

Dialogue

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"Organizations that have a volunteer coordinator, offer a wide range of assignments, view the volunteers' work positively, and use volunteers to recruit new volunteers and represent the organization experience higher net benefits from their volunteer programs."
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Create a Magnet: Using Empirical Studies to Draw Lawyers to Pro Bono Service

by *Deborah A. Schmedemann and Steven B. Scudder*

*Statistics may be defined as "a body of methods for making wise decisions in the face of uncertainty."
~W. A. Wallis*

Empirical studies and the statistics they produce can yield helpful insights. As the above quotation suggests, careful analysis of statistical studies and their findings permit us to gain vital insights and improve upon our work. There have been a number of empirical studies conducted in the pro bono arena recently. This article focuses on a few of these and reflects on the opportunities they present for improving participation in and support for pro bono legal services programs.

The ABA study

In August 2005, the ABA Standing Committee on Pro Bono and Public Service released *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers*, a wide-ranging survey of 1,100 lawyers in private practice, corporate counsel, government, and academic settings.¹ In an encouraging finding, 93 percent of the respondents believed that pro bono is something lawyers should do.

According to the study, in 2004, 66 percent of the respondents surveyed performed "Tier 1" pro bono, such as free legal services to people of limited means or organizations serving the poor, and an additional 18 percent performed "Tier 2" pro bono, such as free services to other entities and reduced rate services. An additional two percent did other work meeting the lawyer's personal definition of pro bono and 14 percent did no pro bono work in the prior year. Respondents performed, on average, 39 hours of Tier 1 and 38 hours of Tier 2 work. In addition, 43 percent of the respondents contributed an average of \$276 to legal services agencies or pro bono programs.

Supporting Justice also provides important insight into which lawyers are performing pro bono. Respondents in private practice participated at twice the rate (73 percent) of corporate counsel (35 percent) and government lawyers (33 percent). Older lawyers (61 and older) participated at a higher rate (79 percent) than younger lawyers (56 percent for 21-40 year olds; 59 percent for 41-60 year olds).

In addition, *Supporting Justice* sheds light on why lawyers do and do not do pro

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2006 Equal Justice Conference



U.S. Representative Chaka Fattah (D-Pennsylvania) delivered the keynote address during the closing plenary at the 2006 Equal Justice Conference in Philadelphia. Turn to page 11 for more coverage of the conference.

DIALOGUE

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Empirical Studies

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bono. The major motivators were a sense of professional responsibility, personal satisfaction, and recognition of the needs of the poor. The major de-motivators were a perceived lack of time, billable hour expectations and other forms of employer discouragement, and a lack of expertise.

After the JD

Information about new lawyers—a key segment of the profession to involve in pro bono, according to the ABA study—is provided in *After the JD: First Results of a National Study of Legal Careers*, a joint effort of the National Association for Law Placement and the American Bar Foundation.² The authors plan to study, over ten years, a cohort of 5,000 lawyers who entered practice in 2000.

The first survey, conducted after the lawyers had been in practice two to three years, revealed wide variation by practice setting in pro bono participation rates and median annual hours for those participating. Lawyers in the largest firms (101 or more lawyers) and solo practitioners participated at relatively high rates (up to 81 percent and medians of 30 to 45 hours respectively). Lawyers in smaller firms and business participated at intermediate rates (around 50 percent and 20 hours). Government lawyers participated fairly little (18 percent and 10 hours). About one-fifth indicated that they would like more opportunities for pro bono work; this figure was one-quarter for lawyers in small to mid-sized firms.

This survey also explored the new lawyers' job satisfaction. Opportunities for pro bono ranked 15 out of 16 in a series of questions

about job satisfaction. (The lowest-ranked facet was performance evaluation process.) In general, lawyers who do little pro bono are least satisfied with the social value of their jobs. On a more positive note, lawyers who do more pro bono work are less likely to report that they would like more training.

Law student studies

How do *future* lawyers think about pro bono? A recent study conducted at William Mitchell College of Law involved about 225 second-year students. The results provided answers to several key questions:

► **What types of pro bono opportunities might future lawyers find attractive?** Listed from most to least appealing, they are: providing brief advice to individuals, advising a public interest organization, litigating a precedent-setting case, representing an individual in litigation, making presentations on legal topics in the community, and making a financial contribution to a legal aid agency.

► **What kind of support might future lawyers desire?** Respondents were asked to pick the three most desired types of support from a list of nine. Nearly two-thirds of the respondents wanted access to a staff attorney or experienced co-counsel for the first case; about one-half wanted a manual on the pertinent law and procedures. About one-third wanted sample documents or training on the law and procedures; one-fifth wanted an opportunity to shadow an experienced lawyer; one-seventh wanted training in pertinent skills; and about one in ten wanted a mentor in private practice or education about the life situations of low-income people.

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From the Chair...



by L. Jonathan Ross
Chair of the ABA Standing Committee
on Pro Bono and Public Service

My intent with this column in the past has been to share with you some of the important work of the Standing Committee on Pro Bono and Public Service and to highlight important trends in the pro bono field. I find myself this time, however, needing to look backward and to share some thoughts and reflections about a friend, colleague and pro bono hero: Tanya Neiman.

Tanya passed away recently, leaving a deep and lasting legacy in her city, state and throughout the country. She shared her heart, dedication and genius with everyone and anyone who would listen. Anyone who did always came away a little more excited and energized about their work, and with at least a few new ideas to try out in their own programs and communities. Others have written elsewhere about Tanya's profound impact on the pro bono and legal services communities. I want to tell you just a little about what Tanya meant to the ABA Pro Bono Committee and our work.

Tanya and I partially overlapped terms on the Committee and I truly enjoyed spending those working weekends with her. She was always engaged and focused; for Tanya, making a commitment

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Responding to the Hurricanes

by Anthony H. Barash

In late August of 2005 the world watched as Hurricane Katrina ravaged the Gulf Coast, only to be followed within weeks by Hurricane Rita. The local and national legal communities reacted, often heroically, to these unprecedented events.

Faced with immediate critical needs for themselves, their families and their professional colleagues, lawyers in the region nonetheless began marshalling basic survival and legal assistance information for victims. FEMA Legal Assistance Disaster Recovery Centers (DRCs) and call centers were established and staffed by the ABA Young Lawyers Division and the state bar young lawyers divisions in the immediately affected states. With a remarkable response by willing but often untrained volunteers, they addressed both logistical and substantive issues.

But there was a shortage of transportation, room and board, office space and supplies, and serious and complex issues impeded deploying, housing and providing for volunteers. Communications were spotty at best as DRCs and volunteers needed to be kept abreast of rapidly changing situations. Training and reference materials, especially in key areas of immediate concern, such as insurance, mortgage obligations, landlord/tenant, domestic relations, creditors rights and bankruptcy, had to be prepared, double checked and updated regularly to reflect constantly changing real world events and developments and then distributed to DRCs and volunteers.

The hurricanes devastated local legal service programs, buildings and staff and the legal services infrastructure in impacted areas, compounding the challenge of providing legal assistance to affected persons.

Facilitating coordination was critical to ensure that legal services providers, private lawyers and law firms, bar organizations, law school faculty and students, and the judiciary—many of whom were themselves severely impacted by the hurricane—were all involved in legal services delivery efforts. Ongoing needs assessments and mid-course corrections were imperative in this dynamic, chaotic and kaleidoscopic environment.

Those most immediately affected by the hurricane were disproportionately poor, elderly, sick, and disabled. They were joined by a whole new poverty population created by the disaster, people whose experience with poverty and capacity to cope with personal and financial disaster was untested.

From past experience in large-scale disasters, legal services providers and pro bono coordinators knew that legal issues and legal assistance needs would surface slowly, over a matter of months, while out-of-state pro bono volunteers' interest in helping would peak soon after the event. That interest had to be maintained over an extended period of time, both to match the volume of emerging cases and issues and to give the local legal services and pro bono communities sufficient time to develop the infrastructure for managing the volunteer effort.

The national response

Meanwhile, at the national level, the response of the American legal community was immediate and significant. ABA President Michael S. Greco

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From the Chair...

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to serve meant being completely present in that service. She displayed that important trait not only at the meetings themselves but at our meals and social events. Words cannot describe the joy on her face when she bowled a strike at one of those Committee outings!

Looking over past meeting minutes, both when I was on the Committee with Tanya and not, I was not surprised to discover that her fingerprints are all over the current state of the Pro Bono Committee's activities and projects. Here are just a few of the things she either set in motion or enhanced during her term:

- Tanya chaired the Committee's Outreach Working Group. She pushed the Committee to develop ideas for bridging the gaps between the pro bono and legal services communities, developed and helped to implement a strategy for raising the profile of pro bono, focused us on ways to reach out to diversity bar associations, and activated the Committee's efforts to reach bar leaders with the pro

bono message at national, regional and state bar meetings.

- She served on the design team of the ABA/NLADA Equal Justice Conference. In 2003 she was co-chair of that group. Her impact on the content, structure and scheduling of the conference was profound. She reminded us over and over that the conference will be more likely to improve if we don't carry over assumptions from year to year. Tanya helped the conference planners appreciate the value of stripping the conference down to its core principles each year and building a new conference around those principles in light of current needs in the provider and client communities.

- Tanya reminded us to keep our own standards consistent and high about what counts as pro bono and about the quality that should be expected of pro bono programs across the country.
- After September 11 Tanya played a very active role in New York City helping to coordinate the response of the provider community. The lessons she learned from that experience provided her, and us, with important guidance about

the role of the ABA and the Pro Bono Committee in future disasters.

- Tanya believed that collaboration was critical to fully and effectively meeting the legal needs of the poor and had little tolerance for turf battles and tension that only interfered with the important work that should be done. She helped the Committee identify opportunities where it could have an impact in developing relationships, using its resources to provide information to the provider community and intervening when necessary.

During Tanya's time on the Committee she celebrated her 20th year as director of the San Francisco Bar's Volunteer Legal Services Program. The presentation she made describing the history and accomplishments of her program during its history—and hers—was inspiring. Having her as a member of the Pro Bono Committee was a gift that kept on giving. We were fortunate to have had the benefit of her history, knowledge, connections and energy and look forward to continuing to promote her ideals and vision.

Empirical Studies

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► **What types of invitations to participate might be the most effective?** The 2L students were asked to respond to a series of scenarios, each containing a particular ethics rule on pro bono and a particular invitation to participate in a wrongful eviction case. Very clear patterns emerged:

- A rule requiring pro bono service was more persuasive than a rule requiring reporting of hours served (but not actual service), or a rule setting a pro bono aspiration. The reporting rule was more persuasive than the aspiration rule if the invitation to participate came from a partner or friend, but not when the invitation to participate came in a letter from the state supreme court chief justice and the president of the bar association.

- Across all types of professional responsibility rules, a letter from the state supreme court chief justice and bar association president was the least persuasive. A mention by a partner during a firm meeting and an invitation over lunch from a friend who works in the legal aid program were equally persuasive.

This study, and another involving the reaction of undergraduates to various pro bono messages, are

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Empirical Studies

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part of a larger research project funded by the Minnesota Office of Higher Education's Community-Service-Learning and Campus-Community Collaborations Program.³

Possible implications

When assessing the implications of a study, it is important to look at the collected data in context. For example, the responses in empirical studies of current law students' attitudes may differ from those of attorneys at or nearing retirement age. Implications seen in a study of current law students may be most useful in understanding how to work with new lawyers, not older ones.

A clear finding from these studies is that there is widespread endorsement of the professional principle of pro bono. Furthermore, both the ABA report and *After the JD* provide guidance on which segments of the bar have the greatest potential for significant gains in participation: younger lawyers, lawyers in government and business settings, and new lawyers in mid-sized law firms.

Taken together, the studies also suggest potentially fruitful recruiting messages and strategies aimed at employers, individual lawyers and pro bono programs:

For employers

- High billable hour requirements discourage pro bono
- Providing opportunities for pro bono service contributes to lawyers' job satisfaction
- Pro bono programs provide training and mentoring for lawyers—saving employers

A clear finding from these studies is that there is widespread endorsement of the professional principle of pro bono

money and giving lawyers the resources they need to succeed

For individual lawyers

- Pro bono is gratifying
- Pro bono permits lawyers to express their values and those of the profession
- Pro bono provides an opportunity to address real problems in our society
- Pro bono programs offer a wide range of support and opportunities to assure that individual needs are met and that lawyers gain new skills and experiences

For pro bono programs

- Targeting recruitment to particular segments of the profession may be more useful than widespread solicitations
- Providing free or reduced cost training, and making it easily accessible, is critical to recruitment efforts
- Offering mentoring and co-counseling as resources will help to bring in those lawyers who might otherwise be reluctant to participate
- Working directly with legal employers (such as law firms and corporate law departments) to help them make time avail-

able for their lawyer employees to do pro bono will benefit the employer, the individual lawyers and the program

Equally important to recruiting new pro bono lawyers is retaining volunteers over time. Social science research on volunteerism provides some useful insights. A study conducted for the Urban Institute establishes that three volunteer management practices correlate with volunteer retention: recognition activities, training and professional development, and screening and matching of volunteers to appropriate tasks. Organizations that have a volunteer coordinator, offer a wide range of assignments, view the volunteers' work positively, and use volunteers to recruit new volunteers and represent the organization experience higher net benefits from their volunteer programs.

Recruiting and retaining pro bono lawyers is neither quick nor easy. Understanding the empirical studies that have been conducted and building strategies around the data they have generated will significantly enhance efforts to involve more lawyers in pro bono.

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Steven B. Scudder is staff counsel of the ABA Standing Committee on Pro Bono and Public Service.

Endnotes

¹ *Supporting Justice* is available online at www.abaprobono.org/report.pdf.

² *After the JD* is available at www.abf-sociolegal.org/afterjd.html or www.nalpfoundation.org.

³ For further information about these studies, please contact the study director by email at dschmedemann@wmitchell.edu.

Hurricane Response

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quickly appointed the ABA Task Force on Hurricane Katrina to oversee the ABA's multi-faceted response. An ABA Staff Working Group swung into action, focusing on national coordination of needs assessment and response, through a variety of ABA sections and entities.

Technology played an important role, too. The ABA Center for Pro Bono developed and managed the ABA's online national lawyer volunteer recruitment effort. In addition, the ABA—in partnership with the Legal Services Corporation, the National Legal Aid and Defender Association and *probono.net*—developed the online Katrina Legal Aid Resource Center (www.katrinalegalaid.org) to complement and augment the ABA's disaster assistance Web site (www.abanet.org/katrina). The national legal organizations used these resources to provide training and reference materials, to offer information on assistance to victims including lawyers and law firms, to solicit lawyer volunteers, and to make available a database of legal services resources throughout the country.

Handling volunteers

Local legal services providers and pro bono coordinators in the region simply could not absorb the immediate outpouring of interest from volunteer lawyers around the country who wanted to help persons affected by the disaster.

In addition to the obvious and pervasive logistical issues inherent in managing significant numbers of volunteers, including both lawyers and law students, some obvious technical and legal problems had to be resolved. For

example, lawyers who wanted to come to the region confronted unlicensed practice of law issues. In due course, both the Mississippi and Louisiana Supreme Courts adopted emergency orders permitting out-of-state lawyers to provide pro bono legal services in those states under the auspices of recognized local legal services and pro bono programs. And conversely, many other states adopted emergency orders to permit displaced lawyers from Louisiana, Mississippi and Alabama to practice, enabling them to assist evacuees as well as to re-establish their practices in certain cases.

Rebuilding

It has taken many months for the local legal services providers and pro bono programs to re-group. With financial assistance from resources across the country, including many individual lawyers, law firms and bar associations, the legal services community has made major progress in rebuilding its facilities, technology and, most importantly, its personnel to address the escalating needs of persons of limited means in their service areas.

In both Mississippi and Louisiana, the generosity of the national legal community has resulted in the funding necessary to hire statewide pro bono volunteer coordinators. A gift of \$75,000 from the ABA Section of Business Law in March supported the hiring of Karen Lash as the statewide disaster legal assistance pro bono coordinator for Mississippi. With financial assistance from the Minnesota law firm of Robins, Kaplan, Miller and Ciresi, and other resources, Monique Drake was hired as the statewide disaster legal assistance pro bono coordinator for Louisiana.

Planning and preparation

So, even as legal resources were and continue to be deployed to respond to the needs of Katrina's and Rita's victims, what has the legal community at large learned?

First of all, we must plan for disaster. We must maintain and enhance the organizational networks linking national/local, national/national and local/local response efforts. Web sites posting useful training and reference content and links to helpful resources and information are vital, but not necessarily accessible during and immediately after a large-scale disaster. They must be augmented with relevant, user-friendly hard-copy materials that can be delivered to the scene as quickly as possible. Electronic mailing lists and other communications to network interested parties are important tools for managing and accessing a database of volunteers and other resources.

We also must be prepared to bring human resources to the assistance of our colleagues in places hit by disaster, to assume interim management, coordination and technology responsibilities while those immediately affected recover and re-group. This includes coordination between national and local responses, efficient identification and allocation of resources and working groups, such as state-wide pro bono coordinator projects, development of new resources to respond to perceived unmet needs, and solicitation of financial support for programs in the field. And we must encourage and support continuing evaluation of our disaster response efforts, recognizing that, although all disasters have common elements, each is different, and we inevitably must

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Introducing the Business Law Pro Bono Project

The ABA Section of Business Law and the ABA Standing Committee on Pro Bono and Public Service have launched a new collaboration to expand the ABA's support for business law pro bono activities. The Business Law Pro Bono Project includes the establishment of a new full-time attorney position housed within the ABA Center for Pro Bono, and will create resources, provide technical assistance, coordinate trainings, and develop materials to enhance and expand the delivery of business law pro bono legal services programs.

The goals of the project are multifaceted:

- To develop, support and foster the growth of pro bono and public service opportunities for members of the Section of Business Law that maximize their unique skill sets
- To fully utilize the section's volunteer and paid resources through centralized administra-

tive support, planning and funding

- To coordinate the section's pro bono and public service efforts with those of other ABA and non-ABA legal professional organizations

The Section of Business Law's showcase pro bono project is "A Business Commitment" (ABC). ABC is a master template for state and local groups to replicate for the efficient delivery of pro bono business legal services to community-based organizations. This national project will act as a national clearinghouse for information on starting and operating a business pro bono project, act as a national catalyst for expanding provision of business law pro bono services, and develop and leverage resources to serve and expand ABC projects throughout the country.

The new project also provides for a new assistant staff counsel position. Allyn O'Connor, an

experienced business lawyer, assumed that post in March. She works to support section initiatives to promote and expand business lawyer pro bono activity. Working with the section, law firms, corporate legal departments, bar associations, the judiciary, law schools, pro bono programs, legal services programs and others, O'Connor also supports the creation of new business law pro bono programs and the improvement of existing programs to deliver business and transactional pro bono legal services to the poor, to organizations serving the poor, and to community economic development projects.

With experience in the securities industry, O'Connor is also a dedicated pro bono advocate. In 2003 she was recognized with the Chicago Volunteer Legal Services Foundation's Distinguished Service Award. O'Connor can be reached at occonnora@staff.abanet.org or 312-988-6398.

Hurricane Response

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tailor our response, sometimes in mid-course and often on the fly.

The critical importance of contingency planning cannot be overemphasized. Be prepared:

- Establish and maintain national and local networks to facilitate rapid, meaningful and practical gathering, distribution and sharing of information
- Anticipate unlicensed practice of law issues (both in-bound and out-bound), concerns about

professional liability insurance, and other potential concerns of pro bono lawyers

- Think through the tools that were used or that we wished had existed, including those enabled by technology
- Create and archive training and resource information and materials
- Designate and train a disaster coordinator in every legal services, bar association and pro bono organization and at every level, local, state and national, now—not when it's too late

There is simply no need to reinvent the wheel each time. Logistics are the key to an effective and meaningful early response to disaster needs. The legal community in the impacted region, whether lawyers, pro bono coordinators, bar leaders or judges, must recognize that it, too, suffers personal, financial and psychological losses. They are victims as well as service providers. This places a premium on externally sourced administrative and management resources. But there is also an early "burn-out" factor

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Child Custody Project Releases Training, Announces Grants

The ABA Child Custody and Adoption Pro Bono Project has issued a nine-topic interdisciplinary training program on video, and has also awarded a total of \$50,000 in grants to six organizations to utilize the program in training lawyers who represent children in cases of divorce, adoption, guardianship, unmarried parent or civil orders of protection.

The training program is accompanied by a 700-page manual of supplementary material. Combined with relevant local laws and rules, the series can be the basis for training attorneys to represent children in compliance with the ABA Standards on Representing Children. The Child Custody Project has applied for CLE credit for the series.

The project's grants will go to programs and organizations that will use the ABA training series, the ABA Standards for Representing Children in Custody Cases, and the National Conference of Commissioners on Uniform State Laws Uniform Act to train and guide attorneys for children in their jurisdiction. In addition, the

grantees will (1) design a local component to the training covering state and local laws and procedures; (2) secure relevant multi-disciplinary experts to participate in the training; (3) work with judges on both the training and a system for appointing pro bono attorneys for children; (4) use the training and standards to expand legal representation for children; and (5) attempt to implement the ABA standards or Uniform Act in their jurisdiction.

Training topics

The topics in the training series are:

- Case development
- Cultural competence
- Ethical issues
- Child development
- Interviewing: Hearing the voice of the child
- Mental health experts, tests and services
- Domestic violence
- Child abuse
- Alternative dispute resolution

The Child Custody and Adop-

tion Project will provide technical assistance to support programs in the use of the training. In addition, the project's 2006 Child Custody Advocate Mini-grants are focused on implementing training for children's attorneys and the ABA Standards on Representing the Child in Custody Matters. Six programs from around the country will share the awards as follows:

Oklahoma Indian Legal Services

Oklahoma Indian Legal Services (OILS) will use its \$12,000 grant to develop a "Care Advocacy Project" which will offer free training based on the ABA training series, as well as extensive information on the Indian Child Welfare Act and tribal court practice. Attending attorneys will represent children in tribal courts, and will agree to follow the ABA Standards of Representation. OILS will design and maintain a pro bono referral service for all attending attorneys. OILS also will seek standardization in the 22 tribal courts serving 38 tribes in Oklahoma, using the ABA Standards.

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Hurricane Response

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affecting volunteers and service providers. Recognize the importance of creating "SWAT" teams to provide technology and case management assistance and support for the existing legal services infrastructure. And last,

but certainly not least, remember that dislocation and displacement adversely impact coping skills at all levels within the impacted area.

The legal community plays a critical role in disaster relief. We must, and will, be prepared to continue that help to victims of this and future significant disasters.

Anthony H. Barash is director of

the American Bar Association Center for Pro Bono. Amanda Jones and Peter Carson also contributed to this article. Jones, a partner at Bradley Arant Rose & White LLP, coordinated Mississippi's YLD Disaster Legal Assistance Program as president of the YLD. Carson is a partner at Bingham McCutchen, LLP and serves as co-chair of the Pro Bono Committee of the ABA Section of Business Law.

Child Custody

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Legal Aid Society of Middle Tennessee and the Cumberland

Domestic violence is among the primary areas of specialization at the Legal Aid Society of Middle Tennessee and the Cumberland in mid-Tennessee. The \$10,000 grant will create a new program to represent children in civil protective order cases. A staff attorney at the program will represent children directly and will recruit, train and supervise volunteers in such representation. Program staff will work with the Davidson County Juvenile Court and the Nashville Pro Bono Program to design and implement a pro bono attorney referral system. The Nashville Pro Bono Program will provide CLE credit and malpractice coverage, and will use its current well-established referral system to help monitor the cases. The attorneys will provide representation to children in a newly formed juvenile court order of protection docket, in domestic violence cases involving unmarried parents.

Pima County Superior Court and University of Arizona College of Law

The Pima County Superior Court and the University of Arizona College of Law Child Law Clinic have a partnership to train volunteer attorneys and law students to represent children in cases involving divorce, parentage and domestic violence protective orders.

The \$8000 mini-grant will be used to provide a "Representing Children" seminar, a training program for practicing lawyers in 2007, and a field placement component for law students.

The law school seminar will use the ABA training materials as a

Resources available

Numerous resources for volunteer advocates, pro bono programs and policymakers (including the training and grant programs described here) are available from the ABA Child Custody and Adoption Pro Bono Project and elsewhere.

- Training tapes and materials for programs and volunteers, available for free: contact Barbara Chasnoff at chasnoffb@staff.abanet.org
- Information about mini-grants: contact Linda Rio Reichmann, project director, at lrio@staff.abanet.org or 312-988-5805
- ABA Standards for Representing Children: available online at www.abachildcustodyproject.org
- NCCUSL Uniform Act: online at www.nccusl.org
- Information about becoming a Grant Advocate: contact Linda Rio Reichmann, lrio@staff.abanet.org or 312-988-5805

basis for law students to develop a state-specific training for attorneys and law students. Consulting on the seminars and training design will be local family court judges, practitioners, court staff, and experts.

Justice for Children Project, Ohio State University College of Law

An \$8000 mini-grant has been awarded to the Justice for Children Project, an educational and interdisciplinary research project at the Ohio State University College of Law. The project explores ways in which law and legal reform can be used to redress systemic problems confronting children, through original research and writing and direct legal representation of children.

The project will use the grant to create the "Pro Bono Partnership" with the local courts and bar. It will train private attorneys to represent children in divorce and parentage cases pursuant to Ohio and ABA Standards. The trained private attorneys will be paired with third-year law students who will provide research, drafting, and on-the-ground support to the attorneys. Project staff will serve as experienced mentors for the

volunteers and meet with them regularly. Subsequent monthly follow-up meetings will feature a segment of the ABA training and discussion, and law students from the Pro Bono Research Group will provide computer-based research, drafting, and client-contact support for the volunteers.

Kids First Law Center, Iowa

The Kids First Law Center in Cedar Rapids, Iowa, will use its \$7500 grant to (1) provide a multi-disciplinary training that introduces attorneys to the ABA Standards, (2) ensure that the ABA standards are followed in the judicial district by requiring attorneys to comply with them when accepting cases through Kids First, and (3) develop a database of attorneys who regularly accept pro bono cases. Attorneys who attend the training will agree to handle two pro bono cases representing children. Kids First also will set up and maintain a database, and provide regular follow-up training and support for the volunteers.

In addition, toward the end of the grant period, Kids First will assist the ABA Child Custody Project in conducting an outcomes assessment

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Child Custody

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for cases in which attorneys are appointed to represent children in these private custody cases. Kids First will help design and administer an outcomes evaluation to participants in the cases, including the child clients.

ChildLaw Services, West Virginia

Pursuant to a \$4500 mini-grant, ChildLaw Services in Princeton, West Virginia will design and implement a statewide training for volunteer attorneys who agree to handle at least one pro bono custody case representing children. The circuit family court will assist with the appointments of attorneys in cases involving allegations of child abuse, domestic violence, substance abuse, or another factor that can limit shared parenting under West Virginia law. ChildLaw Services will then provide continuing mentoring

services to the volunteers.

ChildLaw Services also will present the ABA standards to the West Virginia Supreme Court's Court Improvement Project Oversight Board and argue for their adoption. Toward the end of the grant period, ChildLaw Services will assist the ABA Child Custody Project in conducting an outcomes assessment for cases in which attorneys are appointed to represent children in these private custody cases. ChildLaw Services will develop an evaluation tool that will be provided to parents, children, and other players in 60 custody cases in three variable groups: cases with children's attorneys who received the training, cases with children's attorneys who did not receive the training, and cases with no children's attorney.

About the mini-grants

This is the fourth year the Child Custody and Adoption Pro Bono Project has awarded grants. Jointly sponsored by the ABA Standing

Committee on Pro Bono and Public Service and the ABA Family Law Section, and administered by and housed at the ABA Center for Pro Bono, the project was established in 2001 through a grant from Bill and Melita Grunow, in memory of their niece, Ann Liechty, a dedicated child law advocate.

Since a major goal of the Child Custody and Adoption Pro Bono Project is to identify successful projects that can be replicated by other groups, all grant recipients will provide the project with an extensive report and relevant materials at the end of the grant period.

The funds for these grants were made possible through the ABA Child Custody Grant Advocate Program. Child Custody Grant Advocates make a five-year pledge or an upfront contribution to this grant program. Almost \$130,000 has been raised thus far, with an ultimate goal of raising \$250,000. The Project is actively seeking additional Grant Advocates to make future grants possible.

Program News from the Field

Florida: Florida Legal Services welcomed **Sheila M. Meehan**, pro bono developer, to the organization.

Louisiana: **Monique Drake** has been hired as the statewide volunteer coordinator for Louisiana. Drake's primary responsibilities will include coordinating and organizing volunteers and support necessary to provide existing and expanded services, with a focus on post-Katrina coordination.

Mississippi: With funding from the ABA Section of Business Law, the Mississippi Volunteer Lawyers Project and the Mississippi Center for Justice have created a national pro bono coordinator position to assist Mississippi bar and legal services providers in developing and implementing an integrated system for recruiting and coordinating out-of-state pro bono attorneys and referring them Katrina-related cases. **Karen Lash**, previously with Equal Justice Works, has been hired for this position.

Ohio: **Howard Strain**, a Jones Day Pro Bono Fellow, has joined the Legal Aid Society of Cleveland Volunteer Lawyers Program.

South Carolina: **Jill C. Rothstein** is the new director of public services for the South Carolina Bar, where she directs the pro bono program, supervises the improvement of delivery of services to indigents, and oversees the ask-a-lawyer project, the lawyer referral service, the Lawyers' Fund for Client Protection and fee disputes programs.

Scenes from Philadelphia

The 2006 Equal Justice Conference attracted a record attendance of more than 950 advocates, law students, bar leaders, judges and others. Co-sponsored by the American Bar Association Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Association, the three-day program (plus numerous pre-conference seminars and other events) coalesced around the conference theme "Commitment, Service and Empowerment."

As the scenes captured here attest, the conference succeeded in bringing together a broad array of individuals with a common interest in access to justice. Law school representatives, bar leaders and members of the judiciary were present in particularly impressive numbers.

Please make plans to attend the 2007 Equal Justice Conference at the Hyatt Regency Denver at the Colorado Convention Center in Denver, from March 22 to 24. Visit www.equaljusticeconference.org for more information, and to sign up for periodic email updates about the conference.



Hon. Theodore McKee, a judge on the US Court of Appeals for the Third Circuit, presented keynote remarks at the conference's opening plenary.



Conference attendees acknowledged the work of Dorothy Jackson, who was the ABA's lead conference staff person for 25 years.



The conference reunited ABA Standing Committee on Pro Bono and Public Service Chair Jon Ross, ABA President Michael S. Greco and ABA Standing Committee on Legal Aid and Indigent Defendants Chair Bill Whitehurst. All three were founders of Bar Leaders for the Preservation of Legal Services to the Poor in the mid-1980s.



More than 85 individual workshops were offered at the conference, providing attendees with a wide range of programming.

Photo credit: Jane Ribadneyra/NLADA



The National Association of Pro Bono Professionals presented the William Reece Smith Jr. Special Services to Pro Bono Award and the Pro Bono Professional of the Year Award. Pictured are (left to right): NAPBPro President Judith Whitelock, ABA President Michael S. Greco, William Reece Smith Award winners Bricker Lavik and James Baille, Pro Bono Professional of the Year Krista Scully, and William Reece Smith, Jr.

IOLTA Programs Respond to Unprecedented Disasters

by Laura Figueroa

For millions of residents along the Gulf Coast, Hurricanes Katrina and Rita have changed their lives forever. We have all seen the images of raging floodwaters, people separated from their families, and the devastation wrought upon homes and businesses. But in the midst of the destruction and chaos, IOLTA programs emerged as heroes to those affected by the storms.

Donna Cuneo, president of the New Orleans-based Louisiana Bar Foundation, said that she and her team had little time to prepare for the storm. Two days before Hurricane Katrina hit, the bar foundation's staff accountant obtained from their office the back-up tape to the computer server, checks, payroll information and software.

According to Cuneo, in the aftermath of the hurricane, her only means of communicating with other employees was through text messaging. Within a few days of the storm, all staff and their families were accounted for. Within about a week, staff was allowed to enter the bar foundation's office to retrieve what they could in ten minutes. In addition to their server and computers, they collected IOLTA grant applications.

Louisiana: Keeping the grants on track

"We were in the middle of our grants process and needed the IOLTA grant applications," Cuneo said. "We knew our grantees were going to need our support more than ever."

The bar foundation set up an

"Several of our grantees lost office space, volunteers, staff members and in many cases their own staff members' homes."

office an hour outside of the New Orleans metro area. Cuneo said that because many volunteer grant evaluators were displaced, as were grantees, the grants process was very challenging. "Several of our grantees lost office space, volunteers, staff members and in many cases their own staffs' homes. Most legal services directors were doing what we were doing—locating personnel and volunteer leadership, and moving offices.

"The LBF was able to keep its grants process on track with the assistance of great volunteers, and we approved grant awards at the November board meeting." Undeterred by the challenges of the previous months, the bar foundation awarded \$1,477,471 to 49 grantees statewide, an increase of \$500,000 over the previous year's grants.

The bar foundation also initiated a series of emergency grants, starting with \$70,000 to underwrite the Louisiana Legal Assistance Call Center, which was established to respond to the hurricanes. "The call center is a successful collaboration of the Louisiana State Bar Association, the Louisiana Bar Foundation, the Baton Rouge Bar Association, the LSBA Young

Lawyers, the LSBA/LBF Access to Justice Program, state bar volunteer leaders, and many other groups," Cuneo said. The call center has handled more than 13,000 calls from hurricane victims.

Cuneo explained that although faced with significant hurdles, many Louisiana legal services organizations aided victims by providing services at the call center and at local shelters, and by helping displaced people find loved ones and temporary homes.

Texas: Handling an influx of evacuees

After Hurricane Katrina struck and residents of the Gulf Coast region began desperately fleeing the area, Texas became a haven for people who had nowhere to go. It is estimated that up to 300,000 evacuees came to Texas from Louisiana, Alabama and Mississippi—the areas hardest hit by Hurricane Katrina.

As floodwaters decimated homes, property and lives, it quickly became clear that evacuees might not have a place to return and that legal assistance would be imperative. But cash-strapped Texas legal aid programs knew that addressing the legal needs of evacuees would prove to be a monumental challenge.

The Texas Equal Access to Justice Foundation (TEAJF) board of directors, recognizing the imminent crisis, swiftly convened a meeting to discuss disbursement of emergency funding. Shortly thereafter, TEAJF announced its plan to release up to \$1 million in IOLTA funds to Texas legal aid organizations providing assistance to hurricane evacuees.

"When a disaster of this magnitude strikes, people suffer significant losses for which legal assis-

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From the Chair. . .



by Joanne M. Garvey
Chair of the ABA Commission
on IOLTA

The Commission on IOLTA and the National Association of IOLTA Programs (NAIP) jointly present the two-day IOLTA Workshops twice a year, in conjunction with the ABA Midyear and Annual meetings. Despite the shift of the 2006 ABA Midyear Meeting site from New Orleans to Chicago, the Winter IOLTA Workshops enjoyed a larger-than-expected turnout and exceeded the high expectations and standards established by previous workshops. Standout sessions included those focused on executive director evaluations, program reserve policies, grant-making, and most significantly, revenue enhancement.

Revenue enhancement has become increasingly important since IOLTA represents a major source of funding for legal service programs. The revenue enhancement session featured a new small-group breakout format that enabled in-depth discussion of strategies ranging from bank negotiations to mandatory IOLTA to interest rate comparability. The conclusions developed in the small groups were then reported back to the entire group. The ensuing discussion made for one of the most vibrant sessions I can recall, demonstrating the high level of

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IOLTA Grantee Spotlight: Michigan IOLTA Helps Establish Medical-Legal Collaboration

by Kelly J. McNerney Quardokus

As a mother and daughter sit in a waiting room at the C.S. Mott Children's Hospital in Ann Arbor, Michigan, the child's belabored breathing causes a worried look to flash across her mother's face. It's their third visit this month. The mother wonders why her daughter's asthma does not seem to be getting better, even with newly prescribed medicine. Anxiously, the mother contemplates whether she will be able to take time off for another trip to the doctor without losing her job. This time the doctor determines that mold and allergens in their apartment are the likely cause of the daughter's reoccurring allergy and asthma attacks. But the doctor has no prescription for resolving the housing conditions that are the cause of these ailments.

This story is one example of the many situations where medical treatment alone cannot cure an illness linked to underlying, poverty-related problems. Fortunately, the Pediatric Advocacy Initiative (PAI) is an innovative program that can help doctors access community legal resources to address this family's living conditions and stabilize the daughter's health.

Modeled after the Boston Medical Center's Medical-Legal Partnership for Children (formerly the Family Advocacy Program), PAI is a medical-legal collaboration designed to improve the health of low-income children through legal advocacy, education and policy efforts. PAI's work is inspired by the analysis of these chronic problems articulated by the Boston program: "Without advocacy to ensure families' basic needs—adequate housing and nutrition, income supports, safety, access to health care and appropriate educational services—children living in poverty experience relatively poor health and development outcomes regardless of the quality of medical care that they receive."¹

Although modeled after the Boston program, PAI is different in several ways. The Boston program is housed within the hospital itself, has a small staff of legal attorneys to directly help patients, and uses undergraduate and graduate interns from a variety of disciplines including law, medicine and community health. PAI was created in 2004 through the University of Michigan's Law School Poverty Law Outreach Program and is a separate entity with its own funding and institutional framework. PAI has an on-site presence at the medical facilities, but is based at the law school. It works collaboratively with the Michigan Poverty Law Program (MPLP), a grantee of the Michigan State Bar Foundation which supports the state's legal aid field programs by coordinating advocacy and providing skills and substantive law training. The cooperative relationship between the law school and the MPLP makes it easier for

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From the Chair...

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enthusiasm and sophistication with which the IOLTA community is addressing revenue enhancement.

I am happy to report that the number of programs exploring and taking action on these revenue enhancement strategies continues to grow. Currently there are proposals pending in a number of states that would add revenue enhancement-related amendments to the IOLTA rule or statute. Research and discussion of these strategies has begun in several other states.

There is no doubt that it takes significant initiative and leadership to pursue these changes. There is a great deal of work involved, from research to presentations and discussion with trustees to the decision to take a

proposal "public" for scrutiny and input outside of the organization. The prospect of going before the state supreme court or legislature to seek a change to the IOLTA rule or statute can be daunting, even for the strongest programs. The IOLTA leaders who have decided to take the step toward change deserve our congratulations and respect.

* * * * *

The Commission and NAIP are planning a full program of sessions during the Summer IOLTA Workshops on August 3 and 4. The workshops, held in conjunction with the ABA Annual Meeting in Honolulu, will focus not only on ongoing issues such as revenue enhancement, but also on more topical concerns, such as program quality and evaluation, and disaster planning.

The location in Hawaii will

make this trip longer than normal for many, but the extra effort to attend will be worthwhile. I am grateful to NAIP for offering some travel assistance to IOLTA programs with smaller budgets, which may not otherwise have the opportunity to attend the Summer Workshops. NAIP's decision is yet another indication of the collective spirit that makes the IOLTA community so strong.

Advance registration for the IOLTA Workshops and Annual Meeting closes on June 29, and we are told that hotel rooms are filling quickly. Visit www.abanet.org/annual/2006/ to register today. For more information about the workshops please contact Mickey Glascott at mglascott@staff.abanet.org or 312-988-5750.

Grantee Spotlight

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PAI to access expertise on poverty law issues and refer cases to local legal aid or pro bono attorneys.

PAI is located a short distance from the medical centers it serves. It utilizes about one dozen law students under the direction of a licensed attorney to meet clients at the health centers and hospitals and to offer legal assistance through the Pediatric Advocacy Clinic. At the clinic students talk to clients firsthand and learn how legal problems affect lives, an experience that cannot be duplicated in the classroom or gained from law school books.

IOLTA support for fellowship

In 2005, PAI received a \$20,000

IOLTA grant from the Michigan State Bar Foundation to help fund a fellowship, with the law school also providing resources for the fellow and other related PAI costs. The bar foundation viewed this as an opportunity to support an innovative new partnership between the medical and legal professions, and to establish a pilot program which might be duplicated in other areas of the state. The bar foundation in its grant conditions asked PAI to meet and coordinate with others interested in using this model in other regions. It also urged the newly formed PAI to continue to cultivate relationships as a way of sharing lessons learned and reducing duplicative efforts.

Early support from the bar foundation was instrumental in establishing PAI. It was also hoped

that by investing in the start-up costs, PAI would exhibit success that would attract other funders, so that IOLTA funds would serve as a catalyst for other foundation grants. IOLTA funding made a full-time fellow possible to help the newly established PAI immediately build solid relationships with medical providers, a critical aspect of a successful program according to the experienced Boston program. The funding of the fellowship position allowed the PAI to cultivate a stable and regular presence at the medical facilities and establish a reliable system to manage the flow of information. The fellow's regular presence and frequent communication with medical professionals created confidence that patients' needs will be met, regardless of

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Grantee Spotlight

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conflicts in the law students' schedules, such as winter break or final exams. The PAI fellow also develops and provides training for pediatric providers and parents to help them recognize legal obstacles related to children's health in addition to performing direct casework and helping steer appropriate cases to the clinic.

Pediatric Advocacy Clinic

The law school's Pediatric Advocacy Clinic is an essential component of PAI. Law students participating in the clinic work 20 hours per week and carry a case load of clients referred by the medical providers at local hospitals and health centers. Supervised law students provide legal advice and counsel, brief services and direct representation to poor children and their families. Cases that do not have a direct link to health issues or that fall outside the scope of the clinic are referred to local legal aid programs and pro bono panels.

PAI's close relationship with a range of local legal aid programs and other clinics at the law school has created a wide array of legal service options for client referrals. Several programs have entered agreements with PAI for inter-program referrals, so potential clients don't have to start from scratch when they contact another legal aid program for help. In March, Anne Schroth, director of PAI, reported that students and staff are handling approximately 50 open cases, and that nearly 145 cases have been closed in the 18 months since the program began.²

PAI in action

Recently, third-year clinic students
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Medical-legal collaborations expanding

Michigan's Pediatric Advocacy Initiative is inspired in part by the model for medical-legal collaborations that was pioneered at the Boston Medical Center. The Family Advocacy Program was founded there in 1993 out of frustration with the inadequate nutrition, substandard housing and other conditions underlying the chronic health problems experienced by children treated by the medical center. Dr. Barry Zuckerman, professor and chair of pediatrics at Boston University School of Medicine and the medical center, attempted to intervene in these situations, for example by calling landlords to demand improvements. When his efforts failed, he proceeded to what he saw as the next logical step: hiring a lawyer to help the families meet their basic needs.

With that, Zuckerman and the medical center launched what would turn into the Family Advocacy Program (now called the Medical-Legal Partnership for Children), with the aim of creating a culture of advocacy in the health care setting by adding lawyers to the clinical team treating families. The program works to educate medical practitioners about the legal aspects of their patients' problems, and teaches them to recognize where legal remedies may be among the treatment options. At the same time, the program offers an efficient and accessible means of screening clients and connecting them with legal aid lawyers who can provide representation regarding specific problems. Finally, the program gives medical practitioners tools to advocate for their patients, both individually and systemically.

The Boston program and the medical-legal collaboration movement both are growing. The Family Advocacy Program recently transformed into the Medical-Legal Partnership for Children (MLPC), which will provide an institutional base for support and seed funding for the establishment of new collaborations across the country. Medical-legal collaborations are now operating in 30 sites in 18 states, with more programs under development in four other states. A number of these receive IOLTA funding. In addition to Michigan, the IOLTA programs in California, Connecticut, the District of Columbia, Maine, and New Hampshire currently support medical-legal collaborations.

The promise and success of this model has attracted attention and support from beyond the legal services community. Major support for MLPC has been committed by foundations that traditionally have not funded legal work, such as the W.K. Kellogg Foundation and the Robert Wood Johnson Foundation. Recognition has also come from the bar. On the launch of MLPC in Boston, American Bar President Michael S. Greco commented, "Medical-legal partnerships present an important opportunity for lawyers and doctors to work together to help children and families protect their health."

For more information about the Medical-Legal Partnership for Children, visit www.MLPforChildren.org or contact its executive director, Ellen Lawton, at Ellen.Lawton@bmc.org.

Grantee Spotlight

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Sarah Chopp and Jeena Shan helped a mother struggling with the difficult appeal of a decision to deny Social Security benefits for her three developmentally disabled daughters. The much-needed benefits were approved for all three girls, providing health care, safe housing for the family, and other necessities for the girls. "It would be impossible [for the mother] without a lawyer to appeal," said Chopp.³ While working on this case, the law students learned that two of the girls were several grade levels below where they should be in school. They are now helping the girls request special educational services to improve their education and give them a better chance of success in school and in life.

Students are not the only ones successfully helping clients through the PAI. PAI Fellow Debra Chopp also recently won a case involving SSI benefits for a 22-year-old woman, diagnosed at age 14 with two rare forms of cancer in her head and neck. Referred to PAI from a hospital pediatric social work team that follows up on child survivors of cancer, the client could not keep a job over the years. With a tracheotomy tube to help her breathe, exposure to dust and co-workers with illness caused her to have repeated respiratory infections along with the other severe medical problems already present as a result of her cancer. With the skills to obtain and use the medical evidence, Chopp secured disability benefits for the client. The benefits will substantially improve the lives of the client and her children by providing a stable income and eliminat-

ing the need to jeopardize her fragile health.

Legal education

In addition to delivering direct legal services to low-income patients, the PAI fellow also provides education about advocacy and legal issues to medical professionals, social workers and parents. They learn to spot legal issues concerning habitable housing, special education eligibility and concerns, guardianship or power of attorney issues, access to hunger relief, and problems with public benefits and health care. If caught early, all of these can be prevented from aggravating health or life problems. Training development and sessions are an integral part of the fellow's job duties and the PAI's Legal Advocacy Training is now part of the formal training curriculum for residents at both Mott's Children's Hospital and the Ypsilanti Health Center.

Conclusion

PAI is a timely innovation. Medical problems touch everyone, and frequently issues emerge that call for civil legal counsel or representation. Help with civil legal problems improves lives, especially for families with children struggling with poverty. In 2004, 37 million people lived in poverty, including 13 million children.⁴ A child's needs, like those of all persons facing poverty, are multiple and related, with one affecting the other.

"In my clinic, I see children with developmental or behavioral concerns who also live in poverty. There are a myriad of advocacy issues that arise with almost every patient. For many of my patients, advocacy is not just something to help implement my intervention—

it actually is the intervention," says Dr. Julie Lumburg, clinical instructor in the Department of Pediatrics, Division of Child Behavior Health at the University of Michigan.⁵

It is extremely beneficial for families to resolve issues whenever a health or legal problem can be avoided, or before it grows more serious. Like the practice of pediatric medicine, the PAI has a preventative rather than reactive approach. And when legal and medical professions work together, problem resolution is not limited to simply health and legal issues. Resolution of civil legal problems and health issues can affect the social, psychological, or economic well being of the child and their family. Through the PAI, the medical and legal professions can draw strength from each other and work together to provide that ounce of prevention, which as the saying goes, is worth more than a pound of cure.

Endnotes

- ¹ From the Medical-Legal Partnership for Children, www.mlpforchildren.org.
- ² For information about PAI, contact Anne Schroth at 734-615-2450 Ext. 1 or schroth@umich.edu
- ³ "Opportunity to Help Gives Students Real Experiences" by Anne Rueter; *Ann Arbor News* March 5, 2006
- ⁴ Income, Poverty, and Health Insurance Coverage in the United States, U.S. Census Bureau, August 2005 (online at www.census.gov/prod/2005pubs/p60-229.pdf)
- ⁵ University Record Online "Law School Develops Collaborative Pediatric Clinic," January 31, 2005

Kelly J. McNerney Quardokus is the communications/grant manager for the Michigan State Bar Foundation.

IOLTA Response

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tance is invaluable,” Betty Balli Torres, TEAJF executive director, said. “For those who were already low income, and those who lost their jobs because of the disaster, legal aid is playing an integral part in helping them overcome the tragedy.”

The emergency funds enabled TEAJF grantees to station advocates at disaster recovery centers, staff emergency hotlines and provide direct service to hurricane victims. To date, Texas legal aid programs have assisted more than 8,000 hurricane victims with their civil legal needs.

Lisa Melton, director of grants for TEAJF, saw firsthand the distress that victims of Katrina were experiencing. When evacuees began filling the Houston Astrodome, she volunteered her services to help in whatever way she could. “My first experience at the shelter was the day that evacuees were arriving from Louisiana,” Melton explained. “Shell-shocked is the best description I can give. They were exhausted, disoriented and focusing on basic human needs.”

Before long, Texas legal aid groups were canvassing evacuee centers offering assistance.

“Our grantees have done a truly amazing job of being out front and prepared to meet the evacuees where they are,” Melton said. “Houston Volunteer Lawyers Program was in the disaster recovery centers as soon as they would let them in. When the shelters began closing, HVLP went door-to-door in the hotels that were housing evacuees to provide assistance.”

Texas’ Protection and Advocacy agency, Advocacy, Inc., played a

“For those who were already low income, and those who lost their jobs because of the disaster, legal aid is playing an integral part in helping them overcome the tragedy.”

significant role in assisting hurricane victims with special needs. “Advocacy, Inc. was on the front lines from day one advocating for those in the shelters suffering from physical and mental disabilities,” Melton stated. “The advocates also worked with communities to ensure that their shelter policies and plans for moving beyond the shelters took into consideration the challenges faced by this most vulnerable population.”

Another threat

In the midst of these critical activities, a second hurricane, Rita, threatened the Gulf Coast. With another major hurricane looming, the Louisiana Bar Foundation was faced with the possibility of a second evacuation.

“Just as we were starting to get our bearings, everything changed again with the arrival of Rita three short weeks later,” Cuneo said. “Volunteers and grantees moved again because many had gone west of New Orleans before and after Katrina.”

Hurricane Rita caused extensive damage in western Louisiana and East Texas. Texas, which had been spared from Katrina’s wrath, faced a loss of electricity, flooding and destruction of property. Lone Star Legal Aid, headquartered in Nacogdoches in the heart of East Texas, assisted two counties in

securing federal disaster area designation. The situation was dire, as elderly and disabled individuals faced extreme heat and humidity without water or electricity.

Melton explained, “Paul Furrh, the executive director of Lone Star Legal Aid, was driving through the rural counties in his service area the day after Rita hit, trying to determine how Lone Star could be most helpful. The organization successfully represented the county judges in their claim that the area should be designated a disaster area, so they could get the appropriate financial assistance to help clean up and re-build the community.”

In addition to providing cash assistance through emergency IOLTA grants, the Texas Equal Access to Justice Foundation played a significant role in the development of a disaster section on the TexasLawHelp.org, the statewide Web site for people seeking legal information and assistance. TEAJF is part of a grant-funded project to augment the site and promote it statewide.

As another hurricane season looms, IOLTA programs and legal aid providers are acutely aware that they are not immune to such disasters. Yet despite the hardship caused by the storms, legal services programs were among the first responders for victims in a time of desperate need.

“I think we were all shocked at the sheer devastation caused by two of the strongest hurricanes on record,” Torres said. “But witnessing firsthand how providers, administrators and partners mobilized to help the victims made me incredibly proud to be a part of the legal aid community.”

Laura Figueroa is the communications manager of the Texas Equal Access to Justice Foundation.

Lights, Camera, Action!

Using Television to Spotlight Your LRIS

by Howard A. Shalowitz

One reason moderate-income consumers have limited access to the legal system is their lack of awareness about where to turn when a legal problem arises. By raising the profile of a public service lawyer referral and information service (LRIS), access to attorneys and the legal system is increased for moderate-income consumers.

More consumers receive their information from television than from any other source. LRIS programs can take advantage of this effective medium with just a small investment of time and money. At the Bar Association of Metropolitan St. Louis (BAMSL), we found that making a 30-minute infomercial highlighting different areas of the law interspersed with public service announcements (PSAs) on LRIS is a tremendous way to advertise for free. Any bar association-affiliated LRIS program across the United States can replicate and implement this blueprint for a television show at little or no production cost and with free airtime. The television show accomplishes the goals of promoting LRIS, showcasing activities of the bar association and educating the public in substantive areas of the law. This creates revenue for the association and LRIS panel attorneys, and provides greater access to our legal system for those who would not ordinarily know where to turn for legal advice and help.

Here are some of the elements involved in bringing your LRIS program to the small screen.

1. Selecting areas of the law

The best indicator of what the general public would be interested in viewing is the numeric breakdown of LRIS calls by area of practice. Each bar association's "top 10 list" may be different, but generally would include some of these areas: immigration, family, criminal, business, landlord-tenant, debtor/creditor, bankruptcy, consumer, elder law/Social Security, workers compensation, real estate, civil rights, labor/employment, and probate. Other shows may be on personal injury, product liability, alternative dispute resolution, and/or services your bar association provides to the community, including LRIS.

2. Selecting television panel members

Once the legal topic has been chosen, the appropriate bar association committee or section chair should select up to four panel members for that particular show. The chairs should be instructed to choose individuals who are articulate, diverse in their perspective on the legal topic and in ethnicity, age, gender and race), knowledgeable, and able to present well on television.

The panelists' perspectives should be diverse within each area of the law selected to air. For example, in the criminal law area, the panelists may include a circuit court judge for a judicial perspective, the United States Attorney for a federal law and prosecutor's perspective, and two defense attorneys, each with a different

perspective on criminal defense and DWI cases. Ethnic, gender, racial, religious and age diversity should also be present. Ensure that there is a mix of male and female attorneys and junior and senior members of the bar. Hispanic, Asian, Native American, Indian, African-American, and other minorities should be represented to reflect the community you serve.

3. Choosing the moderator

The moderator of the show should be someone with television experience who is also knowledgeable about the area to be discussed. An attorney who has only practiced criminal defense may not be the best host for a show on consumer issues or child custody matters. The moderator should know both the technical side of the production of the show (including introduction of the show, introduction of panelists, questioning properly, calling on guests, breaking to a PSA, and wrapping up the show) and the substantive aspects of the material to be covered (such as knowing what questions to ask, what questions to follow up, and what would be interesting to the viewer).

4. Funding

While there will be an initial outlay for equipment and learning how to use it, the cost of taping the program is minimal if done in-house. If done at a studio, the rates vary. In St. Louis, \$2,500 for a six-hour shoot (including minor editing) is reasonable. Funding

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From the Chair...



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

Lawyer referral services are uniquely situated to assist moderate-income legal consumers who are in need of legal services and are unsure of how to shop for a lawyer. These consumers find themselves leery of lawyers and worried about the prospect of high legal fees.

For these folks, a lawyer referral service is the perfect option, particularly if it is an ABA-certified service. When legal consumers see the ABA logo and slogan displayed by certified programs, they can be assured that participating lawyers meet experience requirements, carry malpractice insurance, and have been screened for basic competence before being allowed to receive referrals.

Moderate-income legal consumers look for lawyers only occasionally: to draft a will or family trust, when contemplating a divorce or responding to a divorce filing, when facing employment termination, when a child has been arrested, or following an accident or work injury. Unfamiliar with lawyers and the legal system, their fears about costs are fueled by the high-priced advertising launched by some law firms. Confused consumers realize they don't really

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A Nip Here, a Tuck There: Giving LRIS Panels a Facelift Can Boost Your Program's Appeal

by Charles J. Klitsch

Have you looked at your referral panel list lately? Are clients falling through the cracks in your LRIS program's array of panel choices? Is the percentage of successful referrals sagging? If your LRIS is not keeping pace with the changing legal needs of the community you serve, it may be time for a panel facelift.

Change is not simply inevitable. It is determined to a large degree by social, economic and political forces. Consider these scenarios:

- Thomas lives in a house he and his wife purchased more than 20 years ago. Recently, he received a mortgage delinquency notice addressed to a person he had never heard of. Thomas does not have a mortgage and never encountered the mortgage company before receiving the notice. Through some telephone inquiries, he learned that he had been the victim of fraud. Someone filed a forged deed, applied for a mortgage on the property, took the money and disappeared.

Thomas also learned that he is not alone. Fueled by a rising real estate market, easy mortgage availability and overwhelmed staffs at filing offices, jurisdictions from California to Chicago to the Northeast are reporting a rapid rise in the number of fraudulent real estate document filings. According to the local recorder of deeds, Thomas and his wife no longer own their home and the property is encumbered by a \$200,000 mortgage. Thomas is seeking an attorney to straighten out the mess.

- Karen and her partner, Evelyn, were married in a civil ceremony in a suburb of Boston shortly after same-sex marriages became legal in Massachusetts. Karen accepted a job at a university and the couple moved to Philadelphia. They registered their domestic partnership with the university to be eligible for benefits, and registered their relationship under the city's domestic partnership registration ordinance. Karen and Evelyn's relationship has not been going well lately, and Karen is looking for advice. Can she file for a divorce in Pennsylvania? Must she move back to Massachusetts to file? Are the domestic partnership registrations allowed by local ordinance enforceable in light of Pennsylvania's seemingly contradictory "defense of marriage" act? Karen would like a referral to an attorney familiar with domestic partnership law.

- David hired a Web site developer to create an attractive, interactive site for his auto parts distribution business. David spent over \$100,000 on this effort and is pleased with the result. Through a customer, he learned that a company in another state lifted the graphics, text, parts of photographs, and order forms from his site and is using them in direct competition with his business. After doing an online search, David discovered that another company in Canada did the same thing. David's Web site developer told him that there is something called the Digital Millennium

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From the Chair...

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know how to find the right lawyer. It is very likely that most will find their traditional sources of advice in times of crisis—family members, co-workers, friends and acquaintances—are similarly situated, with little if any experience in selecting a lawyer.

Successful lawyer referral services have long known that this moderate-income demographic is the heart of the LRIS customer base, and target their advertising in an effort to reach this group. What lawyer referral services should never ignore, given the increasingly multicultural nature of American society, is that the LRIS base—moderate-income legal consumers—exists within all ethnic groups. If a lawyer referral service wants a shot in the arm, it needs to look no further than the diverse communities in its own area. Ethnic communities exist in regions and cities across the United States, including ones consisting of Somalis in Minneapolis, Latinos in Austin, Vietnamese along the Gulf Coast, Koreans in Los Angeles, and Puerto Ricans in New York. Each of these has legal access needs similar to those of the

traditional LRIS base.

The LRIS Committee long has been committed to serving all moderate-income legal consumers, including those in diverse communities. In 2003, as part of its marketing outreach effort, the committee commissioned the creation of Spanish-language LRIS marketing templates for telephone directory page ads, lawyer referral brochures, promotional tear pads and clip art. The committee produced 300 sets of camera-ready materials in Spanish for distribution to local programs. The committee is exploring ways to expand this effort in the coming years to include other languages.

On the local level, programs are beginning to advertise in local ethnic publications in an attempt to capture a share of this market. Most ABA-certified programs offer translation services in a multitude of languages and actively recruit lawyers who are bi-lingual. All who have done so report an increase in calls and quality referrals.

Ethnic group populations, perhaps to an even greater extent, share the concerns moderate-income legal consumers have regarding how to select a lawyer. These populations are much more likely to seek and trust a referral from

the local bar association, especially when the bar association's promotional materials include the ABA logo and slogan, "The Right Call for the Right Lawyer." Trust as a marketing asset should not be underestimated and referral services should not be shy in using trust to their advantage.

Bar association-sponsored lawyer referral services, while operating as businesses, recognize that they are in the business of public service. Individual panel members offer legal advice and representation, but the service itself offers much more. Where else can legal consumers, unsure of the process and equally unsure about the nature of the underlying problem call and obtain impartial legal advice and a helping hand? Disseminating this information in local ethnic communities should be a high priority task for every lawyer referral service.

LRIS programs should be proud of the work they are now doing in diverse communities and committed to doing even more. Want a shot in the arm for your LRIS? Look no further than the ethnic groups in your community. You will be providing a valuable legal service, and you will expand your client base in the process.

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Copyright Act that may protect him. David needs a referral to an attorney familiar with copyright law and the technical language of Web site development and features.

If Thomas, Karen or David called your LRIS today, would you feel confident that you could make an appropriate referral?

New wrinkles, new panels

Successful lawyer referral programs across the country are reacting to new wrinkles in the law.

"We are always trying to keep our finger on the pulse of changes or adaptations in the areas of law in which we refer clients," says Janet Diaz, executive director of the Houston Lawyer Referral Service. Within the past two years, Diaz has added five panels to her program's roster, in the following

areas: computer/Web site transactions, identity theft, domestic partnerships, collaborative law, and HIPAA (the Health Insurance Portability and Accountability Act).

According to Diaz, there was a simple impetus for the panel on collaborative law, a growing field of practice that uses non-adversarial strategies to help clients in domestic relations matters come to an agreement in a dignified and respectful

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LRIS Panels

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manner without potentially contentious court proceedings. "We began to get calls from the public asking for attorneys who handle matters this way," she explains.

In Ohio, Marion Smithberger, director of the Columbus Bar Association Lawyer Referral Service, reports, "We recently added sexual orientation issues to our major categories: domestic relations, estate planning, probate, real estate, Social Security, and insurance. This arose in the discussion about same-sex marriages."

The Philadelphia Bar Association LRIS added a real estate-fraudulent conveyance panel last year to help clients like Thomas in the example above. This summer, the program intends to add a family law - domestic partnership panel, several e-commerce panels, and a HIPAA panel.

In Seattle, King County Bar Association LRIS Executive Director Joan Andersen noted, "We are constantly changing our panels both to refine them for better accuracy and to add new areas that pop up." Among the panels recently added in King County are predatory lending, prenuptial/partnership agreements, sexual assault, and expungement. Andersen anticipates adding a HIPAA panel this year, and another panel to handle gambling and nightclub issues.

Lisa Reep, executive director of the Contra Costa County (California) Bar Association, states that the association's LRIS recently added identity theft, adoption, domestic partner/step-parent and divorce-non-marital relationships panels.

California programs are reacting to their courts' greater receptivity

to limited scope representation, particularly in family law matters. "We recently added a limited-scope representation panel because our court system approved documents that make it easier for lawyers to practice in this fashion, and because so many were going unrepresented," explained Sheree Sweetin, executive director of the San Diego County Bar Association.

Similarly, Ken Matejka of the Bar Association of San Francisco LRIS reported that the program has added a limited-scope representation program for family law. Confirming that local conditions dictate the need for panels, San Francisco revived a panel in a practice field that has seen steady demand in many jurisdictions, but that had become moribund in the city by the bay—family law contempt. "We made a big push last summer to recruit attorneys for our under-subscribed and neglected family law contempt panel on account of the growing number of defendants we were finding facing such charges in San Francisco Family Court," said Matejka.

Not all new panels are created because of consumer demand. Occasionally, the push comes from the legal profession. Patricia Holt, director of LRIS for the Los Angeles County Bar Association, explained that the pressure to add a limited-scope panel in family law came from the bar association's Family Law Section.

Audrey Osterlitz, coordinator of the New York State Bar Association LRIS, relates a similar experience. "We recently added a panel on animal law in response to a request from the NYSBA Committee on Animal Rights," Osterlitz said.

Giving membership requirements a lift

Adding new panels is only part

of the picture. Experience requirements for panel membership also need to be reviewed and modified on a regular basis, due to changes in the law and the way law is practiced.

One example of a recent major change in the law is the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This act has dramatically changed the way personal bankruptcy law is practiced. It could impose liability on attorneys and have serious legal consequences for debtors if proper procedures are not followed.

To ensure that panel members were familiar with the act, the Philadelphia Bar Association's LRIS amended its experience requirements for the bankruptcy panels. In order to remain active, panelists were required to attend a CLE course on the new act for at least three hours and provide the LRIS with proof of attendance. Lawyers who failed to provide proof of attendance were removed from the panel.

Changes in the way law is practiced are leading Lisa Reep to review the Contra Costa County program's experience requirements. "We are considering modifying some of our experience panel applications to eliminate the need for the current quantity of court and jury trials," Reep stated. "The trend has been an increase in the use of mediation and other pre-trial settlement approaches. Fewer and fewer cases actually go to trial these days, therefore reducing the opportunity to meet our current experience panel requirement in some areas."

Making LRIS programs mirror community needs

By conducting a regular check-up of the legal needs of the commu-

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Spotlight Your LRIS

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may be provided by the bar association and/or the bar foundation. Sponsorship funding should not come directly from individual law firms, as the audience may perceive that the show is an advertisement for the firm. If a firm is interested in providing money for this purpose, it should be given as a general contribution to the association or the foundation.

Studio time includes set-up, graphics, actual taping of the programs, editing time, and tapes. While there is a cost for the production of the shows, the airtime is free. Almost every cable television company has a public access station which allows shows to be aired for free as long as there are no paid advertisements during the show. As LRIS is a public service provided through the bar association, the entire show qualifies as a PSA, allowing it to be shown on the free public access channel.

5. Choosing a name

Choosing the name of the show is very important. It should identify your city, bar association or the theme you wish to convey with a catchy title. You must check to make sure that you are allowed to use that name, that it is not already in widespread use in your community, and that it would not be confused with another name similar to yours. Consult a trademark and copyright lawyer about your name and logo before they are used and before any promotional materials are sent out using the chosen name.

6. The show

In a six-hour session, you should

be able to tape six 30-minute segments. Shooting should begin at 9:00am and each 30-minute show should be shot on the hour with a one-hour lunch break. Instruct the panel members to arrive 30 minutes before each show is to be shot. This ensures time to review the material and go over the production process with the panelists.

Before the show begins, the station will require a disclaimer which states that the opinions expressed are not those of the station. *Legally Speaking in St. Louis*, the show sponsored by the Bar Association of Metropolitan St. Louis, opens with a graphic of the statuette of "Lady Justice" and the BAMSL and St. Louis Bar Foundation logos. The name of the show is displayed while classical music plays during the introduction. As the opening graphics dissolve, the moderator appears and introduces that show's theme. A graphic of the show theme also appears on the screen. The backdrop consists of the BAMSL banner, the St. Louis Bar Foundation banner, and the statuette of "Lady Justice" in the middle. The moderator reminds the audience that the show is intended for educational purposes only and is not a substitute for legal advice. The moderator then introduces the panel and begins the questions.

Approximately 13 minutes into the show, the moderator takes a break and PSAs for BAMSL's LRIS are shown. These PSAs were produced by the Missouri Bar for television use. At the end of the PSA, the name and phone number of BAMSL's LRIS is displayed on the screen. Although the questions and answers are geared toward the common viewer, there is a constant reminder that nothing can substitute for the advice an attorney may give and one should

not attempt to resolve a legal issue on his or her own.

The show continues for another 13 minutes, after which the moderator thanks the panel members and repeats the legal disclaimer. The address of BAMSL is provided in case a viewer wants more information on this or any other topic. There is a graphic with classical music playing as the show closes and the PSAs for LRIS follow. Each show ends with the station's disclaimer.

7. Public service announcements

PSAs should be 30 seconds in length. A dramatic effect can be attained by starting out in black and white while the speaker tells of his or her legal problem. When the speaker then states that the LRIS referred a lawyer in that field, the screen turns to full color. There should always be diversity in the content of the legal problem featured (personal injury, family law, bankruptcy) and in the ethnicity, age, and gender of the actors. Three PSAs should run back to back, if possible, in the middle of the show and again at the end of the show. Nothing can substitute for repetition.

8. Releases and ownership of work product

No participant in your show should be paid. The bar association should own and maintain exclusive rights to the programs and the tapes. Prior to each show, each panel member should sign a release which states that he or she is not being paid, waives all rights to ownership of the material, is not a member of a television union (to comply with the Taft-Hartley Act), and allows his or her likeness to be aired on television. Additionally,

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Spotlight Your LRIS

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the production studio signs a similar waiver of ownership rights and acknowledges that the bar association is the rightful owner of the material and the tapes.

9. Airtimes and viewers

Each show should feature a different area of the law, which should run at least once a week for one month. Most television markets have hundreds of thousands of potential viewers. You would be amazed to learn how many people actually stop and watch while channel surfing.

10. Public access vs. community access

Some communities have a public access cable television channel and a community access cable television channel. It is easier to air a show on public access television

channels than on community access television channels. As long as there is no advertising or defamatory or lewd content to the show, any show will air on public access television. The technical quality is not reviewed and a show with a bad sound track, poor lighting and poor content will still air. Community access goes through a more stringent process in that the station screens for both technical and substantive quality of the show.

11. What to wear

Do not wear white! White will tend to bleach out and distort true colors around you. A powder blue shirt or blouse will appear almost white on television without the distortion.

12. Recording format

Stations prefer a variety of formats. They include SVHS, VHS, MiniDV, DVC Pro, DVD, BetaCam SP, and others. Find out which format your station prefers. Many times it is just

a matter of preference with very little quality sacrificed.

13. Measuring success

Although it is difficult to find out who is watching and who is calling LRIS based on the television show, studies have shown that repetition is the greatest form of advertising. The more airtime you can get, the greater the chance someone will call or refer someone else to call LRIS.

The amount of time put into this project is well worth it. The positive exposure for the sponsoring bar association, bar foundation, and the LRIS will enhance the quantity and quality of calls to LRIS.

Howard A. Shalowitz is host of the weekly television show *Legally Speaking in St. Louis*. A past president of the Bar Association of Metropolitan St. Louis (BAMSL), he is currently a member of the ABA's Standing Committee on Lawyer Referral and Information Service.

LRIS Panels

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nity, lawyer referral programs can keep their programs fresh and relevant. Here are five methods that successful programs use to review and update referral categories:

- *To find out what's on the cutting edge, consult the front line.* Your telephone intake staff is the front line of your service. Ask your staff to keep notes of new issues or trends they encounter while talking with clients. Ask them to suggest ideas for new panels.
- *Ask the experts.* Consult with your bar association's committee and section heads to find out what's new and in demand in

their practice fields.

- *Ask the public.* Some programs, such as the Columbus Bar Association LRIS, conduct focus groups of clients to gauge the effectiveness of advertising and learn about client needs.
- *Use panel members as your scouts.* Get the word out to your panel members to report trends in client needs that do not quite fit the existing categories of referral.
- *Read all about it.* Keep up with your local legal periodicals to spot emerging trends.

Some of these methods may also be used to review and revise experience requirements. Jeannie Rollo, executive director of the Lawyer Referral Service of Central Texas, gets panel members involved

in the process. "I pull together a small focus group of attorneys—usually no more than three—with various levels of the calls, changes in the law and even just formatting changes to make the applications more user-friendly."

At the Philadelphia Bar Association, the LRIS consults section and committee chairs for recommendations. "We get as much substantive input as possible from lawyers who are leaders in their areas of practice," says Sayde Ladov, chair of the bar association's LRIS Committee. "Involving these leaders also raises awareness of LRIS in the legal profession. Lawyers are already an important source for clients who come to LRIS

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From the Chair...



by Hon. Lora J. Livingston
Chair of the ABA Standing Committee
on the Delivery of Legal Services

Much has been written and discussed about the so-called “gap population”—those who have too many resources to qualify for legal aid, and too little to afford the services of a lawyer in a traditional setting. In many ways the issues, problems and legal concerns of those just above the poverty line are the same as those just below it. Issues of affordable housing, health care, domestic turmoil and discrimination are often the same. Legal solutions are frequently required. Yet, those who do not meet the means tests for legal aid or pro bono assistance are left to seek representation in the marketplace, with hourly rates that frequently match or exceed a full day’s take-home pay.

Often providing legal services to the working poor is done at the expense of the lawyers who serve these clients. For example, moder-

ate means panels of lawyer referral services expand access for those of limited incomes by providing lower hourly rates and set fees. Yet the individual lawyers who provide the services are the ones asked to shoulder this burden as they receive the lesser compensation. Similarly, lawyers who accept cases from clients who cannot afford to continue payments are faced with a difficult dilemma of seeing it through at a financial loss to themselves or of leaving the client to fend for him or herself. We need to explore and advance systems that meet the legal needs of the working poor in ways that do not require these types of *de facto* subsidies.

We are beginning to see examples where the resources and economies of legal aid are being integrated into the delivery systems for those of moderate income. In February, the Committee gave the 2006 Louis M. Brown Award for Legal Access to the Legal Aid Society of Orange County California for its project Legal Resolutions. The project enables people to use technology to answer questions. This information is then formatted into the documents necessary for the particular court matter. Those who do not qualify for legal aid can then hire a lawyer, who has registered with the Society’s state-approved lawyer referral service,

at a fixed fee to assume the representation. The participating lawyers benefit because the clients have completed the paperwork before seeing them and merely need the lawyers for advice and additional representation.

While Legal Resolutions is an uncommon example, a recent report from the Bellow-Sacks Project at Harvard Law School advances the concept that full access must address the legal needs of those of moderate income in a complex mixed-model approach that relies on the resources of all stakeholders.

The Delivery Committee encourages the experimentation called for in the Bellow-Sacks report and being done in Orange County. The notion of full access demands for us to go beyond collaboration. We must focus on our common goals, share resources and overcome the barriers that hinder our abilities to seek justice for all regardless of income.

For more information about the Louis M. Brown Award, visit www.abalegalservices.org/delivery/brown.html. Learn more about Legal Resolutions at www.legalresolutions.com. The Bellow-Sacks report, Civil Legal Assistance for All Americans, is online at www.law.harvard.edu/academics/clinical/bellow-sacks/papers/bellow-sacks.pdf.

Lawyer Referral

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seeking a referral. We want to nurture and expand that relationship.”

Take a look at your panel list. Is your program meeting the

evolving needs of the community you serve? By reaching out to bar leaders and panel attorneys, listening to the public and keeping up with developments in the law, you will find that the changing legal landscape, rather than being a problem, is an opportunity to

expand business and better serve the public.

Charles J. Klitsch is director of public and legal services for the Philadelphia Bar Association and is a member of the ABA Standing Committee on LRIS.



by Gen Earl E. Anderson, USMC (Ret.)
Chair of the ABA Standing
Committee on Legal Assistance
for Military Personnel

By definition, government lawyers serve the public. Their public-sector status, however, need not act as a constraint upon their opportunity to do volunteer legal work. There is a growing recognition within government law offices that pro bono work is not only permissible for government lawyers, but good for lawyers and clients alike. It helps the lawyers polish their legal skills and people skills, adds a measure of personal satisfaction to their legal practice, and confers the benefits of quality representation on clients who could never afford to pay a lawyer.

Innovative pro bono programs in agencies such as the United States Department of Justice (DOJ) have helped dispense with the idea that pro bono work and public-sector law practice are mutually exclusive concepts. DOJ has emphasized to attorneys on staff that they not only are permitted to give pro bono service, outside of their work obligations, but are encouraged to do so. The response has been enthusiastic, as lawyers in the Department have embraced the chance to donate their legal skills in ways that improve the lives of people in their community. Training resources are available to ensure that attorney volunteers are practicing within

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Recent Tax Law Developments for the Military

by LTC Janet H. Fenton, USA

Military operations in Afghanistan and Iraq frequently spotlight members of the military in nightly newscasts and on the front pages of newspapers. Service members are depicted taking part in combat and security operations, engaged in reconstruction efforts, or returning home. Usually unmentioned in this news coverage is the fact that service members are taxpayers, too. As those experienced in military legal assistance understand, service members face the same tax issues as other Americans, and some unique tax issues to boot. For attorneys helping service members navigate the tax system, several recent developments affecting military taxpayers deserve special attention.

Military Family Tax Relief Act

The Military Family Tax Relief Act of 2003 (MFTRA) contained three changes of particular significance. One of the most anticipated changes involved the tax treatment on the sale of a principal residence. Since May 7, 1997, an individual taxpayer can exclude up to \$250,000 (\$500,000 if married filing a joint return) of gain realized on the sale of a principal residence if he or she owned and used the home as a principal residence for at least two of the five years preceding the date of sale. A partial exclusion applies, under specific conditions such as a permanent change of station due to military orders. The MFTRA created a special rule applicable to members of the uniformed services regarding the two-out-of-five year test. The new rule, codified at 26 USC § 121(d)(9), allows a taxpayer serving on qualified official extended duty as a member of the uniformed services to elect to suspend the running of the five-year period of ownership and use during such service for up to 10 years. The same applies to taxpayers with spouses serving on qualified official extended duty.

This new provision provides some flexibility for service members trying to decide whether to sell a home. The exclusion of gain for sale of a principal residence is an intricate section of the tax code. Service members should be aware of the general rule and the new MFTRA provision and seek specific tax guidance on the application of the rules to their specific situation.

The MFTRA also created an above-the-line deduction for certain Guard and Reserve members. Under prior law, Guard and Reserve members who incurred un-reimbursed expenses for overnight travel 100 miles or more away from home to attend meetings and drills could deduct those expenses only as miscellaneous itemized deductions.

The benefit of doing so was limited by two significant restrictions associated with a miscellaneous itemized deduction: Taxpayers must itemize deductions, and second, miscellaneous itemized deductions are only allowed to the extent they exceed two percent of the adjusted gross income on the return. The new above-the-line deduction means that Guard and Reserve members can take the deduction regardless of their competency, and the agency has developed protocols to make sure

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From the Chair...

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pro bono initiatives do not interfere with the attorney staff's official duties, particularly with respect to conflicts and appropriate use of office resources.

If pro bono works for lawyers in civilian government offices, it follows that it should work for the military bar as well. It is true that many military attorneys already spend much of their day working with lower-income service members whose financial status is not much different from that of a pro bono clientele. Certainly, many young service members and their families could not afford lawyers but for the free legal assistance resources of the service branches. It is also important to recognize that many JAG officers, paralegals and legalmen have in recent years been fully engaged, and then some, by the extraordinary demands associated with preparing and counseling troops deployed to war zones and responding to natural disasters that have torn up homes and lives.

With that said, where military attorneys have the time and the inclination to deliver pro bono legal services in their communities, above and beyond their service duties, such initiatives must be encouraged. Pro bono work is not only good for

military lawyers and good for their pro bono clients, it represents an important additional opportunity for installations to be good neighbors to their surrounding communities. Although the services cannot cover malpractice insurance for pro bono work, local nonprofit organizations that sponsor the work commonly provide such coverage for attorney volunteers.

There are signs of late that the pro bono cause is gathering steam within the services. As but one example, last September the Judge Advocate General of the Air Force issued a policy memorandum entitled, "Pro Bono Activities by Judge Advocates and Civilian Attorneys." While setting forth appropriate precautions regarding conflicts of interest, licensing, malpractice insurance, and approval by superiors, the memorandum affirms at the outset that "... active duty judge advocates and civilian attorneys may provide pro bono legal services."

It is my steadfast hope that one day soon every SJA will be in position to send a strong, clear message to staff that, as long as military exigencies permit, pro bono service by military attorneys is encouraged, consistent with the larger commitment to national service. At the end of the day, I see little real distinction between the

moral bases of a service member's commitment to serving his or her country, on the one hand, and a lawyer's commitment to doing his or her fair share of pro bono work, on the other. In each case, the individual subordinates personal interest to the greater good. In each case, serving where needed becomes a matter of duty, not choice. Pro bono work is among the highest callings of the nation's lawyers, and all lawyers, in and out of uniform, should look for these opportunities to serve.

ABA President Michael S. Greco has made it a primary mission of his term to re-focus the bar on its great traditions of public service, both in the responsibility to provide pro bono legal assistance contained in Rule 6.1 of the ABA Model Rules of Professional Conduct, and beyond. The presidential Commission on the Renaissance of Idealism in the Legal Profession has made significant strides in raising the profile of pro bono and public service within the profession. The ABA initiative responds to the persistent gap in American society between the legal needs of low- and moderate-income people and the resources to meet them. It falls upon the legal profession as a whole to make its best efforts to bridge that gap, in the interest of access to justice for all, and of our nation's future.

Tax Developments

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they itemize or use the standard deduction, and the deduction is not limited by the two percent cap.

The third significant change included in the MFTRA related to the death gratuity payable for deaths occurring on active duty.

The gratuity increased from \$6,000 to \$12,000. The gratuity was also made tax-free, both at the current level and at the level of any future increases to the death. (This proved especially important when the recent 2006 National Defense Authorization Act increased the death gratuity again to \$100,000, all of which is tax-free.)

Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act of 2003 (SCRA), which updated the Soldiers and Sailors Civil Relief Act (SSCRA), did not focus primarily on tax issues, but it did correct a long-standing state tax problem for military members.

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Tax Developments

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Like the SSCRA before it, the SCRA provides that only a service member's state of domicile can tax his or her military pay. However, the SCRA protections do not extend to military spouses or to non-military income earned by service members. Some states, recognizing they could not tax the military income of nonresidents, would nonetheless include nonresident service members' income when calculating the tax liability on the taxable income of non-military spouses or members' non-military income. The SCRA prohibits states from using nonresident service members' income in this manner to increase the tax liability on other income. This provision applied to all open cases as of December 19, 2003. Most states that employed this method of taxation allow affected taxpayers to amend past returns based on the SCRA.

Combat zone tax exclusion

Current world operations highlight one of the most well known tax provisions in the armed forces, the exclusion from gross income of military compensation earned in a combat zone. Section 112 of the Internal Revenue Code provides for this combat zone tax exclusion (CZTE). Section 112 excludes from gross income all the military compensation earned by enlisted members and warrant officers who serve in a CZTE area. Commissioned officers exclude up to the highest enlisted pay plus imminent danger pay. (This monthly exclusion is capped at \$6,724.50 for 2006.)

A service member's entire monthly military compensation is excluded if he or she spends any time during that month in a CZTE

Various tax code provisions often interact, and changes in one provision can have unintended consequences for another

area. There are three ways to qualify for CZTE:

- serve in a combat zone established by the President in an executive order
- serve in a Qualified Hazardous Duty Area (QHDA) established by Congress
- serve in an area certified by the Secretary of Defense as a direct-support area

Currently there are three combat zones declared by the President: the Arabian Peninsula, Kosovo and Afghanistan. Congress has created two QHDA areas in Bosnia and Kosovo. There are currently 10 countries designated as in direct support of a combat zone.

Addressing unintended consequences

Various tax code provisions often interact, and changes in one provision can have unintended consequences for another. This happened regarding two popular tax credits for low-income wage earners with children—the earned income tax credit (EITC) and the refundable portion of the child tax credit (CTC)—and CZTE. In 2002, the definition of earned income changed for purposes of qualifying for the EITC, and only income included in gross income counts for purposes of qualifying for EITC. Furthermore, the refundable CTC is calculated as a percentage of the taxpayer's earned income as defined for EITC purposes. As the number of personnel and the

length of time spent in the CZTE areas increased, junior service members who would ordinarily qualify for the EITC and CTC did not qualify because all of their income was excluded. Conversely, senior service members who would ordinarily not qualify for the EITC and refundable CTC did qualify because not all of their income was excluded.

The Working Families Tax Relief Act of 2004 (WFTRA), addressed these tax credits and their interaction with CZTE. For tax years 2004, 2005 and 2006, service members who serve in a CZTE area can elect to include their CZTE income for purposes of qualifying for EITC. Service members who elect to include the income must include all the CZTE income. (The amount of CZTE income is on the W-2 form in box 14, code Q.) Two service members married to each other—who both spent time in the CZTE area—can make their own election separately, even though filing a joint return. This election means that service members who serve in CZTE areas should work their tax return both including and excluding the income to see if this election benefits them.

The WFTRA treated CZTE income differently for purposes of qualifying for the refundable portion of the CTC. In the case of the CTC, CZTE income must be included in the calculation. In addition, this provision regarding the CTC is effective through tax year 2010.

Conclusion

This is a brief summary of recent legislation addressing complex tax issues that may affect service members and their families. The tax assistance centers on military installations are well-

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Tax Developments

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equipped to prepare tax returns and answer tax questions for service members. Publication 3, *The Armed Forces Tax Guide*, is a useful resource for all sorts of tax information and is available online at www.irs.gov. Additional information specific to the CZTE and other tax provisions available to members of the armed forces who serve in a combat zone is also available on the IRS website.

LTC Janet H. Fenton, USA, is the executive director of the Armed Forces Tax Council.

The views expressed herein are solely the opinion of the author and do not reflect the views, opinions or policies of the United States Army, the Department of Defense or the American Bar Association.

LAMP Distinguished Service Award Recipients

The Legal Assistance Distinguished Service Award is presented annually by the ABA Standing Committee on Legal Assistance for Military Personnel. It recognizes individuals and groups that have had exceptional achievements or exceptional service in delivering legal assistance to military personnel.

The LAMP Committee has selected two individuals and four groups as recipients of the 2005 Legal Assistance Distinguished Service Award:

- Mr. Dwain Alexander, Naval Legal Service Office Mid-Atlantic
- MAJ Michael Martinez, United States Army (posthumous)
- Coast Guard Hurricane Response Legal Assistance Team
- Naval Legal Service Office Central
- Office of the Staff Judge Advocate, 3d Infantry Division and Fort Stewart
- Office of the Staff Judge Advocate, 81st Training Wing, Keesler Air Force Base

See next issue of *Dialogue* for profiles of the award recipients.

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