



# Dialogue

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DIVISION FOR LEGAL SERVICES

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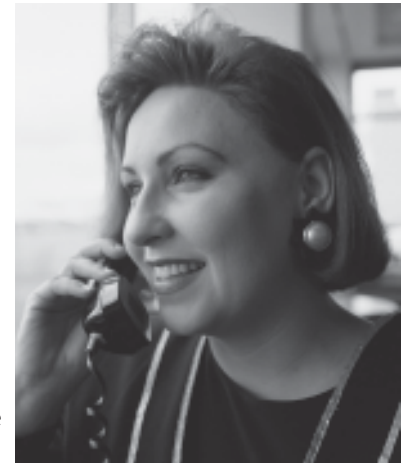
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## Automated Call Distribution—Enhancing Customer Service

by Joan Anderson and Diane LaPierre

*Editor's note: Several lawyer referral programs across the country have implemented Automated Call Distribution systems. The following article describes the experiences of the King County Bar and the Massachusetts Bar Association LRSs. Upcoming issues of Dialogue will report on how other LRS programs have fared with the system.*



### King County Bar's LRS

The King County (Seattle) Bar LRS began using an Automated Call Distribution (ACD) system in 1992 to alleviate a traffic jam at the reception desk. Although the new system has not been without its problems, it now seems impossible to think of operating without ACD.

In 1992, we were trying to handle a volume of calls that approached 4,000 per month, all of which were funneled through a receptionist picking up from a call sequencer that did not hold more than two callers and did not have voice-mail capabilities. Both the callers and the receptionist were unhappy, hence the move to an ACD system.

We have an Executone phone system purchased from and serviced by a local vendor. The system was installed for the whole bar association, although the LRS is the only bar entity that has the ACD. In addition, the bar installed a separate, smaller queue system for the Neighborhood Legal Clinic appointment line. The initial cost for the whole bar system, including 30 headsets, was \$35,000 (the remaining records do not have a separate line item for the ACD system).

Our ACD now has eight incoming lines, and it can accommodate five holds. The system sends all calls to the next available interviewer. Typically, we fluctuate between two and three intake interviewers, depending on the load. While the caller is waiting, the system broadcasts several messages, all of which are meant to give information and encourage the caller to hold. After about a minute, the caller may choose to leave a voice mail message or to continue to hold.

We have changed the messages several times in an attempt to achieve just the right approach. At one point, we reprogrammed the system so callers could press one key to

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## DIALOGUE

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## Call Distribution

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go directly to the Neighborhood Legal Clinic lines if they wanted advice only, or another key to go directly to the pro-se divorce line. The goal was to reduce the number of those callers who did not want a referral from reaching the interviewers.

Although this approach appeared to work at first, we did change it after about six months, because too many callers were not listening to the information and were going to the wrong place. The lesson: keep the messages simple.

ADC can compile phone statistics, such as number of calls, dropped calls, and time waiting. Costs differ for the software that generates these reports, depending on how much information you desire.

There are some points that you should consider before implementing an ACD system, most of which relate to the vendor. You should make every attempt to know exactly what you are getting. Our vendor did not seem to understand the system functions that we wanted, and if the function was not in the basic package, our attempt to add it often did not work.

As the forgoing suggests, you should investigate whether your vendor is sufficiently experienced. If it is not, here is what can happen. We had rather persistent trouble with an unusual domino effect. Every time the bar made a change in one of its office lines, something odd would happen to the ACD messages. For a long time, the LRS could not put an extended absence message on ACD if the bar office itself was open. The queue operated so that when someone chose to remain on the line rather than leave a voice

mail, he or she went to the back of the queue again. When the Neighborhood Legal Clinics wanted a queue, the vendor jerry-rigged it and tangled it with the LRS ACD lines. At one point the vendor admitted that it was flying by the seat of its pants.

Fortunately, the vendor merged with a national company. The new management seems to be able to tell the difference between sales-people and technicians, so things are looking up. The Y2K conversion, which cost about \$8,400 for the whole bar office, seems to have been accomplished without having everything come to a grinding halt. A more sophisticated voice mail upgrade improved the operations in the whole office and eliminated the cross-tangle between programs.

Our only remaining complaint is that the basic report package is not adequate, and a more complete reporting software would cost an additional \$6,000, which is not currently in our budget. Our ACD also lacks the capability to tell callers their position in the queue, although some systems do have that capability.

The level of sophistication that a program needs depends on the number of intake interviewers it staffs and calls it receives. Our Neighborhood Legal Clinics use a queue system even though there is only one operator. Their telephone lines are so busy that they needed a system to impose a first-come, first-served principle rather than random busy signals. The LRS, on the other hand, needs to distribute calls among interviewers and have a queue system to assist the client.

The most important achievement resulting from the ACD is vastly improved customer service. Those who call a busy service feel wanted, get relevant information,

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## From the Chair...



by John Busch

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

When you get 24 million people to listen it is worth mentioning!

On July 21, ABA President-Elect William G. Paul served as the association's spokesperson for the ABA Standing Committee on Lawyer Referral and Information Service's second national radio media tour. Our monitoring reports indicate that by broadcasting these interviews on more than 91 radio spots, two with national syndication, more than 24 million people heard our message about public service lawyer referral.

This column will not go into detail about the tour. That information is included elsewhere in *Dialogue*. I do, however, want to take this opportunity to express the Committee's and my sincere personal thanks to Mr. Paul. This truly is one of those instances where, if not for a particular individual, the outcome could well have been dramatically different.

In pitching this interview with radio stations, the best selling point was having the Incoming ABA President address the issue of access to the legal system for moderate-income people via public service lawyer referral programs. Equally important was Mr. Paul's reputation in the legal,

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## Radio Campaign Scores Big Numbers

by Jane Nobsch

On June 21, ABA President William (Bill) Paul reached an audience of more than 24 million when he was the spokesperson for the 1999 LRIS Radio Media Tour. This third in a series of such events using the



Bill Paul on the air

visibility of the ABA's highest leaders to publicize public service lawyer referral garnered the largest audience to date. We could not have achieved those kinds of audience numbers without advanced technology and old-fashioned legwork.

A media relations consulting firm began the legwork when it faxed to approximately 1,000 adult radio stations across the country an initial notice, which alerted the stations to the campaign's content and airing date.

Follow-up phone calls targeted markets that the ABA Media Relations and Media Affairs Division identifies on an annual basis, radio stations with contacts established by local LRIS programs, and areas in which an ABA-approved LRIS program operates.

These follow-up phone calls are highly personalized. The media relations representative uses them to ensure that the local radio stations understand the value the "message" has to their listeners.

In many ways, public service lawyer referral is an easy sell. It is a quick consumer benefit to the target market audience: the individual with a discretionary income. In other words, it is a proverbial win-win. The audience learns how to gain access to the legal system via a qualified lawyer, and the radio station knows that it has provided a valuable public service.

Let's be honest, though. Lawyer referral is not "sexy." It does not have the immediacy of a natural disaster or the drama of an ongoing national investigation. In fact, you are not even attempting to create an immediate need in the consumer's mind. That would be easy. Who hasn't seen the milk on the celebrity's lips and immediately thought, "I need to buy milk to dunk a cookie?"

The LRIS message, on the other hand, is a simple, straightforward resource statement. Who do you call when you need legal help? Conveying that message takes legwork. It also is a fact, however, that without the benefit of having the ABA's highest leadership involved, the number and quality of the bookings would be greatly diminished.

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## Call Distribution

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and have the option to leave a message or remain on hold. ACD systems also help the LRS interviewers. Our system has a 15-second "catch your breath and finish the data entry" delay between calls. Interviewers can override the delay if they want to proceed immediately. In addition, the ACD is equipped with an "unavailable" button for interviewer breaks. It keeps the callers in the system to wait for another interviewer or to go to voice mail.

If you are fielding your calls without a lot of busy signals and your intake staff does not feel overwhelmed, you probably do not need an ACD system. If callers are complaining nonstop and your staff is having nervous breakdowns, then maybe you do.

### Massachusetts Bar Association LRS

Most of us would cringe at the idea of reverting back to a typewriter. As business people, we have come to enjoy the time and cost saving benefits of the latest software packages. Similarly, as consumers, we have come to expect that we will receive timely and efficient service made possible with these latest technological advances.

While technological upgrades are often misunderstood and even feared, we know all too well that keeping pace with the changes is critical to enhancing customer service and growing our business. This is one major reason why in February 1996, the Massachusetts Bar Association's (MBA's) Lawyer Referral Service chose to upgrade its sequencer phone system to an ACD system.

One of the largest services of its kind in the country, the MBA's

Lawyer Referral Service receives an average of 65,000 calls per year. A highly trained staff of four LRS representatives is charged with screening these calls and referring them to either panel members or appropriate agencies. While the professional, knowledgeable and courteous service of the staff is the hallmark of the MBA's LRS, prior to the installation of the ACD system, our antiquated phone sequencer system was our worst enemy.

The sequencer was an unreliable piece of equipment. It often malfunctioned, forcing staff to manually answer each call and then place the caller on hold to take other calls. The level of customer service dropped in the attempt just to answer the phones. Even in the event that the sequencer was working properly, the system only had the ability to play two messages for callers: a standard night message, stating the LRS was closed, or a day message stating the opposite.

Any special messages, such as those announcing our monthly call-in program entitled "Dial-a-Lawyer," or those related to the service temporarily closing due to a computer malfunction, had to be recorded over the existing day message. This, in itself, was an internal technical nightmare. If flexibility is one key element of solid customer service, the old system was sorely lacking.

The sequencer system also left much to be desired in tallying call statistics. With its limited abilities, the "traffic report" produced only a total number of calls each day, and not much information beyond that. LRS staff could not review individual staff statistics, nor could it determine the busiest call times on any given day. This deficiency hampered any effort to evaluate the productivity of each

staff member and to make appropriate scheduling adjustments as dictated by the calling patterns.

Furthermore, the sequencer did not distribute calls equally among the staff. Rather, each call routed through the sequencer rang on every phone and it was only the initiative of each staff person that determined how quickly the call was answered. Undoubtedly, this method left friction among staff—some simply took more calls than others.

The Automated Call Distribution system has alleviated these problems. Now calls are answered much more reliably and promptly. There are several brief messages, or rads, that give the caller information while they are on hold. Rads help to assure customers that their business is important to us and that their call is indeed in queue to be answered—certainly more familiar and expected these days than utter silence. The system allows for several standard messages, professionally recorded and ready for use at any time. These messages for day, night, computer problems, staff meetings, holiday closings and the Dial-a-Lawyer program are easily changed.

The queue is visible to LRS staff, such that at the touch of a button they may see how many calls are waiting, and even how long the earliest caller has been on hold. In the event that an LRS representative needs to step away from his or her desk, the system has a button that allows the representative to temporarily suspend calls to their phone.

In addition, the calls are distributed evenly to the staff (known to the ACD system as agents), based on who has been waiting the longest time without a call. This eliminates "initiative debates" among the representatives, which in turn, promotes a

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# Tips for Building Lawyer/Client Relationships: The First Impression

by Alan Charne

*Author's note: The following article is the first in a series of monographs by the ABA Standing Committee on Lawyer Referral and Information Service. This article is designed for distribution to your panel attorneys. Subsequent monographs will be available in upcoming issues of Dialogue.*

Lawyer referral and information services in New York City and in other urban areas receive hundreds of calls each day from people seeking lawyers. Even in rural areas, such services receive thousands or even tens of thousands of calls each year. Individual lawyer referral services can generate millions of dollars in fees annually

for their panel members. So why are some lawyers disappointed with panel membership, while others are satisfied?

For many callers, the LRIS provides the first contact they have with legal services.

In spite of this, some lawyers throw away that first impression without a second thought. Whether the catalyst for the lawyer/client relationship is a new home, an invention, a contract or litigation, suspicion and fear are frequently the client's companions. Anxiety inspired by media horror stories and movie caricatures of lawyers make each contact a delicate exchange.

When the LRIS recommends a

lawyer, it is like a seal of approval that allays some of the client's fears. If the lawyer is only concerned with fees and not with the client's problem, the fee will end up with another lawyer. If the lawyer does not respond to the client's calls, that client will conclude that the lawyer does not care. The legal problem will still exist, and the neglected caller will still be a client—but of a different lawyer.

If you are going to be on vacation, or are otherwise unable to return phone calls for more than a day, you should inform the referral service. In this manner, lawyers can maintain their positions and avoid having their names rotated to the bottom of the list for calls that they cannot answer. We want to avoid the frustration of prospective clients who leave messages and do not get their calls returned because the lawyer is on vacation and did not advise the LRIS. Whenever a lawyer is going to be away for more than a day, instructions should be left with the office or on voice mail, advising the caller when the lawyer will be available. It leaves a very bad impression with a client to reach an answering service or office staff and be told that no one knows when the lawyer will be in, or whether the lawyer will be back that day.

During 1991, one referral service recommended a lawyer who happened to be away for a week. The lawyer's office informed the client when the lawyer would

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## Call Distribution

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positive work environment where everyone works towards providing superior customer service. Since the system has the ability to track the number of calls each day by hour and by agent, we are able to give employees feedback on their own performance and use it as a tool to enhance productivity.

Obviously, the ACD system is not without its flaws. One specific problem is that messages can be a little tricky to change remotely. For example, should the MBA be closed due to a snowstorm (this happens on occasion in New England), staff can record and remotely post an outgoing message about the service being closed, but cannot

force the system to disconnect after the caller hears the message. In the event that the caller does not hang up, the organization incurs unnecessary 800 line toll charges.

While the most technologically advanced computer or phone system on the market today has the potential to help us do our jobs more efficiently, we know that skilled and polite employees are the real driving force behind successful customer service. Our ACD system simply enables our staff to be the best at what they already do very well.

**Joan Anderson** is the Director of the King County Bar Lawyer Referral Service.

**Diane LaPierre** is the Manager of Public Services of the Massachusetts Bar Association.

## First Impression

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return, giving the client a choice of waiting the few days or calling back for a referral to someone else. Since the client was told when the call would be returned, she decided that she could wait the few days. When the lawyer returned to the office and met with her, she retained him, and he settled the matter for more than \$3,000,000.

If the office had not notified the

client of the attorney's temporary absence, the client would have been frustrated, waiting three days to have her call returned with no explanation of when or whether the lawyer would call back. That frustration would, no doubt, have caused the client to lose faith in that attorney and the LRIS, resulting in a loss of more than \$1,000,000 in fees to the lawyer.

We have learned from experience and market research (i.e., follow-up with referred clients) that in most instances it is the first

conversation with clients that prompts them either to meet and retain the attorney, or to continue their search for someone else to handle their matter.

Often clients are more concerned with how much lawyers care than how much they know. In many instances, the client does not have a reasonable way to evaluate the lawyer's strategy in handling a particular matter. Courtesy and responsiveness to the client becomes a surrogate measure that the client uses to evaluate the lawyer. There are a great many lawyers. If one is inattentive or unreachable, there is always another lawyer who is not.

The concept is fairly simple. Clients want and need to feel that the lawyer they will hire, or have hired, is interested in their case and eager to help them. People appreciate being shown concern. If you are working late, you do not have to be shy about returning a client's call at night or on the weekend. If you practice in a particularly sensitive area of law, you may want to have your office or voice mail ask callers whether having calls returned outside of business hours will be okay. If you share office space, it is advisable to get your own phone number. Clients referred by the LRIS often will take the first lawyer they can reach.

Once you have made contact with potential clients, make sure that they see you are the kind of professional who takes pride in the way you run your practice. Demonstrate that you care about the matters that you handle, because you actually want to help people while you earn your living.

Trust is everything for a client seeking to have a matter resolved,

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## Radio Campaign

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As the bookings are scheduled the legwork continues. Mr. Paul, the spokesperson for this year's tour, spent time reviewing the background materials in order to master the issues that he likely would encounter in the interviews. LRIS programs were advised of the possibility of a broadcast in their service area so that they could staff their telephones.

On the day of the broadcast, the real legwork kicks in. The schedule often shows non-stop "bookings" for three hours. The nature of the process (you are buying a block of time on a satellite) necessitates these marathon sessions, which are made up of several ten-minute increments. The spokesperson sits in one radio station and is linked to other radio stations across the country as morning drive time edges across the country from east to west. Mercifully, an occasional radio station will cancel for a local breaking news story, which allows the spokesperson to take a breather.

This year, the legwork paid off in a phenomenal way. Two nationally syndicated radio stations, the

Wall Street Journal, and the USA Radio Network aired live interviews. In addition, 84 live and taped broadcasts aired in 25 other cities including Albuquerque, Boston, Chicago, Cleveland, Houston, Miami, Minneapolis, Nashville, New York City, Philadelphia, Pittsburgh, Portland (OR), San Antonio, San Diego, and Washington, D.C. Those numbers, in that time period, are unachievable without the aid of advanced technology.

The ABA's LRIS National Awareness Campaign is planning next year's program. Tentative plans include radio public service announcements that will include nationally distributed generic statements and customized spots with local program information. The campaign also will include a new series of press releases. We would like to know what will help your program reach the public. Contact Jane Nosbisch at 312/988-5754, e-mail: [jnosbisch@staff.abanet.org](mailto:jnosbisch@staff.abanet.org), with any input.

**Jane Nosbisch** is the Assistant Director of the ABA Standing Committee on Lawyer Referral and Information Service.

## First Impression

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and the only thing that assures people that they can trust you is your attention to and empathy for their concerns. Today's professional must be able to connect on an emotional and human level with clients in order to win their trust and confidence. Lawyers can control their images and the impacts they have on others. Lawyers can learn to project more positive impressions to help build more productive attorney-client relationships. At the same time, this will help to counter the negative image of lawyers.

Lawyers must learn to listen visibly and to live with silence. Every gap in the discussion does not have to be filled. Find out what the client wants and needs before you disclose how you intend to

handle the matter. Extolling your cross-examination and other litigation skills may not be comforting to the client who has a dispute with a good customer and does not want to lose that relationship. Such a situation may be ripe for mediation.

In some circumstances, you may want to suggest a preliminary check of the defendant's assets before suggesting the expense of litigation. This would show the prospective client that you are more interested in an outcome that benefits the client than you are in generating fees.

Of course, once the client retains you, the care you show towards your client must continue. Stay in touch. This is particularly important for negligence and medical malpractice matters where there may be long periods of inactivity, or of legal work that the client will

not be aware of, unless the lawyer keeps that client informed.

As one client in New York City wrote to us: "Recently, I had the opportunity to use your Legal Referral Service. The consultation that followed was conducted with dignity and compassion. In a nutshell, if not for your service, I would be stuck in an expensive legal quagmire. I will continue to use this lawyer and will recommend the Legal Referral Service whenever the opportunity arises."

In short, courtesy, compassion and responsiveness to clients is essential not only to building your practice, but to building a quality lawyer referral and information service.

**Allen Jay Charne** is the Executive Director of the Legal Referral Service sponsored by The Association of the Bar of the City of New York and The New York County Lawyer's Association.

## From the Chair...

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professional and corporate arena.

Enlisting top bar and legal community leaders to publicize your lawyer referral program sends a powerful message. We did not fully appreciate how important that would be when we were designing our own LRIS awareness program. I would like to outline a few examples of how this type of high level visibility has had a ripple effect among our constituency.

In 1997, then ABA President-Elect Jerome Shestack conducted a satellite media tour with TV stations across the country. The ABA showed video clips of the tour at its House of Delegates' Annual meeting as part of the ABA Media Relations report.

As a result of this viewing, bar

leaders from across the country saw how the Incoming ABA President lent the prestige of his office to support lawyer referral. When we subsequently asked all ABA House of Delegates members whether they wanted a copy of the national LRIS directory, more than 60 percent answered affirmatively. Although the majority of these delegates have professional networks extending across the country, they nevertheless saw this national LRIS directory as a potentially valuable resource for referring clients not appropriate for their own practices.

One last anecdote illustrates the benefit of creating a climate of awareness at the highest levels. Our staff recently received a request for a referral to a local program from the director of the ABA Media Relations and Public Affairs Division. She called because she

remembered a briefing about public service lawyer referral that took place at an ABA Board of Governors meeting.

Creating awareness about your high quality public service lawyer referral program is of importance to your bar association. Make it at least an annual priority to brief the highest levels of your bar association leadership. Create events that enlist the prestige of their offices to publicize this bar association public service. Make sure that your bar leadership is aware of LRIS success stories for use in their own speeches in the community. Recruit all of the bar leaders in your awareness campaign by producing a fact sheet of successes within the last year. By enlisting bar leadership involvement, you raise your LRIS' profile and credibility internally and throughout the community.



# Legal Assistants: An Unrecognized and Under-Utilized Resource

by *Kenyon E. Luce*

The purpose of this article is to share my personal philosophy regarding the use of legal assistants in the practice of law and to suggest ways in which JAG offices can utilize their skills. Many attorneys believe that their caseload is overwhelming. This is in addition to the fact that they have a limited amount of time to complete necessary tasks. To meet the demands placed upon them, attorneys must become more efficient and have a qualified support staff. A solution for the attorney is to utilize a resource that is available throughout the armed services: legalmen or legal clerks.

To effectively use legal assistants, institutional thinking must change from the traditional belief that only attorneys can handle activities related to a legal matter, to a recognition that the legal profession can make use of legal assistants like the medical profession utilizes nurses' and physicians' assistants. Civilian practitioners offset the increasing cost of legal services by becoming more efficient and by using legal assistants. The goal is to have the least expensive qualified person accomplish the task at hand.

It is critical for attorneys to manage their time as efficiently as possible to allow for appointments, discovery, taking depositions, motions, attending hearings and trials, not to mention the never ending phone calls. Unexpected crises arise daily in our clients' lives, and they need our immediate

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*To meet the demands placed on them, attorneys must become more efficient and have a qualified support staff.*

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help. We may not always be available when they need us, and, in those situations, the legal assistant becomes a crucial component of a practice.

On the military side, staffing cutbacks, budget restraints, and overall downsizing requires a paradigm shift. The effectiveness and utilization of legalmen or clerks needs to be a priority for the military JAG office. Too long have capable and dedicated service members been overlooked in the military. Law is a "jealous mistress," and allowing a legal assistant to be responsible for the administrative tasks traditionally performed by attorneys may not be a simple undertaking.

Early in my career, however, I recognized the valuable role that a legal assistant could play, and I have used legal assistants in virtually every area of my practice, from estate planning and elder law to personal injury, dissolution of marriage, business, real estate, criminal matters and litigation. Although job descriptions and responsibilities have varied, depending upon the area of law

in which the assistant works, my legal assistants have saved me time, allowed my practice to grow and maximized my productivity and efficiency. Generally, my legal assistants' responsibilities are to make their area of my practice run as smoothly as possible, to gather data and to oversee the progress of each file. When I review a file, I have confidence in the way that it is organized, and I expect my legal assistant to produce a properly drafted work-product that summarizes the file and its contents.

Similarly, legalmen and other enlisted administrative staff are capable of responding to much of a military member's initial request for assistance. After the file is opened, however, it is typical for the matter to become the JAG officer's sole responsibility. Legal assistants, particularly those who receive regular training, can assume much of the ongoing responsibility of tracking court dates, returning calls, drafting certain documents and maintaining contact with the military member.

The JAG office can establish procedures that ensure accountability but shift much of the burden of administrative detail to the legal assistant. In particular, legalmen can provide procedural assistance to enlisted members, leaving the JAG officer more time to respond to command questions, trials, and matters that actually require an attorney.

In many instances my legal

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*From the Chair...*



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

As my first act as Chair, I want to salute the front line of military legal assistance: the judge advocates, civilian attorneys, paralegals, and legal support personnel who serve clients and commands worldwide. The importance of your contribution to the well-being of service members and their families, unit readiness, and quality of life in the Armed Forces cannot be overstated.

I also salute and thank the outgoing Chair of the ABA Standing Committee on Legal Aid for Military Personnel, Leonard Loeb. Leonard led the Committee for four years of extraordinary achievement in support of military legal assistance. Uniformed and civilian legal assistance providers and the clients and commands they serve have been the beneficiaries of his labors. We are all deeply in his debt.

Appointment as Chair of the ABA LAMP Committee is an opportunity and challenge I gladly accept. I recently concluded an active Marine Corps career that included service as a legal assistance attorney, Chief of Marine Corps legal assistance, and staff judge advocate at various commands where I made legal assis-

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## *Legal Assistance Attorney Asserts an SSCRA Stay and Is Found In Contempt of Court*

by Lieutenant Colonel Conrad

**C**urrent Army legal assistance practice counsels against military legal assistance attorneys signing Soldiers' and Sailors' Civil Relief Act (SSCRA)<sup>1</sup> stay actions on behalf of soldiers.<sup>2</sup> Seasoned legal assistance attorneys base this advice on the rulings of several states that if legal assistance attorneys file a stay request with a court, they have made an appearance in the lawsuit.<sup>3</sup> Some courts may find an appearance even where the legal assistance attorney carefully explains that the request for a stay is not an appearance and that the soldier wishes to preserve all jurisdictional objections.<sup>4</sup> Only a few states take the opposite position and proclaim that an SSCRA stay request does not necessarily constitute an "appearance" in a lawsuit.<sup>5</sup> Failure to follow this advice can result in the client losing his or her right to reopen a default judgment under the SSCRA. When a court denies a soldier's SSCRA stay request made by a legal assistance attorney, the attorney has "appeared" in the case, and the client may no longer reopen the default judgment.<sup>6</sup>

Recently, an Army legal assistance attorney received a scare when he ignored his advice on SSCRA stays. A soldier in Bosnia had a divorce hearing pending in Florida. The soldier's commander wrote an SSCRA stay request to the court. The Florida judge wrote the commander back claiming only the soldier, as a party to the lawsuit, or a Florida-licensed attorney, could assert the SSCRA stay.<sup>7</sup> The legal assistance attorney in Bosnia got on the LAAWS BBS<sup>8</sup> looking for a Florida-licensed judge advocate. A stateside judge advocate (Captain X), a Florida bar member, offered to write the SSCRA stay letter for the soldier. Captain X's SSCRA stay letter to the Florida court expressly stated that he was not entering an appearance and referenced the SSCRA statute sections. He mentioned that he was a Florida bar member, and included his Florida bar number. The judge turned down the stay request, and set a hearing date for a case management conference, listing Captain X as the attorney of record for the soldier. The judge determined that the stay request was an appearance because it was signed by a Florida attorney, to a Florida court, on behalf of a Florida resident. The court notified Captain X by mail of the date of the case management hearing. Captain X attempted to phone the judge and the judge refused to speak to him, demanding that all contact with the court be in writing. Captain X wrote the court and opposing counsel stating he was not the soldier's attorney and did not represent him, except to request a stay under the SSCRA.

On the hearing date, the soldier appeared without Captain X. The judge ruled that opposing counsel could not discuss the case with the soldier without counsel of record, Captain X, being present. The judge found Captain X in contempt of court for not appearing at the desig-

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## SSCRA Stay

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nated divorce hearing, fined him \$500, and ordered him to pay the other party's attorney fees. The judge also referred Captain X to the Florida State Bar Professional Responsibility Grievance Committee for breach of his duties to represent his client.

Captain X contacted the Office of the Judge Advocate General (OTJAG) Legal Assistance Policy Division through his technical chain of command. Captain X moved the court to withdraw from the case. The judge approved but refused to vacate the contempt finding. Captain X was successful in convincing the Florida Bar Professional Responsibility Discipline Board to dismiss the judge's professional responsibility complaint as unjustified. The OTJAG Litigation Division counsel found that Captain X was acting within the scope of his duties. They obtained U.S. Department of Justice counsel who represented Captain X and removed the contempt citation from Florida state jurisdiction to the federal district court. The federal judge dismissed the contempt action.

What are the teaching points from the unpleasant experiences of Captain X?

(1) *Judge advocates should never sign an SSCRA stay letter to a court.* You create more problems than you solve.<sup>9</sup> Alarms should have gone off when the Florida judge demanded that only the soldier or a Florida licensed attorney could assert the stay request. Such action allowed the court to obtain personal jurisdiction over the soldier. Your inadvertent appearance can be the reason your clients may not reopen a default judgment where

they have a meritorious defense.

(2) Commanders may assert SSCRA stays on behalf of their soldiers.

Generally, the courts give much more credence to the assertions of the soldier's commander, than those of a lawyer.<sup>10</sup> The Florida judge clearly was wrong to indicate to the soldier that only a party to a lawsuit or a local attorney may assert an SSCRA stay. The SSCRA says that a lawsuit party or "some person on his behalf"<sup>11</sup> may assert the SSCRA stay request.<sup>12</sup> It does not require that an attorney from the same state request the stay. Of course, judge advocates may assist commanders in drafting stay request letters for their soldiers.<sup>11</sup> Such assistance does not constitute "ghost writing" of *pro se* pleadings by military attorneys.<sup>12</sup>

(3) *Legal assistance attorneys may send an SSCRA stay request to opposing counsel.* Legal counsel have an obligation to act with candor towards the tribunal in a lawsuit.<sup>13</sup> If you send an SSCRA stay request to an opposing counsel, he or she is obligated by his or her state rules of professional responsibility to notify the court of the military status of the soldier party to the lawsuit.<sup>14</sup> Furthermore, opposing counsel must truthfully comply with the SSCRA affidavit requirement.<sup>15</sup> An SSCRA letter, written by a legal assistance attorney to opposing counsel is not an appearance before a court.<sup>16</sup> A soldier's SSCRA stay rights asserted in this manner preserves the soldier's right to assert jurisdictional defects and to assert his or her SSCRA right to reopen a default judgment if he or she has a meritorious defense.<sup>17</sup>

(4) *If you are not sure about asserting an SSCRA stay, discuss your options with your technical*

*chain of command.* You can work your way out of difficult situations like that of Captain X if you discuss your plan with your chief of legal assistance, your deputy staff judge advocate, and your staff judge advocate.<sup>18</sup> You do not compromise client confidentiality by discussing how you wish to proceed on a case within legal assistance channels.

If your office cannot resolve a problem, consider contacting the OTJAG Legal Assistance Policy Office staff. They have the advantage of hearing of similar legal assistance problems from all installations Army-wide and among the various services.

You must have the approval of your legal assistance supervising attorney before you provide assistance to a client by drafting legal documents, such as an SSCRA stay request.

### Notes

1. 50 U.S.C.A. App. " 501-593 (West 1999).

2. *Id.* ' 521. This section states: At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as a plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall on application to it by such person or some person on his behalf, be stayed as provided in this Act unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

*Id.*

3. See *Blankenship v. Blankenship*, 82 So. 2d 335 (Ala. 1955); *Skates v. Stockton*, 683 P.2d 304, 306 (Ariz. Ct. App. 1984); *Artis-Wergin v. Aris-Wergin*, 44 N.W.2d 750, 753-754 (Wis. Ct. App. 1989); *Marriage of Thompson*, 832 P.2d 349, 352-354 (Kan. Ct. App. 1992). See also Michael A. Kirtland, *Civilian Representation of the Military C?L?I?E?N?T*, 58 ALA. L. REV. 288, 289 (Sept. 1997); Legal Assistance Note, *Stays of Judicial Proceedings*. ARMY LAW, July 1995. At 68; Mary Kathleen Day, Comment.

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## From the Chair...

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tance a priority. I was also actively involved with the ABA LAMP Committee for several years as an advisor. During my career I learned that military legal assistance requires and deserves full staffing and funding. In addition, it provides some of the richest rewards of military legal practice.

An even more significant lesson I learned is that although support for legal assistance must start at the top, it cannot end there. Senior officer support of legal assistance is not a problem in the Armed Forces. The Judge Advocates General of the Army, Navy, and Air Force, SJA to the Commandant of the Marine Corps, and Chief Counsel of the Coast Guard are committed to viable, progressive legal assistance and preventive law programs.

Support at the Department and Service levels is equally strong. Even though it is not an entitlement, hundreds of judge advocates and others and millions of dollars are provided annually to ensure that legal assistance is readily avail-

able to all uniformed personnel and their families.

Success in legal assistance, however, is not guaranteed by support from Washington. It is at the posts, stations, and bases

*Judge advocates are essential to readiness, morale, good order, and discipline.*

that staff judge advocates and law center directors infuse energy into local legal assistance and preventive law programs. They determine the scope and reach of the programs and vie for local funding, support of commanders, time on training schedules, and other access issues. As leaders who recognize the importance of legal assistance and preventive law, those senior judge advocates are often unsung heroes.

Legal assistance, for all of its importance, is just part of a judge advocate's life, which can include challenging practices in almost every area of the law. On the pier,

in the barracks, and on the flight line, judge advocates are essential to readiness, morale, good order, and discipline. They are vital team members, and commanders know it.

We are in a golden era of military legal practice that provides marvelous opportunities for lawyering, leadership, and a life style without parallel in civilian life. The American military justice system is the best in the world. Outstanding legal support is being provided ashore and afloat around the globe. Opportunities to excel abound.

The members of the ABA LAMP Committee share in that pride and excitement. We look forward to a busy year ahead as partners with judge advocates in the worthiest of causes: legal support of American military personnel. We will continue to be vocal in support of legal assistance within the ABA, the Congress, DoD, and other centers of influence. Just as legal assistance is "like having a lawyer in the family," the ABA LAMP Committee is like "having a friend in court [and other arenas]." You can be assured that the Committee will remain your steadfast ally and supporter.

## SSCRA Stay

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*Material Effect: Shifting the Burden of Proof for Greater Procedural Relief Under the Soldiers' and Sailors' Civil Relief Act*, 27 TULSA L.J. 45, 55 (Fall 1991).

4. *Id.* See ROBERT CASAD, JURISDICTION IN CIVIL ACTIONS, Sect. 3.01(5)(a), pp.3-46 to-47 (2d ed. 1991). "A motion for a continuance or for a stay or extension of time in which to plead usually will be a general appearance." *Id.*

5. See *O'Neill v. O'Neill*, 515 So. 2d 1208 (Miss 1987); *Kramer v. Kramer*, 668 S.W.2d 457 (Tex. App. 1984); *Marriage of Lopez*, 173 Cal. Rptr. 718, 721 (Ca. App. 1981).

6. Major Garth K. Chandler, *The Impact*

*of a Request for Stay of Proceedings Under the Soldiers' and Sailors' Civil Relief Act*. 102 MIL. L. REV. 169 (1983).

7. The judge's assertion was incorrect. Section 521 of 50 U.S.C.A. states in part, that a stay request may be presented by the plaintiff or defendant, "or some person on his behalf" (emphasis added). Neither the statute, its legislative history, nor case law require that only an attorney may apply to a court for a stay for a military member. No case or statute requires that the attorney who applies for such a stay, on behalf of a military client, be a member of that state's bar. 50 U.S.C.A. ' 521 (West 1999).

8. LAAWA BBS stands for the Legal Automation Army-Wide System Bulletin Board Service.

9. U.S. DEP'T of ARMY. REC. 27-3, THE ARMY LEGAL ASSISTANCE

PROGRAM, para. 3-7f (10 Sept. 1995) [hereinafter AR 27-3]. This regulation states in part:

f. Legal document filing (2) Pro se Assistance.

(a) *Pro se* assistance is the help rendered to non-lawyer clients to enable those clients to file legal documents, papers, or pleadings in civil proceedings, such as small claims or uncontested divorces. Legal assistance may include preparing necessary documents and assisting with their submission to local courts. However, only a supervisor may authorize *pro se* assistance.

(b) Those providing legal assistance to clients on civil proceedings covered by the SSCRA are cautioned that a request for a stay of proceedings (or a letter) sent by a client or to

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## Legal Assistants

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assistant is the liaison between my office and the client. I find a legal assistant's professionalism, courtesy and care to be as important to clients as the legal advice and representation they receive. Trained legal assistants are capable of performing administrative tasks associated with many legal problems, including the initial conference with the clients, gathering information as the case progresses, taking witness statements, preliminary research and drafting routine legal documents. In some instances the legal assistant accounts for 80 to 90 percent of the time associated with a file.

A good legal assistant must

possess the same qualities as a good attorney: organizational skills, accuracy, the ability to read quickly and carefully, writing skills, the ability to think analytically and attention to detail. If these are not your strong points, a legal assistant can add support to your work, free up your time and assume the responsibility for the non-legal aspects of your case files. But how often are support people on your staff allowed to develop and to use their legal assistant skills?

Most legalmen or clerks are able to perform the non-legal administrative tasks that traditionally have usurped an attorney's time, but the support staff is not encouraged or allowed to perform those tasks. Changes are occurring, and the example of NLSO NW is one

to be followed. In recognition of the ability of their legalmen, they arranged to have community college courses available on the base to teach and train legal assistants. Students can earn college credits and acquire heightened skills. This effort is a win-win situation and should be made available at more JAG offices.

Efficiency and diligence are the hallmarks of a good office. Both are achievable if those capable of doing a task are recognized and given the opportunity to carry it out.

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the client's behalf may have the unintended effect of constituting consent to a court's jurisdiction.

10) *Id.* See *Cromer v. Cromer*, 278 S.E.2d 518 (N.C. 1981) (holding that where the commander of sailor requests an SSCRA stay, the court remands the case "in the interests of justice"); *Lackey v. Lackey*, 278 S.E.2d. 811 (Va. 1981) (holding that where a ship captain sent a sworn affidavit to the court indicating that a service member was unable to appear in court for several months until his ship returned to home port, the affidavit was not an appearance).

11) 50 U.S.C.A. App. ' 521 (West 1999).

12) Kansas Attorney General Opinion Number 95-85. 1995 WL 813454 (August 15, 1995) (providing that attorneys acting under the authority of the Army legal assistance program may counsel and assist *pro se* military clients with the preparation of necessary documents to be filed in Kansas courts in specified civil proceedings without

obtaining a Kansas law license. A sample legal assistance attorney letter for commanders to assert an SSCRA stay is at <<http://www.jagcnet.army.mil>>: Lotus Notes database. TJAGSA Publications LA 260, Soldiers' and Sailors' Civil Relief Act (April 1998).

13) Electronic Message #250173, LAAWS BBS. Chief, OTJAG Legal Assistance Policy Division, subject: Preparation of Pro Se Pleadings by Iowa Licensed Attorneys (5 Feb. 1997). Military legal assistance attorneys, licensed in Iowa, may not "ghost-write" pro se pleadings for military members, in courts in states where they are stationed, but not licensed, unless the state allows such a practice, the attorney reveals their participation of the court, and the attorney is authorized to practice in that jurisdiction, by that jurisdiction. *Id* See Iowa Board of Professional Ethics and Conduct Opinions 94-35 (May 23, 1995) and 96-7 (Aug. 29, 1996). None of the above opinions or messages prohibit a military legal assistance attorney from assisting a commander in asserting an SSCRA stay request on behalf of one of their soldiers. A request for an SSCRA stay

is not a "pleading" as contemplated by modern rules of civil procedure. Federal Rule of Civil Procedure 7(a), contemplates only a complaint, answer, and reply to a counter or cross claim as actual pleadings.

14) See *Sacotte v. Ideal-Werk Krug*, 359 N.W. 2d 393 (Wis. 1984) (holding that a letter to opposing counsel does not confer personal jurisdiction over a defendant. See also MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.39(d) (1983). This rule states: "In an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer which are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse." *Id.*

15) See *supra* note 14.

16) 10 U.S.C.A. ' 520(2) (West 1999).

17) *Sacotte v. Ideal-Werk Krug*, 359 N.W.2d 393 (Wis. 1984).

18) A model letter raising the SSCRA stay for opposing counsel is at <<http://www/jagcnet.army.mil>>: Lotus Notes Database. TJAGSA Publications, JA 260, Soldiers' and Sailors' Civil Relief Act (April 1998).



## From the Chair . . .



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

My appointment by ABA President Bill Paul as Chair of the Standing Committee on Pro Bono and Public Service is an honor and a challenge. Hon. Judy Billings, the outgoing chair, was a dynamic leader for the Committee, with a clear vision of pro bono's role in the legal profession. The Committee made great strides under Judge Billings in promoting pro bono work, but we still have far to go to fill the unmet legal needs of our nation's poor.

I believe strongly that doing pro bono work is not simply an obligation for all lawyers, although it certainly is that. It is also an opportunity, however, to reconnect with what is best about our profession, to make a difference in the lives of the least fortunate among us. In that vein, on July 20, 1999, President Clinton issued a challenge to the legal profession. In remarks that day to leaders of the profession, the President urged law firms and the legal community to step up efforts to achieve racial diversity and to do pro bono work. He stated:

*Just imagine this: if every lawyer in America—about 800,000—dedicated just 50 hours a year to pro bono work,*

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## ABA Pro Bono SSI Project

In June 1997, the ABA Standing Committee on Pro Bono and Public Service and the ABA Center for Pro Bono created the Children's SSI Project in response to a nationwide need for representation of approximately 264,000 children whose SSI benefits were at risk of termination. After over two years of operation, the Center for Pro Bono has begun the process of winding down its Children's SSI Project. While the SSI Project will cease to exist formally, the Center will continue its active role in supporting advocates and programs working on SSI issues.

This article provides a brief overview of the SSI Project, highlights the achievements of the unique collaboration between national and local organizations and advocates, and addresses the status of the need for advocates, as well as the current issues affecting claimants.



PHOTO BY RICHARD YOUNKER

### Background

As part of the 1996 welfare reform legislation, Congress drastically narrowed the bases of eligibility for Social Security Income (SSI). Two key areas of eligibility for children were eliminated: mental impairments for "maladaptive behavior" and the Individual Functional Assessment (IFA), an overall criterion for determining eligibility. Elimination of the IFA meant that children who could demonstrate an inability to engage in age-appropriate activities of daily life, but did not meet a medical listing, would be less likely to qualify for benefits. The change affected children already receiving SSI, as well as children still in the application process, because the Social Security Administration (SSA) was directed to "redetermine" their cases under the new criteria. Children no longer determined disabled under the new standards would lose their cash benefits.

The Center for Pro Bono collaborated with national and local organizations to develop a plan to assist families with the legal problems brought on by the new SSI criteria and the resulting redetermination process. The Bazelon Center, the Center for Law and Social Policy

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## SSI

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(CLASP) and other national organizations assisted in analysis of the law and advocacy issues. With this input, startup funding from the ABA Board of Governors, and a grant from the Open Society Institute, the Center for Pro Bono created the SSI Project as a nationwide pro bono effort. The SSI Project's strategy was to serve as a central resource for state and local providers of legal assistance. Rather than recruiting and training attorneys from the national level, the SSI Project assisted programs to achieve those objectives at the local level.

### Reaching the Goals: The SSI Project's Accomplishments

As the SSI Project developed, it directed its efforts at achieving three goals: training volunteers to represent affected families; providing information to affected families, the public, and potential volunteers; and advocating for a fair process for claimants.

#### Developing a Network of Key Coordinators

In order to implement its strategy, the SSI Project identified and cultivated key coordinators in the advocate community in each state and the District of Columbia. These key coordinators were the contact and distribution points for materials and advocacy updates. In turn, the key coordinators were responsible for establishing and developing individual children's SSI projects. Projects were eventually established in each of the states as well as in the District of Columbia. As the SSI Project developed media kits, press releases, informational literature

for affected families, and training materials, they were distributed through the key coordinators to local advocates.

#### Training Volunteers

The SSI Project strongly supported local training efforts. Many volunteer attorneys were not familiar with Children's SSI benefits, and they needed to be brought up to date with the changes in the law. The SSI Project assisted local efforts by collecting, creating and distributing videos and manuals for use in training attorneys to represent child SSI claimants. Pro bono programs and legal services organizations, including the Volunteer Legal Services Program of the Bar Association of San Francisco, the National Center for Youth Law, Atlanta Volunteer Lawyers Foundation, Georgia Legal Services Program, and the SSI Coalition for a Responsible Safety Net, contributed invaluable training materials to the SSI Project.

In some states, such as Florida, Mississippi, Illinois, Ohio and Virginia, the SSI Project actively assisted in the organization of local training by helping to locate trainers and ensuring that programs had appropriate resources to attract an audience and prepare materials. Approximately 1,000 attorneys attended these regional trainings.

In other states, the SSI Project simply provided local programs with material, including manuals and videos, to train pro bono attorneys. This allowed local programs to avoid both the high costs of developing and producing the materials as well as unnecessary repetition of effort. The SSI Project estimates that approximately 3,000 attorneys participated in training sessions sponsored by local programs.

#### Getting the Message Out

In addition to supporting the training and recruiting of volunteers, the SSI Project devoted substantial effort to providing affected families critical information so that they were aware of their rights, understood that assistance was available, and knew where to turn to obtain assistance.

The SSI Project developed a variety of materials to inform affected families of their rights and how to proceed in securing those rights. Children's SSI programs located in San Francisco, Georgia, and Illinois created some of the materials and the SSI Project also developed materials. They covered topics ranging from the changes in the children's SSI disability standard to information on waiving and appealing an overpayment of benefits.

The SSI Project worked with the key coordinator network to develop innovative strategies for disseminating the material to the public. In Georgia, each Medicaid recipient received information about children's SSI terminations with their monthly medical card. In Illinois, each child's school report card contained informational fliers. The SSI Project advised other key coordinators on how to duplicate these methods in their states.

The SSI Project encouraged each key coordinator to establish a toll free hotline to provide information to affected families. The structure of the hotlines varied from state to state. Some hotlines connected callers to live persons. These hotlines were staffed in several ways, including by law students, law firms, legal services programs, or state pro bono centers. Other hotlines provided prerecorded messages designed to answer callers' general questions. Ap-

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proximately half were freestanding hotlines established for a limited duration, while half utilized the existing lines of a local agency. Eventually, forty-six states established a toll-free number that families could call for information.

With assistance from the ABA Media Relations Division, the SSI Project also developed a media campaign to inform affected families of their rights and the ability to obtain assistance. The media campaign advised families of their rights, advertised pro bono opportunities for private attorneys, and publicized the issues facing affected families.

The SSI Project created video and audio public service announcements (PSAs) that ran in more than 30 states. The PSAs effectively disseminated critical information to the public. Several state and

local pro bono programs reported an increase in calls after the PSAs ran in their area. The Georgia Kids Disability SSI Project reported a dramatic increase in calls after a PSA aired on a local radio station.

The SSI Project also created media kits for distribution to state and local bar associations and legal services. Organizations used the kits to conduct local media campaigns, which broadly publicized the difficulties faced by affected families and the need for volunteers. The publicity, in turn, educated affected families about their rights, served as a tool for recruiting volunteers, and strengthened calls for change in SSA's procedures.

### Advocating for Change

Advocating for changes in SSA's procedures was another important aspect of the SSI Project. The ABA joined numerous advocates across the country protesting inadequate

notices issued by SSA and objecting to SSA's refusal to include the telephone numbers of toll-free hotlines and legal services providers in the notices. Then ABA President Jerome Shestack took an active role and communicated directly with the Acting SSA Commissioner about these concerns, in addition to writing op-ed pieces and appearing in a video news release to publicize the plight of affected families.

As a result of these extensive efforts, SSA took the following actions:

- Issued second notices and granted additional appeal rights for almost 80,000 families who had lost benefits. The notices included the statewide toll-free hotline numbers for legal help.
- Agreed to review the case of 40,000 children who lost benefits due to mental retardation.
- Worked with the SSI Project to develop training materials for

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## May SSI Claims Proceed Without Counsel?

A July 19, 1999, decision by the U.S. District Court in the Southern District of New York preserved the rights of parents to litigate their children's claims for SSI benefits. *Maldonado v. Apfel*, 98 Civ. 9037; *Olavarria v. Commissioner of Social Security*, 98 Civ. 9038.

The U.S. Attorney's office requested that appeals of two children's SSI cases to the district court be dismissed, citing case law prohibiting a non-attorney parent from appearing on behalf of an infant. In an unusual joint decision, the court held that parents are permitted to represent their children in SSI claims.

The court distinguished the SSI claims from those in prior

cases, stating that the nature of the claim, the purpose of the benefits, and the difficulty in obtaining counsel in such claims required the holding allowing parents to represent their children. The plaintiffs were represented by the Center for Disability Advocacy Rights, Legal Services for the Elderly, and Bronx Legal Services. As of August 30, 1999, the government had not decided whether to appeal the decision.

The issue was also addressed in the West District of New York in an opinion issued August 5, 1999, *Ortiz o/b/o Rolling v. Secretary, Dept. of Health and Human Services*, 1999 WL 605707 (W.D.N.Y.). The court reiterates the rule that a non-

attorney parent may not represent her child pro se in federal court and pointed out that there is no exception in the Social Security Act authorizing such representation. The opinion considered whether the appointment of an attorney is proper. The court ruled that in this case, it was not. It dismissed the plaintiff's claim without prejudice and gave the plaintiff one-month to find counsel and file a new complaint on behalf of the claimant. The court did not cite the opinion issued by the Southern District of New York, and it is unclear from other circumstances whether the court considered, or was aware of, the Southern District decision.



## ABA 1999/2000 Directory of Pro Bono Programs

The Center for Pro Bono is in the process of updating the 1997/98 Directory of Pro Bono Programs. By now directors should have received a program information sheet and questionnaire via fax. The collection of this data is extremely important to advocates of legal services as they seek to represent the full extent of pro bono activities. We ask that you promptly update

the program information sheet and complete the questionnaire. It should take about 15 minutes to complete.

As an incentive to completing the program information sheet and questionnaire, we are offering several wonderful prizes, including a fee waiver for the 2000 Equal Justice Conference in Houston, Texas. Winners will be chosen at random from eligible responses.

You must meet the deadline indicated on your questionnaire and complete the questionnaire in its entirety in order to qualify.

If your pro bono, legal aid or legal services program was not included in the 97/98 Directory, or should you have questions, please contact Bridget Howard at 312/988-5789, fax 312/988-5483, e-mail [howardb@staff.abanet.org](mailto:howardb@staff.abanet.org)

### 1999 Pro Bono Publico Award Winners

L-R: **William S. Harwood**, Verrill and Dana, LLP; **George H. Hettrick**, Hunton & Williams; **Christina Rainville** and **Peter S. Greenberg**, Schnader Harrison Segal & Lewis; **Hon. Judith Billings**, Chair, StC on Pro Bono and Public Service; **Peter Langrock**, Chair, Pro Bono Awards Subcommittee; **Deborah Rhode**, Special Award Recipient, CUNY School of Law; **Daniel Mulligan**, Jenkins and Mulligan; **Mary Ellen Koscs-Fleming**, Merck & Co. Inc.; and **Thomas Jenkins**, Jenkins and Mulligan.



## SSI

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SSA personnel on mental retardation and maladaptive behavior issues and developing dedicated account rules. The SSI Project sent a memorandum to state and local contacts in January 1999, which included the Program Operations Manual section on dedicated accounts.

### The SSI Project Winds Down

As the SSI Project comes to a close, the need for advocacy continues. Although many of the redeterminations have been completed, scores of children are in the process of either the review or appeals of terminations. Many families remain in need of information about their legal rights upon receiving a denial

or termination of benefits.

Families may still seek help from the nearly one-half of the hotlines—primarily those housed in a legal services provider—that remain in operation. Additionally, private attorneys are still seeking and responding to opportunities to help children retain their SSI benefits.

The Center for Pro Bono continues to raise awareness of the continued need and availability of assistance. It still receives and responds to requests for training materials, which it will continue to make available. The Center issued a press release in August 1999, encouraging families in the process of appeals to continue to appeal unfavorable decisions and to continue to seek legal assistance. In addition, the Center will monitor other issues as they arise. For example, SSA asked the Center to help resolve a new

potential problem facing the families of affected children in New York (see insert on page 15).

### Conclusion

The Children's SSI Project proved to be an effective model for collaboration between a national entity, local providers, and the private bar to address a pressing legal issue faced by indigent families throughout the country. With the Children's SSI Project collecting and distributing information, local programs leveraged their resources to assist families in need. This unique collaboration led to the mobilization of a large number of private attorneys in donating their time and energy. As a result, thousands of disabled children facing termination of benefits received representation their families could not have otherwise obtained.



# Cultures of Commitment: Pro Bono for Lawyers and Law Students

by Deborah L. Rhode

*Editor's note: this article first appeared in Researching Law, Volume 10, Number 2, Spring 1999, published by the American Bar Foundation. It is reprinted here with permission. The article will appear in Dialogue in two installments. The first outlines the rationale for pro bono services. The second will discuss the origins of pro bono commitments and the rationale for law school pro bono programs.*

**M**ark Twain once reminded us that "to do right is noble: to advise others to do right is also noble and much less trouble for yourself." For too many lawyers, the issue of pro bono service reflects too wide a gap between professional rhetoric and professional practice. Bar ethical codes have long maintained that all lawyers have obligations to assist individuals who cannot afford

counsel. Yet the percentage of lawyers who actually do so has remained dispiritingly small. Recent estimates suggest that most attorneys do not perform significant pro bono work and that only between 10 and 20 percent of those who do are assisting low-income clients. The average for the profession as a whole is less than a half an hour per week. Few lawyers come close to satisfying the American Bar Association's Model Rules, which provide that "a lawyer should aspire to render at least 50 hours of pro bono public legal services per year," primarily to "persons of limited means or to organizations assisting such persons."<sup>1</sup>

The Bar's failure to secure broader participation in pro bono work is all the more disappointing when measured against the extraordinary success that such

work has yielded. Many of the nation's landmark public interest cases have grown out of the lawyers' voluntary contributions, and for low-income clients, pro bono programs are crucial in meeting basic survival needs. For lawyers themselves, such work is similarly important in giving purpose and meaning to their professional lives. Our inability to enlist more attorneys in public service represents a significant lost opportunity for them as well as for the public.

We have missed similar opportunities with law students. In 1996, the American Bar Association amended its accreditation standards to call on schools to "encourage students to participate in pro bono activities and to provide opportunities for them to do so." These revised ABA stan-

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## From the Chair...

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*that would be 40 million hours of legal help. That's a lot of personal problems solved, a lot of headaches gone away, a lot of hurdles overcome, a lot of businesses started. Think of what we could do. A 1993 ABA study found that half of all low-income households had at least one serious legal problem each year, but three-quarters had no access to a lawyer. Now we can fill that gap. Now America's lawyers can afford to fill that gap. And I would argue, if we really believe in equal justice, we cannot afford not to fill that gap.*

The Pro Bono Committee will make its resources, expertise, and energy available to fulfill this mission. We will seek to open pro bono opportunities to more lawyers. We will endeavor to mobilize all lawyers—those in small firms as well as large, in government as well as private practice, in rural as well as urban areas—to meet the civil legal needs of the poor.

The challenge, as I indicated, is daunting. Over 900 pro bono programs throughout the country work to involve lawyers in the delivery of legal services to those who cannot afford them. Twenty-three state bar associations have staff assigned to support the pro

bono programs in their states and to encourage more pro bono work. Nonetheless, the best estimates are that fewer than 20 percent of lawyers regularly provide pro bono legal services to the poor, and we fulfill less than 20 percent of the legal needs of the disadvantaged.

Aspirational standards and inspirational words are most valuable if they lead to action. As a Committee, we are determined to produce results. Working nationally and locally with bar associations, legal services programs, the judiciary, law school groups, corporate counsel organizations and others, we intend to rise to the President's challenge.

## Commitment

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dards also encourage schools to address the obligations of faculty to the public, including participation in pro bono activities.<sup>2</sup>

Despite such initiatives, pro bono still occupies a relatively marginal place in legal education. Although most law schools advocate pro bono in principle, only about 10 percent require any service by students and only a handful impose specific requirements on faculty. At some of these schools, the amounts demanded are quite minimal: less than 20 hours by the time of graduation. While almost all institutions offer voluntary programs, their scope and quality vary considerably. About a third of schools have no law-related pro bono projects or project involving less than 50 participants. In others, only a small minority of each class is involved. In short, most students do not have public service in law as part of their educational experience.<sup>3</sup> It is partly for that reason that my presidential initiative as head of the Association of American Law Schools (AALS) was to create a Commission on Pro Bono and Public Service Opportunities. That Commission, which released a preliminary report, *Learning to Serve*, at the AALS January 1999 annual meeting, has provided the Association's first systematic research on what schools are and should be doing to foster cultures of commitment. The hope is that such commitment will trickle up to a broader group of practitioners.<sup>4</sup>

With that end in view, let me take this opportunity to provide some thoughts about how best to narrow the gap between professional ideas and professional

practice. In the process, I also want to flag the need for more research by institutions capable of high quality work. Although much has been written about the value of public service and the merits of requiring it, relatively little attention has focused on the factors that encourage such service or on the effectiveness of law school programs. We urgently require a better understanding of what can foster cultures of commitment to pro bono work. In that spirit, my hope is to provide a brief overview of the rationale for pro bono involvement, the characteristics and experiences that foster such participation, and the strategies most likely to increase it.

### The Rational for Pro Bono Services

The primary rationale for pro bono contributions rest on two premises: first, that access to legal services is a fundamental need, and second, that lawyers have some responsibility to help make those services available. In this company, it seems unnecessary to belabor the importance of either point. Access to law is the right that protects all other rights. It is particularly critical for the poor, who often depend on legal entitlements to meet basic needs such as food, housing, and medical care. Moreover, social science research confirms that public confidence in the legitimacy on legal processes depends heavily on opportunities for direct participation.<sup>5</sup>

In most circumstances, those opportunities are meaningless without access to legal assistance. Our justice system is designated by and for lawyers, and lay participants who attempt to navigate without counsel are generally at a disadvantage. Those disadvantages are particularly great among the poor, who typically lack the

skills for effective self-representation. Inequalities in legal access compound other social inequalities and undermine our commitments to procedural fairness and social justice.

While most lawyers acknowledge that access to legal assistance is a fundamental interest, they are divided over whether the profession has some special responsibility to help provide that assistance and, if so, whether the responsibility should be mandatory. One contested issue is whether attorneys have obligations to meet fundamental needs that other occupations do not share. According to some lawyers, if equal justice under law is a societal value, society as a whole should bear its cost. The poor have fundamental needs for food and medical care, but we do not require grocers or physicians to donate their help in meeting those needs. Why should lawyers' responsibilities be greater?

One answer is that the legal profession has a monopoly on the provision of essential services. Lawyers have special privileges that entail special obligations. In the United States, attorneys have a much more extensive and exclusive right to provide legal assistance than attorneys in other countries, and the American Bar has closely guarded that prerogative. Restrictions on lay competition have helped to price services out of the reach of many consumers. Under these circumstances, it is not unreasonable to expect lawyers to make some pro bono contributions in turn for their privileged status. Nor would it be inappropriate to expect comparable contributions from other professionals who have similar monopolies over provision of critical services.<sup>6</sup>

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An alternative justification for imposing special obligations on lawyers stems from their special role in our governance structure. As a New York bar commission report explained, lawyers provide "justice [which is]...nearer to the heart of our way of life...than services provided by other professionals. The legal profession serves as indispensable guardians of our lives, liberties and governing principles." Because lawyers occupy such a central role in our justice system, there is also particular value in exposing them to how that system functions, or fails to function, for the have-nots. Pro bono work offers many attorneys their only direct contact with what passes for justice among the poor. To give broad segments of the bar some experience with poverty-related problems and public interest causes may lay critical foundations for change.<sup>7</sup>

A final justification for pro bono work involves its benefits to lawyers individually and collectively. Those benefits extend beyond the enormous personal satisfaction that can accompany such work. Particularly for young attorneys, pro bono activities also can provide valuable training, trial experience, and professional contacts. Through such activities, lawyers can develop capacities to communicate with diverse audiences and build problem-solving skills. Involvement with community groups, charitable organizations, and public interest causes is a way for attorneys to expand their perspectives, enhance their reputations, and attract paying clients. It is also a way for the bar to improve the public standing of lawyers as a group. In one repre-

sentative ABA poll, nearly half of Americans believed that providing free legal services would improve the profession's image.<sup>8</sup>

For all these reasons, the vast majority of surveyed lawyers believe that the bar should provide pro bono services. However, as noted earlier, only a minority in fact offer such assistance and few of their efforts aid low income clients. The reasons do not involve a lack of need. Studies of low-income groups find that well over three-quarters of their legal problems remain unaddressed. Studies cutting across income groups estimate that individuals do not obtain lawyers' help for between 30 and 40 percent of their personal legal needs. Moreover, these studies do not include many collective problems where attorneys' services are often crucial, such as environmental risks of consumer product safety.<sup>9</sup>

Although many lawyers acknowledge the problem, they oppose requirements to address it. Opponents to mandatory pro bono raise both moral and practical objections. As a matter of principle, some lawyers insist that compulsory charity is a contradiction in terms. From their perspective, requiring service would undermine its moral significance and compromise altruistic commitments.

There are several problems with this claim, beginning with its assumption that pro bono service is "charity." As the preceding discussion suggested, pro bono work is not simply a philanthropic exercise; it is also a professional responsibility. Moreover, in the small number of jurisdictions where courts now appoint lawyers to provide uncompensated representation, no evidence indicates that voluntary assistance has declined as a result. Nor is it

evident that most lawyers who currently make public service contributions would cease to do so simply because others were required to join them. As to lawyers who do not volunteer but claim that required service would lack moral value, David Luban has it right. "You can't appeal to the moral significance of a gift you have no intention of giving."<sup>10</sup>

Opponents' other moral objection to mandatory pro bono contributions involves the violation of lawyers' own rights. From such critics' vantage, conscripting attorneys is a form of "involuntary servitude" and a taking of property without just compensation.

Neither the legal nor the moral basis for such objection is convincing. A well-established line of precedent holds that Thirteenth Amendment prohibitions extend only to physical restraint or a threat of legal confinement and that uncompensated public service requirements are permissible as long as the amounts are not unreasonable. From a moral perspective, requiring the equivalent of an hour a week of uncompensated assistance hardly seems like slavery. Michael Millemann puts the point directly:

It is surprising, surprising is a polite word, to hear some of the most wealthy, unregulated, and successful entrepreneurs in the modern economic world invoke the amendment that abolished slavery to justify their refusal to provide a little legal help to those, who in today's society, are most like the freed slaves.<sup>11</sup>

The stronger arguments against pro bono obligations involve pragmatic rather than moral concerns. Many opponents who support such obligations in principle worry that they would prove ineffective in practice. A threshold

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problem involves defining the services that would satisfy a pro bono requirement. If the definition is broad, and encompasses any charitable work for a nonprofit organization or needy individual, then experience suggests that poor people will not be the major beneficiaries. Most lawyers have targeted their pro bono efforts to friends, relatives, or matters designed to attract or accommodate paying clients, such as hospitals, museums, and churches. By contrast, if a pro bono requirement is limited to the low-income clients given preferred status in the ABA's current rule, then that definition would exclude many crucial public interest contributions, such as work for environmental, women's rights, or civil rights organizations. Any compromise effort to permit some but not all charitable groups to qualify for pro bono credit would bump up against charges of political bias.<sup>12</sup>

A related objection to mandatory pro bono requirements is that lawyers who lack expertise or motivation to serve underrepresented groups will not provide cost effective services. In opponents' view, having corporate lawyers dabble in poverty cases is an unduly expensive way of providing what may be incompetent or insensitive assistance. The performance of attorneys required to accept uncompensated appointments in criminal cases does not inspire confidence that unwillingly conscripted practitioners would provide adequate representation.<sup>13</sup>

Requiring all attorneys to contribute minimal services of largely unverifiable quality cannot begin to satisfy this nation's unmet

legal needs. Worse still, opponents argue, token responses to unequal access may deflect public attention from the fundamental problems that remain and from more productive ways of addressing them. Preferable strategies might include simplification of legal procedures, expanded subsidies for poverty law programs, and elimination of the professional monopoly over routine legal services.

Those arguments have considerable force, but they are not as conclusive as critics often assume. It is certainly true that some practitioners lack skills and motivation to service those most in need of assistance. But the current alternative is scarcely preferable. If a matter is too complex for a nonspecialist lawyer, then those who cannot afford any attorney are unlikely to do better on their own. To be sure, providing additional government subsidized legal aid by poverty lawyers would be a more efficient way of increasing services than relying on reluctant dilettantes. But the budget increase that would be necessary to meet existing demands does not seem plausible in this political climate. Nor is it likely, as critics claim, that requiring pro bono contributions would divert attention from the problem of unmet needs. Whose attention? Conservatives who have succeeded in curtailing legal aid funds do not appear much interested in increasing representation for poor people, whether through pro bono service or government-subsidized programs. And as earlier discussion suggested, exposing more lawyers to the needs of poverty communities might well increase support for crucial reform effort.

Moreover, mandatory pro bono programs could address concerns

of cost effectiveness through various strategies. One option is to allow lawyers to buy out of their required service by making a specified financial contribution to a legal aid program. Another possibility is to give credit for time spent in training. Many voluntary pro bono projects have effectively equipped participants to provide limited poverty-law services through relatively brief educational workshops, materials, and accessible backup assistance.<sup>14</sup>

To make adequate judgments about mandatory pro bono, we need more experimentation and more research on the few local programs now being administered. But in the absence of further data, there is strong argument for trying pro bono requirements, even if they cannot be fully enforced. At the very least, such requirements would support lawyers who want to participate in public interest projects but work in organizations that have failed to provide adequate resources or credit for these efforts. As to lawyers who have no interest in such work, a rule that allowed financial contributions to substitute for direct service could materially assist underfunded legal aid organizations.

In any event, however the controversy over mandatory pro bono service is resolved, there is ample reason to encourage greater voluntary contributions. Lawyers who want to participate in public interest work are likely to do so more effectively than those who are fulfilling an irksome obligation. How best to encourage a voluntary commitment to pro bono service demands closer scrutiny.

**Deborah L. Rhode** is a Professor and the Director of the Keck Center on Legal Ethics and the Legal Profession at Stanford Law School.

(see footnotes on page 36)



## From the Chair...



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

During the 1999 ABA Annual Meeting in Atlanta, the ABA Commission on Multidisciplinary Practice (MDP) submitted a recommendation to the ABA House of Delegates that is of great significance and interest to the Commission on IOLTA. It provides in part that attorneys should be permitted to deliver legal services through a multidisciplinary practice and that attorneys should be permitted to share legal fees with non-lawyers, subject to certain safeguards that prevent erosion of the profession's core values.

The Commission on IOLTA voted to submit written and oral comments to the Multidisciplinary Practice Commission, and on Sunday, August 8, 1999, I gave oral testimony to the MDP Commission outlining our position on the recommendation. Our comments took no position on the broad issues that the MDP proposal considers. They did take the position, however, that if MDPs become widely accepted, it is vital that IOLTA-eligible funds continue to be deposited in IOLTA accounts. The current recommendation includes no mention of IOLTA.

Another potential problem that we identified in our comments is the difficulty in determining which

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## Texas IOLTA Trial Held in Austin

The trial of *Washington Legal Foundation, et al. v. Texas Equal Access to Justice Foundation, et al.* was held on September 22-23, 1999, before U.S. District Court Judge Nowlin in the U.S. District Court for the Western District of Texas in Austin. Plaintiffs presented three witnesses and defendants presented five in this two-day bench trial. At the conclusion of all testimony, Judge Nowlin set the following schedule for post-trial briefs: plaintiffs' brief is to be filed by November 1, 1999 and defendants' brief by November 29, 1999. The Court indicated that it planned to issue its ruling in the case by no later than January 1, 2000.

Richard Samp and Michael Mazzone represented the plaintiffs. Darrell Jordan, Beth Bivans and David Schenck of Hughes & Luce and Rich Johnston and Francine Rosenzweig of Hale and Dorr represented the defendants.

Judge Nowlin made clear from the beginning that he planned to hear all evidence that either side wanted to present and that as the trier of fact, he would determine what was relevant and credible. As a result, he overruled all objections to the entry of documents into evidence or the testimony of witnesses.

As previously reported in *Dialogue*, on June 15, 1998 under the caption *Phillips, et al. v. Washington Legal Foundation, et al.*, the U.S. Supreme Court issued a 5-4 decision ruling that interest earned on client trust 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 and thus did not rule on the constitutionality of the IOLTA program. It remanded the case to the Fifth Circuit Court of appeals, which in turn remanded it to the U.S. District Court.

Judge Nowlin set a post-trial briefing schedule as follows: plaintiffs' brief is due November 1, 1999 and defendants' brief is due November 29, 1999.



## Grantee Spotlight . . . The Massachusetts Law Reform Institute

by Judith Liben

### One Video Worth a Thousand Law Suits?

Imagine you are a low wage earner with two little kids. You live in terrible and dangerous housing that eats up most of your meager income, and the landlord has just raised the rent for the second time

this year. One November day you hear that a large housing authority will soon be taking applications for its Section 8 housing subsidy program. A Section 8 voucher just might be the answer to your family's prayers.

You soon learn, however, that

there is only one way to get an application. The housing authority will not take requests for applications over the phone, and as a result you have to go in person and wait in line. In addition, the housing authority will be open for

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### Members of the ABA Commission on IOLTA During Its May 1999 Meeting in Scottsdale, AZ

Left to Right: **Matthew Feeney**, **L. David Shear**, Former Board Liaison **L. Jonathan Ross**, Chair **Herbert S. Garten** (front), **Hon. Lora Livingston**, **Ellen Mercer Fallon**, **Ruth Ann Schmitt**, **Robert Bevan** (front), Former Member **Joseph S. Genova**.

### From the Chair...

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professional in a multidisciplinary practice should hold a given client's money, especially in those situations in which one client is represented by a lawyer and a non-lawyer in the same or a related matter. Our position is that all client trust funds held in a multidisciplinary practice should be subject to the rules governing the safekeeping of client property and lawyer trust accounts, including the IOLTA rules.

On Tuesday August 10, the House of Delegates held a limited debate on this issue. At the conclusion of the debate, it voted to postpone final action on

the recommendation. The House stated that no changes have been or will be made to the Model Rules of Professional Conduct "unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients."

The Commission on IOLTA will continue to monitor this issue closely.

On October 30-31, 1999, the Commission will meet in Portland, Maine. As has become our custom, we have invited representatives from the IOLTA program to join us for a portion of the meeting. This session will give us an opportu-

nity to discuss, brainstorm, and network on an array of issues. It also will provide an opportunity for the Commission to publicize the activities in which it is engaged and the services that it can provide.

Last but not least, I would like to welcome Lynn Tsugie Nagasaki to the Commission. Lynn currently is the President of the Oregon Law Foundation, the entity that administers IOLTA revenues in the state. She brings a wealth of experience and expertise to the Commission (see story on page 25), and we are looking forward to her contributions on the Joint Commission/NAIP Meetings and Training, and Resource Development/Banking Committees.

## Spotlight. . .

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just five hours on one designated day. It is a "first come first served" system: the applicant who meets all the criteria and who is first on line will be the first to receive the certificate. You know you have to get there as early as possible in order to maximize your chances.

So, even though it means missing a day's pay, you call your boss and say that you cannot come to work on the application day. Then you borrow a car and pack up the kids with food, diapers, sleeping bags, etc. Despite the chilly November air, you go to the housing authority at 9 or 10 at night, to be sure of a place at the front of the line the following morning. But when you get there, there are hundreds of families ahead of you, and your heart sinks as you see how low on the list you will be. Since you are desperate, you decide to stick it out.

There are no housing authority staff on the scene, and there is no one to organize the hundreds of people on the line that feels so chaotic as it grows longer and longer in the middle of the dark night. The kids have to go to the bathroom, but there are no toilets, and you are afraid to lose your place in the line to find one. Your family is tired and scared as you try to navigate a scene that feels like something from a third world country rather than America in its boom time.

Finally, at 7:00 a.m. there is almost a stampede as someone from the housing authority arrives. Hours later you manage to squeeze in to the office and get an application. You take it home to fill out and gather the documents that the housing authority requires, and



PHOTO BY RICHARD YOUNKER

only later do you learn that your place on the list depends on when you submit the application, note when you receive it. Months later you get a notice saying you are number 381 on the list, and it will be several years before your name is reached.

Until recently, this story was repeated scores of time each year as most of the 127 Massachusetts local housing authorities administering Section 8 used competitive "first come first served" procedures to take names for desperately needed public and subsidized housing. For years, legal services lawyers, spearheaded by the Massachusetts Law Reform Institute (MLRI), tried different approaches to change these practices. It had meetings with local housing authorities and HUD. It described the problems and suggested practical, efficient and less traumatic ways of opening up waiting lists. In a few cases, it filed individual complaints with HUD. Although MLRI succeeded in the individual cases, the general system remained stubbornly stuck in its ways.

There were notable exceptions: The Worcester Housing Authority and a few others voluntarily came up with creative ideas, including publishing a pre-application in the newspaper and allowing anyone to make copies and mail them in, with applicants to be chosen by lottery. Although legal services lawyers showed these models to other housing authorities, most refused to change their procedures.

After observing several of these "openings," the MLRI staff was struck with how desperately people needed affordable housing. So one autumn in 1997, folks from MRLI and the Massachusetts Coalition for the Homeless took a camera crew to a Section 8 opening at the Fall River Housing Authority. By 3:00 a.m. there were hundreds of families in a sort of line, almost all with children, and by 5:00 a.m. more than 1,000 applicants had braved through conditions to join the process. The camera crew filmed and interviewed scores and scores of people. The result is a powerful (and award winning) ten-minute

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## Spotlight...

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video called *End of the Line*.

When we saw the finished video, we knew it would be a good way to convince decision makers that there really was a housing crisis in Massachusetts and that the shortage of affordable housing leads to scenes like those in Fall River. But the video also showed the illegality of the “first-come” procedure. On tape, folks in wheelchairs, with canes, with walkers and folks with mental and emotional disabilities were waiting on line. We subsequently learned of many others with disabilities who did not even try to apply because the procedure was so physically and emotionally grueling. It became clear not only that the process was daunting for all applicants but that it also illegally discriminated against people with disabilities.

So, with the video as evidence, and with legal services assistance, two social service agencies filed an administrative complaint with the fair housing office at HUD, claiming that the Fall River procedure discriminated against people with disabilities, in violation of several federal laws. At the same time, legal services lawyers met with HUD, urging the agency to do something systematically about this issue—i.e., not just to rule on one fair housing complaint while the problems persisted throughout the state.

Gradually, the Massachusetts Law Reform Institute started getting results. First, in the case of the Fall River opening, the HUD complaint was settled with the necessary changes to make the



PHOTO BY RICHARD YOUNKER

system fairer for everyone who applied to that housing authority. In March of 1998, the HUD Boston office wrote to all Massachusetts housing authorities with Section 8 programs with concrete guidelines on how to open waiting lists and avoid both legal and practical problems. HUD's notice adopted most of MLRI's suggestions and stressed that a lottery or random-choice technique was preferable because “any use of chronology in the course of re-opening a waiting list includes a risk that some person with disabilities will not have equal access to the certificates or vouchers.” Several housing authorities and advocates from around the country have used this material as the basis for reforming their own application procedures.

The advocacy of legal services staff and clients has almost completely eliminated the chaotic application lines at housing authorities in Massachusetts. Most Section 8 selections are now made by lottery, and most housing authorities stress in their public

notices that there is no necessity to get in early for applications.

In response to other complaints brought by MLRI and Southeastern Massachusetts Legal Assistance Corporation, many housing authorities are also keeping their application period open for several days or weeks, simplifying the procedure and allowing people to apply in person, by mail or by phone (not yet by e-mail!). Several housing authorities now confer with MLRI or their local legal services offices to avoid the pitfalls of past openings. Others have been willing to modify their systems when MLRI

contacted them to explain the legal problems.

Those in legal services sometimes talk about multi-forum advocacy. Well, this was a case of multi media advocacy that has helped thousands of clients and made life easier for the housing authorities and their staff, who no longer have to fret about how to oversee thousands of applications in one day. Of course, straightening out the Section 8 application process does not get to the basic problem: the lack of decent and affordable housing for low-income people. As we enter the new millennium, with rents so high and vacancies so low, housing advocates have their work cut out for them. For now, though, we are proud that we have succeeded in at least making the application process fairer, kinder and saner for everyone.

**Judith Liben** is a housing attorney at Massachusetts Law Reform Institute and Coordinator of the Housing Task Force.



## IOLTA News

### Lynn Tsugie Nagasako Joins the Commission on IOLTA

Lynn Tsugie Nagasako has been appointed as a member of the ABA Commission on IOLTA. She replaces Joe Genova, who had a distinguished tenure on the Commission. Nagasako is an Assistant Attorney General in the Salem, Oregon office of the Department of Justice, General Counsel Division, Business Transactions Section. Prior to her tenure at the Department of Justice, Lynn worked for thirteen years as the Vice President and Senior Counsel for the First Interstate Bank in Portland, Oregon. Her extensive banking experience and expertise will be invaluable to the Commission.

A graduate of Columbia Law School and Princeton University, Nagasako currently serves as President of the Oregon Law Foundation, the IOLTA entity in the state. She also has been a board member of the Multnomah Bar Association, a board member of the Asian Pacific American Law Association of Oregon, the Vice



President of the Campaign for Equal Justice and the Co-Chair of the Oregon State Bar Interim Civil Legal Services Task Force.

Nagasako will serve on the Joint Commission/NAIP Meetings and Training, and Resource Development/Banking Committees.

Please join *Dialogue* in welcoming Lynn Tsugie Nagasako to the ABA Commission on IOLTA.

### Lorna Blake New President of National Association of IOLTA Programs

Lorna Blake of New York has been elected as President of the National Association of IOLTA Programs (NAIP). In addition to Blake, the NAIP Board has three new members: Tina Abramson (New Hampshire—Secretary), Angie Cook (Mississippi), and Faith Rivers (South Carolina). They replace Barri Bernstein (Tennessee), Bob Clyde (Ohio), and Len Horton (Georgia—Secretary). Blake replaces Jayne Tyrrell (Massachusetts), who remains on the NAIP Board as Past-President.

Blake has been Executive Director of the Interest on Lawyers Account (IOLA) Fund of the State

of New York since its inception in 1983. Prior to that she was the Assistant Regional Director of the New York Office of the Legal Services Corporation. Blake is a former board member of the National Association of IOLTA Programs and the New York Regional Association of Grantmakers' Committee to Increase and Diversify Philanthropy in the region. Among other activities, she is a current member of the State Planning Assistance Network, a joint effort of the American Bar Association and the National Legal Aid and Defender Association as well as a member of the Fund for New Citizens Review Committee. Blake graduated from Trinity College in Hartford, Connecticut and holds a Masters Degree in business administration from New York University.

The NAIP President has indicated that the new and continuing issues on which the organization will concentrate include: technologies for programs and grantees, collaborative funding, state planning, and IOLTA leadership issues. A Soros grant will continue to fund the position of Consultant Lucy Metting, who is working on fellowships for legal services, collaborative funding and the Replication of Innovative Programs for Legal Services (RIPLS) project.

## Become an ABA Associate

You don't have to be a lawyer to enjoy the benefits of affiliation with the American Bar Association or to give a meaningful voice to your support of the ABA's efforts on behalf of legal services.

A recent change in the ABA's membership structure makes it possible for professionals involved in supporting the delivery of legal services to become ABA Associates.

To learn about what becoming an ABA Associate means to you, see the full-page ad on page 35. You can enroll by completing and returning the form on page 35 or by visiting the ABA's website at <http://www.abanet.org/members/info/associates.html>

## A Brief History of Legal Services

*Editor's note: the following is a transcript of the Keynote address that Clinton Bamberger gave during the plenary session of the 1999 Summer IOLTA Workshops. Mr. Bamberger served as the first National Director of the Legal Services Program at the Office of Economic Opportunity in 1965. Later, he became the Executive Vice President of the Legal Services Corporation from its beginning in 1974 until 1979.*

**T**he rich and the poor stand equal before the law. The government should assure that the poor have access to the protection of the law. These precepts inspired the beginning of the legal services program 34 years ago in the Office of Economic Opportunity and its continuance in the Legal Services Corporation twenty-five years ago.

The federal program to support legal services for the poor was established to provide for the poor the same rights and protection under law as is available for anyone who can afford a lawyer. Lawyers would do for the poor what lawyers do for others: attend to immediate difficulties and fashion new judicial and legislative solutions for recurring problems.

The opposition to federally funded legal services for the poor arose early. A capsule of history tells us that the opposition began in ignorance about the origin of governmental power and in greed for unjust business profits from the vulnerable poor. The opposition was rooted in an erroneous understanding of a fundamental tenet of our government and in untrue accusations against legal services lawyers.

In 1967 Senator George Murphy

of California, a former movie actor, was the first major opponent. The Senator offered an amendment to the legal services enabling act to prohibit legal services lawyers from representing the poor in an action "against any public agency of the United States, any State, or any political subdivision thereof." The amendment failed.

*The rich and the poor stand equal before the law. The government should assure the poor have access to the protection of the law.*

A majority of the Senate understood that the government of a democratic republic is subject to the will and the grievances of all of the people, the poor as well as the rich.

The opponents of legal services did not go away. In 1971 Governor Reagan, another former movie actor, vetoed a legal services grant by the Nixon administration to the California Rural Legal Assistance Program. The lawyers of CRLA were very effective advocates for the farm workers victimized by illegal practices of overreaching growers. The growers had been strong supporters of Governor Reagan's campaign for Governor.

His office filed in support of the veto a 283-page report that itemized 150 charges of misconduct by the lawyers and staff of CRLA. Frank Carlucci, the Director of Nixon's Office of Economic Opportunity, appointed a blue-ribbon commission of state supreme court justices, all Republicans as I remember, to investigate the charges. The commission heard testimony from 165 witnesses and concluded that the charges were absolutely unfounded. They complimented CRLA for providing legal assistance to the poor in a "highly competent, efficient, and exemplary manner." Reagan withdrew the veto. Neither he nor his staff ever forgot the public exposure of their false accusations.

Ten years later in 1981, President Reagan attempted to abolish federal assistance for legal aid. On the same day Reece Smith, the President of the American Bar Association, held a press conference to reaffirm the ABA's support of the Legal Services Corporation. Three weeks later Reece led 120 lawyers representing 60 bar associations to Washington, DC. They met with half of the members of the Congress and testified before several committees to urge funding for the Legal Services Corporation.

When the Legal Services Corporation began in 1975 it continued the system for providing legal services that had worked well since it was put in place by OEO in 1966: grants to independent, locally-controlled, not-for-profit law offices. The Corporation took charge of an annual appropriation of \$71.5 million. In the first years of its existence the Corporation

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## Brief History

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obtained increased appropriations to strengthen existing offices and to establish new offices in neglected areas. In 1981, over a century after the founding of legal aid in the United States in 1876, legal assistance was for the first time available for the poor in every county in the United States. The appropriation rose from \$71.5 million in 1975 to \$321.2 million in 1981.

When the response of the legal profession and the public prevented the destruction of the legal services program, the opponents of government funding for legal assistance for the poor regrouped. If they could not eliminate the Legal Services Corporation, they would cripple it by appointing members of its governing board who were opposed to the program, by severely reducing the appropriation and by restricting the legal work that could be done for poor people.

In the 1980s the opposition to legal services attacked the annual appropriations. A series of Reagan White House gaffs and illegal and unacceptable appointments to the Corporation's board delayed the takeover by the Reagan administration until 1983. From that time the appropriations have never increased sufficiently to meet the increasing unmet need. The legal needs of the poor multiplied as the Reagan administration restricted or eliminated social programs. In the few years when there were slight increases in the appropriations, the increased costs of inflation prevented offices from maintaining the existing level of service, much less, expanding. In 1996 legal services offices were devastated by a one-third reduc-



tion of the appropriation—from \$415 million to \$278 million!

In 1981, as the Reagan Congress chopped away at the budget for legal services, the first IOLTA plan became operational in Florida. You were critically important then, and you continue to be critically important today. IOLTA plans, courts, legislators and bar associations have found important additional sources of revenue for legal services. IOLTA plans are second only to the Federal Government in the financial support for legal assistance to the poor.

Federal funding will never be sufficient to meet the needs for legal assistance for all of the poor. In the current issue of NLADA's publication, *Cornerstone*, Alan Houseman, Director of the Center for Law and Social Policy, concludes that the limitations on domestic federal spending and the sharp divisions among political

leaders about whether there should be a federal legal services program and, if there is, how it should be structured will prevent the federal government from meeting the need in the foreseeable future. Alan affirms that state and local support is essential for the future of legal services for the poor.

The ABA has been the leader in the policy and political struggles of legal services for the poor. IOLTA plans have centered their attention and energy on mustering additional fiscal resources in a partnership between the legal profession, legislators, banks and business leaders.

Now with a supportive President in the White House and a Board and staff of the Legal Services Corporation who believe that the poor should have competent legal assistance, I sense some relaxation among those who have fought so

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## Brief History

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long for legal services. When legal services survived the vicious onslaughts of the Reagan administration we lowered our guard and raised the threshold of our outrage over the atrocities inflicted on legal services by the far right.

The Congressional appropriation for legal services is still woefully inadequate. Last year the Congress appropriated \$300 million. For next year, the Corporation asked for a modest increase to \$340 million. The Senate decided to hold the appropriation at the \$300 million level. Yesterday the House approved \$250 million: a 26 percent reduction.

The restrictions placed on the practice of legal service lawyers since 1996 are shameful. The most shameful is the prohibition against challenges to illegal welfare reform laws and regulations. If a welfare reform law is unconstitutional or a regulation is illegal, the poor may not take the matter to court with a legal services lawyer. Some protections of the Constitution that guard you and me do not shield the poor.

Despite the restrictions, legal services lawyers continue to find justice for poor clients. The intelligence, creativity and tenacity of legal services lawyers has, to their everlasting credit, carried them and their clients over or around these hurdles.

The failed argument of Senator Murphy 30 years ago that legal services lawyers should not be permitted to question the legality of government action has returned in the ban on representation to challenge illegal welfare reform laws and regulations. The accusations fabricated by Governor Reagan's staff to protect illegal

business practices from review by courts in actions brought by legal services lawyers have succeeded in the ban on class actions by the poor.

Legal services for the poor began in 1965 as a bipartisan program. It continues to have bipartisan support. For too long the terms of the debate have been set by the worst of the opponents. They do not speak for a majority of conservatives or a majority of anybody. I have a view that legal services has been the diversionary bone that conservative national administrations have thrown to the rabid

*IOLTA  
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must be the catalysts  
of new support for  
legal services.*

right to keep them in the kennel and away from attacks on the mainstream conservative agenda.

The legal services lawyers in the thick of the fight to save and strengthen legal services have been beleaguered and sometimes not certain of the strength of their support. Too often legal services lawyers and their allies have accepted compromises to preserve the program for a better day; compromises they might not have accepted if they were confident of stronger political support.

In times of other crises, lawyers, business leaders, labor unions and

bar organizations came together to defeat threats to legal assistance for the poor. In 1970, when the very survival of federal support for legal services was threatened, Mickey Kantor, a former lawyer for migrant farm workers and later the U.S. Trade Representative and Secretary of Commerce, led a coalition of business leaders, educators, lawyers, labor, and social service providers to advocate successfully for the creation of the Legal Services Corporation.

The time has come again to organize against the continuing attacks on effective lawyer advocacy for the poor. IOLTA organizations have been the leaders in increasing the resources for legal services for the poor. Now you can be the catalyst of renewed public and political support for legal services.

IOLTA organizations can initiate the conversation to rally broad and renewed public and political support for legal assistance for the poor. You talk to and collaborate with lawyers and their professional organizations, with banks and business leaders, with legislators and judges, with legal services lawyers and supporters. Many of you are involved in NLADA's Justice '99 Campaign, the grassroots network to advocate for Congressional support of a decent appropriation for the Corporation in the current Congress. Your conversations to reinvigorate broad public and political support for access to justice for the poor can begin here in Atlanta with the ABA and NLADA leadership and continue at home with bar organizations, labor unions and legal services programs in your respective states.

The task is well worth the doing. The prize is justice for the poor.



## From the Chair...



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

I want to use my chair's column in this issue to bring readers up to date on this year's "issue du jour" raised by opponents of the Legal Services Corporation.

Over the past few months, the Legal Services Corporation and several of its local program grantees have again come under attack by the minority of vocal opponents of legal services. This year those opponents of the program have complained about the accuracy of the case reporting statistics kept by LSC for its 1997 fiscal year.

The LSC realized, as early as late 1997, that its system for obtaining information about the types and quantity of services provided by its grantees no longer accommodated the diversity of types of services provided. The twenty-year-old system contained ambiguities in the definition of a "case" and did not allow accurate reporting of grantees' work in providing brief service and advice. LSC, through issuance of new reporting guidelines in 1998 and 1999, has attempted to clarify reporting requirements. It also asked its own, independent, Inspector General to examine program compliance with reporting requirements.

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## Room for Improvement

by Hon. Sandra Day O'Connor

*Editor's note: This article is adapted from a speech the author gave last May in Washington, D.C., at the National Conference on Public Trust and Confidence in the Justice System, sponsored by the American Bar Association, the Conference of Chief Justices, the Conference of State Court Administrators, and the League of Women Voters. It first appeared in the September 1999 issue of Student Lawyer and is reprinted here with permission.*

"Although public confidence in the justice system is relatively high, several aspects of the courts call for reform."

I work in a building that bears a marble inscription over the entrance that says "Equal Justice Under Law." Everyone involved in our profession (including law students preparing to enter it) would do well to remember that public trust in the justice system is critically important as a dimension of equal justice under law.

Two 1999 national surveys by the American Bar Association and the National Center for State Courts reveal a fairly high level of public confidence in our courts. There is a widely held belief that, although not perfect, our justice system is one of the best in the world. The public's faith in our system has increased over the last 20 years, even as confidence in other public institutions has declined. But the surveys also show substantial dissatisfaction in some areas and many opportunities for increasing public trust in the justice system.

Among the areas that affect public attitudes toward the justice system are juvenile and family courts, bias in the courts and court-community relations, the jury system, and access to justice—issues of my own longtime concern. Many other issues are certainly as important. My failure to include them here by no means indicates that I consider them

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## From the Chair...

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The LSC Inspector General selected several grantees for audit. He submitted a report early this summer, indicating that for a variety of reasons—ranging from computer errors to erroneous interpretations of LSC guidelines—some of those grantees had made reporting errors leading to over-reporting of the numbers of cases handled. He found that in no case had there been fraud or deliberate over-counting of cases.

Opponents of legal services used these findings to grossly distort what had happened. This led to a request by some members of Congress for an audit by the federal General Accounting Office (GAO). The GAO examined records of the five largest LSC grantees. Its findings were consistent with those of the LSC Inspector General: The GAO report supported none of the allegations by opponents of legal services that there had been serious misconduct by programs. The GAO found no evidence of fraud, misuse of federal resources, or deliberate wrongdoing by any program.

It is clear that local legal

services programs have not acted in bad faith. Local programs have no financial incentive to deliberately overstate the number of cases handled. Program funding is not tied to the number of cases handled or reported. Funding is based solely on the low-income population living within a service area.

What happened is that the Inspector General and the GAO uncovered problems with LSC's 20-year old case reporting system. LSC was already aware of these problems, and has been taking steps to modify and improve its guidelines and data-collection system since early 1998. There have been many changes in the practice of law and the system for delivering legal services to the poor over the past 20 years. Legal services programs have adopted a number of innovative methods of serving more clients with limited funds—through hotlines, clinics and other formats that make it difficult to define when a matter may fairly be counted as a "case" within LSC's traditional reporting definition. Changes have also been imposed on the records that grantees must keep to verify that each client is eligible for service. All of this has led to a broad

initiative now underway by the LSC to adapt its case reporting system and to work with its grantees to improve the accuracy of record-keeping and reporting. We applaud this initiative.

Most importantly, we must not lose sight of the essential service provided by LSC lawyers for the most vulnerable members of society. Local legal services offices help millions of people each year with legal problems that can prevent these individuals from becoming productive members of society. This is true even if the paperwork has been deficient in some cases, and those cases cannot be officially "counted" by LSC. It is critical that we continue to work for adequate funding for LSC so victims of domestic violence can escape abuse, patients can receive adequate health care and other poor clients can get the help they need.

The ABA is proud of its long-standing support for a strong federal program to provide legal services to the poor. That program has helped millions of people over the past 25 years. Only through its efforts can we fulfill the promise of access to justice, and full participation in our society, for all.

### 1999 Harrison Tweed Award Recipients



Ramon Arias (left) and Doreen Dodson (second from right) present the 1999 Harrison Tweed Award to representatives of the Saginaw County (MI) Bar Association (l-r): Marilyn Hackett, D. Larkin Chenault, John Lozano and Alfred Butzbaugh.



Ramon Arias (left) and Doreen Dodson (middle) present the 1999 Harrison Tweed Award to representatives of the Washington State Bar Association (l-r): M. Wayne Blair, M. Janice Michels, and Chief Justice Richard P. Guy.

## Improvement

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unworthy of attention.

The first item on my list of concerns is the need to strengthen juvenile and family courts. This need often has been identified within the context of improving public trust and confidence in the system. As a former judge with the Superior Court of Maricopa County, Arizona, I have had the experience of dealing with family issues. Courts that hear family and juvenile cases touch the lives of many people and are often called upon to mend social bonds and to keep the community's social fabric intact. As the courts' involvement in the area of family and juvenile justice continues to grow, it is likely that public perception of courts will be increasingly influenced by how well these courts function.

The National Center for State Courts' public opinion survey demonstrates that much improvement is needed. The survey reported that a majority of Americans believe that court handling of family and juvenile cases is merely fair or poor. Only one-third of the public rates the courts as doing either an excellent or good job with juvenile cases. This rating, which is lower than that for court handling of civil and criminal cases, indicates that considerable work needs to be done in the juvenile and family areas.

The low public confidence in these courts reflects in part the difficulty of their tasks. For judges, family cases present special challenges because their role in such cases is substantially different from those in criminal and civil courts. Juvenile judges by necessity become more involved in

*Public confidence in the courts is essential to our system of government.*

practical problem solving, and they may identify crucial needs for social services. In child abuse cases, the courts provide a protective shield for children and are often called upon to make decisions that fall outside the normal scope of legal training and experience. Juvenile courts require specially skilled and often more expensive staff support to help judges handle this nontraditional role. Consequently, the juvenile judge may spend considerable time overseeing the court's staff support system.

Family and juvenile court judges function in a forum charged with human emotions. They are called upon to make decisions that profoundly affect families. Perhaps nothing is more difficult than terminating parental rights. And the emotional trauma of the family court is often exacerbated when the litigants choose to represent themselves. Indeed, judges working in this area have to operate in what is increasingly becoming a lawyerless environment. The situation is sometimes further complicated by linguistic problems. This was particularly true in my home county, where there is a large

Spanish-speaking population.

Another reason that public perception concerning the handling of juvenile cases is negative may be related to my next point—that there is a rather widespread belief that African-Americans are not treated as fairly as other groups. Statistics of the racial characteristics of juvenile offenders reflect that substantially more African-American young people are charged with delinquency or crime than their numbers in the general population would indicate. The reasons for this disparity need to be examined, and the process of the courts must be made as fair and even-handed as we can make it.

A second issue that should be of concern to us all is the belief of African-Americans that our justice system does not serve them well. Two-thirds of the African-Americans surveyed by the National Center for State Courts believe that courts are out of touch with the community and that African-Americans are treated somewhat or far worse than other racial groups. Moreover, the survey indicated that members of other racial groups agreed that African-Americans are treated less fairly by the courts than other groups. Clearly this a problem that must be addressed.

As we near the end of the 20th century, we have made great strides toward the racial integration of our society, the pursuit of gender equality, and the protection of fundamental rights and freedoms. But legal change is not always enough. The *perception* that African-Americans are not accorded equality before the law is pervasive. It requires us to take action at every level of our legal system, especially at the local level.

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## Improvement

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Across the country, courts are establishing closer relations and better communication with the minority communities they serve. But concrete action must be taken to ensure that court services do not operate in ways that perpetuate racial or gender bias.

The problem of perceptions is not confined to the African-American community. The surveys reveal that a majority of Hispanic-Americans and 40 percent of whites also feel that courts are out of touch with the community. There are, of course, ethical and prudential limits on the extent of interaction of judges with the public, but these constraints on judges may indeed permit a more active role for judges in the community than is common. I hope the judiciary continues to explore the permissible scope of court-community relations and examines the various ways these relations can be strengthened.

The jury system is another area requiring attention within the context of strengthening public attitudes toward the courts. Close to 25 percent of those surveyed by the National Center for State Courts had been called for jury service. Almost 70 percent of those surveyed by the ABA consider the jury the most important component of the justice system. Most people who actually visit the courts do so when they are called for jury service. Juries usually do their job very well, and on occasion they show extraordinary courage in delivering a verdict. But at times they can also disappoint us. Mark Twain once complained that juries had become "the most ingenious and infallible agency

for defeating justice that human wisdom could contrive."

Nevertheless, we will continue to rely on juries. Our federal Constitution and all of its state counterparts guarantee the right to trial by jury. It is fundamental to our system of justice. But there are serious problems with our handling of juries today. Solving these problems can be ensured if every state will consider some needed changes. Some states have already done so.

Three aspects of the jury system need particular attention. First, the conditions of jury service. When citizens are called for jury service, they often view it as a burden rather than a privilege. And for good reason: When they arrive at the courthouse, they are frequently treated more like sheep than people, and the system can seem designed to disrupt their lives to the maximum possible degree. Second, jury selection. The process of selecting a jury out of the citizens called for jury service on a particular day has changed from a necessary safeguard against potentially biased jurors to a way for highly paid jury consultants to attempt to ensure a jury favorable to the side paying their fees. And third, the conduct of the trial itself. Too often, jurors are allowed to do nothing but listen passively to the testimony, without any idea what the legal issues are in the case. In many

instances, they are not allowed to take notes or participate in any way. Finally, they are usually read a virtually incomprehensible set of instructions and sent into the jury room to reach a verdict in a case they may not understand much better than they did before the trial began.

The jury system is not only central to our process, it is also the primary link between the courts and the community. The impressions that jurors receive during their jury service can have a significant impact on public perceptions of the justice system. States such as Arizona and New York have enacted reforms to increase juror participation at trial and to increase the understanding and respect that citizens have for

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## Improvement

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our system. The time jurors spend in jury service is perhaps our best opportunity to instill in them a sense of trust in the fairness and competence of the justice system.

For this reason, I urge every state that has not recently done so to examine its jury system in order to make it more representative and effective. At the very least, every state should examine and perhaps narrow the use of peremptory challenges in which jurors are excused with no reason given. Widespread use and abuse of peremptory challenges has contributed to the impression of unrepresentative juries. It has also given rise to so-called "scientific" jury selection, which some say can be used to ensure a verdict. Moreover, the use of unlimited "for cause" challenges to prospective jurors, coupled with extensive media coverage of some cases, leads courts to search for the most ignorant and poorly informed citizens to serve as jurors in high-profile cases because only those citizens are likely to have avoided forming any opinions.

With respect to jurors selected for service, they should be given a clear and understandable set of instructions on the law at the beginning as well as the end of the case. They should be allowed to take notes and to let the judge know of questions they would like asked. Some states now permit jurors to discuss aspects of the case before they are sent for final deliberations. All these issues and more should be considered.

A fourth area of concern is access to justice. According to the survey data, a great majority of people do not think that justice is

affordable. They attribute this, in large part, to the cost of legal services. The data also show, perhaps not surprisingly, that confidence in the courts increases with income level.

The Sixth Amendment to the U.S. Constitution guarantees the accused the right to assistance of counsel for his defense. The Supreme Court has held that this right includes the right to counsel without cost for all indigent defendants in danger of losing their liberty and on their first appeal of right. Congress has enacted a statute that provides for the appointment of counsel to represent indigent capital defendants in federal post-conviction proceedings. The clarification and expansion of the constitutional right to legal representation in criminal cases has produced systems to provide counsel to indigent criminal defendants. But these systems have not always proved sufficient.

Indeed, there has been increasing recognition that in capital cases, in particular, the availability and quality of representation is often inadequate. Recognizing these shortcomings, some states have begun taking steps to improve the level of representation in death penalty cases. But, of course, these initiatives address only one small part of the broader problem of inadequate counsel for the poor.

Indeed, this problem is not limited to criminal proceedings. Similar problems also plague civil proceedings. The economics of modern law practice excludes many individuals and small businesses from pursuing civil justice. Many solutions developed for representation of indigent criminal defendants are not practical or appropriate in civil cases. But in addressing the problems

of inadequate representation, we must not forget that there is also a pressing need to provide access to representation in civil cases to those who cannot afford it.

In large part because of the expense and difficulty of obtaining adequate representation, more people are resorting to self-representation. This can be risky for the litigants, who are often not properly prepared to present their legal claims, and burdensome for the courts, which are forced to make decisions in poorly argued cases. Courts across the country have developed a variety of programs to assist pro se litigants. Such efforts are laudable, and we should experiment with an array of programs. At the same time, we must continue to encourage alternative dispute resolution at early stages to resolve cases before they reach the courtroom. Previous surveys have shown significantly greater satisfaction with mediation and negotiation as a means of resolving civil issues than with a courtroom trial.

There are many possible ways we can work to broaden citizens' understanding and trust of our justice system. Public confidence in the courts is essential to our system of government. Indeed, it is what gives force to judicial decisions. This is why we must be aware of public attitudes toward our system of justice. And it is why we must seek to keep and build public trust. We can do this by working to create a just society. The justice system must provide for the fair, prompt, and proper resolution of the conflicts brought to it, and it must also work to help the public see what the system is doing and how it is being done.

**Hon. Sandra Day O'Connor** is a Justice of the US Supreme Court.



### An Historic Meeting

Clinton Bamberger (left) and John McKay (right) were the featured speakers at the 1999 Access to Justice Reception, which was held in conjunction with the 1999 ABA Annual Meeting in Atlanta. Sponsored by the ABA Division for Legal Services, the reception celebrated the 25th anniversary of the Legal Services Corporation (LSC).

Mr. Bamberger served as the first National Director of the Legal Services Program at the Office of Economic Opportunity. In addition, he was the first Executive Vice President of LSC. Mr. McKay currently serves as LSC President. Both gave inspiring speeches about the past, present and future of federally-funded legal services.

## ABA Commission on Advertising Changes its Name

The American Bar Association's commitment to balance the interests of law firm marketing with the legal profession's responsibility to professionalism is reflected in the renaming of the ABA Commission on Advertising to the ABA Commission on Responsibility in Client Development.

The commission, which is housed in the ABA Division for Legal Services, has three primary initiatives.

First, it serves as the only national clearinghouse on lawyer advertising, solicitation and marketing. The clearinghouse provides research and reports to lawyers and marketers involved in client development, as well as to policy-makers among the states who draft the rules that govern marketing.

Second, the commission advances aspirational goals by encouraging lawyers to approach client development in ways that enhance rather than detract from the profession's public image.

"Poorly done and irresponsible lawyer advertising can dissuade the legal profession by resulting in a lower image of those lawyers, while dignified campaigns can actually elevate the image of the lawyers," said William P. Smith III, commission chair.

Specifically, the commission is involved in expanding civility codes and professionalism reports to offer guidance to lawyers on their client development efforts.

The commission's third initiative is to work toward a balance between consumer protection and client development in creating policies for the use of emerging technologies in marketing legal services.

"The Internet enables lawyers to advertise in ways that were never even imagined a few years ago," said Smith. "The legal profession has a responsibility to make sure that potential clients obtain important information, but are not misled. Today's technology makes that goal far more complex."

The ABA established the Com-

mission on Advertising in 1977, shortly after the United States Supreme Court lifted the ban on lawyer advertising that had been imposed by the states, through their ethics rules, for most of the 20th Century.

Since then, the commission has conducted research, held public hearings, contributed to the policy of the ABA, gathered and circulated information from all sources, and sponsored and participated in programs to assist the organized bar, practitioners, academics and the media with client development issues.

The seven-member Commission on Responsibility in Client Development will continue that work.

For more information, contact William Hornsby, Staff Counsel, ABA Commission on Responsibility in Client Development, 312/988-5761, e-mail: [whornsby@staff.abanet.org](mailto:whornsby@staff.abanet.org), or visit the commission website at <http://www.abanet.org/legalservices/advertising.html>

# *A New Opportunity to Expand Your Options: Become an ABA Associate*

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By joining the ABA now **and indicating a special interest in "Access to Legal Services,"** you will also receive additional savings on Division for Legal Services products:

- A coupon for a significant discount on the registration fee for one of the select conferences and workshops sponsored through the Division for Legal Services during the 1999-2000 season.
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- Inclusion on the Division mailing list which guarantees your receipt of the *Dialogue* news magazine, and invitation to the annual Division for Legal Services Equal Justice reception and other events.

## **Here's how to enroll**

- Return the ABA Associate enrollment form on the bottom of this page to the address shown, or
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- Be sure to mark a special interest in "Access to Legal Services"—this is the key to receiving additional Division for Legal Services discounts and services.

We hope that you will join your voice with our 400,000 members in common cause to improve the delivery of legal services to those who struggle for access to justice.

Please fill out this form and mail to Legal Services Division, 541 N. Fairbanks Ct., Chicago, IL 60611 or FAX to 312/988-5483

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\_\_\_\_\_

Phone Number: \_\_\_\_\_

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## Footnotes

(continued from page 20)

<sup>1</sup> For a more extended discussion of the issues raised here, see Deborah L. Rhode, "Cultures of Commitment: Pro Bono for Lawyers and Law Student," *Fordham L. R.* (forthcoming, 1999). For surveys on pro bono work, see Deborah L. Rhode, "The Professionalism Problem," *39 Wm & M.L. Rev.* 283-291 (1998). For the bar's rule, see ABA Model Rules of Professional Conduct, Rule 6.1.

<sup>2</sup> American Bar Association, Recodification of Accreditation Standards 302 and 414.

<sup>3</sup> William Powers, *Report on Law School Pro Bono Activities* 2, 5 (American Bar Association, 1994); Association of American Law Schools (AALS), Commission on Pro Bono and Public Service Opportunities in Law Schools, *Learning to Serve: A Summary of the Findings and Recommendations of the AALS Commission on Pro Bono and Public Service Opportunities* 4 (1998); *Id.*, Focus Group Interviews, June 1998.

<sup>4</sup> AALS Commission, *supra* note 3.

<sup>5</sup> See David Luban, *Lawyers and Justice: An Ethical Study* 252-55, 263-64 (Princeton University Press, 1998).

<sup>6</sup> See Deborah L. Rhode, "Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice," *22 N.Y. Rev. of Law & Social Change* 701 (1996).

<sup>7</sup> Committee to Improve the Availability

of Legal Services: Final Report to the Chief Judge of the State of New York, reprinted in *19 Hofstra L. Rev.* 755, 782 (1991).

<sup>8</sup> Donald W. Hoagland, "Community Service Makes Better Lawyers," in *The Law Firm and the Public Good* 104, 109, (Robert A. Katzmann ed.) (Brookings Institution, 1995); Gary Hengstler, "Vox Populi," *ABA J.*, Sept. 1993, at 61.

<sup>9</sup> See studies cited in Deborah L. Rhode and David Luban, *Legal Ethics* 729 (Foundation Press, 1995).

<sup>10</sup> Michael Millemann, "Mandatory Pro Bono in Civil Cases: A Partial Answer to the Right Question," *49 Md. L. Rev.* 18, 64 (1990); David Luban, "Mandatory Pro Bono: A Workable (and Moral) Plan," *64 Michigan B.J.* 280, 283, (1985).

<sup>11</sup> *Powell v. Alabama*, 287 U.S. 45, 73 (1932). In *Sparks v. Parker*, 368 So. 2d 528 (Ala. 1979), appeal dismissed, 444 U.S. 803 (1970) (upholding compensated assignment system for indigent criminal defense); *Mallard v. U.S. District Court for Southern District of Iowa*, 490 U.S. 296 (1989) (reserving decision on mandatory assignment in civil cases); Millemann, *supra* note 10, at 70.

<sup>12</sup> See sources cited in Rhode, "Cultures of Commitment," *supra* note 1; Esther F. Lardent, "Pro Bono in the 1990s," in American Bar Association, *Civil Justice: An Agenda for the 1990s* 423, 434 (Esther F. Lardent ed.) (American Bar Association, 1989).

<sup>13</sup> Roger C. Cramton, "Mandatory Pro

Bono," *19 Hofstra L. Rev.* 1113, 1137 (1991); Report of the Committee to Review the Criminal Justice Act, Jan 29, 1993, reprinted in *52 Criminal L. Rep.* 2265 (March 10, 1993).

<sup>14</sup> Luban, *supra* note 10, at 280-82; John Greenya, "Partners in Justice: Mentoring in the Pro Bono Program," *Washington Law*, May-June 1997, at 26-28; Eileen J. Williams, "PSAC in Action," *Washington Law*, May-June 1996, at 36-38.

## Calendar

### ABA

February 9-15, 2000-Midyear Meeting in Dallas, TX.

### IOLTA

February 10-11, 2000-Winter IOLTA Workshops in Dallas TX. Contact: Mickey Glascott, 312/988-5750 (e-mail: mglascott@staff.abanet.org).

### LAMP

November 19-20-CLE at Fort Hood, TX. Contact: Colleen Glascott, 312/988-5763 (e-mail: lascotc@staff.abanet.org).

### Pro Bono

April 6-8, 2000—Equal Access to Justice Conference in Houston, TX. Contact: Bridget Howard, 312/988-5789 (e-mail: bhoward@staff.abanet.org).

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