



DIVISION FOR LEGAL SERVICES

Dialogue

FALL 1998, VOL. 2 NO. 4

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LRIS on the Airwaves... and Elsewhere

by Jane Nosbisch

The LRIS National Awareness Campaign has stormed the air-waves with both custom-ized radio public service announcements and a radio media tour, among other activities.

The LRIS Campaign first produced three radio public service announcements with professional voice-over talent in 1997 and distributed them to radio stations across the country. The ABA Standing Committee on Lawyer Referral and Information Service's follow-up usage survey found that an estimated 14 million listeners heard these messages.

While we were distributing the public service announcements, requests from local LRIS programs indicated an interest in adding on "tag lines" customized with local contact information. Seventeen programs decided to participate in the test production of the customized radio public service announcements where, for a nominal charge, programs could add a program name and phone number to the previously produced tapes.

Programs that participated in California, Connecticut, Florida, Illinois, Maine, Michigan, Missouri, New Jersey, Pennsylvania, Texas, and Wisconsin are now being surveyed to determine

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A.P. Carlton serving as the ABA spokesperson for the first ever LRIS radio media tour



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DIALOGUE

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Airwaves

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the effectiveness of these customized radio spots. If results are favorable, this feature may become a component of future programs.

In many ways this usage epitomizes what the ABA intends to accomplish through the LRIS National Awareness Campaign: an initial, broad distribution of a "product" at the national level coupled with secondary uses of the same, or a slightly modified product, through customization with local information. All of this is accomplished with the benefit of the economy of central production and cost-sharing with local programs. Of course some activities, such as the radio media tour, have the benefit of being produced centrally and having immediate impact locally.

A.P. Carlton, then-Chair of the ABA House of Delegates, served as the ABA spokesperson for the first-ever LRIS radio media tour on July 15. Much like the process for the television satellite tour that then ABA President Jerome J. Shestack conducted on behalf of LRIS in 1997, the radio media tour places a spokesperson in one city and the connections are then made with local radio stations. A.P. proved to be the ideal spokesperson, having had the first-hand experience of serving as an LRIS panel attorney when he started his legal career in a sole practice in Raleigh, North Carolina.

The results could not have been better. An estimated audience of 4.75 million listeners tuned into radio stations in Baltimore, Detroit, Houston, Long Island, Phoenix, Portland (OR) and San Diego. Key to picking up 4.75 million listeners was a booking with the Business News Network, which syndicates

spots to radio stations across the country. This resulted in airings in Albany, Albuquerque, Boston, Cincinnati, Green Bay, Honolulu, and Philadelphia.

A.P. also proved to be a good sport when the Houston booking turned into a live call-in radio show where he was asked questions such as which law school would be best for a caller's daughter. Despite the distractions, he managed to deliver the message of the benefits of public service lawyer referral.

The campaign also continued this year with the successful feature of authoring and distributing press releases about LRIS issues to newspapers across the country. As in past years, these press releases also will be distributed to LRIS programs for further use in local communities.

In addition, development is well underway for the third in the series of public relations guides for programs. This third guide entitled *PR Tools, Tips & Timesavers*, focuses on public relations methods not extensively covered in the previous two publications and also provides an analysis of the effectiveness of campaigns. The publication includes capsule summaries of campaigns for varying budgets. Look for the release of this publication in early 1999.

We want to hear from you about your suggestions for activities for the LRIS National Awareness Campaign. Please send your suggestions via e-mail to jnosbisch@staff.abanet.org or write us at ABA LRIS Committee, 541 N. Fairbanks Court, Chicago, IL 60611.

Jane Nosbisch is the Assistant Counsel for the ABA Standing Committee on Lawyer Referral and Information Service.

From the Chair...



by John E. Busch
Chair of the ABA Standing
Committee on Lawyer Referral
and Information Service

Hello.

I am not Denis Murphy. Denis and Maureen have moved to Annapolis, Maryland where he will continue his public service by engaging in pro bono work, including a clinic teaching position at the University of Maryland. The commitment, competence and skill that Denis brought to the ABA Standing Committee on Lawyer Referral and Information Service is a rich legacy upon which I hope to build. I know Denis will stay interested, and I look forward to his guidance.

As I embark on the LRIS mission, let me introduce myself. My ABA work dates back to the early 1980s, when my selection as President of the West Virginia State Bar also involved a dual role as delegate to the ABA House of Delegates. More than 10 years as a State Delegate and service on various ABA committees (i.e., Membership, Bar Services, Youth Education For Citizenship) culminated in a three-year term on the ABA Board of Governors. The term ended in August 1998.

As many of you know, each Board Member serves as a liaison to selected ABA sections or committees. In that capacity, I served as liaison to the ABA

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Pioneering the Online Lawyer Referral Service

by Tamra Powell

Celebrating its first anniversary in September, the Chicago Bar Association (CBA) web site is the first bar association in the country to offer an online Lawyer Referral Service (LRS). Internet users may obtain a referral to a private attorney 24 hours a day, seven days a week by visiting the "Legal Information for the Public" section of the CBA web site at www.chicagobar.org. An increasingly popular addition to the 1,500-plus-page CBA web site, online LRS was second only to the CBA home page in the July 1998 list of the web site's most requested pages, comprising 10 percent of total web site use and processing more than 500 referrals per month.

"The CBA's online LRS is creative, innovative and a wonderful public service," said Terrence M. Murphy, CBA Executive Director. "For the first time ever, people who need a lawyer and don't know where to turn, can find an attorney through the CBA's online referral service using their home computers."

How Does It Work

Approximately two-thirds of the 450 rigorously-screened attorneys actively participating in the LRS program are available for web site referrals. Hubbard Online, designers of the CBA's award-winning web site, worked very closely with the CBA's 50-year-old LRS program in creating an easy to use, five-step online referral process.

The first step gives an overview of the referral process, explaining how attorneys are chosen and screened and how to set up the initial in-person consultation with the referred attorney. At this point, users who are interested in receiving legal information only may link to the web site's "General Legal Information" section called "Dial Law."

In step two, users with legal issues not pertaining to Cook or its surrounding counties are linked to the American Bar Association's LRS Directory.

Step three requires users to choose from 45 alphabetically listed legal areas of expertise including real estate, divorce, personal injury, criminal law and insurance law, and step four provides a two-or three-sentence description of each legal area.

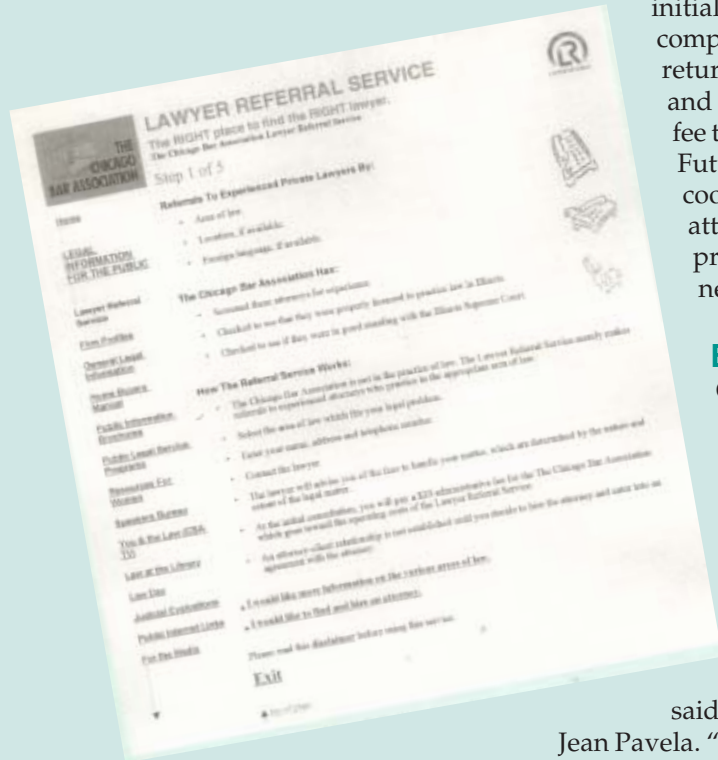
In step five, the web user types in his or her name, address and phone

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Online Referral

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“Statement of Web Site Referrals” listing the web users referred to that attorney. Once the initial consultation is complete, the attorney returns this statement and the \$20 consultation fee to the LRS office. Future consultations are coordinated through the attorney and the prospective new client.

Benefits

One benefit to online referral for web site users is anonymity. “When a person calls the LRS office, our staff needs to get enough information to make an appropriate referral,”

said CBA LRS Director

Jean Pavela. “Online you don’t have to divulge sensitive or personal information to anyone other than your chosen attorney.”

Another user benefit is 24-hour access. An online referral service accommodates users who, for professional, personal or privacy reasons, may be unable to telephone the LRS office during business hours, or users who live in different time zones. “Online LRS is an economical and efficient way to educate the public whenever they want and wherever they are,” continued Pavela. “Anyone who logs in should be able to get the information and/or

referral that they want.”

Attorneys do not have to be computer literate or even own a computer to take advantage of the additional online referral opportunities. Attorneys can be added to the online database by filling out a short online LRS registration form which asks for the attorney’s e-mail or web site address, if available.

Considerations

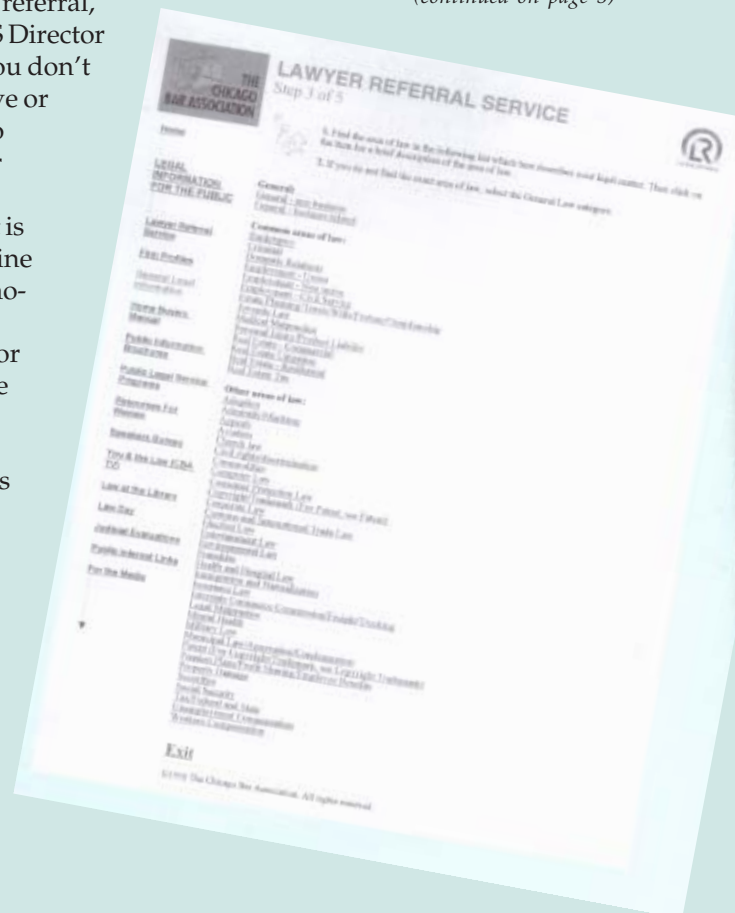
Security is the top issue to consider when developing an online referral service. The technology needed to ensure the security and incorruptibility of attorney contact information and referral requests is available. During its inaugural year, there has been no known security breach within the CBA’s online LRS system.

Another challenge for bar

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number and requests an attorney in a preferred geographical location in the city or in neighboring suburbs and counties. The user may also request an attorney with extensive skills in one of more than 12 foreign languages. The consumer then prints the “Lawyer Referral Service Voucher” outlining all the information required to contact the referred attorney, including the attorney’s name, address, phone number, fax number and e-mail and Web addresses if available. The consumer is reminded that a \$20 initial consultation fee is required at the time of the first meeting with the attorney. Potential clients may contact the attorney at their convenience.

Each participating online attorney receives a monthly



Online Referral

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associations is to educate the public about the quality of the referred attorneys. In addition, as the attorney referral process becomes more popular and web-accessible, it will become harder for consumers to discern between a "yellow pages-style" listing and a referral created by a more credible bar-sponsored institution. Bar associations must strive to educate the public about the quality and reliability of the LRS attorney-screening process. In some cases, the design of the association's web site can aid in fostering credibility with web users.

Balancing ease of use with quality of the lead is a constant challenge. An anonymous, user-friendly system is vulnerable to abuse. Web users can repeatedly request multiple referrals in the same legal area, perhaps in the interest of having a pool of attorneys from which to choose, making accurate referral measurement difficult. In this case, the online LRS system may over-report the number of system users. For example, a user may access online LRS to get acquainted with the system, and then call LRS in person.

Or a user may obtain an online referral for a parent or friend who contacts the attorney not knowing the referral was made online and therefore, does not pass that information on to the attorney. Other users may wait weeks or months to contact the referred attorney, then misplace the voucher, or forget to mention it to the attorney once a consultation is made. In this case, the online LRS system may under-report

the number of attorneys retained.

In an anonymous system, users may also submit phony or joke names (e.g., Sue Me) and contact information, making follow-up contact impossible. Although the CBA has chosen to stay with a more open system, technology exists to make the process less anonymous and more restrictive of multiple requests.

Ensuring a fair rotational system of selection for available attorneys within each legal area was one of the site's earliest technical challenges. Incorporating the referral request date into the online LRS system has allowed the CBA and Hubbard Online to develop a more even referral frequency for all attorneys in the online database.

The top administration issue is data maintenance. If an address change is processed within the in-house LRS database, the change must be distributed to the online provider or on-staff web manager in a timely manner to reduce information errors. New technological developments in this area will allow database updates made from a bar association computer to appear on the Web site in "real time."

The Future of Online LRS

"The important thing to remember is that online LRS is always a work in progress," said Hubbard

The image shows a screenshot of the Chicago Bar Association's Lawyer Referral Service (LRS) website, specifically Step 5 of 5. The form is titled "LAWYER REFERRAL SERVICE Step 5 of 5" and includes the Chicago Bar Association logo. The form contains several sections: "LEGAL INFORMATION FOR THE PUBLIC" with a "Name" field; "YOUR FAVORITE AND ADDRESS" with fields for "Street Address", "Telephone Number", and "City, State, ZIP"; "You have selected the lawyer's legal practice" with a "Specialty" dropdown; "Select a language other than English (optional)" with a "Language" dropdown; "Narrow the location (optional)" with a "City" dropdown; and "Outside Chicago" with a list of locations including North Dakota, Northwest Indiana, South Dakota, and others. There are "Submit" and "Close" buttons at the bottom.

Online President John Fish. "Many changes and revisions have been made along the way, but I firmly believe that the web will become a very significant source of referrals in the next couple of years, comprising up to 50 percent of total referrals. The CBA has been a pioneer in this area."

To consult the CBA's online Lawyer Referral Service, visit the CBA Web site's "Legal Information for the Public" section at www.chicagobar.org. All questions and comments about the CBA Online Referral Service should be directed to John Fish, President of Hubbard Online at 312/923-0800 or to LRS Director Jean Pavela at the Chicago Bar Association at 312/554-2071.

Tamra Powell is Director of Public Affairs at The Chicago Bar Association.

From the Chair...

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Standing Committee on Lawyer Referral and Information Service, which allowed me the opportunity to work with Denis Murphy, Sheree Swetin and a host of committed, highly-qualified staff and committee members. Hopefully, that experience will provide a foundation for my successful tenure as chair. I am grateful to those who have preceded me, in addition to ABA President Phil Anderson, for providing me with this opportunity.

An occasion to join my hand on the rudder began promptly. The LRIS ship sailed into stormy waters in California, at Newport Beach, on August 20 and 21. Sheree Swetin and I attended, as ABA representatives, the State Bar of California LRIS Workshop.

California has long been a leader in LRIS. At one time, nearly a third of all lawyer referral programs were located in California. Currently, more than 60 of the approximately 300 LRISs in the country are in California. California has been a leader in adopting model LRIS rules, generally tracking the ABA Guidelines, and it has been at the forefront of the fight for program certification and member regulation.

The State Bar of California was a mandatory bar, with a \$65 million dollar budget and approximately 750 employees. By law, the state legislature must approve the mandatory bar's annual dues. The bar submitted a fee bill that the legislature approved for the 1998 fiscal year. Governor Pete Wilson, however, vetoed the bill. In a news release dated May 29, 1998, Governor Wilson criticized the bar's spending practices and articulated his desire to limit bar activities to essential issues. Since

the veto, more than 500 staff members have been laid off due to lack of funding.

The Governor's plan to reform the bar would essentially limit programs to discipline, client security and billing and member related administrative functions.

The Governor's office also endorsed the maintenance of programs without cost to bar members involving certification of specialties, lawyer referral services, and fee arbitration. Absent emergency legislation, the certification and regulation of lawyer referral services in California likely will not receive funding from the state bar prior to the year 2000, and it can expect only minimal staff review due to the drastic down-sizing.

Not surprisingly, the primary topic of consideration during the two day workshop was the continued support of lawyer referral services in California, with emphasis on adequate certification procedures for lawyer referral programs and appropriate enforcement to prevent the establishment of bogus or sham referral services that might deceive the public. Currently, disciplinary complaints against lawyers are essentially being date stamped and warehoused. Obviously, any regulation of LRIS agencies and certification must be initiated and concluded in-house, without bar funds or staff.

Among the other topics discussed was a continuing desire to maintain a network among the California LRIS programs, and how the ABA could help them weather the storm. As testimony to the commitment of the LRIS services, more than half of the programs in California sent representatives to the workshop, and even in the face of the funding crisis, the State Bar Standing Committee continues to function.

Plenary sessions focused on ways to build a new, independent LRIS network and to maintain an adequate level of communication and support services.

To this observer's perception, there seemed to be a consensus as to several key issues.

- A committed core of knowledgeable LRIS directors and administrators will continue to network and use their best efforts, considerable skill and experience to continue the LRIS function, and they will form a coalition, committee or entity devoted to that goal.
- The network group places a priority on certification and regulation that must be accomplished in some manner involving an alliance with the State Bar of California. The Bar's endorsement is crucial to provide consumers with assurance of the lawyer referral entities' legitimacy.
- The networking group must, perhaps through district attorneys or other enforcement agencies, promote or direct action against those who would advertise as lawyer referral services for the purpose of private client solicitation. In addition, certified lawyer referral programs must be recognized separately and must be listed in telephone directories under an appropriate heading.
- The ABA can be of service in providing guidance, administrative assistance, listserv and website or other technical advice.

The State Bar LRIS Committee, under the leadership of Jan Heying, Ron Abernathy, Carol Woods, Dan Shurman, Mary Weigert, Elaine Glass, Heather Wagner, Pat Holt and others, is alive and in reasonably good health. Lawyer referral programs continue to provide a high quality public service to consumers, and future certification will assure that this quality is maintained. Holding steady the course and finding a safe harbor may require some tall ships, but it appears the crew stands ready.

From the Chair . . .



by Leonard L. Loeb
Chair of the ABA Standing
Committee on Legal Assistance
for Military Personnel

The legal assistance attorney needs to be an expert at using the Internet. As the LAMP Committee meets with legal assistance attorneys during quarterly visits to military installations across this country, it has become clear that an essential element of a legal assistance attorney's practice involves the web. It can be used for legal research, seeking advice from colleagues, and communicating with clients around the world.

Notwithstanding the relative ease with which one can fly around the web, a critical missing component is a central site that links the resources from each of the military branches. The ABA Standing Committee on Legal Assistance for Military Personnel is committed to developing a web site, "The Lamplighter," that will facilitate the process of making that connection and greatly enhance access to these disparate sites.

The Lamplighter, which is under development, will provide many other benefits:

- a directory of world-wide legal assistance offices with contact information and links to each web site

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Guerilla Warfare Methods to Combat Mail Fraud

by LT Jonathan I. Shapiro

Mail fraud, disguised in numerous buying or wholesale clubs, has afflicted all branches of the armed forces. While the products pitched to service members vary from location to location, all of these so called "once in a lifetime" deals share common themes.

Unfortunately, the vast majority of victims are enticed to sign away thousands of dollars via direct allotment because, first, the hucksters often will make their pitch to relatively junior service members who are not yet wise to the ways of the world and who do not understand the amount of money it takes to pay off a debt at over 18 percent interest. Second, the salesperson plays on the member's greed, promising something that is too good to be true. Understanding these two tactics will be important once the fraud is revealed and the service member attempts to fight it.

Most of the mail fraud victims are junior members. They have been promised that buying into the gimmick is going to help them establish credit, something most of them desperately want. Once the members reveal the scam, the company holding the contract often will turn the members' desire to establish credit against them, telling them that if they fail to pay their outstanding balance, their credit will be ruined. Junior service members are petrified of this. They need to be assured that a legal assistance attorney will assist them and, on service branch letter head, will send letters to the credit reporting agencies.

Compounding the problem is the member's own greed, which often causes a reluctance to report a scam. Members may be embarrassed that greed blinded their common sense. When discussing the fraud with them, let them know that they were swindled by people who do this for a living and as a result are very adept at using psychology to ply their wares. It also helps to let them know that everybody gets had once in his or her life. You should emphasize that victims must learn from their mistake and teach others about these scams. In short, part of a legal assistance attorney's job is to help victims repair a damaged ego.

Mechanics

1. Once you hear about a scam, it is important to grab hold of the victim and find out exactly what happened. Although the scams vary in form, often members will tell of a postcard arriving with "merchandise for delivery" and "paid" stamped across the back. Commonly, there is a number to call, and when members dial, they are invited to a free meal



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Mail Fraud

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or are promised free cash simply for listening to a sales pitch.

When you learn of such a scam, announce it via base media, organize a meeting for all members who have been targeted and become involved. Include the base

criminal investigators, NCIS or OSI in the meeting. Record the names of all attendees and ascertain the extent of their involvement in the scheme. Explain to them that they were victims of fraud and that you are going to help them void the contract. If you have not missed the final sales pitch, it may be possible for you or one of your more stealthy colleagues to attend the presentation and gain intimate knowledge of this particular fraud.

2. Through the criminal investigators, contact the postal service and alert its criminal inspectors that a mail fraud is taking place. These pitches potentially are mail fraud because the mail may carry payments and correspondence for what ultimately may be an illegal contract. Mail fraud is a federal crime, and postal inspectors have wide powers and latitude in securing subpoenas.

3. Hold a second meeting with your victim class and obtain as much original documentation as possible. The contracts themselves often are the best ammunition at your disposal to void the agreements. Many contain language indicating that the seller has explained to the buyer all of the provisions of the Door to Door Sales Act. In virtually every instance, there is a blank space for the buyer to sign or initial this contract provision. Very frequently, however, the space remains blank, and the seller has never explained the Act's provisions to the buyer, which makes the contract unlawful. Such an omission goes a long way toward invalidating the contract.

Use this information when contacting creditors. Inform them that your client is going to unilat-

erally void the contract because it violates the Door to Door Sales Act. This may not cause them to roll over, but at least they will know that you know the law.

4. The contact also will help you attack the credit company, which will claim that it knows nothing of the seller's practices, as the creditor simply is a holder in due course. Wrong. Usually the small writing on the contract, where the seller should have explained the buyer's right to cancel, contains an address to which the consumer should send the cancellation. Often this address belongs to the creditor, not the entity listed as the seller. In this way you can "pierce the veil" and point to the creditor as a willing participant in the fraud. Likewise, this address on different contracts ties the creditor to seemingly independent sellers.

5. Enlist the assistance of the States Attorney Office and the Federal Trade Commission. Both have consumer fraud divisions. Both have tremendous expertise, and often they are happy to assist the military in combating this type of fraud.

Service members in all military branches are targeted in mail fraud schemes. These scams can cause much damage to those who fall prey to their enticements. By following these simple steps, legal assistance attorneys can bring comfort and justice to service members already victimized and enlightenment to those yet to be targeted.

LT Jonathan I. Shapiro is Officer in Charge, Roosevelt Roads Detachment (Puerto Rico), Trial Service Office Southeast Mayport, FL. LT Shapiro is a prosecutor, but does legal assistance as an additional duty.

From the Chair...

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- a directory of national, state, and local bar associations with military law committees and links to their web sites and resource directories
- links to legal assistance training calendars
- links to reference texts
- an awards program page, featuring recipients of legal assistance awards from all of the military branches
- articles of interest for the legal assistance attorney.

The LAMP Committee's goal is to fashion a web site that serves the needs of front-line legal assistance officers in all of the branches--a true electronic "Purple Crossroad." Kevin P. Flood, LAMP Committee member and managing attorney of NLSO S.E., is a computer guru, and he is in charge of developing this site. Kevin recently retired as a 38 year veteran of the Naval Reserve. He is vitally interested in hearing from you. Please send your suggestions for links to him at floodkp@jag.navy.mil

This column will announce the official launch of the site.

Office in the Spotlight

Legal Assistance at Jacksonville Naval Air Station and Aboard the Aircraft Carrier USS John F. Kennedy

The Standing Committee on Legal Assistance for Military Personnel spent June 11-12 in the Jacksonville, Florida area.

Among its activities during the visit, the Committee conducted an eight hour continuing legal education (CLE) program for legal assistance officers in the Southeast area at Naval Air Station, Jacksonville, Florida. Kevin Patrick Flood, Head of Legal Assistance Department, Naval Legal Service Office Southeast and member of the ABA Standing Committee on Legal Assistance to Military Personnel, organized the CLE. The 80-plus attendees earned 6.25 general hours of CLE credit and one hour of ethics credit.

In addition, the Committee examined the Legal Assistance Office at the Air Station and visited the USS John F. Kennedy (CVN-67) homeported at Naval Station, Mayport, Florida, touring the ship and the legal office aboard.

The LAMP Committee presents CLE programs to enhance the skills of legal assistance officers who may not have had the opportunity to return to their service JAG School for updates in various areas of law. In addition, these CLE programs focus on local state law and procedures, supplementing the generic legal assistance courses taught at the service JAG Schools.

The Naval Air Station Jacksonville CLE covered "Basic Trusts, Probate Concepts, and Estate Planning." Mr. Flood was the presenter. Before heading the NLSO Legal Assistance program,

he had extensive civilian practice in this field. The previous day, Mr. Flood conducted a three hour computer training course using the DL Wills Program, for some 35 legal assistance officers arriving early.

Next Elena Escamillia, Staff Attorney, Office of the Bankruptcy Trustee, and Greg Atwater, U.S.



Aircraft Carrier USS John F. Kennedy

Bankruptcy Trustee and former debtor's attorney, presented "Bankruptcy and the Military Member." Both Ms. Escamillia and Mr. Atwater are Naval Reserve Judge Advocate General's Corps officers. This experience enabled them to offer incisive guidance to legal assistance officers who advise clients on bankruptcy problems, and to the clients themselves.

LCDR Michael E. Tousley, U.S. Coast Guard, and a faculty member of the Naval Justice School, Newport, RI, spoke about "Legal Ethics and the Internet." This is a growing area for attorneys as Internet usage both for communicating with clients and for research continues to increase.

LTC Greg Huckabee, JA, U.S. Army, former Chair and Army Representative to the DOD Task Force to Revise the Soldiers and Sailors Civil Relief Act in 1991,

and former Deputy Chief, Army Legal Assistance Division, OTJAG, spoke about the present SSCRA act, with an emphasis on default judgments, interest and stays of execution.

A "Family Law Symposium" took place during the final two hours of the CLE. The Honorable Amanda F. Williams, Judge, Superior Court Brunswick, GA spoke on "Dissolution of the Marriage and Support Enforcement in Georgia," where many of the CLE attendees provide legal assistance. Judge Williams was one of 60 influential civilians chosen to participate in the Secretary of Defense-sponsored Joint Civilian Orientation Conference (JCOC).

The Honorable John A. Sampson, III, General Master and Child Support Hearing Officer, Fourth Judicial Circuit, Jacksonville, FL, discussed the Fourth Circuit's program for pro se parties in divorce matters. Topics included property division, alimony, and child support. Mr. Sampson, a former Marine, is working with NLSO SE to develop an NLSO pro se dissolution clinic to assist the many military members in the Jacksonville area.

The final "Family Law" presentation focused on "Military Pension Division: Nuts and Bolts." Peter Cushing, CAPT, USNR, conducted the presentation. He is Board Certified in Marital and Family Law and has written extensively on military family law issues. Mr. Cushing's presentation covered

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Spotlight

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military retirement as marital property, alimony, survivor benefits, military and commercial insurance.

NLSOs, not the Staff Judge Advocate, provide Navy legal assistance at Navy Commands. In the southeastern part of the United States, legal assistance is provided through NLSO SE, and, as we found out, its branch offices located throughout the area. The NLSO headquarters is located at the Naval Air Station, Jacksonville. Captain Terry Baker, JAGC, USN is the Commanding Officer of NLSO Southeast.

Captain Baker's and Mr. Flood's legal assistance duties are far reaching with branch offices at Naval Submarine Base, Kings Bay Georgia, Naval Station, Mayport Florida, Naval Training Center, Orlando, Florida (being deactivated), Naval Weapons Station, Charleston, South Carolina, Naval Station, Guantanamo Bay, Cuba, and Naval Station, Roosevelt Roads, Puerto Rico. The NLSO SE Area of Responsibility is all of South Carolina, Georgia, Florida (except Pensacola), Puerto Rico, Cuba, the Caribbean, and most of South America.

Due to a draw down in judge advocate officer staff, not all branches have a judge advocate officer. Some only have civilian paralegals and or laypeople. In these situations, the Navy relies on its Naval Reserve Judge Advocate officers or on the Judge Advocates of other services to provide legal assistance to its personnel. In addition, it may rely on the use of video teleconferencing equipment. The Branch Office in Orlando is staffed one weekend per month by Army Reserve Judge Advocates of the Florida LSO unit, commanded by Colonel Bob Yerkes of Jacksonville.

Even with these strength limitations, the NLSO SE is a full-service legal assistance office, *plus*. The members of the NLSO SE, all legal assistance and defense attorneys, are nicknamed the "Gunslingers," because they provide only personal representation. During the CLE, those members of the command, other services, and the civilian community that had provided noteworthy legal assistance services were awarded the white ball caps embroidered with the word "Gunslinger" and the NLSO SE Palm Tree logo. Those outside the command who received this distinction were Judge Amanda F. Williams, General Master John Sampson, LTC Huckabee, Ms. Cary Mitchell (USCG Legal Assistance Attorney), and Brian Powers of the NLSO in Chicago, who all had contributed to NLSO SE fulfilling its mission.

The "plus" begins when the Carrier Battle Group, and its 10 or so combat and support vessels that accompany the aircraft carrier John F. Kennedy, CV-67, deploy for a six month cruise. Total legal assistance is provided by Mr. Flood's office and CDR Ray Carlson, the NLSO SE Detachment Mayport Officer in Charge. CDR Carlson's Legal Assistance Division Officer is Mr. Thomas Wallace, a Navy Civilian Attorney, who also is a Naval Reserve Judge Advocate Lieutenant. The legal services offered includes not only wills and powers of attorney, but also preventive legal assistance. Once afloat, limited legal assistance is provided by the Kennedy's Command SJA, LCDR Peter Schmid, and his assistant. With the 5,000 personnel on board during a cruise, personnel spaces are at a premium and there is no assigned legal assistance officer.

Routinely, NLSO SE goes beyond regular legal assistance. It is an "Expanded Legal Assistance

Program" office, which utilizes the Florida Bar rule allowing military attorneys not licensed in Florida to represent lower ranking enlisted personnel in Florida courts involving divorce, child support, landlord and tenant and similar problems. LT Peter M. Rodnite, an NLSO SE legal assistance officer was most successful in a suit against the Florida Department of Revenue for failing to observe the requirements of the Soldiers and Sailors Civil Relief Act. The original case involved a paternity judgment taken against a local sailor.

In addition, the office has "pro se" instruction classes and provides paperwork in uncontested marriage dissolution, child support and simple probate actions.

Through Mr. Flood's efforts, the office provides estate tax planning that includes credit shelter trusts. The office found this service to be necessary after determining that, with a house or two and a modestly large term life insurance estate, a number of military personnel required this type of tax shelter.

The Legal Assistance office also has conducted a beta test for providing legal assistance to clients at branches with no judge advocate officer. This test uses personal computer video conferencing equipment (VTEL). The concept was tested successfully between Jacksonville and Cuba, and it is now on hold pending further study.

The Committee would like to thank Mr. Flood, and his project officer, LT Cyndi Peppetti, for overseeing the logistics for the CLE and visit. You can access the NLSO SE website, currently under construction, at <http://members.aol.com/nlsose>

The Committee takes its hat off to NLSO SE. You are a lucky sailor if you have a legal assistance problem and are stationed in the NLSO SE area.

From the Chair...



by Hon. Judith Billings
Chair of the ABA Standing
Committee on Pro Bono
and Public Service

One of the most important things that any ABA entity can do is pay attention to its constituents' interests and needs. The ABA Standing Committee on Pro Bono and Public Service and its project, the Center for Pro Bono, have worked hard to be flexible enough to respond as their constituents' interests and needs change.

The best example of this in recent years has been the Pro Bono Committee's sponsorship of the ABA Pro Bono Conference. The Conference started essentially as a training event focusing on how to best handle the mechanics of running an efficient and effective pro bono program. For many years, its attendees were primarily pro bono program managers and program board members. It became clear to the Committee that, while the Conference was successful, there were many individuals interested in pro bono who were not attending because it did not meet their particular needs.

In response, the Pro Bono Committee significantly expanded the Conference's substantive focus and concentrated on making attendance more diverse to include bar leaders, judges, law deans and professors, corporate counsel and others. We made these changes without sacrificing the interests or

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Tax-Based Pro Bono Incentive Legislation: A New Recruiting Tool?

by Cassie Diaz-Bello

As the 1990s come to an end, an all too familiar truth has become apparent to many pro bono programs: demands continue to grow while funding on both the state and federal level continues to diminish.

Help may be on the way, however, in the form of Neighborhood Assistance Acts (NAAs). These state laws provide tax credits to businesses, including law firms, that contribute to nonprofit, community-based organizations. These laws may become an invaluable recruiting tool for pro bono programs.

Originally, state legislatures enacted NAAs to provide tax incentives for businesses that contribute resources to nonprofit community development organizations serving the poor or the residents of impoverished areas. To receive a tax credit, a business could donate almost anything of value to support the nonprofit's activities, including cash, materials, property, food, professional services and technical assistance. Recently, however, states have demonstrated a growing interest in utilizing NAAs to provide tax credits for pro bono legal assistance.

An Overview

NAAs exist in thirteen states: Connecticut, Delaware, Florida, Illinois, Indiana, Kansas, Maryland, Michigan, Missouri, Nebraska, Pennsylvania, Virginia and West Virginia.¹ The Pennsylvania statute, enacted in 1967, is the oldest. The original Virginia law, considered by experts in the community development field to be the most successful NAA in the nation, was the model for the more recently-enacted statutes in Kansas, Maryland, and West Virginia. In 1991, the eleven neighborhood assistance programs in effect generated over \$63 million in private sector contributions to nonprofit organizations serving low income communities and persons.²

While NAAs vary from state to state, collectively they possess the following common characteristics:

- A focus on corporate giving. More than half of the NAAs make tax credits available only for corporate contributions.
- An emphasis on organizational recipients. For contributions to be eligible for tax credits, they must be rendered to a nonprofit organization. The recipient organization may or may not provide services to individuals.
- Pro bono legal assistance is only a limited aspect of the legislation. NAAs provide credit for an almost unlimited variety of services.

A Recruitment Tool

The obvious recruiting benefit that NAA legislation provides is the financial incentive for lawyers and law firms to undertake qualifying pro bono activities. In addition, Neighborhood Assistance Programs (NAPs), created through NAA legislation, offer two other attractive components: minimal paperwork and limited government bureaucracy.

The Union Institute conducted research on NAPs and published its findings in "Neighbors Building Community." The research demonstrates that NAPs help build cooperation between receiving organizations, businesses and the state, and they help programs develop a strong political constituency. NAPs also provide much needed funds at the neighborhood

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level for non-categorical activities. They work well with existing federal and state programs and entities such as Community Development Block Grants, Enterprise Zones, McKinney grants, community action programs, community development corporations, and housing programs.³

In Virginia, NAPs have created solid and unprecedented partnerships between the private and nonprofit or legal services sectors. For example, Hunton and Williams, one of the largest law firms in Virginia, maintains a separate office and staff to recruit other lawyers to provide pro bono legal services to the poor in the Churchill neighborhood. The firm seeks tax credits for those lawyers who provide pro bono services. Moreover, the law firm receives a credit for 50 percent of the businesses' expenses.

John Whitfield, Director of Blue Ridge Legal Services and Vice-Chair of the Virginia State Bar Access to Legal Services Committee, calls the tax credit, "a wonderful tool." Blue Ridge Legal Services has used the tax credits as a recruitment device for the last ten years. Mr. Whitfield credits the Virginia NAA for the dramatic increase in the number of hours that lawyers have volunteered during the past decade.

In recognition of this potential, the Virginia legislature recently amended its NAA to make it more easily applicable to pro bono attorneys. The amendment extends the category of those able to receive tax credits to include sole proprietors in addition to partnerships among other business firms.⁴

NAA's also have forced some programs to become more creative. For example, when Legal Services of Eastern Missouri determined that it needed a new building, it looked at NAA legislation as a means to an end. According to John

Essner, Director of the St. Louis Volunteer Lawyers' Program, Legal Services of Eastern Missouri devised a capital campaign to purchase and renovate a building. The capital came from lawyer donations, and the program applied for special NAP credits authorized for the expansion of a business facility. Attorneys who contributed to the building campaign received a 50 percent tax credit for their donation.

In Louisiana, a far-reaching effort to use modified NAA legislation as a recruiting tool for pro bono programs has taken root. Unlike traditional NAAs, which focus on corporate and firm contributions and credit a wide variety of community service work, the Louisiana model would create a tax incentive exclusively for the value of a lawyer's time spent performing pro bono civil legal services on behalf of indigent persons.

Any attorney providing pro bono civil legal services to indigents through a pro bono program operated by a certified provider could claim a tax credit. The credit would be based on the certified value of the legal services and expenses up to a value not to exceed \$250 annually. The certified provider would calculate the certified value of the services rendered on the basis of the average hourly rate provided to attorneys working for the legal services project in the closest geographical proximity to the certified provider. The proponents of this legislation continue to seek a legislative sponsor.

NAA Legislation

The concept of the government providing an incentive for lawyers and law firms to support pro bono services is still developing and needs to be examined closely. Proponents will emphasize that NAAs function as an additional incentive for attorneys, law firms and corporate counsel to devote time to pro bono work. Critics may argue that tax credit legislation

provides a financial reward for lawyers to achieve an objective that many consider an altruistic endeavor or a professional responsibility. Providing lawyers with a financial incentive, no matter how small or large, may taint the unselfish character of pro bono work and undermine its altruistic nature. This is an important concern for a profession already under fire from the public for its alleged greed and lack of professionalism.

Critics also may stress that tax credit legislation drains state tax revenues and therefore places a burden on the state to indirectly finance part of the cost of providing legal services to its citizens. This perception may create two problems. First, it may assist opponents of federal funding for legal services, who could argue that the states are providing sufficient funding through NAAs. Second, it opens to debate the question of whether underwriting pro bono work is the best use of state resources to provide legal assistance to the poor. Many states may be better served by spending money on additional legal aid attorneys.

Some states have minimized this cost by instituting credit limits. The smaller the credit limit, however, the less effective the incentive. In addition, no empirical data has been developed that demonstrates NAAs will increase pro bono involvement beyond current levels of participation.

Careful consideration must be given to drafting these laws. Many NAAs provide tax breaks for corporate but not individual or partnership contributions. As a result, NAAs may benefit medium to large law firms at the expense of sole practitioners and small firms. The exclusion of the sole practitioner and small firm lawyer has the potential to alienate the traditional yeomen of pro bono organizations while benefitting law firms that typically possess greater resources.

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Faith in Action: A Panel Interview—Part II

by Greg McConnell

The 1998 Pro Bono Conference in Asheville featured a program entitled “Faith In Action: Pro Bono Work as a Practice of Faith.” During this program, an ecumenical panel of experienced pro bono and legal services attorneys led a discussion exploring the connection between faith and involvement in public interest law. The panelists were Ashley Wiltshire, Jr., Director of the Legal Aid Society - Middle Tennessee; Ellen Hemley, Director of Training and Development, Massachusetts Law Reform Institute; Kareem Irfan, Chief Information Technology Counsel, Square D Corporation; and Terry Wiley, Assistant District Attorney, Alameda County District Attorney’s Office.

The audience feedback from the panel indicated a keen interest in continuing the dialogue that was initiated at the Conference and the desire to further examine the connection between faith and pro bono. In response to this message, the Center for Pro Bono interviewed the panelists to learn more about them, their thoughts on the connection between faith and pro bono or legal action, and their ideas on how that connection may be a resource for pro bono programs. The following is Part II of a summary of those interviews. Part I appeared in the Summer 1998 issue of *Dialogue*.

GM: What challenges, if any, does the concept of faith in action (in the workplace) face as it concerns the legal profession, which trains lawyers to separate their personal views from their clients’ viewpoints?

Ashley: This gets back to the fine but important distinction between explicit and implicit practice of faith. Explicit religious concerns in the practice of law shade the necessary separation between our beliefs and the client’s concern. Our faith teaches us to love, honor and embrace one another as a child of G-d. This may implicitly impact our relationships, but ultimately we have to respect clients as individuals.

Kareem: The problem is as you say in the question—that we have been trained to separate our personal view from our work. This is preeminent in the principle of separation of church and state, the corollary of which is the separation of work and religion. This is the primary hurdle we face. To overcome this, we must promote the acceptability of bringing religious beliefs into the workplace. However, this is a slippery slope. You don’t want people thrusting their beliefs on co-workers. It’s our duty to believe and to practice without imposing it on others. At my place of employment, for instance, I made clear my religious views, but also assured my employer that, as I practice these views, my work will not suffer and that the clients’ needs will be met. But, I did not hesitate to practice my beliefs, and my employer has been supportive of that.

It is also our duty as lawyers to protect our clients’ interests regardless of our own beliefs, which may compromise our own value systems. When I advise clients in the Muslim community at times, I feel like I have greater

freedom to discuss religious principles. I may tell a client the legal status of his or her matter, but I may also provide religious advice. As Muslims, they are likely to understand what it is that I tell them and why. This may not work if looked at from a broader perspective. For example, I handle a lot of marital mediation work. When working with non-Muslims, I counsel them about their legal rights and also share my personal moral viewpoint and tie it in to a practical side. However, I leave the final decision up to them.

Ellen: From the Jewish lawyer’s perspective this has two implications. First, as you say, lawyers are trained not to bring religious beliefs into the work place, and to separate their personal views. But for the Jewish lawyer, this is especially relevant because Jews do not like to call attention to themselves as Jews because of fears of anti-Semitism. Explicit references to faith-based advocacy may be scary to them. They prefer to be judged for excellence in their profession.

I also think that, in some ways, by opening up conversations of religion, what you are really doing is raising a whole new level of diversity awareness. Diversity has been discussed in terms of race, age, gender or sexual preference, but religion has remained a taboo area. The more we open up this area of discussion, the more we will allow lawyers, and other persons, the opportunity to make the connection between faith and their work.

GM: According to recent

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Faith in Action

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surveys from a variety of sources, an overwhelming number of Americans consider themselves “religious.” At the same time, according to the most recent pro bono participation studies compiled by the ABA Center for Pro Bono, only about 17 percent of all registered attorneys participate in organized pro bono programs (this does not include informal participation). Are those study results inconsistent? Can you explain?

Ashley: I can think of a couple possible explanations. The first is that many lawyers just haven’t made the connection between pro bono work and acting on their faith. A lot of people don’t understand that faith and work are connected. Many think of religion as being pious or ceremonial and not a part of everyday life. Also many have a privatized view of religion which does not look to the community at large. This is all magnified by the emphasis in our culture on individualism. The other thing that we cannot ignore is that many of us know better but we choose to be greedy and lazy and choose not to do what we ought to do.

Kareem: My first response is to question what people mean by religious? Pursuit of religion often tends to be misunderstood. If it is only a belief in a G-d in an extremely narrow sense, there is no obligation of community involvement. True religion must have a strong element of practice, and that will draw a person into pro bono.

I also would say that many people who are involved in religion just don’t seem to realize the significance of giving back to the community. Also, many religious people practice only those aspects of religion which

are convenient for them, they pick and choose which aspects of religion they want to adhere to. But Muslim teaching says you must accept the Islamic faith as a whole and cannot selectively follow certain parts. That’s the significance of following a supreme deity who has a better understanding of the universe than we do and why divine principles are put into place for us to follow consistently.

Ellen: I am not surprised. I think most people who consider themselves religious go to temple or to church, maybe only on the holidays, but it does not carry over into social action. Heschel’s daughter, Suzanna Heschel wrote, “to be religious is to be grateful and never take anything for granted. Instead of viewing the world and one’s own life as a possession, a pious person feels bestowed by a gift from G-d, and wants to respond, not to accomplish but to contribute. The intense, private intoxication experienced by G-d’s presence leads not to a withdrawal from the world, but, for Heschel, motivates a response of wanting to contribute to the world. We are, he wrote, G-d’s partner in creation.” (Tikkun Vol. 13, No. 1, p. 38)

Living according to these precepts is an enormously difficult challenge and many of us fall short. The question we must ask is on what basis we judge ourselves and our success. Jewish writings on Holy living declare that how you make your money matters. It’s not enough to pile up your money and then give it away for a charitable cause. The process itself is Holy.

Suzanna Heschel’s quote seems contrary to popular legal education today. The concept of how you make your living and giving it back are not essential aspects of the process. That’s why I admire people like Dean David Hall [at Northeastern University]

who continue to look at the profession as a noble profession, and who strive to inculcate those values into a new generation of lawyers and citizens.

GM: How can inter-religious dialogue promote pro bono work?

Ashley: Inter-religious dialogue was one of the highlights of the panel. My own beliefs and work are motivated and reinforced by the fact that people of other faiths are driven to do this work. This helped to illuminate my faith. I think of the particular story of the Exodus of Jews coming out of Egypt into freedom, and how slavery, freedom and redemption are such a part of their tradition, and how that story was such a resonating part of the civil rights movement for African-Americans in the 1960’s—and how these traditions reinforce my faith. Faith generally is reinforced through particular stories.

Kareem: This gets back to the common agenda that we just discussed. We must involve informed persons from the legal community in addressing religious, community and social values to arrive at a common platform for legal professionals. When they get together and discuss and eventually practice their commonality, it makes it easier to address community needs. Thus, interreligious dialogue can promote pro bono work by promoting opportunities for an exchange regarding commonality of beliefs, and development of a common agenda. It cannot but help. Our immediate goal should be to come up with common religious values that can translate into pro bono work.

Inter-religious dialogue involving lawyers and the legal community is essential. Lawyers are extremely well-prepared to represent and articulate positions. As

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a result, they are well-equipped to participate in interreligious dialogue. It has been my experience, that in many instances, lawyers can accomplish a lot more than non-lawyers in a discussion and committee setting. The critical analysis and decision-making skills can impact social ethics in a significant manner.

Ellen: How can inter-religious dialogue promote pro bono work? It's important to hear from people of other faiths. For example, it was exciting for me to listen to Terry Wiley speak of his program [a partnership between the Charles Houston Bar Association (Oakland, CA) and the Allen (Baptist) Temple located in inner-city Oakland]. It's reassuring to learn of the common foundations we share and it's important for people to learn about how our traditions are similar, and the common values that our faith traditions share.

I recall a training event many years ago working alongside a former nun and a Jewish man. During a break, we quietly shared the spiritual dimension of our work and we all concurred how we felt uncomfortable talking about it in the legal services context. I think that our hesitancy and that of others stems from the fact that for many years, being religious was thought of as reactionary and divisive. Much of traditional religious doctrine is difficult to embrace for people who are developing policy on human rights because it does tend to be, at least on some level, divisive or sexist. In these circumstances, the negative aspects of religion block the prophetic aspects.

GM: How can the Center for Pro Bono continue the dialogue begun at the Pro Bono Conference?

Ashley: I would like to see the Center involve other persons who have thought and taught about these subjects. I think that law professors Tom Schaeffer at Notre Dame and Milner Ball at the University of Georgia Law School would provide invaluable insight. I also would like to hear from other faith traditions.

Kareem: These discussions are an excellent start, and the Center should continue with panels of this type. At the same time, you should try to increase their prominence and visibility within the mainstream legal community. We must project the message that pro bono and faith are mainstream concepts that are here to stay. We must also avoid any stigma attached with either concept. The people involved in these matters are not misfits or unsuccessful in their practices. The Center should promote discussions at other ABA conferences, including the Annual Meeting, regarding both pro bono and faith in action. The Center should also seek out ways to tap into the media.

Additionally, if we can work to develop the common agenda we spoke of, we can develop specific action item proposals. We need to get more people into the discussion to develop this conversation.

Finally, we must all continue to push for continued action that is faith based. I know that in my own company I have been encouraging our general counsel to make pro bono part of the criteria for selecting outside counsel. Currently, when speaking to potential legal providers, I let them know of my participation in pro bono and belief in its importance. If this is continued among all our attorneys, it won't be long before legal service providers understand our priorities and will make pro bono a part of their priorities. I look at diversity issues and see the

possibility of making this happen. In diversity matters, companies send the message that diversity is important, and people respond. However, this is a somewhat shortsighted view. If corporations and businesses inculcate a common agenda of values, matters like pro bono and diversity would take care of themselves because they grow out of a value-based foundation of fairness, justice, equality and community service.

Ellen: I certainly recommend more workshops at conferences like the Pro Bono Conference. But you need to allow for more participation among the participants. Also, you should begin to provide technical assistance as we do in other areas. This area will present its own challenges and you may want to think about how to develop appropriate guidelines. At the same time, this will lead to easy community partnering.

Another idea is to encourage connections with other organizations on non-pro bono projects, which may lead to pro bono opportunities. Terry Wiley mentioned a joint study group between his church and a Jewish congregation. My synagogue does the same thing with an African-American church in Boston. Once that relationship is established, it will provide a foundation for future projects. By expanding our base of interactions we can develop the relationships we need to forge new programs and new partnerships.

Note: The ABA Center for Pro Bono is interested in learning more about pro bono programs or projects that involve religious institutions or organizations as active partners or participants. If you know of any efforts and would like to share that information, please contact Greg McConnell at 312/988-5775 (988-5483 fax) or cconneg@staff.abanet.org

Incentive

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Similarly, because NAAs may benefit large firms over small firms and sole practitioners, NAAs may have an urban bias and may accentuate the resource disparity of rural areas, which often lack access to large firm resources or capital.

Finally, existing NAAs promote only certain types of pro bono work. Although NAAs broadly define the type of community work that is eligible for tax credits, not all pro bono work fits within the parameter. For example, most NAAs would not cover criminal and individual rights pro bono work. To remedy these deficiencies, those states with NAAs must take steps like Virginia to amend existing laws, and proponents in states considering NAA legislation must make efforts to minimize these flaws.

Looking To The Future

NAA legislation raises serious questions for legal services proponents about how and why pro bono services should be increased. Should lawyers receive financial rewards for pro bono service? Will the introduction of tax credits or deductions create an environment where firms refuse to donate or serve in the absence of the incentive? Will the spirit of philanthropy be diminished? Is the benefit worth the risk?

As funding for legal services in the year 2000 becomes ever more precarious, legal services proponents must be more creative in their efforts to develop funding resources. NAAs provide one possibility. Whether they are the best alternative has yet to be determined.

For these reasons state proposals for tax credit legislation should be well thought out and all relevant consequences should be weighed.

Cassie Diaz-Bello is the Assistant Counsel for the ABA Center for Pro Bono.

¹ The statutes are, respectively, C.G.S.A. §12-631 - 12-638; 30 Del. C. § 2001 - 2006; F.S.A. § 220.183; 65 ILCS 5/8-3-18; IC § 6-3.1-9-1 - 9-5; K.S.A. § 79-32,194 - 32,199; Md. Code § 4-701 - 706; M.C.L. § 125.801- 814; R.S.Mo. § 32.100-125; Neb.Rev.St. § 13-201 - 208; 62 P.S. § 2081-2089; Va. Code § 63.1-320 - 325; W.Va. Code § 11-13J-1 - 13J-12.

² J. View and C. Wayman, *Neighbors Building Community: A Report of the Neighborhood Assistance Act Project*, (The Union Institute), October 1995, p.1.

³ *Id.* This report includes sections on creating a program, incorporating model legislation, workshop agendas, contacts, and more. It is available from the Union Institute, National Congress for Community Economic Development at 202/234-5009.

⁴ The 1996 amendments also (1) revised the minimum credit eligibility from \$50 to \$400, and at the same time, and (2) reduced the percentage given as credit from 50% to 45% of the donated service based on the attorneys hourly rate not to exceed \$125.

From the Chair...

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needs of pro bono program managers.

Recent changes that the Committee has instituted have done much to engage a broader community of stakeholders in supporting and expanding pro bono legal services delivery efforts. The response from Conference attendees not only has been positive, but attendees have encouraged the Pro Bono Committee to do more: to discuss legal services delivery from the perspective of the overall system, not just the pro bono component of it.

The 1999 Conference will mark the combination of two long-standing events that traditionally have focused on civil delivery from the perspective of the pro bono and staff-based legal services communities. The Pro Bono Committee consulted with the National Legal Aid and Defenders Association (NLADA) in an effort to merge the Pro Bono Conference with an appropriate event focused on legal services, staff-based programs. As a vehicle to

bring together as broad a spectrum as possible, the NLADA Experienced Managers Conference made the most sense. The last such event was held in Dallas in September 1997. It represented a collaboration of diverse providers interested in innovations in legal services delivery.

Similarly, NLADA recognized that the many changes of the last several years regarding federal welfare programs and LSC funding have set the stage for collaborative opportunities. Recent technological innovations have provided tremendous opportunities for both collaboration and increased services. A conference bringing together all elements in the evolving state-based delivery system provides significant opportunity to share experiences and innovations. In addition, this type of conference helps to maintain and strengthen a sense of community among the various stakeholders.

A joint Conference Design Team has been hard at work for the past few months designing a conference

that will provide a meaningful learning and networking experience.

The Conference will merge each of the participating groups into a series of plenaries and workshops designed to integrate the delivery of civil legal services to the indigent. We plan to provide a series of workshops on technological innovations, ethical implications, delivery models and techniques, and resource development. Developing interactive, integrated discussions with leaders of the pro bono community, staff programs, law schools, the judiciary, bar leaders, public interest organizations and other relevant groups is the Conference's overarching goal.

Please mark your calendar now for this important and exciting event. The Conference will be held May 6-8, 1999 at the Innisbrook Resort in Tarpon Springs, Florida. We look forward to seeing you there. For more information about the Conference, contact Dorothy Jackson at 312/988-5766, e-mail: jacksond@staff.abanet.org

From the Chair...



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

Although the U.S. Supreme Court's decision in *Phillips, et al. v. Washington Legal Foundation, et al.* has caused some disappointment in the IOLTA world, the American Bar Association continues to demonstrate its staunch support for the program.

During the 1998 ABA Annual Meeting in Toronto, the ABA Commission on IOLTA requested, and the ABA Board of Governors approved, an emergency supplement to the Commission's budget for the 1998-1999 fiscal year. This \$40,000 budget supplement will be used in large part to convene an October 24-25 meeting in Chicago. Participants and attendees will include the Commission, IOLTA program directors, IOLTA program trustees, other IOLTA leaders and legal experts. The purpose of the "IOLTA Leadership Conference" is to bring together leaders of the IOLTA community to discuss the critical issues that programs are facing in the wake of the *Phillips* decision and to hear from legal experts about the best ways to address those concerns. Topics to be covered include: tax issues that the *Phillips* decision implicates; potential liability/immunity issues; an update on current IOLTA litigation; and the strengths

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Response to Phillips: It's Business as Usual

As most *Dialogue* readers know, on June 15, 1998, in a 5-4 decision, the U.S. Supreme Court ruled that, under Texas law, interest earned on client funds held in an IOLTA account is client property. The majority opinion, however, expressed no view as to whether Texas has "taken" client property, or whether any "just compensation" is due the respondents. It remanded those issues to the Fifth Circuit Court of Appeals for consideration.

For the Court to find a Fifth Amendment violation, it must answer the "property," "taking," and "just compensation" questions in the affirmative. Because the Court did not rule on the latter two issues, it did not find the Texas IOLTA program to be unconstitutional, and as a result, it did not enjoin the operation of the Texas or any other IOLTA program.

The overwhelming response to the *Phillips* decision, on both the national and state levels, has been that IOLTA programs should continue to operate "business as usual." The following are examples of national and state responses to *Phillips*.

The Conference of Chief Justices

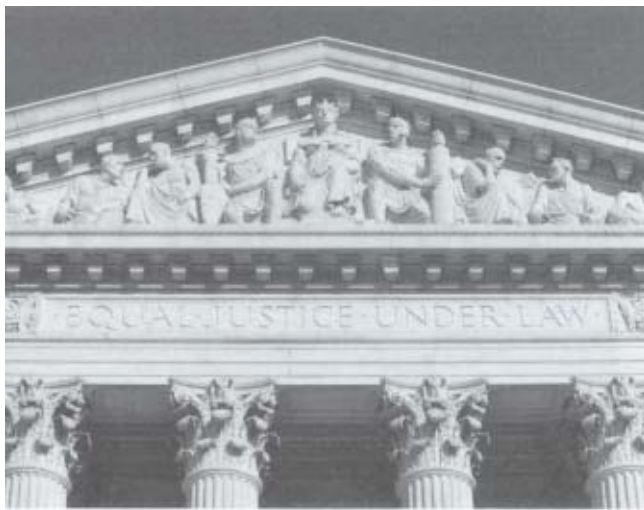
In a show of solidarity for the nation's effort to assist those who cannot afford a lawyer, the Conference of Chief Justices, which includes 55 Chief Justices from the fifty states, Washington D.C., and the U.S. possessions, approved a resolution backing continued support for IOLTA programs at its 1998 annual meeting.

By a unanimous vote, the Conference of Chief Justices approved the resolution on the final day of its meeting in Lexington, Kentucky on Thursday, August 6, 1998. (See the full text of the resolution on page 22.)

Without dissent, the resolution had been approved by the Conference of Chief Justices' Resolution Committee and its Board of Directors earlier in the week. The measure was offered by Indiana Chief Justice Randall T. Shepard, who began his career on the Indiana Supreme Court in 1985 as the sole member of that body who supported IOLTA.

"Several of my counterparts on the Conference expressed gratitude

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Grantee Spotlight... Maine Equal Justice Project

by Calien Lewis and Mary Henderson



Photo by Richard Younker

In 1994, Michelle Alexander and her infant daughter were homeless, on welfare and sleeping on a relative's couch. Today, she has graduated from college with honors, started graduate school, and left welfare "forever," as she puts it. Michelle is one of the earliest graduates of the newly-created Parents as Scholars program—a state-funded student aid program assisting parents on welfare with two- and four-year college level programs. Parents as Scholars is one of the most signifi-

cant accomplishments of the Maine Equal Justice Project (MEJP), which was established and is largely supported by IOLTA dollars from the Maine Bar Foundation.

MEJP was created in response to the restrictions that Congress placed on grantees of the federal Legal Services Corporation (LSC). IOLTA dollars allowed two experienced legal services staff to leave federally-funded legal services behind and take on restricted activities, primarily

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From the Chair...

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and weaknesses of the constitutional claims raised in those suits.

I would like to take this opportunity to thank the ABA Board of Governors for its continued and uncompromising support of IOLTA. During times of adversity, the Board has come through for the IOLTA community at every step of the way. I also would like to acknowledge members and staff of the Conference Planning Committee who have worked so hard to organize this crucially important meeting: Tina Abramson, Bob Clyde, Lora Livingston, Linda Rexer, Jayne Tyrell, Bev Groudine, and Ken Elkins.

In addition to the supplemental funding, at the Commission's request, the Executive Committee of the ABA Board of Governors approved the filing of an amicus curiae brief in support of Appellees

in *Washington Legal Foundation, et al. v. Legal Foundation of Washington, et al.* This case is the most recent of several constitutional challenges that the Washington Legal Foundation has levied against IOLTA. It is slightly different than the others, however, in that it focuses on the application of the Washington State IOLTA rule to limited practice officers, whom the Washington Supreme Court license solely to complete real estate closings. In the Washington case, the Ninth Circuit Court of Appeals will review a Federal District Court ruling that neither limited practice officers nor their clients have a property interest in IOLTA revenues. Other issues that have been briefed include, whether the state has taken property and has denied plaintiffs just compensation in violation of the Fifth Amendment; and whether the IOLTA program amounts to compelled speech in violation of the First Amendment.

Again, the Commission is indebted to the Executive Committee of the ABA Board of Governors and the ABA Standing Committee on Amicus Curiae Briefs for their unwavering support of IOLTA. The ABA now has filed six amicus curiae briefs in three law suits involving IOLTA. In addition, the Commission would like to thank Stephen M. Rummage and Eric M. Stahl of Davis Wright Tremaine LLP, in Seattle, for authoring the Ninth Circuit amicus brief. The Commission also is indebted to Ragan Powers of Davis Wright Tremaine LLP for his continued guidance during the Washington State litigation.

During these uncertain times, there is at least one thing that is certain: the American Bar Association believes that IOLTA is constitutional and correct, and, through the Commission on IOLTA, it will continue to act consistent with that belief.

Spotlight. . .

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legislative advocacy. In 1996, the MEJP created a sister organization, the Maine Equal Justice Partners, to handle the non-legislative work, primarily class actions, welfare reform litigation, and rule-making and similar representation before administrative agencies.

IOLTA Dollars in the Democratic Process

The restrictions imposed on LSC grantees were enacted in the same Congress that repealed “welfare as we know it” and handed to the states the responsibility for remaking the welfare system at the state level. Major changes in other areas of law affecting low income families (e.g., food stamps, Medicaid and utilities) were also playing out in state legislatures. In Maine, the judiciary and the bar stood solidly behind the need for the poor to have a voice, including informed legal representation, in the legislative process.

As the Directing Attorney of the Maine Equal Justice Project, Mary Henderson states, “people may disagree about the positions our low income clients take on particular issues, but few disagree that they should have a voice in the process. The Maine Bar Foundation and IOLTA dollars have made it possible for their voice to be heard.”

Have IOLTA dollars (\$75,000 in 1998) been invested well in Maine? Welfare reform here is widely touted as one of the most humane in the nation. With the help of the Maine Equal Justice Project, the Maine legislature heard the voice of low income people themselves and, in addition

to creating the Parents as Scholars program, it adopted many other reforms that clients sought:

- Maine will continue welfare benefits to families who “play by the rules” even after their federal five year time limit on assistance expires.
- Eligibility for TANF (formerly AFDC), Medicaid, food stamps and SSI for legal immigrants has continued in Maine even where federal support has been withdrawn.
- A pilot program in half the counties in Maine allows parents on welfare who find paying jobs to continue receiving some assistance until their earnings raise the family out of poverty.
- Welfare benefits in Maine increased five percent, beginning a long climb from their 1988 levels.

Needless to say, these and other reforms could not have been achieved without significant legal expertise. MEJP is staffed with two former staff from Pine Tree Legal Assistance, Maine’s sole LSC grantee. In Maine, where staff for the legislature is thin, their expertise is widely appreciated. “Without the expertise and advocacy of the Maine Equal Justice Project, Maine would not be the leader it is today in welfare reform,” says Maine’s Senate Majority Leader, Chellie Pingree.

How do we know that MEJP staff truly are representing the voice of low income people? They reach out. MEJP staff represent an organization of low income people, the Maine Association of Interdependent Neighborhoods (M.A.I.N.). M.A.I.N. holds a major conference of low income people before each new legislature takes office to set its priorities. This gives MEJP staff their marching orders. M.A.I.N.’s

Board then meets monthly with MEJP staff, making decisions along the way on issues as they arise. On major issues, MEJP staff assure that their low income clients are at the State House personally to let legislators know what they think and to hear their testimony.

In addition, MEJP staff work hard with M.A.I.N. and other low income groups to reach out and insure that informed decisions are made. Monthly M.A.I.N. meetings are taken “on the road” to provide more low income people the opportunity to participate in this large, rural state. MEJP and M.A.I.N. jointly produce the newsletter *M.A.I.N. Update*, which is sent to over a thousand low income people and social services providers, providing background on current issues and often surveying people for their input. In addition, MEJP staff reach out to other low income groups all over Maine. Headstart parents, community action agencies, and others all benefit from learning about changes in law enacted or proposed that will directly affect their lives.

In short, the MEJP is truly a catalyst for assuring that views of low income people themselves are presented in a timely and legally sound manner. Michelle Alexander puts it this way, “by educating me about public policy, they have given me the knowledge and tools necessary to make my voice heard and to have a say in welfare reform.”

IOLTA Dollars in Class Actions and Administrative Proceedings

While the Maine Equal Justice Project provides legislative representation, its sister organization, the Maine Equal Justice Partners,

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Spotlight...

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provides low income people with representation in other restricted areas, as stated above.

Just as a securities lawyer needs to know the detailed workings of the SEC, so a poverty lawyer needs to know the inner workings of Maine's Departments of Human Services and Labor. So much of the policies that affect low income families are left to administrative agencies. In Maine, the Maine Equal Justice Partners plays a critical role in representing low income families in the public rule-making process. Indeed, if low income people did not comment, particularly in an area like welfare, the rule-making process often would proceed without public input at all. Valuable contributions have been made, both at the technical and policy levels. For example:

- Food stamps are more available to unemployed adults in areas of high unemployment as a result of federal waivers on which Maine Equal Justice Partners and the Maine Department of Human Services worked together.
- Rule-making comments by the Maine Equal Justice Partners most recently have assured prompt processing of applications for Maine's expanded children's health care programs.
- Administrative advocacy by the Maine Equal Justice Partners also has resulted in an expansion of Medicaid to parents with minor children below the poverty level.

Maine policy makers appreciate these efforts. As Maine Commissioner of Human Services Kevin



Photo by Richard Younker

W. Conequonons recently stated in a letter to Maine Equal Justice Partners staff, "I know from my perspective that your advocacy has helped me and the people that DHS serves over these past three years to make more humane the approaches of public policy. I'm proud of where Maine finds itself on so many of these fronts and know that you had a critical leadership role in virtually all or most of these advances."

It is unusual that advocates for low income people are so appreciated by administrators who are often taking opposing positions. Mary Henderson attributes some of that mutual respect to having grounding in the law. "A policy debate becomes much more civil, when everyone, including low income people themselves, understand the law well enough to understand the realm of possible change. Administrators are not blamed for policies beyond their control, but are presented with options that they can actually pursue. As legal

representatives of low income people in the legislative debate, we are able to serve as this bridge in communication."

The Maine Bar Foundation has helped ensure that class action and other restricted litigation continues. The Maine Equal Justice Partners has looked to the private bar for pro bono assistance, and this year it expects to be able to hire an attorney to coordinate these efforts.

In the meantime, some significant results have come from the Maine Equal Justice Partners work with pro bono counsel. For example, an agreement was reached with pro bono counsel under which parents doing workfare for their welfare benefits will not be "paid" less than minimum wage. In addition, as Maine began preparing to move 100,000 Medicaid recipients into managed care, it was the Maine Equal Justice Partners and its pro bono counsel that convinced the state that this major change in the health care program could not proceed without the appropriate promulgation of rules.

Conclusion

IOLTA dollars in Maine have been well invested to make access to justice a reality for low income people not only in the court, but in other forums where major issues affecting their lives are decided. The Maine bar and judiciary understood this need in our democratic society, and the results, thus far, show that these are IOLTA dollars well spent.

Calien Lewis is the Executive Director of the Maine Bar Foundation.

Mary Henderson is the Directing Attorney of the Maine Equal Justice Project.

Phillips

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that Indiana was willing to put the resolution before the Conference. Frankly, we were glad to do it. Indiana's IOLTA program is on the brink of becoming operational, and we would not be at that point at all had it not been for all the help that dozens of IOLTA directors, board members and ABA staffers had lent to our program. It was really the least that we could do. I truly hope the resolution produces positive results and I am grateful my colleagues on the Conference of Chief Justices voted in its favor," said Chief Justice Shepard.

The vote by the Conference of Chief Justices was a reaffirmation of a 1979 resolution that also supported IOLTA. Herbert S. Garten, Chair of the ABA Commission on IOLTA viewed the most recent resolution as extremely significant in light of the U.S. Supreme Court's decision in *Phillips, et al. v. Washington Legal Foundation, et al.* "The resolution by the Conference of Chief Justices is just one more sign of support that the IOLTA community has received in the wake of the *Phillips* decision," Garten said.

State Judiciary

Georgia. On August 11, 1998, the Supreme Court of the State of Georgia issued an order directing the state's IOLTA program to continue to operate business as usual. It provides, in relevant part:

"After reviewing the [*Phillips*] decision, the Court concludes that the IOLTA program should continue as mandated by its December 28, 1989 order, as amended. . .

"Therefore, the Georgia Bar

Foundation, Inc., its officers and trustees are directed to continue to operate the IOLTA program and its business in the same manner as it has been conducted in the past, including collecting and disbursing funds for the purposes set forth in the Restated Articles of Incorporation. . . This directive is to be followed until further order of this Court or order of another court having jurisdiction over the Georgia Bar Foundation, Inc."

Kansas. A July 9, 1998 letter

In a show of solidarity for the nation's effort to assist those who cannot afford a lawyer, the Conference of Chief Justices unanimously approved a resolution backing continued support for IOLTA programs at its 1998 annual meeting.

to the President of the Kansas Bar Foundation, Justice Fred N. Six indicated that upon review of the *Phillips* decision, the Supreme Court of Kansas concluded that the state's IOLTA program should continue to operate as before the decision.

State Attorney General

Maryland. On July 10, 1998, Jack Schwartz, Chief Counsel, Opinions and Advice, State of Maryland Office of the Attorney General, issued a letter to the Maryland Legal Service Corporation (the IOLTA entity in the state).

Mr. Schwartz wrote that, in *Phillips*, "The Supreme Court addressed *only* the first of [the] three elements of [a Fifth Amendment] claim. The Court held that the interest generated by IOLTA

accounts is clients' 'private property.' 66 U.S.L.W. at 4472. But that is all the Court held. It expressly declined to address in any way the latter two elements of the claim. . . There is simply no basis in the Court's majority opinion for a prediction about the Court's ultimate resolution of the other two elements of the claim. Indeed, according to the dissenting opinion of Justice Souter, which did not address the latter two elements of the claim, strong

arguments can be made that an IOLTA program involves no taking and no denial of just compensation. 66 U.S.L.W. at 4473.

"Accordingly, *Phillips* should cause no change in the operation of the IOLTA program in Maryland."

American Bar Association

Immediately after the U.S. Supreme Court handed down its *Phillips* decision, then ABA President Jerome J. Shestack stated, "we are confident that, ultimately, the courts will uphold the constitutionality of this vital resource for the public good. We will continue to work to preserve this program, which provides tens of thousands of the most needy members of our society access to our civil justice system to enforce their rights and resolve their grievances."

The ABA Commission on IOLTA issued a statement on June 23, 1998. It reasoned that "the U.S. Supreme Court did not find the Texas IOLTA program to be in violation of the Fifth Amendment, and it did not enjoin the operation of the Texas or any other IOLTA program. As a result, the IOLTA rules in every state and the District

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Conference of Chief Justices

Resolution IX

In Support of the Interest on Lawyers Trust Account (IOLTA) Programs and Other Methods to Assist People of Limited Means Obtain Legal Assistance

(Adopted as proposed by the Board of Directors of the Conference of Chief Justices
in Lexington, Kentucky, at the 50th Annual Meeting on August 6, 1998.)

WHEREAS, the ability to have legal representation is a vitally important right for the citizens of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands; and

WHEREAS, there are many citizens who do not have the economic means to obtain legal counsel and fully participate in the judicial system; and

WHEREAS, this gap in legal service coverage is met in part by revenue from IOLTA programs; and

WHEREAS, the ultimate purpose is to use an otherwise non-existent economic resource in order to generate funding that increases access to justice for impoverished citizens; and

WHEREAS, IOLTA programs not only make a vital contribution to state judicial interests but are also, for the most part, creatures of state judicial invention; and

WHEREAS, the ultimate goal of the Conference of Chief Justices is in large part to improve the administration of justice; and

WHEREAS, although the U.S. Supreme Court in *Phillips, et al. v. Washington Legal Foundation, et al.* recently determined that the interest generated from Texas IOLTA accounts is the private property of clients, it did not declare the Texas IOLTA program unconstitutional, but rather remanded the case to determine if under the Fifth Amendment there has been a "taking" of property, and if so, whether any "just compensation" is due;

NOW, THEREFORE, BE IT RESOLVED that the Conference:

- reiterates its strong support for the concept of IOLTA, as first articulated in a resolution adopted by the Conference in 1979;
- supports the continued operation of IOLTA programs in each jurisdiction; and
- supports the continued growth and development of additional methods for funding the delivery of civil legal services to those who cannot afford an attorney.

IOLTA News & Notes

Faith Rivers Named Executive Director of South Carolina Bar Foundation

Faith R. Rivers has replaced Sam Pierson as Executive Director of the South Carolina Bar Foundation. Before coming to the Foundation, she served as Executive Director of the Williamsburg Enterprise Community Commission, Inc., a

Kingstree-based not-for-profit economic and community development corporation. She also has served as counsel and senior policy advisor for the office of



U.S. Representative Richard A. Gephardt and as a legislative lawyer for the Washington, D.C. firm of Akin, Gump, Strauss,

Hauer & Feld, LLP.

Rivers received her juris doctor degree from Harvard Law School in 1990 and a bachelors degree in government and sociology from Dartmouth College in 1986.

Briefs Filed in Washington State Litigation

On September 11, 1998, the Legal Foundation of Washington, the entity that administers IOLTA revenues in the state, and the other Appellees filed their brief in the Ninth Circuit Court of Appeals in *Washington Legal Foundation et al. v. Legal Foundation of Washington, et al.* The Washington Legal Foundation had until October 13, 1998 to file a reply brief. At least four amicus curiae briefs were filed in support of the Legal Foundation of Washington:

- The American Bar Association
- The National Association of IOLTA Programs

- The Washington State Bar Association
- Many of the IOLTA programs in the states, other than Washington, that make-up the Ninth Circuit.

As of this writing, oral arguments have not been scheduled. They are not expected to take place before March 1999.

Bereavement Notice

It is with great sadness that *Dialogue* informs you of the death of **Richard A. Royds**, chair of the Texas Equal Access to Justice Foundation (Texas IOLTA Program). Richard died on Tuesday, September 22, 1998.

As many of you know, Richard took over as chair of the Texas program at a very difficult time and did an extraordinary job in leading the program.

From 1985-1995, Mr. Royds was the managing partner at the law firm of Bracewell & Patterson. After his tenure in that position, he remained with the firm as a partner. Prior to 1985, Mr. Royds spent 15 years as the partner in charge of Bracewell & Patterson's corporate, securities and international practices.

Phillips

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of Columbia remain in effect. While the ABA cannot provide legal advice, it is the Commission on IOLTA's position that lawyers and banks should continue to adhere to the IOLTA rule in their state and that IOLTA programs should continue to collect interest on IOLTA accounts and disburse grants as before." (See the full text of the ABA Commission on IOLTA response by visiting its web site at www.abanet.org/legalserv/memiolta.html)

Other Responses

In addition to those outlined above, several state bars, IOLTA program counsel, IOLTA program boards, and others have issued opinions or statements supporting a business as usual approach to the *Phillips* decision. The ABA IOLTA Clearinghouse is collecting responses to the U.S. Supreme Court's *Phillips* decision. If you would like a copy of these responses or if one has been issued in your state, please contact the ABA IOLTA Clearinghouse, 15th floor, 541 N. Fairbanks Court, Chicago, IL 60611, 312/988-5774.

1998 Harrison Tweed Award

The 1998 joint ABA/NLADA Harrison Tweed Award was conferred upon three bar associations during the August, 1998 ABA Annual Meeting. The award recognizes the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services to poor persons or criminal defense services to indigents. Award winners were the State Bar of Michigan, the Forsyth (NC) County Bar Association and the Dallas (TX) Bar Association (*see Dialogue, Summer 1998, Vol. 2, No. 3 for a complete description of the accomplishments of each bar association*). Pictured (left to right) are representatives of each awardee.

The Forsyth County Bar Association:
Hon. William Reingold
Linwood Davis



The Dallas Bar Association:
Bonnie Marstaller
Liz Lang-Miers
Cathy Maher
Bob Jordan



The State Bar of Michigan:
Esther Lardent, presenter
D. Larkin Chenault
Tom Kavanagh
MaryAnn Sarosi
J. Thomas Lenga
Doreen Dodson, presenter
Al Butzbaugh
Paula Zimmer
Linda Rexer
Hon. Victoria Roberts



Latest SPAN Update and Fundraising Manuals Now Available

The SPAN UPDATE: *A Guide to Legal Services Planning*, Volume III, #2, was published in August and distributed to NLADA members, IOLTA directors, and local and state bar leaders. SPAN is a joint project of SCLAID and NLADA.

This issue provides an overview of the civil legal assistance delivery system in place in each jurisdiction, and it recaps bar initiatives in each state and includes statistics about the delivery system in each state and includes contact information for relevant bar, IOLTA and legal services leaders.

It also refers to a Draft Discussion Document prepared by the Project for the Future of Equal Justice (Project). This discussion

document provides a framework for state leaders to use in state planning and suggests the elements that should be in place for a state to have an effective civil legal assistance delivery system.

The elements of a comprehensive, integrated, statewide civil legal assistance system are aspirational. No state has developed all of them and there is no expectation that they can do so without new resources, significant changes in the way legal services are delivered and the commitment of staff legal providers, pro bono providers, private attorneys and law firms, the organized bar, the judiciary and key interests from the community at large.

One of SPAN's primary concerns has been securing additional resources for legal services. SCLAID's Project to Expand Resources for Legal Services (PERLS) has published a new manual, *Innovative Fundraising Ideas for Legal Services—1998 Edition*. The manual contains information on 30 initiatives that may provide new sources of income for legal service providers. To order, (\$15.00 plus shipping) contact the ABA Service Center at 312/988-5522 (product code #4190010).

For more information, call SPAN Coordinator Guy Lescault, at 202/452-0620, ext. 18, or e-mail g.lescault@nlada.org

From the Chair...



by Doreen D. Dodson
Chair of the ABA Standing
Committee on Legal Aid and
Indigent Defendants and

Dennis R. Keefe
Chair of SCLAID's Indigent
Defense Subcommittee

Chair's note: For my chair's column in this issue, I have asked Dennis Keefe, who chairs the Indigent Defense Subcommittee of the Standing Committee on Legal Aid and Indigent Defendants to bring Dialogue readers up to date on SCLAID's latest policy initiative:

System Standards and Quality Representation— There is a connection.

Could you imagine the public reaction if a group of government officials signed a contract for the construction of a bridge, school, or hospital without establishing design and construction standards, without issuing a request for proposals, without investigating the contracting company's background and based solely on the fact that the contractor agreed to build the bridge for the least amount of money? If questions were not raised at the outset of the process, they would surely be raised once the bridge fell down.

Yet, that is essentially what happens when many state and local governments establish an

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New Hampshire Programs Collaborate on Future Plan

Editor's note: An example of admirable collaboration in planning for the future of legal services delivery is provided by the close coordination of programs providing legal services to the poor in New Hampshire. The New Hampshire Bar News recently reported on planning efforts by four key entities in that state:

Two years after creating a new delivery structure to cope with federal funding cuts and restrictions, the state's major providers of civil legal services are planning how to better coordinate their efforts and plan for the future.

With the help of a New Hampshire Bar Foundation grant, staff and board members from New Hampshire Legal Assistance (NHLA), the Bar's Pro Bono Referral Program and the Legal Advice & Referral Center (LARC), are meeting regularly to improve communication and jointly develop long-range plans to deal with the challenges facing these three providers of legal services to low-income people in New Hampshire.

In late May, the governing boards of Pro Bono, NHLA and LARC held their first joint meeting along with representatives of the New Hampshire Bar Foundation. "It was great to have a roomful of people who care about civil legal services coming at the issues from a variety of backgrounds," said John E. Tobin, Jr., NHLA's executive director. "In terms of legal services nationally, I think we are ahead of the curve in our collaboration."

Changing funding sources, expanding and changing client needs, and the specific strengths and missions of each organization are factors to be considered as legal services for the disadvantaged moves into the 21st century.

Collaboration has been a fact of life since the creation of LARC more than two years ago as an independent entity to provide legal advice, limited representation and eligibility screening for clients while remaining within the strict guidelines imposed by the Legal Services Corporation. LARC's intake process provides referrals of certain clients to the Pro Bono program and NHLA, whose range of activities preclude receiving LSC funding under congressional restrictions.

The three major providers also cooperate in other ways such as avoiding competing for the same grants, and seeking some jointly. For example, last year LARC and NHLA applied together for a New Hampshire Bar Foundation grant to fund the acquisition of client intake software to facilitate referrals and to save money on training.

Another example of collaboration is the coordinated effort by NHLA and the Pro Bono program to provide representation to families with disabled children who believe they were improperly denied benefits under the Supplementary Security Income program. "Whenever possible, we try to work as partners with the other providers," said Virginia A. Martin, NHBA Associate Executive Director for Legal Services. "We capitalize on the strengths of each organization in responding to the civil legal needs of low-income people."

"We do have a joint mission-providing access to the legal system for low-income people," said Connie Boyles Lane, LARC's executive

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From the Chair...

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indigent defense system in their jurisdictions. Public defender offices are established, attorneys are awarded contracts, and private attorneys are assigned on a case-by-case basis without even considering fundamental issues such as independence of defense counsel, quality of services, adequate funding, caseload and workload limitations, conflict of interest problems, the need for supporting services including experts, and training. The bridge is falling down. Does anyone care?

At the ABA annual meeting in Toronto, the House of Delegates showed that it cares. It unanimously passed a resolution urging state and local bar associations to encourage and support state and local governments in the adoption of minimum standards for the creation and operation of their indigent defense systems and to tie funding of those systems to substantial compliance with those standards.

The body of the resolution identifies specific national standards. In addition, the accompanying report includes examples of how those standards have been adapted and adopted in various jurisdictions. In many of the examples, the adoption of standards at the state and local levels has provided the indigent defense system with a long term payback, including such things as reasonable fees for assigned counsel, a formula for the adequate funding of a public defender office,

fees for visiting clients in prison, and protecting the important principle of independence for the indigent defense service provider.

What the resolution says, and what the examples prove, is that the adoption and enforcement of meaningful standards at the state and local levels can improve the quality of an indigent defense system.

But there is more. The ABA,

What the resolution says, and what the examples prove, is that the adoption and enforcement of meaningful standards at the state and local levels can improve the quality of an indigent defense system.

through its Bar Information Program, BIP, offers to assist state and local bar leaders in accomplishing the goals of the Resolution by adopting or improving their existing local standards. BIP, which is sponsored by the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID), has provided technical assistance to state and local bars and governments for more than 15 years on issues relating to indigent defense systems. BIP, through the consulting work of Robert Spangenberg of The Spangenberg Group, has worked with bar and governmental leaders in all 50 states during that time.

BIP has experience in assisting jurisdictions in adopting and adapting national standards to the needs of the locality. It was BIP's experience across the country that led the Committee to the conclusion that the adoption and enforcement of standards has and can make a difference in raising or maintaining the quality of defense services.

To assist in efforts to get standards adopted locally, BIP has collected and indexed existing state and local indigent defense standards from around the country along with the names of local contact persons. This information is available on the ABA website in a PDF downloadable format at www.abanet.org/legalserv/pub.html

BIP will provide technical

assistance to state or local bar leaders or indigent service providers who are committed to establishing standards to improve the indigent

defense systems in their jurisdiction. We will assist in looking at the standards issue comprehensively, and we will assist in developing a strategy and a process for the adaptation and adoption of meaningful, enforceable standards for each jurisdiction. For more information on the services that BIP can provide, contact:

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New Hampshire

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director. "But we have to figure out how to fulfill that mission, and clarify the tasks that each organization performs." Initiatives such as the meeting of the three boards, she says, foster the development of a greater sense of "team spirit."

Martin added that legal services providers also maintain contacts and make referrals when appropriate to other legal service providers such as the Disabilities Rights Center and the Franklin Pierce Law Center's Civil Practice Clinic.

Tobin, a 20-year legal services veteran, says the landscape for legal services is changing. "Welfare reform has produced a host of new rules on Temporary Assis-

tance to Needy Families (TANF), formerly AFDC, food stamps, disability benefits and other programs. These political initiatives are affecting people," he said. "The upturn in the economy unfortunately has brought back an old problem—a growing shortage of housing for low income families. The stakes are higher now in some housing cases. In good economic times, there are no vacancies and higher rents. For someone, eviction can be a really devastating thing."

The growing ranks of litigants representing themselves in the courts are of particular concern to the legal services organizations. Tobin, a member of the Bar's Cooperation with the Courts Committee, is chair of a subcom-

mittee seeking funding for a full-scale study of the pro se phenomenon in New Hampshire's courts.

For the Pro Bono program, the past two years have involved repositioning itself to concentrate on recruitment, referral, support and training of the Pro Bono panel, including increasing diversification of the kinds of cases it accepts. Martin cites Pro Bono's involvement in the Children's SSI project and a growing number of bankruptcy and consumer cases as examples of the continuing effort to diversify the kinds of cases Pro Bono attorneys can handle and the ways assistance can be provided.

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House Votes to Support LSC

On August 4, 1998, the House of Representatives voted 255-170 in favor of the Mollohan/Fox amendment, restoring funding for the Legal Services Corporation for FY 99 to \$250 million. The House Appropriations Committee previously voted to slash LSC's funding to \$141 million. On August 6, 1998, the House narrowly passed H.R. 4276, the Commerce, Justice State appropriations bill, on a vote of 225-203 clearing the bill for conference with the Senate.

As expected, the Mollohan/Fox Amendment did not fully restore funding for LSC to its current year level of \$283 million. However, during the debate on the amendment, Congressman Mollohan stated his intention to work in conference to obtain funding for LSC in FY 99 closer to the Senate number of \$300 million, rather than settle on this year's funding of \$283 million: "As many of my colleagues know by now, the Senate, in its appropriations bill,

already has provided \$300 million for the Legal Services Corporation. Frankly, as we move through the appropriations process, I intend to work hard to get as near the Senate level as possible."

A bipartisan group of Members spoke on the House floor or submitted statements for the *Congressional Record* in support of the Mollohan/Fox Amendment. They were: Representatives Fox (R-PA); Nadler (D-NY); Meek (D-FL); Fattah (D-PA); Rodriquez (D-TX), Jackson-Lee (D-TX); Morella (R-MD); Stenholm (D-TX); Skaggs (D-CO); Thurman (D-FL); Davis (D-IL); Waters (D-CA); Watt (D-NC); Furse (R-OR); Olver (D-MA); Scott (D-VA); Lowey (D-NY); McHale (D-PA); Ramstad (R-MN); Delahunt (D-MA); Stokes (D-OH); DeGette (D-CO).

Readers of *Dialogue* are encouraged to thank Congressmen Mollohan and Fox and Members from their states who voted for the amendment. To find out if Mem-

bers of your Congressional Delegation voted for the Mollohan/Fox amendment, log on to the newly expanded ABA webpage at www.abanet.org/legadv/home.html. Next, click on "Become an Advocate," then "Interact with Congress," and follow the prompts.

The next step in the funding process for LSC will be reconciliation of the differences in the House and Senate versions of H.R. 4276. On August 31, the Senate appointed conferees. However, as of September 21, the House had not yet followed suit. In the meantime, Congress has conceded that it will not complete work on FY 99 appropriations bills before the start of the new fiscal year on October 1. On September 17, 1998, Congress passed a continuing resolution, H.Res. 128, to keep the government open through at least October 9, 1998. Additional continuing resolutions may be necessary before funding for FY 99 is finally in place.

Calendar

LAMP

November 19-20, 1998—the ABA and North Carolina Bar Association LAMP Committees will co-sponsor a two-day CLE at Fort Bragg, NC. Contact Lourdes Rodriguez, 312/988-5786 (e-mail: rodrigul@staff.abanet.org), for more information.

Pro Bono

May 6-8, 1999—ABA Pro Bono Conference at the Westin Innisbrook Resort, Tampa, FL. Contact Dorothy Jackson at 312/988-5766 (e-mail: jacksond@staff.abanet.org), for more information.

ABA

February 3-9, 1999—The 1999 ABA Midyear Meeting in Los Angeles, CA.

IOLTA

February 4-5—1999 Winter IOLTA Workshops co-sponsored by the ABA Commission on IOLTA and the National Association of IOLTA Programs. The Workshops will be

held in conjunction with the 1999 ABA Midyear Meeting in Los Angeles, CA. Contact Mickey Glascott, 312/988-5750 (mglascott@staff.abanet.org), for more information.

Nominations Sought for 1999 Louis M. Brown Award

The American Bar Association Standing Committee on the Delivery of Legal Services is seeking nominations for the 1999 Louis M. Brown Award for Legal Access. The Award recognizes outstanding contributions by individuals or organizations that match unmet legal needs of the middle class with lawyers who provide affordable legal information, services and representation.

Those who have advocated improvements, implemented policies, or originated programs, methods or procedures that improve the delivery of legal services and information to moderate income people should be nominated for this Award.

The 1999 Brown Award recipient will be honored February 5, 1999 at the ABA's Midyear Meeting in Los Angeles.

Prior Brown Award recipients include the AARP Legal Hotlines Project, the Maricopa County Self-Service Center and the Orange County (CA) Modest Means Panel.

For more information about submitting a nomination, see <http://www.abanet.org/legalserv/delivery.html> or call 312/988-5761.

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