

# 'Outrage' Needed for Civil Gideon Success

By Albert S. Dandridge III

"RECAPTURE THE OUTRAGE" WAS THE battle cry of Professor Russell Engler, the featured speaker at the Chancellor's Forum on July 7 on Civil Gideon, a national movement attempting to provide legal counsel as a matter of right at public expense to low-income persons in adversarial civil matters where basic human needs are at stake.

Immediate-Past Chancellor Sayde J. Ladov commenced the Bar Association's Civil Gideon initiative in 2009. She established a Civil Gideon Task Force to, among other things, undertake a feasibility study of whether Civil Gideon should at least be guaranteed in cases involving child custody and housing eviction or foreclosure. Chancellor Scott F. Cooper has also made Civil Gideon one of his priorities, continuing the Task Force which is now co-chaired by Catherine C. Carr and Joseph A. Sullivan.

The Task Force brought in Professor Engler, who is an acknowledged authority in the area of Civil Gideon, from New



Photo by Mark Tarasiewicz

Professor Russell Engler addresses a standing-room only audience on July 7 at the Bar Association where he discussed Civil Gideon at a Chancellor's Forum.

England Law | Boston, to speak at the Chancellor's Forum.

In front of a very interactive standing-room-only audience at the Bar Association's Conference Center that included

Pennsylvania Supreme Court Chief Justice Ronald D. Castille, Philadelphia Court of Common Pleas President Judge Pamela Pryor Dembe and numerous other judges, members of the bar and

law students, Professor Engler eloquently made the case for Civil Gideon, especially when one side is represented by counsel and the other is not. He spoke of the inherent "outrage" that all of us felt as young children when we witnessed what we believed to be an unfair fight and asked quite simply, "where has that outrage gone?" He spoke of persons who could not afford legal counsel pitted against those who were represented, in struggles that put basic human needs and requirements at stake.

Professor Engler made the case that not only was our Bar Association on the right track in addressing this inequality as part of a larger "access to justice" concern, he also reaffirmed that, in his opinion, we were going about addressing the issues in the appropriate manner. He proceeded to lay out what he considered to be a three-pronged strategy to address the problem of absence of counsel: (1) revising the roles of the key players, such as the judges (more "active than passive" in dealing with the structural imbalance), mediators

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## Freedom Day Naturalization Ceremony



Photos by Jeff Lyons

Past Chancellor Edward F. Chacker (left photo) meets with Niti Jethava of Julia R. Masterman High School, winner of the Edward F. Chacker 2010 Law Day Essay Contest, before a July 1 naturalization ceremony at the U.S. Courthouse. Jethava read her winning essay to the court. Board of Governors Chair Richard S. Seidel (right photo), addresses new American citizens at the ceremony, presided over by U.S. District Court Judge Eduardo C. Robreno. Approximately 85 people from 40 different nations were naturalized in the Freedom Day ceremony, sponsored by the Philadelphia Bar Association.

## Phanatical Fan Has Doubts Over Mascot Suit

"THIS IS LIKE SUING SANTA CLAUS." Those were the words of John Speicher, the attorney of 75-year-old Grace Crass, a Wernersville woman who recently filed a lawsuit against this city's beloved Phillie Phanatic for injuring her at a Reading Phillies game back in 2008. The suit, filed in Philadelphia, alleges that the Phanatic injured Crass' knees when he was climbing through the stands. Crass is seeking \$50,000 in damages.

After the story of the lawsuit broke, everyone started pointing to a May 2002 article in the *Cardozo Law Review*, which claimed that the Phanatic holds "the du-

bious record as the most-sued mascot in the majors." This statistic really surprised me, as I couldn't seem to recall hearing about the Phanatic being sued before. But after an online search, I did find some articles about him having to pay a \$2.5 million judgment to a man that he "hugged too hard." But seeing that the Phanatic has been around since 1978, it is not all that surprising that he was involved in an incident or two over the years. It can't be easy to control your movements in that costume.

If you ask me, and yes, I may be a little biased, the Phanatic can do no wrong.

He is original, he gets the crowd motivated and he sweats buckets day after day in that feathery suit in 100-plus degree weather. He makes grown-ups and kids alike smile, and he makes fun of the opposing team in a way that is too funny to be offended by. Now granted, I have never seen the Phanatic actually crawl through the stands and on top of people. He did sit on my lap at a game in 2009 and I was just as excited about it as the little kids sitting next to me, but then again, I was not injured in any way. The suit filed by Crass claims that as the Phanatic was climbing through the stands and onto her legs, her asymptomatic arthritis was triggered, requiring her to get knee replacement surgery.

Now the point can be made that when people attend sporting events, they assume a certain level of risk. For example, in the case of a baseball game,

By Asima Panigrahi



a fan assumes the risk of being hit with a ball. The back of your ticket even contains disclaimer language to this effect. Now does having a mascot sit on your legs fall under the category of the general risk that is assumed when you attend a baseball game? I'm not sure that I have the answer to that, but I

think the argument could go either way.

I feel badly that Crass was injured, but realistically speaking, she and her attorney definitely have an uphill battle ahead of them, because just as much as this city loves their Phillies, they also love that giant furry anteater from the Galapagos Islands that helps cheer them on. He is an anteater, right?

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### Civil Gideon

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and clerks; (2) using, but also evaluating, robust and effective assistance programs (such as telephone hotlines, self-help centers, pro se offices, advice-only clinics and court-appointed legal service programs); and (3) expanding access to full representation where basic human needs are at stake and lesser forms of assistance cannot protect those basic needs.

As an expert, Professor Engler enlightened those present as to what was happening in other jurisdictions and how they were dealing with these Civil Gideon issues. With this background, he put forth a seven-step approach that has a universal application for those seeking to tackle this enormous right to counsel problem, with the availability of resources always being a consideration:

- Identify likely areas in which counsel is most needed – in categories of adversarial proceedings where basic human needs are at stake such as those involving shelter, sustenance, safety, health or child custody, as adopted in the 2006 American Bar Association resolution.
- Review available data – such as studies and reports that shed light on the impact of counsel in various types of legal proceedings.
- Put 1 and 2 together – by prioritizing areas in which basic human needs are at stake, and there is evidence that counsel has a significant impact in the outcomes of such proceedings.
- Identify areas of consensus – this allows initiatives to gain momentum.
- Obtain estimates as to the volume of cases involved – again, this involves data collection in order to deal with cost challenges.
- Identify existing resources – and



make the best of them.

- Identify the best delivery mechanism where new resources are needed – develop a model and get started.

Not only were Professor Engler's points cogent and reasonable, they were reaffirming.

Here is what the Task Force is doing, which is in keeping with Professor Engler's recommendations:

- The Family Working Group has recommended that full legal representation by an attorney in custody cases should attach when parents are seeking to establish and/or maintain their parental/custodial rights.
- The Housing Working Group is discussing and researching how to expand the Landlord/Tenant Representation Project and the Residential Mortgage Foreclosure Diversion Project. In this regard, Philadelphia has been chosen by NPC Research of Portland, Ore., to study the effects of providing counsel in civil housing cases. The study will focus on how legal services are delivered to tenants facing eviction.
- The Communication Working Group is reaching out to the bench, bar and community at large to educate them about Civil Gideon and what the Task Force is attempting to accomplish. A link has been created on the Bar Association's website dedicated entirely to Civil Gideon.

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