

SPEAKING OF JUSTICE

News From The Florida Bar Foundation

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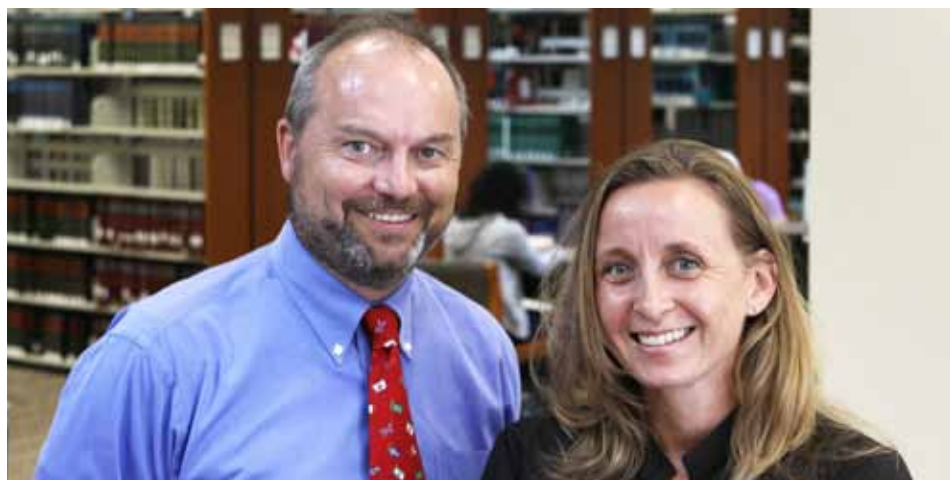
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HILDA PEREZ

With funding from The Florida Bar Foundation, Gerard Glynn and Ilona Vila of the Barry University School of Law are working to ensure quality representation for juveniles whose life sentences were deemed unconstitutional by the U.S. Supreme Court.

Foundation supports efforts to ensure fair sentencing for juveniles

by Nancy Kinnally

In his cell at Lake Correctional Institution in Clermont, Fla., Kenneth Young, 25, keeps among his few possessions a worn copy of *USA Today* dated May 18, 2010, the day after the U.S. Supreme Court ruled that juveniles cannot be sentenced to life without parole for crimes other than murder.

"The newspaper looks like it's 100 years old, because I done folded it and reopened it and read it so many times," Young said.

Young keeps poring over the story about the Court's decision in *Graham v. Florida* to make sure he didn't dream it. To a young man who went to prison as a 15-year-old boy, the 1,566 words in that article boil down to one thought: "You might not die in prison after all."

There it is in black and white.

"Here you go, all your [life] sentences are illegal, unconstitutional," Young said. "It's like a blessing. I still kind of find it hard to believe."

Young is one of 112 Floridians potentially entitled to relief as a result of the *Graham* decision, according to

see JUVENILES, p. 4



Leadership and Funding for Justice in Florida

Message from the President

Many of us who have watched and worked closely with The Florida Bar Foundation know that one of its hallmarks is the Foundation's ability to identify and respond to unmet needs, whether the needs be longstanding or emerging.

A great example is the Foundation's development of a grant program targeting the special legal needs of children.

Almost 20 years ago, when it came to the Foundation's attention – in part through a Florida Bar Commission set up to study the legal needs of children – that children needed more specialized legal services than they were then receiving from most Foundation grantees, the Foundation took action.

Through its Children's Legal Services Grant Program, the Foundation has for the past two decades helped fund the representation of children in foster care, as well as children's access to special education, medical, developmental and

mental health services that are required under law. The Children's Legal Services projects vary in content and location from the Florida Legal Services, Inc., Children Statewide Litigation and Policy Project in Tallahassee to the Guardian Ad Litem Project operated by the Legal Aid Society of the Orange County Bar Association in Orlando to the Statewide Foster Children's Advocacy Project at the University of Miami and many others statewide.

In the mid-1990s the scope of the program was broadened after a Foundation survey of legal aid programs revealed still greater needs. Today, the Foundation provides about \$2.8 million annually to 23 local legal aid programs around the state in support of their special Children's Legal Services projects. As an example of the vital work these programs do and the difference they can make in the life of a child, I invite you to read Keshawn's story on the opposite page.



John A. Noland

He is one of nearly 3,000 children served last year through the Foundation's Children's Legal Services grants.

If you have already supported Children's Legal Services through the Lawyers' Challenge for Children this year, thank you. If you have not, or if you are able to increase your support, I encourage you to give to our End-of-Year Children's Legal Services Campaign at www.floridabarfoundation.org/children.

John A. Noland

Keshawn

He is one of nearly 3,000 reasons to make a gift to support Children's Legal Services through the 2010 End-of-Year Children's Campaign.

www.floridabarfoundation.org/children

CHILDREN'S LEGAL SERVICES BY THE NUMBERS

2,969

The number of cases closed through Foundation-funded Children's Legal Services projects statewide in 2009.

\$2.8 million

The amount of Foundation funding for Children's Legal Services in 2009.

3,403

The number of Florida lawyers who added their financial support to the Foundation's through the Lawyers' Challenge for Children.



PETE CROSS

Keshawn demonstrates remarkable artistic talent for his age. In particular, he likes to draw sea life. Here, he holds his sketch of a flounder.

Legal aid attorney opens doors for first-grader

by Nancy Kinnally

When James Kearsé learned that a lawyer at the Legal Aid Society of Palm Beach County might be able to help his first-grader, he let nothing stand in his way.

"I'd do anything for my kids," said Kearsé. "I'd go around the world for them."

So, with both of his vehicles out of commission, Kearsé borrowed the cab of a long-haul semi and began the 50-mile trip from his home in South Bay on the southern rim of Lake Okeechobee to downtown West Palm Beach.

There, he met with Susan Hendricks, an attorney with the Legal Aid Society's Education Advocacy Law Project, which is supported by a \$144,000 Children's Legal Services grant from The Florida Bar Foundation. Hendricks could have met with Kearsé a few days later when she was scheduled to be in the Belle Glade office, just a few miles from South Bay, but Kearsé did not want to wait another day.

His son Keshawn had already been out of school for almost two months — at first because of out-of-school suspensions and then because the 6-year-old was frightened to return to a school where Hendricks said two aides had held him in prone restraint for several minutes.

Kearsé had tried repeatedly to get Keshawn transferred to another school, traveling several times to the school district offices in West Palm Beach and pleading with school officials in Belle Glade. But he got nowhere.

"I called Tallahassee. I called everywhere," Kearsé said.

Hendricks believed the school was in violation of state and federal law because, in spite of abundant evidence that Keshawn was deeply troubled, they had not initiated behavioral interventions or screened him for eligibility for exceptional student education services.

"They should have been doing behavioral interventions with him,"



Keshawn, now 8, and his father James Kearsé relax at home together in South Bay.

PETE CROSS

Hendricks said. "Instead they were focused on trying to restrain him. It was obvious what was at the root of his behavior. He had gone through a very traumatic experience and he was responding to that."

Hendricks reached a settlement in lieu of litigation with the Palm Beach County School District, which agreed to transfer Keshawn immediately to another school and provide bus transportation, therapy, an expedited psycho-educational assessment and intensive tutoring to help him make up missed work.

Testing revealed Keshawn was suffering from post traumatic stress disorder, but was a gifted student with high intelligence and exceptional artistic ability. He was placed in a specialized classroom for students with emotional and behavioral disabilities.

By the end of the school year Keshawn had no further discipline referrals, was reading above grade level and was promoted to second grade. Now in third grade, he's doing so well, he's moved to a mainstream classroom.

"The second school dealt with him with compassion and patience, and it was

the polar opposite of the bad experience he'd had at the prior school," Hendricks said.

Now, Keshawn will wake up on a Saturday and react with disappointment when he's reminded it's not a school day. He enjoys art and writing, and will often sit down to write a story just for fun.

"He loves school so much," Kearsé said. "Ms. Hendricks, she opened the right doors for me. She was Heaven-sent."

At home, father and son do all kinds of activities together, from making pancakes to fishing to working in their garden, where they grow vegetables to share with their elderly neighbors.

"He's my right and left hand," Kearsé said. "We can't live without each other."

While Kearsé is keenly focused on ensuring Keshawn makes the most of his education, his ambitions for his son are simple.

"Have a good heart and a good nature," Kearsé said. "I try to teach him the most important things are the little things, not the big things. Little things will take you a long way."

Gerard Glynn, director of clinical programs at the Barry University School of Law.

With \$100,000 in funding from The Florida Bar Foundation through its Improvements in the Administration of Justice (AOJ) Grant Program, Glynn and juvenile defense expert Ilona Vila are developing a Juvenile Life Without Parole (JLWOP) Defense Resource Center within Barry's law school to address the legal and public policy questions raised by the *Graham* decision, as well as individual client needs.

Senior Judge Emerson R. Thompson Jr., formerly of the Fifth District Court of Appeals, chairs the Foundation committee responsible for reviewing AOJ grant applications.

"The Supreme Court decided *Graham* and said juveniles are different and should be sentenced differently," Thompson said. "The Foundation is funding this project to ensure that the sentence imposed at resentencing is fair to the juvenile and to the citizenry of Florida."

The Foundation anticipates a second request for funding to enable the Resource Center to complete its two-year project.

"I see this as an opportunity for us to truly address the big policy question, which is, 'When is it ever appropriate to send children to adult court and for them to face long sentences?'" Glynn said. "Florida took a policy position on that in the 1980s, but this decision gives us an opportunity to reevaluate the wisdom of the strategy we took in the '80s."

Writing for the majority in *Graham*, Justice Anthony Kennedy cited both legal precedent and scientific evidence to establish that juveniles have limited culpability by virtue of their immaturity and susceptibility to negative influences. Meanwhile, "juveniles are more capable of change than are adults," Kennedy wrote.

He also noted the relative harshness of a JLWOP sentence, saying, "A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only."

Florida at the epicenter

A key underpinning of his opinion was that the sentencing practice for children whose crimes fell short of murder was not only cruel, but also unusual. For evidence of that, Kennedy cited a study by Young's attorney, Paolo Annino, and his colleagues at Florida State University.

Supervising attorney at FSU's Public Interest Law Center, also a Florida Bar Foundation grantee, Annino was racing during the summer of 2009, in anticipation of the *Graham* case, to gather evidence of a phenomenon he believed could be almost unique to Florida.

Through information he had obtained from the Florida Department of Corrections, Annino knew that Florida had at least 77 JLWOP cases based on a conservative tally, but he lacked precise data on other states.

"Then the *Graham* case was accepted by the U.S. Supreme Court and at that point there was a need for an empirical study," Annino said. "And I thought [Florida was] going to be an outlier, but I really did not know at that point. My information was still anecdotal. And it turned out that we were an outlier of an outlier. We were the only country in the world who gave life without parole sentences to juveniles for nonhomicide, and then [Florida was] an outlier within the country."

Through information requests to all 50 states, Annino found that nationwide only 109 people convicted as juveniles were serving life without parole for nonhomicide offenses, meaning Florida prisons held the vast majority. The Supreme Court found 20 more by requesting information from the federal prison system as well as a few states that had refused to respond to Annino's queries. Besides Florida, only 10 states reported having any inmates serving JLWOP sentences for nonhomicide, and most of those had only a handful.

Florida's JLWOP numbers were the result of a perfect storm, the conditions for



Paolo Annino of the Florida State University Public Interest Law Center led a study cited in *Graham v. Florida*.

COURTESY OF FLORIDA STATE UNIVERSITY

which Glynn said included the practice of trying juveniles as adults; the elimination of parole for noncapital offenses in 1983; and a 1994 legislatively enacted criminal code allowing judges to exceed the statutory maximum sentence.

"There should be incredible national resources coming to Florida, and we're hoping The Florida Bar Foundation's money will be able to help us leverage those national resources, because Florida is the epicenter of this problem," Glynn said.

Cases already moving forward

Since the *Graham* decision, Glynn and Vila have been collecting information about all of the potentially affected inmates and working quickly to make sure every one has a lawyer.

Their sense of urgency stems from their discovery that many inmates, having heard about *Graham*, have already filed pro se for a resentencing hearing, or were otherwise involved in an appeal.

"The number of cases moving forward is significant," Vila said.

To ensure that each has quality representation, they are working with public defenders, the Florida Association of Criminal Defense Lawyers, and pro bono attorneys. While they intend to represent a handful of indigent clients themselves, their broader function will be

to coordinate Florida's response to the **Graham** decision.

The new Resource Center will build on relationships already established through the law school's Juvenile Justice Center, which coordinates training and support to Florida's public defenders to improve the quality of representation for children in the delinquency system.

The Resource Center will conduct legal research on the specific procedural and substantive legal issues raised by **Graham**, create a database of experts, develop litigation strategies, provide technical assistance and education, and coordinate with advocates nationwide representing youth entitled to relief under **Graham**.

The project will also involve Barry law students as way of providing both extra manpower and a frontline educational experience for future defense attorneys and prosecutors.

Bringing together the experts

While **Graham** took life without parole off the table, there is a concern that prosecutors could go for lengthy sentences that would amount to life.

"We view all these cases as death penalty mitigation hearings," Glynn said. "So the hearings should be comprehensive mitigation hearings where you hire experts who study the children's background and present as much mitigation as is possible."

Providing a top-notch defense will in many cases require leveraging pro bono lawyers and other experts.

"You may have these pro bono lawyers, especially from the large law firms, who have incredible resources and are great civil litigators, but know nothing about adolescent development or criminal procedure, and so we have to bridge that gap, either through training or through partnerships," Glynn said.

Meanwhile, public defenders might have the expertise, but lack resources.

"We've got some really good defender offices who are saying we're happy to help but our caseloads are way

"There should be incredible national resources coming to Florida, and we're hoping The Florida Bar Foundation's money will help us leverage those national resources, because Florida is the epicenter of this problem."

— Gerard Glynn

Barry University School of Law



HILDA PEREZ

too high for us to do an effective job," Vila said. "So how do you take that really great, specialized skill and partner that with resources so that the client gets really great representation?"

Bringing together the best of both worlds will be part of the Resource Center's challenge. Strategies include development of Web-based resources, conference calls for peer-to-peer mentoring and sharing best practices at state and national meetings.

The Center will also work to bring all that is learned from this shared experience to bear on public policy in Florida as lawyers, judges and legislators seek to respond to **Graham**.

Spotlight on Florida

While Florida was the only state identified in Annino's study to sentence juveniles to life without parole for offenses such as burglary, battery or carjacking, some of the JLWOP cases in Florida involve more serious offenses that often result in a life sentence. Glynn believes that because Florida law does not allow for parole under any circumstances, **Graham** would suggest that the Legislature should act to create a system for reviewing long sentences for juveniles.

"So there is going to have to be some response [from the Legislature],

and we hope the Resource Center will significantly participate in that dialogue based on our experience," Glynn said.

Vila said Florida has been thrust into the national spotlight by the U.S. Supreme Court.

"There's a feeling we're in a petri dish with all these issues," she said. "Everyone is just waiting for us to do something. I feel like our partners are ready and waiting to go forward to assist clients, and that's the most exciting part."

For Young, who maintains that a neighborhood drug dealer 10 years his senior put him up to the crimes of which they both were convicted 10 years ago, the waiting is not easy. But the Supreme Court decision has renewed his faith in the justice system.

He's hoping his nearly spotless record as an inmate and the mitigating circumstances of his offenses will be taken into consideration in accordance with the **Graham** decision.

Now, he is no longer afraid to let himself imagine life on the outside.

"I know one thing that I'm going to do," Young said, explaining his plan to repay for his second chance by sharing his experience with youth in detention.

"I want to be that voice to let them know, 'This ain't no joke.' "

Foundation advances technology for legal aid programs

by Gabrielle Davis

Prior to 2007, case management systems used by Florida's legal aid organizations varied widely, with some programs using newer electronic systems and others struggling with outdated software, or even paper files.

"Another problem for agencies that try to maintain an older system is that many times the software vendor no longer exists or consultants are hard to find or are too expensive," said Lea Remigio, who has been working to bring The Florida Bar Foundation's grantees into a common system as the Foundation's statewide case management project director.

After a 2006 assessment of the technological needs of Florida's legal aid programs, the Foundation set aside \$2.3 million in IOTA funds to implement the Information System for Legal Advocacy of Florida project (ISLA), a statewide case management system to improve the efficiency and effectiveness of legal advocacy.

An ISLA vendor selection committee — made up of grantee legal aid attorneys, executive directors and technical support staff — chose Legal Server, a secure Web-based information system. From November 2007 to August 2009, 28 Florida legal aid organizations were connected to Legal Server. They each have separate databases with a unique log-in and secure access.

The data conversion of the programs' old systems to Legal Server was not without problems, the extent of which depended on the platform each legal aid organization had previously.

The Foundation continues to provide technical support and trainings. The Foundation also agreed to pay for monthly hosting fees for the systems, removing the legal service programs' obligation to pay for server space and technical support.

Since the system is Web-based, legal aid programs can access their case files

"Like the Foundation's leadership on loan repayment assistance for legal aid attorneys, online legal research, legal aid salary improvements, and the like, this has been an example of bold thinking and strong commitment."

**— Chris Jones, Executive Director
Florida Institutional Legal Services**



PETE CROSS

outside the office, something that helped keep Florida Institutional Legal Services working after a broken water pipe flooded its building in January.

FILS Executive Director Chris Jones credited his office's quick recovery to the case management system, his flexible staff, and access to a backup server.

"The biggest advantage is definitely the ability to access our case management system anywhere over the Web," Jones said. "Because documents are stored in the clients' files, we are able to access our documents and collaborate on them no matter where we are."

Another time-saving feature is the system's ability to generate templates for documents commonly used in legal aid offices, such as standard client letters, eliminating duplicative work.

"I think it's important to recognize that the Foundation undertook an important task in leading the move towards a statewide case management system," Jones said. "Like the Foundation's leadership on loan repayment assistance for legal aid attorneys, online legal research, legal aid salary improvements,

and the like, this has been an example of bold thinking and strong commitment."

The system also enables legal aid offices to cut down on mass mailings and utilize e-mail for their intake process and pro bono initiatives.

"Going paperless means eliminating filing cabinets that are storing old paper applications, duplicate pro bono referral files and closed pro bono cases," said Cathy Tucker, pro bono coordinator with the Legal Aid Society of the Orange County Bar Association. "This is giving us space, which we always need."

Another helpful tool is the ability to track data to recognize trends in certain types of cases and also track time spent on particular grant projects, said Alan Hill, administrator with Three Rivers Legal Services. He said the software allows his staff to link cases with a common thread so as to better quantify results and outcomes related to specific legal issues or client groups.

"This is a great thing the Foundation has done. A lot of programs couldn't have afforded to have this software development," Hill said.

Grant helps Legal Aid of Manasota expand pro bono program

by Gabrielle Davis

Legal Aid of Manasota aims to change the perception of pro bono in Manatee and Sarasota counties one law firm at a time through Lawyers Giving Back.

The project, launched in May, focuses on engaging law firms to create tailored pro bono plans that suit their firm culture, said Linda Harradine, Legal Aid of Manasota executive director.

"One of the goals of Lawyers Giving Back is making pro bono a community partnership," Harradine said.

Before Lawyers Giving Back, the legal aid program's pro bono efforts focused on recruiting individual attorneys to take on a pro bono case. But with a nearly \$60,000 Pilot Pro Bono Grant from The Florida Bar Foundation last year, the program was able to hire an attorney pro bono coordinator and a part-time marketing coordinator who've been able to reach out directly to law firms.

Legal Aid of Manasota has also streamlined the process for matching attorneys with cases and reporting pro bono hours on their website.

The Foundation created the Pilot Pro Bono Grant Program in 2009 in response to a 2008 Foundation-funded study, which identified the reasons for a 30 percent decrease in pro bono services performed through pro bono programs statewide.

One of the study's recommendations was to start a dialogue with law firms about pro bono.

Staff from Legal Aid of Manasota do just that, Harradine said, meeting with law firms to discuss pro bono opportunities and potential benefits to the firm, such as her organization's ability to offer related CLE programs. After a firm agrees to 100 percent pro bono participation, legal aid staff and the firm's attorneys create the firm's pro bono plan.

Through the program, Icard Merrill Cullis Timm Furen & Ginsburg, a 29-attorney Southwest Florida firm, has launched a foreclosure clinic program that advises clients on Saturday mornings and weekday evenings.

About 65 new attorneys have been recruited so far, and with several additional law firms now joining in the effort, Harradine anticipates that the number of new attorneys doing pro bono will ultimately be more than twice that.

She said Lawyers Giving Back is successful because firms are taking on the responsibility and ownership of their pro bono plans, rather than taking on cases assigned to them by Legal Aid.

"Firms want to have a signature project where they can make their mark," Harradine said. "This process is why it's going to work. They're having the discussion, and in the end it's their plan."

Cooke fits The Florida Bar Foundation into his estate plan

by Nancy Kinnally

The start of Ham Cooke's legal career coincided with an event that marked a turning point, not only in American history, but also in Cooke's perspective on his own role in society.

An Army veteran and political moderate raised in Kentucky, Cooke was no '60s radical, but he took the assassination of Martin Luther King Jr. in 1968 as a call to action.

"I felt the need to get involved in programs that would foster black-white relations, and legal aid was one way," said the Jacksonville attorney, who considered a career in legal services but decided instead to make his contribution through a combination of community involvement, pro bono work, and philanthropy.

While on The Florida Bar Board of Governors, Cooke served as vice-chairman of The Florida Bar/Florida Bar Foundation Joint Commission on the Delivery of Legal

Services to the Indigent in the early 1990s. He then joined the Foundation board, where he served for 10 years, including a year as president.

Cooke remembers seeing the Foundation's creativity in action when the federal government placed strict limitations on the funding of legal services for the poor in the 1990s. In response, the Foundation helped devise a new funding and delivery system to ensure that the needs of Florida's indigent clients would still be met.

"I learned how extremely dedicated the legal aid staff members are to the delivery of free legal services to the poor," Cooke said.

An estate planning attorney, Cooke, with the full support of his wife and children, has put the Foundation in his will, along with other organizations that provide services to the poor.



Ham Cooke

GREG LEPERA

"The Foundation's work is particularly appealing to me," Cooke said, "because you get so much bang for the buck. Generally, about 90 percent of your gift is used to provide services. And that's really important."



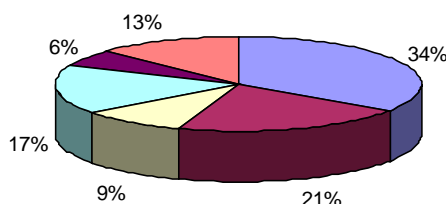
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The Florida Bar Foundation is the only statewide organization that provides funding for Legal Aid and promotes improvements in addressing the civil legal needs of the poor.

FOUNDATION FACTS



In 2009, The Florida Bar Foundation provided about 34 percent (\$31.85 million) of the overall funding (\$92.56 million) received by Florida legal aid organizations.

About 21 percent (\$19.38 million) of legal aid funding in Florida comes from the federally funded Legal Services Corporation, and another 9 percent (\$8.56 million) is provided through other federal programs, including Title III.

The remaining 36 percent (\$32.77 million) comes from statutory county funding, along with discretionary funds from the state, cities and counties, as well as donations and other grant programs.

SPEAKING OF JUSTICE

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We are The Florida Bar Foundation,

and we believe the justice system works best when it works for everyone.



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