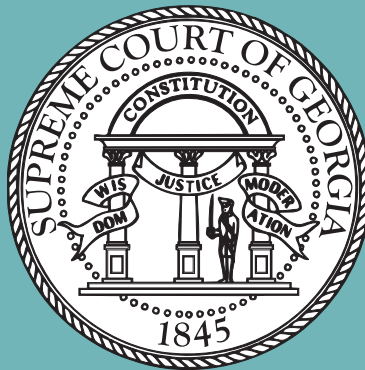


Cognition in the Courts Conference

*May 2006
Atlanta, GA*



White Paper Summary

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Executive Summary

The Cognition Issues in the Courts conference, held in Atlanta, Georgia on May 16 and 17, 2006, sought to provide a meaningful dialogue about the issues confronted by individuals with developmental and intellectual disabilities who come into contact with the court system. The event, cosponsored by the Atlanta Alliance on Developmental Disabilities, the State ADA Coordinator's Office, and the Georgia Committee on Access and Fairness in the Courts, examined the role of the court systems in accommodating individuals with developmental and intellectual disabilities who encounter the justice system as victims, witnesses, jurors or defendants.

The objective of the conference was to identify and discuss in greater depth the main issues concerning how to best ensure equal access for individuals with developmental disabilities in the court system. Attendees included judges, attorneys, social workers, prosecutors, court officers, representatives from social service agencies, and state government programs from throughout the United States. Attendees listened to presentations and participated in discussions that primarily focused on the following topics:

- Identifying how individuals with developmental and intellectual disabilities come into contact with the court system.
- Identifying barriers in the criminal justice system for individuals with intellectual disabilities.
- Exchanging ideas and best practices between disability service providers from jurisdictions around the country.
- Developing a summary of recommendations for next steps.

The substance of the two-day conference drew on the expertise of presenters and facilitators from Georgia, Minnesota, Vermont, Connecticut, Colorado, Pennsylvania and California. Each of the two days commenced with a large plenary session organized around a general theme. The first day's plenary, "State Programs," explored the work of three different advocacy organizations that help to accommodate individuals with intellectual disabilities in the court system. The second day's plenary, "The Vermont Communication Support Project," focused on one advocacy project that has been successful in providing assistance to individuals with intellectual disabilities in the state family and probate courts of Vermont.

Robert Perske, a renowned disability rights advocate, delivered the keynote address. Mr. Perske, the author of several works, including the books *Unequal Justice*, *Show Me No Mercy*, and *Deadly Innocence*, drew on his decades of experience to pose critical questions to the audience about our society's treatment of defendants with intellectual disabilities who become part of the criminal justice system.

Panel discussions based on common themes rounded out the remainder of the conference, with two to four speakers presenting on each panel. These panel topics were:

- Criminal Justice Issues, which tackled the problems that individuals with intellectual disabilities often experience in navigating the complex criminal court system.
- Criminal Justice Programs, which examined programs that have been implemented or are currently in existence for criminal defendants with developmental disabilities.
- Alternative Courts, which tackled the hot topic of specialty courts, including mental

health courts, community courts, and drug courts.

- Civil Court Issues, which examined problems that attorneys may encounter in civil court and what accommodations are available or should be available to better assist the client, attorney, judge, and other court personnel.
- Judicial Perspectives, which examined the role that judges and court personnel play in accommodating persons with intellectual disabilities and mental illness who find their way into the courtroom.
- Consumer Panel, which provided a forum for self-advocates to share their personal stories about their experiences with the legal system.

After the close of the conference, several members of the planning committee met to discuss the results and their impressions of the two-day event. Based on research conducted prior to the conference, information gathered during the conference, and discussions that resulted after the event, this white paper is a final product that serves to accomplish two tasks: 1) it provides a comprehensive overview of general problems; and 2) it includes a series of recommendations for next steps. These recommendations include the following:

- Coalition building and collaboration is essential to identifying and addressing issues facing individuals with intellectual disabilities in the criminal justice system.

- There is a great need for training curricula for all concerned parties. Audiences for whom such training would be appropriate should be identified, and collaborations with existing criminal justice-related training should take place if at all possible.
- Existing home-based and community-based supports must be expanded, while ensuring that these supports are relevant to persons with co-occurring diagnoses.
- A plan for targeted case management services should be developed to enhance the judicial system's options for alternative sentencing and to generally assist individuals with the challenges presented to them when before the courts.
- Social workers should be employed in every public defender's office to help in communicating with defendants with intellectual disabilities.
- Georgia's statutory language should be changed to use "people first language" when referring to individuals with disabilities.
- Alternative courts or Individualized Justice Plans should be developed to help ensure greater fairness in the criminal justice system.

Introduction

On May 16 and 17, 2006, approximately sixty-five individuals attended a working conference entitled “Cognition Issues in the Courts” in Atlanta, Georgia. This conference was cosponsored by the Atlanta Alliance on Developmental Disabilities, the State ADA Coordinator’s Office, and the Georgia Committee on Access and Fairness in the Courts. The two day conference was the culmination of work previously undertaken by various Georgia agencies to examine the role of the courts in accommodating individuals with developmental and intellectual disabilities¹ (commonly referred to as “mental retardation”²) who encounter the criminal and civil court systems as victims, witnesses, jurors or defendants.

Attendees included judges, attorneys, social workers, prosecutors, court officers, and representatives from social service agencies³ and state government programs from throughout the U.S. Presenters and facilitators were from Georgia, Minnesota, Vermont, Connecticut, Colorado, Pennsylvania and California.

The objective of the conference was to identify the main issues pertaining to how to best ensure equal access for individuals with developmental and intellectual disabilities in the court system. To that end, the conference’s speakers, topics, and discussions primarily focused on the following topics:

(1) Identify how persons with developmental and intellectual disabilities come into contact with the court system. The most common ways are as victims, witnesses, jurors or defendants.

(2) Identify barriers in the criminal justice system for individuals with intellectual disabilities, regardless of how the individual enters the system, in order to create a more equitable system. This involved a close examination of practices at every phase of the criminal proceeding: from giving witness statements, to police interrogation, to pre-trial pleas, to establishing a defense theory with an appointed attorney, and to giving testimony at trial.

(3) Exchange ideas and practices between disability service providers from jurisdictions around the country. Conversations between attorneys and social workers were helpful in compiling comprehensive information on services and best practices that are available for individuals with intellectual disabilities.

(4) Develop a summary of recommendations for next steps to support individuals with developmental and intellectual disabilities to be included in a white paper.

This paper is the final result from the May 2006 conference. It attempts to encompass the conference background, key topics, ideas, and recommendations that were discussed during the two day event. This paper closes with an overview of some general recommendations proposed during the conference and developed by conference organizers as next steps in providing equal access for individuals with developmental and intellectual disabilities in the court system.

¹The term “developmental disability” refers to a group of conditions attributable to a mental or physical impairment or combination of impairments that occur prior to, at birth or during childhood. The term “intellectual disability” refers to a subset of developmental disabilities characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. Please see Section IV and Appendix A for additional details.

²The term “mental retardation” was deemed by many as offensive during the 1990s and has subsequently been replaced in the disability community with “intellectual disability.” See Section IV and Appendix A for additional details.

³See the Glossary in Appendix A for additional details.

Conference Background

The conference developed as a continuation of other initiatives undertaken in the State of Georgia to address barriers to court access for individuals with disabilities. In 2004, the Institute on Continuing Judicial Education (ICJE), Institute on Human Development and Disability (IHDD), Georgia Georgia Committee on Access and Fairness in the Courts, and the State ADA Coordinator's Office collaborated to conduct a series of "focus group" discussions with judges from various classes of courts in Georgia. The judges were asked about their experiences with parties (plaintiffs or defendants), jurors, and witnesses in their courtroom who had a physical or intellectual disability. They were prompted to recount stories about any difficulties they had encountered in accommodating the disability and what resources they had relied upon; or, alternatively, what resources they would have liked to have had available to them.

The topics and comments that resulted from these discussions were thought provoking. Judges across all classes of court acknowledged difficulty in adjudicating cases involving individuals with intellectual disabilities, learning disabilities, or various types of mental illness. Specifically, many explained they often-times are uncertain if an individual has an intellectual disability and are unsure about what procedure to follow to determine such conditions. Further, if a party to a case does have an intellectual disability, judges expressed concern with how to best communicate with the party and help them through the proceedings.

Based on these findings, the aforementioned group of organizations collaborated to provide a series of trainings for judges and

court personnel for all classes of courts on ensuring access for individuals with disabilities to court services, programs, and activities. Additionally, the Georgia Georgia Committee on Access and Fairness in the Courts developed *A Meaningful Opportunity to Participate: A Handbook for Georgia Court Officials on Courtroom Accessibility for Individuals with Disabilities*. This handbook was written to: 1) provide information about the rights of people with disabilities in clear, easy-to-understand language; and 2) increase the ability of judges, clerks, bailiffs and other court personnel to identify and remove the barriers to full participation that individuals with disabilities encounter in Georgia courtrooms. However, while it proved to be a useful tool, the handbook did not provide adequate guidance concerning individuals with intellectual disabilities in the courts.

In 2005, the Atlanta Alliance on Developmental Disabilities formed the Criminal Justice and Developmental Disabilities Coalition to address the lack of understanding of the needs for individuals living with developmental disabilities when confronted with the criminal justice system. The Georgia Committee on Access and Fairness in the Courts and State ADA Coordinator's Office joined the Coalition in an effort to continue to explore ways to better accommodate individuals with developmental disabilities in the court system. In examining the issue, the three organizations opted to sponsor a two-day working conference to bring together attorneys, judges, service providers, and disability advocates to discuss how to improve court accommodations to individuals with intellectual disabilities.⁴

⁴See Appendix B for statistics gathered from post-conference surveys.

Substantive Issues

A. The Language Challenge

Language is important when addressing disability issues. From the Middle Ages until well into the twentieth century, the British and the American legal systems labeled many individuals with developmental disabilities as “idiots,” “imbeciles,” or “feeble-minded.”⁵ However, these terms have been replaced with words considered more respectful for people with disabilities such as “developmental disability,” “intellectual disability,” or “individual with a disability.”⁶ For example, the American Association on Mental Retardation recently changed its name to the American Association on Intellectual and Developmental Disabilities. Moreover, some states are explicitly setting standards for how intellectual disabilities should be referred to in legal documents. In July of 2005, the State of Oregon passed a “Respectful Language Bill” which officially adopted the use of “people first language”⁷ in state legal documents; as a result, “individual with disability” replaces terms such as “disabled person.”⁸ This paper uses “people first language” except when associated with a quote.

The term “developmental disability” refers to a group of conditions attributable to a mental or physical impairment or combination of impairments that occur prior to, at birth or during childhood and manifest prior to the age of twenty-two.⁹ The term intellectual disability refers to a subset of developmental disabilities characterized by significant limitations

both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.¹⁰

Finally, while this conference focused on intellectual disability issues, many discussions during the two days raised interrelated points about mental illnesses. It should be noted that while mental illness and intellectual disabilities are separate matters, they can be co-occurring; like all other persons, some people with intellectual disabilities are susceptible to mental illness. In addition, in looking at mental illness in the criminal justice system, conference participants were able to examine programs currently in place and look for practices (already accepted and codified) that can be adapted and/or utilized for persons with intellectual disabilities.

Statutory Language in Georgia: The State of Georgia has no statute that defines an “intellectual disability;” Georgia relies on OCGA 17-7-131(a)(3), which defines “mentally retarded” to mean “having significantly sub-average general intellectual functioning resulting in or associated with impairments in adaptive behavior which manifested during the development period.” The State of Georgia does have a statute that defines “developmental disability” that includes “mental retardation and other neurologically disabling conditions, including epilepsy, cerebral palsy, and autism, which require treatment similar to that for individuals with mental retardation.”¹¹

⁵See, for example, Issac Ray, A TREATISE ON THE MEDICAL JURISPRUDENCE OF INSANITY 227 (Harvard 1st ed. 1883) (1962 reprint) (“Idiocy, imbecility and senile dementia admit neither of cure nor amelioration.”) *Comment, Lunacy and Idiocy—The Old Law and Its Incubus*, 18 U. CHI. L. REV. 361, 361-2 (1951) (distinguishing between lunatics and idiots, and describing idiots as having been born “mentally deficient or disturbed.”).

⁶Note, however, that some states still enforce statutes that use such antiquated language. See, for example, Georgia’s witness competency statute, GA. CODE ANN. §24-9-5 (1990), which explains that: “Except as provided in subsection (b) of this Code section, persons who do not have the use of reason, such as idiots, lunatics during lunacy, and children who do not understand the nature of oath, shall be incompetent witnesses.”

⁷See the Glossary in Appendix A for further explanation.

⁸See Oregon’s Respectful Language Bill, HB 3047 (passed July 1, 2005).

⁹See the Association of University Centers on Disabilities, available at http://www.aucd.org/aucd_dddefinition.htm. Please see the Glossary in Appendix A for more details.

¹⁰*Mental Retardation: Definition, Classification and Systems of Supports*, 10th edition. AAMR. See the Glossary in Appendix A for more details.

¹¹See OCGA 37-2-2(4) of the Mental Health Title.

B. Statistics

Persons with developmental disabilities are frequently the victims of crimes, and justice often goes unserved. According to the Arc of the United States¹², adults with developmental disabilities are abused at four to ten times the rate of others their age, and over ninety percent of the time, the victim knows the abuser personally.¹³ Crime strikes people with developmental disabilities four times more often than the general public, with people with developmental disabilities being 13 times more likely to be a victim of sexual assault or robbery.

Compounding the problem, seventy-one percent of crimes against people with developmental disabilities are never reported.¹⁴

Additionally, people with intellectual disabilities or developmental disabilities frequently come into contact with the criminal justice system as defendants. While statistics can vary widely, due in part to not identifying individuals with intellectual disabilities, the best available data suggest that at least forty-five thousand — and perhaps more than two hundred thousand — people with intellectual disabilities currently are imprisoned in the United States.¹⁵ Suspects with intellectual disabilities comprise somewhere between two and ten percent of the population of prisoners,¹⁶ whereas intellectual disabilities occur in approximately three percent of the general population.¹⁷ In California, for example, an increasingly dispro-

portionate number of people with developmental disabilities, including intellectual disabilities, cerebral palsy, and autism, have rates of conviction.¹⁸ Such individuals are also less likely to strike a plea bargain, to be granted probation, or released on parole; and they are often abused in prison.¹⁹ Moreover, police, courts, and prisons are ill-equipped to handle their needs, and state regional centers that provide services for persons with developmental disabilities lack resources and training to deal with criminal offenders.

C. Unique Characteristics of Individuals with Intellectual Disabilities

People with intellectual disabilities are often viewed as one-dimensional caricatures by the general public, including the courts, prosecutors, defense attorneys,²⁰ and juries. Although stereotypes and misconceptions abound, it is important to understand that all persons with disabilities are unique individuals, and therefore there are no behavioral characteristics or traits that can be categorically assigned to them.

However, there are some characteristics that many with intellectual disabilities possess. Knowledge of these characteristics may help identify victims, witnesses, defendants, or inmates with intellectual disabilities, allowing all branches of the criminal justice system to address the needs of these individuals with rea-

¹²The Arc of the United States website describes the national organization as one that “is devoted to promoting and improving supports and services for people with mental retardation and their families. The association also fosters research and education regarding the prevention of mental retardation in infants and young children.” See <http://www.thearc.org/about.htm>.

¹³See Nora J. Baladerian, *What I Have Learned About Abuse of People with Developmental Disabilities in My Thirty-Six Years in the Field*, the Arc Riverside, available at <http://www.arcriverside.org/newsletters/Newsletter-WhatIveLearned.pdf>.

¹⁴See The Special Offenders’ Coalition at the Arc of the Pikes Peak Region, available at: http://www.pjdf.org/innovation/innovation/innovation.asp?innov_id=66.

¹⁵See, for example, Arthur L. Bowker, *Handle With Care, Dealing with Offenders Who Are Mentally Retarded*, 63 FBI L Enforcement Bull 12, 12 (1994) (giving figures as from 5 to 10 percent of the prison population), citing C.O. McDaniel, *Is Normalization the Answer for MROs?* CORRECTIONS TODAY 184 (1987).

¹⁶*Id.*

¹⁷William Edwards et al., *Equal Justice for People with Mental Retardation, A Training Guide for Attorneys* (Institute on Disabilities at Temple University, 2002).

¹⁸*Equal Justice Eludes People with Developmental Disabilities*, available at: http://www.open.org/people1/articles/news_justice_eludes.htm.

¹⁹*Id.*

²⁰If the defense attorney fails to employ discerning interviewing techniques to offset the well-documented tendency of persons with intellectual disabilities who attempt to conceal their disability, important facts are likely to be masked or distorted. “Although interviewing the person with intellectual disabilities can provide some information on present and past abilities, such information should always be corroborated with external sources as reliability is questionable. . . . Frequently people with intellectual disabilities do not have accurate estimations of their abilities and often provide distorted versions of past accomplishments.” See Caroline Everington and Denis Keyes, *Diagnosing Mental Retardation in Criminal Proceedings: The Critical Importance of Documenting Adaptive Behavior*, 8 THE FORENSIC EXAMINER 31, 34 (1999).

sonable accommodations. For example, people with intellectual disabilities often try to hide their disability and make convincing efforts to avoid being identified.²¹ These individuals often are not identified as having a disability at the pre-trial stage even if the public defender requests to have a mental health evaluation conducted, as many pre-trial mental health evaluations inadequately detect the presence of intellectual disabilities.²² People with intellectual disabilities are often poor and thus dependent on the court and state to provide resources for an evaluation. However, mental health evaluators provided by the state often fail to obtain school records and thus never discover that an individual received special education services. Evaluators may also fail to conduct a complete psychological, social, and medical history of the defendant,²³ and they frequently conduct inappropriate psychological testing using outdated materials.²⁴

In addition, some people with intellectual disabilities have a significantly limited ability to use abstract reasoning²⁵ and most have limited communication skills.²⁶ These two factors often limit their ability to assist a prosecutor or defense attorney in preparing for their case.

Moreover, without the proper supports, individuals with developmental disabilities often answer questions without understanding what they are being asked.²⁷ For example, it has been shown that a majority of individuals

with intellectual disabilities do not even understand their Miranda rights, and, by extension, they do not understand the court process. An in-depth report published in 2002 by a team of defense attorneys and law professors revealed that “[e]ven people with only the mildest retardation do not understand the Miranda warnings or their legal significance.”²⁸ These qualities increase their susceptibility to coercion, leading many to confess to crimes that they did not commit.

Furthermore, people with intellectual disabilities may have limited attention spans,²⁹ so it is not unusual for people with intellectual disabilities to have a difficult time paying attention in court. They often behave in ways that are contextually inappropriate, and this may impact their case at trial and sentencing.³⁰ Many frequently smile at the witnesses and jury, and while this improper behavior may be intended to mask their lack of understanding of the courtroom proceedings, it may convey a false impression or show a lack of remorse.³¹

Finally, people with intellectual disabilities may recall fewer details and become confused about the timing or sequencing of events. However, research examining witness reliability has shown that they are as reliable as non-disabled witnesses in reporting what was done to them and the identity of the perpetrator.³²

²¹ See, for further discussion, William J. Edwards, *Competency to Confess: Rethinking the Death Penalty for People with Intellectual Disabilities*, paper presented at Auckland University of Technology, Auckland New Zealand (2005) (paper on file with the author).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Denis W. Keyes et al., *Mitigating Mental Retardation in Capital Cases: Finding the “Invisible” Defendant*, 22 MPDLR 529, 531 (1998).

²⁶ Court documents are usually written at a twelfth grade level. Most individuals with developmental disabilities have a reading level far below the twelfth grade. (Phone conversation with Dr. Philip Kinsler, October 2005. Dr. Kinsler is a professor and clinical psychologist at the Antioch New England Graduate School. For more information on his work, see Kinsler, Saxman, and Fishman, *The Vermont Defendant Accommodation Project* at 10 PSYPPL 134 (2004).)

²⁷ Morgan Cloud, *Words Without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects*, 69 U. CHI. L. REV. 495, 501 (1d.2002).

²⁸ *Id.*

²⁹ See Edwards, *supra* note 21.

³⁰ *Id.*

³¹ *Id.*

³² N. Perlman & K. Erickson, *Interviewing Developmentally Handicapped Persons: The Ability of Developmentally Handicapped Individuals to Accurately Report on Witnessed Events*, in *Law and Mental Health*, 202-206 (J. Casselman ed., 1992).

D. Individuals with Intellectual Disabilities and the Criminal Justice System

Individuals with developmental disabilities often do not have access to equal justice under the law.³³ This, in part, is due to the under-identification of an intellectual disability, lack of inter-agency coordination, and a fragmented system of intervention should an individual become involved in the criminal justice system.³⁴ In most county jails, for example, if a person with an intellectual disability is not identified upon entrance, he or she will likely remain unidentified.³⁵ Most individuals with intellectual disabilities who commit crimes and are booked into jails have a mild intellectual disability that is difficult to detect.

Consequently, the criminal justice system often fails to produce support systems for persons with intellectual disabilities.³⁶ Prison can have severe repercussions for both the offender and society, as persons with intellectual disabilities are often processed without sufficient regard to addressing any support needs³⁷ and jails are poorly equipped with the necessary resources to provide adequate treatment or support services.³⁸ Furthermore, fellow inmates often mistreat prisoners with disabilities, making them the target of assault, exploitation, extortion, and sexual abuse.³⁹ When such defendants are discharged from prison, the negative effects of imprisonment,

coupled with a lack of adequate monitoring and support services required to assist the person's transition back into the community, may exacerbate re-offending by people with disabilities.⁴⁰ This cycle defeats the purpose of traditional sentencing, which typically stresses rehabilitation in addition to retribution.

Many aspects of the criminal justice system have been unable to address the needs of offenders who have intellectual disabilities.⁴¹ This has led to a search for alternative and improved methods of working with offenders with intellectual disabilities who come before the court. The utilization of proactive dispositional options such as diversion programs and deferred sentencing may achieve more humane outcomes for such offenders.⁴² Diversion programs aim to screen and identify offenders diagnosed with a mental illness or an intellectual disability in order to divert them from the criminal justice system and into a program that aims to provide treatment and/or support in a setting more likely to help attain positive change.⁴³

Citizens with intellectual disabilities are especially vulnerable to confusion over specific and formal requirements of conditions of pre-trial releases and probation. For example, in many states, defendants are often subject to release or probation conditions requiring that they attend multiple appointments a week with various programs, such as alcohol coun-

³³ARC of California, *Criminal Justice Task Force for Persons with Developmental Disabilities*, 4 Sacramento, CA (1998).

³⁴*Id.*

³⁵*Id.*

³⁶See Alexander Zammit, *Disability and the Courts*, for the Office of the Public Advocate 4 (February 2004) (copy on file with the author).

³⁷*Id.*

³⁸T. Butler & S. Allnutt, *Mental Illness Among NSW Prisoners*, Corrections Health Services, available at: <http://www.health.nsw.au> (2003).

³⁹J. Mariner, *Prisons as Mental Institutions*, FindLaw's Legal Community, available at: <http://writ.news.findlaw.com> (November 2003).

⁴⁰D. Denckla & G. Berman, *Rethinking the Revolving Door: A Look at Mental Illness in the Courts*, Center for Court Innovation, available at: <http://www.courtinnovation.org> (2001).

⁴¹See Zammit, *supra* note 36, at 11. Prisons based on retribution do little to help lower the conduct of any criminal offender, whether he or she has a developmental disability or not.

⁴²*Id.*

⁴³S. Henderson, *Mental Illness and the Criminal Justice System*, the Mental Health Coordinating Council, available at: <http://www.mhcc.org.au> (November 2003).

seling, mental health, and anger management services.⁴⁴ Many defendants with intellectual disabilities have trouble telling time, using a calendar, arranging transportation, or following a multi-step plan.⁴⁵ The criminal justice system interprets lateness, the failure to keep these multiple appointments, and not following complex instructions as signs of willful defiance, and it punishes and incarcerates

based on this assumption.⁴⁶ However, such violations could be reduced if defendants with intellectual disabilities were given conditions of probation that were clear and within their abilities, or if the probation officers and the judges understood the nature of the defendant's disabilities.

⁴⁴Philip J. Kinsler et al., *The Vermont Defendant Accommodation Project*, 10 Psychol. Pub. Pol'y & L. 134 (2004).

⁴⁵*Id.*

⁴⁶*Id.*

Program Summary: Issues of Discussion at the Cognition in the Courts Conference⁴⁷

A. Plenary Sessions and Key Note Address

Plenary #1: State Programs

Panelists:

Kerry Martin, Office of Special Offenders Services (Lancaster, Pennsylvania)

Teddy Roberts, The Arc of the Pikes Peak Region (Pikes Peak, Colorado)

Lili Garfinkel, The Juvenile Justice Project (Minneapolis, Minnesota)

Facilitator: Mary Yoder, Atlanta Alliance on Developmental Disabilities

As the issue of accommodating individuals with intellectual disabilities becomes more pronounced, state agencies and advocacy organizations are responding by implementing programs to better meet the needs of all citizens in the court system. In this panel, conference participants heard from three panelists in different parts of the country that have created or are directing such programs.]

Special Offenders Program Summary. The Office of Special Offenders Services is one of four specialty programs operating under Lancaster County Adult Probation & Parole Services and serving the Lancaster County Court of Common Pleas. It is the first of its kind in the United States and is recognized as an international model for agencies and facilities that address the special needs of offenders with intellectual disabilities and/or mental illness. It is unique in that it utilizes a dual-systems approach that combines the criminal justice system and social services system.

In addition to supervising individual probation/parole clients, the director and employees

of Special Offenders Services educate other members of the legal, educational, and MH/MR⁴⁸ communities through conference, seminar, and classroom presentations. Efforts are also made to encourage potential offenders to stay free of trouble and away from the criminal justice system through the agency's school crime prevention and scared-straight programs.

After being placed on probation or parole supervision by a Judge of the Lancaster County Court of Common Pleas, each client is accepted into the program based on established diagnostic criteria and can be placed into one of three components available: Juvenile Mental Retardation, Adult Mental Retardation, or Adult Mental Health.

The program emphasizes "a team approach to realizing individual goals." Each client is assigned a Court-funded Probation Officer and an MH/MR-funded Case Manager while serving his/her probation or parole sentence on an intensive basis. While under supervision, each client works to maintain functional stability and achieve his/her maximum potential in life, given his/her individual capacity and ability. Following completion of probation/parole, each client is encouraged to remain in contact with the community-based resources to help ensure a continued crime-free and productive lifestyle.

During her presentation, Ms. Martin emphasized the importance of an extensive public education effort and said there was a need for interdepartmental approaches to helping criminal defendants with intellectual disabilities. She stressed that social workers, the police, and the legal system should all be able to work together.

The Juvenile Justice Project Summary. Based in Minneapolis, the Juvenile Justice Project includes multiple components in helping juveniles with disabilities in the justice system. These components include specialized trainings for professionals and parents; a partnership with the National Center on Education, Disability, and Juvenile Justice;⁴⁹ individual assistance and referral to families and professionals with questions about youth with disabilities at risk or already in the justice system; and the distribution of publications and videotapes.

Ms. Garfinkel explained that most of the issues she works with relate to special education. For example, often a child will be charged with a crime (e.g. assault) at school. She said that many of the behaviors that result in court appearances could be averted with properly written and executed Individualized Education Plans (IEP). Ms. Garfinkel criticized the federal No Child Left Behind legislation as making it easier for schools to justify expelling students with special needs. She also emphasized the need to utilize early intervention techniques to address the purpose of the behavior—rather than the behavior itself—as the key to preventing repeat offenders.

The Special Offenders Coalition of Pikes Peak: A subsidiary of the ARC of the Pikes Peak Region, the Coalition works to build recognition of individuals with developmental disabilities to ensure they receive appropriate treatment and assistance throughout the judicial system and in the community. The Coalition was established in 1992 to foster understanding between law enforcement and people with disabilities.

Ms. Roberts noted that deinstitutionalization⁵⁰ in the previous decades corresponds with the increase in persons with intellectual disabilities and mental illness going through the

criminal justice system. While her Coalition was not at first embraced by the law enforcement community, it slowly became accepted with the decrease of repeat offenders.

The program uses various techniques to assist people with intellectual disabilities as they navigate the justice system. For example, by recording the sentencing process on video, the defendant is able to review the judge's explanation of the person's problematic behavior as many times as necessary to gain full comprehension of what was said in court.

Ms. Roberts also pointed out that El Paso County, Colorado established a dual diagnosis tract of court and treatment to address the large number of clients with the multiple diagnoses of developmental disabilities and mental illness (as well as addiction on a case by case basis). The program focuses on treatment that teaches appropriate behaviors.

Plenary #2: The Vermont Communication Support Project

Panelists:

Karen Vastine, Vermont Communication Support Project (Montpelier, VT)
Anna Saxman, Deputy Defender General, Vermont Communication Support Project (Montpelier, VT)

The Vermont Communication Support Project (VCSP) provides accommodations for individuals with intellectual disabilities in family and probate courts in the State of Vermont. The project is currently sponsored by the Vermont Developmental Disabilities Council and employs six "Communication Specialists." These Specialists generally have a background in disability issues and a familiarity with the court system, and they complete a two-day training prior to the commencement of their job.

⁴⁹See The National Center on Education, Disability, and Juvenile Justice, available at <http://www.edjj.org>.

⁵⁰Please see the Glossary entry on Institutionalization in Appendix A for more details.

Specialists serve as “interpreters” for individuals with intellectual disabilities in the court system. Specialists may help with communication between a client and attorney, the judge, other court personnel, or may help explain aspects of court proceedings.

However, Specialists are barred from advocating on behalf of the client.

While the project initially originated in criminal court, Specialists are now used exclusively in probate and family courts. The panelists noted that while working in the criminal court system, there were several instances where Specialists were used to justify trying individuals with severe intellectual disabilities who would have otherwise been found incompetent to stand trial.

Keynote Address: Robert Perske, author of Unequal Justice, Show Me No Mercy, Deadly Innocence, and Circles of Friends

Robert Perske, noted author and advocate for people with disabilities who have encountered the legal system, presented a rousing and thought-provoking presentation based on his decades of experience. He began the presentation with his belief that “we all live by the grace of others” and that people must have passion and endurance to work for justice on behalf of individuals with disabilities. As an initial example, Mr. Perske related the story of Jerome Bowden, a man with an intellectual disability, who confessed to a murder in 1976 after a prolonged and intense interrogation. Bowden was convicted with no physical evidence corroborating his confession presented at trial and was executed on June 24, 1986. The actual perpetrator of the crime, Jamie Graves, received a life sentence for his crime. Using this story as the backdrop, Mr. Perske asked a series of questions for the audience to consider:

1. *Is there a difference between a rich and poor man's trial?*
2. *What are our beliefs about intellectual disabilities?*
3. *What happens when there is a failure to corroborate evidence?*
4. *What happens when a psychological evaluation is conducted without explanation of intellectual disability?*
5. *Is it problematic when an individual with an intellectual disability does not have access to a defense attorney during questioning?*
6. *What happens if the defense attorney is inept?*
7. *What happens if the person who is arrested cannot understand their Miranda rights?*
8. *What happens when a person with an intellectual disability is named as accomplice?*

Mr. Perske suggested that in considering issues related to people with intellectual disabilities in the legal system, there are eight areas that merit attention:

1. *We must acknowledge our early, awful prejudices.*

In his 1927 work, *Mein Kampf*, in which he championed cleansing of race, Hitler said, “the right of personal freedom receded before the duty to preserve the race.” This ideology led to the systematic execution of many people with disabilities. Mr. Perske cited Oliver Wendell Holmes, the Supreme Court Justice who said persons with intellectual disabilities were “imbeciles who were a sap on the strength of the nation” and ordered their systematic sterilization. In addition, Mr. Perske cited Dr. Golter, who coined the term “moron,” and who said these individuals formed the criminal class.

Throughout history, parents of babies with disabilities were told by doctors not to take them home, which led to the practice of institutionalization.⁵¹ One of the largest institutions in the world was Central State Hospital in Georgia, which housed 13,000 people. It should be noted that Central State Hospital still houses people with disabilities. While there has been a movement towards deinstitutionalization, with human services systems developing supports so that people with disabilities “live in our neighborhoods,” Perske expressed a concern that the jails have become the present day institutions.

2. *We must find ways to improve our Judicial System.*

3. *We must improve police training, using community policy officers as a possible model.*

4. *We must strive to diminish the rate of false confessions.*

In a review of cases, half of the individuals with intellectual disabilities convicted of crimes were exonerated by DNA tests. In 39 of those cases, no defense attorney was present during interrogations.

5. *We must advocate for expanded use of videotaped confessions.*

Across the country, 238 law enforcement agencies are using video recording equipment in the interrogation room. In the State of Georgia, Atlanta, Fulton, Cobb, DeKalb, and Savannah have adopted this procedure.

6. *We must educate people about the danger of misunderstanding responses – to questions, to processes, to interactions with people – that may occur when a person with an intellectual disability encounters the criminal justice system.*

7. *We must completely ban executions of persons with intellectual disabilities.*

Perske cited the Supreme Court’s decision in *Atkinson vs. VA*⁵² and noted that Georgia was the first state to ban the execution of persons with mental retardation.

8. *We must strive to corroborate confessions.*

Perske cited examples in Iceland; where thorough investigations had resulted in confessions, but reviews identified biases on the part of the investigators that were critical to how the process was carried out and the conclusions were reached. He strongly stated that “using trickery to get confessions is wrong” and it is important to have an independent third party present during an interrogation. Perske stressed that law enforcement should not depend on “macho star-performers” to elicit confessions out of persons with intellectual disabilities.

As an extended part of his address, Mr. Perske presented a series of video clips of interrogations, news reports, and commentaries on people with intellectual disabilities who had been arrested and convicted of various crimes. These clips detailed problems with all parts of the criminal justice system, but primarily focused on interrogating people with intellectual disabilities without counsel present and false or coerced confessions. In most cases, the videos dealt with individuals who had been convicted and sentenced to either life in prison or to death.

⁵¹ See the Glossary in Appendix A for details.

⁵² See *Atkinson v. VA*, 536 U.S. 304 (2002).

B. Panel Discussions:

Panel Discussion: Criminal Justice Issues

Panelists:

William Edwards, Deputy Public Defender
(Alhambra, California)

Richard Malone, Prosecuting Attorneys'
Council of Georgia (Atlanta, GA)

Buddy M. Mears, The Georgia Public
Defender Standards Council (Atlanta, GA)

Facilitator: Yvette Robinson, ASMI (Atlanta,
GA)

Individuals with intellectual disabilities often experience difficulties in navigating the complex criminal court system. Reports, such as Emory Law School Professor Morgan Cloud's *Words Without Meaning*⁵³ law review article, emphasizes that defendants with intellectual disabilities fail to understand fundamental Miranda warnings and often confess to crimes they did not commit or waive their access to legal representation. Once these individuals are defendants in the criminal court system, they often encounter difficulties in communicating with their attorney, the judge, their probation officer, and other court officials. These panelists debated ways to better identify and assist criminal defendants with intellectual disabilities in the criminal justice system.

The first topic for discussion centered on how to best help defendants communicate in court proceedings. Mr. Mears acknowledged that navigating the court system is difficult for individuals without disabilities, and especially trying for those with disabilities.

Consequently, attorneys must understand that the communication deficit puts many individuals at a disadvantage, and attorneys must be trained to communicate using a language that is easier to understand. Mr. Mears noted that there has been a push to staff public defender offices with social workers to better accommodate individuals with intellectual disabilities.

Mr. Edwards emphasized the need for screening devices and assessments. He argued that it is imperative that individuals with intellectual disabilities be identified so that they can be helped. Moreover, he emphasized that the real problem originates with the initial arrest. Often people are told police officers are "our friends," but that isn't always the case. Mr. Edwards described one of his clients, "Jimmy," who lights fires and then calls 911 because he enjoys climbing on the fire trucks and petting the dog. Mr. Edwards argued that "Jimmy" does not understand what "voluntary" means or what an "accomplice" is, and concluded that the problem lies not with the Miranda warnings but with the need for better training to teach clients living in the community and in group homes that they should not talk to the police. Mr. Edwards wrote such a training guide in 2002 with Temple University.

Mr. Malone, however, disagreed with the notion that we should teach people with intellectual disabilities not to talk to the police. He pointed out that a large number of victims of crimes are those with disabilities, and they should be encouraged to report such incidents to the police. Rather, he believed that the real issue is about communication and said there needs to be more resources available to public defenders to deal with defendants who have intellectual disabilities.

⁵³See Cloud, *supra* note 27.

*Panel Discussion: Criminal Justice Programs*Panelists:

William Edwards, Deputy Public Defender
(Alhambra, California), Facilitator

Kerri Martin, Office of Special Offenders
Services (Lancaster, Pennsylvania)

Anna Saxman, Vermont Communication
Support Project (Montpelier, Vermont)

Ron Braswell, TAPP Program Director, Albany
ARC (Albany, Georgia)

This panel examined programs that have been implemented or are currently in existence for criminal defendants with developmental disabilities and other special defendants. Kerri Martin and Ron Braswell currently run existing programs. Anna Saxman formerly directed a criminal justice program which has since transitioned to only assist individuals in probate or family court proceedings.

Each panelist commenced by discussing how their program operates. Ron Braswell described the Mental Health Court in Albany, Dougherty County, Georgia, which was established as an attempt to reduce recidivism and the number of people in jail. It is primarily a post-conviction program that is divided into two tracts: mental health and substance abuse. Violent felonies and sex offenses are excluded. The program uses rewards for compliance such as an early end to probation and lighter sentences, and it has been designated as a learning site by the US Department of Justice.

Kerri Martin of the Office of Special Offenders Services described her program as one focused on probation and parole that includes a great deal of community education. (See further discussion about this program in the Plenary One section above).

Anna Saxman from the Vermont Project briefly described the start up of a mental health court in Vermont. The program is designed to help people who cannot succeed in other types of probation. It does use jail as a motivational factor, but the client's attorney only requests jail if they have previously been given permission by the client to do so. Ms. Saxman also pointed out that the issue of competency is handled differently in Vermont than it is in Georgia. In Vermont, an individual is determined to be either incompetent and dangerous (in which case they are held and referred to treatment) or they are determined to be incompetent and not dangerous (in which case they are released). In Georgia, a person's competence is determined first. If deemed incompetent, they may be held and referred to treatment until such time as they are found to be competent; at that point, they can be adjudicated.

Mr. Edwards discussed diversion programs in California. He explained that an individual is automatically eligible for diversion if they are receiving services from a Regional Center (the California provider of Mental Health and Developmental Disability services). No plea is entered, and a report is made to the court every three months concerning the services being provided. He explained that public defenders could appear in court without their clients in misdemeanor cases.

There was a discussion regarding the differences between the court systems in various states: some are unified, while others are not; and some programs in divided court systems accept referrals from all courts. In Georgia, Fulton County accepts referrals from all courts but receives most of them from Superior Court.

*Panel Discussion: Alternative Courts*Panelists:

Andy Cummings, DeKalb County Drug Court (DeKalb County, Georgia)
 Claire D'Agostino, Ph.D., Municipal Court of Atlanta, Community Court Division (Atlanta, GA)
 Sabrina Rhinehart, Office of the Mental Health Advocate, Georgia Public Defender Standards Council (Atlanta, GA)

Mental health courts, drug courts, and community courts have emerged in recent years as alternatives to traditional sentencing methods. Representatives from each of these courts talked briefly about their court, what difficulties they encounter with their clientele, and what issues they still need to work out. The Office of the Mental Health Advocate: Sabrina Rhinehart discussed how her office monitors and represents those found not guilty by reason of insanity. They assist attorneys in cases involving mental health clients and help to establish mental health courts.

The Atlanta Community Court: Claire D'Agostino addressed the system adopted in the city of Atlanta that works with mental health, drug, and other special needs inmates. Dr. D'Agostino described the concept of "restorative justice," which is sentencing that focuses on helping the defendant make restitution to the community for crimes committed. Restitutions can be made to the victim, the community at large, or to the defendant himself.

DeKalb County Drug Court: Andy Cummings discussed the operation of the DeKalb County Drug Court and emphasized that several high risk factors work against treatment in addition to the addiction itself. He explained that one's home life often supports addiction, as does a lack of employment, trau-

ma, and general poverty. Thus, in addressing issues of addiction, all risk factors contributing to the delinquency of an individual must be considered.

Mr. Cummings described three stages to his program: (1) an assessment and screening; (2) a stabilization unit, where housing and case management resources are provided as people detoxify; and (3) providing community based services. The cost for treatment is \$20 per day in comparison to \$50 a day for jail.

*Panel Discussion: Civil Court Issues*Panelists:

Karen Vastine, Vermont Communication Support Project (Montpelier, VT)
 Josh Norris, Georgia Advocacy Office (Decatur, GA)

Facilitator: Phyllis Holmen, Georgia Legal Services (Atlanta, GA)

While issues concerning the justice system and individuals with intellectual disabilities often center on criminal court, such individuals are often involved in civil court proceedings. This panel examined problems that attorneys may encounter in civil court and what accommodations are available or should be available to better assist the client, attorney, judge, and other court personnel.

The panelists started their dialogue by discussing attorney obligations in civil proceedings with clients who have intellectual disabilities. An attorney must be an independent, zealous advocate and work towards the objectives the client desires, which may conflict with what the attorney believes is in the client's best interests. One panelist admitted that this attorney-client relationship can easily turn into a paternalistic arrangement if the attorney is not careful to stay within bounds.

The panel also discussed the various needs of a client during a hearing. Beyond the pres-

ence of an individual like those provided by the Vermont Project Communication Support Project (see the notes on Plenary Two above), attorneys should help clients establish a level of comfort within the court and develop a rapport with the client while refraining from substituting any personal biases. Panelists noted that the Georgia Rules of Professional Responsibility provide a similar rule to the American Bar Association's (ABA) diminished capacity statute, which allows the attorney to seek outside resources if necessary to effectively communicate with the client.

The next major topic pertained to the termination of parental rights. In such cases, a parent's disability can be used against him or her. Peer Navigators—individuals who help advocate for parents in the court system—can provide supportive assistance. One audience member expressed the opinion that DFCS (Department of Family and Child Services) presumes incompetence in the case of parents with disabilities.

The panelists emphasized that courts need to be fair and ensure persons with intellectual disabilities receive due process. The panel offered several suggestions that would help achieved this goal, including: 1) slowing the proceedings down; 2) holding attorneys accountable for their advocacy; 3) raising the Americans with Disabilities Act (ADA) as an issue before the judge; and 4) advocating for appropriate judicial leadership. However, Karen Vastine noted that providing accommodations often results in a stigma, and as a result, many clients do not want to request an accommodation.

Panel Discussion: Judicial Perspectives

Panelists:

Hon. Maxine Cindy Morris, Superior Court
Conasauga Circuit

Hon. Susan Pearce Tate, Probate Court
Athens-Clarke County

In the administration of justice, all persons are entitled to equality, impartiality, and due process of the law. This panel examined a) the role that judges and court personnel play in accommodating persons with intellectual disabilities and mental illness who find their way into the courtroom; and b) the systems and processes currently in place that are used to assist these persons. Judges recounted their past experiences and relayed the best practices as well as those instances that did not fare as well.

Both panelists discussed some of their personal experiences in working with people who have mental health and intellectual disability issues, which have led them both to the belief that coordination of resources and consultation among all involved parties is critical. Both agreed that out-patient commitment tends to work better with the younger participants but is not as successful with the older ones who have had time to cope and embrace their condition. The judges also discussed their preference for setting consequences deemed both appropriate for the crime and for the particular defendant in question.

Moreover, the judges explained how it can prove difficult to balance their ethical duties to remain impartial and still provide reasonable accommodations to a defendant. They agreed that appointing a guardian ad litem can help to ensure that an individual gets a fair day in court without compromising the judge's role as an unbiased jurist.

The judges also brainstormed some possible accommodations that would be feasible in their courtrooms. These included allowing

some leading questioning of the witness for background questioning; loosening the order rules; allowing family members to help explain procedures; repeating testimony; and holding hearings in different locations that are more comfortable for the individual with an intellectual disability.

The panelists also acknowledged the importance of using other services to best meet the needs of persons with intellectual disabilities involved in a case. The judges expressed concern that Georgia does not have a working system for comprehensive services and that state agencies often communicate poorly with each other. One judge in the audience commented that there are not enough licensed social workers in Georgia, resulting in a shortage of qualified people to provide services.

Panel Discussion: Consumer Panel

Panelists:

Celestine Jacobs, Self-Advocate⁵⁴

Jonas Daniels, Self-Advocate⁵⁵

Robert Perske, author

Lesa Nitcy Hope, LMSW, Ph.D., Director of Community Services, AADD

Facilitator: Jenny Manders, Ph.D., IHDD, University of Georgia (Athens, GA)

While it may seem obvious that the opinions and perspectives of people with intellectual disabilities should be included when discussing issues, barriers, and solutions to matters that impact their lives, it does not always happen. During the Consumer Panel, self-advocates had the opportunity to share information about their experiences with the legal system. Other panel participants shared stories of individuals with intellectual disabilities who had direct experience with police officers, social services agencies, and the courts.

Mr. Daniels discussed how he had been

accused of “rape” (child molestation of a family member) and described how he has been treated throughout his ordeal. From the very beginning, Mr. Daniels told law enforcement officials that he was innocent, but the police officers involved in the case repeatedly tried to coerce him into confession. He described how they tried to put words in his mouth, repeatedly asked him confusing questions, and pressured him to sign a statement saying that he committed the crime.

According to Mr. Daniels, he was “given the run-a-round,” while in police custody. The prosecutors continue to pursue his case despite the fact that the girl in question received a medical examination showing no signs of molestation or rape. Mr. Daniels explained that he does not trust his lawyer, in part because they have never spoken outside of the court room. He strongly asserted his innocence and is very worried about the issue continuing.

Ms. Jacobs discussed her struggles involving her abusive ex-husband and the custody of her three children. She described her ex-husband as an overprotective, abusive man who had “dangerous ways,” which resulted in him frequently rotating in and out of jail. Ms. Jacobs told of one particularly bad beating in which he “tried to kill [her]” and she found herself battered, homeless, and pregnant when she fled. She tried to get into several shelters but was told that they were full. Because she had no where to go and “did not know how to get out” of her situation, Ms. Jacobs returned to her abusive husband and they lived with his mother.

After one particular beating during her third pregnancy, Ms. Jacobs called the police and filed for divorce. As retribution, her ex-husband called the Department of Family and Children Services (DFCS) to falsely report that she had neglected their two children and told

⁵⁴To respect the confidentiality of this participant, a pseudonym has been used.

⁵⁵*Id.*

them of her disability. As a result, DFCS took custody of Ms. Jacobs' children away from her and gave them to her ex-husband and his new girlfriend. Ms. Jacobs and advocates told the conference audience that she completed all that DFCS had requested of her, but at each subsequent review, she was given additional requirements to fulfill before her children would be returned to her custody. Staff with DFCS reported at several review panels that they did not support her having her children, based solely upon her disability. After a year and a half, Ms. Jacobs regained custody of her children, and her abusive husband was sent to jail for assaulting her.

Dr. Hope relayed the story of Mr. Grant, a man with an intellectual disability who liked to drink heavily. On one such occasion, Mr. Grant passed out in the back seat of a family member's car, which his cousin and her boyfriend then used to committed armed robbery. Because he was in the car, prosecutors charged Mr. Grant as an accomplice. Mr. Grant's disability, coupled with the fact that he was unconscious when the crime was committed, hampered his ability to help his attorney present an adequate defense. Mr. Grant served eight years in prison while the two perpetrators were acquitted.

Mr. Perske relayed the story of Ms. Smith and her two sons, all of which have intellectual disabilities. Ms. Smith was gang raped while her sons witnessed the crime, but because of their disabilities, the prosecutor considered Ms. Smith and her children poor witnesses. As a result, the case was dropped and the perpetrators went unpunished.

C. New Jersey Developmentally Disabled Offenders Program

Denise Goobic from the New Jersey Developmentally Disabled Offenders Program was unable to attend the conference, but her program provides services that are noteworthy.

The office, which serves the entire State of New Jersey, is staffed by three individuals: the director; a case manager, and a part-time administrative staff person. The program works with defendants who have developmental disabilities to help them better understand the court process. Judges, attorneys, probation officers, and other public and private agencies refer individuals to the program. Most of the clients that the program accepts are deemed competent to stand trial. Advocacy services are provided to defendants who, because of their disability, may not understand the workings of the criminal justice system, and case management services are provided to help develop a "Personalized Justice Plan" for all participants.

The Personalized Justice Plan allows the referring agency to ensure accountability for the individual's behavior while balancing the needs of the community. The Plan identifies community resources that will best enable the defendant to complete probation requirements. For example, it may establish a repayment schedule for covering the cost of a fine or identify community service placements that are appropriate for the defendant. The case manager drafts the Plan and sends it to the attorney, who reviews it and sends it to the judge for approval. Judges have responded well to the program, noting they are grateful to have guidance in handling defendants that have been labeled as "difficult to deal with" in the court system. A staff person may accompany a client to court, but only in the capacity of assisting the attorney, and such appearances are infrequent. Due to the size of the program staff, the case manager focuses on creating jus-

tice plans, working directly with the client through case management, and assisting the attorney, if necessary.

The New Jersey program is unique in that it works with each individual to provide resources and to ensure that a sentence is both appropriate for the crime and for the individual. However, states without this type of program are still capable of shaping sentences that are appropriate for individuals with developmental disabilities. For example, one member of the Vermont Supreme Court, who served on the state's Advisory Council, became interested in the reading levels required in court documents. Document analysis revealed that the conditions of probation and conditions of release documents used in Vermont required a twelfth grade reading level.⁵⁶ These forms were given to defendants of whom ninety-five percent had never finished high school, and 48% of whom had received special education services.⁵⁷ As a result of her findings, the Justice revised the document to be aimed at an eighth grade reading level⁵⁸ and simplified the complex "Application for a Public Defender" form.⁵⁹ While it has proven difficult to refine legal documents into more accessible language, document analysis continues with the goal of lowering them to a fourth to sixth grade reading level. Such simplified forms would also benefit individuals with low reading levels and limited English skills.

D. Alternative Sentencing Schemes and the Americans with Disabilities Act:

Two major initiatives are at the forefront of legal, academic, and policy-making debates on alternative sentencing.⁶⁰ The "community justice" trend includes community policing, community prosecution, community courts, and community sentencing.⁶¹ The "problem-solving" movement utilizes problem-solving policing strategies and specialized problem-solving courts such as drug courts, domestic violence courts, mental health courts, and prisoner re-entry courts.⁶² Conference participants suggested that an effective way to address sentencing for persons with developmental disabilities might combine elements of a community courts system with components of the problem-solving courts. It was noted that while a developmental disability differs from mental illness, in that the latter can be "treated" whereas the former cannot, individuals with intellectual disabilities would greatly benefit from a wide network of community support that would ensure sentencing is appropriate, fair, and can reasonably be fulfilled.

Moreover, several conference panelists and participants suggested that providing more appropriate sentencing schemes and general court accommodations to individuals with developmental disabilities is arguably required by federal law. Title II of the Americans with Disabilities Act (ADA)⁶³ assigns an affirmative obligation to the court system to ensure equal access for participants with disabilities.⁶⁴ This mandate includes a) furnishing aids and services to ensure effective communication for

⁵⁶See Kinsler, *supra* note 44.

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401 (2001).

⁶¹Roger Conner, *Community Oriented Lawyering: An Emerging Approach to Legal Practice*, NAT'L INST. OF JUST. J., 27 (2000).

⁶²*Id.* at 402.

⁶³The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990. It expresses a national goal of assuring equal opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. See the Glossary in Appendix A for more details and citations.

⁶⁴See 42 U.S.C. §12131(1) The provision states that "no qualified individual with a disability shall, by reason of such disability be excluded from participation in or denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." *Id.* See also Keri K. Gould, *And Equal Participation For All... The Americans With Disabilities Act in the Courtroom*, 8 J.L. & HEALTH 123, 141 (1993/94).

courtroom participants with disabilities; and b) making reasonable modifications to policies, practices and procedures to ensure an equal opportunity to participate.⁶⁵ When determining what kind of accommodation is necessary for the participant with a disability, the courts are required to give primary consideration to the requests of the individual.⁶⁶

A large part of implementing the ADA has focused on accessibility for individuals who

have physical disabilities. This has resulted in ramps for wheelchair users, an effort to make sign language interpreters more available, and a push to make materials accessible in Braille.⁶⁷ However, the scope of the ADA applies to individuals with intellectual disabilities, and several conference participants argued that it is difficult to think of many areas that are more fundamental than a defendant's right to fully access the court system.

⁶⁵42 U.S.C. §12111-12117.

⁶⁶See Gould, *supra* note 64, at 141.

⁶⁷*Id.*

Recommendations for Next Steps

Recommendations for next steps emerged from the conference, including:

A. Collaboration and Coalition Building

Many representatives invited to the conference talked about the necessity of collaboration between all parties, either formally or informally, that enables the identification of resources and best practices. Such coalitions would foster a greater understanding of the challenges people with developmental disabilities face in the justice system.

Recommendation #1:

Identify stakeholders for the purpose of building partnerships, sharing information, and developing a collaborative approach in identifying and addressing issues facing individuals with intellectual disabilities who encounter the Criminal Justice System.

B. Training and Information

Conference participants asserted that there is a great need for training curricula for all concerned parties, including judges, police officers, prosecutors, public defenders, families, and persons with intellectual disabilities. Given the busy schedules of professionals working in these fields, there is a recognized benefit to plugging this effort into existing trainings. This curriculum should include a manual for public defenders and prosecutors on the various definitions of disabilities, available community resources, and ways to provide accommodations and facilitate accessibility. Participants suggested adopting information cards similar to those that other programs have developed for families and persons with disabilities to hand to police officers when confronted. More work is also required in identifying and training of effective screening tools for individuals with developmental disabilities.

Recommendation #2:

Identify target audiences and conduct an assessment of current training activities to address gaps in training curriculum and development.

Recommendation #3:

Collaborate with existing criminal justice-related training and education agencies to develop and implement a comprehensive training program that includes a focus on a) legal responsibilities under the ADA and other applicable federal and state law; b) best practices for addressing commonly identified issues involving individuals with intellectual disabilities in the Criminal Justice System.

C. Additional Resources and Staff

Over 7,000 Georgians with developmental disabilities are in need of home- and community-based services. These individuals need assistance with matters ranging from personal care and daily routines to accessing community activities and gaining employment. Assistance with home and vehicle modifications, assistive technology, transportation, and aid in managing difficult behavior help individuals with disabilities and their families stay together and live freely in the community. With the expansion of these services, the state would promote community and family values while supporting the economic prosperity among those in need, thus decreasing the risk of illicit behaviors. Additionally, numerous conference participants, including those with intellectual disabilities, discussed the lack of appropriate, relevant support services to assist them before, during, and after their interactions with the courts.

Recommendation #4:

Encourage a partnership among stakeholders to expand existing home- and community-based supports to meet the needs of this population, with attention ensuring these supports are relevant to persons with co-occurring diagnoses.

Recommendation #5:

Develop a pilot for targeted case management services that would enhance the judicial system's options for alternative sentencing, provide support for probation compliance, and provide meaningful assistance to individuals with whatever challenges placed them before the courts.

Recommendation #6:

Employ a social worker in every public defender's office to help in communicating with defendants with intellectual disabilities.

D. Legislative and Policy Considerations

Conference participants recommended the following policy initiatives to be studied:

Recommendation #7:

Change Georgia statutory language to use current terminology and "people first language" when referring to individuals with disabilities.

Recommendation #8:

Develop alternative courts or Individualized Justice Plans to help ensure greater fairness in the criminal justice system.

Conclusion

The “Cognition in the Courts” conference exposed the complex problems individuals with developmental and intellectual disabilities face when they encounter the justice system. Perhaps the most pressing problem is the lack of a uniform screening process that will identify an individual with cognitive impairments. With proper identification of a disability during the pre-trial stage of a court proceeding, an individual can be provided with supports that ensure that justice can be properly served. In addition, attorneys and court personnel must become aware of developmental disability issues and know how to most effectively communicate with such clients. Moreover, the recognition and identification of the large number of persons already in the criminal justice system who have a developmental disability is the first step towards providing these indi-

viduals with the support systems needed to successfully rehabilitate and integrate them back into society.

However, in the face of these challenges, a growing number of stakeholders are working to develop innovative solutions to facilitate equal justice for individuals with developmental and intellectual disabilities. A wide variety of non-profit and government organizations throughout the country have programs designed to provide additional services to individuals with disabilities who are parties to criminal and civil cases. Communication between these stakeholders is vital to the continued development and expansion of such programs and can build coalitions capable of securing the systematic changes needed to ensure justice for individuals with intellectual and developmental disabilities.

Appendix A: Glossary

Americans with Disabilities Act (ADA): Signed July 26, 1990, the law expresses a national goal of assuring equal opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. In order to qualify for statutory protection under the law, a person must be a “qualified individual with a disability.”⁶⁸ Qualified individuals with disabilities are those who: “(a) have a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) have a record of such impairment; or (c) are regarded as having such an impairment.”⁶⁹

Case Manager: Typically a professional with a degree in Social Work that monitors individual cases and assists persons with disabilities in attaining direct supports either at home or in their community. In Georgia, the system is referred to as Support Coordination.

Community-Based Services: Support services provided to people with disabilities by Disability Service Providers within their own community.

Community Justice: The practice of improving local quality-of-life through the coordination of local criminal justice agencies and members of the community to combat the anti-social behavior and target quality-of-life crimes. Some aspects include community policing, community prosecution, community courts, and community sentencing.

Developmental Disabilities (DD): This term refers to a group of conditions attributable to a mental or physical impairment or combination of impairments that occur prior to, at birth or during childhood.⁷⁰ These conditions affect normal growth and development, impacting learning, mobility, speech, self care, life decision-making and earning an income. The impairment(s) is usually manifested before the person reaches age 22 and may be severe enough to require lifelong care. There are hundreds of causes for developmental disabilities, but in many cases the specific cause remains unknown. It is important to understand that most persons with developmental disabilities are so through no fault of the parents or their own. While the definition remains broad, the term is often used to refer to (but is not limited to) four prominent disabilities in particular: autism, cerebral palsy, Intellectual Disabilities (mental retardation⁷¹), and epilepsy.

Disability Service Provider: A person or entity that works to address the physical and/or mental well-being of individuals, families, groups, and communities, specifically with regard to issues arising from Developmental Disabilities. This category includes direct support professionals who assist persons with disabilities in various aspects of daily living, as well as administrative personnel who assist in the coordination of such services (e.g. Georgia’s Support Coordination system).

⁶⁸ See 42 U.S.C. §12101(a) (8) (1992).

⁶⁹ See 42 U.S.C. §12102(2) (1992). This definition is drawn from §504 of the Rehabilitation Act, 29 U.S.C. §706(8).

⁷⁰ See the Association of University Centers on Disabilities, available at http://www.aucd.org/aucd_dddefinition.htm.

⁷¹ “Mental retardation is not something you have, like blue eyes or a bad heart. Nor is it something you are, like being short or thin. It is not a medical disorder ... nor is it a mental disorder. Mental retardation refers to a particular state of functioning that begins in childhood and in which limitations in intelligence coexist with related limitations in adaptive skills.” (*Mental Retardation: Definition, Classification and Systems of Supports*, 10th edition. AAMR).

Diversion Program: Programs that aim to screen and identify offenders diagnosed with a mental illness, an intellectual disability, or an addiction issue in order to divert them from the criminal justice system and into a system that aims to provide treatment and/or support in a setting more likely to help attain positive change.

Home-Based Services: Support services provided to help persons with disabilities with various aspects of daily living within their own homes.

Human/Social Service Provider: A general term to describe a person or entity that works to address the physical and/or mental well-being of individuals, families, groups, and communities. Disability Service Providers are a category of Social Service Providers.

Individualized Education Plan (IEP): A mandated requirement of the Individuals with Disabilities Education Act (IDEA), a committee comprised of school officials and the parent(s) of a child with a disability develops this plan. An IEP ensures a student's access to the general education curriculum, extracurricular programs and services, or an alternative individualized functional curriculum developed by the student's IEP Committee. An IEP is required for any pupil in the public schools who is found to meet the federal or state requirements for special education and related services.

Institutionalization: The practice of placing persons with disabilities (as well as persons with Mental Illness) in large institutions rather than allowing them to live independently with their families in the community. Often presented by doctors as the "best option" for fam-

ilies, Institutionalization was popular in the first half of the 20th century. Discovery of rampant human rights violations, coupled with the growing desire to keep families together, spurred the practice of Deinstitutionalization and the development of community-based services that started in the early 1970s and continues to this day.

Intellectual Disabilities (ID): A disability that originates before age 18 and is characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.⁷² An Intellectual Disability can be defined as any disability related to the mental process, including aspects such as awareness, attention, memory, perception, reasoning, and judgment.

Mental Health/Mental Retardation

(MH/MR): An acronym used by various private and governmental agencies, including the Georgia Department of Human Resources (DHR), in reference to organizations, services, or government agencies who service persons with Mental Illness and/or Intellectual Disabilities. The two categories have been historically paired together due to some of the various issues that pertain to both, such as communication barriers.

Mental Illness: A disturbance of the mind that affects mood, thought, or behavior.⁷³ These disorders cause distress and result in a reduced ability to function socially, psychologically, or interpersonally.

Party: Either a plaintiff or a defendant in a judicial proceeding.

⁷²*Mental Retardation: Definition, Classification and Systems of Supports*, 10th edition. AAMR.

⁷³See 42 U.S.C.A. § 10802, which provides the federal Protection and Advocacy statute for Individuals with Mental Illness (PAIMI).

Parole: The supervised release of a prisoner before the completion of his/her sentence. Parolees are still considered to be serving their sentences, and may be returned to prison if they show poor adjustment to society.

People First Language: The practice of using specific sentence structures to mention the person before the disability. People First Language describes what a person has rather than what a person is. This practice rejects language deemed derogatory or offensive to persons with disabilities. For example, when using People First Language, one would say “man with a vision impairment” instead of “blind man” and “person with an intellectual disability” instead of “retard.” People First Language has been adopted as a standard among advocates in the disability community and disability service providers.

Probation: The suspension of a jail sentence for one who has been convicted of a crime, but whom the Court deems can be returned to the community for a period in which they will have to abide to certain conditions.

Conditions are set by the Court and may include maintaining employment, abiding to a curfew, living where directed, abstaining from unlawful behavior, following the probation officer's orders and not absconding.

Supervision is maintained by a probation officer, to monitor the offender's performance during the probation period. The probation officer helps the offender adapt to living in the community and guides them in choosing to behave in a lawful and responsible way.

Problem-Solving Court: A court system that is designed to treat offenders while at the same

time considering the harm to victims in the community. These courts work with other criminal justice institutions and across disciplines (such as health and social services) to address underlying issues that contribute to criminal behavior and to design appropriate interventions. Examples include drug treatment courts, community courts, domestic violence courts, mental health courts, and re-entry courts.

Self-Advocate: A term used to describe someone who actively advocates for themselves in one form or fashion. Within the context of this paper, the term specifically references an individual with a developmental disability who actively works to influence systematic changes within the spectrum of disability services and/or advocates to local and state officials within various government agencies (ie: the Department of Human Resources, the Department of Family and Children Services, local school officials, a court, etc.) to improve his/her personal situation.

Appendix B: Conference Evaluation Results

The conference planning committee developed and distributed surveys to rate the Cognition in the Courts conference. Of the sixty-five (65) people recorded as official attendees, thirty-two (32) people (approximately 49%) filled out and returned surveys.

When asked to evaluate the conference overall, nineteen (19) people gave it an “Excellent” rating, seven (7) people gave it a “Good” rating, no one rated it as “Fair” or “Poor,” and six (6) people abstained. When asked, “Do you plan to attend this conference next year?” thirty-one (31) people, or 95% of the participants, responded “Yes.”

Participants were asked to identify the strengths of the conference and were given the option to choose more than one answer. The categories selected by a substantial number of participants are ranked below, with the total number of respondents listed in parenthesis to the right of the category. Several categories were tied and are referenced by duplicate numbers.

1. Speakers (25)
1. New Information (25)
2. Networking (20)
2. Workshop Topics (20)
3. Conference Materials (16)
4. Location (15)
4. Plenary Sessions (15)
5. Cost (12)
6. Organization (9)

Conference attendees were also asked to rate all breakout and plenary sessions, as well as the large group discussions and luncheon address. There were ten (10) sessions that are ranked in the order of those which received the highest to the lowest marks. Attendees could rate each session as “Excellent,” “Good,” “Fair,” or “Poor.” Organizers assigned each

response a numerical value to calculate overall rankings. Duplicate numbers denote a tie in rank.

1. The Vermont Project Plenary Session
2. The State Programs Plenary Session
2. Keynote Address by Robert Perske
3. Criminal Justice Issues Panel
4. Consumer Panel
5. Alternative Courts Panel
5. Large Group Discussions
6. Judicial Perspectives Panel
7. Criminal Justice Programs Panel
8. Civil Court Issues Panel

Participants were asked to identify the one session that they found the most helpful. The sessions are below in descending order based on the number of people who chose that session. The total number of respondents is listed in parenthesis to the right of each session.

- The State Programs Plenary Session (5)
 The Vermont Project Plenary Session (4)
 Criminal Justice Issues (4)
 Consumer Panel (3)
 Alternative Courts (2)
 Keynote Address by Robert Perske (2)
 Large Group Discussion (1)
 Criminal Justice Programs (1)
 Judicial Perspectives (1)
 Civil Court Issues (0)

Likewise, participants were also asked to identify the one session that they found least helpful. While many abstained from answering or indicated that none of the sessions could qualify, below are the answers provided, listed in descending order based on the number of people who chose that session. The total number of respondents is listed in parenthesis to the right of each session.

Alternative Courts (2)
Civil Court Issues (2)
Criminal Justice Programs (2)
Large group Discussions (1)
Criminal Justice Issues (1)

Participants were also asked to identify their favorite speaker. While Lili Garfinkel, Karen Vastine, Andy Cummings, Anna Saxman, Sabrina Rhinehart, Teddi Roberts, Richard Malone, and William Edwards each received at least one vote, Robert Perske received the most votes (10).

When given the opportunity to write in comments, many participants praised the conference as being well-planned and informative. The following comments and suggestions were made with regard to future events and plans for action.

- “There is room for some of these ideas within my organization. I plan to speak with the appropriate individuals that participated in the conference in an effort to establish new programs.”
- “Sometimes panelists and audience lost sight of the connection to developmental disabilities and the courts. [In future conferences] encourage panelists to focus on the most salient issues that will assist the propagation of the programs to assist individuals with disabilities in the Criminal Justice system.”
- “It would be nice to have a discussion on how to implement some of the ideas presented on a limited or no budget, as well as how to team build/collaborate with other agencies to address cognitive issues. This has been a well organized conference: I leave with many ideas that I will share with my fellow judges, administrative officials, etc.”

