



# Dialogue

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## ABA and iLawyer Sign Agreement to Provide Online Referrals

by Sheree Swetin and Garrett S. Vachal

In August, the ABA Standing Committee on Lawyer Information and Referral Service (LRIS) announced an agreement with iLawyer, Inc. to establish a national online network of public service lawyer referral programs. The agreement calls for iLawyer to refer prospective clients who are visiting its Web site to local lawyer referral service programs which have been certified as meeting ABA Minimum Standards for LRIS. The ABA name and logo will be used on the iLawyer's Web site at <http://www.iLawyer.com>, and the Standing Committee's Web site and referral page will feature links to iLawyer.com.

iLawyer is a San Francisco-based company started by two attorneys with backgrounds in LRIS programs. It has developed the technology to host a national network of bar association-sponsored lawyer referral services. Through iLawyer's technological capacity, clients seeking counsel on the Internet can be matched with an attorney from a participating local bar association lawyer referral service.

While at the iLawyer.com site, a prospective client selects the county where assistance is needed. The client then submits a description of the legal problem along with contact information and optional appointment preferences such as location, time and special needs such as wheelchair accessibility. Local LRIS staff will make all referrals to local panel attorneys through iLawyer's secure Web site, the ABA's Web site or through the local bar association's Web site. An email is then sent to the client with information about the appointment and the lawyer with whom the client will meet.



Local LRIS programs retain control of the referrals and their panels. iLawyer's Web-based software allows participating LRIS programs to quickly send Internet-based referral requests to member attorneys. In addition, the software automatically sends post-appointment follow-up email messages to the panel attorneys so that the LRIS remains informed about the status of referred cases.

The software also generates feedback questionnaires sent by email to every client. It monitors client responses to gauge levels of customer satisfaction and to check for

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## DIALOGUE

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## iLawyer

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discrepancies between the client's feedback and the attorney's status reports. The system maintains attorneys by panel in rotational order and allows LRIS staff to add, delete or place attorneys on hold, as required. In addition, iLawyer's system can easily interface with local pro bono programs to effectively direct clients to free legal services. This makes it easy for LRIS programs to create or expand their low fee programs.

Lawyer referral clients using the iLawyer portal will pay a \$25 fee by check or credit card for the initial in-office or telephone interview with a lawyer. There is no fee for clients seeking legal help in personal injury cases. Fees will also be waived for low income clients meeting certain eligibility criteria.

iLawyer utilizes an encryption protocol called Secure Sockets Layer to protect client privacy. The same technology is used by many banks, brokerage houses and others to ensure the security of online transactions.

Currently iLawyer is handling referrals to lawyer referral services sponsored by the Bar Association of San Francisco and the Bar Association of Northern San Diego County. Expansion of the service to Los Angeles County and other metropolitan areas in California is expected soon. iLawyer and the ABA Standing Committee on LRIS will coordinate the further development of this network and will provide national marketing and promotion of the network. Lawyer referral programs seeking to participate must meet the ABA standards in order to do so.

The Internet offers a new

opportunity to access moderate-income clients, and this network will provide clients with the same unbiased source of information now provided by telephone. Importantly, this agreement affords public service LRIS programs an Internet presence and the opportunity to compete with the myriad commercial services springing up on the Web.

According to Carol Woods, director of the Bar Association of San Francisco's LRIS, "We believe partnering with iLawyer is one of the best way for us to provide quality customer services online. The people at iLawyer understand how the Internet is changing the way people find attorney services." Woods adds, "iLawyer enables us to provide services to clients who are looking for attorneys on the Internet any time of day or night."

The ABA chose to work with iLawyer for several important reasons. The principals of iLawyer come from a solid, bar program orientation, and are concerned first and foremost with public service. The Committee believes they have excellent business sense and a solid business plan. The principals have successfully started and sold a previous on-line business. They are committed to putting in the staff, monetary and technology resources to make this work. Most importantly, they are committed to working with each individual LRIS to design a link and referral system that meets the unique needs of the LRIS and provides the requisite information and reports.

In addition to referrals, the ABA/iLawyer.com sites will offer consumers legal information. Currently, iLawyer offers an archive of a San Francisco-based public radio program, titled "Your Legal

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## From the Chair...



by John Busch

Chair of the ABA Standing Committee on Lawyer Referral and Information Service

Recently the ABA Standing Committee on Lawyer Referral and Information Service entered into an agreement with iLawyer, Inc. to establish a national lawyer referral network on the Internet. A review of the large commercial referral programs predicts that small, bar-sponsored programs could never hope to compete with the assault of multiple referral "wannabes" (some of which only seek to solicit business) who now have a Web presence. After much discussion and debate, both within the Committee and with program directors in the field, the Committee feels that this joint effort provides ABA-endorsed public service lawyer referral programs an outstanding opportunity to have an Internet presence, and to reach a new market of moderate-income clients. While the Internet will never totally replace the telephone as a source of referrals, it is a force to be reckoned with in the future.

And speaking of the future—the theme of the 2000 Workshop in New Orleans is "Reconcepting LRIS for the Technology Revolution." Not a very catchy title, but an accurate description of where

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## Some Habits of Highly Effective Lawyer Referral Programs

by Jane Nobsch

**S**uccess: much like that other subject, everyone knows it when they see it, but it is often difficult to define and even more difficult to predict. What elements determine the success of a lawyer referral program? This exploration of factors that might predict a successful program grew out of *Profile 2000: Characteristics of Lawyer Referral and Information Services*, the most recent survey of lawyer referral programs undertaken by the ABA Standing Committee on Lawyer Referral and Information Service.

Although success is difficult to define, for the purposes of this article we will borrow from the phrase "the **business** of public service" and define success as more revenues than expenses in the most recent fiscal year.

A note before proceeding with this exploration—*Profile 2000* was designed as a descriptive venture, at best meant to portray the key features in the operation of a program. However, because of the overwhelming response to the survey from more than 200 programs, the resulting database is sufficiently comprehensive to allow analysis of what factors predict "success."

A further note of caution should be provided before interpreting the following information. The relationships identified are not statistically significant. The most favorable way to state the relationship between the predictors of success and the outcome measure (net revenues in the last year), is that the presence of the predictor factor appears to be related to the presence of the outcome measure. Despite not achieving a statistically significant relationship, the apparent correlation of certain factors and a successful outcome is still meaningful for this exploration. The following factors are present in successful programs.

The presence of a percentage fee system was found to be a factor that positively related to success in program operations. This is logical considering that percentage fees often are the single largest revenue source for programs. In the survey, almost twenty percent of the responding programs indicated revenue of \$50,000 or more from percentage fees. Nine percent of the programs indicated revenue of \$100,000 or more from percentage fees. It has become axiomatic in lawyer referral that a balanced budget cannot be achieved without percentage fees. Granted, percentage fees are not a guarantee of success, but lack of percentage fees almost virtually insures lack of success. Initial panel registration fees (at the level charged by the majority of programs) and client consultation fees alone are not sufficient sources of revenue to achieve a balanced budget.

Subject matter or experience panels with objective, verifiable criterion for participation are another factor related to success in a program. To identify attorneys competent to handle more complex

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## New LRIS Committee Members

The ABA Standing Committee on Lawyer Referral and Information Service is comprised of ten lawyer members, appointed by the President-elect of the ABA to three-year terms. In August, the Committee lost some old friends, but gained some new ones.

Say hello to Barbara Johnson, Adam Gruen and Jim McLindon.

Barbara Johnson hails from the Los Angeles area, and has served previously on the ABA Standing Committee on the Delivery of Legal Services.

Jim McLindon has served as the LRIS Dialogue editor for the past three years, has spoken at many LRIS Workshops and is a PAR consultant.

Adam Gruen is a past chair and member of the LRIS Committee of the Bar Association of San Francisco, where he helped to implement the peer review and fee audit programs.

Say good-bye to Wesley Hackett, Shelley Carthen Watson and James Dwyer.

We will miss the expertise and company of Wes, Shelley and Jim, whose terms expired in August. We hope they will continue to join us at our annual conference, and to contribute their wisdom and advice to the lawyer referral field.

## From the Chair...

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we all must go if we are to make the transition to the Internet era. And make no mistake—we must make this transition, or wither away. Just as the railroads, telephone and telegraph changed the face of business in their times, so has the Internet in our time. Consider this - in less than 20 years, **every** student in the United States will have been taught how to use the Internet in school or at work, and will be able to find basic information and research on the Internet.

The client of the future will be different than the client of the year 2000. More sophisticated, more impatient clients are a certainty, and those clients will have a tremendous amount of information at their fingertips. The minority population, with special legal needs, will exceed 50 percent of the population, and many more women will be in control of

money resources. The population is aging rapidly. Elder law is the legal field of the near future, and perhaps we should be developing flat fee services to meet the needs of this growing group of fixed income clients.

We believe that the lawyer referral program of 2020 will look nothing like the program of 2000. The practice of law may look nothing like it looks today. There is a good possibility that both multijurisdictional and multidisciplinary practices will be common. Lawyer referral programs will be called on to assist clients who need a lawyer in another jurisdiction, or a team of professionals, both lawyers and non-lawyers, to provide a holistic solution to a problem. We will be competing with large, commercial services that provide brief legal advice, flat rate charges, lowest-bid legal services and sophisticated consumer information, all available at the touch of a button. How will we rise above the competitive clatter? Only by

offering a better product—individualized, quality services and referrals carefully constructed to help the client navigate the justice system and obtain the most appropriate combination of services available to meet his or her needs at the best price possible.

Think back on the first lawyer referral programs established over 50 years ago. At first, these were no more than rudimentary lists of local attorneys. Now we have developed lawyer referral programs into a high quality, unbiased source of individualized legal information and access to the justice system for middle income clients. It was impossible to imagine 50 years ago the current state of online programs and quality standards. What will the next 50 years bring? This is impossible to imagine, but one thing is for certain, the changes will come and they will be as significant as they were over the last fifty years. Will your LRIS survive? How readily do you embrace change?

## Subject Matter Panels: Good Business and Good Service

by Ron Abernethy

*Editor's Note: This article is the first of a two-part series. Here, the author explains the need for subject matter panels. The second part of this series, which will discuss how to establish subject matter panels, will be published in the Winter 2001 issue of Dialogue.*

**W**hy should a consumer needing legal assistance contact a lawyer referral service instead of selecting a lawyer from the phone book? Your ability to provide a legitimate answer to this question will determine the financial viability and survivability of your lawyer referral service.

Running a lawyer referral service has evolved from maintaining a mechanism for connecting clients who need a lawyer with lawyers who need clients into operating a business enterprise. Unless the lawyer referral service can provide the legal consumer with a valid reason to choose it, it will not survive as a business in today's increasingly competitive legal market place. This fundamental economic realization, coupled with the recognition that a lawyer referral service must operate as a public service, has provided a potent answer to the question of why the legal consumer should choose a lawyer referral service.

That answer—the existence of subject matter panels—provides lawyer referral services with a powerful marketing tool and insures that they provide a product upon which the legal con-



sumer can rely and of which the sponsoring organization can be proud. Without subject matter panels, neither the consumer nor the service can be assured that the lawyer to whom the referral is made is qualified to handle the legal issue involved or even has handled that sort of legal problem before.

Rule X of the American Bar Association Model Rules Governing Lawyer Referral and Information Service sets forth the basic parameters of a subject matter panel—that it be based on objectively determinable criteria designed to insure that the lawyer is qualified to handle the case:

A qualified service shall establish specific subject matter panels, and may establish moderate and no fee panels, foreign language panels, alternative dispute resolution panels and other special panels which respond to the referral needs of the consumer public, eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria.

Over 85 percent of the lawyer

referral services in the United States operate some form of a subject matter panel. Unfortunately, what many programs refer to as subject matter panels are in reality “self-selection” or area-of-

preference panels. With these panels, there is no attempt by the program to determine whether a prospective panel member is qualified to handle referrals in a particular area. Instead, the individual attorneys select those areas in which they wish to receive referrals. In some instances, the participating attorneys are required to sign a statement saying that they are competent to handle cases in the particular area selected. A panel is then established by listing the names of all attorneys who have selected a particular area. For those services relying on panel registration fees as a major source of income, there are often increased fees charged for multiple panel memberships, and these multiple memberships are openly encouraged by the service to increase its revenue.

In programs that operate a self-selection or area-of-preference panel it is not uncommon for the service's executive director to receive an application, submitted by a lawyer fresh from the bar exam, which includes a check mark next to every panel or area of practice available for selection. While it is clear that bar admis-

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## Good Service

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sion allows a recent admittee to handle any sort of case or client, it does not indicate, let alone guarantee, that attorney's competence. For example, it is highly unlikely that a recently admitted lawyer is qualified to try either a capital murder case or a complex medical malpractice action. A self-selection program does little, if anything, to insure either the referral service or the legal consumer using the service that the lawyer receiving the referral has some experience in the area of a caller's legal need. A lawyer's eligibility for membership on such self-selection panels is clearly not based on "experience and other substantial objectively determinable criteria." For this reason, a program of self-certification will never comply with the Model Rules, and the program cannot truthfully argue that the legal consumer should choose it based on the quality that the existence of its subject matter panel should ensure.

In order to operate in conformance with ABA Model Rule X, a lawyer referral service program must have specific objective criteria that an applicant is required to meet prior to subject matter panel admission. For example, a rule requiring that a prospective panel member personally handle, to completion, a specific number of matters in the subject area within an immediately preceding number of years would comply with Model Rule X. A felony criminal law panel that requires each panel member to have personally tried five felony cases within the immediately preceding five years is an example of this sort of objectively determinable criterion for panel

membership. The requirement that members and prospective members of a domestic relations panel complete, within the immediately preceding two years, ten hours of bar association-approved continuing legal education in the field of domestic relations is another example of substantial objectively determinable criteria for membership.

Subject matter panel requirements must, of course, be based on prevailing local standards of practice and should have the goal of insuring that each case is referred to a lawyer qualified to handle the legal problem involved. Subject matter panel requirements should never be confused with a program of legal specialization in which the licensing authority is certifying that a particular lawyer is an expert or specialist in a particular field. The goal of subject matter panels is much more modest—ensuring the competence of each lawyer affiliated with the service.

Experience in those lawyer referral services across the county that have adopted "substantial objectively determinable criteria" for their subject matter panels provides several valuable lessons for any program considering adoption or refinement of such panels. First, most existing panel members currently receiving referrals in a particular subject matter area will more than likely meet any reasonable objectively determinable criteria that may be imposed by the service.

Second, client satisfaction with the referral service has universally improved and the number of cases returned for re-referral has decreased following adoption of a subject matter panel program that complies with Model Rule X.

Third, eliminating panel mem-

bers who are not qualified to handle cases in a particular area has significantly reduced the amount of staff time devoted to dealing with problems generated by client complaints and cases returned for re-referral.

Fourth, and probably most importantly, a lawyer referral service with **real** subject matter panels is in a position to offer the legal consumer something that cannot be obtained through random selection of an attorney from the yellow pages: a lawyer who is qualified in the subject matter of the client's legal need.

This ability to provide a qualified lawyer should play a prominent role in any LRIS advertising and is the primary reason only those services who comply with the Model Rules are allowed to utilize the ABA logo and the slogan, "The Right Call For the Right Lawyer."

Most of the lawyer referral programs across the country that do not have subject matter panels or whose subject matter panels do not comply with Model Rule X report that implementation of such a program would not receive the support of their local governing committee.

In some services, the governing committee tends to view the lawyer referral service as a program for providing cases for new lawyers while giving the bar association staff somewhere to send the inevitable callers seeking legal help. This perception of the role filled by a referral service, while perhaps true at one time, is certainly no longer the case.

**Ron Abernethy** is a past member of the ABA Standing Committee on LRIS, and is currently chair of the Program of Assistance and Review (PAR) Subcommittee.

## Habits

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matters, subject matter panels often use criteria such as: number and types of cases handled by the attorney; percentage of an attorney's practice in a particular area of law; the extent of an attorney's CLE training in an area of law; and/or state bar specialty certification of the attorney. Subject matter panels recognize that although every attorney is licensed to practice law, a newly licensed lawyer is not necessarily the best practitioner to handle more complex matters. Experience panels allow the complexity of the matter to be more precisely matched to the current competency of the attorney. This "best match" process keeps the client's interests paramount by ensuring that the attorney who can most successfully and expeditiously resolve a matter handles the case.

Additionally, anecdotal information tells us that clients who are informed of their attorney's qualifications are more likely to follow through with an appointment with the attorney after referral. Creating a client-attorney match using a subject matter panel provides another reinforcement for the client. The client perceives that he or she is no longer in a random assignment process because an attorney has been identified in response to the client's specific needs. Increased follow-through by clients should result in more attorney retention, all of which ultimately contributes to increased revenue for the program.

The last factor found related to success is the concurrent use of several marketing methods. Successful programs use three or more methods for marketing their services. The database is not

## 2001 Cindy A. Raisch Award

Nominations are now being sought for the 2001 Cindy A. Raisch Award. The award recognizes the enhancement of public service-oriented lawyer referral and information programs that provide access for moderate-income consumers across the country. The winner will receive an all-expenses paid trip to the ABA Midyear Meeting in San Diego, where the award will be presented at the National Association of Bar Executives Luncheon.

Award applications have been sent to all public service lawyer referral and information programs and nomination information is available at <http://www.abanet.org/legal/services/raisch2001.html> Past award winners include: the Bar Association of San Francisco LRS, the Toledo Bar Association LRS, the King County (WA) Bar Association LRS, and the Travis County (TX) Bar Association LRS. For any questions regarding this award please contact Sheree Swetin at [sswetin@staff.abanet.org](mailto:sswetin@staff.abanet.org)

structured to allow testing for the effectiveness of specific marketing methods, but it did show that the top five marketing methods used by programs are: advertising in the yellow pages (90 percent of programs), informational brochures (59 percent), posters/flyers at the local courthouse (46 percent), a Web site (41 percent), and a speakers bureau and educational programs in the community (32 percent).

Factors that could be categorized as quality control measures such as written procedures for panel management and client and attorney follow-up measures showed no relationship to "success." Likewise, the number of staff, the percentage of bar members on the LRIS panel, or the percentage of clients referred to panel attorneys did not show any relationship to the program's success.

Interestingly, the survey information indicates that the type of area served by a program is not determinative of that program's success. That is, success is not tied to whether the program serves an urban, rural or mixed urban/rural population. Stated in terms of the predictive model, it is equally

likely that a rural or urban program can achieve success. This appears to contradict the conventional wisdom that a critical mass of individuals on the panel or in the population favors success in urban areas.

This survey was useful in affirming some commonly held beliefs and dismissing others. It should by no means be taken as definitive, merely illustrative. Ten years ago there was decidedly less focus on lawyer referral programs as revenue sources, but programs today are being measured on the basis of the budget standard. Increasingly, programs are being asked to meet expenses or turn a profit. The entire public service lawyer referral community benefits when we share the ideas and innovations that result in quality services to the client that also meet bottom line expectations. We look forward to hearing from you about the endeavors in your program that have assisted in "the business of public service."

**Jane Nosbisch** is Assistant Staff Director of the Standing Committee on Lawyer Referral and Information Services

## iLawyer

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Rights." The program covers a wide range of legal topics for California consumers. iLawyer is building a comprehensive library of frequently asked legal questions and answers. This library is being indexed by jurisdiction and maintained by iLawyer, with content contributed by LRIS member attorneys. More information will be offered on a localized basis as additional LRIS programs join the ABA/iLawyer network.

In conjunction with the new iLawyer program, the Committee has developed a new logo for all ABA-approved programs. This logo will be used on the iLawyer site, and will be phased into use by programs nationwide over the next year.

**Sheree Swetin** is Staff Director of the ABA Standing Committee on LRIS. **Garrett S. Vachal** is Strategic Alliance Manager for iLawyer.

Please visit the iLawyer site at <http://www.ilawyer.com> If you would like more information about this program or if you would like to comment on it, please contact Sheree Swetin at [sswetin@staff.abanet.org](mailto:sswetin@staff.abanet.org), or Adam Slote at iLawyer, [adam@ilawyer.com](mailto:adam@ilawyer.com)

## New LRIS Monographs Available Online

Looking for articles that address the frequently asked questions from your panel members? A series of six short articles targeted to these FAQs is available at <http://www.abanet.org/legalservices/monographs.html> The monograph series is to provide answers in a short, informative format that can be adapted for your local needs, particularly for your newsletter. The series is made available on the Internet to cut the expense of mailing and to make it immediately accessible to you.

The monograph series includes:

- How New Practitioners Can Benefit from LRIS Membership, by Carol Woods
- Tips for Building a Client Relationship, by Allen Charne
- Maintaining Ongoing Relationships with Existing Clients, by Wes Hackett
- Meeting Experience Panel Requirements, by Ron Abernethy
- Dealing with Those Pesky Percentage Fees, by Cindy Thoennes and Janet Diaz
- Is Unbundling for You? by Ruth Edlund

The maxim for all of these articles is "steal this!" Please feel free to plagiarize these articles, use them in your newsletters, or send them to your panel! Also, please let us know other topics you would like us to add to this list. If you do not have Internet access, these articles can be requested by writing to: ABA Standing Committee on LRIS, 541 N. Fairbanks Court, Chicago, IL 60611. Please enclose a check for \$8.00 to receive a disk containing the articles in Word format.

## LRIS Committee offers program support

Do you need resources, ideas and discussion? The ABA Standing Committee on Lawyer Referral and Information Service exists to help you meet the challenges of operating a lawyer referral and information service (LRIS) program. Take advantage of our resources:

- Marketing publications customized to LRIS, including *PR Tools, Tips and Timesavers* and *Public Relations and Marketing Guide*.
- A free Listserv discussion group for program managers to discuss management and ethical issues for LRIS. Contact [glascotc@staff.abanet.org](mailto:glascotc@staff.abanet.org) to join.
- A quarterly newsletter, *Dialogue*, for your information needs.
- A clearinghouse of forms, ethics opinions and ideas to help you customize your program.

Please contact the LRIS Committee at (312) 988-5760 or via email at [glascotc@staff.abanet.org](mailto:glascotc@staff.abanet.org) to let us know what we can do for you.

### From the Chair...



by David C. Hague  
Chair of the ABA Standing  
Committee on Legal Assistance  
for Military Personnel

Legal assistance/preventive law is the most important service provided by judge advocates! Is that too hard to believe? Then how about this: legal assistance/preventive law is the most important service provided by judge advocates in time of peace—or, in time of peace **and** when crime/misconduct rates are low and good order and discipline prevail. Is this still too hard to believe?

Let us begin with a less controversial claim. Legal assistance/preventive law, military justice and operational law are the three most important services provided by judge advocates! While there are other important areas of military legal practice—such as claims, labor law, command counsel, procurement, environmental law and admiralty—legal assistance/preventive law, military justice and operational law most directly impact readiness. Thus they are the **most** important. The connection between military justice and good order and discipline and between operation law and war fighting is obvious. What, then, makes legal assistance/preventive law so important?

Morale, individual well-being,

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### LAMP Spotlight...

## Naval Legal Service Office Northwest, Naval Station Everett

**T**he Naval Legal Service Office Northwest (NLSO NW) branch office at Naval Station Everett, in Everett, Washington was the location of the LAMP Committee's visit in July. CAPT Bruce E. MacDonald, Commander NLSO NW, was our host for the two-day CLE and committee meeting. Project Officer CDR Albert Abuan and Assistant Project Officer LT Eric J. Osterhues assisted CAPT MacDonald.

The US Navy is big in the Puget Sound region of Washington State. There are 26,000 active duty personnel stationed at Naval Station Bremerton—where CAPT MacDonald and his NLSO NW are headquartered—Naval Air Station Whidbey Island, Submarine Base Bangor, and Naval Station Everett. In addition, there are 80,000 military family members and 45,000 Navy retirees in the area. The legal assistance staff has its work cut out for it. CAPT MacDonald runs branch offices at each of these installations. Diane Karr is the legal assistance department head and oversees legal assistance not only in Washington, but also for clients in Alaska, Idaho, Montana, Oregon, Wyoming and the Canadian provinces of British Columbia and Alberta and the territory of Yukon.

Naval Station Everett is the Navy's most modern facility. Construction of the base began in November 1987, and in January 1994, personnel moved into the fleet support and administration buildings to officially begin operations. The first ships arrived in September 1994. The facilities are wonderful.

The NLSO NW branch office at Naval Station Everett provides legal assistance, claims and defense support for the 5,000 naval personnel assigned to the station, along with military family members and retirees in the area. Everett is home port to the newest nuclear-powered aircraft carrier, USS Abraham Lincoln (CVN72). The station is also home port to three destroyers, three frigates and other support ships.

LT Osterhues is the chief of legal assistance at the Everett branch office and is assisted by LT Kevin Powers and two legalmen, LN2 John Rising and LN2 Shauna Chapdelaine. In addition there are three temporary enlisted personnel assigned to the office. CPO 2 Sharon Dailey is the most senior of the temporary enlisted personnel. Ulullani Elliott is the office secretary.

The Everett office has provided legal services to over 8,700 clients this year. Using the DL Wills Program, it prepared over 4,300 wills and 9,300 powers of attorney. The office also drafts *pro se* dissolution documents and prepares parties for their court appearances. The office assists crew members of the ships assigned to Everett with their personal affairs, especially when they are preparing to depart on a six-month cruise. In fact, email is allowing LT Osterhues to continue to work on with sailors on the Abraham Lincoln who were unable to resolve their legal problems prior to leaving port.

The NLSO NW is very active in the Volunteer Income Tax Assistance

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## From the Chair...

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individual readiness and quality of life are four reasons legal assistance/preventive law is so important. Pride of service and sense of family are two other reasons that are seldom mentioned. Legal assistance is like having a lawyer in the family and is one of the few remaining benefits that make the armed forces more than just employers, and service in uniform more than just a job.

Assessing the value and impact of legal assistance/preventive law requires analysis beyond number crunching. Direct assistance in the form of documents prepared, letters written, and counsel given can be tallied, but we cannot count the number of spouses and children who do not get abused because a separation agreement brought calm to the household. Nor can we quantify the family turmoil, financial disarray, and personal anxiety and pain ameliorated by the estate planning and other legal services provided by legal assistance attorneys. There is also no way to count the difficulties prevented because the spouse left behind during deployments has a power of attorney and access to free legal advice.

Legal assistance/preventive law is in a class by itself. It reaches and enriches the entire military community like few other benefits of service to country. Furthermore, the problems solved and prevented in legal assistance offices directly and significantly benefit both individuals and the commands to which they belong. Commanders understand and value the legal assistance-readiness connection. So do senior judge advocates. Freed in recent

## New LAMP Committee Members and Liaisons

The ABA Standing Committee on Legal Assistance for Military Personnel is comprised of seven lawyer members, appointed by the President-elect of the ABA to three-year terms. In August, the Committee said good bye to some departing members, but welcomed some new ones.

Dan Bean and David Clement join the Committee. Bean is the past head of legal assistance at Naval Legal Service Office Southeast, and chair of the Florida Bar Military Affairs Committee. Clement is the former chief of legal assistance for the Navy, recently retired, and is entering private practice in Cary, North Carolina.

The Committee bids farewell to Kevin Flood. (Well, OK, maybe he'll be back again someday!) Kevin holds the dubious honor of serving the most years of anyone ever on the Committee. He has contributed invaluable expertise to the Committee's business and policy deliberations, led its CLE efforts with his estate planning and DL Wills programs, and has spearheaded the refinement of the LAMP Distinguished Service Award. He has contributed all of this in addition to serving as chair of the Committee.

The Committee is also losing several liaisons from the service branches—chiefs of legal assistance who are rotating out of legal assistance to take on other responsibilities. The committee offers its sincere thanks to LT COL John Dyer, Air Force chief of legal assistance, CAPT Tim Young, liaison from the Naval Justice School, and COL David G. Ehrhart, liaison from the Air Force Judge Advocate General School.

We welcome their successors—LT COL Walter Skierski, Air Force chief of legal assistance, CAPT Dennis Bengston, Naval Justice School, and COL Bruce Brown, Air Force JAG School. We look forward to working closely with them over the next few years on common goals for legal assistance efforts on behalf of military personnel and their families.

years from crushing military justice caseloads, they have placed increased emphasis on legal assistance/preventive law programs. Consequently, that once-neglected stepchild of military legal practice is in better shape now than ever before. As good as its leadership, funding and staffing are, however, military legal assistance/preventive law falls short of its potential.

The American Bar Association has for years advocated making legal assistance an entitlement for junior enlisted personnel. The time is ripe to further advance this idea. In the months ahead the LAMP Committee will be actively engaged with the branches of

service and the Department of Defense to determine what can be done. This is an exciting time filled with promise for legal assistance/preventive law practitioners and the clients and commands they serve. Stay tuned for developments. If you have any thoughts on making legal assistance an entitlement for junior enlisted personnel (it would remain available to other qualified personnel on the current basis of "as resources permit") or on other matters relating to the LAMP Committee's mission of fostering legal assistance in the armed forces, please send them to me, in care of Sheree Swetin at [sswetin@staff.abanet.org](mailto:sswetin@staff.abanet.org)

# Non-Lawyer Assistants: Their Time is Now

by Kenyon E. Luce

Legal assistance attorneys have burgeoning caseloads and inadequate time to complete the increasing variety of tasks required of them. To timely meet the demands placed upon them, legal assistance attorneys must become more efficient in the use of their time. One solution involves utilizing an existing resource available throughout the military—legalmen

and legal clerks. Legal assistance attorneys must learn to delegate work to qualified non-lawyer assistants and allow them to be responsible for many of the tasks traditionally performed by attorneys.

To effectively utilize non-lawyer assistants, institutional thinking must change from the traditional belief that tasks

involving legal assistance must always be handled by an attorney, to recognizing that properly trained and supervised non-lawyer assistants can perform many functions of a legal assistance office.

Accomplishing this will take great effort. While understanding the need for this change may be

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## Spotlight...

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(VITA) program in the Puget Sound area. It prepared over 15,000 federal and state tax returns at the end of the most recent tax year, saving legal assistance clients approximately \$1 million in tax preparation fees and securing over \$15 million in tax refunds.

During its visit, the LAMP Committee sponsored a one-day CLE for legal support personnel, with students travelling from as far Louisiana to attend. Kenyon E. Luce, the LAMP committee member for CLE programs, planned this program along with CAPT MacDonald. Topics covered during the CLE included: an introduction to the DL Wills program, client interviews, immigration issues, using the Internet for legal research and for obtaining information from state and county agencies, child support collection, consumer issues, and legal ethics involving legal

assistance paralegals.

A second CLE program was held for JAG officers in the area. It included active duty and civilian attorneys from the Army, Air Force, Marines and Coast Guard. Topics presented included military estate planning using DL Wills, trusts, personal civil liability for official acts, consumer issues, child support, and using the Army JAG Corps Web site *JAGCNET* (<http://www.jagcnet.army.mil>) in the context of legal assistance.

CAPT MacDonald has developed an outstanding educational program for legal support personnel. In conjunction with Highline Community College, his office has created a program for active duty enlisted legalmen to pursue an associate degree in paralegal studies. Students go to school on the base and can complete their degree programs during one normal tour in the area. Studies include legal research, writing and substantive areas of the law. Active duty personnel can use the GI Bill to pay for most of the costs.

The program has been expanded to include family members. This is an outstanding program and is being looked at further by the LAMP Committee for use at other military bases.

CAPT MacDonald, CDE Abuan and LT Osterhues should be thanked for the outstanding support they provided to the Committee and the CLE programs. Their hospitality and the wonderful Northwest made our visit most worthwhile and enjoyable.

**Bryan S. Spencer** is a member of the ABA Standing Committee on LAMP and the editorial liaison to *Dialogue*.

*Anyone desiring more information on NLSO NW's program for educating legal support personnel may contact NLSO NW at the following address: LT Andrew Wilkes, HIGHLINE Coordinator, ATTN: Paralegal Project, NLSO NW, 365 South Barclay, Bldg 433, Code 1307, Bremerton, WA 98314-5260. Phone is (360)476-2156 x 245, DSN 439-2156, and email is wilkesat@jag.navy.mil*

## Assistants

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easier in light of the cutbacks, budgeting constraints and overall downsizing facing legal assistance offices, it is still incumbent upon the legal assistance community to combine its efforts and work together to obtain the required recognition and training for non-lawyer assistants.

The successful use of non-lawyer assistants requires that their duties be defined, their performance monitored, and procedures implemented to insure their compliance with the rules of professional conduct. With adequate safeguards in place, non-lawyer assistants can work under the supervision of a legal assistance attorney who maintains control of the client's legal matter and remains professionally responsible for the work product.

The specific utilization of non-lawyer assistants depends on the needs of local legal assistance offices. Assistants should fulfill roles that will carry out the mission of the office. Some administrative duties that can be assigned to non-lawyer assistants include screening clients and the subject matter of cases for eligibility, performing conflict checks, maintaining office master calendars, supervising the law library, and maintaining filing systems and computerized information retrieval systems.

In addition to administrative duties non-lawyer assistants can conduct initial client interviews, prepare client-specific memorandums and informational handouts, draft routine office correspondence, draft powers of attorney and other documents as directed by the attorney, and perform certain tax assistance and notarization services.

In offices that have preventative law programs, non-lawyer assistants can participate as speakers in lectures and seminars.

Training must be implemented to create an effective non-lawyer assistant program. An excellent example of opportunities for training exists at the Naval Legal Service Office Northwest (NLSO NW), which in recognition of the potential ability of its legalmen, arranged to bring community college courses on base to teach and train non-lawyer assistants. These assistants earn college credits and build their skills. This effort is a win-win situation and should be used as an example by other JAG offices. (*The non-lawyer assistant training program at NLSO NW is described in greater detail in this issue's LAMP Spotlight, which begins on page 9.*)

The ABA LAMP Committee sponsors joint training sessions for JAG officers and the legal support staff. A recent training held at Naval Station Everett included sessions on legal ethics, immigration, child support collection and DL Wills. Further joint training sessions are planned at future LAMP meetings.

The Army is very supportive of the use of non-lawyer assis-

stants. However, it is time for all branches of the military to implement policies allowing non-lawyer assistants to perform similar tasks and have similar responsibilities as their civilian counterparts. In supporting the concept of the non-lawyer assistant, the military will receive a great benefit. The service member will be more productive and valuable to the military during his or her service, and to the civilian community after discharge.

Efficiency and diligence are hallmarks of a good legal assistance office. Both are achievable if those capable of performing a task are recognized and given the responsibility to do so. Capable and dedicated service members have been overlooked for too long. Now is the time to allow qualified service members to perform up to the level of their training and capability. If non-lawyer assistants are recognized for their professionalism, education and experience, they, the military and legal assistance clients will all benefit.

**Kenyon E. Luce** is an attorney in private practice in Tacoma, Washington and is a member of the ABA Standing Committee on LAMP.

### ABA Committee on LAMP Featured Web Link

Check out this link to the North Carolina State Bar LAMP Web site. Not just for North Carolina attorneys, this site offers a wide variety of Take-1 handouts for distribution to legal assistance clients, lawyer-to-lawyer information and legal references on civil legal issues, a network of links and contacts for further information and peer consultations, and citations to other publications and resources of interest to legal assistance attorneys.

The link to the North Carolina State Bar LAMP Web site is <http://www.ncbar.com/lamp.htm>

## Careful Planning Can Limit Estate Taxes

by Kevin Flood

Careful estate planning can limit the estate tax liability incurred by transfers of assets by current and former military personnel. Current law concerning estate taxes provides an exemption equivalent of \$625,000 per person. A person can give away a combined total of \$625,000 during his or her lifetime or at death without creating any gift or estate tax liability. Congress has increased the exemption equivalent amount from \$625,000 to \$650,000 for next year. This amount will gradually increase to reach \$1,000,000 in 2006.

Current tax law also provides for an unlimited marital deduction for property inherited by a United States citizen spouse. This means that a person may transfer an unlimited amount of property to a spouse without incurring any federal gift or estate tax at all. If at the death of the first spouse all property goes to the surviving spouse, there is no estate tax in the first estate because of the unlimited marital deduction.

However, the tax problem occurs in the **second estate**. When the surviving spouse dies owning all of the family assets, he or she has only the original \$625,000 exemption. Anything in this second estate over \$625,000 will be taxed at a rate that begins at 37 percent. The original spouse's \$625,000 exemption equivalent is wasted if he or she gives everything to the surviving spouse. This is usually described as the "second step" problem, as it gives rise to taxes in the surviving spouses estate.



### Credit shelter trusts

Good estate tax planning involves utilizing each spouse's \$625,000 exemption equivalent as fully as possible so as to pass up to \$1,250,000 estate tax free to any heirs, rather than just \$625,000 from the surviving spouse. To accomplish this, a client should arrange to put up to \$625,000 in trust (usually called a "credit shelter trust") when the first spouse dies, rather than giving everything to the surviving spouse outright. The surviving spouse can serve as trustee of the credit shelter trust and receive all of the trust income, as well as the principal if necessary for his or her support and medical care. Extreme care must be taken in drafting the trust if the surviving spouse is to be the trustee, as a mistake can negate the credit shelter aspect.

When the surviving spouse dies the credit shelter trust assets are not part of his or her estate. In this way a client can pass up

to \$1,250,000 estate tax free to any heirs (\$625,000 through the estate of the second spouse to die because of his or her exemption, and the \$625,000, or whatever it has appreciated to, in the credit shelter trust created by the first spouse to die). Again, it is important to shield up to \$625,000 in the first estate by not allowing it to pass to the surviving spouse outright.

This can be done by simply creating a credit shelter trust upon the first estate, and funding it with the maximum amount left of the credit equivalent amount (currently up to \$625,000). This allows for no discretion, and just places the amount in the credit shelter. The other choice is to give the option to the surviving spouse to fund the credit shelter trust through something called a "disclaimer trust."

### Disclaimer trusts

The client's will and testamentary trust leaves the entire estate out-

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## Estate Taxes

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right to the survivor. There is a nine month period after the first death in which the surviving spouse may disclaim—or reject—all or part of his or her inheritance. The credit shelter trust is to be funded by the surviving spouse disclaiming part of the estate. This enables the survivor to decide how much to keep outright (and to be taxed in the second estate), and the amount to continue in trust and keep shielded from any further estate taxes.

Most assets, including life insurance, can be disclaimed, but there are strict rules regarding this. The survivor cannot accept, collect or exert control over an asset and then later disclaim it. Furthermore, joint accounts with the right of survivorship between spouses and some other types of joint property cannot be disclaimed. In addition, if the survivor fails to disclaim there will be no estate tax savings. The client must consider this carefully, as there may be a great reluctance on the part of the surviving spouse to “give up” anything such a short time after an emotional loss. After careful consideration, clients should determine if they want a disclaimer trust, or just use the mandatory funding of the credit shelter trust.

### Splitting assets

In order to take advantage of the estate tax planning provisions of the credit shelter trusts and ensure maximum utilization of the \$625,000 exemptions, married clients must split their assets so that each will have property worth approximately one half the total. Assets must be in one spouse’s

name alone so they can pass pursuant to the will into the credit shelter trust. A client can no longer have joint property with the right of survivorship, and he or she must also change some relevant beneficiary designations.

The key to the tax savings is to force a taxable estate when the first spouse dies, and then use the \$625,000 exemption amount. Remember that property held jointly with the right of survivorship passes automatically to the surviving joint tenant and is not controlled by the decedent’s will. A client must also take into account his or her present SGLI and other life insurance beneficiary designations; these most probably have to be changed.

The following list will cover important points regarding some changes that must be made:

- **Bank and Credit Union Accounts, Certificates of Deposit** - These should not be held in joint names with the right of survivorship, as the other spouse probably cannot make an effective disclaimer. These assets should be titled in one spouse’s name alone, so they will go into the probate estate. If the surviving spouse disclaims, a CD then passes under the will to the credit shelter trust.
- **Beneficiary Designations** - In the case of IRAs and retirement plans, the spouse, if living, should be the beneficiary. Only the surviving spouse can elect to postpone distribution (and taxation) for a longer period of time, by rolling-over retirement funds into his or her own plan or IRA. In the case of life insurance, whether SGLI or commercial, all or part of

the proceeds can be disclaimed, and therefore diverted to the credit shelter trust. This will most likely require a change of beneficiary. The client should identify the contingent beneficiary as: “The trustee of the credit shelter trust in my last will and testament.” A client cannot have another person as the contingent or alternate beneficiary, because when the surviving spouse disclaims it is as if he or she died before the client, and the amount disclaimed will go to the contingent beneficiary.

- **Stock, Mutual Funds** - These should be held in one spouse’s name, not jointly owned with the right of survivorship.
- **Real Estate** - Real estate enjoys a special type of ownership when owned by a married couple, called “tenants by the entirety.” One of the important aspects of this type of ownership is that the property is usually protected from the claims of creditors of only one of the spouses. Because of this, and due to the complexity of homestead laws in many states, it may not be advantageous for spouses to transfer ownership of their residence. Remember, not all the assets need be subject to the disclaimer, just enough to make up the \$625,000 exemption, or to achieve the tax savings the client desires.
- **Business and Certain Investment interests** -
  - **Sole Proprietorships** will be available to the disclaiming spouse as they are all in one name.
  - **Certificates of Limited Partnership** should be

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## Estate Taxes

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examined to make sure they do not specify joint ownership with the right of survivorship.

- **General Partnership** interests can be disclaimed. If there is a buy-sell agreement between the partners, it must be reviewed for any prohibition against this type of transfer.
- **Close Corporation Stock** must be changed into one name, and must not call for joint ownership with the right of survivorship.
- **Personal Property** - Furniture, furnishings, clothing, jewelry and items that have no certificate of ownership will pass in the estate of the spouse who owns those items.

This is only a general discussion of some aspects of enabling the funding of the credit shelter trust. If a client's investments and assets are complex, the funding or transfer process can be involved, time-consuming and costly. The funding requirement does not cease after the client initially re-

titles the assets, but continues during his or her lifetime. Every time the client sells an asset, purchases a new asset, or changes brokers it will generate further funding considerations and the need to monitor the balance between both spouses.

### Gifting program

An alternative to the division of assets and the use of credit shelter trusts would be to keep a client's combined estates under \$625,000 by establishing a vigorous gifting program. The client would continue to gift away all sums over \$625,000, but not exceed the annual exempt gift amount.

During the client's life, he or she may give \$10,000 individually (or \$20,000 in the case of a married couple) annually to anyone without incurring any gift tax. For example, a married client with two children and four grandchildren could conceivably give \$20,000 to each every year (or \$120,000) without incurring a gift tax. A significant tax benefit of such a lifetime gift is that appreciation in value following the date of the gift is not subject to transfer taxes. By giving property likely to appreciate in value, any increase

in value is removed from the client's estate, thereby avoiding any transfer tax on that appreciation. However, bear in mind that the recipient takes the client's cost or basis in the gifted property, and will have to pay any capital gains tax using that cost upon a sale of the property. If the recipient inherited the asset, the basis would be the value at date of death, eliminating any gain from the date of the client's purchase of the asset to his or her death.

Another factor to consider in advising a client about a gifting program is the impact of **taxable** gifts made during his or her lifetime. Taxable gifts would consist of gifts of more than \$10,000 to any individual in any one year or more than \$20,000 to one individual if the client's spouse joins in the gift. In these cases there will be gift taxes due which may reduce the client's \$625,000 exemption. If the client has a lower exemption equivalent, then the estate tax will apply to a lower level of assets.

**CAPT Kevin Flood** (Retired) is chief of legal assistance for the Naval Legal Service Office Southeast, and is a past member of the ABA Standing Committee on LAMP.

## Nominees Sought for Equal Access Article Award

The National Equal Justice Library (NEJL) invites nominations for the second biennial competition for the Edgar and Jean Cahn Article Award. The award honors the most outstanding article or essay addressing equal justice concerns in civil justice contexts. The award is named for the Cahns, whose 1964 Yale Law Journal article, *The War on*

*Poverty: A Civilian Perspective*, was a seminal work of scholarship in furthering equal access to justice.

For the 2000-2001 cycle, two Cahn Awards will be given. For this cycle only, any article, essay or book written in the 20th century is eligible. Nominated works and criteria for the Cahn Award can be viewed at the NEJL Web site at <http://nejl.wcl.american.edu> or <http://>

[www.equaljusticeupdate.org](http://www.equaljusticeupdate.org)

Nominations for the Cahn Award may be made until December 15, 2000. Nominations should be made to the Smith-Cahn Awards Committee, National Equal Justice Library, Washington College of Law, 401 Massachusetts Avenue, N.W., Washington, D.C. 20016, or to archivist Robert Forman at [nejl@wcl.american.edu](mailto:nejl@wcl.american.edu)

## Committee Seeks Nominations for Brown Award

Nominations are now open for the 2001 Louis M. Brown Award for Legal Access. The Brown Award is given annually at the ABA Midyear Meeting to a program or project that is dedicated to matching the unmet legal needs of those with moderate incomes with lawyers who provide them with affordable legal information, services and representation.

Prior Brown Award recipients have been bar-sponsored programs, such as the Houston Bar Association's Modest Means Program; court projects, such as the Maricopa County, AZ, Self-Service Center; and individual initiatives, such as the hotline service Tele-Lawyer, Inc.

The Award is presented by the ABA Standing Committee on the Delivery of Legal Services. The Committee is dedicated to the improvement of the delivery of legal services to both moderate-income people, sometimes referred to as the "working poor", and to the public in general, by encourag-

ing innovations in methods of providing legal information, services and representation. Brown Award recipients are programs or projects that have made substantial or creative contributions to the delivery of legal services.

Brown Award nominees are included in the Committee's annual publication titled *Profiles of Moderate Income Programs*, which is circulated to bar associations, law libraries, courts and legal services entities across the country. In addition, the Committee encourages the utilization and replication of the nominees in the effort to expand affordable legal

services to those in need.

Nominations are due by December 1. The Award recipient and those receiving meritorious recognition will be honored by the Committee at a program sponsored by the National Conference of Bar Presidents, at the ABA Midyear Meeting in San Diego in February.

The complete award criteria and nomination information are available at <http://www.abanet.org/legalservices/brown.html> or by contacting staff counsel Will Hornsby at 312/988-5761 or [whornsby@staff.abanet.org](mailto:whornsby@staff.abanet.org)

### Prior Brown Award Recipients

1995: Tele-Lawyer, Inc.

1996: Orange County, CA, Lawyer Referral Modest Means Panel

1997: The Self-Service Center, Superior Court of Arizona in Maricopa County

1998: The AARP Legal Hotlines Project

1999: The Senior Citizen Judicare Project in Philadelphia

2000: The Houston Bar Association Modest Means Program

### Pro Bono Awards

The ABA Pro Bono Publico Awards were presented July 10 during the ABA Annual Meeting. The awards were presented by (front row, left to right) Michael Pratt, chair of the ABA Pro Bono Awards Subcommittee; then-ABA President William G. Paul; keynote speaker Elaine R. Jones, president and director-counsel of the NAACP Legal Defense and Education Fund, Inc.; and Robert N. Weiner, chair of the ABA Standing Committee on Pro Bono and Public Service. Accepting awards were (back row, left



to right) Charles E. Patterson; Dean Michael A. Fitts on behalf of the University of Pennsylvania Law School; Theodore M. Frois and DeMonica Gladney on behalf

of the Houston law department of Exxon Company U.S.A.; Robert E. Borton on behalf of Heller Ehrman White and McAuliffe; and Anil K. Mehta.

## From the Chair...



by Robert N. Weiner  
Chair of the ABA Standing  
Committee on Pro Bono  
and Public Service

The New York Times reported recently on a decline in pro bono work by major law firms over the last seven years. In my view the figures in that story are not accurate, but one key point is that we are not doing enough to meet the legal needs of the poor in this country. For many, equal justice remains a distant promise, not a reality.

The recent salary increases for associates at major firms may, paradoxically, increase the gap between the legal needs of the poor and the resources devoted to serving them. I say "paradoxically" because one might think that prosperity would breed generosity. Apparently not. As firms raised salaries for associates, many sought to offset the increased expense by setting high minimum targets for billable hours. While some firms treat pro bono hours the same as billable time, others do not. Even where firms have not imposed explicit hours targets, or have not treated pro bono projects differently than billable time, associates have felt pressure to justify their higher salaries by producing more remunerative work. In consequence, legal service providers are reporting

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## Creating a Pro Bono Culture: An Update on Indiana's Statewide Pro Bono System

by David J. Remondini and Greg McConnell



**Introduction:** In the last five years, dramatic changes in the landscape of Indiana's pro bono system have thrust the state into the limelight of the national pro bono and legal communities. In the fall of 1997, the Indiana Supreme Court approved the creation of an IOLTA program and a statewide pro bono initiative. Both concepts were intertwined from the start. Revenues earned from IOLTA accounts were earmarked to implement and support the pro bono initiative that the Court created in Rule 6.5 of the Indiana Rules of Professional Conduct. The statewide pro bono system created 14 local pro bono districts and charged them with developing and implementing a pro bono action plan for each community. The local districts overlap the Indiana trial court arrangement and each encompasses several counties. Rule 6.5 provides for a local trial judge to oversee each district's efforts. Rule 6.5 also established a Pro Bono Commission appointed by the Supreme Court and the Indiana Bar Foundation to oversee all the local district activities. The Hon. L. Mark Bailey of the Indiana Court of Appeals was appointed to chair the Pro Bono Commission in 1998.

Indiana's efforts are remarkable for many reasons, including the participation of all levels of the state judiciary, and the tremendous amount of time and energy devoted by many concerned lawyers in developing the initial components of the statewide plan and its local pieces. However, perhaps the most challenging part of the Indiana effort has been meeting the underlying objective of developing a strong pro bono culture throughout the state. Many states and cities have struggled with this issue and many different strategies have developed to address this cause. The Indiana statewide plan is another such strategy.

The following article is an insider's perspective of how the effort is progressing. The ABA Center for Pro Bono asked David J. Remondini, Counsel to Chief Justice Randall T. Shepard of the Indiana Supreme Court, to provide this update because of his intimate involvement with the state plan during all levels of its development. Assisting Chief Justice Shepard, Remondini has guided the Court's creation of the IOLTA plan and the simultaneous implementation of the statewide pro bono initiative. Remondini is also the first chair of the newly created Indianapolis Bar Association (IBA) Standing Committee on Pro Bono. In December 1999, the IBA culminated a two-year assessment of its pro bono efforts by issuing a set of comprehensive findings and recommendations for a pro bono strategy. Remondini is now leading the effort to implement that plan.

**I**t was the same look in different places across Indiana. In town after town, uncertainty marked the faces of lawyers and judges who had been directed to fashion a local pro bono plan. Still, each face also bore a trace of optimism. Under direction from the Indiana Supreme Court, and its new rule of professional conduct outlining a statewide voluntary pro bono plan, groups of lawyers and judges began meeting to

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## Pro Bono Culture

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figure out how to comply with the new rule. Indiana didn't have long to wait before seeing the result of their work.

The fruits of this effort blossomed in the summer of 2000 as groups from Indiana's 14 judicial districts filed their initial plans to provide pro bono civil legal service to the poorest of Indiana's five million citizens. In law firm conference rooms, coffee shops, and restaurants across the state, the judges appointed to lead their districts' efforts each began taking the tentative steps toward a grass-roots approach to pro bono that

would try to cover all of Indiana.

For many, it was a new challenge. Historically, trial judges in Indiana had not been heavily involved in organized pro bono efforts. Now they were placed into leadership roles on the newly created committees. The judges were urged to appoint local bar leaders and law school representatives, and each committee was directed to include two members of the community-at-large, one of whom must have previously benefited from pro bono legal help.

Lawyers who previously had been only informally involved in pro bono activities stepped forward to take part in the planning process. Traditional providers of free legal service to the

indigent also came to the table. The committees relied heavily on these organizations because, as was frequently said, there was "no reason to re-invent the wheel." More importantly, the committees viewed these providers as important participants because of their experience and organization and the need for collaboration with them to help the system achieve its full potential.

### Local Ownership – Local Control

Each district was directed to develop its own plan, which would draw on local resources and fit local needs. Funding would come from an infusion

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## From the Chair...

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a decrease in pro bono work by the private bar.

I believe this decline will be short-lived. As the competition for new recruits based on salaries approaches equilibrium, firms will need to compete in other ways. One potential area of competition is the strength and attractiveness of their pro bono programs.

The ABA Standing Committee on Pro Bono and Public Service has sought to help that competitive process along. We have produced a cyber-brochure, distributed to law students, advising them to ask firms about pro bono. The brochure tells the students that, "Your commitment to serving the poor can and does drive the profession to do the right thing. Whether you know

it or not, you have substantial market power in this area. You should thus make sure to include pro bono in your discussions with potential future employers." The brochure therefore sets out questions that law students should ask firms to assess their commitment to pro bono. Included are such questions as,

- If the firm has a billable hours target, does pro bono work count towards billable hours? Does the firm have a maximum number of pro bono hours that may be applied toward the billable requirement?
- What percentage of the lawyers in the firm did pro bono work last year? What percentage of the partners? What percentage of the lawyers who made partner this year handled a pro bono case?
- Is the firm a signatory to the Law Firm Pro Bono Challenge?

Our hope is that if a critical mass of law students asks even some of these questions, the law firms will conclude that pro bono is an important tool for recruitment, and they will respond.

In the meantime, those of us who are committed to pro bono must ensure that all lawyers in the bar understand the compelling need for our help. We must take this opportunity to rededicate ourselves and our firms to serving the least fortunate among us. Hubert Humphrey once observed that, "The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life—the sick, the needy and the handicapped." That same moral test applies to our profession. In this time of unprecedented prosperity, we should not fall short.

## Pro Bono Culture

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of revenues from Indiana's IOLTA program, which began earning interest in the fall of 1999. The broad outlines of the voluntary attorney plan in Rule 6.5 left it completely up to the local committees to work out the local plans and build local partnerships. But sometimes with freedom, comes uncertainty.

As the committees began to craft their plans, some felt hindered. For a few, the task seemed overwhelming. They had never done anything like this before and the challenges ahead seemed so immense. But time-after-time, as the committees began to grapple with their plans, flashes of understanding began to surface. One committee member recalled that some free space in a church could house a pro bono office. Another realized that a fax machine was about to be replaced and probably pitched into the trash. It could be rescued. One lawyer who served on the board of a local social services agency quickly began to make connections between the work of that group and the legal needs of the poor. A survey on people of "modest means" conducted by a local group could be put to use in the pro bono planning process.

In time, the committees began to see how they could weave their work into the existing structures in their communities. As the fall of 1999 flowed into winter, the committees continued to refine their plans by first assessing their local needs and then tailoring the plans to meet those needs. For many, the initial traces of uncertainty on their faces were beginning to be replaced by cautious optimism.

## Local bar associations join in Indiana's pro bono effort

Indiana's Rule of Professional Conduct Rule 6.5 has prompted many local bar associations in Indiana to refocus their attention on pro bono. In the southwestern Indiana city of Evansville, the local bar association is revamping its pro bono outlook by developing pro bono policies along with a definition of pro bono.

The Indianapolis Bar Association (IBA), Indiana's largest city bar association, has placed a heavy emphasis on pro bono issues. A yearlong task force on civil pro bono matters, led by Nancy J. Gargula of Baker and Daniels, sparked the creation of Indianapolis' first Standing Committee on Pro Bono in the fall of 1999. Within months, the Standing Committee crafted a mission statement for the bar on pro bono, drafted a definition of pro bono, put together a recruitment strategy and devised a program to recognize volunteer attorneys.

This fall, the IBA will consider adding a position of pro bono coordinator, funded in part by a local trial judge who is returning to private practice and who has donated her remaining campaign funds to the Indianapolis Bar Foundation.

As part of its commitment to pro bono, the IBA also organized an "Ask-A-Lawyer" project. On the first Saturday in June, the IBA recruited nearly 300 lawyers and judges to spend the day in the city's 14 neighborhood centers to answer questions from local residents about the law. While at times the lawyers outnumbered the clients, the event was considered a success and will be repeated in 2001.

### Institutional Support

An important aspect of the plan was the staff support created to guide and assist the local committees. The Indiana Bar Foundation, the Indiana Supreme Court and the four Legal Services Corporation grantees in Indiana worked together to jointly fund and oversee the creation of the position of pro bono coordinator for Indiana. Kelly Kann Davidson was appointed to this position on a part-time basis in July 1999, and later became executive director of the Indiana Pro Bono Commission. Her duties were to act as a resource for the local district

committees and help them develop their plans, organize training in poverty law for Indiana attorneys, act as a liaison to legal services providers, and to offer staff support for the Pro Bono Commission.

The Internet was employed to both transfer and to share information. An email network was established. With Davidson's assistance, model local plans and plan formats were posted on the Commission's Web site at <http://www.state.in.us/judiciary/probono/index.html>. The hope was to minimize dupli-

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## Pro Bono Culture

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cation of effort and to develop a creative competition among the districts that would challenge all to build the best product possible. Outright theft and imitation of the best parts of each plan were enthusiastically encouraged.

### District Plans

By the end of the summer of 2000, reports and funding requests from all 14 districts were filed with the Pro Bono Commission. The Commission began reviewing the reports and preparing funding recommendations.

The plans from the districts are varied and in some cases quite creative. One district focused its efforts on developing a legal resource room in every county for *pro se* litigants and pro bono attorneys. Local judges and seasoned lawyers will be responsible for recruiting new attorneys to handle pro bono cases. In another district, efforts will be made to recognize pro bono volunteers in local newspapers and at the state bar level.

In another district, the committee will seek to tie into the existing work of the local Legal Services Corporation grantee by finding more attorneys to serve on the grantee's pro bono panels. Another district, which includes eleven counties with their own court systems, will identify a "county manager" in each county to coordinate pro bono efforts.

### A Familiar Look

If the Indiana system appears familiar, look no further than Florida. The Indiana Supreme Court committee that drafted

Rule 6.5 purposely modeled its plan on the similar district plan used in Florida. The grass roots approach and each community's freedom to develop its plan were particularly appealing to the Indiana Supreme Court.

To fine tune its system, Indiana invited assistance from veteran pro bono hands like Kent Spuhler and the Hon. James Barton from Florida, and Linda Rexer from the Michigan Bar Foundation. From the ABA Standing Committee on Pro Bono and Public Service and the Center for Pro Bono, Steve Scudder, Greg McConnell and Bonnie Allen (formerly of the Center) made site visits. The Center for Pro Bono also provided the assistance of its Peer Consulting Project, and sponsored trips by consultants James Baillie of Minnesota, Doreen Dodson of St. Louis and Chuck Henegar from Maine.

### Funding

To fund the statewide voluntary pro bono attorney plan, hard cash was coupled with organizational structure. Under the leadership of Indiana Chief Justice Randall T. Shepard, the Supreme Court looked to IOLTA revenues. This funding plan was chosen because of the Court's belief that it can leverage more attorneys' hours via pro bono than could be expected if the cash was simply used to hire full-time attorneys to do legal work. This method also has the benefit of connecting the organized bar more closely to the pro bono field.

In 2000, **100 percent** of IOLTA revenues, after administrative expenses, will be granted to the local district committees. In late 2000, the Indiana Pro Bono Commission will begin its first round of grant-making by award-

ing over \$200,000 to the district committees. In the near future, Indiana's IOLTA program is expected to generate about \$500,000 in interest each year.

In many districts, this infusion of cash will open up access to the legal system through pro bono assistance for the first time. In some districts, the funding will bring cohesiveness to the existing system.

### Trial Judge Involvement is Crucial

One key to the early success of the planning process has been the close involvement of the local trial judges. One staff member of the Legal Services Organization of Indiana recalled how she had tried for years to expand pro bono to the seven counties around Indianapolis, but with only moderate success. But a single letter from the trial judge appointed to direct the pro bono effort in that district quickly got the attention of the local county bar associations. Many bar leaders became involved in the planning. But more importantly, several bar leaders told stories of their own existing pro bono programs, some 20 years old, that many people in neighboring Indianapolis barely knew existed.

### More Work Ahead

Even with the success of the local bar associations' pro bono efforts and the good, solid work of the local pro bono committees, it is obvious that the hardest work is still ahead. The local district committees must now move from planning and making grant requests to actually spending the money and implementing their plans. But the initial signs appear quite promising. The look of pro bono in Indiana is changing.

## Pro Bono Mini-grants Target Rural Areas

**M**ini-grants ranging in size from \$4,000 to \$15,000 were recently awarded by the ABA Center for Pro Bono to help build models for effective delivery of pro bono legal services to impoverished rural residents and to promote using innovative technology to improve those services. The grants are awarded as part of the Center for Pro Bono's Rural Pro Bono Initiative.

Six programs were selected from over 80 applicants to receive the mini-grants. The grants help funnel human and financial resources to rural areas and help programs establish a physical or technological presence in hard-to-serve areas:

- **Volunteer Lawyers Project of Maine.** An ABA mini-grant will help the VLP create an on-site presence for the Project in central and northern Maine. In addition, further Internet resources for volunteer lawyers in rural areas will be made available through the VLP web site at <http://www.vlp.org>
- **Utah Legal Services.** A mini-grant will support the Utah Rural Pro Bono Project, which is designed to increase the availability of pro bono legal services to Utah residents living in rural areas through rotating site visits by law student volunteers.
- **Montana Legal Services.** A mini-grant will support the creation of the Ravalli County Family Law Advice Clinic, which will build upon an existing family law advice clinic in Missoula, Montana and will give guidance in family law related cases.

*"... the Rural Pro Bono project will help build models for effective delivery ..."*

- **Rural Law Center of New York, Inc. (RLCNY).** A mini-grant will help RLCNY recruit pro bono lawyers in rural areas through continuing legal education "best practice" seminars taught by rural judges and their law clerks.
- **West Tennessee Legal Services Pro Bono Project and Memphis Area Legal Services.** A mini-grant will support an urban-to-rural telephone hotline system that helps low-income clients experiencing consumer debt and/or bankruptcy problems, and taps into the volunteer lawyer base in Memphis.
- **Three Rivers Legal Services Volunteer Lawyer Program.** A mini-grant will help in the development of a consumer law training seminar for lawyers helping the rural poor who deal with problems such as unmet seller promises or who face the loss of their homes. The program will also develop a self-help guide for low-income consumers buying mobile homes.

The Rural Pro Bono Initiative, with funding from the Open Society Institute, aims to promote a restructuring of rural pro bono delivery systems by improving their collaboration with urban pro bono programs and replicating models that already work.

"A major challenge of providing pro bono legal services to the historically overlooked rural poor stems from the critical shortage of lawyers practicing in rural areas," said Robert N. Weiner, chair of the ABA Standing Committee on Pro Bono and Public Service. "Most of the nation's lawyers reside and work in urban areas, and lawyers practicing in rural areas are often constrained from providing pro bono services. Through these mini-grants, the Rural Pro Bono Project will help build models for effective delivery, using such things as innovative technology to improve pro bono legal services to impoverished rural citizens who do not have access to justice."

Among those expected to benefit from the project are underrepresented constituencies in rural areas, such as the elderly, victims of domestic violence, women and children who need child care and other protection, farmers, victims of natural disasters, and community organizations supporting rural micro-enterprise projects. Another round of mini-grants will be funded in 2001.

*For more information about the Rural Pro Bono Initiative, call its director, Claire L. Parins, (312) 988-5774, or write via email at [parinsc@staff.abanet.org](mailto:parinsc@staff.abanet.org)*

## December ABA Connection Features Pro Bono Program "Doing Well by Doing Good"

On December 20, the ABA Connection Teleconference series is presenting a one-hour CLE program on pro bono work titled "Doing Well by Doing Good." The program will begin at 1:00 p.m. Eastern time, and is a no-cost benefit of ABA membership.

The season of giving is a good time to think about the rewards of doing pro bono work. For some practitioners, pro bono work is not only fulfilling a responsibility of the profession, but also an

opportunity for profits down the line through exposure to new practice areas. In this teleconference, several practitioners committed to pro bono discuss the fundamentals of handling some of the most common pro bono cases and talk about how they have also incorporated those types of cases into their regular practices. Hear how lawyers are addressing these and other issues while working with their clients.

To register, call the ABA at (800)

285-2221 from 8:30 a.m. to 6:30 p.m. Eastern time weekdays, beginning November 20, 2000. You may also register online by December 15, 2000 at <http://www.abanet.org/CLE/connection.html>. Co-sponsors of the program are the ABA Standing Committee on Pro Bono and Public Service; the Law Practice Management Section; the Litigation Section; the General Practice, Solo, and Small Firm Section and the Government and Public Sector Lawyers Division.

## Brochure for Law Students Available on Committee Web Site

A new brochure, titled *The Path to Pro Bono: An Interviewing Tool for Law Students*, is now available to assist law students in their efforts to identify employers that are committed to pro bono. Created by the ABA Standing Committee on Pro Bono and Public Service and its project, the Center for Pro Bono, the brochure is intended to educate and empower law students to ask interviewing firms about their pro bono efforts and practices and to

assist students in evaluating a firm's pro bono culture. In addition to assisting law students, the Committee and the Center also hope the brochure will emphasize to law firms the importance of legitimate pro bono efforts.

The brochure includes:

- a discussion of the importance of asking firms about their pro bono commitment;
- sample interview questions useful in evaluating a firm's pro bono culture;
- testimonials about the importance

of incorporating pro bono into your job search from influential attorneys, such as ABA President Martha W. Barnett, managing partners of large law firms, and a new associate;

- information about ABA Model Rule 6.1; and
- information about the ABA Law Firm Pro Bono Challenge.

The brochure may be downloaded by connecting to the ABA pro bono Web site at <http://www.abanet.org/legalservices/pbhome.html> and clicking on the link to the brochure.

## ABA and NLADA Announce 2001 Equal Justice Conference

The American Bar Association Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Association proudly announce their co-sponsorship of the third annual Equal Justice Conference. The conference will be held at the Town & Country Resort Hotel in San Diego, California, March 29 - 31, 2001.

The theme of the conference will be Pro Bono, Innovations and Partnerships. Among the featured speakers at the conference will be

ABA President Martha Barnett. The conference features workshop programs covering substantive and administrative issues and innovations in the delivery of legal services. This year, bar leaders and other supporters of pro bono legal services who are not involved in the day-to-day management of pro bono programs are warmly invited to attend the Pro Bono Partnership Forum during the conference on March 30.

To receive a copy of the 2001

Equal Justice Conference registration brochure, please contact Dorothy Jackson, American Bar Association, 541 North Fairbanks Court, 15th Floor, Chicago, IL 60611; phone (312)988-5766; fax (312)988-5483; email [jacksond@staff.abanet.org](mailto:jacksond@staff.abanet.org). After November 1, online registration information will be available on the Standing Committee on Pro Bono and Public Service Web site at <http://www.abanet.org/legalservices/pbhome.html>

## From the Chair...



by L. David Shear  
Chair of the ABA  
Commission on IOLTA

As I begin my journey as the new chair of the Commission on IOLTA, I wish to express my sincere appreciation for the opportunity to serve the ABA and the IOLTA community as we proceed on this critical mission. I look forward with optimism and confidence to the challenges that lay ahead. At the outset, I particularly want to acknowledge the invaluable contributions of my predecessor as chair, Herb Garten, and the other outgoing members of the Commission: Bob Bevan, Ellen Mercer Fallon, Paul Igasaki, and Ruth Ann Schmitt.

At the Commission's most recent meeting in New York, I described Herb as virtually irreplaceable as chair. Indeed, I have quite an act to follow. At the beginning of his tenure, Herb faced the rare challenge of becoming chair as he joined the Commission for the first time. No doubt he was aided by his background as chair of the board of directors of the Maryland Legal Services Corporation, but this was no small feat, and few would have led as effectively as Herb during that transition.

Herb contributed tremendous time and energy to the Commission, traveling to meetings and

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## Summer IOLTA Workshops Keynote Address: Light in the Middle of the Tunnel

by Hon. Judith S. Kaye

*Editor's Note: The following is adapted from the keynote address given at the Summer 2000 IOLTA Workshops on July 6, 2000, during the ABA Annual Meeting in New York. The Hon. Judith S. Kaye has been Chief Judge of the State of New York since 1993.*



I wanted to begin this fantastic week here with you, because IOLTA programs address perhaps the most fundamental concern of our justice system today, and that is the issue of access to justice. We can have a legal system that is a model of modern jurisprudence—fair, effective, efficient. But if access is limited, can we really call it a justice system?

I guess I've always felt a special connection to access to justice issues in part because of a historical coincidence. I was sworn in as a lawyer in March of 1963, the very week the U.S. Supreme Court handed down its decision in *Gideon v. Wainwright*, guaranteeing the right to counsel for indigent criminal defendants. How proud I was, as a newly minted lawyer, that I was an officer of a legal system that recognized that the rules in the books can be meaningless without the assistance of a lawyer to interpret and enforce them.

*Gideon*, of course, was a criminal matter. But the underlying principle is relevant for civil matters as well. An illiterate tenant facing eviction; an elderly person confused by the social services bureaucracy; a battered woman seeking protection in the Family Court—in these kinds of cases, a lawyer can make the difference as to whether there's a roof over one's head or food in the cupboard or safety in the home.

I know I'm preaching to the choir when I speak to this group about the importance of legal assistance in civil matters. Nor do I need to dwell on the challenges that confront us in meeting this critical need. The people in this room know only too well that our society is only partially fulfilling its promise of equal justice for all.

### The Funding Cuts

In recent years political and funding developments have fundamentally altered the civil legal services landscape and adversely affected society's ability to meet the legal needs of low-income people. The primary source of funding for legal services in New York is the federally-funded Legal Services Corporation, which once provided New York programs with an average of approximately \$26 million a year. In 1996, however, federal funding was cut by almost one-third. To make matters worse, declining interest rates and the proliferation of bank fees have significantly reduced New York's IOLA funding to about \$11 million annually

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from a high of \$31.5 million as recently as 1992.

New York State's commitment to legal services in the form of discretionary budget appropriations and earmarked grants has remained strong, but it has not made up for these drastic reductions in resources. Similarly, the work of private foundations and the extensive pro bono services provided by the New York bar, while enormously helpful, have been insufficient to overcome the massive shortfalls.

The bottom line is that legal services providers in New York and across the country have far fewer real dollars to work with today than they did in the early 1990s—even as the civil legal needs of low-income people have continued to grow. Again, this choir already knows this refrain all too well.

The irony with all these fiscal considerations is another basic fact we all know well: that investing in legal services is actually cost-effective. We know, for example, that every dollar spent in eviction prevention programs in New York City saved four dollars in government expenditures. Helping poor families cope with difficult legal problems is not just the right thing to do—it also makes sense financially and strengthens the social fabric of our communities.

### Not All Hopeless

Now I don't want to spoil everyone's bar meeting right at the outset with a kickoff that paints a picture of hopeless gloom and doom. The fact is, I don't think the situation is hopeless. We face challenges, yes, but we also have

tremendous resources. If not a completely bright and promising picture, I'd like to think that at least there's some light in the middle of the tunnel that will help us reach our goals.

To begin with, we have IOLTA. IOLTA programs have superb, dedicated leaders. I know this from my contacts over the years with my friend Lorna Blake, the executive director of the IOLA Fund of the State of New York, and with William Nojay, Jonathan Blattmachr, Sue Gardner, Steve Kelban and the other New York IOLA trustees. And IOLTA programs have the history, the relationships, the commitment and the wherewithal to help change the current legal services landscape.

The truth is that, in response to funding cuts and declining revenues, IOLTA programs around the country are rising to the challenge, evolving from funding conduits to take on leadership roles within their states, becoming sources of creativity and innovation, developing new programs, strategies and solutions. The original idea of IOLTA—using interest on lawyers' accounts to support legal services—is itself a marvelous example of thinking outside the box, 20th century style. Surely there are other equally creative ideas out there that will be as effective in moving us forward in the 21st century. IOLTA programs can be the catalyst for the new thinking we need.

### The Power of Synergy

One lesson that I've learned in my seven years as New York's chief judge is the power of synergy—of the extraordinary outcomes that can be achieved when people work together toward a common goal. That is why in October 1997, I asked an extraordinary group of

private and public sector leaders, including Lorna Blake, to think creatively about additional funding mechanisms for civil legal services that would be removed from the political arena. In May 1998, the group—known as the Legal Services Project—issued an important report that contained several major recommendations. One of their best ideas: revising the New York State Abandoned Property Law to produce an estimated \$40 million each year in new funding for civil legal services. We are still working on persuading the policy-making branches in this State of the merit of this proposal. But it represents exactly the kind of creative approach we need to take to find new ways to supplement IOLA funds to meet the growing need.

Two years ago, at the 50th Annual Conference of Chief Justices, every chief judge in the nation pledged to work in his or her home state to help our fellow citizens gain access to the legal system and to explore appropriate vehicles for achieving this goal. As I reflected on this challenge personally, I came to believe that there was a great deal more that we in the courts could do to complement the work of IOLTA and legal services programs and promote broader access to the justice system.

### State Initiatives

Last year, here in New York, we created the Office of the Deputy Chief Administrative Judge for Justice Initiatives, a concrete commitment of our institutional leadership and resources to expand access to justice. The appointment of Judge Juanita Bing Newton reflects the paramount priority that we in the New

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York State Court System place on this vital task. Now a year down the road, I would say it was an excellent appointment. Every state should do this.

Judge Newton's assignment: to develop and implement programs that increase the availability of free and affordable legal assistance, and that help low-income individuals understand and assert their legal rights within the legal system—with or without the assistance of counsel.

In her first year, Judge Newton has been busy reaching out to all the stakeholders, building relationships and supporting the work of IOLA and legal services providers. That means she meets with a working group of key players from the legal services community to share information and ideas and coordinate fundraising strategies. She has put together a steering committee, comprised of major bar association presidents, the chair of the board of trustees of New York's IOLA program and other state leaders to promote cooperation and support for legal services. She is also spearheading a judges' legislative group that includes judges who are former legislators to lobby key lawmakers on access to justice issues. That's another initiative well worth replicating.

While much of the discussion among these groups has certainly focused on establishing permanent, stable new funding sources for civil legal services, Judge Newton's office has also worked tirelessly to increase assigned counsel rates in New York. At \$40 per hour for in-court time, and \$25 per hour for work outside the

courtroom, our rates are among the lowest in the nation. By preparing a report that meticulously documented the crisis in indigent representation, Judge Newton has helped galvanize support for increasing these rates.

And leaving no stone unturned, Judge Newton is also working closely with state and local bar associations and legal services providers to develop effective methods to stimulate increased pro bono involvement. While the members of the New York bar have been generous in their pro bono efforts, every ounce of encouragement helps. This past February, New York State became only the third state in the country to allow lawyers to earn continuing legal education credits for performing pro bono work.

The New York courts are working on all fronts to increase the availability of legal assistance. At the same time, we are seeking to address the needs of those thousands upon thousands of citizens who come to our courthouses every year seeking justice without the benefit of counsel.

### Programs for the Self-Represented

We have a couple of promising pilot programs that we will be expanding in the near future. After a successful test of an Office of the Self-Represented in Manhattan Supreme Court, we will be opening additional offices in three other major counties. We are also expanding the number of our Community Resource Centers where trained volunteers provide information about court services and procedures to those citizens who cannot or do not want to retain a lawyer.

Those are some of our targeted efforts. But we want to see im-

provements statewide. We are conducting a survey of every court in our system, including Town and Village Justice Courts, to collect information about services and programs available to the self-represented in the trial courts. The survey will be used to assist the court system in implementing a statewide program of best practices to make the courts more accessible to unrepresented litigants.

And recognizing that barriers to court access can be subtle, we are studying the issue of how court staff interacts with the public, and developing guidelines to train court clerks on how to provide information and assistance to the public in appropriate ways.

Finally, we are also using technology to reduce barriers by providing information about the legal system and its procedures, as well as how to obtain legal representation. In the near future, the thousands of citizens who turn to the court system's official Web site on a daily basis will soon be able to enter a virtual Office for the Self-Represented, complete with forms and instructions on how to complete them.

So these are a few of the lights we have here in New York in the middle of our tunnel. As chief judge of the state, I strongly believe that we have a societal obligation to promote equal access to justice and that state court systems, working in cooperation with IOLTA and legal services programs, can be key players in this effort.

The sheer magnitude of the unmet civil legal needs that exist in New York State and elsewhere simply demands that we be proactive and innovative in exploring alternative avenues

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## Litigation Update: ABA Files Seventh Amicus Brief in Support of IOLTA

In August, the ABA filed an *amicus curiae* brief in support of Texas' IOLTA program with the Fifth Circuit Court of Appeals after the Commission obtained approval to do so from the ABA Board of Governors. The brief was filed in *Washington Legal Foundation, et al. v. Texas Equal Access to Justice Foundation, et al.*; No. 00-51039 (Fifth Circuit Court of Appeals), an action challenging the constitutionality of the Texas IOLTA program. Earlier this year District Court Judge James Nowlin ruled in favor of TJEAF, dismissing the plaintiffs' claims that the Texas program violates their rights under the First and Fifth Amend-

ments to the Constitution. The plaintiffs have appealed Judge Nowlin's decision to the Fifth Circuit Court of Appeals.

The brief was authored by pro bono counsel Nory Miller, Marc A. Goldman and Matthew Hersh of Jenner & Block. It is the seventh *amicus* brief filed by the ABA on behalf of IOLTA programs.

The National Association of IOLTA Programs, the Conference of Chief Justices, the Independent Bankers Association of Texas, The State Bar of Texas, and a coalition of local bar associations, legal services providers and organizations representing the poor in Ohio have also filed *amicus* briefs

on behalf of TJEAF in this appeal. An *amicus* brief in support of the plaintiffs was filed by the Association for Objective Law.

Although briefing in the case has been completed, as of press time a date for oral arguments has not been set.

*Editor's Note: This litigation has been covered extensively in Dialogue, most recently in the Spring 2000 issue beginning on page 9. Other articles appeared in the following issues: Fall 1998, page 17; Summer 1998, page 1; Spring 1998, page 9; Summer 1997, page 8 and Fall 1996, page 3.*

## From the Chair...

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working within the ABA to support IOLTA. In addition, I cannot overstate how important Herb's leadership and guidance were in the face of difficult times

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to improving the availability of legal representation. Just looking around this room, I know that the interest, the talent and the commitment exists to find those creative and synergistic solutions we need to bring us closer to our ideal of equal justice for all.

I salute the work that all of you are doing toward this noble goal. I look forward to continuing our ongoing partnerships in the service of equal justice.

for IOLTA, particularly during the aftermath of the Supreme Court's 1998 decision in *Phillips, et al. v. Washington Legal Foundation, et al.*

Herb was a guiding light in responding to the *Phillips* decision and the doubts and fears that followed it. He successfully encouraged the ABA to provide the funds needed to hold the 1998 IOLTA Leadership Conference, which was organized by the National Association of IOLTA Programs and the Commission. The Leadership Conference gathered IOLTA directors and trustees from across the United States to strategize and discuss the impact of the *Phillips* decision on IOLTA programs. His was one of the voices of authority and reassurance at the conference.

Herb continued to work tirelessly to build support for IOLTA programs within the ABA. During his tenure, the ABA filed two *amicus curiae* briefs on behalf

of IOLTA programs in Texas and Washington State. Significant work was accomplished on a third brief—recently filed in the Fifth Circuit in the ongoing Texas case—before the end of his term.

I am happy to report that Herb was recently re-appointed as chair of the Maryland Legal Services Corporation, and will maintain his links to the IOLTA community.

Although Herb cited the work of our outgoing members Bob Bevan, Paul Igasaki and Ruth Ann Schmitt in his final column, I would also like to recognize Ellen Mercer Fallon, who elected not to continue on the Commission due to personal and professional obligations. Ellen served on the Joint Technical Assistance and Joint Meetings/Training Committees, and always added her talent and reasoned insights to our meetings. The Commission will miss the work, commitment and

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## Five New Members Join Commission on IOLTA

**A**BA President Martha Barnett has appointed five new members to the ABA Commission on IOLTA. Among the newcomers are several faces familiar to the IOLTA community, and two experts on banking. The new members are John C. Deal, Judy Garlow, Michael E. Phenner, Ragan Powers and Dwight S. Williams.

They will join L. David Shear, the new chair, and incumbents Matthew Feeney, Hon. Lora Livingston and Lynn T. Nagasako.



**John C. Deal** comes to the Commission with a record of over 25 years experience in banking law. Since 1985 he has worked as

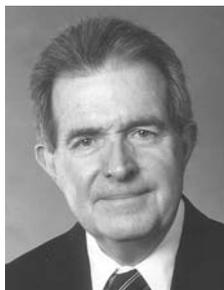
an attorney with the Columbus, Ohio firm Kegler, Brown, Hill and Ritter. Before entering private practice, Deal worked for the Ohio Division of Banks and served as regional counsel to the Federal Deposit Insurance Corporation. His practice is concentrated in defending financial institutions in regulatory enforcement proceedings. He also has significant appellate practice experience, having argued appeals in five federal circuits.

Deal has long been active within the ABA, including in the Banking Law Committee of the Business Law Section. He is a former chair of the Regulatory Enforcement and Director Liability Subcommittee of the Banking Law Committee. Deal is also active in the Ohio State Bar Association, where he is a past chair of that association's Bank-

ing, Commercial, and Bankruptcy Law Committee.

According to Deal, "I am happy to bring some of my banking experience to bear on the provision of legal services to low income people." As a member of the Commission, Deal will serve on the Commission on IOLTA/National Association of IOLTA Programs (NAIP) joint committees on Resource Development/Banking and on Communications.

Another banking expert, **Michael Phenner**, joins the Commission as he transitions from 34 years of practicing law with Hopkins & Sutter in Chicago to becoming president of The Cradle New Ventures, a large non-profit adoption agency based in Evanston, Illinois. During his career at Hopkins & Sutter, he served as managing partner of



the firm for 12 years, and represented major domestic and international banks, an ATM network, and other businesses.

Prior to entering private practice, Phenner worked as a clerk in the United States Court of Appeals in Chicago and was a member of the U.S. Army JAG Corps. He also has a long record of involvement with the ABA, including a term as chair of the International Banking Subcommittee of the ABA's Banking Law Committee. He has been active in the Illinois State Bar Association and the Chicago Bar Association, where he was past chair of the Financial Institutions Committee. Phenner has

also served as chair of the board of directors of the Cradle.

Phenner is excited to bring his background to the Commission, noting "I consider it a privilege and a duty to serve. IOLTA has tremendous importance for legal services."

Phenner will join the Resource Development/Banking and Communications Joint Committees.



Three years after completing her term as president of NAIP, **Judy Garlow** brings her wealth of experience as an IOLTA director to the

Commission. She has worked with the Legal Services Trust Fund Program of the State Bar of California since 1985, and has served as its director since 1993. As director, she oversees one of the larger IOLTA programs in the United States—in 1999 it collected over 11 million dollars and distributed grants to more than 100 programs. Garlow is also involved in state-wide efforts to increase legal services funding in California.

Garlow, an associate member of the ABA, looks forward to taking on a leadership role within the organization by joining the Commission. She says "the ABA's support for IOLTA has always been crucial and enormously valuable, and as an IOLTA director I am very pleased to join in that effort." She also remains active with NAIP, and is also Secretary-treasurer and a board member of the Management Information Exchange.

Garlow will serve as chair of the Technical Assistance Joint Com-

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## Member Profiles

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mittee and will also serve on the Meetings and Training Joint Committee.

Many will recognize **Ragan Powers**, who returns to the



Commission after serving as its chair in 1996 to 1997 and as a member from 1994 to 1996. Powers is a partner in the Seattle office

of Davis Wright Tremaine where his practice is concentrated on credit recovery and bankruptcy.

In addition to his previous service to the Commission, Powers has a long history of other work in access to justice efforts. He is currently a member of the board of trustees of Washington State's IOLTA program, the Legal Foundation of Washington. He is also a member of the board of directors of

the LAW Fund, which raises funds for legal services in Washington. Powers is a past chair of the Washington State Equal Justice Coalition, a coalition of community leaders and organizations that advocates for support for legal services. Powers' involvement with the ABA also includes his membership on the Committee on State Justice Initiatives.

He will serve on the Communications and Technical Assistance Joint Committees.

**Dwight Williams** is another longstanding equal justice advocate. He is a supervisory attorney with the Federal Aviation Administration in Renton, Washington. Currently he is a member of the



Access to Justice Board, which is sponsored by the Washington State Supreme Court and the Washington State Bar

Association to coordinate state legal services planning efforts. Williams is past president of the Legal Foundation of Washington, and previously served on the board of trustees of the former Puget Sound Legal Assistance Foundation.

Prior to joining the FAA in 1986, Williams worked in private practice in Tacoma and served in the U.S. Army JAG Corps. He is currently a member of the Washington National Guard.

According to Williams, joining the Commission is a great honor, especially considering his prior involvement with Washington's IOLTA program. "I really appreciated the work of the Commission during the litigation involving the Washington and Texas IOLTA programs," says Williams. "The ABA took the lead in getting experts, writing briefs and keeping everyone informed."

Williams will join the Meetings and Training and Resource Development/Banking Joint Committees.

## From the Chair...

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friendship that Herb, Ellen, Bob, Paul and Ruth Ann shared with us over the past years.

### The Future

This is an important and exciting time for IOLTA. We face a diverse set of challenges. Litigation against IOLTA programs continues in Texas and Washington State. Rapid technological advancements are changing the practice of law—including poverty law—which IOLTA programs support. Perhaps, of greater importance,

IOLTA programs are struggling with the limited revenues resulting from low interest yields.

Responding to each of these challenges is a major undertaking. Yet I feel hopeful and positive. For example, the ABA has once again shown its support for IOLTA by filing another *amicus* brief in the Texas litigation. Regarding technology, IOLTA programs are taking advantage of the changes in communications and law practice in order to expand access to services and to use resources more efficiently. Also, one very positive development coming out of the IOLTA workshops in New York is the vigorous discussion

about improving program income by developing new sources of revenue, and working with financial institutions that are willing to be innovative.

I have great faith in the ability of the IOLTA community to respond with creativity and dedication to the challenges that face us. The Commission will continue to explore innovative ideas emanating from the workshops. I am confident that the new members of the Commission will contribute their own considerable talents and commitment to the IOLTA community. I look forward to working with them and with you to meet these challenges.

## From the Chair...



by L. Jonathan Ross  
Chair of the ABA Standing  
Committee on Legal Aid  
and Indigent Defendants

I am delighted to begin a term as chair of the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID). This, the ABA's oldest standing committee, leads the organized bar in seeking access to justice for all. As chair, I hope to continue and expand upon the ambitious schedule of committee projects and activities that immediate past Chair Doreen Dodson has ably guided for the past three years.

My own involvement in legal services activities began while I was still in law school in 1965, when I worked in the Neighborhood Legal Services Office of the Office of Economic Opportunity in Washington, DC. I became involved in national efforts to strengthen the legal services system in 1985, when I co-founded the Bar Leaders for the Preservation of Legal Services for the Poor during my term as president of New Hampshire Bar. I joined with then-Massachusetts State Bar President Mike Greco and then-Texas State Bar President-elect Bill Whitehurst to form that organization to raise awareness of the problem within the organized bar, and to engage in advocacy before the Legal Services Corpora-

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## ABA and NLADA Recognize Harrison Tweed Recipients and Notable Nominees

The Alameda County Bar Association in Oakland, California and the Delaware State Bar Association were presented with the 2000 Harrison Tweed Award during the National Conference of Bar Presidents luncheon in New York City on July 7, 2000. This award, sponsored by the American Bar Association and the National Legal Aid and Defender Association, recognizes the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services for poor persons or criminal defense services for indigents. The award is named for a leader in the advancement of free legal services to the poor.

The Alameda County Bar Association (ACBA) received the award in recognition of its leadership in creating a new civil legal services delivery system in the San Francisco Bay area. ACBA played an instrumental role in the formation of Bay Area Legal Aid in 1999, replacing the five separate, pre-existing Legal Services Corporation-funded programs in the Bay Area. The single new program promises improved client service and cost-effective use of funds.

The Delaware State Bar Association (DSBA) received the award as a result of efforts to unify previously disparate legal services initiatives. The DSBA joined forces with three legal services providers in the state—the Community Legal Aid Society, Inc.; Delaware Volunteer Legal Services; and the Legal Services Corporation of Delaware—to form the Combined Campaign for Justice, launched on March 1, 1999. In previous years the three organizations conducted their own fund-raising, and separately solicited lawyers and others for contributions. The new joint effort coordinated by the bar yielded \$360,000—more than twice the aggregate amount that had been raised in even the best prior years and a very significant amount in a state with only 2,700 lawyers.

A number of other bar associations were also nominated for this year's Harrison Tweed awards. After a careful review, the Awards Subcommittee selected the Alameda and Delaware Bar Associations. The efforts of the other nominees, however, were extremely commendable. Notable were the:

- **St. Petersburg (FL) Bar Association (SPBA)** The SPBA has, for the past 10 years, operated a pro bono program called the Community Law Program (CLP). Leaders of the SPBA have been very active in recruiting association members to provide services through this all-volunteer program. The SPBA provides a significant amount of CLP's funding and sponsors additional fund-raising events for CLP, offers staff support, and participates in governance of the CLP.
- **Baton Rouge Bar (LA) Foundation Pro Bono Project (PBP)** The PBP has been in operation for 16 years, having begun under the sponsorship of the Baton Rouge Bar Association and then, in 1989, becoming a project of the Bar Foundation. The Bar Association and the Bar

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## From the Chair...

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tion (LSC) Board, in Congress and in other appropriate forums.

This fall, we will continue to urge bar leaders to advocate for an adequate budget for the LSC. As the update on page 32 explains, the FY 2001 budget appropriation for the LSC remains unresolved. The current budget of \$305 million is clearly inadequate to permit the LSC and its grantees to even come close to meeting the legal needs of the poor. We hope that the legislative process will ultimately yield a FY 2001 budget of \$340 million, as the LSC has requested.

The LSC's Board of Directors met September 17-18 in San Francisco. The Board authorized the creation of a special panel to study the impact on clients of recently enacted restrictions on services that LSC grantees may provide. When this special study commences, we hope that all interested groups and individuals will share with the panel the experience of local programs and their clients since those restrictions have been imposed. The panel will likely consider whether individual restrictions have adversely affected clients or barred legal services lawyers from pursuing legal remedies that would have been available to other litigants. The results of this study will influence the activities and advocacy of SCLAID and many other groups in the coming months and years.

Other important changes are on the horizon, as well. Under the leadership of President John McKay, LSC management is considering new approaches to gathering data on the work of its grantees. Flaws in the 20-year-old case service reporting system are

widely recognized, and LSC hopes to put new systems in place that will do a better job of capturing the breadth of work performed, and results obtained, by LSC grantees. SCLAID and other national organizations interested in this issue are working with the LSC to assist in refining data-gathering systems.

SCLAID also continues to be active in seeking to improve systems for providing defense services to indigent persons accused of crimes. Our State Commissions project, operated in collaboration with the U.S. Department of Justice, offers consulting services in the establishment of statewide commissions to improve indigent defense systems in several states. Our Gideon Initiative will invite grant proposals from newly formed collaborative ventures

between defender and community programs in selected states. And SCLAID is working closely with other ABA programs to support ABA President Martha Barnett's call for implementation of a nationwide moratorium on the use of the death penalty.

I am looking forward to working on these and other issues with all members of the bar and legal services community during the next several years. Please feel free to contact me or the SCLAID staff at any time if you need information or have suggestions relating to committee endeavors.

*You may reach L. Jonathan Ross via email at [rossj@wiggin-nourie.com](mailto:rossj@wiggin-nourie.com). You may contact Terry Brooks, SCLAID's staff counsel, by email at [tjbrooks@staff.abanet.org](mailto:tjbrooks@staff.abanet.org) or by calling (312)988-5747.*

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## Technology Grants Awarded by LSC

As part of its FY 2000 appropriation, the Legal Services Corporation received \$4.25 million to improve access to justice for those in poverty through the use of technology. The LSC developed a grant program, inviting proposals from its grantees for funding of technology-based projects. Proposals were due May 5, 2000. The LSC is in the process of evaluating those applications and awarding grants. Grant awards to date include:

- DNA-People's Services, Inc., a legal services program serving New Mexico and Arizona, received a \$245,000 technology grant to develop a system of satellite connections and touch-screen kiosks to deliver culturally appropriate community legal education and social service resource information to remote Navajo and Hopi communities.
- The LSC also awarded a \$70,000 technology grant to Community and Indian Legal Services of Northern New Mexico. Through this grant, the program will connect its advocates using a wide area network. It will also create a toll-free help line, which will improve client access to legal services across the vast service area.
- The Legal Aid Society of Hawaii has received the largest of the technology grants to date. It received a \$460,000 grant to partner with other service providers to make services more readily available to clients in remote areas of the state. The project will include video connections between locations on remote islands and legal aid lawyers in central offices. This will permit real-time interviews without requiring travel between islands. The project will also develop a multi-function Web site offering clients self-help materials, access to volunteer lawyers and other service-providers. It will also establish a state-wide telephone hotline referral system.



*Delaware State Bar Association – The 2000 Tweed Award is accepted by (left to right) Kanchalee Reeves, James McGiffin, Jr., Donald F. Parsons, Jr., Dennis L. Schrader, and Rina Marks of the Delaware State Bar Association.*



*Alameda County Bar Association – (left to right) Doreen Dodson, immediate past chair of SCLAID, is pictured with Jonathan McNeil Wong and Bari Robinson of the Alameda County Bar Association and Ramon Arias of the National Legal Aid and Defender Association.*

## Harrison Tweed

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Foundation have been instrumental in recruiting lawyers to participate in the project, and in both providing direct funding and supporting other PBP resource development efforts. The PBP offers a number of services to clients, including direct representation, clinics and community education.

- **Kalamazoo County (MI) Bar Association (KCBA)** The KCBA, a bar of modest size, has sponsored a free legal clinic for nearly 10 years, relying wholly on volunteer efforts to serve over

300 clients annually. The program draws lawyers from large and small law firms, solo practice and corporate counsel departments. Volunteer lawyers are assisted by paralegal students and law students in operating the program and providing services. The free legal clinics are offered weekly in community-based settings to make services more readily accessible to the client community.

- **Rhode Island Bar Association** The Rhode Island Bar Association has provided volunteer legal assistance for the past 10 years to the Rhode Island Coalition for the Homeless to

help in its mission to end homelessness in the state. The Bar Association has partnered with the Coalition to operate a legal clinic, joining forces for purposes of volunteer recruitment, retention, training and recognition of attorney volunteers each year. The clinic provides direct legal counsel to the homeless and refers clients to other appropriate providers when necessary.

The Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association applaud the efforts of each of these bar associations to broaden access to justice in their communities.

## ABA Day

May 16-17, 2000 marked the annual ABA Day on Capitol Hill. Here, Rep. Howard Berman (D-CA), left, is joined by Suzanne Graber, ABA Board of Governors liaison to the Standing Committee on Legal Aid and Indigent Defendants (SCLAID), and Mark Schickman, a former member of SCLAID. Rep. Berman is a past ABA Day honoree for his strong support of the Legal Services Corporation.



## LSC Legislative Update

**A**s of late September, Congress had not yet completed its work on any of the 13 major appropriations bills that fund federal programs, including the bill that funds the Legal Services Corporation (LSC). Normally, by early fall Congress is at least close to finishing its work on the budget for the next fiscal year. This year, indications leave room for both optimism and pessimism concerning the probable outcome regarding the LSC's FY2001 funding.

The House of Representatives committee process early in the year included praise for the LSC from Rep. Harold Rogers, chair of the budget subcommittee responsible for appropriations to the

LSC. The House ultimately approved an LSC appropriation of \$275 million. While this is far short of the current appropriation of \$305 million, this number was achieved with broad support and little dissension on a voice vote; the fact that it is lower than the current appropriation has more to do with the budget cap than any disapproval of the LSC.

The Senate has not yet voted on the bill containing the LSC's appropriation. The Senate bill, as drafted, would give the LSC \$300 million. The Clinton Administration, however, continues to support funding for the LSC at the \$340 million it requested. There is every possibility that

the conference between the two chambers and/or an end-of-the-year budget scramble will yield an appropriation higher than the current level and approaching the requested amount.

The final chapter of this story will likely be written by mid-October, when observers predict that Congress will adjourn. To learn how the LSC fares in the FY2001 appropriations, please check for updates on the SCLAID Web site at <http://www.abanet.org/legalservices/sclaid.html> News of civil legal services developments is also available on the National Legal Aid and Defender Association Information Hotline (888)668-6933.

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