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Military Legal Assistance Emerges as a Potent and Productive Force

by Daniel K. Bean

The legal assistance programs of the armed forces have achieved tremendous improvements in the delivery of their product to service personnel in the past two decades. Today, the legal assistance product offered to clients by each of the various branches is virtually unrecognizable when compared to the product of 1980.

To illustrate this point, and in order to fully appreciate the substantial changes in the manner in which the armed forces are delivering legal assistance, one need only compare the 1980 prototype naval destroyers to the Arleigh Burke destroyers that are currently moored to the pier. The newer version processes more data, provides quicker and more accurate solutions, carries and delivers superior weapons, has increased efficiency, and, perhaps more importantly, is more sailor-friendly. Similarly, today's legal assistance programs are smarter, resolve legal issues quicker and more accurately, have more "weapons" and are, therefore, more client-friendly.

The production of the armed forces' legal assistance, in the aggregate, is staggering. Annually, military legal assistance attorneys counsel over 646,000 clients and handle more than one million civil legal matters. Diverse legal issues such as estate planning, family law, consumer law, immigration and tax are handled routinely.

"So much has changed since I first started providing legal assistance in the mid-1990s," says naval reservist LT Russell Verby, JAGC, USNR. "The technology and the

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"Before anything else, legal assistance is a readiness issue."

—RADM James Charmichael, Chief Counsel of the Coast Guard. Charmichael recently addressed a LAMP Committee CLE session in Yorktown, Virginia. Please see page 6 for more of his remarks.



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DIALOGUE

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Legal Assistance

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amount of resources that I have available to me today when I am on active duty are astonishing in comparison to what I had. The improvements to the legal assistance program have made a good program outstanding," says Verby.

Verby, who started his naval command's electronic tax-filing program from scratch in 1995, is astounded at the growth of the program and the total number of returns being filed today. Over 35 percent of the Navy's entire active duty population filed its tax returns electronically in 2000. Specifically, over 120,000 returns were filed by the Navy, resulting in an estimated savings of over \$10 million.

The changes in the Navy's program from 1995 to today are "amazing," according to Verby. "It has grown so large in such a short time and shows no sign of slowing down." The reports of the 1999 tax returns completed in the other service branches are equally impressive:

- The Army filed 192,067 federal returns and 72,226 state returns for estimated savings to its clients in excess of \$16.5 million.
- The Air Force filed 123,014 returns electronically and estimates savings to its clients in excess of \$11 million.
- The Marines filed more than 70,500 returns and saved clients over \$6 million.
- The Coast Guard assisted over 11,600 personnel for total savings of \$426,480.

These impressive numbers would have been unthinkable 20 years ago. But, with the technology and information available to today's legal assistance offices, it

will be surprising if the numbers do not continue to increase.

It is important to note that the armed forces do not assign all of their legal assistance assets to their respective electronic tax-filing programs. Legal assistance continues marching along all year round. Clients are being assisted at a higher level of competence than they were in the past. For example, two decades ago when a client sought advice about a divorce, he or she was given a little information about the divorce process, and more often than not, referred to a civilian attorney. In reality, the military personnel could not afford civilian attorneys and thus went without legal help. Today, a significant amount of military attorneys are preparing settlement and dissolution agreements, which include child support payments, alimony, visitation and division of retirement pay.

Legal assistance attorneys are able to provide this heightened level of service because of the countless resources our modern technology provides. Furthermore, the training provided at the services' basic lawyer courses, combined with the outstanding continuing legal education programs offered by the services and the American Bar Association Standing Committee on Legal Assistance for Military Personnel, have helped military attorneys to continually produce a better product for their clients.

On the estate planning front, the typical will document now includes a trust for minor beneficiaries and/or a credit shelter trust for the spouse. Twenty years ago it was rare to find a military will that included such provisions. That situation changed because of the expanded instruction on

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From the Chair . . .



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

Military legal assistance could disappear tomorrow! Though not likely, it is possible that legal assistance could vanish completely at individual installations, in specific branches of service, and even throughout the armed forces. That possibility exists because military personnel are not statutorily entitled to legal assistance. Federal statute—10 U.S.C. §1044 provides only that legal assistance will be provided “[s]ubject to the availability of legal staff resources” at the discretion of the service secretaries. Consequently, force reductions, targeted cuts of judge advocates, or realignment of priorities could result in the curtailment or elimination of such support. Given the value of legal assistance/preventive law to commands and individuals, especially those in lower enlisted pay grades and their families, its loss would have tremendous adverse impact.

Legal assistance/preventive law is one of the three most important and far-reaching areas of military legal practice. Military justice and operational law are the other two. Putting those three

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LAMP Spotlight...

US Coast Guard Training Center Yorktown

by Bryan Spencer

The LAMP Committee visited the US Coast Guard Training Center Yorktown in early November 2000. CAPT John Gentile, Center Commander, and LCDR Kevin Lunday, Legal Officer, hosted the Committee and co-hosted a one-day Continuing Legal Education program. CAPT Peter Seidler, Chief, Office of Legal Policy and Program Development, Headquarters, US Coast Guard, and his assistant, LT Benes Aldana also assisted on the visit. The LAMP Committee extends its thanks to all for the outstanding support on all accounts.

The Yorktown Training Center is a small, beautiful base located on 140 acres of a peninsula flanked by the York River and Wormley Creek. It is situated within the confines of the battlefield where the decisive Battle of Yorktown was waged at the end of the Revolutionary War.

Though it is small in size with 500 permanently assigned personnel and up to 1000 students at any one time, the center is one of the key training Centers for the Coast Guard. It hosts 7000 students per year for training in 15 Coast Guard occupational skills. These figures must be considered against the total Coast Guard force of 26,000 military and civilian personnel, 7,000 reservists, and 27,000 Coast Guard Auxiliaries. In addition, the Center trains some 12,000 students across the United States annually through correspondence courses.

Under the sponsorship of the Department of State, the Center's International Program trains civilian and military personnel from many nations in resident programs including the prestigious International Maritime Officer Course. Over 280 international students from 78 nations have graduated from this course, including the commanders of some foreign maritime services. In addition, the Center sends instructors around the world to over 40 countries to deliver training to foreign navy and coast guard forces in such disciplines as search and rescue and maritime law enforcement. At present, instructors are in such countries as Azerbaijan and Albania.

The Center also has the mission of “standardization” in the Coast Guard's operational community, which is a service-wide assessment of the material condition of operating equipment and personnel readiness. Performance Analysis and Design is a new mission for the Center. This encompasses analyzing the performance of Coast Guard programs and the service's work force, identifying performance gaps and determining root causes and then designing interventions to correct the performance problems.

The Coast Guard is a military, multimission, maritime service within the Department of Transportation, and one of the five armed services. With its 26,000 personnel, the Coast Guard's fundamental roles are to protect the public, the environment, and U.S. economic and security

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New legislation allows for uniform military wills

President Clinton signed legislation October 30 that includes provisions supported by the ABA to make it easier for military wills to be probated in various states. Part of a bill that was approved by wide margins in both the House and Senate, the new Section 1044d of Chapter 53 of the U.S. Code removes obstacles from probating military wills where they may not comply with technical state law requirements of form, formality or recording. The new law further provides that military wills have the same

legal effect as wills prepared and executed in accordance with the laws of the state concerned, and deems military wills valid for probate in the courts of the state concerned. The new section will allow military attorneys to draft and execute valid wills quickly and give maximum assurance that the service member's last wishes will be respected and recorded, regardless of the state or territory in which the will is executed.

—Information courtesy of Rhonda McMillion, ABA Information Services

Legal Assistance

(continued from page 2)

estate planning. Military attorneys became more competent and confident in advising clients and preparing such testamentary instruments. Consequently, military wills are now more responsive to the needs of the client and save literally thousands of dollars for countless beneficiaries.

One of the reasons for the improved estate planning advice is the presence of civilian legal assistance attorneys. The Army led the way by hiring numerous civilian attorneys, who remain anchored in various legal assistance offices around the world. All of the armed forces have followed suit. For example the Navy has 11 civilian legal assistance attorneys. The Coast Guard has six and will be hiring three more in the new fiscal year. The Air Force has them, as well. The civilian legal assistance attorney captures and retains the command's corporate knowledge, which is crucial to the practice of law. Additionally, they become subject matter experts and are relied upon for training the rotating active duty legal assistance attorneys.

The latest project for the armed

forces is the increased scope of legal representation for clients. Too often in the not-so-distant past, when a military legal assistance attorney took on the representation of a client, that representation stopped on the courthouse steps. Opposing attorneys did not hesitate to make unreasonable demands because they knew the service member could not afford civilian representation and would, therefore, have to appear in court *pro se*. Even worse, the service member would often surrender despite having a superior legal position. That rarely happens these days with the advent of the expanded legal assistance program (ELAP).

Rule changes in a few states now allow expanded legal assistance. Specifically, states such as Illinois, Virginia, California, Florida and Hawaii have regulations that permit military attorneys to represent military personnel in state court—even if the military attorney is not a member of the state bar. Almost all the states have a *pro hac vice* provision. Enabled by these changes, ELAP has had a significant impact on the armed forces legal assistance program. Military attorneys can now see a case through to its

natural completion. Clients who could otherwise not afford legal representation now have a highly skilled advocate throughout a dispute. Military attorneys also have the opportunity to garner additional courtroom experience.

In Florida, ELAP was so well embraced by the Florida Bar and the Florida Supreme Court, it was recently amended to expand both the subject matter jurisdiction and the eligible clients. A key component of the program's successful passage through the "administrative wickets" was the support voiced by military veterans within the Florida Bar and by several justices of the Florida Supreme Court.

As a result of all of these recent innovations, the morale of military legal assistance attorneys has vastly improved. No longer is legal assistance a resting stop for attorneys waiting to enter or leave the military courtroom. The ability to provide clients with cutting-edge legal advice, coupled with the ability to represent them in court, has legal assistance attorneys more satisfied than ever about their assignments. Consequently, the product continues to improve, just like it has for the past two decades.

LAMP Spotlight...

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interests in America's inland waterways, ports, and harbors; along some 95,000 miles of U.S. coastlines; in the U.S. territorial seas and 3.4 million square miles of Exclusive Economic Zones; on international waters and in other maritime regions of importance to the United States.

A unique feature of the 170 military lawyers in the Coast Guard is that there is no JAG Corps. All officers are line officers and many serve in non-legal billets. This includes

the former Chief Counsel who is commanding the Atlantic Area, and the commander of the 17th Coast Guard district in Alaska.

As such, every Coast Guard

lawyer provides legal assistance to some degree. At Yorktown, there are two legal billets. LCDR Lunday, our co-host, is the base legal officer, supported by parale-

gal YN1 James Jeffery. LCDR Patrick McGuire is the legal advisor to the Maritime Law Enforcement School. Both provide traditional legal assistance. More complex matters and cases in which there is a conflict with another client are referred to the legal assistance office at Fort Eustis, just a short distance away, or to the Coast Guard's legal office in Norfolk.

The Coast Guard has

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During the visit to the Coast Guard Training Center, LAMP Committee Chair David Hague met with (left to right) RADM James Carmichael, CAPT Peter Seidler, LCDR Kevin Lunday and LT Benes Aldana.

From the Chair...

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areas of practice first in no way diminishes the importance of the other legal services provided by uniformed and government service attorneys. It does, however, focus attention on legal assistance/preventive law as critical to individual and unit readiness, morale and quality of life. It also serves as a reminder of the necessity for continued command support of legal assistance attorneys, paralegals and other legal assistants, and those who support and train them.

The five military legal assistance programs—four in the Department of Defense and one in the Department of Transportation—are different; significantly so in some ways. The scope and nature of legal services vary from service-to-service and from

installation-to-installation within services. The differences are the result of different service priorities and policies, and local requirements and resources.

The programs have important elements in common, however, starting with their statutory basis in 10 U.S.C. §1044. Section 1044 also provides authority for certain military personnel to act as notaries and requires state recognition of powers of attorney and advance medical directives prepared by legal assistance attorneys. Most recently, in the National Defense Appropriations Act for Fiscal Year 2001, Congress has required states to recognize military testamentary instruments prepared in accordance with the statute (10 U.S.C. §1044d) and controlling regulations. The LAMP Committee and ABA are proud to have been instrumental in the passage of 10 U.S.C. §1044 in the mid-1980s and of each of

its sections in succeeding years.

The message from Congress is clear. In requiring state recognition of testamentary instruments, medical directives, and powers of attorney prepared by legal assistance attorneys, Congress has recognized the value of these benefits and their essential role in preparedness. At a minimum, every member of the Navy, Marine Corps, Air Force, Army, and Coast Guard should have these essential documents. Only by making legal assistance an entitlement, which in turn will ensure funding and the commitment of other resources, can this modest objective be achieved.

The American Bar Association has for many years advocated making legal assistance an entitlement for junior enlisted personnel. Working with the services and Congress, the ABA will redouble its efforts to this end in the upcoming legislative year.

LAMP Spotlight...

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recently reinforced its legal assistance program by putting civilian attorneys at six of its largest bases. It is in the process of hiring three more attorneys. This provides the continuity necessary to increase the scope and expertise of the legal assistance program. One of these civilian attorneys was a speaker at the CLE program, Patricia Laverdure. She was recently awarded the Department of Transportation Secretary's Silver Medal Award for Meritorious Achievement for her outstanding work for her legal assistance efforts as Chief, Legal Assistance Branch of the Coast Guard's Maintenance & Logistics Command, Pacific, in Alameda, California. In addition, last year she was recognized as the San Francisco Bay Area Federal Executive Board Federal Employee of the year in the professional category.

The CLE program, titled "Leveraging Internet Legal Knowledge Technology & Preventive Law", was presented by COL George Hancock, Chief of Army Legal Assistance. Another program, "Ethics/Professional Responsibility of Supervisors and Non-Lawyer Assistants" was presented by a panel of Laverdure; Sally Andress, President National Federation of Paralegal Associations; and Lt Col Walter J. Skierski, Chief Air Force Legal Assistance. Colonel (Ret.) Fred Arquilla, former Chief of Army Legal Assistance, spoke on "Military Attorneys in Civilian Courts." CDR Ann Delaney, Chief of Navy Legal Assistance, presented a program titled "Current Immigration Procedures." CDR

Delaney is to be commended for her efforts in working with the Immigration and Naturalization Service in establishing procedures to reduce the time required for processing citizenship applications of a service member or spouse from several years to three months.

Carole Houk, Office of the General Counsel, Department of the Navy, spoke on "Use of Alternative Dispute Resolution in Legal Assistance." The final topic was a panel presentation of "Critical Legal Issues Domestic Violence Victims Confront" by David Lloyd, Military Community and Family Police, Office of the Secretary of Defense; Jane Sherman, Assistant Commonwealth's Attorney, Hampton, Virginia; and Dina Blythe, Director of Legal Services, Transitions, Hampton, Virginia.

RADM James Carmichael, Chief Counsel of the Coast Guard, spoke during the Committee's meeting and addressed the CLE attendees at the luncheon.

His remarks on the importance of legal assistance included the following:

"...When we talk about legal assistance, one fact becomes clear: Before anything else, legal assistance is a readiness issue. Our young men and women at the point of the spear are called upon to perform tasks that require both sacrifice and nobility. To ask them to do these things without taking care of their families and their personal concerns lessens the opportunities for success and degrades our ability to attract and retain the best and the brightest. The Coast Guard's commitment to providing legal assistance is critical to achieving our mission.

It is clear that personal problems affect work performance. Day-to-day problems affect our people whether working in staff positions or sched-

uled for deployment. Many of our members on cutters are young and lack experience in business dealings. They're worried about their automobiles and debt, or the security deposits they haven't received from the landlord at their last duty station 2000 miles away. Some are seeking US citizenship, perhaps waiting one and a half to two years to have an INS application approved. They want their families taken care of while they are at sea.

Legal assistance puts their minds at ease. It saves thousands of dollars in legal fees...or maybe provides them help they never would have sought were it not for our programs. It gives them the chance to talk to a lawyer who understands the unique problems and stresses of military life and can fashion realistic solutions that take these into account. The day-to-day help our legal assistance attorneys provide may never hit front-page news, but to those receiving legal assistance it makes a big difference in their daily lives...

[And] with military legal assistance, you'll never have to worry about getting a bill in the mail. It's absolutely free.

So, I salute the vital work legal assistance attorneys and the paralegals of all services do daily and the work of the ABA LAMP Committee in furthering this most worthwhile effort."

It was a very successful two-day meeting and CLE in Yorktown. Thanks to all who made it possible, including the 70 plus CLE attendees from the surrounding military legal assistance offices.

And one more thing... "Coasties," you are in good shape if you have a legal assistance problem!

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

Fighting Consumer Frauds Which Target Military Personnel

by Paul K. Davis

Consumers today face an evolving array of consumer frauds. The companies and individuals who organize these enterprises have for years shown a remarkable ability to adapt to new technologies and opportunities in a quest to separate consumers from their money. The methods used to reach consumers with deceptive sales pitches have included in-home sales, mail order, traditional media advertisements, infomercials, telemarketing, and, most recently, Internet sales.

Scam artists also have developed a talent for effectively targeting distinct groups of consumers for their sales pitches. Unfortunately, military consumers are considered particularly vulnerable by many of these companies. This is particularly true for service members in the lower ranks and their dependents. As a result, military consumers are not only subjected to the same deceptive acts and practices as consumers in general; they are also specifically targeted by unscrupulous companies. Hopefully, by giving increased training and knowledge about consumer issues to military personnel, especially Staff Judge Advocates and Command Financial Specialists (or comparable senior non-commissioned officers), the vulnerability of military consumers can be eliminated. Additionally, increased awareness and enforcement from state and federal law enforcement can also help. For example, the Federal Trade Commission (FTC) has recently brought several

enforcement actions against companies that targeted military consumers with frauds involving credit and photo packages.

The trend toward deceptive practices on the Internet is at the top of the current list of potential frauds facing all consumers, including those in the military. Military consumers clearly are participating in the growth of online commerce. In fact, online sales earned Army and Air Force Exchange Service the number four

spot on *Information Week* magazine's "E-Business" list in 1999, with close to one third of its 1999 sales from Internet orders. The corresponding increase in the number of complaints resulting from online transactions warrants concern about this form of business.

Internet-related complaints currently far outnumber the next category of complaints received by various law enforcement agencies. Problems with online

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Legal assistance-law enforcement collaboration can aid the fight against fraud

The majority of consumer fraud investigations and cases brought by law enforcement agencies start with and are built upon consumer complaints. Over the past several years a small, but perceptible, movement has taken place towards a broader partnership between the military community and law enforcement agencies in the consumer protection area. The keys to continuing an effective partnership between the military community and consumer protection law enforcement agencies are: (1) continuing education of both military attorneys and other service members on consumer issues, (2) efficient and timely sharing of information about the problems affecting service members and their families, and (3) recognition that the unique

characteristics of the military mean that law enforcement personnel often need special support from legal assistance attorneys.

When all the elements of the partnership are present, the results can be impressive. Just a few recent examples:

- A legal assistance attorney at Ft. Hood recognized a potential problem with soldiers applying for what they thought were debt consolidation loans. She was persistent in making sure the FTC was in contact with each soldier. As a result, a Ft. Lauderdale, Florida, company was put out of business for the deceptive telemarketing of advance fee loans, and many refunds were made possible.
- Based on the information

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Consumer Fraud

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auctions make up a significant number of these complaints, involving such practices as failure to deliver goods or services, improper billing, false earnings claims and product misrepresentation. This is an important point to note. The problems people are encountering in e-commerce are not fundamentally different from those confronting consumers through other media. The scams are often the same, only the method of solicitation has changed.

Other scams that are more likely to target military consumers include credit and lending schemes. Advertisements found on the Internet and in local newspapers (including base publications) offer home-equity loans that don't require equity in the consumer's home, as well as solicitations for guaranteed, unsecured credit cards, regardless of the consumer's credit history. Often these loans are offered by offshore banks. Typically ads for these loans are couched in terms such as "debt consolidation" or "avoid bank-

ruptcy" and are directed toward consumers who are already in financial difficulty. The common theme in these frauds is the request for an advance fee, perhaps \$300, in return for the "guaranteed" loan or credit card. In most cases, the credit either does not exist or is accompanied by hidden costs and conditions. Recently, many of these offers amount to cross-border fraud with a significant number of the companies and solicitations coming from Canada.

Credit repair scams also offer to erase accurate negative information from the consumer's credit file so he or she can qualify for a credit card, auto loan, or home mortgage. Unfortunately, the scam artists who promote these services cannot deliver. No one can remove accurate information from a credit report. As with advance fee loan operations, the companies that advertise credit repair services appeal to consumers with poor credit histories. Not only are these companies unable to provide consumers with a clean credit record, they also may be encouraging consumers

to violate federal law. Following their advice by lying on loan or credit applications, misrepresenting Social Security numbers, or getting Employer Identification Numbers from the Internal Revenue Service under false pretenses will lead consumers to commit fraud themselves.

Buyers' clubs offer consumers the promise of deeply discounted or free products and services. These companies often sell door-to-door or set up shop at a local hotel or restaurant just outside a military base to make their pitch. The products offered include photo packages, vacation deals, coupon clipping services and educational material such as encyclopedias and study guides. These packages are almost always poor deals, and the products are often out of date, overpriced or simply non-existent. The same deceptive techniques are often used in door-to-door sales of discounted magazine subscriptions.

A significant number of companies that sell College Level Examination Program (CLEP) review materials exclusively target

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Interagency

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gathered in the above case, a second telemarketing company in Miami was also sued and put out of business.

- A legal assistance attorney at the Aberdeen Proving Grounds made special efforts to identify soldiers who had bought an expensive photo package from a door-to-door sales company. Her work provided the basis for a settlement with a Maryland company. A redress program

for a number of soldiers is underway.

- Because of the persistence of a legal assistance attorney at the Naval Station at Roosevelt Roads, and agents of the Naval Criminal Investigative Service in Everett, Washington, several investigations of debt collection companies targeting military consumers were started and are nearing completion.
- Investigations of companies selling magazines door-to-door to service members are underway because of support provided by legal assistance

attorneys at Ft. Hood, Ft. Bliss, and Ft. Carson.

- The Army and the Marines have become members of a consumer complaint database called "Consumer Sentinel." The database is an essential tool for both state and federal law enforcement agencies in fulfilling their consumer protection missions. Any military attorney who is not familiar with the database, or would like to subscribe to it should contact his or her chief of legal assistance.

—Paul Davis

The Changing Face of Legal Practice: A National Conference on “Unbundled” Legal Services

by Ayn H. Crawley and Susan M. Erlichman

The practice of law is changing. Over the last two decades there has been a consumer and technology-driven movement toward new approaches to solving legal problems. The dramatic nationwide increase in *pro se* litigation is one measure of the profound changes in our legal culture. This has significant implications for the courts and the legal profession, both of which have responded with a variety of innovations. As new delivery methodologies are being tested, questions arise as to their efficacy and ethical propriety. The concept of “unbundling” the tasks that an attorney can perform on behalf of a client as a conscious planning method has raised controversy

and questions as well as excitement about the possibilities for new client-centered approaches to delivering legal assistance.

In October 2000, the Maryland Legal Assistance Network (MLAN), a project of the Maryland Legal Services Corporation (MLSC), convened a national conference on “unbundled” legal services attended by over 225 people from 34 states plus the District of Columbia, Canada and Russia. “The Changing Face of Legal Practice: A National Conference on ‘Unbundled’ Legal Services” was intended to be the first gathering of law schools, non-profit legal services providers, the judiciary and court staff, mediators, private practitioners, the

organized bar and entrepreneurs for what is hoped will be a continuing multi-perspective conversation on the changing practice of law. Conference co-sponsors included: the ABA Standing Committee on the Delivery of Legal Services; the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID); the National Association of IOLTA Programs (NAIP); the Legal Services Corporation (LSC); the American Judicature Society (AJS); the National Legal Aid and Defender Association (NLADA); the Project for the Future of Equal Justice/NLADA-CLASP; the AARP Foundation Legal Advocacy Group; the

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Consumer Fraud

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military consumers. The CLEP program is, in fact, a respected testing-for-credit program used by most colleges. However, many companies grossly overstate the possible benefits to someone trying to get college credit through the exam program. Common claims are that someone can “get [a] four-year degree at any college in the country in only six to nine months.” These companies market their review material as the best way to pass the exams. The targets of these solicitations are typically lower-rank enlisted personnel.

In another kind of scam, offers of business opportunities make it sound easy to start a business

that will generate lots of income without much work or cash outlay. The solicitations trumpet unbelievable earnings claims such as \$140 a day, \$1,000 a day, or more, and claim that the business does not involve selling, meetings or personal contact with others, or that someone else will do all the work. Work-at-home schemes are common. Especially through email ads, many business opportunity solicitations claim to offer a way to make money in an Internet-related business, such as offers to sell lists of email addresses. Short on details but long on promises, these messages usually offer a telephone number to call for more information. In many cases, the consumer will be told to leave his or her name and telephone number so that

a salesperson can call back with the sales pitch. The scam in these instances is that many of these solicitations are illegal pyramid schemes masquerading as legitimate opportunities to earn money. Also, as with sales of business opportunities in general, many earnings claims are false or inflated.

Clearly, these are not the only scams and consumer problems facing today’s military consumer. However, they are among the most prevalent seen at the FTC.

Paul K. Davis is an attorney with the Federal Trade Commission’s Southeast Region. He has previously taught at the U.S. Army Judge Advocate General School. He can be reached via email at pdavis@ftc.gov. The views expressed here are his own, and not necessarily those of the FTC.

Unbundled

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Maryland Legal Services Corporation (MLSC); the Maryland State Bar Association (MSBA); the University of Baltimore Law School; and the University of Maryland School of Law.

What are “unbundled” legal services?

The term “unbundled” is generally used to describe the wide range of discrete tasks that an attorney might provide, short of full representation. It may include advice only, coaching a *pro se* litigant before a hearing or negotiation, document review and/or preparation, legal research, or any number of other services that are bundled together as part of traditional full representation in a case. Although the formulation of the term is relatively new, the concept is as old as the profession. What is new is the practice of an attorney offering a menu of services to a prospective client and negotiating a relationship with a “partner” client. Many private firms have long offered unbundled services to existing clients, especially business clients. Since their inception, federally funded legal services offices have assisted *pro se* litigants in their cases—often as a response to limited funding. What is new is the impact of technology on the practice and the way in which legal information and work formerly offered by an attorney only in the context of full representation has become commonly available. This new information and work includes, for example, child support calculators on the web, interactive document preparation on the Web, and court-based kiosks for *pro se* litigants.

Conference themes and conversations

ABA President-elect Robert Hirshon set the tone of the conference with his remarks regarding the opportunities and challenges facing the legal profession as it considers unbundled approaches. “Unbundling is like splitting the atom,” Hirshon stated. “We have a tool that can create incredible benefits, and we have a tool that can also create a disaster. Thus the challenge before us is to examine and pursue the benefits, recognize the limitations and advance only those policies that strike the necessary balance in the delivery of unbundled legal services.” Hirshon’s keynote address was complemented by an overview of unbundled legal services by Forrest “Woody” Mosten, often referred to as the “father of unbundling,” and Richard Zorza, who spoke of the broad ethical issues. The workshops that followed covered a wide variety of issues, and addressed the concept of unbundling from a number of distinct yet interrelated viewpoints:

Law schools—A cluster of sessions at the conference focused on the role of law schools and unbundling. Law school professors and legal services clinicians from throughout the country participated in panels that showcased models of limited lawyering programs in law schools, discussed the importance of the development and implementation of clear standards for law students in an unbundled clinical law setting, and considered the need for law schools to respond to current trends in the practice of law.

Courts—Judges, representatives from state administrative offices of the courts, and those from court *pro se* initiatives participated

in several workshops that examined various court rules, trends and issues. The status of *pro se* court initiatives around the country was reported, with a detailed look at challenges and successes in particular states. The need to develop creative solutions to promote the cooperation necessary to effectively integrate unbundled practice with the courts and bar associations was also explored in a lively session titled “Reluctant Bedfellows: Integrating Unbundled Practice with Courts and Bar Associations.”

Private bar—Private practitioners, mediators, and attorney “dot-com” entrepreneurs offered a variety of presentations on unbundling for lawyers engaged in private practice. Workshops included a “nuts-and-bolts” session on rethinking solo and small firm practice; a “show-and-tell” session from pioneers in the field of client coaching, mediation-based practice, and collaborative and holistic lawyering approaches; and a “how-to” session on developing a successful unbundled practice.

Mediators—Another group of workshops examined the increased role of mediation and other alternative dispute resolution (ADR) techniques. A wide array of topics were explored, from the basic skills required to be an effective mediator to the various ways that pro bono attorneys could provide unbundled legal services in the mediation process. The expanding role of ADR in family, employment, community and other areas of law was also discussed.

Legal services providers—Throughout the conference, a great deal of discussion involved the manner in which innovative

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From the Chair...



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

In September 1995, the ABA Center for Pro Bono sponsored a program designed to "predict the future" of pro bono. Thirty-five people participated in this Pro Bono Summit. They included bar leaders, pro bono program managers, legal services directors, and individuals from civil rights and community economic development groups, and IOLTA programs.

At the time, there was great uncertainty whether the Legal Services Corporation would survive and, if so, under what limitations and with what level of funding. While challenging, this uncertainty was also liberating. It freed the group to invent a new future for the delivery of pro bono legal services.

It is informative to compare the visions of the participants in the Summit to what has actually occurred over the last five years. The Summit participants suggested, among other things, that:

- **Boundaries between urban and rural delivery systems need to be broken down.**

Now: Significant efforts are underway to address this critically important issue. An *ad hoc* group, the Rural Pro Bono Consortium, has met at

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Tax Clinics: The New Face of Legal Services

by Janet Spragens and Nina E. Olson

Editor's Note: This is the first installment of a two-part article. Here, the authors identify the reasons for the growing need many low-income people have for tax-related legal assistance, and the emergence of low-income taxpayer clinics to meet that need. In the second part of this article, to be published in the Spring 2001 issue of *Dialogue*, the authors argue that despite these successes, the clinic movement needs greater support while the systemic problems facing low-income taxpayers must be confronted.

One by-product of welfare reform is the emergence of a new population of low-income taxpayers, as former welfare recipients join the national workforce. Surprisingly, these individuals' tax returns are often remarkably complicated, contain frequent errors and, as *The New York Times* has reported, are drawing a disproportionate number of IRS audits.¹ Historically, tax law has not been a core service area for cash-strapped legal aid providers. Tax lawyers (who practice in an area long thought of as "rich people's law") have also not offered pro bono services in an organized manner. However, with the increasing numbers of working poor taxpayers, tax law is rapidly becoming a practice area for legal services providers. Further, in light of the importance of the earned income tax credit to the financial health of thousands of low-income families and the high audit factor for those claiming the credit, together with the resulting large numbers of low-income taxpayers streaming into the controversy and litigation system, members of the tax profession can no longer ignore the impact that low-income taxpayers have on tax policy and tax administration. In short, poverty tax law has come of age and is "hot."

Congress recognized the importance of low-income taxpayer representation when, in the Internal Revenue Service Restructuring and Reform Act of 1998, it added to the IRS's annual budget authorization a new \$6 million program that provides matching grants of up to \$100,000 for law and business school clinics and other 501(c)(3) organizations that agree to give pro bono legal assistance to low-income taxpayers.² These low-income taxpayer clinics offer "post-filing" legal help for low-income taxpayers in the audit, controversy, and collections systems.

Audit issues of low-income taxpayers

Why is the IRS spending its scarce enforcement resources auditing so many low-income returns? The answer is that anyone who files a tax return is subject to audit. No income class gets a bye. Moreover, Congress is so concerned about the extensive error rate in the earned income tax credit program, the nation's largest income transfer program for low-income working taxpayers with children, that it has **required** the IRS to spend \$144 million a year out of its enforcement budget just

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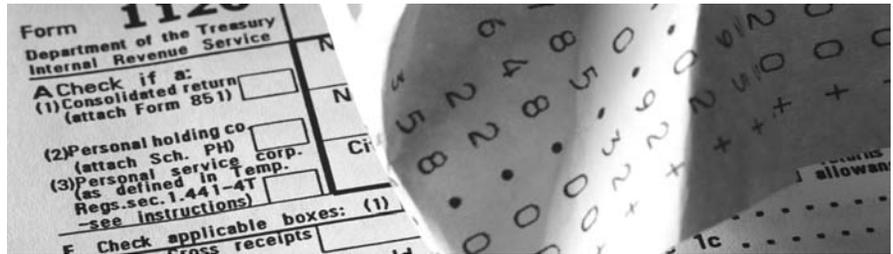
Tax Clinics

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on auditing the credit. This audit program has far-reaching consequences for tax administration (and fairness). For example, the most recent National Taxpayer Advocate's Report to the Congress states that the earned income tax credit (EITC) is now the fourth most frequently litigated issue in the U.S. Tax Court.

Immigrants and non-English speakers face scrutiny

Recent immigrants to this country and other non-English speakers or ESL (English as a Second Language) taxpayers are a second group of taxpayers who face regular tax audits. Many of these taxpayers start their own small businesses with only the most rudimentary understanding of their record-keeping and tax obligations as entrepreneurs. Within this group, Social Security numbers may be stolen, borrowed or fabricated, raising audit issues including assigning income and deductions to the correct taxpayer, and qualification for the earned income tax credit. Taxpayers arriving from other countries often are unaware of their filing responsibilities and consequently become non-filers; or may not know how to obtain an individual taxpayer identification number with which to file. ESL taxpayers often use incompetent or even unscrupulous storefront or other transient preparers who offer the prospect of large refunds as an incentive to use their services. These preparers make significant errors on the returns and then are not around a few years (or even months) later for the audit when the errors are picked up.



When ESL taxpayers are audited, language barriers often hinder resolution of their cases. The IRS has no budget for translators. In addition, audit resolution is impeded by a common, paralyzing fear that challenging the government about the tax matter will bring forth an immigration-related penalty. The result is that the taxpayers involved often do not respond to IRS correspondence (which is originally written in English), further enmeshing their cases deeper in the system, and accruing significant interest and penalty charges.

Divorce and separation can also lead to audits

Recently separated or divorced taxpayers are a third group of low-income taxpayers who are in the controversy system in large numbers. Their problems range from double-claiming children as dependents (or as qualifying children for purposes of the EITC) to erroneous filing status issues, and to joint and several liability problems in connection with joint returns filed during the marriage. Cases involving the latter issue are particularly insidious. For example, victims of domestic violence may find that, among other barriers to starting a new life, they must deal with a tax audit concerning their joint and several liability for their spouse's tax debts since their signature is on the joint return. Although "innocent spouse" or "separate liability" relief may be

available to such a taxpayer under legislation enacted by Congress in 1998, the proof requirements for entitlement to such relief are extremely complicated and are often beyond the person's ability to organize and present without professional assistance.

The low-income taxpayer clinics are now seeing all of these issues and more: a steady stream of denied child care credits, home office deductions, start-up business expenses, unreported tip income, car expenses, substantiation (of cost of goods sold, interest payments, charitable contributions, etc.), worker classification issues, disability income, pensions, hobby losses, and self employment tax—to name just a few. The taxpayers are taxi drivers, maintenance workers, nurses, restaurant workers, bus drivers, artists, auto mechanics, hairdressers, retirees, agricultural workers, police officers, gas station attendants, teachers—even prisoners.

These taxpayers generally do not have lawyers, nor in most cases, given the amounts in controversy, would it be cost effective for them to retain a lawyer even if they could afford the charges. The result is large numbers of cases in a system in which taxpayers are terrified. They lack the knowledge of how to proceed or how to defend the reporting positions they have claimed (or others have claimed for them) on their returns. From

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From the Chair...

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conferences, by phone, and via Listserv exchanges to share information and new ideas. In addition, through a grant from the Open Society Institute, the Pro Bono Committee has developed the Rural Pro Bono Project—a national effort to study, develop and promulgate effective models for the delivery of legal services in rural areas.

- **The legal community must work in partnership with a range of service providers—social workers, health care providers, protection and advocacy organizations and others—to facilitate the most efficient “one-stop shopping” system possible for low income individuals.**

Now: When first proposed, the idea of holistic delivery of services by legal services programs seemed to be a truly cutting edge idea, with only a handful of programs even exploring it. Today, many programs have adopted this approach. This is a developing area, with significant potential.

- **The use of technology must be expanded as a tool for helping clients access legal services, for conducting intake and assessing client needs, for referring clients to the appropriate service providers, for helping clients help themselves and for educating clients about their rights.**

Now: Developing technology has created opportunities to help clients in underserved communities. In staff attorney legal services programs, hotlines, pro bono programs and other contexts, technological innova-

tions are making it possible to deliver legal services more efficiently, with fewer legal personnel. We still need to develop strategies for using technology to involve the private bar, but the past five years have seen much progress in this area.

- **All of the players in the legal system—the organized bar, individual lawyers, judges and others—must take a leadership role in developing new, expanded delivery systems.**

Now: Bar associations continue to lead the way. They have taken on the difficult challenge of changing the pro bono culture in their communities—promoting policy initiatives such as pro bono reporting, Model Rule 6.1 and aspirational resolutions.

However, individual lawyers continue to be the linchpin and a vastly untapped resource. There is no hard data to assess whether pro bono participation has increased over the past five years. But one thing is clear: There have been impressive efforts across the country to involve members of the private bar who have not previously done pro bono work—corpo-

rate counsel, transactional lawyers, government attorneys and others. Pro bono programs are becoming more sophisticated about the use of these attorneys and have reduced barriers to their participation.

The judiciary has been at the forefront of efforts to expand pro bono nationally, statewide and locally. The Conference of Chief Justices adopted a resolution calling on its members to take the lead in promoting pro bono in their states. The National Judicial College has included information about pro bono in its training of new judges. The leadership of chief justices in many states has produced new initiatives and support for pro bono efforts.

All of this—new ideas, initiatives, energy and direction—has been the result of unflagging commitment by advocates of pro bono. The seers of five years ago envisioned a future that is still in the making. We can congratulate ourselves on significant, tangible progress. But so long as we meet just a fraction of the legal needs of the poor, so long as access to justice is more myth than reality for the least fortunate among us, we have much work left to do.

ABA Section of Business Law seeks nominations for service award

The ABA Section of Business Law’s Pro Bono Committee is now accepting nominations for its National Public Service Award. The award recognizes significant pro bono services rendered to the poor in a business context, and the achievements resulting from the public service work for the clients and the client groups repre-

sented. The deadline for submission is February 1, 2001. For more information on the award and guidelines for submission, go to <http://www.abanet.org/buslaw/probono>, or contact Joanne Travis, ABA Section of Business Law, 750 North Lake Shore Drive, Chicago, IL 60611, email: travisj@staff.abanet.org

Tax Clinics

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the government's point of view, these cases involve small dollar amounts and are consuming a disproportionate share of enforcement resources.

The growth of tax clinics

One of the oldest tax clinics in the country is at the American University, Washington College of Law, in Washington, D.C. That clinic was created in 1990 as an educational program to let third-year law students learn firsthand about tax practice and procedure by handling some cases for low-income clients. Each year 18 students (nine per semester) represent taxpayers with cases pending on the "S" calendar of the U.S. Tax Court. When it was started, the American University tax clinic had no idea how great the demand would be for its services. The clinic currently accepts about 50 cases for representation each year, and gives informal advice to many more taxpayers.

In recent years, a handful of nonprofit organizations have also stepped forward to deal with the growing needs of low-income individuals in tax controversy matters. The oldest nonprofit clinic offering such tax assistance is the Community Tax Law Project (CTLP) in Richmond, Virginia. Founded in 1992 and serving the entire Commonwealth of Virginia, CTLP represents more than 200 clients each year through in-house attorneys (one of whom speaks English and Spanish) and its pro bono panel of 135 attorneys and accountants. CTLP accepts all kinds of tax controversy cases, including those involving nonfilers, immigration-related tax problems, and collections matters.

The California State Bar Tax Section has for some time sponsored another early and innovative program. Volunteer attorneys appear at tax court calendars and give free legal advice to *pro se* taxpayers about the merits of their cases and about trial procedure. The California group just completed a videotape for *pro se* taxpayers in the tax court, complete with guest appearances by several tax court judges. Attorneys in the DC Bar Tax Section have also created the Washington D.C. Center for Public Interest Tax Law, a freestanding nonprofit clinic to handle low-income controversy work.

In addition to the direct service providers, the American Bar Association Section of Taxation has also been a steady and important supporter of the low-income taxpayer clinic movement. One of the section's contributions to the clinical movement is sponsorship, through its Committee on Low-Income Taxpayers, of a soon-to-be published treatise titled *Effectively Representing Your Client Before the New IRS*. Edited by Professor Jerome Borison of the University of Denver School of Law, this publication contains the collective wisdom of the most experienced tax controversy lawyers in the United States today and was written to be a handbook for low-income taxpayer clinics as well as other practitioners. The ABA section has also testified on multiple occasions in favor of legislation to fund clinics, has underwritten an annual workshop (in partnership with American University) on tax clinics, has sponsored a National Association of Public Interest Law fellow to work on ESL issues at The Community Tax Law Project, and has provided seed money for a Low-

Income Tax Clinic Resource Center.

Despite all this activity, before the tax clinic funding legislation was enacted in 1998, the tax clinical movement consisted of only about a dozen clinics in the entire country—mostly at law schools, and far fewer than one per state. The legislation has had a material impact on those numbers: In the first year after the grant program was created, 34 tax clinics received funds under the program, many newly created in response to the legislation. In 2000, 81 applicants received funds under the grant program. Since under the authorizing legislation, grant funding is made on a matching basis, it is clear that the program is not only stimulating the creation of more clinics around the country, but it is also leveraging private resources into this important activity.

Endnotes

¹ See David Cay Johnston, "IRS More Likely to Audit the Poor and Not the Rich," *New York Times*, Apr. 16, 2000, p. A-1; see also David Cay Johnston, "Reducing Audits of the Wealthy, IRS Turns Eye on Working Poor," *New York Times*, Dec. 15, 1999, p. A-1.

² Section 7526, added by section 3601 of the Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105-206.

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Nina E. Olson is the founder and Executive Director of The Community Tax Law Project and current chair of the ABA Section of Taxation Committee on Low Income Taxpayers. She is an adjunct faculty member at the College of William & Mary School of Law and at Virginia Commonwealth University.

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ABA Pro Bono Committee and Family Law Section Announce Joint Initiative: The ABA Pro Bono Child Custody Project

In 1998, the ABA Standing Committee on Pro Bono and Public Service presented one of its annual Pro Bono Publico Awards to Ann Liechty, a lawyer from Billings, Montana. Liechty was recognized for her tremendous dedication to providing pro bono legal services benefiting children. Unfortunately, she was diagnosed with a virulent form of cancer that ultimately claimed her life.

In honor of Liechty's commitment to meeting the legal needs of poor children, her aunt and uncle, Melita and Bill Grunow of Lake Geneva, Wisconsin, have made a private gift to the ABA Fund for Justice and Education in the amount of one million dollars. The gift is dedicated to support the development and implementation of the ABA Pro Bono Child Custody Project. The Project is a joint initiative of the ABA Standing Committee on Pro Bono

and Public Service and the ABA Family Law Section. It will be operated under the management of the ABA Center for Pro Bono, a project of the Pro Bono Committee, and will begin operation in early 2001.

The Pro Bono Child Custody Project will establish resources, develop standards and create training materials that will enhance and expand the delivery of legal services to poor and low income children involved in custody disputes and promote permanency for children by providing adoption assistance. With emphasis on identifying and developing "best practices", training, and technical assistance to courts and pro bono programs, the Project will serve as a critical national resource in the important area of child custody as it arises in the context of divorces, non-marital custody disputes and adoption.

A full-time attorney director will staff the Project. This individual will be someone with a strong child advocacy background, significant pro bono program management experience or both.

Collaboration with other ABA entities will be an important aspect of the Project. Its design takes into consideration the current initiatives of the ABA Center for Children, the Litigation Section's Children's Law Committee, the Steering Committee on the Unmet Legal Needs of Children and other groups. The Project will call on these entities, and groups outside the ABA, for expertise, support and collaboration.

Additional information about the Pro Bono Child Custody Project will be made available in future issues of *Dialogue* and on the Pro Bono Committee's Web site at <http://www.abanet.org/legalservices/probono.html>

Register now for the 2001 Equal Justice Conference

There is still time to sign up for the third annual Equal Justice Conference before advance registration ends on March 9. The conference, co-sponsored by the ABA Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Associa-

tion, will be held at the Town & Country Resort Hotel in San Diego from March 29 to 31. The theme of this year's conference is Pro Bono, Innovations and Partnerships.

Online registration is available on the Standing Committee on Pro Bono and Public Service Web site at

<http://www.abanet.org/legalservices/probono.html>
For more information or to receive a copy of the conference registration brochure, please contact Dorothy Jackson by phone at (312)988-5766; via fax (312)988-5483; or by email jacksond@staff.abanet.org

Nominations Sought for 2001 ABA Pro Bono Publico Awards

Nominations are now being sought for the 2001 ABA Pro Bono Publico Awards—the preeminent pro bono awards within the American Bar Association. The Pro Bono Publico Awards were established in 1984 and are designed to recognize extraordinary contributions to extending pro bono legal services to poor and disadvantaged people by individual lawyers and institutions within the legal profession. The award program is administered by the ABA's Standing Committee on Pro Bono and Public Service.

The Pro Bono Committee is seeking nominations of individual attorneys who do not earn their

income delivering legal services to the poor. Large and small law firms, corporate law departments, government attorney offices and other institutions in the legal profession whose members have collectively made an outstanding contribution toward one of the award's criteria are also eligible. Not more than five awardees will be selected.

Nominations must be **received** by March 1, 2001. Award recipients will be notified no later than April 13, 2001. The awards will be made at the Pro Bono Publico Awards Assembly Luncheon on August 6, 2001, at the ABA Annual Meeting in Chicago.

For more information about



the awards, the nomination criteria and instructions on submitting a nomination please visit the Pro Bono Committee's Web site at <http://www.abanet.org/legal services/probono.html> or call Dorothy Jackson at (312) 988-5766 to obtain a copy of the Pro Bono Publico Awards brochure.

NAPBCO Seeks Nominations for Awards

The National Pro Bono Coordinators Association is seeking nominations for two awards: the Pro Bono Coordinator of the Year award and the William Reece Smith Jr. Special Services to Pro Bono award.

The Pro Bono Coordinator of the Year Award recognizes a Pro Bono Coordinator who has demonstrated outstanding dedication and commitment to pro bono and has achieved outstanding results. Nominations from all programs, regardless of size or demographics, are encouraged. Past recipients include Celia Mansaray, Carol Powell, Carl Poirot, Pat

Bremmer, Patty Murto, Kathy Duncan Taylor, Tanya Neiman, Eloise Dudley, Eve Bisconayan, Pat Brown, Rachel Piercey and Judy Sobin.

The William Reece Smith Jr. Special Services to Pro Bono Award recognizes the efforts of persons who have made exceptional contributions to advance the work of pro bono coordinators and volunteer attorneys through innovation and the generation of support on a statewide, regional or national basis. Past recipients include William Reece Smith, Laurie Zelon, F. William McCalpin, Esther Lardent, Joseph Genova,

Robert E. Hirshon, Lynn R. Sterman, Sandy (Talbot) D'Alemberte and J. Chryst Dougherty.

The awards will be presented during the Equal Justice Conference, March 29-31, 2001, in San Diego.

The submission deadline is Friday, January 12, 2001. To request more information about the nomination process, contact: Angele Court, NAPBCO Nominating Committee Chair, Vermont Volunteer Lawyers Project, 30 Elmwood Avenue, Burlington, VT 05401; telephone (802) 863-7153; email: acourt@lawlinevt.org

From the Chair...



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

The ABA Commission on IOLTA met for its first business meeting of the 2000-2001 bar year in Tampa on November 11 and 12. The Commission welcomed its new members with a meeting that was punctuated by a lively but thoughtful dialogue about increasing yields on IOLTA accounts and other banking issues.

As has been the custom, the Commission invited representatives of the state IOLTA program where the meeting is being held to attend its business meeting. Two board members of the Florida Bar Foundation—Kathleen McLeroy and Kelley Howard—gave a detailed presentation about their program and the challenges and opportunities it is currently facing. Like many programs, the Florida Bar Foundation has recently experienced a downturn in revenues due to low bank interest rates. However, it is contemplating several rule and policy changes designed to encourage higher interest rates, to allow attorneys to place IOLTA accounts in government money market funds and in non-bank financial institutions, and to limit the impact of bank service charges on IOLTA program revenues.

The meeting also gave the Commission the opportunity

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Grantee Spotlight...

Arizona's Florence Project: Serving Detained Immigrants and Refugees

by Elizabeth Dallam

On any given day, more than 18,000 men, women and children are held in detention centers, county jails and prison facilities while the Immigration and Naturalization Service (INS) seeks to remove them from the United States. These detainees lack the right to government-appointed counsel, despite the adversarial nature of removal hearings, and face immigration laws that rival the Internal Revenue Code in their complexity. In addition, those facing deportation risk great peril—including persecution on religious, political or other grounds, torture at the hands of their native governments, or exile from established U.S. citizen families in the United States—if they return home. Most asylum seekers have just arrived in the United States, do not speak English, and lack the resources to hire a lawyer. Most of the INS detention sites across the country are located far from metropolitan centers, making it difficult for attorneys to provide legal services to the often forgotten people in detention. The end result is that 90 percent of those detained lack counsel.

In Arizona, where almost 10 percent of the nation's INS detainees are held, the Florence Immigrant and Refugee Rights Project seeks to provide legal assistance to all individuals in detention. In Arizona, the INS currently detains over 1,700 immigrants in a variety of settings. This includes an INS detention facility in the rural town of Florence, a private prison in Florence, a private prison located near the rural town of Eloy, two rural INS contract facilities for children, and other juvenile correctional facilities in rural counties throughout the state. The Florence Project has programs in place to assist all of these individuals with only four staff attorneys and an operating budget of approximately \$400,000.

The Florence Project dates back to 1989, when Immigration Judge John J. McCarrick implored Arizona's legal community to do something to help the hundreds of people detained in Florence. Judge McCarrick felt many detainees were being wrongfully deported without the assistance of legal counsel. In response, a large Phoenix law firm, Lewis and Roca, sent one of its associates, Christopher Brelje, to rural Florence, located more than an hour from Arizona's metropolitan centers. Along with one assistant, Brelje established the Project. Since 1990, the Arizona Bar Foundation has helped support the Florence Project with grants made possible by IOLTA revenues.

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Florence Project

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The Florence model of legal services delivery

The Florence Project employs a unique model to provide legal assistance to all individuals detained in Florence. Two staff attorneys provide legal advice and assistance to over 3,000

individuals a year. In addition, the Project provides rights presentations to the two or three dozen people who come to immigration court every day. These presentations explain the court process and the various remedies to deportation, with a goal of allowing individuals to make informed decisions about whether to pursue their cases or accept deportation.

The legal staff provides indi-

vidual case assessments to anyone who requests help. Follow-up assistance is provided to those pursuing relief from deportation, including advice before each of their court hearings, representation in release hearings, assistance in completing relief applications (which must be submitted in English), help in securing supportive documentation, and represen-

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From the Chair...

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to explain its work to the Florida representatives. Both Kathleen and Kelley joined in the Commission's discussion of banking issues, and I believe the exchange of information and ideas was valuable for everyone.

Prior to the meeting, the joint committees sponsored by the Commission and the National Association of IOLTA Programs (NAIP) began conferring about their activities and plans for 2001. All four of the joint committees—Meetings, Communications, Technical Assistance and Banking/Resource Development—have met by phone and are proceeding with their work. I would like to discuss the work of two of those committees.

The Meetings Committee, led by co-chairs Lora Livingston and Calien Lewis, has been developing a program for the IOLTA Workshops to be presented at the 2001 Midyear Meeting. The workshops you will participate in next month in San Diego are the result of months of behind-the-scenes efforts by the Committee. The planning process started in the fall, when the Committee began reviewing evaluations of the

Annual Meeting workshops held in New York. Later, the Committee surveyed the IOLTA community for possible workshop topics and then settled on which topics to include. This hardly completes the Committee's work, however. The topic ideas must be refined, program titles created, speakers and presenters selected, and the Committee must then facilitate each speaker's travel and other arrangements to participate in the workshops.

Banking will be a featured topic in San Diego. The workshops will include banking breakout sessions and discussions of hot topics in banking such as emerging strategies for increasing bank yields. Other sessions will feature developing Web sites for IOLTA programs, the future of the legal profession and its impact on IOLTA, and the role of IOLTA programs in promoting collaboration among grantees. If you have not made plans to do so already, please consider attending the IOLTA Workshops on February 15 and 16. You cannot afford to miss them.

The Technical Assistance Joint Committee has also been hard at work, with the guidance of co-chairs Judy Garlow and Barbara Clark. The Committee has matched five new state IOLTA

program directors with mentors under its Mentor Program. The new directors were paired with experienced IOLTA directors, who will serve as resources and provide a nationwide perspective on IOLTA to the newcomers. In arranging the matches, the Committee took particular care to consider the new director's own experience and background, and the nature of the individual state's program.

The Technical Assistance Committee also continues to work on its Peer Review Program, which was first announced last spring. The goal of this effort is to provide support to programs by arranging consultations and site visits by staff from other IOLTA programs. A wide range of issues may be reviewed during these visits, including program governance and organization, administration, grant-making, revenue collection and enhancement, and stakeholder relations. Thus far, the Committee has received two peer review requests and is hard at work responding to them.

None of this important work could be accomplished without the participation and leadership of both Commission and NAIP members. I want to recognize and thank all of them for their efforts on behalf of IOLTA programs.

Florence Project

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tation at the final hearing when possible.

Known as the “justice and efficiency model,” this system has led to the recognition of the Florence Project as a “best practices” model by many immigrant and refugee rights groups, the INS and the immigration courts.

The Eloy model

In 1998, the Florence Project developed another innovative model of legal service to meet the legal needs of individuals detained at the Eloy detention center, a private prison with a normal daily population of over 1000. With only one attorney and a detained population over 750 in Florence, the Project decided that it would make efforts to empower individuals to represent themselves. The model works extremely well for lawful permanent residents and other immigrants seeking discretionary waivers of criminal convictions.

After identifying clients eligible for such waivers, the legal advocate gives her clients very specific homework and descriptive materials to assist them in completing their homework. The materials provide instructions on how to fill out the applications for relief, which require detailed biographical, immigration and criminal history. The materials also explain the factors the judge will consider in determining the merits of the case and what type of supporting documentation to gather from family, friends, former supervisors and community members. Clients are scheduled for individual sessions with the attorney to prepare for their final hearings and have the opportunity to

participate in a group workshop in which Project staff and volunteers role-play as the immigration judge and INS trial attorney, while the other six to ten clients respond to questions.

This process not only helps

“Since the Eloy model was initiated . . . over 100 lawful permanent residents and other immigrants have won discretionary waivers on their own.”

clients prepare for their hearings, it provides them a sense of confidence in their own abilities to stand up for themselves in a complex court hearing and a sense of camaraderie with others in the detention center going through the same experience. Since the Eloy model was initiated in October 1998, over 100 lawful permanent residents and other immigrants have won discretionary waivers on their own.

Recognizing that the Eloy empowerment model has its limitations—particularly for those clients who have endured significant persecution or torture, suffer from mental health disorders, or lack the sophistication to represent themselves—the Project launched a systematic pro bono referral program in 1998 to recruit private attorneys to represent those most in need of legal representation.

Pro bono referral program

With funding from the American Bar Association, the Arizona Bar Foundation and the Arizona Social Change Fund, the Florence Project has developed a pro bono referral program and for the first time has involved almost all of the major Arizona law firms in pro bono representation. Seven law firms and over 30 lawyers

have already participated in pro bono representation and 30 more lawyers are trained and ready to take cases in the coming year.

Under the pro bono referral program, the pro bono lawyers have litigated over 20 immigration hearings on issues of deportation, handled six appeals to the Board of Immigration Appeals, one appeal to the Ninth Circuit Court of Appeals, six requests for release from custody, and several habeas petitions.

The success rate of the pro bono attorneys is extremely high—relief has been won for clients at the Immigration Court level in over 80 percent of the cases litigated so far.

The children’s project

Every year, the INS detains more than 4,600 children nationwide, including several hundred in Arizona. The children are held in several rural facilities across the state. Many are fleeing poverty, hardship or even persecution in their homelands, and often they are seeking reunification with their family members in the United States. The majority of the children are in their teens and have been apprehended by INS at ports-of-entry for lack of proper documentation or after crossing the border without inspection. They are all unaccompanied children who may be detained for months while they are in removal proceedings.

Like adult immigrants and asylum seekers, the unaccompanied children do not have the right to government-appointed counsel and there are no legal provisions for appointment of guardians *ad litem*. As a result, the children often lack legal counsel in their immigration

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Florence Project

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cases. Based on the Florence Project's successful model of service delivery to detained adults, the Project was invited by the INS and immigration court and INS contract facilities to offer a full range of legal services to these children. The Project has just hired a full-time staff attorney to work with the detainees. It is also in the process of developing a pilot initiative in collaboration with the Arizona State Bar's Immigration Law Section, the Women's Commission on Refugee Women and Children, Lutheran Immigration and Refugee Service (LIRS) and the University of Chicago's Human Rights Program to develop a national model for legal service delivery for INS-detained children.

National assistance to detained immigrants and advocacy efforts

In addition to assisting thousands of detainees in Arizona, the Florence Project has played a crucial national role in increasing legal services to the hundreds of thousands of people detained across the country each year. Since 1992, the Project has advocated for federal government funding of legal assistance to detainees.

Although a growing number of nonprofit organizations are working across the country, every year thousands of people still lack legal counsel. Given this dire need the Project has developed extensive *pro se* "Know Your Rights" materials for those who have no one to advocate for them. The materials include videotapes of the Project's rights presentation and nine accompanying booklets that explain how to present

"...the children often lack full legal care and counsel in their immigration cases."

defenses and win one's case. Through the Project's advocacy, along with that of LIRS, the INS has recently agreed to require placement of the Know Your Rights materials in all INS-owned and operated facilities across the country.

To further advance its goals of increased legal service delivery to the nation's detained, the Florence Project, along with LIRS and the Catholic Legal Immigration Network, established and continue to sponsor the Detention Watch Network, a coalition of over 120 legal, social and pastoral service providers working in detention sites across the country. Through the network, the members share different models of legal service delivery, and work together to change immigration law and policy for the benefit of those in detention. The members also share their legal knowledge, which is crucial in a complex and ever changing area of the law.

Community education

Because of harsh changes to the immigration laws enacted in 1996, the Florence Project's assistance to those in removal proceedings is not enough to guarantee justice will be done for a vast number of immigrants and asylum seekers. Under the 1996 laws, longtime legal permanent residents have no relief from deportation if they have committed certain crimes that can include shoplifting, driving under the influence and other nonviolent offenses. In the

last four years, the Florence Project has seen hundreds of legal permanent residents deported without any legal arguments to make on their behalf. As a result, last year the project collaborated with the *Universidad Noroeste* in Mexico and community-based groups such as Derechos Humanos and Border PACT in an education campaign to inform immigrant communities in Arizona of the consequences of criminal conduct and their rights when arrested by border patrol officers. The Project has also held a number of training seminars with public defender offices in Arizona on these topics.

Conclusion

The Florence Project has been working for 11 years to make a difference for its Arizona clients and for immigrant detainees across the United States. IOLTA funding from the Arizona Bar Foundation makes much of the Florence Project's work possible. According to Kelly Carmody, the Legal Services Director of the Bar Foundation, "We take pride in assisting the Florence Project in their valuable work on behalf of detained immigrants and refugees in Arizona. We are extremely fortunate to partner with a national model legal services program, and look forward to continuing to assist them financially and with their pro bono referral program." The Project's continuing direct service efforts, pro bono initiative, work as a national model for service delivery, and community education programs will continue, assisted by the Bar Foundation's grant of \$110,000 for 2001.

Elizabeth Dallam is the Executive Director of the Florence Immigrant and Refugee Rights Project.

Colorado Campaign Succeeds in Reducing Bank Fees on IOLTA Accounts

Recently *Dialogue* spoke to Judith Slason, executive director of the Colorado Lawyer Trust Account Foundation (COLTAF), about her program's campaign to eliminate bank fees on IOLTA accounts.

Dialogue: What was the nature of the problem that COLTAF tried to address with this campaign?

Judith Slason: In the 1999-2000 fiscal year, approximately \$68,000 was deducted from COLTAF interest revenues to pay banks monthly service and remittance fees. A monthly fee is charged for simply having an account at a bank, and banks charge the remittance fees whenever the interest payments are transferred from the individual trust account to COLTAF.

Dialogue: Did COLTAF do anything in the past to eliminate these fees?

Slason: For at least the previous six years, COLTAF had written letters to banks on an annual basis asking them to waive their fees. In 1993 a very large bank in Colorado did waive the fees, and we reached a point where 63 percent of the banks in the state waived their fees and joined our honor roll for banks.

Dialogue: But a significant percentage of banks still did not waive fees?

Slason: Right. In fact, there were two particular banks that held large numbers of IOLTA accounts, and charged large amounts of fees as a result. One of these banks charged \$24,000 a year in fees and the other charged \$12,000 a year. And after attending several

banking sessions at the IOLTA Workshops over the previous year, it became clear that COLTAF did not have much leverage with those remaining banks. One banker who talked at the 1999 Workshops in Atlanta explained that banks set their fees based on market conditions, and that bank customers form those market conditions. But IOLTA programs are not bank customers, and do not have leverage with banks. The lawyers who place their trust accounts in banks are the bank's customers.

Dialogue: How did you develop a strategy to address this problem?

Slason: The Board of Directors of COLTAF looked at this problem and established a banking committee that was comprised of two bankers, two lawyers, and me. The committee looked at the results of a survey of IOLTA programs which asked whether



Slason

programs publish the interest rates and fee structures of the banks holding IOLTA accounts. The survey was conducted by Stephen Brooks [of the IOLA Fund of the State of New York] and was titled "Winter 2000 Survey: Publicizing Bank Data." The results and responses to the survey were helpful because they described different methods IOLTA programs used to get banks to waive fees. The committee looked at the results and decided it was time to write attorneys with accounts at banks that still charged fees.

Dialogue: Did you write to all of those attorneys?

Slason: Yes, we wrote to approximately 1600 attorneys, and we also sent letters to the 56 banks that did not waive fees on IOLTA accounts.

Dialogue: What did the letters say?

Slason: The letters to the attorneys thanked them for participating in the IOLTA program and reminded them of the importance of IOLTA in funding civil legal services in Colorado. The letters also explained that 63 percent of Colorado banks with IOLTA accounts waived fees, but that their bank was in the minority and did charge those fees. We also explained why this was a problem—that the fees can wipe out or even exceed the interest charged on an account. We enclosed a copy of the COLTAF honor roll, which listed banks that waived fees. Finally, the letters asked the attorneys to contact their banks to request waiver of the fees.

We sent similar letters to the banks. These included a copy of the honor roll, and emphasized that banks that did not waive fees were in the minority in Colorado.

Dialogue: How did the lawyers respond?

Slason: The reaction was mostly positive. We received at least 15 positive letters from attorneys and several phone calls as well. On more than one occasion I was called by attorneys and brought into conference calls with their bankers. There was a range in the

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IOLTA News and Notes

New directors in five IOLTA programs



Garvin

The year 2000 saw the arrival of several new IOLTA directors. In May, Kim Garvin became executive director of the Utah Bar Foun-

ation. Kim brought eight years of fundraising experience to the Utah program. She previously worked as development director of the Legal Aid Society of Salt Lake and was involved in a collaborative fundraising effort among legal aid programs in Utah.

In July, Michelle Ottoes became the executive director of the

Ottoes



Wyoming State Bar Foundation. Michelle taught junior high school and worked as a legal secretary before joining the Foundation. As a college student, she served as a student

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Colorado

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attorneys' correspondence with their banks. From what we saw, many attorneys politely requested that their banks remove the fees, and others threatened to move their accounts elsewhere if the fees were not waived by a certain date. We received only two negative responses from attorneys.

Dialogue: *How did the banks respond?*

Slason: Some banks said "okay" right away, and waived their fees. Others got in touch with us and were upset that they were not already on the COLTAF honor roll—they did not charge service fees, but did not understand that we were also seeking to have remittance fees waived. We had to do a little bit of education. Overall, though, the response was very positive.

Dialogue: *Did you make any follow-up efforts?*

Slason: When we knew a bank had been approached by an attorney, we also arranged for another attorney we had previ-

ously selected—most likely one with an IOLTA account with a high balance at that bank—to call the banker directly with the same request. We had identified these attorneys ahead of time as ones who support IOLTA. This strategy was very effective.

Once a bank waived its fees, COLTAF sent thank you letters to the bank, and sent letters to the attorneys with accounts at that bank to let them know their bank had joined the COLTAF honor roll. We also published an article in *The Colorado Lawyer* that listed the bank honor roll and announced the new additions as a result of the campaign.

Dialogue: *Was the campaign successful?*

Slason: Absolutely. It was far more successful than we thought it would be. Since we sent the letters in June 2000, 12 banks have waived their fees and agreed to join the honor roll. We expect that in the 2000–2001 fiscal year, COLTAF will gain about \$46,000 in additional revenues due to the additional waivers of bank fees.

Dialogue: *Was this a difficult initiative to move forward? Did you have to get board approval or*

do any other background work before sending letters to those attorneys?

Slason: No. The board really delegated responsibility to the committee. We did a little bit of research into some national banks which had agreed to waive fees in other states, but had not done so in Colorado. I should emphasize that this did not involve a great deal of effort or resources on the part of our program. We spent about 40 hours of staff time, and our expenses consisted of printing and mailing the letters.

Dialogue: *What happens if banks stop waiving their fees in the future?*

Slason: It is not likely that a bank would do this. There is no history of banks in Colorado going off the honor roll after they have been added to it. If this did become a problem, I would guess that we would respond with another campaign.

Dialogue: *What does the future hold for the COLTAF board's banking committee?*

Slason: The next issue we hope to address is increasing the interest rates paid on IOLTA accounts.

IOLTA Notes

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ambassador for the University of Wyoming Foundation. Michelle will devote some of her time providing assistance to the Wyoming State Bar Association, but her primary responsibility is with the Foundation and the IOLTA program.

Todd Horstmeyer joined the Kentucky Bar Foundation as its executive director in July. A graduate of the University of Kentucky School of Law, Todd comes to the Bar Foundation after 25 years in private practice. Todd is responsible for both the operation of the Kentucky IOLTA program and the overall operation of the Bar Foundation.

Also in July, the Kansas Bar Foundation and Kansas Bar Association named Jan Kuckelman as their new public services



Horstmeyer

director. Jan now handles the day-to-day management of the Kansas IOLTA program. Jan had worked at the Kansas Bar as a meeting coordinator since 1998.

In October, Karen Beagles became the executive director of the Virgin Island Legal Assistance Foundation. Karen was educated as an engineer, but for the past six years has managed a homeowners association in St. Croix. That experience allowed her to learn about the legal system and become familiar with many attorneys and banks in the Virgin Islands.

LSC technology grant to help South Carolina program expand access to clients

In September, Legal Services Corporation President John McKay announced that South Carolina would receive the largest LSC technology grant in the nation. The LSC grant of \$500,000 goes to the Legal Services Agency of Western Carolina on behalf of the statewide Partners for Justice initiative. The grant comes from a \$4.25 million appropriation

to LSC to support technological advancement in legal services programs.

The new funding will help efforts to build upon the existing technology infrastructure of South Carolina's legal services offices and centralized Legal Aid Telephone Intake System (LATIS). (*The IOLTA Grantee Spotlight in the Summer 2000 issue of Dialogue featured the LATIS program.*)

The grant provides funding for a mainframe relay telephone system to support enhanced transmission of data between programs, improve Internet connectivity, and provide video-conferencing throughout the state. This technology will increase collaboration and supplement substantive training opportunities for legal services staff.

The initiative will also establish a "virtual" legal aid office in every county in South Carolina that does not have a legal services office. Partnering churches, libraries and other community centers have agreed to host these facilities. The project will also offer self-help videos and *pro se* forms via the Internet, and provide real-time video conferencing between clients and legal services staff.



In September, South Carolina Governor Jim Hodges met with LSC President John McKay and representatives of the Partners for Justice Initiative. Pictured are (left to right): Teresa Cosby, Legal Services Agency of Western Carolina; McKay; Bonnie Brisbane, Neighborhood Legal Assistance Program; Hodges; Eddie McDonald, Piedmont Legal Services; Johnny Simpson, Palmetto Legal Services; Sue Berkowitz, Applesseed Legal Justice Center; Alvin Hinkle, Carolina Regional Legal Services; Faith Rivers, South Carolina Bar Foundation; and Joan Brown, Legal Aid Telephone Intake Service.

Unbundled

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unbundling techniques could help to expand legal services to low and moderate income persons. Workshops included opportunities to discuss the ways in which a statewide unbundled legal services delivery system could be developed and integrated with existing legal aid, lawyer referral, court-provided assisted *pro se*, and other programs serving low and moderate income clients. Another session focused on which clients and which cases can and should be handled *pro se*, with a look at some tools that are currently available to make such assessments.

Ethics issues—Among the most hotly debated topics were the variety of presentations on the ethics issues raised by the new models of delivery. The most widely attended workshop at the conference dealt with the question raised by many of the models emerging in the ever-changing information environment: “Where does the practice of law begin?” The progress of the ABA Ethics 2000 initiative was reported, and topics such as ghostwriting pleadings for *pro se* litigants, safe harbors for attorneys offering unbundled services, limited appearances and the response of the courts were presented. In addition, there were workshops analyzing the relative roles of the courts and the bar in working with *pro se* litigants.

The explosive evolution of the “legal space” on the Web—Among the most interesting aspects of the conference were the contributions of over 15 “dot-com” legal entrepreneurs who offer a variety of discrete services over the Internet. Discussions included an analysis of how solo and small

firm practitioners are being affected by the commodification of the law as well as several presentations on opportunities for small firms to take advantage of some of the new approaches. A broad range of approaches was highlighted from the Web-based delivery of companies such as Americounsel, USLaw.com, MyLawyer.com, MyCounsel.com to the “coffee and counsel” café model of Legal Grind, Inc. One of the larger affinity groups to meet on the last day of the conference was comprised of entrepreneurs working on Web-based delivery models. A key topic was the creation of strategic partnerships with legal services providers and with legal services plan companies. Alec Schwartz, the executive director of the American Prepaid Institute, attended the breakfast to meet with participants.

“Developing a vision”—The MLAN project compiled a source book of recommendations of various past conferences, ethics opinions from a number of jurisdictions and some of the related case law. The goal was to summarize the trends in discrete task lawyering around the country and to suggest possible recommendations to be adopted by the conference. Prior to the conference, registrants received a copy of draft recommendations drawn from this compiled material. The conference provided a series of facilitated workshops to collect participants’ ideas, issues and concerns. The comments, additions and changes have been incorporated into a revised post-conference version of the recommendations that is being circulated among the participants of the conference and to other interested parties. The current draft is posted on the conference

Web site and users are invited to comment. We will be working with various interested members of the legal community to examine ways in which the recommendations might be useful to the various stakeholders as part of an “unbundled action agenda.”

Related post-conference activities

We are working with others in the community to continue the conversations and work of the October conference in a number of ways. The most active approach will be through the continued development of recommendations to the courts, the bar, legislatures, providers and others with a stake in the changing practice of law. We are seeking ways in which to disseminate the ideas and issues addressed by the conference through workshops at other conferences, a special spring 2001 issue of the Family and Conciliation Courts Review, distribution of a national survey of ethics opinions on practices related to unbundling, and the distribution of audiotapes and written workshop materials from the conference.

Those interested in any of these activities should contact the MLAN office at 410-576-9494, by fax at 410-385-1830 or visit the Conference website, at <http://www.unbundledlaw.org> The site will be maintained for six months post-conference to serve as a forum for posting resources in the area. The site also offers a downloadable copy of the order form for the audiotapes and materials.

Ayn H. Crawley is director of the Maryland Legal Assistance Network (MLAN). She can be reached at acrawley@mdjustice.org

Susan M. Erlichman is director of Operations for the Maryland Legal Services Corporation. She can be reached at serlichman@mlsc.org

From the Chair...

by John Busch

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

The 2000 National Lawyer Referral Workshop was held in New Orleans from October 18 to 21, under the direction of Program Chair Joan Anderson, director of the King County (Washington) Lawyer Referral Service. The theme of the annual workshop was "where will your LRIS be in 5 years?" Consistent with this, ABA President-elect Robert E. Hirshon delivered a compelling and insightful keynote speech focused on change in the profession and the movement to Internet-based referrals. His comments merit our careful consideration.

Hirshon began his address by quoting former Secretary of State John Foster Dulles: "A capacity to change is indispensable. Equally indispensable is the capacity to hold fast to that which is good." The President-elect then referred to his own experience with the Maine Lawyer Referral Program, and commented on the "much good work and good service your lawyer referral programs provide."

Hirshon noted that bar-related lawyer referral programs receive approximately seven million telephone inquiries annually, and identified what drives that level

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Matching Panel and Community: How and When to Recruit New Panel Members

by Audrey Osterlitz and Carol Woods

The first question to ask when thinking about marketing your lawyer referral service to attorneys is whether you need more attorneys. If you do not, why would you ask more attorneys to join? Determining whether you have an adequately sized panel is simple—if you can help everyone who calls find an attorney or other appropriate resources, and if your panel members are getting an adequate amount of referrals but are not overwhelmed, you probably do not need to recruit attorneys. You have enough resources to meet the needs of the public, and therefore you do not need to expend efforts on recruiting, at least for the moment. Read no further, and save this article for when you do need to recruit.

At most lawyer referral services, however, recruitment is an ongoing process. There is always a caller's need that goes unmet, or a geographic location where panel membership is sparse. The best recruiting efforts are therefore **targeted**, in that the service seeks out those specific attorneys who can meet the service's precise geographic and substantive needs. You may have plenty of attorneys in one city, but few or none in another. Perhaps you have more than enough personal injury attorneys, but could really use more family law participants or one or two labor and employment attorneys. You have talked about doing a blanket solicitation, but you fear getting more participants in areas where you don't need them. You do not want to risk diluting the benefit of lawyer referral service participation to those already on the panel. A general invitation may bring in more attorneys with offices in Pleasantville, when you really wanted them in Happy Valley. And if your general solicitation brings in more eager personal injury attorneys, all of the personal injury practitioners who are already part of the service will get fewer of these precious referrals. For these reasons, targeting your recruiting efforts makes good business sense.

It is also very important to avoid relying on registration fees as a primary source of revenue, even though annual registration fees do represent income to the service. In other words, don't drum up panel members for the sole purpose of raising money while disregarding where and if you actually need attorneys. You will find yourself with a little more money, but many unhappy panel members who are getting fewer referrals. These attorneys will eventually drop off the panel at the end of the year, as their impression of the lawyer referral service will be unfavorable. Ultimately, the image of the service will suffer. Just as with friends, you need to take care of those you have rather than trying to get lots of new ones. It is therefore short-sighted to try to increase your panel membership solely as a means of raising money.

With regard to image, many services work continually to overcome

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New Members

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the mistaken impression that lawyer referral exists to help people who cannot afford a lawyer. Often attorneys will participate in the belief that they

are doing you a favor. To enhance your ability to attract good quality panel members and thereby meet the needs of the legal consumers, the lawyer referral service must dispel this myth. Doing so involves a continuing effort to offer a high quality service. This should be coupled with education of the bar

as to the true function of lawyer referral—matching clients who can pay at least some attorneys' fees with attorneys qualified in their area of need—and the lawyer referral service's significance as an attorney benefit.

When you set out to recruit

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From the Chair...

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of activity: "There is a compelling need for legal information that is at the heart of what [lawyer referral services] provide."

According to Hirshon, the volume of calls reflects the public's need for high quality service and valuable information about legal issues, and underscores the role of lawyer referral services in "helping people to make that first, most important decision about whether or not to contact an attorney."

However, Hirshon noted that past accomplishments do not guarantee future success. "The entire environment in which [lawyer referral services] operate is changing..." Hirshon sees "a tectonic shift ... so dramatic that it threatens to overwhelm [lawyer referral programs] ... or even render them irrelevant." Hirshon was speaking of Internet services and new technologies, and he advised, "Rather than curse these new technologies, we must embrace them, capture them for our own purposes." Hirshon warned that programs cannot be passive, waiting for callers, but must go out and find legal consumers, and view technology as an answer, not simply a challenge. "As the public learns over time to access information and services more quickly

and efficiently through electronic sources, it is only natural that the same public will turn to these sources for legal advice... We are proud of seven million telephone calls, but who will respond to the 20 to 25 million Web site hits?" he asked.

Hirshon noted concern among LRIS entities about online providers who are more interested in the bottom line than public service. He warned, "The organized bar and your referral programs simply cannot cede the field to for-profit competitors."

To address the situation, Hirshon suggested that "we must adapt to and embrace the new technologies... This process is underway, and is highlighted by the [ABA] Standing Committee on Lawyer Referral's initiative to collaborate with iLawyer.com to establish a national lawyer referral network on the Internet." Hirshon described this as the first step in a long-term process. According to Hirshon, "The goal must be the total integration of LRIS with the emerging technologies. This electronic information should be interactive, giving individuals an opportunity to obtain personalized responses with a single visit. This interactive information must be available around-the-clock. '24-7' is no longer just a saying; it is how people live." Hirshon also urged making the process more

user-friendly by providing customers with information about a referral lawyer's "age, location, hours of operation, language skills, special access needs for the handicapped, educational background, experience or special training." Hirshon also urged services to provide consumers with information on mediation programs and alternative dispute resolution.

In closing, Hirshon urged LRIS leaders to raise their voices and visibility within their bar associations, and demand the resources necessary for technological improvements. Hirshon noted, "Change likely will not come easily. Bar associations are slow to adopt new ways of thinking. Moreover, no organization ever made a change without an internal advocate." Hirshon's message to lawyer referral services leaders is that **they** must become that advocate.

Winston Churchill noted that courage is "the first of human qualities because it is the quality which guarantees all others." If lawyer referral service leaders demonstrate the courage to change, then, as Hirshon put it, they will find "the vision, the fortitude and wisdom to define and embrace a future that serves our profession and the public in the best possible manner." Lead on, with courage!

New Members

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new members, make it clear why you need them, or rather, why potential clients need them. Include information about the number of clients that the service was unable to assist because of a lack of panel attorneys. This helps demonstrate the demand for legal services in a particular geographic and/or legal area. Statistics on the amount of attorneys' fees generated in comparable geographic locations or in a specific area of law also can impress prospective members with the potential financial benefits of the lawyer referral service to their practice.

Some of the recruiting tools at your disposal include:

(1) Articles about the good cases referred to panel members.

Seek out such information. Conduct an interview with the panel attorney, and then write an article for your bar publication, making changes and omitting details as necessary to preserve confidentiality. You should feature cases from areas of practice in which you need participants.

(2) Free first year for new members. Attorneys are always happy to receive free gifts. The idea behind waiving the membership fee is to get them on the panel and experiencing the benefits of participation. Once they have, it is hoped that their experience will convince them to continue.

(3) General articles about lawyer referral service for the bar publication. These articles can provide information about how the service works, and present statistics on call volume and types of inquiries received. They can, and should, include a copy of the attorney application to

make it convenient for the attorney to register. While they do not target particular practitioners, such general articles maintain the lawyer referral service's presence before the bar membership.

(4) Committees and sections of the bar association. Ask to have a lawyer referral service representative at a meeting of the committee or section relating to the area of law where panel membership needs to be increased. Bring information about the need, how the service operates, and applications for the panel. Alternatively, mail this information to members of the section or committee.

(5) Other bar associations and attorney organizations. Specialty and minority bar associations are a source of potential new members. Services with a need to recruit bilingual attorneys, for example, can approach a bar association whose members may speak the language needed. Other organizations can be targeted by the area of law they emphasize, such as local chapters of the American Immigration Lawyers Association for immigration attorneys, the American Academy of Matrimonial Lawyers for family law practitioners, or the National Employment Lawyers Association for attorneys who practice in the area of employment law.

(6) The ABA Logo and Slogan. If you have applied for and been granted permission to use the ABA logo and slogan, "*The right call for the right lawyer,*" you should be using them in your advertising and recruiting efforts. This association with the ABA tells attorneys that the lawyer

Testimonials from happy panel members sell your service like nothing else can.

referral service has met a nationally recognized standard.

(7) The ABA Marketing Guide. This publication, available for a fee from the ABA, is full of helpful marketing hints.

It was developed by marketing experts to make your job easier. (Note: *The Marketing Guide is available from the ABA Committee on Lawyer Referral and Information Service. Contact Marsha Boone at (312)988-5786 or via email at boonem@staff.abanet.org*)

(8) Feedback from panel members. Testimonials from happy panel members sell your service like nothing else can. Seek these out by sending simple prepaid postcard questionnaires to your panel members. Put a space for comments on their quarterly reports. Make it easy for them to say nice things about the service and then use those comments to build your panel.

(9) Your Web site. Do not overlook this valuable tool! It is a great place for lawyer referral service information and statistics. The Web site ideally will have a public section and a private area for attorneys. Since it can be updated frequently and easily, the attorney who accesses it has the most current information, unlike brochures, which can become outdated quickly. Other time-sensitive information can be placed on the Web, such as where participants are most needed.

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New Members

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(10) Reception for new attorneys. Some bar associations have a gathering for new attorneys and/or new members, and the lawyer referral service would be one of the most logical member benefits promoted there. The lawyer referral service is a great way for new attorneys to get their practice started. Have brochures on hand, along with food—see below for details on both.

(11) Recruiting brochure. When you are talking to attorneys about lawyer referral service at various events, the brochure is something to place in their hands to reinforce the information you give them in person. It is a good idea to have the lawyer referral service application built into this promotional piece.

We conducted a very unscientific telephone survey, asking lawyer referral service directors around the country this question: “What is your most effective or most unique technique in marketing the LRIS to attorneys and trying to convince them to join?”

Allen Charne of the Legal Referral Service in New York City says, “Food, probably.” He has a good point. People are more congenial at functions where food is served. You might want to show up at catered bar events armed with copies of your attorney brochure and applications. The Santa Monica Bar Association also uses this method. There are distinct advantages with face-to-face meetings. They are much more effective than letters or phone calls.

Charne also says that when he reads about an attorney who has done well in an area of practice

where they have a need, he will call that attorney and ask him or her to join. He will even waive the registration fee for a portion of the year. He says this does

not affect his budget because when the attorney renews, there will still be income in that fiscal year. And, every new member who fills a need generates retained cases and percentage fee income to the service. It is an investment.

Carolyn Stachura (formerly Hamele) of the Erie County Bar’s Lawyer Referral Service in Buffalo, New York, says there’s nothing really unique or interesting about her recruitment methods. She staggers the attorneys with statistics. Every month, she releases figures on the number of calls and requests received in each area of practice. In bar and lawyer referral service newsletters, attorneys are asked to fill the need in areas where there are no panel members.

Stachura also gives some valuable advice on the always-troublesome issue of how to help callers who say they have been unjustly terminated from employment. Everyone expresses frustration over the difficulty in getting attorneys signed up for labor issues, and things were no different in Buffalo. So Stachura went to the bar’s Labor and Employment Law Committee, asking them to draft a brochure which advises members of the public of their rights under the labor law. Now, when callers ask for a labor law attorney, the staff at the Erie County Bar lawyer referral service still cannot help them find a lawyer; but, they can send them

... every new member who fills a need generates retained cases and percentage fee income to the service.

some basic legal information, which makes the caller happy, and the staff members feeling as if they have really helped someone.

At the New York State Bar’s lawyer referral service, a favorite recruiting tool in use over the years is a postcard sent to attorneys, asking them why they do not participate in the service. They are given several choices, one of which is, “I would like to participate—please send me an application.” Oddly enough, this postcard generates a significant number of requests for applications.

California, like many states, offers state bar certification as a specialist to attorneys who meet specific experience and peer review requirements. The Bar Association of San Francisco Lawyer Referral Service notifies newly certified specialists that they automatically qualify, by virtue of their certified specialist status, for membership on certain panels.

In closing, the most important advice we can give to lawyer referral services on recruiting attorneys is to always remember: “It’s not the size of your panel that counts; it is whether you can assist those who call you,” and, “Recruiting should be ongoing and targeted.”

Audrey Osterlitz is the director of the New York State Bar Association Lawyer Referral Service.

Carol Woods is the director of the Bar Association of San Francisco Lawyer Referral Service.

Conference Puts Spotlight on Lawyer Referral Services in the 21st Century

by Edwina Martin

While the 2000 National Lawyer Referral Workshop provided traditional fare with sessions on issues such as budgets and finance, ethics, and subject matter panels, its primary focus was undoubtedly on the future: specifically, how will the Internet affect the future relevance of lawyer referral services?

No one, of course, can accurately predict the future. However, the good news from the Workshop—held in New Orleans from October 18 to 21—is that, if lawyer referral services can maintain their tradition of providing meaningful, quality service, they will survive, and even prosper, in the Internet age.

The keynote plenary—“Competing in the Internet Era”—set the tone of the Workshop. Four speakers opined on the possible state of lawyer referral services in 2010. The speakers noted trends expected to define this decade, including:

- increased self-help by legal consumers;
- demand for instant answers from one location—i.e., “one-stop shopping”;
- increased inter- and intrastate law firm mergers;
- the increased importance of consumer issues; and
- increased competition from Web-based advertising by attorneys and organizations (some of which are brand new; and others that are well established, such as Martindale-Hubbell, the American Association of Retired Persons and the Association of Trial Lawyers of America).



A plenary session on the state of the legal profession in 10 years kicked off the Workshop. Pictured are: Peter Bonavich, LRIS Committee member MaryAnn Sarosi, Adam Slote, Allen Charne, and LRIS Committee member James McLindon.

How will lawyer referral services deal with such issues? The ultimate answer is that a lawyer referral service must remain ever mindful of its *core competency*. As speaker MaryAnn Sarosi stated, a service must always ask itself what central functions it performs as a lawyer referral service that differentiate it from resources such as the Martindale-Hubbell Web site, which offers lists of attorneys and their biographical information. The panelists suggested several ways to increase visibility and highlight the core competency of lawyer referral services:

- creating a presence in “legal assistance centers” set up in courthouses to assist *pro se* litigants;
- specialization and increased training of program staff;
- flexibility in combining talents of lawyers and law firms to bid on projects or satisfy particular client needs;
- coordinating legal services through cooperative arrangements between referral services;
- providing a wide array of services, or partnering with those who can provide them; and

- committing to seek out new opportunities for growth, particularly among under-represented populations.

In addition to focusing on how best to offer and improve services, creating a meaningful Web site will be vitally important to an LRIS’s ability to compete on the Internet with its continuous free flow of information. Adam Slote of iLawyer, Inc. suggested many examples that illuminate the possibilities for establishing an effective Internet presence such as hosting community applications including message boards and chat rooms, providing mechanisms for clients to request proposals from attorneys, standardizing credential and fee information, providing information on client satisfaction, and resolving disputes online.

While many large programs in urban areas have developed Web sites, many small programs are just beginning to consider what an effective Web site should offer. Sessions such as “Developing a Web Site for Small Bar Programs” and “Improving Your Web Page” provided guidance on the issues a program should consider when

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Subject Matter Panels: Good Business and Good Service

by Ron Abernethy

Editor's Note: This article is the second of a two-part series. Here, the author explains why subject matter panels are needed to comply with the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service, and factors to consider in establishing subject

matter panels. The first part of this series, published in the Fall 2000 issue of *Dialogue*, discussed the need for subject matter panels.

The ABA Model Supreme Court Rules Governing Lawyer Referral and Information

Service are designed to ensure that lawyer referral services operate as a public service. One of the significant provisions of these rules is the requirement that each service has and maintains subject matter panels. These panels are

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planning its Web site. For example, should a program design a site itself, or hire an outside consultant? What is the full range of applications a program should have on its Web site? Should the site be hosted on an Internet service provider? What type of links should a program's Web site provide? And, how can a program improve the visibility of its Web site? While some of these issues may seem less important than others, all are vital to the effectiveness of a Web site. If a site is "user-friendly" and easy to find, it will be a success. If navigation is complicated, or it is difficult to find using a search engine, it will be a failure.

Finally, in creating a Web site or planning for the future services a program may offer, it is useful to study the other competition on the Internet, an issue addressed in the session, "Internet Competition – What's Going on and What are Customers Demanding?" Consumers are using the Internet to find legal services in large numbers, and are seeking "holistic"



ABA President-elect Robert E. Hirshon delivered the keynote address.



LRIS Committee Chair John Busch addressed the Workshop attendees.

sites – such as a divorce site that offers legal resources, mediation information and accounting information in one place. There are also sites that offer local counsel networks (referring an attorney's potential clients with needs outside his or her practice area to a more suitable attorney), case bidding and dispute resolution services. There are many legal chat rooms, as well as sites that offer form preparation advice, such as for a standard will or articles of incorporation. In sum, there are a

plethora of Web sites that can help a program decide what methods are effective, which current services to keep, and what new services to offer in the future.

The Internet offers lawyer referral services an exciting new world of opportunities. While the Internet has spurred a number of sites that act merely as aids to filling out forms or listing lawyers, lawyer referral services offer

significant, unique services—carefully screened and vetted attorneys; intake personnel to help consumers understand their legal issues and needs; and experienced subject matter and modest means panels. While increasing competition, the Internet also gives lawyer referral services the opportunity to increase their public visibility and highlight the superior value and quality of the services they offer.

Edwina Martin is a member of the ABA Standing Committee on LRIS.

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often, and perhaps more accurately, referred to as experience panels.

The core idea behind experience panels is that a lawyer referral service should refer clients only to those lawyers who by some objectively measurable criteria have demonstrated that they possess the knowledge and skill necessary to resolve the client's problem.

Model Rule X provides:

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

Establishment of these panels requires the thoughtful participation of the ABA Committee on LRIS and careful preparation. It is essential that the establishment of an experience panel **not** be confused with a program of legal specialization. The goal of experience panels is simply to insure that panel members have the basic minimum experience necessary to handle cases in a particular area.

The process of establishing a panel involves the following steps:

1) Survey local lawyers whose practice is in each participant's area of law. For example, in setting up a matrimonial panel, contact local matrimonial practitioners and with their assistance determine what

issues are likely to arise in a matrimonial case. Those issues would certainly include child custody, spousal support and distribution of a pension plan. Make sure to include current panel members receiving referrals in the area of law involved.

2) Determine the degree of familiarity with these issues that a lawyer should have before handling a case. For example, on a matrimonial panel it may be a requirement that the attorney have handled three child custody cases within the past three years or it could be as simple as a requirement of attendance at a continuing legal education program on child custody within the last six months. The requirements in a rural community would be different from those in a metropolitan area. Similarly, the requirements for a medical malpractice or estate-planning panel would be more stringent than those for a misdemeanor criminal panel.

3) Educate panel members as to why the lawyer referral service is establishing experience panels. Point out that most people who have been receiving referrals will have the requisite experience to qualify for admission to the new panels. Explain that the change is not only to improve the quality of the service but also to allow the service to more aggressively market itself. Understand that some panel members may object and choose to drop out of the program.

4) Develop panel application forms that clearly set forth the requirements that must be met

for panel admission (for example, three matrimonial cases involving distribution of a pension plan in the past three years). On the application form provide space for the **applicant** to document the required experience. For court cases, have the applicant list the case name, court, court number, and name of opposing counsel.

5) Periodically review the requirements and adjust by adding, deleting or modifying them, as local circumstances require.

6) Do not place anyone on the panel who fails to meet the experience requirement, and do not under any circumstance "grandfather" in long time members who do not meet admission requirements. If the lawyer referral service has a pro bono or low-income program, suggest that a lawyer who does not have the requisite experience accept cases in one of those programs and thereby gain the experience needed.

Services that establish subject matter/experience panels report that complaints from clients are reduced and that many of their "problem" lawyers either do not qualify or choose not to participate. Lawyer referral services are unlikely to abandon subject matter/experience panels once they are established, and such panels typically represent a dramatic improvement in the service they are able to provide to consumers.

The path to subject matter panels is not always without obstacles. Many committee members are reluctant to tell another lawyer, licensed to

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practice law and thus legally allowed to handle any matter, that he or she will not be allowed to receive referrals from the LRIS. This reluctance can exist even where the committee member would categorically refuse to refer one of his or her personal clients to specific panel members. For example, no lawyer would send a client to another lawyer if that other lawyer were unqualified, inept, incompetent, rude, abusive, suffering from a substance abuse problem, or possessed some other disqualifying factor.

Recognition by committee members that they would not be confident enough in the service provided to use the LRIS themselves is the first step in changing entrenched attitudes opposing subject matter panels. Most committee members will usually admit that it would be inappropriate for a first year lawyer to handle a class action product liability case involving multinational

corporations. One key to overcoming the reluctance of committee members to accept the value of subject matter panels is the realization that a lawyer referral service is a business owned and operated by the local bar association, and whose operation reflects directly on the bar association. To the legal consumer the bar association name on the masthead means that each panel member carries the bar's implied, if not actual, stamp of approval.

Subject matter panels do not prohibit a lawyer from practicing law. Similarly they do not place the referral service in the position of proclaiming a lawyer incompetent. Instead, in adopting such panels, the service is simply requiring its panel members to be **qualified lawyers** before they are allowed to carry the bar association stamp of approval. If the lawyer can show competence in an objectively determinable manner, then the lawyer can participate in the service. A lawyer who cannot demonstrate such competence remains free to practice law, albeit without the

help of the lawyer referral service.

Lawyer-to-service referrals are an important source of clients for a well-run service. An important goal of a lawyer referral service, therefore, is to operate so that other members of the bar are comfortable in referring people to the service because they know they will be referred to a qualified lawyer. Subject matter panels can be used to convince other lawyers to refer cases to the lawyer referral service much as they are used to convince the legal consumer to choose the service when seeking a lawyer.

Legal consumers should choose a lawyer referral service when doing so will assure referral to a lawyer qualified to handle his or her particular legal problem. Without subject matter panels, lawyer referral services can not offer consumers any such assurance.

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

Nominations sought for 2001 Harrison Tweed Award

The ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association invite nominations for the 2001 Harrison Tweed Award.

Named for an outstanding leader in the development of free legal services to the poor, the Harrison Tweed Award was created in 1956 to recognize the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services to poor persons or criminal defense services to indigents.

The awards will be presented in August at the 2001 ABA Annual Meeting in Chicago in recognition of work done during the year beginning April 1, 2000. Projects which began prior to that date will be considered if substantial services have been provided between April 1, 2000 and March 31, 2001. Nominations must be postmarked by March 31, 2001.

A full description of the award, past recipients and nominating procedures are available at <http://www.abanet.org/legalservices/sclaidawd-nom.html> or by calling 312/988-5757.

From the Chair...



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

My baptism as a state bar president came in 1985 and 1986, as the Reagan Administration's all-out assault on the Legal Services Corporation (LSC) continued to threaten its very existence. That year, two other bar presidents and I founded an organization called "Bar Leaders for the Preservation of Legal Services for the Poor." Our objective was to focus the attention of bar leaders nationwide on the vital purposes served by the LSC, and to stimulate the support of the organized bar for preservation of that institution, and for adequate funding to allow it to perform its work. Happily, we were largely successful in that endeavor, though the LSC did suffer significant funding cuts in 1996, similar to those in 1980.

Much has transpired in the last fifteen years. The continuation of the LSC appears, at least for now, to be assured. There is even the prospect of increased funding for the LSC this year. But, the funds provided by the federal government remain woefully inadequate to meet the legal needs of the poor. The hoped-for FY 2001 appropriation of \$330 million will still be \$85 million short of the 1995 high-water mark for LSC

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President Clinton Speaks Out for Legal Services Funding, Pro Bono

On September 21, 2000, President Clinton spoke during the Annual Meeting of the State Bar of Michigan. The following is excerpted from the President's remarks.

* * * * *

Tonight I would like to talk about a couple of issues that I think are profoundly important to the question of access to justice, and the future of one of its cornerstones, the Legal Services Corporation.

We're all here because we believe equal justice is the birthright of every American, but there remains a crying need for the work of the Legal Services Corporation to make that principle a reality for all citizens.

* * * * *

The Legal Services Corporation has been important to my family for a long time. In the 1970s, when President Carter was in office, he appointed Hillary to the Legal Services Corporation Board, and she served as its youngest chair. And in all these years we have cared a great deal about it. Every budget I have submitted as president has requested more funding for legal services, ... [t]hat's the good news, but every budget I have passed by Congress has drastically slashed my request, and funding has declined by 25 percent since 1996, when plainly, the number of people in our country who need access to legal services and who can't afford them has substantially increased.

Again this year, the Congress is proposing to flat-line or cut the budget that I have asked to be increased by \$36 million. So if any of you know anybody in Congress and you can get me another vote or two, I'd appreciate it.

Now, seriously, this is not some sort of abstract concept, or as some members of Congress I think honestly believe, just sort of a luxury our democracy can do without. It is tens of thousands of Americans who seek a lawyer and can't consult with one because they don't have the money for it. Hardworking people in rural communities or inner cities, many of whom have never even seen a lawyer. It is a profound failing in our system of justice when we don't provide legal services, but we continue to maintain we are all equal before the law.

Obviously, you think lawyers make a difference, or you wouldn't be one. And I ask you again, this—for most of our history since legal services came into being, this has not been a partisan issue. And I would hope it would not be again. Our country will have a \$211 billion surplus this year; we can afford \$36 million more for legal services.

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funding. And even in these prosperous times, those in poverty can obtain the legal help they need only about 20 percent of the time. Oregon announced the results of a statewide legal needs study last fall, and that research repeated what the ABA's research demonstrated in 1993—over 80 percent of the legal needs of the poor remain unmet.

Why is this so? One important reason is that state resources for legal services, like federal funds, remain in short supply. Despite this, I can report that once again it is the organized bar that is mobilizing to address the resource shortage problem. Bar leaders in numerous states have found new and creative ways to work in partnership with their legal services colleagues to find new and enhanced funding sources. For example:

- The Alabama State Bar is considering a new staff posi-

tion to focus on identifying and implementing additional sources of revenue.

- The Arizona Bar is working with the Arizona Access to Justice Committee to formulate a long-term resource development work plan.
- The Arkansas Bar Association is working with state legal service providers to prepare educational materials for a legislative campaign to obtain new resources.
- The Louisiana Bar Association and the Louisiana Bar Foundation are collaborating to explore, support and develop an endowment fund.
- The Mississippi Bar has petitioned the state supreme court to create an Access to Justice Task Force to work on resource development for legal services.
- A newly appointed Montana state supreme court Equal Justice Task Force will assist in the development of a campaign to secure a state appropriation for legal services.

The ABA Standing Committee on Legal Aid and Indigent Defendants is providing support for these diverse efforts—offering technical assistance through its Project to Expand Resources for Legal Services, and its State Planning Assistance Network. In the past year, we held two regional meetings for court, state bar and legal services leaders to share knowledge and experience on resource development for legal services. Both were attended by bar presidents, state supreme court justices and many others, and provided a valuable opportunity to borrow successful ideas and share frustrations and enthusiasm. If there appears to be a need, we will continue to sponsor such events.

I congratulate all the bar leaders nationwide who have contributed their time and talent to the funding challenge that continues to confront us. If you are not yet engaged in that effort, I urge you to join; we will offer you all the support that we can to ensure your success.

Congress Approves \$330 Million for LSC

Shortly before the 2000 election, both chambers of Congress approved a conference report that included FY2001 funding for the Legal Services Corporation (LSC) of \$330 million. An appropriation of this amount would be a significant increase for the LSC, which was funded at \$305 million during FY2000. With the strong support of the Clinton Administration, the conference process yielded an amount that would exceed the amounts set in both the House and Senate appropriations measures.

Congress did not send the funding measure to President Clinton for his signature before adjourning

for the election. There is some concern that other components of the funding package—which includes appropriations for the Departments of Commerce, Justice and State, the judiciary, and related agencies—may lead to a veto. As this issue went to press, the presidential election had only recently been resolved, and the remaining appropriation bills in the 106th Congress—including the measure funding LSC—were still pending. As in the past, the latest information will be available on the ABA Standing Committee on Legal Aid and Indigent Defendants Web site at <http://www.abanet.org/legalservices/sclaid.html>

President Clinton

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But I'd also like to talk about the responsibilities of the profession, because the government can't do all of this alone. Since antiquity, lawyers have been expected to give of their time and talent pro bono. It is essential for our democracy and the future of this profession that everyone who needs a lawyer can get one, and that everyone who might one day need a lawyer trusts the system will work in that event for him or her.

Over the last decade our strong economy has actually increased pressure, as you know, to bill more hours and cut back on pro bono work. Surveys tell us that lawyers at the nation's highest-grossing firms are now averaging just 36 hours a year in pro bono work. That is down dramatically from the 56 hours averaged in 1992, and well below the 50 hours recommended by the American Bar Association.

I know this bar association has been a leader in responding to these pressures and meeting the desperate needs for counsel. You created one of the largest and best state bar access programs in the entire nation. And I thank you for that.

I hope you will continue to advocate this position with others in other states who run law firms or work with young lawyers. Pro bono work is good experience and good for the standing of the profession in the community. It is also vital for our democracy.

I can't help saying, in light of all the publicity that the death penalty cases have received lately, this issue is more important than ever. The governor of Illinois

declared a moratorium on executions in Illinois because there were so many questions about whether innocent people had been convicted.

Many states have failed to adequately fund their public defender systems; others have failed to fund them at all. In one of our largest states, two attempts to pass public defender systems were actually vetoed. And we have to do more. There is a very important piece of legislation in the United States Senate today, sponsored by the Republican and Democratic Senators from Vermont, Senators Leahy and Jeffords, and others, which would provide funding for DNA testing and for adequate assistance of counsel in all capital cases. And I hope that the bar will support that objective.

* * * * *

Thomas Jefferson once said that, "Equal justice is a vital part of the bright constellation that guides our political fates and our national life." I want to thank you, all of you, for your devotion to

that goal, for making the law an honorable profession, and for believing in equal access.

I want to especially thank those who have given a lifetime and more, in 50 years of service, to the law of the land. I hope that with all the prosperity and progress our country enjoys, with all of the social indicators moving in the right direction, we will not let the indicator of justice move in the wrong direction. I hope that you will continue to stand for equal access, work for it, and urge others to follow your example.

Thank you very much, and God bless you.

Note: President Clinton's remarks come from a transcript provided by Federal Document Clearing House, Inc. The contents are Copyright 2000 by FDCH, and all rights are reserved. No quotes from the materials contained herein may be used in any media without attribution to FDCH. This transcript may not be reproduced in whole or in part without prior written permission of FDCH. For more information, please contact FDCH directly at info@fdch.com



U. S. Supreme Court Questions Limits on Legal Aid Arguments

On October 4, 2000, the United States Supreme Court heard arguments in a case challenging the restrictions imposed on the types of arguments that may be raised by federally funded legal services lawyers. *Legal Services Corp. v. Velazquez* and *United States v. Velazquez*.

Since 1996, Congressional appropriations for the Legal Services Corporation (LSC) have prohibited legal services programs that receive LSC funding from making any “effort to amend or otherwise challenge existing law” in welfare cases. Several New York legal services attorneys and others had challenged this and other restrictions. The Second Circuit Court of Appeals upheld the other restrictions, but held

that the welfare-related restriction was unconstitutional viewpoint discrimination.

Both sides of the case appealed the Second Circuit ruling. In the Supreme Court, the restriction was defended by the LSC, represented by Alan Levine of New York’s Kronish Lieb Weiner & Hellman and Deputy Solicitor General Edwin Kneedler. The plaintiffs in the case were represented by Burt Neuborne, legal director of the Brennan Center for Justice at New York University Law School.

During the October 4th argument, the Supreme Court appeared to be highly critical of the restriction at issue. Justice Anthony Kennedy suggested that challenging a government policy in court is “the paradigm of free

speech, a petition to the government.” Justices Ruth Bader Ginsburg, Sandra Day O’Connor, Antonin Scalia and David Souter also joined in intense questioning of the restriction’s defenders.

Although predicting the outcome of any matter before the Supreme Court is a risky business, the strong reactions of so many Justices—particularly those members of the Court who have in the past voted to uphold some laws that have been viewed as limiting expression—suggest that this particular restriction may be struck down. Information about any decision from the Court will be available on the ABA Standing Committee on Legal Aid and Indigent Defendants Web site at <http://www.abanet.org/legalservices>

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