

# Dialogue

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## Family Law Cases: The Challenge of Supply and Demand

by *Mary Ann Sarosi*

*This article is the first in a series that will examine the challenges pro bono programs face in handling family law cases. Future articles will address in more detail how to increase the effectiveness of delivering pro bono services to family law clients.*

Cases involving divorce, child custody, guardianship, and domestic violence can hit at the heart of clients' lives and sense of well being. Family law disputes are often drawn out and emotionally draining. A new ABA Center for Pro Bono report, *The Impact of Family Law Cases on Pro Bono Programs*, notes that lawyers are often discouraged from taking on pro bono family law cases because of the complexity of the law and messiness of the issues. The report looks at the impact of family law cases on pro bono programs and proposes recommendations on how to bridge the gap between supply and demand for family law pro bono legal assistance. This article provides a brief overview of the report.

In 2002, 25 pro bono programs participated in a Center for Pro Bono survey. These programs represented a cross-section of service areas (urban, suburban and rural), budget sizes, geographical locations, and organizational structures (such as bar sponsored, LSC-affiliated entity, independent organization). The respondents answered a written questionnaire and some also participated in follow up telephone calls.

The survey results point to some commonly recognized problems in managing and placing family law cases with pro bono attorneys. The report looks at ways that programs are addressing these problems and offers recommendations for increasing capacity to handle pro bono family law cases. The Center for Pro Bono will use the report to prompt a more active response to this growing problem, including the development of resources pertaining to meeting the needs of pro bono family law clients.

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## Volunteer Lawyers Project of the Boston Bar Association



*Retired Judge Edward M. Ginsburg interviews a client of the Boston Bar Association Volunteer Lawyers Project. Ginsburg is founder of the pro bono program's Senior Partners for Justice Project. Read more about the Volunteer Lawyers Project on page 3.*

## DIALOGUE

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## Family Law

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### Challenges

The biggest challenge facing pro bono programs is managing family law caseloads when the demand for legal assistance in this area is growing and the supply of pro bono attorneys willing to take these cases is dwindling. Respondents in the report pointed to many factors underlying this dilemma. A perceived knowledge and skill deficit on the part of pro bono attorneys is a recurring problem—it is simply not a body of law in which many attorneys feel proficient. For those attorneys comfortable with their skill level and the complexity of the cases, volunteer burn out is a frequent problem.

Some respondents cited the lack of support resources—such as translators and liability insurance—and the bureaucratic inefficiencies of many family courts. In rural areas, there is a limited number of practicing attorneys from which to draw, and many of these attorneys have conflicts in any given case.

Several challenges were particular to private attorney involvement (PAI) programs that are part of LSC-funded organizations. These respondents cited examples of the legal services organization taking the interesting cases and passing on the messiest cases to the PAI program. With an influx of new funding sources for domestic violence over the last decade, some large programs (often but not always LSC programs) tailor their services for domestic violence cases and minimally address issues such as custody and support.

Most respondents recognized that the sheer volume of family

law cases forces many lower-income clients to appear in court without representation. To address this problem, programs see the need for better pro se resources and more coordinated efforts on the part of the judiciary and legal community to improve the process for pro se litigants.

### Responsive strategies

In response to the problems identified in the survey, respondents described a number of measures they are taking to overcome barriers to serving family law clients. Most programs engage in family law training for volunteer attorneys, some with mentoring. Additional support offered includes providing liability coverage, office space, and assistance with completing pleadings and fee waivers. About half of the respondents have proactively changed their program priorities in order to handle a larger number of family law cases. Several urban/suburban programs noted an increase in collaborations with other legal service providers. Public education initiatives were also emphasized as a means of preparing clients and lay advocates with basic family law information.

Encouraging the judiciary and the courts to help meet the needs of low-income family law clients has worked well for some programs. Judicial initiatives are seen as a prime growth area for improving the level of assistance to pro bono family law clients. In addition to courthouse-based assistance centers, there are court rules to waive filing fees for pro bono attorneys, volunteer recruitment letters signed by judges, placement of pro bono cases at the

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## From the Chair...



by Debbie Segal

Chair of the ABA Standing Committee on Pro Bono and Public Service

From 1984 to 1998 the ABA's Pro Bono Committee sponsored the annual Pro Bono Conference. It was an event where pro bono program staff, legal services program directors, and others committed to increasing pro bono representation of low-income people could gather to share their successes, challenges and new ideas. It served that purpose well.

Unfortunately, the conference only addressed one part of the puzzle, and attracted a fairly limited group of attendees. The Pro Bono Conference, as wonderful as it was, lacked the attendance (in any significant numbers) of legal services lawyers—the other critical segment of the delivery system. It also lacked the presence of influential leaders in the legal community. We were not attracting judges, bar association officers, private attorneys, law school representatives, and others who could make a significant difference not only in supporting the growth of pro bono, but in leading efforts to maximize a fully integrated legal services delivery system.

Over the course of several years, the Pro Bono Committee worked closely with the National Legal Aid and Defender Association to envision a different kind

*(continued on page 4)*

## Program Profile...

# Recruitment is Alive at the Volunteer Lawyers Project of the Boston Bar Association

by Marilyn Smith

**A**n example of the fresh approach that the Volunteer Lawyers Project of the Boston Bar Association (VLP) brings to recruiting volunteers can be found in a brochure for a new VLP-sponsored program called Senior Partners for Justice. This program is designed to place family law cases with senior and retired members of the Massachusetts bar. The recruitment brochure says:

*Senior Partners for Justice is not for every lawyer. It takes a socially aware individual; one who can feel comfortable making a commitment to other people; one who desires to act as an agent for change. It takes a strong and energetic advocate, possessing an appetite for continual learning and a desire to help out. If you are that lawyer, consider this alternative to traditional retirement.*

This recruitment pitch is not your average plea for hours and money—it is a direct challenge to senior lawyers to envision themselves in a new role, and to make a commitment to share their gifts with those in need.

As one of the oldest organized pro bono programs in the country, VLP is always looking for new ways to attract and recruit lawyers. Current volunteer opportunities are listed on its Web site by practice area and VLP allows attorneys to sign up for cases online. The program provides liability insurance, office space, a monthly training schedule, and mentoring in new skill areas. VLP also maintains a fund to reimburse volunteers for out-of-pocket expenses; offers technical assistance on specific cases; and provides attorneys with a library of poverty law materials including sample briefs and pleadings. For its Senior Partners program, VLP has arranged for lawyers with a “retired” bar status to volunteer without having to reinstate their registration dues.

### Twenty-five years of innovation

VLP could easily have settled into a more predictable routine, but as it celebrates its 25th anniversary this year, it continues to develop and re-invent its services and recruitment strategies in a way that engages volunteers, community partners and clients. When the VLP initiative was first started in 1977, its main goal was to provide legal representation in civil matters to the poor in Boston through the pro bono assistance of attorneys and paralegals. VLP was first envisioned by the Boston Bar Association (BBA) as a broker that could transform attorneys' general willingness to engage in pro bono into actual productive work. The BBA submitted a funding proposal to the newly formed

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## From the Chair...

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of conference. We knew that it was not enough just to talk about partnership and collaboration. We recognized that as national organizations dedicated to expanding legal services for the poor, we had a responsibility to create a single forum where all potential leaders of a strong and vibrant legal services delivery system could come together. In 1999, the Equal Justice Conference was born.

We built it and they have come. The Equal Justice Conference has developed into an annual think tank for anyone committed to the ideal of a legal services delivery system that has the talent, resources, opportunities and vision to meet the legal needs of all low-income people. As I write this column, final preparations for the 2003 ABA/NLADA Equal Justice Conference are underway. Lawyers, advocates, judges, bar association officers, program staff and board members, law students and law school representatives, corporate counsel, government attorneys, law firm leaders and many other stakeholders interested in access to justice issues soon will gather for three days of workshops and networking. Attended by over 600 people each year, it is the largest conference in the United States designed to address these issues.

Conference attendees hear example after example of how someone recognized a problem, appreciated that they were well suited to do something about it, and then acted. The stories about these accomplishments abound. We have heard about:

- Corporate attorneys who organized their general coun-

### Five Ways a Judge Can Lead:

- Write a letter encouraging attorneys to increase their pro bono activity or to compliment them on their current efforts
- Participate in a pro bono skills training session
- Host a reception to honor pro bono attorneys
- Issue a resolution encouraging pro bono service
- Partner with a legal services provider to open a pro bono help desk at your courthouse

### Five Ways a Legal Services Director Can Lead:

- Delegate the overall management and oversight for the program's pro bono efforts to a deputy director-level manager who has pro bono experience and enjoys working with volunteers
- Prioritize your staffing budget so that there is at least one person whose only responsibility is pro bono
- Involve the leadership of the local bar in your program—not just on your board—but on a pro bono project advisory committee
- Explore partnerships with the private bar designed to fully utilize a broad range of private attorney resources—pro bono, financial support, influence, skills and knowledge and more
- Host regular discussion and planning sessions with your own and other local pro bono programs to explore how you can work more effectively together to address the unmet legal needs of your community

### Five Ways a Bar Leader Can Lead:

- Use your president's column, repeatedly, to promote pro bono work
- Convene a summit of leaders of the profession to discuss the continuing unmet legal needs of the poor
- Develop a partnership for a major pro bono effort with other community and professional organizations.
- Initiate a bar-sponsored public legal education
- Allocate bar resources to advertise pro bono opportunities

### Five Ways a Private Lawyer Can Lead:

- Be a role model: accept regular referrals from your local pro bono or legal services program
- Mentor younger lawyers in your firm or community and teach them how to handle pro bono cases
- Offer to train other lawyers how to handle a particular type of case within your practice area or pro bono practice area
- Work with your local legal services providers to create an advisory board (if one doesn't exist) of interested private lawyers to initiate and support the programs' efforts
- Raise money within your firm, your community, your corporate legal department or any other constituency to support pro bono and legal services program efforts

sels' offices to take part in pro bono projects

- Foundation directors who recognized that legal services to the

poor is a critical funding need

- Pro bono and legal services directors who galvanized the

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## Family Law

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beginning of court dockets, receptions and trainings hosted by judges, and even reserved courthouse parking spaces for volunteer attorneys.

Other recommendations from survey respondents include:

- Providing telephone advice/counsel services
- Establishing kiosks in libraries and courthouses
- Encouraging the unbundling of legal services
- Requiring mandatory pro bono service by the bar or court
- In rural areas, offering reduced fee programs and using conflict waivers
- Using skilled pro bono paralegals
- Partnering with bar association family law sections

**Encouraging the judiciary and the courts to help meet the needs of low-income family law clients has worked well for some programs. Judicial initiatives are seen as a prime growth area for improving the level of assistance to pro bono family law clients.**

As the report notes in its conclusion, many of the recommendations involve programs shifting to more external collaborations with the courts, other legal service providers, bar associations and social service organizations. The report catalogs the issues surrounding pro bono family law cases and points to the need to continue developing more concrete initiatives for bridging the gap in family law pro bono cases.

At the 2003 Equal Justice Conference, the Center for Pro Bono will present a workshop to focus on how to develop these findings and recommendations into a more substantively useful tool for pro bono program managers.

*The entire report—along with a new board designed to facilitate discussion—can be found on the Center for Pro Bono website at [www.abaprobono.org](http://www.abaprobono.org)*

**Mary Ann Sarosi**, a Michigan consultant, is former director of the Access to Justice Program at the State Bar of Michigan and founder and former director of the Coordinated Advice and Referral Program for Legal Services in Chicago. She is also the coauthor of the report referenced in this article.

*Stay tuned for part two of this series, in which the Center reports on new ideas, additional comments, and suggestions for how to promote family law pro bono activities.*

## From the Chair...

(continued from page 4)

legal community in their cities to take on issues of great importance to their low income clients

There are many more examples involving judges, bar officers, law school staff and others. These are the stories of leadership.

Accompanying this column are some sidebars reflecting ways that different legal community members can step up to the plate. These ideas are snapshots of the issues that are discussed at the Equal Justice Conference. I certainly encourage everyone reading this to attend the confer-

ence—if not this year—then next. What is most important, however, is taking action—finding a way to make a difference.

You can be the bar association president who makes pro bono the theme for your term, the judge who works to establish a rule giving pro bono attorneys in court priority on the calendar, or the law school dean who successfully promotes a loan repayment program for students who pursue public interest careers. Or, you can be a private lawyer who identifies an unmet legal need within your local community and finds a way to address it.

Recently, former Governor Roy Barnes of Georgia started working

for six months as a full time staff attorney at Atlanta Legal Aid Society on a pro bono basis. In addition to demonstrating his values and giving back to his community, Barnes could be forging a path for others to follow. Potentially, the greater value is the attention his leadership brings to needs of clients, and what the community can do to respond.

Each of us has a leader inside—a sphere of influence that we can touch to effect change. Make a mid-year's resolution, find out what you can do to help, and do it. And then come to next year's Equal Justice Conference to tell us what you have accomplished and how we can follow your example.

## Boston Bar

(continued from page 3)

Legal Services Corporation (LSC) to be included as a pro bono model in a study of alternative delivery systems for providing representation in civil cases to people of limited means. The BBA's proposal was funded by LSC and was the first pro bono model in the original study.

In 1980, the BBA won the American Bar Association's Harrison Tweed Award for VLP's work in providing free legal services to the poor and for the BBA's work with the Lawyers Committee for Civil Rights. That year, VLP also went from being a demonstration project to a regularly-funded LSC project.

During the 1980s and 1990s, the VLP expanded its funding base and its outreach into low-income communities. With the help of a grant from the City of Boston's Commission on Affairs of the Elderly and state disability benefit appropriations, VLP was able to provide programs at senior centers and elder housing projects and offer services to the disability community. As the program continued to grow and diversify, it repeatedly stepped into the gaps created by new poverty issues and unmet legal needs. VLP extended its services to four counties and increased its staff at that time. In 1996, VLP reached another major turning point when it became an LSC grantee agency for the greater Boston area.

### Pro bono remains core focus

Throughout all of these transitions, VLP has steadfastly maintained its core identity as a pro bono organization. As such, it

continually partners with various BBA committees and sections to address the unmet legal needs of the poor through volunteer efforts. For instance, VLP works with the Trusts and Estates Section to provide public education for seniors and to place pro bono attorneys with eligible clients who need wills and other documents prepared. VLP also co-sponsors an annual Chapter 13 training session with the Bankruptcy Section and offers a workshop fee waiver to lawyers willing to take bankruptcy pro bono cases.

VLP also partners with the BBA Real Estate Section and other legal services providers to support the Housing Court Attorney of the Day program in the Boston Housing Court. Former Housing Court Chief Justice E. George Daher commended the program: "As the chief justice of the Housing Court, I know how necessary the work of volunteer lawyers is, both to the court, and to the parties assisted. The lawyer of the day project and the contribution of pro bono lawyers providing representation to individuals substantially improves not only access to justice, but also the quality of justice itself."

Currently VLP has a panel of approximately 1,000 volunteer attorneys and paralegals. The volunteers come from all segments of the legal community and include solo practitioners, members of small, medium and large firms, government offices, and corporate counsel. The panel deals mostly with issues involving housing (31 percent of cases), family law (19 percent), consumer rights (24 percent), Supplemental Security Income and public benefits (15 percent), and wills

and probate for the elderly (5 percent). Volunteers with VLP also teach community legal education programs for low-income homeowners, provide telephone advice on probate and estate related issues, and serve as counsel to a variety of community groups.

### Partnerships

In addition to managing its core pro bono efforts, VLP works with the Community Law Center, a Harvard Law School clinic in Jamaica Plain, to provide clients with representation on public benefits and access to service issues. VLP also partners with the Legal Advocacy and Resource Center in operating a hotline that serves 12,000 to 15,000 callers a year. The hotline screens callers for eligibility and refers them to appropriate legal and social services. The hotline also provides advice when more extensive services are not available or necessary.

Executive Director Meg Connolly, commenting on the silver anniversary of this dynamic and effective organization, noted that: "VLP is not what it was 25 years ago. Nor should it be. It has changed to respond effectively to the emerging needs of its clients. But, the more things change the more they remain the same. Private lawyers continue to donate thousands of billable hours to help make justice a reality for those who would otherwise have no access to the system. For this, we at VLP are eternally grateful."

**Marilyn Smith** is assistant staff counsel to the ABA Standing Committee on Pro Bono and Public Service.

# Pro Bono Ethics Counsel: Checking for Conflicts

by Will Hornsby

*Assisting pro se clients can raise sticky issues for volunteer attorneys, among them uncertainty about an attorney's obligation to perform a conflicts check. ABA Division for Legal Services ethics expert, Will Hornsby, presents and comments on a hypothetical scenario that calls these questions to the fore.*

Joanne turned to the Landlord-Tenant Desk at the courthouse after receiving a thirty-day eviction notice from her landlord's management company. The Landlord-Tenant Desk is a project of the local bar's Volunteer Lawyers Program. It was established to provide legal information and brief legal advice to tenants facing eviction and other problems.

Jack is a first year associate at Rapp & Hill, one of the city's largest law firms, and volunteers to spend one day each month at the Landlord-Tenant Desk. Jack hasn't handled any housing issues at the firm, but he participated in a housing clinic during law school and was confident that with the help of the Desk's attorney-supervisor he would be able to assist clients. He has had some experience in filling out documents, answering motions and preparing clients for court appearances.

In the course of doing intake with Joanne, Jack learned that she lived in a building managed by Lake Star Properties. She failed to pay rent for two months in a row as a result of losing her job. After discussing the situation with Joanne, Jack explained the law to Joanne and worked with her to prepare for her eviction hearing.

**Question:** *Is Jack required to perform a thorough conflicts check to deter-*

*mine whether his law firm has any dealings with Lake Star Properties?*

**Answer:** The threshold question here is whether Jack has developed an attorney-client relationship with Joanne. Court facilitator programs limit the service they provide to individuals to *legal information* and do not give *legal advice*. The information is limited to procedural matters, answering questions about how to fill out forms, where to file documents and how to proceed. Facilitators may not give advice about what clients should do. Even though a lawyer, such as Jack, is qualified to give legal advice—and tell clients what they should do—the program may limit the services to legal information. If so, those giving the information do not assume the role of an advocate and create no attorney-client relationship. Therefore, Jack would not have an obligation to check for conflicts.

Let's assume, however, that the Landlord-Tenant Desk is set up for the lawyers to give legal advice, which is probably what the clients need the most. ABA Model Rule 1.7 and its state counterparts address conflicts of interests for current clients. The rule prohibits a lawyer from representing a client if the representation involves a "concurrent conflict of interest." A concurrent conflict exists "if the representation of one client will be directly adverse to another client." This would obviously preclude Jack from providing legal advice and other services for Joanne if he knows about the conflict. But what is his obligation to find out? The comment to Model Rule 1.7

tells us, "To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine. . . the persons and issues involved."

So, it would be incumbent on Jack to check for conflicts of interest. Even though we know that he, personally, does not have a conflict, since he has not handled any housing matters at the firm, Model Rule 1.10, and similar provisions of most states, impute conflicts for all members of the firm. So, if any lawyer in the firm represents an adverse party, Jack cannot assist Joanne—unless, Jack practices in one of the few states that have adopted the recently created Model Rule 6.5. This rule was developed by the ABA Ethics 2000 Commission to address the very problem Jack faces. In essence, the rule excuses Jack from checking to see if there are imputed conflicts. If Jack knows of a conflict, he must not provide the representation, but if he does not know and he is providing "short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter," he may provide Joanne with the help she needs.

## Conclusion

Although the ethics rules may seem harsh as they are presented in this scenario, we need to keep in mind that fidelity to a client is a core value of the legal profession. We enforce fidelity by making certain that our representation of clients is free from

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## 2003 Mini-Grants to Benefit Children in Private Custody Cases

The Child Custody Pro Bono Project has announced its 2003 mini-grants to seven organizations actively engaged in delivering pro bono legal services to children in private custody cases.

The project was established in February 2001 through a gift from Bill and Melita Grunow, in memory of their niece, Ann Liechty, a dedicated child law attorney. The project designs and implements programs and policies that foster children's well-being, development and safety during custody proceedings in divorce, guardianship, adoption, unmarried parent and protective order cases.

The 2003 mini-grants, totaling \$43,500, are funding efforts that use volunteer lawyers to represent low-income children. The 2003 grant recipients are:

**Children's Law Center (Covington, Kentucky)** – The Pro Bono Child Custody Project will 1) increase judicial collaboration through dialogue, educational materials and dissemination of ethical standards of practice for attorneys representing children; and 2) support pro bono panel attorneys by matching them with law and social work students.

**The Children's Law Center (Washington, D.C.)** – The Pro Bono Guardian Ad Litem Project will recruit and train volunteer attorneys to serve as guardians ad litem, serve as the intake and referral coordinator for the court, and provide ongoing mentoring to pro bono attorneys.

**The Law Foundation of Prince George's County (Hyattsville, Maryland)** – The Guardian Ad Litem pro bono project is creating a corps of volunteer attorneys to represent children in contested custody cases in Prince George's County. The project will provide training, certification, mentoring, and support services for the pro bono attorneys.

**Legal Aid of East Tennessee (Knoxville, Tennessee)** – The Domestic Violence Custody Project will recruit and mentor lawyers so they understand the differences between representing children as opposed to parents in custody disputes, the dynamics of domestic violence, and other legal issues surrounding the representation of children.

**Put Something Back (Miami)** – The grant will expand Put Something Back's existing guardian ad

litem program and develop a special domestic violence GAL panel for investigating and reporting findings to the court when a child seeks an injunction against a parent, guardian or caretaker.

**Support Center for Child Advocates (Philadelphia)** – The Kinship Care Project uses pro bono attorneys to provide follow-up monitoring and evaluation of assisted families to insure that they remain outside the formal child welfare system and progress successfully toward legal custody, adoption, or long-term placement.

**Volunteer Legal Services Hawaii, Na Keiki (The Children's) Law Center Project (Honolulu)** – The Na Keiki Law Center will provide training for judges on the issues involved in guardian ad litem cases and demonstrate the necessity of providing a separate voice for children in these cases. These trainings will include discussions on best practice advocacy for children, court procedures, and how other states are successfully representing children.

*More information about the ABA Child Custody Pro Bono Project can be found at [www.abachildcustodyproject.org](http://www.abachildcustodyproject.org)*

## Conflicts

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conflicts of interests, both our own interests and, especially, those of other clients. While this imposes a burden on pro bono programs to structure their projects in ways that enable volunteer lawyers to check conflicts, it is designed to

serve the interest of the profession's integrity. Model Rule 6.5, discussed above, is intended to strike the necessary balance between protecting the fidelity of the attorney-client relationship and enabling lawyers to pursue their public service and participate more broadly in pro bono opportunities. Those involved in

expanding access to justice should advocate the adoption of Model Rule 6.5 in states where it has not yet been incorporated into the ethics rules. To view Model Rule 6.5, go to [www.abanet.org/cpr/mrpc/rule\\_6\\_5.html](http://www.abanet.org/cpr/mrpc/rule_6_5.html)

**Will Hornsby** is staff counsel to the ABA Standing Committee on the Delivery of Legal Services.

## From the Chair...



by Darrell E. Jordan  
Chair of the ABA  
Commission on IOLTA

I am humbled and grateful to write this column in the wake of the Supreme Court's decision upholding the Washington State IOLTA program. The Court's finding that the IOLTA program does not violate the Fifth Amendment caps over a decade of litigation on this issue, and comes as a great relief to all of us in the IOLTA community. Most importantly, it preserves a vital source of funding for legal services to low-income Americans.

There isn't sufficient time before deadline for me to offer a detailed analysis of the Court's ruling here. Suffice it to say that the majority understood the vital public purpose served by IOLTA, and recognized—as IOLTA advocates have argued for years—that clients lose nothing as a result of IOLTA. It is very gratifying to see that reasoning adopted by the Court. I feel especially good for the early advocates of IOLTA, who analyzed the idea and believed that it presented no constitutional problems.

As this issue of *Dialogue* goes to press, certain implications of the decision are not yet clear. It is uncertain whether the Washington State plaintiffs will choose to pursue their First Amendment challenge in district court. We do

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## U.S. Supreme Court Victory for IOLTA

On March 26, 2003, the U.S. Supreme Court issued its decision in *Brown v. Legal Foundation of Washington*, upholding the constitutionality of IOLTA. Justice Stevens authored the 5-4 majority decision, which Justices O'Connor, Souter, Ginsburg and Breyer joined. In its ruling the Court held that even assuming that the interest generated on IOLTA accounts amounted to a per se taking, that taking was for a valid public use and the amount of just compensation due was zero. As a result, the Court found that the operation of the IOLTA program in Washington does not violate the Fifth Amendment.

In finding that the taking was for a valid public use, Justice Stevens pointed to "the overall dramatic success of these programs in serving the compelling interest in providing legal services to literally millions of needy Americans..." As to just compensation, the Court stated that "[b]ecause that compensation is measured by the owner's pecuniary loss—which is zero whenever the Washington law is obeyed—there has been no violation of the Just Compensation Clause of the Fifth Amendment in this case."

Justice Scalia authored a spirited dissent, which was joined by Chief Justice Rehnquist and Justices Thomas and Kennedy. In it, IOLTA was likened to a "Robin Hood Taking" described as "taking from the rich to give to indigent defendants." Justice Kennedy also filed a separate dissent, in which he stated that although "[t]he First Amendment consequences of the State's action have not been addressed in this case... the potential for a serious violation is there."

Advocates for providing legal services to the poor were delighted and relieved by this important decision. As ABA President Alfred P. Carlton Jr., stated: "The real beneficiaries of this ruling are the tens of thousands of poor people who receive legal assistance because of IOLTA."

## IOLTA Grantee Spotlight: Legal Services Collaborations Serve Arkansas' Senior Citizens

by Sandra Miller

Providing legal help for senior citizens is a hallmark of many legal services practices. Arkansas' two major legal services providers are no exception. But the size and nature of Arkansas' senior population, along with its distinct legal needs, present some difficult

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## From the Chair...

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not know exactly what the Supreme Court or the Fifth Circuit Court of Appeals will order in the currently pending Texas case. I am sure such answers and more analysis of the decision will be forthcoming in the next few months, but at the moment I am content to savor this success, and to consider a bright future for IOLTA.

Countless lawyers, trustees, IOLTA program staff and other friends have come to the defense of IOLTA since the first Fifth Amendment challenge was raised in Florida in 1984. These efforts reached a crescendo in the Texas and Washington State cases, both of which landed before the Supreme Court. With the arrival of both cases on the Court's docket for the current term, there was a great deal of cooperation between the Washington and Texas litigation teams as the Washington case moved forward. In the past, these pages have named many who have played an instrumental role in these cases. Space does not allow me to list the numerous individuals who deserve recognition here, but I will identify those firms and organizations that have provided

so much support—much of it pro bono—over the years. These include Perkins Coie and Sidley Austin Brown & Wood, who represented the Legal Foundation of Washington; and the Washington State Office of Attorney General and O'Melveny & Myers, who represented the justices of the Washington Supreme Court.

The Texas Equal Access to Justice Foundation has been represented by Covington & Burling attorneys, my own firm Hughes & Luce, and Hale and Dorr. The Attorney General of Texas has represented the justices of the Supreme Court of Texas.

The ABA's amicus effort was led by Jenner & Block and Davis Wright Tremaine. The National Association of IOLTA Programs (NAIP) has been represented by Heller Ehrman and Ohio attorney Richard Cordray. Forty-nine state bar organizations co-sponsored the brief filed by NAIP.

Other organizations that filed amicus briefs in support of IOLTA include the attorneys general for 36 states (brief authored by the attorney general's offices in California and Massachusetts); AARP, Legal Counsel for the Elderly, Inc., National Legal Aid & Defender Association, and the Brennan Center for Justice (authored by Wilmer, Culter & Pickering); the Conference of

Chief Judges (authored by Morrison & Foerster and Texas attorney Brian Serr); the National League of Cities, the International Municipal Lawyers Association, and Trial Lawyers for Public Justice (authored by Community Rights Counsel); the City and County of San Francisco (authored by the San Francisco City Attorney's office and the Georgetown Environmental Law & Policy Institute).

The American Bar Association and the Commission on IOLTA both have played a major role in this effort. I would like to acknowledge the commission's current and past members, as well as my predecessors as commission chair. The commission's staff has provided vital support through the duration of the litigation. NAIP and its leadership also have played crucial leadership and organizational roles.

Finally, it is important to acknowledge the IOLTA community as whole. No IOLTA staff member or trustee chose to become involved in IOLTA with the thought of litigation in mind. And this litigation has created its share of discomfort, worry and stress, as any protracted legal battle would. But this community held together and fought for IOLTA, and we have a wonderful result to show for our efforts.

## Grantee Spotlight

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challenges to the Center for Arkansas Legal Services and Legal Aid of Arkansas. With ongoing support from the Legal Services Corporation and the Arkansas IOLTA Foundation,

these organizations have worked to devise creative solutions to overcoming these obstacles.

### Demographic challenges

Fourteen percent of Arkansas residents are 65 years or older, compared to 12.4 percent nationwide. In some areas of the state, seniors make up more than 20

percent of the population. Arkansas seniors are poorer than elsewhere, with 15.2 percent of seniors at or below the federal poverty guidelines compared to 10.1 percent nationally. One-third of Arkansas seniors have incomes below 150 percent of the federal poverty guidelines.

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## Grantee Spotlight

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Despite the pervasive poverty, senior citizens often hesitate to seek legal assistance when they need it. Explains Mona Teague, executive director of Legal Aid of Arkansas: "Arkansas senior citizens have a lot of pride. They won't ask for help until they are at their wit's end. So when they do ask for help, we bend over backwards to do everything we can to help them."

The numbers bear this out. While seniors do not ask for help as often as younger people, 41 percent who meet the eligibility criteria received brief or extended representation in 2002 compared to 27 percent of younger individuals. "We find that seniors often need more than advice and counsel," adds Teague.

### Delivery challenges

Reaching seniors is a more complicated endeavor in a rural state like Arkansas. With more than half of its population living outside of metropolitan areas, it is among the most rural states in the nation. To provide services consistently throughout the state, the two programs teamed up in 2002 to implement a statewide toll-free hotline.

"Through the hotline, we are reaching more people in more places than we could when people had to come into the office," explains Jean Turner Carter, executive director of the Center for Arkansas Legal Services. Anyone anywhere in the state can call a single toll free telephone number and talk to an attorney or paralegal. Program statistics show that the hotline has made an impact. In the first year of hotline operations, Arkansas'

legal services providers handled cases in every county of the state, and increased the number of closed cases by seven percent.

The hotline has enabled the programs to serve seniors more timely and effectively than they could when applicants had to come to the office. Caren Shantz, a hotline attorney, gives an example. "You wouldn't believe the number of calls we get from seniors who are completely beside themselves with worry. They get behind on their bills. By the time they call the hotline, they are losing sleep and fretting endlessly about calls from bill collectors who leave the impression they can garnish Social Security benefits."

### Preventative education

In addition to improving access through the hotline, both providers have developed innovative programs to provide legal education tailored to seniors.

The Center for Arkansas Legal Services collaborates with the Arkansas Department of Human Services to offer a preventive education program called "Words to the Wise" at 104 senior citizens centers.

To begin the program, a staff attorney makes a short presentation about legal issues facing the elderly. A series of one-page handouts, written in simple language without legal jargon, is distributed. The presentation promotes discussions in which seniors ask questions and share their perceptions. Many times this format calls attention to widely held misconceptions and allows the attorney to address them. Moreover, this format lets the particular group of participants decide which topics are most relevant to their needs.

The presenter hands out

brochures describing the center's services and explains how participants can contact the hotline. With the creation of a statewide Web site and a growing number of computer-savvy seniors, the presenter now explains where seniors can go on the Internet to find commonly used forms (ranging from a living will to an order of protection) and instructions about completing them.

One Words to the Wise participant faced wrenching decisions about whether to prolong the life of his terminally ill wife. They had not discussed her wishes prior to the illness. Although the program did not diminish his struggle, the other participants took a special interest in the discussion that day, keenly aware that they now had the means—executing a living will—to spare their loved ones from having to go through the same agony.

### Preserving land and heritage

Legal Aid of Arkansas has taken a different approach. Its service area includes the Mississippi River Delta, where grinding poverty exists in the midst of great wealth. Here poverty rates exceed 30 percent in some counties and African Americans are disproportionately poor. Over the decades, thousands have left to seek jobs and a better life elsewhere. Those who have stayed are fiercely independent, proud of their heritage, and committed to creating new opportunities so their children can also call the Delta home.

Many seniors don't do any estate planning, and do not equip their children to keep historic lands in the family. As a result, Legal Aid of Arkansas' paralegal Andrea Howard explains, "The

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## Expanding Resources: Pennsylvania's Access to Justice Act

In this article, *Dialogue* talks to IOLTA and legal services leaders in Pennsylvania about that state's new filing fee surcharge for legal services. The Pennsylvania effort was led by a collaboration that included Pennsylvania IOLTA Board Executive Director Al Azen, Pennsylvania Legal Services Executive Director Samuel W. Milkes, David Trevaskis, statewide pro bono coordinator for the Pennsylvania Bar Association, and Diann Stinney, who served at the time as PBA's legislative liaison. *Dialogue* recently talked to all four.

### **Dialogue: What are the details of the Access to Justice Act?**

**Al Azen:** The Access to Justice Act is a filing fee surcharge provision that became law on November 1, 2002. It applies a \$10 surcharge to the recording of deeds and on civil and criminal filings. The bill was introduced in the House of Representatives in January 2002, and the governor signed it into law last fall.

### **Dialogue: Will legal services programs receive the entire surcharge?**

**Azen:** Revenues generated by the surcharge will be split between funding for the Pennsylvania Legal Aid Network (PLAN) of civil legal aid programs across the state and funding for an initiative to computerize the Pennsylvania courts. The portion of funding for PLAN will phase in over several years. In the first year, \$1 of every \$10 surcharge will go to legal services, and the other \$9 will go to the computerization project. In

the second and third years, \$1.50 per case will go to legal services. This will increase to \$2 per filing in the fourth year of the surcharge.

**Sam Milkes:** The projections are that the program will generate \$3.8 million during the first year, \$5.7 million in each of the second and third years, and \$7.6 million in the fourth year. The Act currently calls for the program to sunset after five years, so we will need to go back to the legislature to have the sunset provision removed.

### **Dialogue: What is the role of Pennsylvania's IOLTA program in the surcharge program?**

**Azen:** Revenues will be directed to the Pennsylvania Interest on Lawyers Trust Account Board, with approval and oversight of the Supreme Court of Pennsylvania. The funds will be distributed only to organizations that are identified as qualified under the Act. These include Pennsylvania Legal Services and its sub-grantees, including civil legal aid programs providing services in every county of the state and some statewide specialty programs, providing specialized services.

As director of the IOLTA Board, I participated in a steering group that oversaw the approval of the Act. But even though the IOLTA program will administer the funds, it is important to recognize that the bar and legal services communities were instrumental in getting legislative approval for the surcharge.

### **Dialogue: Why did the legal services community decide to**

### **pursue a filing fee surcharge?**

**Azen:** As in other states, funding for legal services from all sources (such as federal, state and local governments and private donations) does not come close to meeting the need for civil legal assistance for low-income people. More recently, IOLTA revenues in Pennsylvania have fallen due to low interest rates, and we had to cut grants to programs by \$1 million in 2002, and anticipate another \$500,000 cut for 2003. But the underfunding of legal services is a chronic problem, and the effort to obtain state funding dates back to the 1980s. Total funding for legal services in Pennsylvania in 2002 was less than what it was 25 years ago.

### **Dialogue: How did the work toward a filing fee surcharge begin?**

**Azen:** There were several key developments. In 1989, the Pennsylvania Bar Association (PBA) convened a statewide Task Force on Legal Services to the Needy to look at legal services funding. That task force concluded that there was a great unmet need for legal assistance, and recommended pursuing legislation that would provide for a filing fee surcharge, but the resulting initiative, while making some progress, ultimately did not succeed.

In 1998 a new (and ongoing) task force was established by then-PBA President Leslie Miller to study the funding problem. It was comprised of representatives

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## IOLTA News and Notes

### Departures

During the Winter IOLTA Workshops the IOLTA community said farewell to two leaders in the community, Owen Snider of the Alberta Law Foundation and Tina Abramson of the New Hampshire Bar Foundation.

Snider will retire as executive director of the Alberta Law Foundation effective June 30, 2003. He joined the law foundation in 1980, and has served as its director since 1983. He served as secretary of the Association of Canadian Law Foundations since

the early 1980s, and as treasurer of the National Association of IOLTA Programs. Snider is leaving Calgary to move with his wife Judith Snider to Ottawa, Ontario, where she has been appointed as a justice of the Trial Division of the Federal Court of Canada.

Abramson will step down as executive director of the New Hampshire Bar Foundation at the end of April. She has been director of the foundation since August 1996, during which time the foundation has grown and revitalized its fundraising activi-



Owen Snider

Tina Abramson

ties. She served for several years in leadership positions within NAIP, including the past two as vice president. Abramson plans to spend more time at home with her growing family.

## Grantee Spotlight

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land gets sold when the parent passes because the children can't agree on what to do with it, particularly in large families or when some of the children have moved away and don't feel an attachment to the land."

Seeing a need, Howard proposed to do something. On February 22, 2003, Legal Aid of Arkansas held its first estate-planning workshop in Lee County, the poorest in Arkansas. Fifteen participants, mostly African Americans, mostly senior citizens, learned how to do effective estate planning. Follow-up services are being provided as needed. More workshops are scheduled in other parts of the Delta.

In order to reach homebound elderly with this same message, Legal Aid of Arkansas will develop short radio spots on the need for estate planning with seed grant funding from the American Bar Association

Commission on Law & Aging (see [www.abanet.org/aging](http://www.abanet.org/aging)). It is seeking additional funding to produce a 7-minute video to explain the historic significance of these lands and has assembled a panel of prominent Arkansas historians to act as advisors to the project. These radio and TV spots will be broadcast throughout the Delta.

### Other issues

These are not the only approaches. Arkansas ranks third in the nation in the percentage of caregiver grandparents, with 33,618 grandparents raising their children's children. In response, the Centers for Youth and Families, a Little Rock nonprofit organization that serves troubled youths, approached the Center about providing legal expertise to a support group for caregiver grandparents. A staff attorney meets with the group monthly to provide legal education about custody, guardianship, adoption and other legal issues facing these grandparents.

The two programs also collaborate to fund and partner with Arkansas Volunteer Lawyers for the Elderly (AVLE). This program takes referrals from both programs, and then identifies private attorneys with the skills and willingness to take the case on a pro bono basis. AVLE handles many guardianship cases, divorces and wills for legal services clients.

Arkansas' diverse seniors present a unique challenge to the state's two legal services providers. As one of just six states without state government support to provide civil legal services to the poor, Arkansas faces special challenges in meeting the legal needs of poor Arkansans. IOLTA has been a partner at each step of the way, not only in providing critical funding but also as a program partner in promoting innovation that stretches our limited resources to achieve more.

**Sandra Miller** is the director of the Arkansas Legal Services Partnership, a collaboration of the Center for Arkansas Legal Services and Legal Aid of Arkansas.

## Pennsylvania

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of the governor's office, the judiciary, the legislature, legal services, members of the bar, and IOLTA. That task force recommended legislation to create a surcharge program.

**Diann Stinney:** The task force had three chairs, one each from the eastern, central and western parts of Pennsylvania, and included 35 members. The most important aspect of the task force was its composition. The bar president knew that it was important to include representatives of many different groups to build a broad coalition. For example, it was very important to have the cooperation of the Pennsylvania Trial Lawyers Association. The result was a task force that was politically and geographically diverse, and which had representatives from small and large law firms, small pro bono programs, large legal services programs, and local bar associations. Despite this diversity, the task force agreed that its mission was to increase funding for legal services.

**Dialogue: How did the initiative proceed after the task force recommended a filing fee program?**

**Azen:** Different groups played a role at different times. At the core, we had a steering group comprised of Sam, Diane, David and me that met weekly at the PBA to discuss strategy and the bill's progress.

**Milkes:** You have to have someone responsible for the day-to-day upkeep and maintenance. In this

case, that was the steering committee. It almost has to be people with the legal services and bar organizations doing the day-to-day work but we were very much assisted by other supporters who did a lot of important work.

**Dialogue: How did you build support and maintain it through the legislative process?**

**Azen:** One key was getting the right legislators interested in the bill.

**Stinney:** In the House, we had great grass roots support. One hundred fourteen legislators (out of 212) signed on as co-sponsors of the bill. Our initial sponsor, Rep. Kathy Manderino (who was on the PBA Task Force), recommended that we help line up other support for the co-sponsorship of the bill. Through the PBA and local contacts we were very fortunate to realize the early support of Rep. Brett Feese, chair of the House Majority Caucus. He became our prime sponsor in the House. As the caucus leader, he sets the legislative agenda, which ensured that our bill at least received full consideration.

**David Trevaskis:** There was overwhelming support in the House. The House passed a bill calling for a \$5 legal services fee on a 187-9 vote.

**Milkes:** The level of support in the House was a tribute to the work people did in their own home communities. I think many legislators had seen the impact of funding cuts for legal services in their communities in the form of service reductions. They wanted this service built back up again for their constituents.

**Azen:** The effort in the state House was based on grassroots

organizing. In the Senate, the effort was based on leadership. The Pennsylvania Supreme Court worked with the Senate leaders to amend the bill and incorporated its own plans for funding for court improvements. Because the House has to approve any amendments made in the Senate, Rep. Feese was able to negotiate with the court and Senate leadership to preserve the legal services funding part of the bill. He championed keeping the funding at a high level.

**Milkes:** Much of the work was grass roots, involving the PBA and local bar associations. In the legislature, we also hired lobbyists to assist us. The PBA used its own lobbyists, and Pennsylvania Legal Services hired lobbyists. We built a core of support through the grass roots, but the lobbyists helped us make key contacts, understand the timing, and make strategic decisions. There were also friends within our community who were not paid lobbyists, but who understood the process and who made calls at key times. Members of the Philadelphia and Pennsylvania trial lawyers associations also made some key calls at critical times.

**Dialogue: Did the initiative encounter any challenges in the legislature?**

**Azen:** A final development was linking the legal services surcharge to the Supreme Court's effort to obtain a surcharge to fund its computerization initiative in the Senate. The court's involvement was always crucial. The Act had the potential to cannibalize the court's computerization effort, and the court balked at first.

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## From the Chair...



by James B. McLindon  
Chair of the ABA Standing  
Committee on Lawyer Referral  
and Information Service

In this column, I will update you about several activities the Standing Committee on Lawyer Referral and Information Service has been working for some time. On all three fronts, we are making progress, albeit perhaps a bit more slowly than we would like.

### Model Rules compliance

The number of programs in compliance with the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service continues to climb. As of press time, 107 programs from around the country now comply. That's over 35 percent of all the programs in the United States, the highest number ever.

Each of these programs is eligible to apply for certification of their compliance by the LRIS Committee, which in turn permits them to use the ABA logo and slogan in their advertising and marketing. When the committee certifies a program, it provides that program with camera-ready slicks of the logo and slogan that can be easily added to your existing advertising materials.

The logo and slogan tell the world—and more particularly your prospective clients—that

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## Serving an Immigrant Community Despite Language Barriers

by Clara Schwabe

Lawyer referral service programs across the country struggle to serve the needs of immigrant communities, often bemoaning seemingly insurmountable language barriers. Ideally there would be a seamless connection between the lawyer referral service and the individual immigrants needing legal services. However, in practice, communications break down and assistance is frustrated. The result is disconnection in three major areas: informing immigrant communities of the existence of the referral service, deciphering the problem when individual immigrants call the service, and having available panel members to provide the needed service.

### Publicity

In New York City's mosaic of immigrant communities, the Legal Referral Service of the Association of the Bar of the City of New York and New York County Lawyers Association (ABCNY LRS) has publicized its services on cable TV bulletin boards, at Law Day fairs with bilingual attorneys, and through materials and programs focused on immigration issues both in the immigrant neighborhoods and at the bar association. For example, when the immigration law changed in 2001, ABCNY's Community Outreach Program organized a marathon pro bono effort to enable immigrants to come to the bar association for free help in filing petitions. Using the language skills of the referral service staff and panel members, announcements in a number of languages were prepared and televised.

Professional translation services such as Language Line are available to help the LRIS prepare documents for dissemination. Local community leaders and service providers are also usually willing to help with translations, and we were able to prepare announcements in English. Community leaders who co-sponsored the event helped with translations into their native languages. This technique can be used for regular services as well.

### Handling calls

Once individual immigrants learn about us, they may have problems communicating with the referral counselors screening the LRIS calls. ABCNY LRS currently has five referral counselors who are native Spanish speakers and one counselor who speaks French. To bridge the gap in reaching other ethnic communities the LRIS uses Language Line that provides via conference call almost instant access to interpreters for over 140 languages. Sometimes, however, it is difficult even to determine the language needed. Few of us would understand someone saying in their native language "I only speak Kikuyu". In practice, callers with that level of difficulty with English must rely on community intermediaries.

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## Language Barriers

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ABCNY LRS's experience has been that callers with language difficulties can usually at least identify the language they require. Using Language Line as a means of identifying a referable

matter has not so far been economically productive. There are serious budgetary concerns in using the Language Line service for public service and/or community out-reach, and such use must be monitored for cost effectiveness. The expense of the Language Line service depends on

the language, the time of day the call is made, and the length of the call. During the first 11 months of 2002, ABCNY LRS used the service for 214 calls in 19 different languages totaling 1892 minutes. The average call was 8.8 minutes and the total

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## From the Chair...

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your program "meets ABA standards." There is no better way to distinguish your program from the flood of legal advertising that washes over consumers today.

### PAR visits

One way to make compliance with the Model Rules easy is to request a PAR (Program of Assistance and Review) visit. At present, the LRIS Committee has a number of openings for PAR visits available for the remainder of 2003.

Programs around the country request PAR visits for a variety of reasons. For example, programs sometimes need assistance to meet a particular goal, such as adding subject matter panels or implementing percentage fees in order to achieve economic self-sufficiency. Other programs request, in effect, a complete physical: an examination of their entire operation; an assessment of how their program is faring, and solid recommendations on how to improve it.

In short, every PAR visit is tailored to the needs of the program requesting it. And it's a bargain. The LRIS Committee will fly two national experts in lawyer referral to your door. The PAR

consultants will spend much of the day with you, observing your operations; talking to key personnel including the program director, the executive director, and bar leaders; and presenting their preliminary recommendations. And when they go home, their work isn't finished. The consultants will also prepare a detailed report that will give your program a road map to improvement.

And best of all, it's free. All we ask is that you provide the consultants with lunch. So whether you have particular questions about, or goals for, your operation, or you just want a check-up, consider a PAR visit.

### Bankruptcy legislation affecting LRIS

One problem that a number of programs have experienced in recent years concerns collecting their percentage fees from attorneys in bankruptcy matters. The problem arises from language in the bankruptcy code that some attorneys have interpreted to prohibit them from forwarding the percentage fee that they would otherwise owe to the program that referred the client to them.

Although the LRIS Committee does not necessarily agree with that interpretation of the present bankruptcy code, several years ago we proposed—and the ABA

House of Delegates approved—a resolution supporting language that would amend the code to make it express that such percentage fees could be paid to lawyer referral programs. That resolution, in turn, authorized the ABA Governmental Affairs Office in Washington to advocate legislation to effect this change. In the last Congress, the ABA succeeded in having this amendment proposed to Congress as part of a much larger overhaul of the Bankruptcy Code.

And therein lies the problem. Although our amendment has not generated controversy, other aspects of the legislation have, and the bill died at the conclusion of the last Congress last December. As we go to press, legislation including our amendment is about to be introduced in the new Congress. Rest assured, we will continue our efforts to make it law.

The LRIS Committee, of course, undertakes these efforts and others for the benefit of state and local programs. If there are other initiatives that you would like to see us pursue, please do not hesitate to contact the committee.

*For further information on any of these efforts or to make suggestions, please contact Jane Nosbisch, staff counsel to the LRIS Committee, at [jnosbisch@staff.abanet.org](mailto:jnosbisch@staff.abanet.org)*

## Language Barriers

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cost was \$4,553.80. In 2001 the cost was \$4,909.90 for 229 calls (2,039 minutes) in 27 languages.

The Language Line service is most efficient in two areas. First, it has been helpful as a public service, and the program has used it most frequently to inform callers from the Chinese, Japanese and Russian communities of other legal resources when the program cannot refer the caller to a panel attorney. Additionally, it has served as a tool to communicate with clients after a matter has been identified as referable or after a matter has in fact been retained. For instance, the LRIS used the Language Line to good effect in communicating with families—mostly from the Dominican community—of victims of the crash of Flight 587 in November 2001.

### Finding panel attorneys

An additional problem arises even after a caller from an immigrant community has been screened and the matter identified as referable—often there is a scarcity of panel members with the requisite language skills. Recruiting panel members from within the immigrant communities most in need is difficult. These communities can take several generations to develop the professional services needed within their community. Even then, the best and brightest may not stay within the community but move into the larger society or into public service.

For ABCNY LRS, overcoming the language barrier at each of these three stages is expensive and in a community of diverse immigrant communities like New

York, nigh on impossible. How can we most effectively assist and market to the immigrant communities that need our services?

### Another approach

I suggest that historically we have been looking at the problem backwards. I suggest that we take a step through the looking glass and view the problem from the point of view of the immigrants themselves. So viewed, the issue is not one of language but of trust. The classic tools we have employed—identifying areas of need, publicizing the availability of legal services through translated written materials, and engaging referral counselors and community attorneys who speak foreign languages, are all vital components of effective outreach. More is still needed.

Truly reaching a target immigrant community requires a commitment to long-term involvement with that community. Because of many immigrants' natural distrust of government officials, relationships of trust must be established with community leaders. Each community has its natural leaders. Key people include clergy members, such as the minister of a Korean church or the priest in a community's Buddhist temple. Less obvious key people may be social workers, school guidance counselors, the local grocer who sells ethnic products, a popular barber, the owner of an agency that arranges to send packages home and even "do-gooders" who know everyone's business. Once identified, these individuals are invaluable interfaces between the individual immigrants and the service and panel members.

A current and inspiring example of the importance of developing

and nurturing the trust of members of the immigrant communities is found in an article titled "Help for Storefront Lawyers" in the January 2003 issue of the *ABA Journal*. The article described City University of New York (CUNY) Law School's Community Legal Resource Network, a program committed to assisting attorneys helping immigrant communities.

ABCNY LRS works with the CUNY program to encourage their attorneys join its panels. One of the English-only speaking attorneys in the CUNY program, Michael Meehan, started with no translators and no document translation services. Nevertheless he has achieved great success. The article explains his success by quoting one of his clients: "The reason," says Maria T. Umazor, who began as a client and later came to work for Meehan as his assistant and translator, "is Meehan's devotion to doing right by his clients. Despite the fact that there are Spanish-speaking lawyers around, clients now go out of their way to seek Meehan's representation because he has gained a reputation for competence, fairness and genuine kindness."

So too, in reaching out to immigrant communities, must an LRIS program establish a reputation for competence and kindness. Developing trust is a slow, but worthwhile, process. Addressing the needs of immigrant communities through bar association efforts, sometimes through pro bono, through community fairs, and through relationships with community providers and natural leaders will succeed over time in building trust. Once the LRIS program has gained a community's trust, the tools to overcome language and cultural barriers

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# Television Advertising on a Tight Budget

by Marion Smithberger

**H**as your LRIS program considered television advertising as part of its marketing plan? Television ads can be used by lawyer referral service programs, even those on a tight budget. Don't be deterred by your assumptions that such advertising will be prohibitively expensive. There is a great deal of competition between stations, so there is television time available for almost any budget.

## First steps: budget and audience

Begin by establishing your budget and selecting your target audience. Then check with the different television stations in your area. Tell them what your advertising budget is and ask if they have packages in your price range. Start with what are likely to be the cheapest stations and work your way toward the network stations. Cable stations can be fairly inexpensive. Even networks can have some very good deals if you can use times that are not attractive to their regular advertisers.

The cost of ad slots varies depending on the time of the year and day. For example, costs are often at a premium around certain holidays or when certain news or sports are scheduled. But this is not always the case. In Columbus, Ohio, for example, we were able to air an ad about the "cost of drunk driving" during time slots between December 25 and January 1 at very affordable rates.

Television advertising prices are set based upon the number

of people watching during a given time span, determined by past performance. The more viewers, the higher the price will be. Bear in mind that to be effective, the ads must be repeated. Most people have to see an advertisement at least a half dozen times before it begins to penetrate their awareness. This means that on a tight budget, you might buy ad time during a morning talk show only for a month, but for 20 times, so that a reasonable number of the same people are seeing it over and over.

You want to pick a show that people actually watch rather than briefly pausing at while channel surfing. The stations have charts that show their demographics and market penetration. They have account representatives to help you craft a strategy within your budget. But keep in mind that the station employs these representatives, so they will be trying to sell you the ad and will not be objective about the competition.

If you have a larger budget you can hire an agency or media buyer to handle this work. The media buyer's fee is negotiable but frequently is established at 15 percent. If an ad is \$100 per spot, you pay \$85 to the station and \$15 to the media buyer. If you handle the media buys yourself, the station will sometimes sell you the same ad at the discounted \$85 and you could use the funds saved to buy more ads. There are, however, two reasons to use a skilled media buyer if you can afford it. Quality spots are sold on a first-come, first-served basis, but the

largest buyers are given a preference. If an agency is placing \$100,000 total advertising per month for all their clients, they may get the first call for optimum time slots. Specifically, a large buyer will have a chance at the slots inside the show, and a small buyer will be sold, for the same price, slots at the back when consumers change channels. The other reason to use a media buyer is they are more savvy about the demographic information. There are lies, damn lies, and then there are statistics, so buyer beware!

## Producing your ad

Now that you have identified a station where you can afford to buy a reasonable number of ads, you need to produce them. An ad can be produced for as little as \$1000. The stations can either help you with in-studio capabilities or refer you to relatively inexpensive production companies. Contact them, tell them what you have in mind and get a quote as to what they think it will cost to produce the ad(s). Public access cable may allow you to use their facilities to produce the ad.

Your minimum crew is a camera operator (lights and sound) and a director. You probably also need someone to help with make up and wardrobe. If you have staff able to be effective on camera, you can save money by not hiring an actor. If you have an on-camera spokesperson, be sure to select someone that you will be able to use for a while, because that person becomes a

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## TV Advertising

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part of your identity. You probably do not want to use your committee chair who rotates through every year or two and who may or may not be effective on camera.

If you are not hiring actors, do not expect your volunteers to be anything except themselves. On camera, even being yourself is harder than you might imagine. If you are not sure how people will perform, do a cheap screen test with your own video camera and clip-on microphone. You probably do not have a teleprompter, so have someone off camera holding cue cards for your talent to read. You will need to record at least a dozen takes, so that your spokesperson can get comfortable being on camera. Watch their performance on the television monitor to see whether they are effective. Watch for things like stiffness,

particularly in the face, and nervous tics. If hands are visible what are they doing? Can you see nervous energy such as a bobbing head? Don't screen test someone who you cannot say "no" to, such as your bar association president.

Even on a modest budget, you do not want your advertisement to look unprofessional.

The way you compensate for a modest budget is to not to try to exceed the quality of your equipment and talent. Keep it simple—one camera, individual mikes, free location or studio, and simple edits and staging.

Higher production costs mean better quality. For a higher price, you can use more sophisticated cameras, multiple cameras, better sound, and lighting. Also, as a general rule, better directors come with higher standards and higher budgets. Since most of us operate on tight budgets, this is an interesting fact that we will not be able to test.

### Tips on producing the ad

Careful planning and attention to detail in producing the ad can yield a quality result even on a limited budget. Here are some tips to consider regarding production:

- **Keep it simple.** Use a single location, a site that can be isolated from unwanted traffic.
- **Be very organized.** Once you start shooting, you are spending most of your production budget, and you do not want people standing around wondering what's next. Planning is cheap, re-shooting is expensive. Have a pre-production meeting to map out the shoot and estimate timing.
- **Use a free site and volunteer actors.** Use a site that you do not have to pay for, such as a

closed restaurant, a studio or someone's house. Use the staff or other willing volunteers you have tested.

- **Watch out for overtime.** Do not shoot at unusual hours, as you will probably have to pay time-and-a-half or double time if you use professionals, and these numbers can add up quickly.
- **Shoot two "keepers".** Video-tape (unlike film) is cheap. Shoot efficiently but record the rehearsal—sometimes the first take is the best. Try to get two "keepers" per shot, one for insurance.
- **Be sure to do cut away shots** in case there is something that has to be fixed in the editing suite. Strategically bringing in a graphic can sometimes hide a small shooting flaw.
- **Always look through the monitor to see what the camera sees.** The camera distorts reality. What looks fine in context is flattened on the monitor and the camera adds ten pounds. For example, actors need to be closer together than in real life to look natural.
- **Monitor sound carefully through headphones.** Usually the camera operator will wear headphones and check for sound problems. Before you strike the set for the scene be sure to listen to the ad for sound quality. Professional microphones are very sensitive and it is easy to pick up distracting background noises.
- **Always look for shadows.** They are a distraction, and the lighting needs to be adjusted to remove them.
- **Respect a hot set.** Once you start to shoot, no one is to move the props. If a prop is being

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## Language Barriers

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will fall into place. Instead of devising ways to cause immigrants to call the LRIS, we need to overcome our fears, make the first call, and keep calling, helping one person at a time. The resulting trust, firmly rooted, will perennially bear fruit.

**Clara Schwabe** is a managing attorney of the Legal Referral Service of the Association of the Bar of the City of New York, and New York County Lawyers Association.

## TV Advertising

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used, it must be marked so that it is always in the same place. This allows you to splice two different takes together if necessary.

- **Haste makes waste.** Take your time to frame the shot. Look carefully through the monitor to ensure that there is nothing in the shot that should not be there, such as a purse, make-up kit or electrical cords.
- **Keep the concept simple.** Script the ad so that it can be shot with one camera with a mini-

mum amount of extra lighting.

- **Use a teleprompter,** especially if you are not using actors. Non-actors tend to look at the ceiling when they are trying to remember their lines.
- **Shoot multiple ads.** The unit price per ad goes down if you can shoot two or three ads at once, because you have reduced your set-up and tear down times. It also gives you some insurance. If one of the ads is not satisfactory, you still have something to air.
- **Vet the ad.** You should have your scripts pre-approved before you set up the shoot. After the ad has actually been

produced, show it to a few critical decision makers to be sure that there is not an unintended nuance or insult in the ad. These steps can save you a lot of embarrassment and pounds of apology letters.

Through careful budgeting and strategic targeting and buying, television advertising is within reach of LRIS programs, even those on a tight budget. With proper planning and resource allocation, your program can produce ads that make a difference.

**Marion Smithberger** is lawyer referral director at the Columbus Bar Association.

## Pennsylvania

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### **Dialogue: What helped the court to change its mind?**

**Azen:** The court was persuaded by the success of the bill in the House, including the co-sponsorship of 114 legislators across party lines. That demonstrated the depth of support for legal services. Then Rep. Brett Feese, our primary sponsor in the House, championed the bill in the Senate. Of course, the court was also persuaded by the need for funding for civil legal services.

**Milkes:** Our partnership with the court strengthened during the process. We had not identified it as strong for this initiative at the beginning, but it grew along the way.

**Trevaskis:** This was a very typical legislative process. The House passed a bill calling for a \$5 surcharge exclusively for legal services. When the bill went to the Senate, it became part of a bigger bill that would apply a surcharge to a broader range of filings. The total share of funding for legal services remained intact, but that share was phased-in over a four-year period.

### **Dialogue: What were the greatest keys to your success?**

**Trevaskis:** The most important part was the coalition of supporters we built. We needed to shift emphasis throughout the initiative—at times calling on the legal services community, other times calling on the trial lawyers. Having a broad representation of groups on our task force meant that we had their support and could ask for help when we needed it.

**Milkes:** Collaboration was key to our success. Pennsylvania Legal Services' partnership with PBA goes back a long way. In 1989, the first task force documented the need to increase service for clients, and set forth ideas about how to increase the funding.

### **Dialogue: What is the impact of this initiative?**

**Trevaskis:** To now have a funding stream dedicated to legal aid is a great development for Pennsylvania. The legacy of building a coalition and getting this Act passed has promise for the future for other potential initiatives.

*Read about Illinois' attorney registration fee add-on, which is a new source of funding for legal services administered by Illinois' IOLTA program. Visit Dialogue online at [www.abalegalservices.org/dialogue/03winter/dial\\_03winteriolta.html](http://www.abalegalservices.org/dialogue/03winter/dial_03winteriolta.html)*

## From the Chair...

PHOTO: ABA/Chris Fitzgerald



by *Mary K. Ryan*  
Chair of the Standing Committee  
on the Delivery of Legal Services

Each year the Standing Committee on the Delivery of Legal Services presents the Louis M. Brown Award for Legal Access to a program or project that advances access to those of modest means in innovative ways. The Brown Award is one of the ways the committee encourages the organized bar and legal profession to embrace progressive avenues of access. Prior award recipients include the AARP Hotline for the Elderly, the Arizona Superior Court's Self-Service Center, and the Civil Justice, Inc. project of the Law School Consortium, not to mention Legal Grind, a coffee house serving Java and Justice.

The 2003 Louis M. Brown Award was presented at the ABA Midyear Meeting to the Self-Represented Litigant Task Force of the State of Maine. The Task Force grew out of a national conference on pro se coordinated by the American Judicature Society and co-sponsored by the Delivery Committee. The Task Force's mission has been to develop programs and craft policies to meet the needs of self-represented litigants. But unlike similar entities, the Maine Task Force has centered much of its work on the role of lawyers in self-help support.

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## Delivery Developments

### Web Site Guidelines Approved by ABA

The ABA House of Delegates passed a resolution adopting the Best Practice Guidelines for Legal Information Website Providers during the ABA Midyear Meeting. The guidelines were developed and advanced as a collaborative effort of the Standing Committee on the Delivery of Legal Services and the e-lawyering Task Force of the Law Practice Management Section.

The guidelines are designed to give direction to those who provide the public with legal information over the Internet, including government agencies, bar associations, the judiciary and non-profit entities, as well as law firms and dot-com businesses. The ten guidelines encourage Web site providers to adhere to best practices such as including contact information, alerting viewers about jurisdictional differences, and informing viewers about the use of information gathered by the site provider.

The Delivery Committee encourages bar associations, law libraries and other interested entities to help circulate the guidelines, which are available online at [www.elawyering.org/tools/practices.shtml](http://www.elawyering.org/tools/practices.shtml)



### Task Force Receives Comments on the Definition of the Practice of Law

The Task Force on the Model Definition of the Practice of Law heard comments on a proposed definition at the ABA Midyear Meeting in February. ABA President Alfred P. Carlton, Jr. created the task force last fall and charged it with the task of creating a model definition that could be adopted uniformly by the states. Dozens of organizations and individuals have submitted comments, with 15 presenters giving testimony reacting to the proposed draft.

The Delivery Committee was among those entities critical of the proposed definition. The committee stressed that the functions listed in the draft, such as drafting, negotiating and counseling, were too broad, while the exceptions were too narrow. The proposal would exclude many acceptable functions involved in daily commercial transactions. The committee is concerned that lawyers do not, and perhaps would not, provide these services economically to those of low and moderate incomes. Therefore, many people would not have access to the services at all.

The committee recommended an alternative definition designed to enable lawyers to be the service provider of choice in a marketplace that promotes competition.

Complete information about the Task Force, including the proposed definition, the written submissions and a transcript of the hearing, is available at [www.abanet.org/cpr/model\\_def\\_home.html](http://www.abanet.org/cpr/model_def_home.html)

## A Tool for Ensuring Legal Readiness

A legal checklist, if used when people enter the Armed Forces and every time they change duty stations, will do much to ensure all service personnel are legally prepared for the uncertainties of military life, including untimely death. The support of the Ameri-

can Bar Association and the LAMP Committee for making legal assistance an entitlement is focused overwhelmingly on making such legal preparedness a reality for every service member. The following checklist, which is completed by service members,

illustrates the elements of a basic but comprehensive approach to legal preparedness. Variations of the checklist have circulated in the military legal assistance community for years. The checklist that follows was redrafted by the LAMP Committee.

<b>Legal Readiness Checklist</b> (shaded boxes, when checked, signal need for legal assistance)	<b>YES</b>	<b>NO</b>
1. Do you have a will?		
A. Have you reviewed your will within the past 36 months?		
B. Have you had a recent, significant family event such as marriage, divorce, birth of child, adoption of child, or death?		
C. If you are married, does your spouse have a will?		
2. Does your spouse (or parents) know where your important papers are kept?		
3. Do you have questions about state or federal income tax requirements?		
4. Do you have questions about voting?		
5. Motor vehicle:		
A. Do you have liability insurance coverage for personal injury of at least \$25,000/\$50,000 on your motor vehicle?		
B. Do you have liability insurance coverage for property damage of at least \$10,000 on your motor vehicle?		
C. Is your motor vehicle registered in your state of domicile? (usually the state where you enlisted)		
D. If you have children under 4 yrs of age, do you have a child restraint device for each such child for your motor vehicle?		
E. Is your motor vehicle registered in the state where you reside?		
F. Has your motor vehicle been inspected within 12 months by your state of domicile?		
G. Has your motor vehicle been inspected within 12 months by the state where you reside?		
H. Is your motor vehicle registered in your name alone?		
I. Are your motor vehicle registration and drivers license from the same state?		
6. Do you have life insurance (do not count SGLI)?		
7. Do you have household goods/personal property insurance?		
8. Do you have any questions about firearm registration, storage, etc?		
9. Do your children have Social Security numbers?		
10. Have you changed or attempted to change your domicile in the past 12 months?		
11. Have you ever given anyone a power of attorney?		
12. Do you have debt/credit issues?		
13. Are your monthly credit payments more than ½ of your monthly take-home pay?		
14. Have you purchased anything on installment during the past 6 months (motor vehicle, TV, washer, etc)?		
15. Do you expect to be transferred within the next 12 months?		
16. Have you purchased a home/land?		
17. Have you purchased land for an investment?		
18. Have you purchased a timeshare?		
19. Have you purchased a vacation campground?		
20. Did you sell your home prior to assignment to this command?		
21. Have you received a copy of our command's "memorandum for reporting personnel" about legal assistance?		
22. Have you rented quarters in the area?		
23. Were you married within the past 12 months?		
A. Are you separated from your spouse because of marital problems?		
B. Are you seeking marital counseling?		
24. Are you retiring within 12 months?		
25. Are you involved in any type of civil/criminal litigation or lawsuit?		

A ready-to-use version of the checklist can be accessed on the LAMP Committee's Web site at [www.abalegalservices.org/lamp](http://www.abalegalservices.org/lamp)

## From the Chair...



by David C. Hague  
 Brigadier General,  
 U.S. Marine Corps, Retired  
 Chair of the ABA Standing  
 Committee on Legal Assistance  
 for Military Personnel

“Yet, forasmuch as in all appearance the time of his dissolution draweth near, so fit and prepare him . . . against the hour of death.”  
 — from the *Book of Common Prayer/ The Visitation of the Sick*.

Readiness-related legal assistance for every service member is an attainable goal. A fleet, corps, division, or regimental commander or commanding officer of a ship need only say “I want everyone under my command to be legally prepared for whatever the future may hold, including deployment, injury, illness, and death” and the means would be found to make it happen. We would see a larger and more lasting result if the Chief of Staff of the Army and other service chiefs said that everyone for whom they are ultimately responsible must have a basic estate plan and other necessary legal support. Hearts and minds would change in a moment. Legal preparedness would assume its rightful place as a readiness-related requirement along with medical, dental, and physical fitness. In the harsh reality of limited resources and shifting priorities, however, only a

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## Change the Law: It's Time For Action

The Standing Committee on Legal Assistance for Military Personnel has drafted a revised version of 10 USC §1044 that, if made law, would make legal assistance an entitlement. The change is reflected in paragraph (a) below, which shifts the provision of legal assistance for active duty personnel from the existing aspirational standard of “may” to the entitlement standard of “shall.” Currently legal assistance is a benefit provided only “subject to the availability of legal staff resources.” See From the Chair... for more discussion of why it is timely to take this action. On page 25, RADM Michael F. Lohr discusses why this action is not necessary.

The proposed revision also includes language that would explicitly authorize military lawyers to provide legal assistance wherever assigned without regard to the state in which they are licensed to practice and the domicile of their clients. These changes are reflected under paragraph (f)(1) and (2).

In addition to the two major changes noted above, the LAMP Committee’s revision incorporates several language and numbering changes. Due to space constraints, however, the revision below is not shown in a legislative style/redline format that illustrates what language was removed or altered from the current version of §1044. Visit the LAMP Committee’s Web page at [www.abalegalservices.org/lamp](http://www.abalegalservices.org/lamp) to view the revision in redline format.

Draft revision of  
 United States Code Title 10 §1044. Legal assistance

**(a)** The Secretary concerned shall provide legal assistance in connection with their personal civil legal affairs to members of the armed forces who are on active duty.

**(b)** Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to the following persons:

**(1)** Members and former members entitled to retired or retainer pay or equivalent pay.

**(2)** Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

**(3)** Members of reserve components not covered by paragraph (1) or (2) following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary of Defense and for the Coast Guard, the Secretary of the department under which the Coast Guard is operating), for a period of time, prescribed by the Secretary concerned, that begins on the date of the release and is not less than twice the length of the period

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## From the Chair...

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change in the law will ensure that service personnel and their families are legally protected against the exigencies of military service.

I once again, as I have in six of my 12 columns to date, make the case for amending Title 10, United States Code, § 1044 to guarantee legal assistance for military personnel. I do so with abiding belief in the 30-year-old American Bar Association policy that our service personnel are entitled to legal assistance support.

Elsewhere in this issue of *Dialogue* are the proposed changes to 10 USC § 1044 that will make legal assistance an entitlement, rather than the benefit that it is currently, namely legal assistance provided “subject to the availability of legal staff resources.” The proposed change also includes language that would explicitly authorize military lawyers to provide legal assistance wherever assigned without regard to their state of licensure or the domicile of their clients. By the latter action we will banish forever the specter of unauthorized practice of law from military legal practice.

A legal readiness checklist is also contained in this issue of *Dialogue*. The checklist, if used when people enter the Armed Forces and every time they change duty stations, will do much to ensure all service personnel are legally prepared for the uncertainties of military life, including untimely death. This tool is only one example of what can be done to ensure that legal preparedness is integrated into the same routines as medical and dental checkups.

The primary responsibility

for commanders is to prepare service members for any eventuality including to “[F]it and prepare him ... against the hour of death.” We are the best in the world at preparing our warriors to live healthy, safe, and socially responsible lives. We require regular physical fitness tests and medical and dental examinations, and provide continuous occupational, safety, and health instruction. We teach personal hygiene and fiscal accountability. Yet, we do not apply the same high standards to our warriors’ “legal health?” We do not require regular legal evaluations. Except for the frenzied efforts just prior to deployments, we do not seem to care if those who need wills and powers of attorney have them or not. Nor are we bothered that we do not know a service member’s wishes concerning continued life support when he or she is faced with no chance of recovery from a wound, illness, or injury.

Individual legal needs vary but some are universal. The single, first-term enlisted person and officer needs less legal support than the married, mid-career service member. Everyone, however, should have a living will that clearly expresses his or her desires regarding medical care if in a terminal or vegetative state. Furthermore, all married personnel should have wills. Those with children should have wills with testamentary trusts that identify guardians for their children and trustees who will ensure their children are financially supported until they reach majority. Finally, just about everyone should have some form of a durable power of attorney.

Commanders, legal assistance attorneys, and others responsible for the welfare of service mem-

bers should be able to say: “I have done everything possible to ensure that the service members and service member spouses for whom I am responsible have, at a minimum, up-to-date beneficiary designations for Serviceman’s Group Life Insurance (SGLI) and any other life insurance, a will, a living will (advance medical directive), and a durable power of attorney.”

In the civilian world, such planning is an individual concern, but in the military the individual and institution must share responsibility for legal preparedness just as they do for combat and occupational training and medical, dental, and physical fitness. Leadership failure is the only way to describe a soldier, sailor, airman, or Marine being legally unprepared for lengthy separation from family, disabling injury, or death. In such cases a commander and entire chain of command have been derelict. Additionally, the responsible staff judge advocate and the service legal community have failed in an important part of their mission.

Legal assistance has the potential to reach and enrich the military community like few other benefits of service to country. Changing the law to put legal assistance in the same category of other, often less important, benefits is only the first step. Beginning at officer and recruit training, service members must be indoctrinated on the importance of personal legal readiness. The message must be delivered continuously just as occurs in other areas of personal readiness by annual dental and medical screenings, physical fitness tests, and weapons re-qualifications. The vast and talented military legal community

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## In Response: A TJAG Offers Another View on Making Assistance an Entitlement

by **RADM Michael F. Lohr**

After reading Brigadier General David C. Hague's "From the Chair" article in the Fall 2002 issue of *Dialogue*, I am concerned that his comments do not accurately reflect the commitment today's Navy places on providing quality legal assistance to our sailors and their families. The Navy leadership, commanders, and all Navy judge advocates understand full well the importance of individual legal preparedness to readiness, morale, and quality of life. We're working 24/7 around the world to make this happen.

Legal assistance is one of the primary missions of the JAG Corps and a core competency for all Navy judge advocates. The Navy JAGC provided over 2,745 preventive law briefs to 81,320 Navy and Marine Corps personnel and client services to 172,473 clients in fiscal year 2002, over 66 percent of the Navy's population. The number of clients assisted and the services provided continues to increase even though the population of the Navy has decreased significantly since we first started

providing legal assistance services. We ensure that every sailor has easy access to "readiness related legal assistance" before he or she deploys including wills, advanced medical directives, and powers of attorney.

Although legal assistance is not mandatory under 10 U.S.C. § 1044, the JAG Corps has expanded services to sailors and their families in many areas to include consumer affairs, adoptions, and estate planning. We are continually improving our legal assistance services to military members. With many states implementing expanded legal assistance programs, Navy and Marine Corps lawyers will be able to provide more extensive legal services to sailors in each individual case.

I welcome initiatives that will make legal assistance more available to our people within the context of a constantly evolving mission. However, making legal assistance an entitlement requires thorough discussion and debate. Foremost, this may hamper our

ability to flex resources and keep pace with the changing needs of the Navy. For example, at the present time, nearly two dozen JAGs are forward deployed, away from their "normal" assignments supporting the Global War on terrorism, various contingency operations, War Crimes Commissions, and the like. If the JAG Corps is to provide timely, competent and vital legal services to sailors and their families, we must be able to prioritize legal assistance services amongst all legal services.

We look forward to continuing to work with the ABA to enhance the provision of legal services to all active and reserve military members so that they will all be "legally prepared" to deploy at a moment's notice. The JAGC has been and will always be energized to provide the best legal assistance services to Sailors and their families.

**RADM Michael F. Lohr** is the Judge Advocate General of the United States Navy.

### From the Chair...

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of lawyers, paralegals, and legal support staff must be energized to meet the challenge with fresh thinking and strong leadership.

Command-sponsored legal

assistance programs should effectively reach every adult in the military family: every enlisted person, every officer, and every spouse. They must each be periodically interviewed in a confidential setting by a legal assistance provider to determine their need for a will, living will, durable power

of attorney, and other legal services. Only then will commanders have fully discharged their duties, the legal community fulfilled its mission, and the Armed Forces—entities that believe people are their most valuable resources and espouse covenant leadership—be truly ready.

## Change the Law

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served on active duty under that call or order to active duty.

**(4)** Dependents of members and former members described in sections (a) or (b).

**(5)** Other such persons authorized by the Secretary concerned.

**(c)** Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction

of the Secretary is responsible for the establishment and supervision of legal assistance programs under this section.

**(d)** This section does not authorize legal counsel to be provided to represent a member or former member of the uniformed services described in subsections (a) or (b), or the dependent of such a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

**(e)** The secretary concerned shall define "dependent" for the purposes of this section.

**(f)** Legal assistance provided under this section, as well as sections 1044a—1044d, means legal advice provided by counsel who are:

**(1)** A judge advocate (as defined in section 801(13) of this title); or

**(2)** a civilian attorney serving as a legal assistance officer under this section, and section 1588. Counsel providing legal assistance pursuant to this section and sections 1044a—1044d shall be permitted to do so in geographic locations, including states in which they are not licensed, at the direction of the Secretary concerned.

### Delivery

## From the Chair...

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The Task Force advanced "unbundled" legal services, allowing self-represented litigants to obtain quality legal advice on a limited and affordable basis. Unbundled services are provided when a lawyer partners with a client to accomplish discrete tasks rather than to provide complete representation.

The Task Force drafted changes to Maine's ethics and civil procedure rules, designed to enable lawyers to participate in the delivery of unbundled services. In addition to the rule changes, the Task Force actively promotes unbundling as a method of expanding the practice of law. In essence, this group of justice leaders has come together to pave the road to reintroduce lawyers as a resource to self-represented

litigants. The Task Force is comprised of leaders from the judiciary, the state bar association, the bar foundation, court administration and legal aid. Members have led continuing legal education seminars, encouraged unbundling panels in lawyer referral services, and advanced the development of a statewide roster of lawyers who provide unbundled legal services.

Three nominees for the Brown Award were chosen to receive meritorious recognition in this year's competition: the Burlington, Iowa, law firm of Beckman & Hirsch, P.L.C., which provides free simple wills through its web site; the Law Office Management Assistance Service of The Florida Bar, which provides consulting services on a wide variety of practice management issues to improve the effective delivery of legal services and enhance lawyer-client relations; and the law firm

of Hunton & Williams, which maintains law offices in economically depressed communities as part of its pro bono initiative.

The ABA Standing Committee on Delivery of Legal Services has produced a booklet describing the projects nominated for the 2003 Brown Award, titled "Profiles of Moderate Income Delivery Programs." The booklet is designed to stimulate innovative access to legal information, services and representation. It is available online at the committee's Web site at [www.abalegalservices.org/delivery](http://www.abalegalservices.org/delivery) or in hardcopy, by request to [whornsby@staff.abanet.org](mailto:whornsby@staff.abanet.org).

On behalf of the committee, I congratulate all of these award recipients. They share the spirit of Lou Brown, who spent over 60 years creating ways to advance affordable legal services to those of modest means.

## From the Chair...



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

The Open Society Institute has focused over the past nine years on the creation of a community of local programs linked by a shared set of values about what constitutes a just, fair and open society and by a common conviction that those marginalized by race, class, gender and poverty should be supported in their efforts to bring about change. We are grateful to have been a partner with OSI in advancing shared values and giving voice to important convictions about our society. As we approach the end of 2003, OSI will be adjusting its funding focus to give greater support to several international endeavors. As this transition occurs, it is important to recognize the vital work accomplished by our committee with OSI funding:

The Project to Expand Resources for Legal Services (PERLS) began in 1995 with funding from the Ford Foundation. When Ford shifted its funding strategies two years later, OSI stepped forward to offer ongoing support to preserve this project. PERLS has been able to continue to provide key technical assistance and information to advocates nationwide who labor in the vineyard of resource

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## Legal Aid Notes

### Gideon Hearings

The ABA Standing Committee on Legal Aid and Indigent Defendants is sponsoring a series of hearings throughout 2003 in honor of the 40th anniversary of the U.S. Supreme Court's landmark decision in *Gideon v. Wainwright*. The hearings will examine whether *Gideon's* promise of effective legal representation for poor persons accused of crime is being achieved throughout this country. The first hearing was held on February 7, 2003, in Seattle, Washington, during the ABA 2003 Midyear Meeting. Ten witnesses, drawn from the bar, the judiciary, public defender and other organizations in three states provided testimony about successes and failures that have resulted from efforts to assure compliance with the constitutional guarantee of counsel embodied by *Gideon*.

### State-by-State Legal Aid Funding Information Available

The ABA Project to Expand Resources for Legal Services (PERLS) has updated its database of states' legal services funding strategies and achievements. This information—compiling results from FY 2001 for most states—is available at [www.abalegalservices.org/sclaid/perls.html](http://www.abalegalservices.org/sclaid/perls.html)

As a result of economic conditions, the legal services funding situation in the states is very fluid. Advocates in many states are working hard to maintain current funding levels for legal services. However, legal services advocates in several states are mounting strong campaigns to obtain or increase their state funding. Kentucky has been successful in increasing legal services funding through an increase in the state filing fee surcharge; Oregon and Washington are awaiting the results of their own requests for increases in their filing fee surcharges. Delaware, Florida and Maryland are working on efforts to obtain or increase state appropriations. For more complete information on this year's legislative efforts, contact Meredith McBurney, Director, Project to Expand Resources for Legal Services, [mm8091@aol.com](mailto:mm8091@aol.com), 303/329-8091.

### LSC Funding for 2002-2003

On February 20, 2003, the President signed into law H.J. Res. 2, known as the Consolidated Appropriations Resolution, 2003. The \$397.4 billion bill, which includes 11 of the 13 annual appropriations bills, provides for a \$9.5 million increase for the Legal Services Corporation (LSC). This increase will prevent some of the drastic funding cuts in the states and service areas negatively affected by the reallocation of funding following the 2000 Census. Most local LSC-funded programs that would have experienced large reductions due to census-based reallocation will now see only about one-half the reduction that they would otherwise have suffered. The budget process for 2003-2004 will begin soon; the ABA and other advocacy organizations will continue to seek an increase in LSC funding. The ABA will recommend that LSC receive an increase of \$50.5 million in that funding year.

## From the Chair...

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development for civil legal services programs. The Project has become one of the most important sources of data on the success of funding strategies. I have no doubt that this information—which would never have become available without OSI support—has contributed significantly to the phenomenal growth in aggregate resources available for civil legal services across the nation.

The ABA Gideon Initiative—also begun with OSI funding—has provided key catalyst grants for projects in four selected states. These projects reached out to non-traditional indigent defense stakeholders in each state to assist in developing innovative approaches to systemic improvement. A grant to Louisiana sought to build public and political consensus for reform of the juvenile indigent defense system, to ensure that young people are both adequately represented and given meaningful opportunities for rehabilita-

tion. Another grant, to the Michigan Public Defense Task Force, supported public hearings to discuss how public defense services should be improved, leading to development of a “Model Plan for Public Defense Services in Michigan.” A grant for the “Mississippi Gideon Enforcement Project” sought to secure state funding for the entirely county-funded indigent defense systems in Mississippi by: providing support for ongoing systemic litigation; conducting necessary research; and educating the public on the need for improved indigent defense representation for adults and juveniles. Lastly, a grant to the Virginia Indigent Defense Coalition supported the efforts of a broad coalition of criminal justice system stakeholders and community leaders to develop and implement a long-term campaign for indigent defense reform in Virginia. ABA Gideon Initiative grantees have succeeded in energizing community organizations and other non-defense attorney groups to join the fight to improve public defense services in these states.

The Virginia Indigent Defense Evaluation Study, begun just this past month, will gauge the degree to which the indigent defense system in Virginia delivers competent, effective legal representation. The ABA, OSI, the National Association of Criminal Defense Lawyers (NACDL), and the law firm of Covington & Burling have all agreed to contribute funding toward this important effort. The study will involve on-site collection of quantitative and qualitative data; analysis of that data; collection and review of existing studies and information; and preparation of findings, and recommendations for improving Virginia’s indigent defense system. We are optimistic that significant improvements can be achieved.

These efforts would not have been possible without the funding provided by the Open Society Institute. Of equal importance has been the Institute’s presence in the community as a source of inspiration and leadership toward solutions to the many challenges confronting those of us seeking access to justice for all.

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