

Dialogue

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Outcome Measurement: An Integral Part of an Effective Statewide Legal Services System

by Ken Smith and Lorna Blake

Outcome measurement is a powerful tool for examining how clients benefit as a result of services they receive from legal services programs. Led by IOLTA programs in four states, statewide legal services systems are implementing outcome measures as a cornerstone of their efforts to support program improvement and resource development at local and statewide levels. These measures spotlight the results delivered by programs, addressing questions such as:

- How many clients and their family members received protection from domestic violence as a result of a program's services?
- How many people avoided illegal or unfair eviction from their homes?
- How many dollars did clients receive as a result of Social Security disability appeals, child support petitions and other successful income support advocacy?
- How effective are a program's efforts to improve these kinds of outcomes for clients?



Only a handful of state legal services systems have implemented outcome measures that cover the full range of programs serving clients in a state. State leadership groups such as IOLTA programs, bar foundations, access-to-justice committees, and state planning groups can do much to promote greater utilization of outcome measurement. Models are in place; investments by IOLTA programs in New York, Virginia, Maryland, and Texas have created an intellectual asset that any program and any state can tap into.

Installing outcome measures should be a priority of every state legal services community

Legal services programs have a great story to tell. Being able to present facts and examples to show potential partners (such as legislators, bar leaders, judges and local officials) what kinds of results are being delivered in their own "communities of interest" by legal services programs is a powerful asset. The ability to specify

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Outcomes

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results is key to expanding resources and enrolling a bigger cast of players to help in this work.

In addition, maximizing the return on society's investment in legal services is a public responsibility. Tracking results—and taking effective action to improve them—demonstrates good stewardship over the public dollars entrusted to legal services.

Advocates also can use information about outcomes for clients to improve performance.

At the program level, outcome measures can shed light on several questions. How well are the management and advocacy systems that are in place serving the needs of clients? Do a program's results align with its priorities? Do intake workers or case handlers need training or other intervention to improve the outcomes they can deliver to clients?

Measuring the results legal services programs can deliver

Legal services programs seek three broad kinds of outcomes. The first two encompass the core mission of legal services: seeking

individual solutions for individual clients, and solving problems affecting broad segments of the low income community. At the same time, however, a program's ability to achieve these direct results depends on its success in achieving a third kind of outcome: expanding the core capacity of the program itself.

Measuring the results of investments in a program—such as developing new funding sources, enrolling new partners, recruiting pro bono lawyers, training staff, improving technology, and incorporating new delivery models—can help a program make a real difference in expanding access to justice in its community.

Four IOLTA programs lead the way in measuring the results of direct legal assistance

Until 1993, the only legal services case statistics system in general use was the Legal Services Corporation's Case Service Report (CSR) system. When it was introduced in 1980, the CSR system provided an important tool for statistically describing outputs of the LSC programs to Congress, state legislatures, the

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Three Kinds of Outcomes We Measure:



... For Individuals

- Protection from domestic violence
- Prevented illegal eviction from home

... For Low Income Communities

- Bigger supply of affordable housing
- Better access to special education

... For Building Capacity to Serve More People

- Recruited pro bono lawyers
- Expanded funding support

From the Chair...



by *Herbert S. Garten*
Chair of the ABA
Commission on IOLTA

I want to use this issue's column to discuss several short news items.

First, on April 29, 2000, the ABA Commission on IOLTA met in Chicago. William H. Farley, president of the Lawyers Trust Fund of Illinois (LTF), and John B. Simon, trustee of LTF, joined us for a portion of the meeting and provided useful information regarding the operation of the Illinois IOLTA program and some of the challenges it is facing. The Commission was given the opportunity to highlight its activities and services. Everyone in attendance found the meeting valuable.

In the spring of 1999 the Commission began meeting with IOLTA program representatives from the state in which the Commission is holding its meeting. We plan to continue this tradition because it is an excellent way to exchange information with IOLTA programs across the country and to thank staff and volunteers of those organizations for the excellent work they are doing.

Texas litigation continues

As expected, the Washington Legal Foundation filed an appeal in the Fifth Circuit Court of Appeals of United States District Court Judge James Nowlin's

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Grantee Spotlight: South Carolina's Legal Aid Telephone Intake System

by *Faith R. Rivers*

In a bold move to utilize current technological advances to enhance the provision of legal services, South Carolina's five legal services programs have joined together to establish a centralized, statewide telephone intake system.¹ The Legal Aid Telephone Intake System (LATIS) is expected to improve the efficiency of local program offices by consolidating the majority of client intake services at one location. The legal services programs anticipate that concentration of intake services at a central location will make front-line staff available to provide other services and enable program staff attorneys to concentrate on additional and more complex cases. This service is expected to substantially expand the number of poor persons receiving legal services in South Carolina, especially those living in rural counties.

Joyce's Story

"Joyce," a low-income client living in Dillon, South Carolina, called LATIS in March to seek assistance regarding an ongoing dispute with her landlord. Joyce was concerned about improper late charges, damage claims by the landlord, and abuse of access to her apartment by the landlord. She called LATIS because she feared losing her apartment. An attorney talked to Joyce by telephone and sent a letter to the apartment management company. The legal services agency handling Joyce's case received a written response from the management company, and the dispute was resolved to Joyce's satisfaction. This assistance was provided without requiring Joyce to travel to the local legal aid office, which was 50 miles away.²

Barriers to Access

Largely rural in nature, South Carolina faces multifaceted challenges in providing access to legal services. Eighteen percent of the state's population lives in poverty. Forty-five percent of South Carolinians reside in rural areas. According to the US Department of Agriculture (USDA), 28 of South Carolina's 46 counties are completely rural in nature. The remaining 18 counties have significant rural areas where USDA provides services. Lack of transportation among the low-income population and in rural areas presents a major barrier to client access. Across the state, nearly 11 percent of all households do not have access to a car. This situation is even worse in the African American community, where 25 percent of that population does not have access to a car.³ Furthermore, the state's urban centers operate only minimal mass transit systems, while mass transit is largely unavailable in rural areas.⁴ In reviewing the structure of legal services, the legal services

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courts and the public. For two decades the CSR has supported grant-making, fund-raising and public relations efforts at national, state and local levels. However, it has two serious shortcomings that limit its usefulness. First, while it tracks kinds of matters, it does not measure outcomes for clients. The CSR reflects a *lawyer's* perspective—what the legal problem was (eviction, child custody dispute, debt collection...), and how it was resolved (by advice, brief service, court or administrative agency decision...). What the CSR does not indicate is the number of clients who obtained solutions to the problems that led them to seek legal help.

Secondly, the CSR covers a limited range of legal services. It focuses on the kinds of matters for which LSC provides funding. It may provide little or no detail about advocacy areas that may be very important to state and local program managers, and it does not include information about matters that LSC programs cannot handle—such as prisoners' rights and welfare reform cases. Specialized programs and state funders have had to supplement CSR statistics with other information to describe the services they provide.

In 1993, the IOLA Fund of New York decided to develop a new approach to tracking legal services provided by programs. The Fund launched a pioneering effort that ultimately produced a practical model for measuring client outcomes in both general-purpose and specialized legal services programs.

Because of the size and diversity of the state, New York is a good

place to see the vast range of services and needs covered by legal organizations serving the poor. Although a large portion of IOLA funds go to LSC-funded general civil legal services programs, the Fund also supports more than 70 specialized projects and programs operating in all sizes and types of communities across the state. To make sure that its outcome measurement effort would take this diversity into account, the Fund convened a pilot group of IOLA grant recipients reflecting the full range of programs supported by IOLA funds.

This group devised a simple system by which advocates could code the most significant benefits received by clients at the time each matter was completed. The measure was tested in 1994 in the pilot group member programs. After review and comment by the IOLA grantee community, a final measure was incorporated into the Fund's annual grantee reporting process and implemented in 1995 by all of the 90-plus IOLA-funded agencies in New York.

The New York system enabled programs to accurately track and report the following information on an annual basis:

- How many people are benefiting from specific kinds of case outcomes? More than 100 categories of outcomes were included in the IOLA report.
- How many dollars are being produced for clients? For example, what was the total sum of monthly child support awards obtained by programs for their clients?
- How many dollars are saved by taxpayers? For example, what are the annual savings from successful homelessness prevention and eviction

defense efforts that avoid the expense of state- or city-mandated emergency housing?

- What results were produced by grantees' legal assistance to community-based organizations serving low-income people?

Building the intellectual asset: major improvements by Virginia, Maryland and Texas

The New York model was adopted and further refined in 1996 and 1997 by legal services evaluation committees in Virginia and Maryland. These committees were in the process of upgrading their own evaluation and monitoring systems. The Legal Services Corporation of Virginia made its outcomes system mandatory for all funded programs. The Maryland Legal Services Corporation invited its grantees to participate on a voluntary pilot basis. The New York IOLA Fund then incorporated these states' features into its system.

In 1999, the Texas Equal Access to Justice Foundation (TEAJF) decided to incorporate outcome measures in an update of the program assessment system it had used since 1992. A committee of TEAJF staff, board members and grantee representatives reviewed the New York/Virginia/Maryland model in light of the special features of Texas legal services practice. Recently the committee began pilot-testing a system with several significant enhancements to capture the work of Texas programs in better detail. For example, the new system will:

- identify multiple-benefit outcomes;
- distinguish contested from non-contested matters;
- improve the reporting categories; and

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- compare what the client wanted with what he or she actually got.

Telling our story: using outcomes information to market legal services

Outcomes data provides three themes equal justice advocates can include in their talking points. First, programs can send the message that *we deliver solutions*. For years, legal services advocates have told legislatures and community leaders that there is an overwhelming unmet need for legal services. While this message can motivate some people to provide resources (funding, volunteers, political support), there is another story that needs to be told: *legal services programs get dramatic results with the resources they are given!* The graphic

Leverage...
Every \$10,000 invested in IOLA-funded programs provides legal assistance benefitting 74 low income people and generating \$14,700 in direct dollar benefits to pay for such necessities as food, rent, heat, lights and health care.



Source: Grantee Activity Report, 1998; The IOLA Fund of the State of New York (March 1999)

below illustrates how the IOLA Fund of New York has used outcomes information (dollar benefits generated, numbers of people helped) as part of a bigger success story.

We make a life-changing difference ... for lots of people is a second theme. Legal services advocates have long used compelling vignettes in reports and funding proposals to describe how legal assistance is helping people pull themselves out of poverty or escape the devastating grip of abusive relationships. With outcome measures in place, programs can add a sense of scale to those stories.

Finally, outcome measures can help programs say: “we are aligned with your mission.” One of the challenges faced by state access-to-justice groups is showing a wide array of potential partners and funders how support of legal services for the poor fits in with their own mission. Armed with good data about the results that are produced and a bold dash of creativity, legal services leaders can easily draw these connections.

Conclusion: outcome measures are a crucial part of an effective statewide legal services system

The IOLTA programs in New York, Virginia, Maryland and

Texas have performed a vital service for their grantees and for legal services clients by installing performance measures in the programs they fund. Individual programs are unlikely to make this investment without the impetus of a mandate from a major funding source. Yet once the system is in place it can yield valuable information for program improvement and resource development at both local and statewide levels. These states have produced models that other states now can follow.

Experience to date shows that a statewide system is a good place to implement outcome measures. State-based systems can capture the diversity of programs and services across a state without the compromises that adjusting to a national reporting system such as the LSC’s CSR has proven to require. A statewide approach aligns with LSC’s push for integrated, state-led legal services systems that engage a full range of stakeholders in meeting the unique needs of a statewide community.

Outcome measures are not perfect, but they are available and getting better. They are an integral part of an effective statewide legal services system.

Ken Smith is president of IOLTA Information Services, a firm that provides market research and strategic analysis services to state funders and legal services provider organizations nationwide.

Lorna Blake has been Executive Director of the Interest on Lawyer Account (IOLA) Fund of the State of New York since 1983. She currently is serving as President of the National Association of IOLTA Programs.

South Carolina

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programs sought to utilize centralized intake as a strategy to combat these formidable transportation challenges and to expand access to justice to low income people throughout the state.

A Collaborative Effort

LATIS is the product of a widening collaborative effort between legal services programs in South Carolina and the private bar. The concept of centralized intake was introduced in South Carolina during state planning efforts in 1996 as a mechanism to provide more efficient services. The project was promoted by the South Carolina Bar's Structure Task Force and endorsed by Legal Services Corporation President John McKay in 1997. Former South Carolina Bar Foundation President Joseph D. Shine championed the concept, and a special IOLTA grant provided \$353,000 for capital costs associated with procuring technology required to implement the system statewide.

The institution of LATIS has spawned increasing coordination between legal services programs and unprecedented collaboration with the private bar. The current funding scenario for LATIS exemplifies the extent of buy-in and partnership between these entities. Subsequent to the initial IOLTA grant from the Bar Foundation, the South Carolina Bar awarded \$46,000 to LATIS for additional capital costs, and the legal services programs have assumed operating responsibility for LATIS, committing more than \$600,000 from non-LSC sources to the continuing operation of the system.

LATIS

LATIS began operations in September 1999. It is a separately incorporated nonprofit organization governed by a board of directors comprised of representatives from the legal services program directors and boards, the Bar Foundation, the South Carolina Bar and the state support center, Applesseed Legal Justice Center. The organization is headed by Joan Brown, an experienced legal services attorney with bar association experience and a keen interest in technology. Currently, the staff consists of attorneys who have been trained in poverty law and paralegals who have had extensive training in telephone intake procedures.

Potential clients contact LATIS through a toll-free telephone number and are prompted through an automated call distribution system that has nine incoming lines. The system is operational Monday through Thursday from

9:00 a.m. to 6:00 p.m. Recently Saturday morning hours have been added.

When potential clients call LATIS, a hold message describes the intake process and refers callers with criminal cases to other resources. Callers are screened for financial eligibility and case priority by intake paralegals. Subsequently, the files created for eligible priority cases are electronically transported to the appropriate local office for case acceptance review. In emergency situations, eligible clients are immediately referred to the local field office for assistance. In addition, local offices continue to interview clients with special needs such as mental illness, cultural barriers, communication difficulties, telephone barriers and walk-in emergencies.

In order to bring all 46 counties online, and in an effort to streamline calls and facilitate faster intake

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ABA Rural Pro Bono Initiative supports innovations to help under-served rural poor

The South Carolina telephone hotline is just one example of the creative solutions that will help meet the needs of rural clients. Recognizing that clients in rural communities have a wide range of general civil legal needs that are not being met through the traditional legal services system, the ABA Center for Pro Bono launched the Rural Pro Bono Delivery Initiative. (See the Winter 2000 issue of *Dialogue*, page 25). The central goal of the Initiative is to help fill the gaps in legal services delivery by encouraging pro bono advocates to develop strategies for serving rural clients. To help reach this goal, the Center has invited pro bono advocates to apply for *mini-grants* to assist in delivering the much-needed services. The deadline for applying is July 14, 2000, and recipients will be announced in early fall.

Robert N. Weiner, chair of the Standing Committee on Pro Bono and Public Services, says about the Initiative "the ABA is pleased to be working, along with others who have labored in this area, on ways to deliver legal services to some of the most under-served people in America." For information about the Initiative or about how to apply for the *mini-grants*, contact its director, Claire L. Parins, at 312/988-5774, or write her at parinsc@staff.abanet.org

South Carolina

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during the initial phase, LATIS will not provide counsel, advice and brief service functions until the transition stage is completed. The program's goal is to utilize part-time attorneys to supplement intake services with counsel, advice and brief service functions within the next 12 months.

LATIS is the latest component in a network of resources supported by IOLTA. With funding from the Bar Foundation, the South Carolina Bar Pro Bono Program has implemented two other telephone support systems which serve as resources for legal services clients. Instituted in 1997, the Bar's *Law Line* provides audio messages on legal topics to clients who call a toll free number. In 1998, the Pro Bono Program instituted the *Ask-A-Lawyer* hotline, which is staffed by volunteer private attorneys in three major cities. The service is managed by a paralegal and operates for four hours every weekday afternoon. The hotline provides client callers with counsel, advice and referrals to service providers. *Ask-A-Lawyer* callers who may be financially eligible are referred to LATIS. Conversely, financially ineligible LATIS callers are referred to the *Ask-A-Lawyer* hotline or local community mediation center for assistance. All conflict matters or matters outside of the legal services programs' case priorities are referred from LATIS to the Pro Bono Program for intake and referral to private attorneys. These partnerships extend the range of services offered to the legal services client population through alternative resources.

The South Carolina legal services programs have continued to pursue technology as a means to expand client access

Standardization and Technology Planning

An important outcome resulting from the implementation of LATIS is the ongoing effort among the legal services programs to standardize operations between programs. To date, the programs have adopted standard intake procedures and legal forms. Currently, the programs are considering establishing statewide case priorities. It is certain that screening eligible clients would be greatly simplified by reducing the differences between program intake procedures and case priorities.

A crucial component of the LATIS structure was the development of a case management software program used in common by the South Carolina legal services programs. The development of this program was made possible by the initial IOLTA grant. The software utilizes uniform intake templates, which were instrumental for LATIS operation. The resulting common technological platform enables LATIS to transport case files to field offices and the South Carolina Bar Pro Bono Program via the Internet. This technology is the lynchpin for the seamless integration of LATIS into the civil legal services network.

The South Carolina legal

services programs have continued to pursue technology as a means to expand client access. Recently, the programs developed a joint proposal for a mainframe relay telephone system to support enhanced transmission of data, constant Internet connectivity, and videoconferencing throughout a network comprised of LATIS, legal services offices and human service agencies.⁵ Continuing efforts among the legal services programs to expand their technology infrastructure network indicate that the initial IOLTA investment in LATIS was a wise one. That investment continues to generate technology-related strategies for legal services programs to overcome barriers and expand access to justice for South Carolina's low-income citizens.

Faith R. Rivers is Executive Director of the South Carolina Bar Foundation.

End Notes

- ¹ Carolina Regional Legal Services, Palmetto Legal Services, Piedmont Legal Services, Neighborhood Legal Assistance Program and Legal Services Agency of Western Carolina.
- ² Piedmont Legal Services case vignette.
- ³ United States Bureau of the Census, 1990
- ⁴ In South Carolina, the absence of a reliable and adequate public transit system is evident in that nine of every ten workers relies on private transportation to access the workplace. *The Working Poor of South Carolina: Poverty Despite Work*; South Carolina Legal Services Association; p. 26; Feb. 1998.
- ⁵ South Carolina. Legal Services "Partners for Justice" Proposal to the Legal Services Corporation, May 2000.

Division Welcomes New Assistant Counsel, Director of Periodicals

David Holtermann joined the ABA on May 1 as Assistant Counsel to the Commission on IOLTA and Director of Periodicals for the Division for Legal Services. His responsibilities as Director of Periodicals include editing *Dialogue*, beginning with this issue. David also serves the Commission on IOLTA and operates the ABA's IOLTA Clearinghouse.

Prior to coming to the ABA, David worked as a staff attorney at Prairie State Legal Services in Illinois for over five years. While at Prairie State he represented low-income clients in a variety of issues,

including housing, consumer, insurance and public benefits. While in law school, David was an intern at Evergreen Legal Services, the Legal Action Center (Seattle) and University of Washington Student Legal Services.

David earned his B.A. from Marquette University and J.D. from the University of Washington.

David assumes the responsibilities held by Ken Elkins, who left the ABA last December.

The Commission on IOLTA and the Division for Legal Services welcome David to the ABA.

From the Chair...

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January 28, 2000, decision upholding the constitutionality of the Texas IOLTA program. The Commission is seeking permission from the ABA Standing Committee on Amicus Curiae Briefs and the ABA Board of Governors to file an *amicus* brief in support of the Texas Equal Access to Justice Foundation in the Fifth Circuit. If the filing of a brief is approved, it will be the fifth brief filed by the Association in this litigation, which is probably a record for any one case. This litigation has been covered extensively in *Dialogue*, most recently in the Spring 2000 issue beginning on page 9.

Summer workshops

Just a reminder that this year's Summer IOLTA Workshops will be held in conjunction with the ABA Annual Meeting in New York City on July 6-7. Once again, the Joint Commission/National Association of IOLTA Programs Meetings and Training Committee has planned informative sessions on topics such as:

- IOLTA programs as leadership

platforms for expanding access to justice;

- improving yields on IOLTA accounts;
- enhancing support for legal services through message development;
- best practices for IOLTA board and staff;
- legal services fellowships; and
- workforce diversity issues.

We are particularly honored to have Chief Judge Judith Kaye of the New York Court of Appeals as the keynote speaker for the workshops. In addition, in response to your requests and thanks to the hard work of the Joint Committee, there will be joint programming with the National Conference of Bar Foundations on Friday afternoon, July 7. Rounding out the program is a trustees' roundtable and a session for newer directors. All in all, it promises to be an exciting two days. I hope to see many of you there.

Commission's membership changes

Every year, not only does the ABA Annual Meeting usher in the Summer IOLTA Workshops, it also signifies changes in the

Commission's membership. This year, three members who have contributed greatly to the work of the Commission will be ending their terms: Bob Bevan, Paul Igasaki and Ruth Ann Schmitt.

As a member and later co-chair of the Joint Banking Committee, Bob Bevan has shared his wealth of knowledge regarding banking rules, regulations and proposed legislation to enable us to better understand trends in the banking market and to seek ways in which to increase yields on IOLTA accounts. Ruth Ann Schmitt, as co-chair of the Joint Technical Assistance Committee and a member of the banking committee has provided the Commission with the invaluable perspective of a seasoned IOLTA director. She was a moving force in conceptualizing and activating the new Peer Review Program, which was inaugurated this spring. And finally, Paul Igasaki, as a member of the Joint Meetings Committee and Joint Technical Assistance Committee, contributed regularly to the important work of both entities. I know my fellow Commission members join me in thanking them for their hard work, commitment and friendship over the past three years.

From the Chair...



by John Busch

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

Should there be a national lawyer referral network involving a joint effort between the American Bar Association and state and local bars throughout the country? A private provider, staffed by counsel with bar-sponsored lawyer referral information service (LRIS) experience, has asked the Standing Committee on Lawyer Referral Information Service to consider the development of a national referral system using the ABA Web site to refer clients to bar-sponsored lawyer referral programs. This collaborative system would benefit the ABA, LRIS programs at the state and local level, and consumers.

Historically, our committee has not embraced the concept of a national referral system. The prevailing logic was that state and local bars could best evaluate local needs and provide an effective LRIS, and the role of the ABA was to remain independent and neutral, providing direction on national education and policy. With the proliferation of private referral services and the advent of the Web-based services, rethinking this view seems appropriate.

Under the current proposal, a

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Implementing a Percentage Fee Program

by Carol Woods

Like any other business providing a service to the public, lawyer referral services must be concerned with the financial “bottom line.” In an increasingly competitive market, referral services must consider the most effective means of generating income. Programs that stress public service need to pay special attention to the revenue-producing aspects. In the best-case situations, the fee-generating aspects of the programs have been successful enough to support the many non-fee-generating public service activities that make up a large part of most lawyer referral services.

The revenue resource that has proven most effective for referral services is some type of percentage fee structure, which requires that participating attorneys remit a portion, typically 10 to 15 percent, of the fees received from LRS referrals. Similar systems are in use in approximately **one half** of the bar-sponsored lawyer referral services in the country. Ethics opinions from various states have frequently concluded that a percentage program is an ethical way for a lawyer referral service to generate income when the funds are used to defray the cost of operating the service.



The benefits of such a system are numerous. First, most services that institute such a system see a marked increase in revenues within two years of implementation. The attorneys on the panel only pay on fees actually received, so that low or no fee work is not included in the percentage fee program. The LRS may develop a flat percentage fee approach (e.g., charging attorneys 10 or 15 percent of all fees received), or it may develop a sliding scale (e.g., charging five percent of the first \$1,000 received and 10 percent of the fee above that). Some programs differentiate between contingent and non-contingent fees, typically assessing a higher percent fee in contingency cases.

In implementing any new revenue-raising approach, it is important to keep in mind that the program may experience an initial decline in panel membership as a result. Experience has shown, however, that the loss is generally a small percentage of the total panel membership. The income raised makes the practice worthwhile even with a slight drop in panel participation.

Further, any membership loss will result in more referrals to those attorneys remaining on the panel, thereby increasing the benefit of their participation. Membership usually increases again once word spreads about the benefits received by the remaining panel attorneys.

Plan Ahead

Instituting a percentage fee program where none exists takes planning if it is to be successful. A referral service should allow six months to a year from the time such a proposal is favorably received until the program is

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From the Chair...

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for-profit provider, working with the ABA, would develop a national LRIS on the existing ABA Web site. A client would access this national service and fill out a form with contact information and a description of his or her legal problem. This form then would be forwarded on to the appropriate state or local bar LRIS for referral to an attorney. State and local bars would make the referral from their existing subject area panels, providing the client with information on the attorney and scheduling the initial consultation via e-mail. The LRIS would also have the option of contacting the client by telephone or e-mail to obtain additional information on the legal problem if the situation warranted it. The LRIS response also could include the information component of LRIS, with links for a potential client to connect to social service agencies, or obtain information about small claims courts, alternative dispute resolution and so on.

If the consumer chooses to accept the referral attorney, he or she would enter a credit card number to pay the initial consultation fee. This fee would be paid to the ABA or the private provider to cover the marketing and programming costs. Once the referral was complete, the state or local bar would "own" the referral, and the ABA and the private provider would have no further contact with the client. All percentage fee arrangements, client satisfaction surveys, and other follow up would be the responsibility of the local LRIS, as if the consumer had directly

LRIS Scam Alert!

Several New York lawyer referral programs report recently receiving phone calls from three men in Ohio. These callers stated that they were involved in a tragic accident while in the programs' locale or state on a church-related trip. One caller said that his wife was killed and his daughter paralyzed. The callers asked for referrals to a personal injury attorney.

In one case, LRIS panel attorneys volunteered to travel to Ohio to meet with the callers, but they declined, saying that they would be more comfortable seeing the attorneys' offices. Unfortunately, they said, they could not afford to travel there. One of the attorneys called a meeting of the firm, which decided it was worth the risk to send the airfare. Needless to say, no prospective client ever showed up, no police reports regarding the accident were found, and the post office was not able to deliver further correspondence after the initial check was mailed.

The three men who called all used the first name "Lee." They said they were affiliated with a church group, and even had "the reverend" call the LRIS to "alleviate any confusion." The phone numbers they used were all Ohio numbers.

Please warn your phone staff. These sound like tempting personal injury cases. Ask for details and proof of the incident before making this type of referral. Thanks to the LRIS Listserv for the warning.

contacted the state or local bar.

The benefit to the consumer is a nationwide, public service-oriented referral source with legal information and the opportunity to contact a pre-screened attorney. The ABA and state and local bar partnership would add credibility and a level of comfort to consumers not available with private services. The cooperative effort would serve to provide an additional source of clients to state and local LRIS programs. A well-designed program could continue the public service focus of the ABA and give the state and local bars a national market and Internet access that many services now lack.

Is this national LRIS something that would benefit you? If the ABA does not provide an oppor-

tunity for small bars to have presence on the Web, will private providers capture a significant slice of the e-market? Is "the devil in the details?" Is there a sufficient compatibility of interest among the 300-plus providers of LRIS to make a national system feasible? And most importantly, is the concept sufficiently sound and viable that the ABA should take a leadership role and dive into what may be a sticky situation?

Please share your thoughts or concerns with the Committee's ABA staff, me, or any member of the Committee. Sheree Swetin is staff director of the Committee and may be contacted via e-mail at sswetin@staff.abanet.org or by calling (312) 988-5755. You may contact me via e-mail at buschtalbott@neumedia.net

Elements of an Effective Internet Referral System

by Patricia Holt

Now that 2000 is here and the world—at least that part given over to lawyer referral services—did not end, you may be thinking that putting your referral service on the World Wide Web is an idea whose time has come. Even if you are not truly committed to the idea, you are probably increasingly subjected to questions, suggestions, and less-than-subtle hints that demonstrate that this new medium can no longer be ignored. So, what is stopping you from coming to terms with this brave new world?

How about not knowing what kind of help you need or where to get it? Before you can address these issues, however, you should carefully examine what makes up an effective Web-based referral system. With this information in mind, you can then analyze your existing referral system to identify which portions of it can be readily carried over into a Web application and which have to be overhauled or replaced.

An effective referral Web site must do several things. It must get and hold the attention of the user. It must be easy to use. It must generate referrals properly and record them accurately. It must select the attorneys for referrals in the proper rotational order. This last requirement is particularly important for ABA-sanctioned lawyer referral services, because the integrity of the attorney rotation system must be assured.

Achieving all of these

results requires that the various elements be seamlessly integrated. This calls for specialized knowledge in several separate areas. Unless you are lucky enough to have personnel with this knowledge in-house, this will require assembling a team of professionals.

There are three main elements of an effective referral Web site:

- the referral database—the information on attorneys, clients and referrals,
- the graphic design—the all-important “look and feel,”
- the web application—the actual programming that connects the graphic design to the data and makes the whole thing happen.

The Referral Database

The heart of the system is the database that contains information on attorneys, clients and referrals. If you currently have a computerized referral system, this information is stored there. The Web-based referral system must be an extension of your in-house referral system, so attorneys are

rotated for Web-based referrals in the same way as all other referrals. This also ensures that users of the Web-based system are presented with the same information as telephone callers. As a practical matter, to ensure proper attorney rotation, a single database must be shared by your Web-based and in-house referral systems.

The first specialist you will have to identify is the database expert. This person will need to understand, in detail, how the information on attorneys, clients and referrals is stored in your current system. In addition to having specific knowledge of your data, he or she must be well-versed in current database tools and standards. The database expert will determine whether your current data are stored in a format that is compatible with the tools used by Web application programmers. The most popular standard for the interchange of data among different programs is the ODBC (Open DataBase

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LRIS on the Web

The web address for the Los Angeles County Bar LRIS is <http://www.smartlaw.org/index-f.cfm>

Check out these other interesting lawyer referral web sites:

San Francisco - <http://www.sfbar.org/lrs/general.html>

Beverly Hills - <http://www.bhba.org/lawyerref.htm>

San Fernando Valley - http://www.sfvba.org/lawyer_referral.htm

Florida State - <http://www.flabar.org/newflabar/consumerservices/Referral.ser>

Chicago - <http://www.chicagobar.org/public/referral>

New York City - <http://www.abcnyc.org>

Onondaga County - <http://www.onbar.org/law-ref.htm>

Austin - <http://www.austinlrs.com>

Dallas - <http://www.dallasbar.com/public/lrs-public.asp>

Wisconsin State - <http://www.wisbar.org/bar/sblris.htm>



Percentage Fee

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in operation. Time is needed to formulate a strategy for launching the program, to make policy decisions regarding the new fee structure, and to develop the administrative procedures necessary to ensure the percentage fee program's success.

Some referral services have encountered opposition to the establishment of a percentage fee program on the grounds that it constitutes "fee-splitting." Be prepared to refer them to ethics opinions concluding that these fees are ethical under the Rules of Professional Conduct.

Others oppose a percentage fee program because they believe it will require them to collect funds on behalf of the lawyer referral service. Panel attorneys, however, need only collect the fee normally charged for their services and remit a portion of that to the service.

Simple economic concerns are another source of opposition. Attorneys may resist dividing the fees and generating less income for their services. So, remember to point out that a percentage fee program is fair because the cost of operation is borne by those attorneys who benefit financially from the service. Attorneys pay percentage fees only on referrals that result in fee-generating cases.

Involve and Inform Panel Members in Advance

Panel members must be fully informed well before such a program goes into effect. Some services survey their members about their receptiveness to the idea and publish several articles regarding the proposed arrangement in the

LRIS Workshop Plans for the Future: Where Will Your LRIS be in Five Years?

Is the roller coaster of change driven by the Internet driving you mad? Web sites market services directly to clients, provide information on law firms, credential lawyers, and offer free substantive legal information. *Pro se* forms and documents, with or without the help of an online attorney, are easy to find and cheap to use. The key to planning your future is determining how LRIS fits into this mix and offers added value to the legal services consumer.

Attend the 2000 National LRIS Workshop to address how your LRIS can "Reconcept for the Technology Revolution." The 2000 LRIS Workshop will address the fundamentals of program management and help attendees plan for the role of LRIS in legal services delivery in the future. Sessions at the October 18-21 conference include:

- Developing a Web Site for Small Bar Programs
- Improving the Usability and Visibility of Your Web Page
- Defining Your Market Niche in the Internet Era
- Developing a Comprehensive LRIS Service Model
- Building Revenues Through Percentage Fees and Best Business Practices
- Establishing Criteria for Panel Membership: Beyond Subject Matter Panels

Experts in the fields of call center management, ethics, and business planning will address the issues paramount to designing an LRIS that can meet the needs of your public and legal community. Many formal and informal opportunities for networking are built into a three-day program that is a "must-attend."

Mark your calendars now!

Reconcepting LRIS for the Technology Revolution
2000 National LRIS Workshop
October 18-21, 2000
New Orleans, LA

Call (312)988-5760 or e-mail us at glascotc@staff.abanet.org for more information.

local bar publication. It helps to inform members that the trend among lawyer referral services is to raise revenue in this manner, and to ask them for their opinions.

Stress the fact that the new fee structure will allow for improve-

ments in the service that the LRS provides to participating attorneys. For example, if the increased fees are to be used, in part, for expanded marketing such as increased advertising in the Yellow

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Percentage Fee

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Pages, you should give this information to panel members.

Develop Appropriate Policies

The lawyer referral service will need to anticipate problems and develop response policies prior to implementing a percentage fee system. There are several common issues that programs with percentage fees encounter.

The most common problem involves attorneys' failure to return required reports. Additional problems include inaccurate reporting by attorneys regarding the status of a referral and disputes with panel attorneys about the fees due.

The rules of most programs provide that attorneys who do not return required reports become ineligible to receive additional referrals. Lawyer referral services, however, must develop procedures to compel attorneys to report on LRS referrals, even if they no longer are members of the service. Similarly, the LRS needs to decide in advance how it will handle inaccurate reports and fee disputes with panel members. Many programs require that fee disputes be submitted to arbitration.

Develop Administrative Procedures

The words most commonly used in conjunction with a percentage fee program are "follow up procedure." A comprehensive follow up system with both attorneys and clients is essential to the success of the program.

Attorney follow up: Efficient follow up with panel members is essential if forwarding fees is to

be a successful source of revenue. One method that has proven effective is to develop a "case status report" for each attorney listing all ongoing cases. As panel members return referral sheets, those cases that have been accepted are listed on the report. The service should require attorneys to send these status reports periodically, rather than ask them to report their fees only at the conclusion of the matter. Attorneys who are delinquent in returning the reports should be ineligible to receive additional referrals.

Client follow up: Follow up with clients also is necessary in order to ensure that the LRS receives all fees due from panel members. "Client questionnaires" are an effective and efficient means of getting feedback from clients. Such questionnaires solicit feedback about the client's satisfaction with the referral service and the attorney, as well as information about the fees that have been paid. Panel members should be informed that questionnaires are sent routinely to LRS clients. (Note: certain clients may not want to be contacted for follow up, especially in domestic relations and criminal cases.)

The service should closely monitor situations in which a questionnaire indicates that a panel member is handling the case. If an attorney fails to report that the case has been opened, the LRS should take action with regard to this inconsistency. For example, it can send a letter asking the panel member to assist in accounting for the discrepancy.

In addition to providing a useful check on the accuracy of the attorneys' reports and alerting the LRS to potential problems, client questionnaires often include glowing praise for the services of

the attorney and/or LRS staff. Here is an example of the comments the questionnaires generate: "The attorney was great. She spent lots of time answering my questions and really put my mind to rest about this problem. I didn't know where to turn. LRIS really helped me."

It is a good idea to send copies of such questionnaires to the attorney as a means of acknowledging the valuable services that have been provided. These "positive" questionnaires are useful for panel recruitment purposes, and they are an important source of positive feedback and inspiration to staff.

Staffing

Additional staff time is required to implement an effective percentage fee system. For purposes of follow up, staff must obtain more information about each client than may presently be required. At a minimum, the LRS needs to obtain each client's name, address and telephone number. It is a good idea to have a written record of the nature of the problem for which the individual is referred. Expanded record keeping is needed to track referrals and the attorneys' responses. Even recording income from forwarding fees takes additional staff time.

Implementing a percentage fee program need not be overwhelming. While it takes planning, a fair amount of groundwork and extra staff time, the results are usually well worth the effort. If your goal is to run a public service program that does not depend on grants or subsidies, but that is self-supporting, consider a percentage fee program.

Carol Woods is Director, BASF Lawyer Referral and Information Service.

Internet System

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Connectivity) standard. If your data are stored in any of the many formats that are ODBC-compliant, there is a good chance that the Web application programmer will be able to create a Web application that can share it. If not, you will have to call upon your database expert to determine whether some or all of your in-house system needs to be replaced before you can proceed with your Web application.

If your service is part of a bar association that boasts a full-service information services department, you may have such a person on staff already. Otherwise, you may be able to rely on the consultant supplied by the software company which designed your referral software, or you may have to bring in an outside consultant. Whoever is ultimately tapped for this role will coordinate with the Web application programmer, who creates the interface between the Web application and your referral database.

The Web Application

As you can see, building an online referral service involves extending the logic and business rules used to make traditional phone referrals to the Web. The Web application, which acts as the "middleware" that connects your existing referral system to the Web, will guide users through the referral process. You will work closely with your Web application programmer to define the specifications for your system based on your specific business needs. Some of the features you will want to consider building into your Web application include:

- offering the user alternatives, including various kinds of information that your existing Web page might already contain;
- directing the user to the appropriate panel with indexes geared to the sophisticated users as well as the "legally challenged";
- asking for the user's preferences in location and language;
- gathering the user's personal and billing information;
- processing credit card payments;

- selecting the panel attorney based on the user's need, location and language preference, and within rotation parameters (identify attorney with least recent referral who meets requirements);
- presenting the user with information on how to contact the attorney;
- generating a referral confirmation for the attorney;
- updating the records in your in-house system for the attorney, client and referral, including updating attorneys' rotation status;
- providing a simple process for the user to follow in the event the initial referral is inappropriate for any reason and a follow-up referral is required; and
- giving the user help options, which might include chat, telephone, online forms and e-mail.

Creating the Web-based programs to perform these functions is the job of the Web application programmer, in

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PAR Provides Management Assistance Tailored to Your Needs

Free management consultants who understand the complexity of the many LRIS issues are just a telephone call away from helping your program. The Program of Assistance and Review (PAR) is designed to address your issues and help you devise solutions unique to your needs.

Here's how LRIS programs evaluate PAR visits:

"Your insight and suggestions were very informative and extremely helpful. Perhaps more importantly, your presentation really excited the interest of the people who attended the meeting."

—Bucks County Bar Association

"Thank you for all the effort you put into producing such a comprehensive ... PAR Report. We referenced many portions ... in developing a recommendation to our Board of Directors [regarding] some fairly dramatic changes to our percentage fee policy. Our recommendation was ultimately approved"

—Contra Costa County Bar Association

"The PAR visit served us well The visit was very important in helping our officers and committee members see that we have an excellent service."

—Hennepin County Bar Association

Please call us today at (312)988-5760 for more information about PAR.

LRIS Listserv Offers Advice and Counsel at Your Fingertips

Join the LRIS Listserv electronic mailing list to get instant access to the expertise of your peers. Recent postings on the LRIS Listserv discussed:

- Rules and policies regarding repeat clients
- Recruiting ideas that have helped fill gaps in attorney panels
- Obtaining needed expertise on an LRIS case

To join the free LRIS listserv managed by the ABA Standing Committee on Lawyer Referral and Information Service, contact Colleen Glascott at glascotc@staff.abanet.org

Internet System

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cooperation with your database expert. In a modern Web application, the Web “pages” that the users see are dynamically generated on demand from data contained in your in-house system, based on the referral criteria they enter. The Web application programmer will select the tools with which to create the “glue” between the Web pages and the database. Some popular approaches to this are provided by Cold Fusion, from Allaire, and by Microsoft’s Active Server pages.

Putting aside the philosophical battles over whether information gleaned from the Internet should be free, those services which elect to continue processing administrative fees for referrals in certain areas of law must have a secure and reliable credit card processing program. There are several popular software applications, such as CyberCash, that may be incorporated into the system for this purpose.

Graphic Design

A Web graphic designer creates the appearance or “look and feel” (in software lingo) of the system.

This aspect, while separate from the actual function of the system, must be tightly integrated with it. Some Web design firms provide both graphic design and database application programming services, but most specialize in one aspect or the other. The visual design is a work of art, while the Web application is a job for a programmer. These are rarely the same people!

Before you talk to potential Web graphic designers, you may want to try your hand at one of the many available Web design software packages. You can develop a concept for the look and feel of the “GUI” (graphical user interface) that users will encounter when they click onto your Web page. In this way, you will have some basic concepts to show potential Web designers.

Whatever your level of artistic talent, you will greatly benefit from surfing the Web to identify Web design styles that appeal to you and to learn about the latest trends in Web interface design. You will then be ready to interview various Web designers and select a design firm. Remember that geography is of little importance in rating design firms, so there is no problem if the Web designers for the sites you like the best are all located in another part

of the country. Using e-mail and the Internet, they will provide estimates, proposed designs and time schedules without your having to leave your computer. You should involve your database expert and Web application programmer in your decision on the graphic design firm, since all three will have to work closely together.

Once the team is assembled, the actual design work can begin. If you are not comfortable in the role, you will need to designate someone else in-house as the overall project coordinator to monitor the project and provide a liaison among the team members.

There is one last group of specialists to consider. When your site is ready to launch, be sure to enlist the assistance of your marketing and public relations people.

Managing these separate elements is challenging, but ultimately the result can be very satisfying. If done properly, a good Web site should increase quality referrals to your panel from people you may not otherwise reach.

Patricia Holt is Directing Attorney of the Los Angeles County Bar Association LRIS.

Delivery Committee Advances Hotlines Standards

The ABA Standing Committee on the Delivery of Legal Services is scheduled to issue a draft of standards for the operations of telephone hotlines providing legal advice and information at the ABA Annual Meeting in July.

The Delivery Committee's mandate is "to improve the delivery of legal services to moderate income people and the public in general by studying alternative methods of providing legal services, by conducting pilot projects which test and evaluate new methods of delivering legal services and by encouraging participation by members of the bar in the employment of such alternative and new methods."

The Committee has supported telephone hotlines as a method of providing legal services for several years. For example, in 1995, the Committee gave the first Louis M. Brown Award for Legal Access to Tele-Lawyer, Inc., operated by Michael Cane. This service provides advice and

information to those who are weighing options about how to proceed on a matter and those who have decided to address their uncomplicated legal matters on a *pro se* basis. In 1998, the Committee presented the Brown Award to the Legal Hotline Project of AARP.

At that time, the Committee recognized that hotlines were growing within legal aid offices, as part of affinity groups, and as ancillary businesses in more traditional law practices. These services have been responding to the unmet legal needs of low and moderate income families and to the increasing tendencies of people to either unbundle their legal services or proceed on a *pro se* basis.

With the assistance of the AARP Legal Counsel to the Elderly, the Committee began to develop a series of standards designed to assist hotline providers in the establishment and operations of their services in

ways that are consistent with the effective and appropriate delivery of legal services. The Committee's draft includes four sections: compliances, procedures, intake and processing and quality standards. Each section includes a series of standards designed to assure the maintenance of minimal levels of acceptable operations and to encourage the incorporation of best practices, going well beyond those minimal levels.

After the standards are circulated and comments incorporated, the Committee plans to seek their adoption in the ABA House of Delegates. The Committee is targeting completion of this process by the 2001 Midyear Meeting in San Diego. Ongoing developments of the hotline standards project will be posted at the Committee's web site at <http://www.abanet.org/legalservices/delivery.html>. Comments should be directed to the Committee's staff counsel, Will Hornsby, at whornsby@staff.abanet.org

National Unbundling Conference Set for October

The first national conference devoted to the delivery of legal services on an unbundled basis is scheduled for October 12-14, 2000, in Baltimore. The conference is being produced by the Maryland Legal Assistance Network, with co-sponsorship from a wide range of state and national organizations, including the ABA Standing Committee on the Delivery of Legal Services, the National Legal Aid and Defender Association, the Legal Services Corporation,

the National Association of IOLTA Programs, the American Judicature Society and the AARP Legal Advocacy Group.

The conference is designed to:

- explore the relationship between *pro se* litigation, unbundled services and technology;
- create a forum to share information on practices and trends among various service providers, including the private bar, legal aid providers, mediators and the courts; and

- develop an agenda for action to increase access to affordable legal services.

To learn more about the National Conference on Unbundled Legal Services, contact Ayn Crawley, Maryland Legal Assistance Network, at conference@unbundledlaw.org. Also, check for details about the conference as they become available at the conference Web site, <http://www.unbundledlaw.org>

From the Chair . . .



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

I am using this space once again to praise people and programs. I'll write about people first. This is a message for you on the front lines and deck plates. I can report firsthand from recent visits to Fort Hood, Camp Pendleton, North Island Naval Air Station, Maxwell Air Force Base, and Marine Corps Base, Quantico that you provide civil legal support like no one else. You, the active duty, reserve and civilian lawyers and the paralegals, legalmen and legal clerks who assist thousands of clients every day are without peer. The support you provide relates directly to readiness, morale and quality of life. You are smart, dedicated and compassionate, and your importance and value to national defense cannot be overstated.

I have more to say about people. I have in recent columns identified recipients of the ABA LAMP Committee Award for Excellence—outstanding judge advocates, government attorneys, paralegals, and legal assistance offices nominated by their branch of service for special recognition. Instructors at the Naval Justice School and the Air Force and Army Judge Advocate General

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Lamp Spotlight...

The Judge Advocate General School, US Air Force

by Bryan Spencer

On April 27 and 28, the LAMP Committee visited the Air Force Judge Advocate General (JAG) School at Maxwell Air Force Base in Montgomery, Alabama. Our hosts for the visit and the Continuing Legal Education Program were Colonel David G. Ehrhart, Commandant, and his Project Officer, Major Bill Carranza.

In addition to the Judge Advocate General School, Maxwell Air Force Base is the home to the Air University, which includes the Air War College, the Air Command and Staff College, the Squadron Officer College and the Senior NCO Academy. The installation is also home to the 908th Air Reserve Wing, which flies C-130 aircraft, and to 50 other tenant units.

Our visit to the JAG School began with our Continuing Legal Education Symposium. This symposium included classes on the DL Wills program by CAPT Kevin Flood, USN, (Ret) and Chief, Legal Assistance, USNLSO (Southeast); consumer law by Paul K. Davis, an attorney with the Atlanta District Office of the Federal Trade Commission; and immigration and naturalization law by Major Patricia M. Vroom, USAFR, who is District Counsel for the Immigration and Naturalization Service in Phoenix.

Among other things, we observed that the Air Force JAG School provides instruction to its basic and graduate students on the practical as well as the legal aspects of survivor assistance. For example, a chaplain instructs the students on crisis and sorrow management provided to people who have just lost a spouse or family member.

The Air Force JAG School has also recently published an edition of *The Air Force Law Review* focused on legal assistance.¹

The school is also home to the Department of Defense's computer-assisted legal research system, called FLITE. Pamela Maxwell, Chief of Customer Support, responds to requests for assistance—especially involving federal administrative agency decisions—from military and other federal attorneys.² Because of the FLITE program, the base's Staff Judge Advocate Office has reduced its hard copy library to the US Code and the Alabama Code, relying on the FLITE system for other legal reference materials. This has freed up library space, which has been converted into an expanded client waiting room.

The base's Staff Judge Advocate Office is part of the 42d Air Base Wing. Lieutenant Colonel Ormond R. Fodrea is the Staff Judge Advocate (SJA) and Lieutenant Holly Becker is the Chief of Legal Assistance. Lt. Col. Fodrea has five other judge advocate officers, eight enlisted paralegals and six civilian paralegals who provide legal assistance to the 4,500 active duty personnel, 1,300 reservists, 9,600 dependents and over 36,000 military retirees in the central Alabama area.

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Arbitration of Landlord/Tenant Disputes at Fort Hood

by Gene Silverblatt and Robert Sullivan

Since 1989, Fort Hood in Texas has offered arbitration services to help military tenants and area landlords resolve disputes that otherwise might require court proceedings. Annually, between 10 and 12 soldiers take advantage of this free service, where the disputes at issue range from several hundred dollars to as high as \$1,500. Those soldiers who use this procedure frequently save

court costs, time and considerable trouble.

Soldiers and landlords may use the arbitration services by mutual agreement or under the Fort Hood Deposit Waiver Program. Under the Deposit Waiver Program, participating soldiers apply for a waiver from local security or utility deposit requirements in exchange for agreeing to binding arbitration. Upon acceptance by

the landlord or utility company, the soldier avoids having to provide a deposit to the landlord or utility company. When clearing Fort Hood at the end of the soldier's tour, arbitration is used to resolve any unpaid rent, damage or utility claims.

The Fort Hood arbitration program provides for the resolution of landlord/tenant disputes

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JAG School

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Lt. Col. Fodrea and Lt. Becker have recently undertaken several initiatives to provide better legal assistance services to clients. They renovated the customer service reception area, tripling the space and making the legal office easily accessible to handicapped clients. Using the DL Wills software, they provided almost 600 wills to clients in 1999 through their "Wills-While-You-Wait" program. The office has prepared a series of pamphlets on legal topics of common interest to the military members stationed at Maxwell.³ The office has also initiated a home visit program for members, dependents and retirees unable to come into the legal office to prepare wills and powers of attorney.

The office expanded its Volunteer Income Tax Assistance (VITA) program for the most recent tax year. Three specially-trained temporary employees were hired to provide the core staffing of the VITA program. The SJA then recruited and trained 43 volunteers to assist Maxwell members with their taxes. Under the supervision of Maureen R. Reanick-Peltz, the tax staff prepared over 1,000 returns and facilitated the refund of almost one million dollars in refunds for the Maxwell community. This service also saved clients over \$80,000 in tax preparation fees. In order to demonstrate the concrete dollar value of the legal assistance, the fee the service member would have paid had he or she obtained the tax and electronic filing service from a commercial tax business was typed on the cover sheet of the client's copy of the tax return.

On a final note, the Air

Force JAG School building is an awesome facility. Each branch of service should be so lucky to have such a building.

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

End Notes

¹ 47 A.F.L.R. (1999) Copies may be obtained by writing the Managing Editor, *The Air Force Law Review*, AFJAGSCH (CPD/JA), 150 Chennault Circle, Maxwell Air Force Base, Alabama 36112-6418.

² Maxwell can be contacted at DSN 493-3008, COM (334) 953-3008

³ These are now viewable at www.maxwell.af.mil/42abw/jag on the Internet on the 42d ABW legal office's web page. The AF JAG School has a one-week "Webmaster" course. For more information contact the school at (334) 953-3008.

Arbitration

(continued from page 18)

by a neutral arbitrator under the provisions of the Texas General Arbitration Act. The procedures apply to disputes arising from private transactions not involving the United States, the Army or its agents, are limited to disputes involving at least \$100, and do not apply to criminal or disciplinary matters, or matters of official business. The Chief, Administrative & Civil Law, III Corps and Fort Hood Staff Judge Advocate, supervises the proceedings.

Prior settlement efforts required

To participate in Fort Hood's arbitration program the parties must show that mutual efforts to resolve the dispute informally have failed. When a soldier-tenant is involved, there must be evidence that the tenant's chain of command also has been unsuccessful in resolving the dispute.

In addition to soldiers participating in the deposit fee waiver program, other parties may agree to resolve disputes through arbitration:

- before a dispute by including a dispute resolution clause in the lease, or
- after a dispute not covered by a lease provision has arisen, by agreeing in writing to submit the matter to arbitration.

When an existing lease includes an agreement to arbitrate, an application for arbitration must be completed. This application must include a copy of the lease agreement and the standard agreement to arbitrate with the signature of each party. In the case of a dispute without a pre-existing agreement

to arbitrate, all parties must sign the application.

Either party may refuse to consent to arbitration or withdraw from the arbitration proceeding before an award is made. However, any party withdrawing after the commencement of arbitration is liable for the costs incurred.

The Arbitration hearing

The III Corps Staff Judge Advocate appoints a knowledgeable and neutral individual arbitrator from a panel of available arbitrators. To avoid conflicts of interest, no one may serve as arbitrator if he or she has prior knowledge of the facts of the dispute or any personal interest which might prejudice the decision. Either party to the dispute can challenge the appointment of an arbitrator on these bases.

The standard of proof is by preponderance of the evidence. Strict rules of evidence and rules of judicial procedure ordinarily are not observed except to preserve decorum and good order. A party has the right to be represented by an attorney at the hearing at no cost to the government, although ordinarily neither party has counsel present. The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing. Witnesses testify under oath. When necessary, the arbitrators visit the apartment or house covered by the lease in order to personally view and assess the evidence or alleged damage.

Remedies and Damage Awards

In the absence of a lease provision, the arbitrator applies the principles of equity in fashioning

an appropriate remedy within the scope of the arbitration agreement of the parties and the Texas General Arbitration Act. If the parties settle their dispute during the course of the arbitration, the arbitrator may enter any award agreed upon by the parties at the time of the hearing. The arbitrator renders the award promptly and, unless otherwise agreed by the parties, not later than five working days from the close of the hearing, or if oral hearing has been waived, from the date of submission of the final statements and evidence to the arbitrator. Although the consent to arbitration states that it is binding, Fort Hood has no enforcement mechanism, so the prevailing party may ultimately have to resort to judicial enforcement of the award.

Legal assistance attorneys looking for a no-cost or low-cost way to help soldiers avoid requirements to pay security deposits should consider the Fort Hood Deposit Waiver Program as an alternative model. In addition, local community alternative dispute resolution services may be available to avoid litigation.

Lieutenant Colonel Gene

Silverblatt is a reserve Judge Advocate attorney working in the Fort Hood, Texas area. LTC Silverblatt is the Chief of Administrative and Civil Law for the 4003rd Garrison Support Unit for the III Corps & Fort Hood Office of the Staff Judge Advocate.

Robert Sullivan is currently an arbitrator working for the III Corps & Fort Hood Office of the Staff Judge Advocate, Fort Hood, Texas. Specific questions about the Fort Hood program may be e-mailed to him at: sullivanR@hood-emh3.army.mil.

From the Chair...

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Schools have been praised for their roles in training and motivating nascent legal assistance attorneys. Senior judge advocates have also been applauded for providing essential leadership, staffing and funding. Another important group deserves mention: the students in the basic lawyer course who have received the LAMP Committee's Outstanding Legal Assistance Student Award, which recognizes academic achievement in the area of legal assistance. This year's winners are as follows:

Naval Justice School

LTJG Michael G. Barton, USCG
 LT W. G. Perdue, JAGC, USNR
 2nd Lt. Luis R. Campos, USMCR
 Maj. Nancy E. McCarthy ,
 USMCR
 LT Phillip C. Schifflin, USCG
 LTJG Matthew A. Bromund,
 USNR
 Capt. Tamia G. Mewborn, USMC

Air Force JAG School

Capt. Edward C. Reddington,
 USAF
 Capt. Jennifer Bell-Towne, USAF

Army JAG School

1st Lt. Leann Bertsch, USA
 1st Lt. Joshua B. Eaton, USA
 Capt. Jeremy A. Ball, USA
 1st Lt. Jay R. Combs, USA

Congratulations to each of these students. They are the future.

Now, a few thoughts on our legal assistance and preventive law programs. Military civil legal assistance provides an incomparable level of readily available free legal support that military personnel and their families



David C. Hague, chair of the LAMP Committee, presents one of the 2000 LAMP Distinguished Service Awards to John McHenry, of the Naval Legal Services Office Southwest in San Diego, on April 18, 2000.

have enjoyed for 50 years. Legal assistance is the primary portal through which service members obtain access to the courts and justice, and to the peace of mind that comes from having a lawyer on retainer. Consider the need that is being met in the following areas: will preparation and updates, document review, immigration, adoption, name changes, separation and divorce. These are just some of the civil legal services provided at legal assistance offices.

Furthermore, military legal assistance is not only "like having a lawyer in the family," it's like having a lawyer in the house next

door. Legal assistance offices are located on every base and are often open in the evenings and weekends. The lawyers and other legal service providers are fellow Marines, airmen, soldiers and sailors. They wear the same uniform, live by the same code of honor, and share the same sense of commitment. They are all "family members." Nothing comparable exists outside of the armed forces. Every legal assistance provider nurtures that sense of family, one client at a time, though good lawyering, leadership and example. Thanks, and bravo zulu.

The LAMP Committee would like to extend its thanks and best wishes to Colonel David G. Ehrhart, Commandant of the Air Force JAG School, Captain Tim Young, Commandant of the Naval Justice School, and Lieutenant Colonel John Dyer, Chief, Air Force Legal Assistance Division, who will be leaving for other assignments this summer. We will miss the wise counsel, sage advice and pleasant camaraderie that these fine officers provided the LAMP Committee.

From the Chair...



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

[Editor's note: The following is adapted from remarks made by the author on April 28, 2000, on the occasion of receiving the Servant of Justice Award from the Legal Aid Society of the District of Columbia.]

I had the great fortune to start my journey in the legal profession with two of its masters, Judge Henry Friendly and Justice Thurgood Marshall. I sometimes think it has been downhill from there. Some of the highlights of my year with Justice Marshall were those times when he told stories of his civil rights days. He was a great storyteller, and he brought home to us how, with dedication and drive, lawyers can make a very significant difference. He'd tell his clerks about how he and his civil rights colleagues would come into a Southern town and stay in people's homes because, of course, there were no hotels that would take them. He noted that the lawyers argued with each other about who would get the bed closest to the window, because you never knew what would come flying through it.

But the story that moved me most—the one that still moves

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Pro Bono, Legal Services Advocates and Supporters Join Forces at Equal Justice Conference

by Carol Honsa and Steven B. Scudder

Nearly 800 civil legal services advocates, pro bono coordinators, and their supporters and allies gathered in Houston in April for the second annual Equal Justice Conference: *Pro Bono, Innovations and New Partnerships*.

Co-sponsored by the ABA Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Association, the conference brought together a broad coalition of legal services providers, private attorneys, judges, corporate counsel, government attorneys and others linked by a common commitment to equal access to justice for the poor.

The conference began with affinity group sessions in which pro bono program managers, Legal Services Corporation (LSC) program and non-LSC program staff members, social workers and other special groups explored and discussed their distinct issues and concerns. Speaking at the affinity session for LSC and non-LSC staff, LSC President John McKay promised a "bone-on-bone" struggle this year to obtain the LSC and Clinton Administration budget request of \$340 million in funding for LSC programs for fiscal year 2001. This year, "we are taking the position of 340 or fight," McKay told the affinity group.

Over 125 people attended the pro bono manager and staff affinity session. That program began with a plenary session featuring an interactive presentation by popular facilitator Ellen Hemley who led a discussion about the concept of pro bono managers as leaders.

In welcoming conference attendees, Ramon Arias, executive director of Bay Area Legal Services and chair of the NLADA Board of Directors, told the full conference gathering that LSC and non-LSC providers must work together to improve legal services delivery to low income clients. "We have an obligation to improve the delivery system," he said. "From a client's perspective, it's not a system at all. It's a labyrinth. If we don't keep an eye on the delivery system, we become part of the problem."

Attendees were also welcomed by Robert Weiner, Chair of the ABA Pro Bono Committee and by ABA President-elect Nominee Robert E. Hirshon. Hirshon congratulated those who work in the trenches of the justice community, noting that "wherever people have needed legal assistance, no matter what the source of that need, you have been there. Your efforts to serve others have made our profession stronger, by making it more public service-oriented."

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Robert E. Hirshon

ABA Pro Bono Publico Award Recipients Help Those in Need, Donate Thousands of Pro Bono Hours

The University of Pennsylvania Law School will become the first law school to receive an American Bar Association Pro Bono Publico Award at a luncheon presentation on July 10, 2000, at the Sheraton New York Hotel during the ABA Annual Meeting. Also receiving Pro Bono Publico awards this year will be two individual lawyers, a law firm and a corporate legal department.

ABA President William G. Paul will host the Pro Bono Publico Awards Assembly Luncheon. Elaine R. Jones, president and director-counsel of the NAACP Legal Defense and Education Fund, Inc., will be the luncheon speaker.

Also receiving awards will be the law firm of Heller Ehrman White and McAuliffe of San Francisco; the Houston law department of Exxon Company U.S.A.; Anil K. Mehta of Buena Park, California; and Charles E. Patterson of Los Angeles.

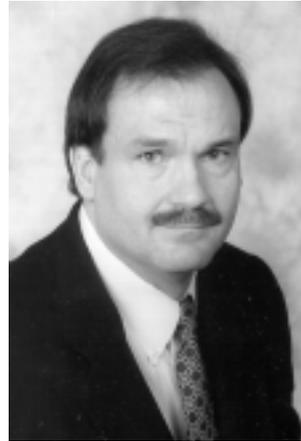
"The individuals and institutions receiving this year's ABA Pro Bono Publico Awards reflect the highest traditions of the legal profession. They have made extraordinary contributions through their pro bono work," said Robert Weiner, chair of the ABA Standing Committee on Pro Bono and Public Service. "They have shown that lawyers can improve the lives of others. We commend them for their successful efforts."

The Pro Bono Publico Awards were established by the ABA in 1984 and are presented annually

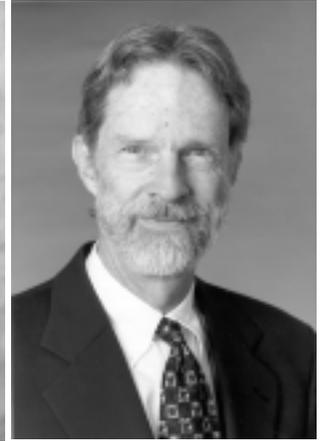
by the ABA Standing Committee on Pro Bono and Public Service to recognize lawyers, law firms and corporate law departments for extraordinarily noteworthy contributions in extending legal services to the poor and disadvantaged.

The following is a brief description of the recipients and their pro bono work:

- **The University of Pennsylvania Law School** became one of the first law schools to establish a mandatory public service requirement. Under its Public Service Program, students must provide 70 hours of public service law-related work as a condition of graduation. Since the program's inception in 1989, more than 2,400 second- and third-year law students have performed more than 200,000 hours of pro bono service for low-income clients, who otherwise might not have had access to legal representation. More than 80 percent of the program's graduates continue to actively participate in pro bono work after graduation.
- **Heller Ehrman White and McAuliffe** has had a tradition of helping San Francisco's low income population since its founding in 1890, and has been involved in virtually



Michael A. Fitts, Dean,
University of Pennsylvania
Law School



Robert E. Borton of
Heller Ehrman White
and McAuliffe

every major program in the Bay Area to fill the unmet legal needs of the poor. Both the firm's management and its lawyers make a major commitment to pro bono work an integral ethic throughout its offices. Among its wide-ranging pro bono projects are helping the homeless; civil rights issues; cases involving political asylum, deportation and immigration law; environmental issues; hate crimes; prison law; real estate and tax issues for the needy; veterans' rights; and community development and non-profit representation.

- **The Houston Law Department of Exxon Company U.S.A.** has provided pro bono legal services to Houston residents for nearly 20 years. During that time the department has made an exceptional commitment to regularly taking cases from the Houston Volunteer Lawyers Project. It has undertaken many initiatives to establish a perma-

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Pro Bono Awards

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ment, ongoing commitment to pro bono work within the department. Exxon's work at the forefront of volunteer efforts has also encouraged many other Houston-area corporate law departments to become active in pro bono work. The winner of several local and national awards for its volunteer work, Exxon's legal department has signed a pro bono commitment to accept 25 cases this year.

- **Anil K. Mehta** of Buena Park, California began his career as a mining engineer. But when Mehta lost his arm in an industrial accident he pursued a second career in law. Mehta was nominated for the Pro Bono Publico Award by the Public Law Center in Santa Ana, California, after he decided that he would spend his first year following law school graduation serving the poor. Last year, he contributed nearly 2,000 hours of legal assistance to Public Law Center clients on 50 different issues. He continues to do volunteer work for the center.

- **Charles E. Patterson** of Los Angeles has long been active in pro bono issues involving Vietnam veterans. He was asked to take the pro bono death row case of Manuel Babbitt, a Vietnam veteran



Charles E. Patterson

suffering from post traumatic stress syndrome who had been convicted of the 1981 murder of a 78-year-old woman. Patterson was unsuccessful with the appeal, but was able to show that Babbitt's prior lawyer had made several errors, and to turn public sentiment to support for Babbitt because of mental illness. Unfortunately, Babbitt was executed under California's felony murder rule.

Before moving to California, Patterson lived in Missouri where he handled several pro bono cases for the ACLU. He was a member of the boards of the Legal Aid and Defender



Theodore M. Frois, General Counsel, Exxon Company U.S.A.



Anil K. Mehta

Society and of Dismas House, a halfway house in Kansas City. Patterson was a founding member of Volunteers in Probation and Parole in Missouri, and a founder of the Missouri Association for Ex-Offenders, which provides pro bono legal services and job placement services to persons released from Missouri prisons.

NAPCO Offers Support for Pro Bono Coordinators

In response to pro bono coordinators' need to share common experiences and ideas, the National Association of Pro Bono Coordinators (NAPBCO) was created in 1987 as a nationwide organization of people involved in providing pro bono legal assistance to the poor.

NAPBCO's mission is to promote the professional development and status of pro bono coordinators. As a NAPBCO member, you receive a number of benefits, including:

- a forum to discuss common issues and problems;
- the opportunity to respond to national issues affecting the delivery of legal services;
- a subscription to the NAPBCO Listserv mailing list, through which participants from across the country exchange ideas and generate new program ideas;
- NAPBCO's Peer Consulting Directory, which identifies pro bono programs that have developed expertise in specific areas;
- regular newsletters;
- the opportunity to receive annual scholarships to attend the ABA/NLADA Equal Justice Conference; and
- the development of leadership skills through participation in NAPBCO's Executive Committee and other work groups.

If you work in or have an interest in the work of pro bono programs, join NAPBCO today. For more information, please contact Patty Murto at (218)723-1742.

From the Chair . . .

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me—was not about his civil rights days. It was about Thurgood Marshall as a teenager, living in Baltimore. He was downtown, and he needed to go to the bathroom. But there was no bathroom downtown that black people were allowed to use. He had to get on a bus and ride all the way to his home in the suburbs. He didn't make it. Telling this story sixty years later, with all that he had achieved and as a member of the highest court in our land, Justice Marshall still described that incident, with great bitterness, as the most humiliating experience of his life.

I've thought about why that particular story moved me so at the outset of my career, and I believe it's because it demonstrates so tangibly, in such concrete human terms, the corrosive effect of discrimination. It explains so much of what Justice Marshall's career was about—protecting the basic dignity of each and every human being.

To my eternal regret, I was born too late for the great civil rights crusade of the 1960s. I know that none of us will likely be able to use the law to change the face of the nation the way Justice Marshall did. But I also know that each of us, by virtue of our skill and our training as lawyers, has the power to transform the life of an individual or a family, to protect their rights, to safeguard their basic human dignity.

That is what the Legal Aid Society does, every day. The examples are numerous:

- A mother of two, in poverty, dunned for \$10,000 in rent for an apartment with no heat, no

hot water, and infested with roaches. The Legal Aid Society protected her rights, and made sure this family had a home.

- A three-year-old boy, stolen from the custody of his grandmother, was rescued from neglect and abuse. The Legal Aid Society protected his rights, and made a critical difference in his life.

... each of us, by virtue of our skill and our training as lawyers, has the power to transform the life of an individual or a family, to protect their rights, to safeguard their basic human dignity.

So I think that it is I who should honor the Legal Aid Society tonight. I have said before that the people devoting themselves to the legal rights of the poor, serving as the last, best hope of the least fortunate among us, are the real heroes of our bar. You are the ones who protect basic human dignity, and that is the highest calling of our profession.

But you are also the heroes of our bar because of what you do for other lawyers. Many of us started in this profession with idealistic goals, but lost our way. Ideals have become submerged in the day-to-day grind. The whole profession seems to have plunged into a collective depression. In a survey by the California Bar Association in 1992, 70 percent of lawyers said they would choose another career if they had the chance. Seventy-five percent said they would not want their children to become lawyers.

Nonetheless, I believe that

this is **still** a noble profession, as noble as when Thurgood Marshall stormed the segregated South. What has withered is not so much the value of our mission, as our own estimation of it.

I don't claim to have any simple answers to the crisis of confidence in the profession. But if, as I believe, the problem lies at least partly within us, then one thing we may need is a guidepost—a moral compass—to show us the way. We need, each of us, to portion off some part of our work that especially illuminates the values of our profession. And if we do that, then this light in the corner of our professional lives can rekindle our sense of professional worth and infuse everything we do, allowing each of us to rediscover for ourselves the nobility of our calling.

Focusing on pro bono work, on serving the poor, did that for me. And my inspiration, my guidepost in that effort, are lawyers like those in the Legal Aid Society, who toil day-after-day, for a fraction of what private lawyers get paid, to secure justice for people who cannot afford to pay. And in this day when pro bono work seems to be dropping off because law firms are too successful, when young lawyers are doing less pro bono because they are making **more** money—your example, your dedication, your guidance is even more critical to the rest of us.

And so, I am deeply grateful, not only for this award (though I am very grateful for that), but also because you have exemplified for me and for so many others the ideals of this profession. You have taught us how to reclaim our sense of professional worth. You have shown us a well-lit path to professional satisfaction.

Equal Justice

(continued from page 21)

Delivering the keynote address at the opening plenary, the Rev. Fred Kammer, president of Catholic Charities USA, focused on the themes of creating justice communities, protecting the poor, and being imbued with a passion for justice.

"Justice," Kammer stated, "is not only about the federal Legal Services Corporation." He explained that it is about an array of responses, as illustrated by the work of conference participants, to meet the legal needs of the poor. "Even more, it is about the necessity of collaboration among these various legal resources or service providers or service models in creating a comprehensive approach that is more concerned about people in need than about turf or professional self-interest," said Kammer, himself a former legal services attorney.

Protection of the poor requires a full range of legal and other services, Kammer declared, and effective responses to social injustice must marshal new resources, master new technologies and build real partnerships across the legal community and with others in social services, business, government, the media and labor.

Another keynote speaker at a conference luncheon was the Hon. Edward C. Prado of the U.S. District Court for the Western District of Texas, who mixed humorous stories of his experiences on the bench with high praise for the work of legal services and pro bono attorneys. "As long as there are children who go to bed hungry at night, as long as there are people who

are not receiving a decent education, as long as there are people who need help with immigration status, as long as people are not given a fair chance to make it, there's a need for people like yourselves," he said. He urged attendees to try to convince more private attorneys and law firms to provide volunteer services to the poor. "It's important work and it's necessary work," Judge Prado declared. "Justice means fairness for all, not just a certain segment of our community."

Over 85 workshops served as the core of the conference. In-depth programs on funding for legal services, delivering services through hotlines and *pro se* programs, involving the judiciary in supporting pro bono, holistic delivery models and dozens of other topics were offered. The conference theme of building new partnerships to improve and expand access to legal services for the poor was well received by attendees.

A special program for those not involved in the day-to-day delivery of legal services to the poor was offered during the conference. Over 130 judges, corporate counsel, government attorneys, bar leaders, legal services and pro bono program board members and law school representatives attended the Pro Bono Partnership Forum. Topics discussed included the impact of multi-disciplinary practices on pro bono, the key elements of planning pro bono partnerships, and holistic service delivery. Acting Associate Attorney General Daniel Marcus of the U.S. Department of Justice addressed the Partnership Forum attendees.

ABA House of Delegates Chair Robert J. Grey, Jr., addressed conference attendees during the

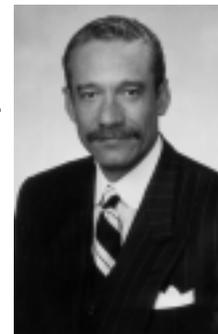
closing luncheon and thanked participants for their contributions to the legal profession and to American society.

During the conference, NLADA presented its Innovations in Equal Justice Award to Hugh Calkins of Pine Tree Legal Assistance in Maine for his leadership and innovation in bringing the power of technology to bear on the legal needs of the poor. The National Association of Pro Bono Coordinators presented its Pro Bono Manager of the Year Award to Judy Sobin of Honolulu for her work with Hawaii Lawyers Care. The organization's William Reece Smith, Jr., Special Services to Pro Bono Award was presented by Smith to J. Chrys Dougherty of Austin, TX. Dougherty, of the law firm of Graves, Dougherty, Hearon & Moody, is a founder of Volunteer Legal Services of Central Texas and a leader of legal services to the poor at the local, state and national levels.

The third annual Equal Justice Conference will be held March 29-31, 2001 at the Town and Country Hotel in San Diego, California. Attendees will continue their exploration of strategies to improve legal services delivery and increase pro bono participation by the organized bar.

Carol Honsa has served as the communications director at NLADA.

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



Robert J. Grey, Jr.

Harrison Tweed Awards Announced

The American Bar Association and the National Legal Aid and Defender Association are pleased to announce the recipients of the 2000 Harrison Tweed Award. This award, named for a leader in the promotion of free legal services to the poor, recognizes the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services for poor persons or criminal defense services for indigents.

This year the award will be presented to the Alameda County Bar Association in Oakland, California and to the Delaware State Bar Association.

Alameda County Bar Association

The Alameda County Bar Association was nominated by the Contra Costa County Bar Association and the Bar Association of San Francisco for providing leadership in the creation of a new civil legal services delivery system in the San Francisco Bay Area.

The Alameda County Bar Association (ACBA) played an instrumental role in the formation of Bay Area Legal Aid in 1999, replacing the five pre-existing, separate Legal Services Corporation-funded legal services programs in the Bay Area.

ACBA efforts began with its sponsorship of and staff support for the Community Services Committee, which served as a clearinghouse to ensure that clients were referred to the appropriate provider during a difficult transition period, after

external factors made a realignment of legal services programs in the region necessary. ACBA took a lead role in bringing together more than 30 civil legal services providers in the area and nurturing consensus for a new system. ACBA's goal was to reduce the existing system's complexity, making it more navigable for clients while at the same time preserving the rich diversity of talent available throughout its component parts.

Change on this scale is often threatening and encounters resistance. Yet the ACBA persevered. It put aside parochial concerns and offered creative compromise on issues such as the composition of the board of directors of the new entity. The resulting program—Bay Area Legal Aid—has already established a record of accomplishment. It has obtained increased resources for legal services and allocated those resources more equitably across the region. It has nurtured close collaboration among experienced poverty lawyers and newer attorneys. It has begun to implement a centralized intake system so clients do not confront a confusing array of programs. None of this would have been possible without the contributions of the ACBA.

Delaware State Bar Association

The Delaware State Bar Association joined forces with three legal services providers in the state—the Community Legal Aid Society, Inc.; Delaware Volunteer Legal Services and the Legal Services Corporation of Delaware—to



Harrison Tweed circa 1945.

form the Combined Campaign for Justice, launched on March 1, 1999.

The Delaware Bar Association has an auspicious record of providing legal services to the poor, and a close connection to the Harrison Tweed Award. The Bar founded the Legal Aid Society after two of its leaders were inspired by a speech delivered by Harrison Tweed at the 1945 American Bar Association Annual Meeting. The Legal Aid Society later evolved into the present three-component statewide program.

The three separate legal services providers coordinate their services extremely effectively, using the same income eligibility criteria and each concentrating on separate areas of law, in order to promote efficiency and reduce duplication. But in previous years the three organizations conducted their own fund-raising, and separately solicited lawyers and others for contributions. In the aggregate, the three organizations raised, at most, \$175,000 a year.

Through the leadership of the bar association, the three agreed

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Tweed Awards

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to jointly raise funds from the bar for three years. The bar assisted with staff support, and its Steering Campaign Committee set an aggressive goal of \$250,000 in the first year. Committee members solicited law firms, banks and corporations, donating hundreds of hours of effort to these solicitations and to other campaign efforts, including a telethon.

The efforts of the bar yielded \$360,000—more than twice the amount that had been raised in even the best prior years and a very significant amount in a state with only 2,700 lawyers. Buoyed by its fund-raising success, the campaign will continue for two more years, and will reach out to find other funding opportunities.

The success of this joint effort has encouraged the exploration of other joint efforts by the partners. These resulted in a successful joint application for a Department of Justice grant, and have evolved to also include joint training initiatives for poverty lawyers.

This successful resource development effort has produced funds to allow the legal services providers in Delaware to hire, and to keep, qualified attorneys to represent the poor. As a result, victims of domestic violence, illegal eviction, fraud and government misfeasance have greater access to the justice system.

The ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association are honored to present the 2000 Harrison Tweed Award to the Alameda County Bar Association and the Delaware State Bar Association.

Supreme Court to Consider Case Challenging LSC Restrictions on Welfare Advocacy

by Linda Perle

The United States Supreme Court has agreed to review a decision by the United States Court of Appeals for the Second Circuit in *Velazquez v. Legal Services Corporation*. The Court of Appeals found that the restriction of LSC-funded recipients from challenging existing welfare reform statutes or regulations was unconstitutional viewpoint discrimination under the First Amendment. The Court found that the LSC prohibition describes a category of arguments that cannot be raised in a particular case, rather than a category of cases that cannot be brought. The Supreme Court granted *certiorari* in early April for review of this narrow issue.

A three-judge panel of the Second Circuit made its decision in *Velazquez* in January 1999. The case challenged some of the restrictions imposed on recipients of LSC funds by Congress in 1996, and by implementing regulations subsequently promulgated by LSC.

Velazquez was filed in January of 1997 as a class action against LSC by a number of current and former staff attorneys from Legal Services for New York (LSNY), several of their eligible clients, private contributors to legal services programs, and state and local public officials whose governments provide public funds to support legal services. LSNY was a defendant, not a plaintiff, in the lawsuit. The suit alleged that the LSC restrictions violated the plaintiffs' First, Fifth and Tenth Amendment rights under the Constitution, as well as the Separation of Powers doctrine. The plaintiffs sought a preliminary injunction only against the application of the restrictions to recipients' non-LSC funds. The U.S. District Court for the Eastern District of New York denied the request for a preliminary injunction, finding that the plaintiffs had failed to establish a probability of success on the merits in their attempt to have the statute and regulation invalidated. The District Court concluded that the regulations were a permissible construction of the 1996 legislation and were consistent with the First Amendment. The plaintiffs appealed.

On appeal, the plaintiffs argued that the final LSC regulations represented an unreasonable interpretation of the 1996 legislation, and that both the regulations and the statute impermissibly burdened the recipients' exercise of First Amendment rights and constituted viewpoint-based restrictions on expression. The Court of Appeals rejected these arguments and agreed with the District Court in most respects. The Court found that, in general, the lobbying and rule-making restrictions prohibit activity regardless of viewpoint, and were therefore constitutional. In addition, the court found that the basic limitations on litigation and legal representation in the welfare reform area were also viewpoint neutral and, thus, constitutional.

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Supreme Court

(continued from page 27)

Nevertheless, relying on *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995), the Court of Appeals rejected the lower court's ruling on viewpoint discrimination in one significant respect. The Court determined that the "suit-for-benefits" exception to the welfare reform restrictions discriminates on the basis of viewpoint and is subject to strict First Amendment scrutiny. The "suit-for-benefits" exception permits a recipient of LSC funds to represent individual clients who are seeking specific relief from a welfare agency, but only if "such relief does not involve an effort to amend or otherwise challenge existing law." (See 45 C.F.R. §1639.4) The Court of Appeals went on to say:

Among the only directly effective ways to oppose a statute, regula-

tion or policy adopted by government is to argue to a court having jurisdiction of the matter that the rule is either unconstitutional or unauthorized by law. The limitation on the suit-for-benefits exception prohibits a legal services organization that has received LSC grant funds from making such an argument on behalf of a client, even though that argument may be necessary to establish the client's rights in precisely the representation for which the funding was granted. ... To forbid a lawyer from articulating that idea [i.e., the constitutionality or illegality of a governmental rule] in the court proceeding effectively drives the idea from the marketplace where it can most effectively be offered. *Velazquez v. LSC*, 164 F.3d 757, 771 (2nd Cir. 1999)

The Court of Appeals concluded the exception "unconstitutionally restricts freedom of speech, insofar as it restricts a grantee,

seeking relief for a welfare recipient, from challenging existing law." The Court also found that the viewpoint-based provision barring legal services attorneys from contesting the legality of an existing rule was severable from the rest of the exception, and enjoined its enforcement, leaving in effect the general exception permitting representation of an individual eligible client who is seeking specific relief from a welfare agency, whether or not the representation involves challenges to existing law.

All of the parties sought *certiorari* on a wide range of issues in the case, but the Court agreed to hear only the narrow question of whether the "suit-for-benefits" exception constituted viewpoint-based discrimination.

Linda Perle is a Senior Staff Attorney at the Center for Law and Social Policy in Washington, DC.

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