

# Dialogue

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## Military Legal Assistance as an Entitlement

by Christo Lassiter

Legal assistance as an entitlement is the rallying cry from those seeking a federal statute mandating basic personal legal services for military personnel in lower pay grades and their immediate family members. The income of personnel at pay grades E-6 and below falls within the eligibility guidelines of the Legal Services Corporation. At such an income level, basic legal services are simply not available on the market.

The need for basic legal services has been recognized when it relates to civilians, but is no less important for military personnel and their families. Basic legal assistance for military personnel is as much a cornerstone of military readiness as mechanical engineering service is to military machines.

### The necessity of military legal assistance

Military service requires service members to put their lives at risk on behalf of their country. Accordingly, the first concern of service members coming on active duty is being prepared to die. Legal advice on testamentary issues and the preparation of a basic will with a contingency trust for the member's children under the age of 21 are necessary

to satisfy family expectations and to meet societal obligations.

There are over 600 military bases worldwide and dozens of other hot spots where military service members are deployed. However, the day-to-day concerns of the service member's family, business, or other legal interests continue in his or her absence.

Thus the second concern of service members is delegating the authority to others to handle those affairs through the preparation of powers of attorney.

Military duty is stressful, especially on families. Whether service members are deployed in the midst of armed conflict or are preparing for such deployment, the military lifestyle of frequent moves, extended time away from family, and long hours on military bases with restricted access adversely impacts marriages. Legal advice and document preparation concerning the many possible family matters is critical to resolving the issues that

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### Navy Recognizes Distinguished Service Award Winner



Admiral Vern Clark, USN, Chief of Naval Operations (left), presents the ABA Standing Committee on Legal Assistance for Military Personnel Distinguished Service Award to Captain Bruce MacDonald, JAGC, USN.

## DIALOGUE

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## Entitlement

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come with changes in marital relations. Shifting marital relations also involve happier moments such as adoptions where legal assistance is also required.

Legal assistance involving consumer issues plays a key role in military readiness. The kind of legal help needed in these matters—communication, correspondence and negotiations with adverse parties—is a basic requirement to avoid defaulting on lawsuits and waiving legal recourse. The same can be said about landlord-tenant issues that arise for service members who lease off-base housing. Affected service members require the review of leases; communication, correspondence and negotiations with landlords; and drafting necessary lease modifications.

Issues involving essential life concerns can disrupt service members' peace of mind, which decreases work performance and adds to the dangers inherent in military life. More importantly, service members who dedicate significant years of time and risk life and limb in their country's interests should not be forced to sacrifice access to the basic legal rights and protections that enable them to obtain and maintain their living quarters and other necessities of life.

## Litigation

In the event that everyday disputes devolve into civil lawsuits, service members must have access to legal advice and other assistance, including the explanation of the procedures and requirements of small claims courts and other courts of limited or special jurisdiction. Without such assistance, military person-

nel become vulnerable to legal adversaries in every endeavor because deployments, or even routine military assignments, compromise the ability of service members to defend their legal interests.

The Soldiers and Sailors' Civil Relief Act, which authorizes a stay of proceeding in certain circumstances, addresses this very issue. Legal advice and other assistance pertaining to procedural rights in civil litigation are as important as the act itself.

## Legal assistance not mandated

The fundamental problem for military legal assistance is its lack of entitlement status: military legal assistance exists as an option, but not as a mandate. Currently, the basic legal services described above are provided as a benefit to military personnel pursuant to 10 U.S.C. §1044 "subject to the availability of legal staff resources." Although legal assistance is consistently acknowledged as a vital mission-related service, it falls at the end of a long list of duties required of the military legal staff. Work in the areas of military justice where Constitutional mandates apply consumes massive amounts of resources. Although concerned judge advocates, compassionate commanders and countless legal assistance attorneys and their enlisted and civilian staff members work mightily to hold the line, the allocation of scarce legal personnel resources away from military legal assistance is as inevitable as it is tragic, particularly since the September 11 terrorist attacks.

Led by the Standing Committee on Legal Assistance for Military Personnel, the American Bar Association advocates amending 10 U.S.C. §1044 to elevate legal

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**From the Chair...**



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

*“The manner in which we treat Marines—our most valuable resource—is a significant aspect of our institutional transformation. Every Marine represents the best and brightest America has to offer, and retaining Marines demands that we change the paradigm within which we respond to Marines’ needs. While we recruit Marines, we retain families. 21st century readiness is defined by a Marine, his family, the weapons systems Marines employ, and the bases and stations from which they deploy.”*

**—General James L. Jones,  
 Commandant of the Marine  
 Corps, Commandant’s Guidance  
 Update, 2002**

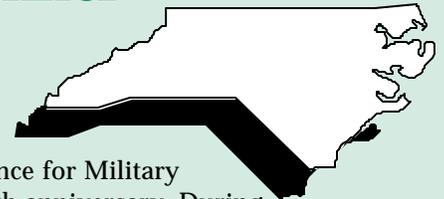
General Jones expressed a similar sentiment in a September 9, 2002 message marking the transition in the assistant commandant position: “. . . let us use this opportunity to renew our commitment to the goal of providing the best possible leadership and support for our Marines and their families, for in them resides the future success of our Marine Corps.”

The guidance from the top, or “commander’s intent,” could not

*(continued on page 4)*

**The North Carolina State Bar  
 LAMP Committee: 20 Years of  
 Supporting Legal Assistance  
 to Military Personnel**

by Gill Beck



In 2002, the North Carolina State Bar’s Standing Committee on Legal Assistance for Military Personnel (NC LAMP) celebrated its 20th anniversary. During those 20 years, the committee has provided military legal assistance attorneys greater access to North Carolina law as it relates to the legal problems of soldiers, airmen, sailors, Marines, and Coast Guard personnel stationed throughout North Carolina.

Today, it seems only logical and quite inevitable that the NC LAMP would fill this role. The LAMP Committee was not a logical inevitability, however, but came about only through the extraordinary efforts of two North Carolina attorneys, Judge Robinson O. Everett and Mark Sullivan, along with the support of other North Carolina attorneys.

**Creation of the NC State Bar LAMP Committee**

In 1982, the NC State Bar established the Special Committee on Military Personnel, which was later given its current name. Judge Everett, a law professor at Duke University School of Law, a retired U.S. Air Force colonel, and the chief judge of the Court of Military Appeals, served as the first chair of the NC LAMP Committee. Sullivan, a colonel in the U.S. Army Reserve, and a prominent family law attorney from Raleigh, served as the committee’s executive director. Together, they observed that a significant number of military personnel were posted in North Carolina far from their permanent homes, and that these service members relied solely on the Staff Judge Advocate’s Office on their base for legal help.

Sullivan, who had served as a legal assistance officer and chief of legal assistance at Fort Bragg during the late 1970s, was keenly aware of the military’s needs for legal assistance, and together he and Everett shaped NC LAMP and anticipated the unique needs of military personnel. Those needs would become only too apparent a year later.

**Legal assistance in Grenada**

On October 25, 1983, United States military forces, including elements of the 82d Airborne Division and XVIII Airborne Corps from Fort Bragg, landed on Grenada as part of Operation Urgent Fury. Operations in Grenada taught the U.S. military many hard lessons, including some regarding legal assistance to military personnel. Although “[l]egal assistance was not a primary concern during planning because of a belief that soldiers in the field would not need legal assistance for several

*(continued on page 4)*

## North Carolina

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weeks after deployment, [b]y the evening of the third day in Grenada, however, long lines of soldiers were waiting to talk with JAG officers on matters such as powers of attorneys, debt payments, cashing paychecks, and wills.”<sup>1</sup> “Despite the high readiness of the [82d Airborne Division] and the relatively good deployment preparation program, within the first seventy-two hours of the operation approximately 1500 powers of attorney and over 100 wills were executed.”<sup>2</sup> “Soon after the first alert the number of deploying

**The disturbing images of long lines of soldiers seeking legal assistance in a combat area of operations revealed the inability of even premier units to extend legal services to soldiers and their families.**

units requiring legal support exceeded the available judge advocate manpower. The preparation of wills, except in holographic form, had to be stopped.”<sup>3</sup>

The disturbing images of long

lines of soldiers seeking legal assistance in a combat area of operations revealed the inability of even premier units to extend legal services to soldiers and their families. Operation Urgent Fury demonstrated the need to support military legal assistance offices in extending legal services to military personnel **before** mobilization as part of preventive law programs and to assist military legal assistance attorneys in the event of combat deployments.

### Expansion of the committee

Aware of these problems, Everett and Sullivan undertook several projects to provide legal assis-

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## From the Chair...

(continued from page 3)

be clearer. The public record is replete with similar pronouncements by the chief of Naval Operations, chiefs of staff of the Army and Air Force, and the commandant of the Coast Guard. Their message is that leading and supporting service members and their families shares top priority with, and are indeed inseparable from, mission accomplishment.

Readiness in the new millennium is more than the “beans, bullets, and band-aids” that it mostly was in the past. The professional, relatively well paid, and mostly married Armed Forces of today require many more “people services” than the force amassed for World War II and maintained until the early 1970s largely with draftees.

At the very top of the list of those “people services” should be statutorily required and

guaranteed legal assistance support. Legal readiness is a component of overall combat readiness. It is not just a quality of life program. Wills, powers of attorney, advance medical directives and other essential documents ensure legal readiness—readiness to die in combat and training mishaps, automobile accidents and from disease; readiness to be captured and held as a POW or be incapacitated by injury or illness. Our cavalier approach to legal preparedness that is evidenced most dramatically by the recurring scramble to get units legally prepared immediately before deployments must become a thing of the past.

10 USC §1044, which authorizes (but does not require) the Uniformed Services to provide legal assistance to their personnel, must be amended so that legal assistance is an entitlement, a guaranteed benefit. At the same time language must be included in

the statute explicitly authorizing military lawyers to provide legal assistance wherever assigned without regard to the state in which they are licensed to practice and the domicile of their clients. By the latter action we will banish forever the specter of unauthorized practice of law from military legal practice.

With the resources available to the Armed Forces—including more than 10,000 attorneys—and the clear nexus between legal support and overall readiness, it is unconscionable and scandalous for any service member to lack a basic estate plan and other essential legal documents. The goal described above by General Jones of providing the best possible leadership and support for service members and their families is easily within our reach. We must “change the paradigm within which we respond to their needs.” And the time for change is now.

## North Carolina

(continued from page 4)

tance attorneys in North Carolina with greater access to North Carolina law and enable them to obtain prompt and professional advice from experienced practitioners in relevant areas. In 1983, Sullivan implemented a preventative law handout program. The goals of this periodically updated and ever-expanding series of pamphlets and handouts were: (1) to help prevent legal problems before they arise, (2) answer some military clients' questions before being interviewed by a legal assistance attorney, and (3) provide legal assistance attorneys with written information on applicable state law and procedure. The "Take-1" handouts and "The Legal Eagle" materials address the frequently asked questions of legal assistance clients. The "Co-Counsel Bulletins" and "Silent Partners" handouts provide attorney-to-attorney resources for legal assistance attorneys.

Recognizing that the legacy of NC LAMP would depend on the leaders they developed for the future, Everett and Sullivan engaged in a vigorous recruiting campaign. They brought to NC LAMP key leaders such as Admiral Edwin H. Daniels, former chief counsel for the U.S. Coast Guard; Colonel Paul Raisig, an experienced Army officer who later assumed leadership position as executive director; Lieutenant Colonel Dale Talbert; a U.S. Air Force reserve officer and assistant deputy attorney general in North Carolina; Lieutenant Colonel Art Zeidman, an experienced and highly talented attorney in Raleigh who also served in the U.S. Army Reserve; and Major Lori Kroll, a

**Vigilance requires ensuring that military personnel have their legal affairs in order long before they are deployed.**

former chief of legal assistance at XVIII Airborne Corps, member of the U.S. Army Reserve, and past member of the American Bar Association's LAMP Committee.

Later, due in large part to the efforts of Buren Shields, a retired Army colonel, NC LAMP, established a Web site for military legal assistance attorneys to access the written assistance materials and locate appropriate subject matter advisors in a statewide network of attorneys identified for that purpose.

NC LAMP also kept the NC State Bar informed of developments that effect the delivery of legal assistance to military personnel. Over the years, NC LAMP has suggested projects to address the unique issues of military personnel and problems created by large-scale developments of those stationed at military installations. Most recently, the committee, led by Lori Kroll in conjunction with the North Carolina Bar Association, established "Operation Legal Eagle NC," which seeks to organize pro bono civilian attorneys to assist military personnel deployed or mobilized in support of the war on terrorism.

NC LAMP has also provided an annual CLE program for military legal assistance attorneys on relevant areas of North Carolina law. Most recently, in November 2002, the NC LAMP Committee co-sponsored a CLE in Raleigh with the ABA LAMP Committee.

## Conclusion

Today, the highly successful military force of the United States is easy to take for granted. One need only look back to the early 1980s to see that it has not always been so successful. The long lines of soldiers seeking legal assistance in Grenada, families left without the necessary legal documents to conduct day-to-day affairs, and overwhelmed military legal assistance offices forced to limit service to holographic wills for deploying military personnel are a vivid reminder that preventive law programs such as those sponsored by NC LAMP are directly related to the readiness of our military forces. History reminds us that we must be ever vigilant in the defense of liberty, and vigilance requires ensuring that military personnel have their legal affairs in order long before they are deployed. NC LAMP has done much over the past two decades to ensure that military personnel stationed in North Carolina receive the best possible legal assistance, and its history reminds us that two leaders at the right place at the right time can make all the difference.

## Endnotes

- <sup>1</sup> Thomas Feeney and Margaret Murphy, *The Army Judge Advocate General's Corps, 1982-1987*, 122 Mil L. Rev. 1, 11 (1988).
- <sup>2</sup> Ted Borek, *Legal Services during War*, 120 Mil L. Rev. 19, 49 (1988).
- <sup>3</sup> Feeney and Murphy, *supra* note 1, at 15.

**Gill P. Beck** is an assistant U.S. Attorney in Greensboro, North Carolina, and the Staff Judge Advocate of the 108th Division (IT), in Charlotte. The opinions set forth in this article are his and not those of the U.S. Department of Justice or the U.S. Army.

## ABA President Presents Award for the Inaugural LAMP Essay Contest

ABA President Alfred P. Carlton, Jr. kicked off the LAMP CLE program held in Raleigh, North Carolina November 14 and 15 by presenting Steven Chucala with the first place award in the inaugural LAMP Essay Contest. Chucala, chief of client services at Fort Belvoir, Virginia, was recognized for his essay "Do We Dare to Think Outside the Box? The Greatest Challenge Facing Legal Assistance." Chucala won the \$1000 first prize for his efforts. Lt. Jonathan Andrew Mitchell, from NLSO SE in Jacksonville, received second place for his essay, "From Start to Finish: A Legal Assistance Attorney's Proposal."

Chucala's essay proposes a reorganization of legal assistance assets, on both a practical and a philosophical level. In his view, legal assistance practitioners operate at a disadvantage; not for lack of effort, but because the allocation of resources does not coincide with the important over-

arching role that military legal assistance plays. Some excerpts from his winning entry follow on page 8.

Mitchell's essay captures some similar themes, but proposed some different solutions. In his view, the legal assistance attor-

ney's inability to provide complete representation leads to inconsistent and unsatisfactory results. The solution involves enabling legal assistance attorneys to provide more holistic representation, including representation in civilian courts.

To read the full text of each award-winning essay, visit the LAMP Web site at [www.abalegalservices.org/lamp/essaycontest.html](http://www.abalegalservices.org/lamp/essaycontest.html)



ABA President Alfred P. Carlton, Jr. presented Steven Chucala with the first place award in the inaugural LAMP Essay Contest. ABA Standing Committee on Legal Assistance for Military Personnel Chair David C. Hague (left) joined Chucala (center) and Carlton at the November 14 presentation.

### Express Your Views, Reap Rewards: The 2003 LAMP Essay Contest

What is the greatest challenge facing legal assistance? Is it determining the extent to which legal assistance should be expanded, developing strategies to outsource legal assistance, or making legal assistance a statutory entitlement? The LAMP Essay Contest awards cash prizes to the two entries that best challenge conventional wisdom and propose realistic modifications to current directives, policies, or practices relating to military legal assistance and preventive law. While each topic listed above is worthy of scholarly treatment, there is no limitation on how you answer the question, **"What Is The Greatest Challenge Facing Legal Assistance?"**

The author of the first place essay will win a cash

prize of \$1,000, and the runner-up will win \$500. The LAMP Essay Contest is open to all military and civilian lawyers, paralegals and law students, and is sponsored and administered by the ABA Standing Committee on Legal Assistance for Military Personnel. The Tacoma, Washington law firm of Luce, Lombino & Riggio, P.S., generously contributes contest prizes. Complete details, including submission requirements and eligibility information may be found at [www.abalegalservices.org/lamp/essaycontest.html](http://www.abalegalservices.org/lamp/essaycontest.html) For more information, visit the Web page or call Edna Driver at 312-988-5763. The deadline for submissions is July 1, 2003.

## LAMP Bulletin Board

### ELAP Recommendation Goes to House of Delegates

The Standing Committee on Legal Assistance for Military Personnel has prepared and submitted a recommendation for the adoption of a Model Expanded Legal Assistance Program (ELAP) Rule to the ABA House of Delegates. It urges the adoption of ELAP rules in each state and territory. It will be considered during the 2003 ABA Midyear Meeting in Seattle.

The recommendation is co-sponsored by the LAMP Committee, the Standing Committees on Armed Forces Law and Delivery of Legal Services, as well as the Family Law and General Practice, Solo and Small Firms sections and the Government and Public Sector Lawyers Division. The Judge Advocates Association is also a cosponsor.

ELAP programs have already enjoyed success in some jurisdictions, including Illinois, Florida, Massachusetts, and Washington. However, the Model Rule would help provide a uniform approach to allowing military attorneys' representation of military clients (and their dependents) in state courts on a limited basis. Often, military clients find it difficult to hire counsel because their financial circumstances prohibit it, or the matters involve amounts in controversy that many private practitioners consider too trivial to handle economically. ELAP would allow military legal assistance attorneys (who are usually most familiar with military clients' situations) to provide representation to service members in state courts regardless of whether they are licensed to practice in the state they are posted in.

Military attorneys must satisfy

certain requirements to qualify for admission under the proposed rule. The rule contemplates that military attorneys will be selected to participate under the ELAP program based on their experience and legal expertise. Participating attorneys must comply with mandatory CLE requirements, and remain subject to the jurisdiction's disciplinary authority.

The ELAP rule will help to deliver legal services to a traditionally underserved but large population that otherwise could not afford a lawyer's help. At the same time, ELAP allows the further development of a bond between the military and civilian bar, and an opportunity for military legal assistance attorneys to see client matters through from beginning to end.

### Congress Extends SSCRA Protection to the National Guard

On November 20, 2002, Congress approved the Veterans Benefits Improvement Act (S.2237), a provision of which will expand protection under the Soldiers' and Sailors' Civil Relief Act to members of the National Guard. The bill has been forwarded to President Bush for his signature.

The provision will extend SSCRA coverage to members of the National Guard who are serving pursuant to "a call to active service authorized by the President of the Secretary of Defense for a period of more than 30 consecutive days under 32 USC §302(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds."

This result follows directly from active lobbying efforts by

the ABA, through the assistance of the LAMP Committee. In July 2002, immediate past ABA President Robert Hirshon and LAMP Committee Chair David Hague gave testimony to a House Veterans' Affairs sub-committee on behalf of SSCRA reform legislation. While these efforts have yet to produce a complete overhaul of the dated statute, the goal remains providing greater protections for those who cannot attend to their personal affairs when they are called to active duty.

This measure also seeks to address the perception among many National Guard members that their missions are not as important as those of other reserve soldiers and sailors called to active duty. (Reservists receive the full protection of the SSCRA.) The amendment recognizes, in part, that National Guard members perform a vital national function.

### Now Available on Your Desktop - Advanced SSCRA Distance Learning CLE

The LAMP Committee proudly announces the release of *Advanced SSCRA*, a multimedia distance learning CLE program, available at no charge. The program can be accessed by computer, and includes a video presentation (viewed through Real Player) and downloadable written materials. To view the program, submit your registration form electronically to the ABA Center for CLE by visiting the LAMP Committee page at [www.abalegalservices.org/lamp](http://www.abalegalservices.org/lamp), and clicking on "CLE Materials" on the navigation bar.

*Advanced SSCRA* consists of a panel discussion about the Soldiers' and Sailors' Civil Relief Act moderated by LAMP Committee Chair, Brigadier General David

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## Do We Dare to Think Outside the Box? The Greatest Challenge Facing Legal Assistance

by Steven Chucala

The following is an excerpt from Steven Chucala's award winning essay in the LAMP Essay Contest. To read the full essay and to read the second place winner's entry, visit [www.abalegalservices.org/lamp/essaycontest.html](http://www.abalegalservices.org/lamp/essaycontest.html)

The greatest challenge facing legal assistance . . . is to overcome its failure to evolve and adjust organizationally in order to cope with current professional needs . . .

Legal assistance is by far the most complex, constantly changing, diverse and emotionally stressful area of law confronting judge advocate attorneys. Attorneys must continually keep abreast of the widest spectrum of domestic and foreign laws, including court decisions, federal, state and county laws and regulations, and administrative rules and procedures. They are constantly confronted with a never-ending conflicts of law practice presented by a transient clientele from across the nation and around the world . . .

The military services have excellent professional development courses for attorneys and paralegals. The Army's Legal Assistance Program as noted in AR 27-3 is comprehensive, but it has continued to function in the same realm for over 50 years without substantive improvements . . .

What is needed: . . . [e]stablishment of a separate legal assistance agency commonly described as a "stove pipe" that is directed by a chief in the Washington, D.C. area . . . [s]upervision, performance evaluations, and awards of personnel both military and civilian assigned to the legal assistance agency, should be administered by its own chain of command . . . [e]stablishment of a standard, organizational legal assistance office table of distribution and allowances (TDA) that contains attorneys, paralegal specialists, legal technicians, legal clerks, and receptionists . . . a civilian attorney as the chief of each legal assistance office, rather than a short-term, inexperienced judge advocate officer, to ensure experience, continuity and professional development of the staff . . . [d]etermine funding costs for the program and obtain a budget to fund the legal assistance agency with its offices worldwide . . . [e]stablish a career program for legal assistance practitioners that deals with assignment changes, professional development (including LLM degrees) and tours or guest speaker presentations [c]oordinate with county and state bar associations to establish a formal system for the referral of pro bono cases after they have been screened by the chiefs of legal assistance.

## Entitlement

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assistance from a discretionary benefit to an entitlement. The argument for mandating legal assistance is not a challenge to the decision-making authority of military commanders and the services' senior legal leadership. Were it not for the reality that legal assistance suffers as a discretionary option precariously balanced

among competing mandatory requirements, this argument would not be made.

The cry for making legal assistance an entitlement is a cry for protected resources more than it is a cry for additional resources. The need for military legal assistance is more compelling than the plight of military equipment abandoned in the field for lack of basic mechanical engineering services, for at least a machine can

be abandoned. Those who serve the military in the defense of our country cannot be abandoned in the legal battlefield. Military service members are the country: they are our spouses, fathers, mothers, sons and daughters, brothers and sisters. They are us.

**Christo Lassiter** is a member of the ABA LAMP Committee and a professor of law at the University of Cincinnati.

## Bulletin Board

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Hague, USMC (Ret.). Joining Hague are Lieutenant Colonel Greg Huckabee, Colonel John Odom, Assistant U.S. Attorney Gary Anderson, and the Hon. Ted Borek (Col. USA (Ret.), superior

court judge of Pima County, Arizona. The program includes education on the substantive law of the Soldiers' and Sailors' Civil Relief Act, including landlord-tenant issues, consumer credit and protection from civil judgments. It provides practical approaches to obtaining relief for military clients

under the SSCRA. In addition to the streaming video presentation, viewers have access to supplemental print and Web-based resources, including the statutes referenced in the program, sample documents and pleadings, and pertinent memos and directives concerning SSCRA protections.

## From the Chair..



by Mary K. Ryan  
Chair of the Standing Committee  
on the Delivery of Legal Services

At a Federal Trade Commission workshop on e-commerce held last October, ABA President A. P. Carlton said, "At the same time we open the door for ready and affordable access to legal services through technology, we create an exponential expansion of the risks that consumers will be misled or abused by those who are not competent to provide needed legal services."

As a profession, we have the responsibility for fostering and encouraging a variety of ways for people to obtain legal information and services. The Standing Committee on the Delivery of Legal Services is a recognized leader in fostering innovative routes for connecting people of modest means with the legal help they need, including the use of technology, particularly the Internet, to advance access to lawyers and legal services. We have been involved in opening the door for better access. The Delivery Committee published a white paper on the use of the Internet to improve client development and contact. Also, many recipients of the committee-sponsored Louis M. Brown Award for Legal Access have been singled out because they use technology in exemplary and innovative ways.

However, the committee is also dedicated to striking the necessary balance between better access and consumer protection. Our responsibility is a two-edged sword that requires not only promotion of the Internet as a tool to improve access but also our efforts to assure Internet users that the legal information they seek out is appropriate for them. We must confront the real risk that consumers will be misled when they surf the net for legal information.

For the past year and a half, the Delivery Committee has worked with the e-lawyering Task Force of the Law Practice Management Section to develop the *Best Practice Guidelines for Legal Information Web Site Providers*. The guidelines are designed to give direction to those who provide legal information through the Internet. These providers vary greatly, and include law firms, government agencies, bar associations, the judiciary, non-profit organizations and entrepreneurs from the dot-com industry.

The guidelines, which are online at [www.elawyering.org/tools/practices.shtml](http://www.elawyering.org/tools/practices.shtml), address ten issues. They encourage Web site providers to:

- 1) include contact information
- 2) make certain content is current
- 3) alert viewers to the fact that different jurisdictions have their own laws, that may be different from other jurisdictions
- 4) include information about the limits of legal information, as compared to legal advice
- 5) add links that enable people who are researching their legal matters to gain as much information as possible
- 6) provide legal citations, so that people can be certain the information they are viewing

is accurate and not just someone's opinion

- 7) enable people who want more than legal information to obtain referrals for legal advice
- 8) be certain that the providers have permissions to link and use other materials
- 9) inform viewers of the terms and conditions that govern the use of the site
- 10) give viewers information about privacy and the use of information gathered by the site provider

The United States lags behind the United Kingdom and Australia in the development of guidelines for Web site providers. Some of the areas examined by the committee come from the work done in the U.K. and Australia.

The Delivery Committee and the Law Practice Management Section have filed a recommendation and report to the House of Delegates urging the adoption of the *Best Practice Guidelines*. The recommendation is scheduled to go before the House of Delegates at the ABA Midyear Meeting in Seattle in February. The committee is interesting in receiving co-sponsorship from those ABA entities that agree that the legal profession should lead the way to make the Internet a great resource of information about the law, while it protects people who turn to this resource in their efforts to learn more about their legal issues. If you are involved in an entity that shares this belief and would like to co-sponsor the recommendation or you would like to receive more information about the Guidelines, please contact Will Hornsby, the committee's staff counsel, at [whornsby@staff.abanet.org](mailto:whornsby@staff.abanet.org) or 312-988-5761.

## Cartoonist Offers Laughs Pro Bono

by Marilyn Smith

Is there room for humor in the delivery of legal services and the pro bono world? The answer from Stu Reese is absolutely yes. Reese is an entertainment lawyer from San Diego who represents cartoonists, many of whom have nationally syndicated cartoons. In addition to being a lawyer, Reese has his own talent and passion for producing cartoons. He started creating his own cartoons as a student at Harvard Law School, and began producing a weekly online legal cartoon column in early 2002.

While his cartoon repertoire focuses on all aspects of the legal profession, Mr. Reese has found an interesting niche in the legal services and pro bono community. So far, he has produced two batches of cartoons on pro bono and legal services, with themes

that include volunteerism, equal justice and the moral commitment required for public service. In his cartoons, he pokes fun at the huge case loads of legal service providers, the need for selflessness on the part of volunteer attorneys, the personal satisfaction attainable through pro bono work, and the David and Goliath-like battles that legal aid and pro bono organizations face everyday.

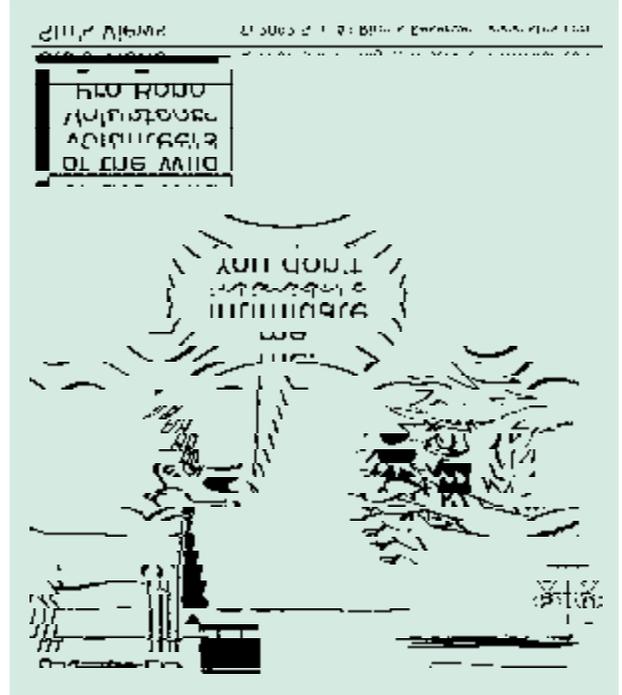
Mr. Reese makes sure that his humor is for lawyers, and not against them. While he licenses other categories of his cartoons—such as bankruptcy—for a fee, he is determined to distribute pro bono and public service humor for free to anyone who uses it for a public service purpose. So far, he has heard from dozens of legal service organizations, pro bono providers, bar associations, professional groups and law firms who want to use his cartoons for newsletters, recruitment, and thank-you notes to volunteer lawyers.

Lori Thompson,

pro bono co-coordinator for the National Federation of Paralegal Associations, sees the cartoons as a positive force for the pro bono community: “The pro bono work of paralegals and attorneys is often a very serious business. Pro bono services allow low-income members of our community to rebuild and move forward with their lives. The cartoons provide a much-needed humorous outlet for those involved in the pro bono trenches. They also show that pro bono work can be challenging, humorous, and inspiring—which is a great recruitment tool.”

To learn more about the cartoons, go to Reese’s website at: [www.stus.com](http://www.stus.com)

**Marilyn Smith** is assistant counsel to the ABA Standing Committee on Pro Bono and Public Service.



## From the Chair...



by *Debbie Segal*

Chair of the ABA Standing Committee on Pro Bono and Public Service

In the four months since I became chair of the Pro Bono Committee, I have had to face the fact that we can't answer the burning question most often asked of us by reporters. They want to know how much pro bono work lawyers in this country are doing. They expect that the ABA, the largest voluntary professional association in the world, and certainly the ABA's Pro Bono Committee will have that information available for the asking. They are surprised and disappointed to discover that not only does the ABA lack this information; it simply doesn't exist at a national level, or with few exceptions, on a statewide or local level.

Lawyers have always volunteered their time and services without pay to help others. Free legal work is offered by attorneys to low-income clients, legal services organizations, pro bono programs, civic causes, and to family members and friends—to name a few. However, it has always been difficult to quantify these hours and collect data on just who is doing this work, how much is being done, and what types of cases and clients are being served.

For many years, the legal profession has grappled with how to promote and encourage pro

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## Still in the Race: 1994 Pro Bono Publico Award Recipient William Reece Smith, Jr.

by *Jenny McMahon Webb*

*For many recipients of the ABA Pro Bono Publico Award, pro bono is a way of life that continues long after the limelight of public recognition fades. Dialogue takes a look at what one past recipient is doing today.*

1994 ABA Pro Bono Publico Award recipient William Reece Smith, Jr. chuckles as he recites one of his favorite lines, one that he has used in numerous speeches. He likes to remind people that "meeting the legal needs of the poor is not a race for the short-winded." Indeed, his commitment to pro bono illustrates this concept.

Smith was, in his words, "not a young lawyer," when he received the award in 1994. However, from his earliest days in practice, pro bono was always his "central focus" and "favorite activity."

And his resume attests to that. Throughout the years, this Florida lawyer, now 77 years old, has played an instrumental role in many of the major advancements made in the area of pro bono.

Two pro bono awards have even been named in Smith's honor—Stetson University College of Law's William Reece Smith, Jr. Award for Public Service, and the William Reece Smith, Jr. Special Services to Pro Bono Award, given annually by the National Association of Pro Bono Professionals. He was the first recipient of both awards, in 1992 and 1994, respectively.

Smith, chairman emeritus of Carlton Fields, a 200-lawyer firm in Florida, has a list of accomplishments and honors that is uniquely long and impressive. Among other positions, he has served as president of the Hillsborough County Bar Association (1963-64), the Florida Bar Foundation (1970-72), The Florida Bar (1972-73), Florida Legal Services, Inc. (1973-76), the American Bar Association (1980-81), the American Bar Endowment (1976-78), the National Conference of Bar Presidents (1978-79), the American Bar Foundation (1990-92) and the International Bar Association (1988-90). In 1989, he received the prestigious ABA Medal for "exceptionally distinguished service to the cause of American jurisprudence."

When Smith was president of The Florida Bar, many counties in the state lacked any organized pro bono programs or federally funded legal services offices. He helped create Florida's first statewide legal services program in 1972, Florida Legal Services, Inc. He served as the program's first president.

As president-elect of the ABA in 1979, he inspired and helped to fund the creation of five local bar-sponsored pro bono programs as pilot



*William Reece Smith, Jr.*

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## From the Chair...

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bono work for low-income persons. It is estimated that between 15 and 25 percent of the eligible lawyers in a community participate in organized pro bono efforts to help the poor and that many others do so on an informal basis. Developing recruitment strategies, leveraging existing pro bono participation rates to generate more pro bono volunteers, and assessing the number of hours contributed by volunteers have been constant challenges. With a diverse legal services delivery system, varying definitions of "pro bono" in use, and widely divergent methods of reporting and collecting pro bono hours, the task of generating a clear picture of pro bono work in the United States has seemed insurmountable.

Pro bono programs, law firms, corporate counsel offices and many other institutions are engaged in matching volunteer attorneys with pro bono opportunities. Many of these institutions have effective systems for collecting and reporting the data generated by these organized efforts. Unfortunately, many others do not have the resources to manage the post-referral follow up that is essential to gather the necessary information. And, even if programs had effective systems in place, there are significant challenges in avoiding double counting, developing demographic reports, ensuring that volunteers keep track of hours, and ensuring that all the information is in fact reported accurately.

In 1993, the ABA amended Rule 6.1 of the Model Rules of Professional Conduct to state that lawyers should "aspire to render at least

(50) hours of *pro bono publico* legal services per year" and that lawyers should devote a substantial majority of their pro bono legal means and organizations that assist these persons. This model rule has been adopted in various forms in many states, with some also incorporating reporting mechanisms for capturing the level of pro bono participation and the number of hours contributed. These reporting mechanisms have met with different levels of success. For instance, in Florida, where reporting is mandatory, 88 percent of attorneys responded in 2002 while in Louisiana, where reporting is voluntary, just over 12 percent of attorneys responded in 2001. But, even if Florida's approach is an effective measurement tool, only one other state (Maryland) has adopted that model in the seven years since Florida's rule was approved. We are a long way, if ever, from being able to rely on accurate data being generated at a state level. It has become increasingly clear to the Pro Bono Committee that it needs to examine this problem more closely and determine what action, if any, it should take.

There are a number of basic questions the committee must address:

- Do we need to know the exact amount of pro bono work being performed in order to measure its value?
- Is it possible to obtain accurate statistics on the kinds of pro bono work delivered?
- If so, how do we best capture this data and how do we use it?
- Alternatively, do we pursue this at all?

As often happens with a group of lawyers, there is debate about

these matters. Some argue that collecting pro bono data will encourage individuals, programs and law firms to increase their pro bono participation, create a healthy sense of competition between programs or states, and provide useful information for legal services lobbying and advocacy. They expect that the numbers will be impressive and will provide evidence, once and for all, that lawyers give to the less fortunate more of their skills than do the members of any other profession. While there is room for improvement, these advocates will argue, the legal profession has much of which to be proud when measured by its commitment to pro bono service.

Some are concerned about how the numbers, regardless of how good they are, will be used. Will they be used for friendly competition? Or, will they be used in a way to criticize the profession? Even assuming that solid, reliable numbers can be obtained and would represent an inclusive picture of the varied ways lawyers provide pro bono services, these individuals might argue that we should not have the data unless there is a comprehensive plan for using it.

Others insist that existing data collection mechanisms are inherently flawed, that obtaining high quality data collection is prohibitively expensive, and that the results would not produce the positive encouragement or competition needed to enhance pro bono work. They fear that the numbers will be meager and will embarrass the profession. They are concerned that negative findings will impact efforts to expand federal and state legislative funding for legal services programs.

We admit that we are not

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## Reece Smith

(continued from page 11)

projects across the country. These projects still operate today. He also took the lead in creating the ABA's national support office for pro bono, the Private Bar Involvement Project (now called the ABA Center for Pro Bono.) As ABA president, Smith ensured that the many ABA entities becoming involved in pro bono activities coordinated their activities. He traveled around the country urging state and local bar associations to

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## From the Chair...

(continued from page 12)

statisticians. The Pro Bono Committee's early conversations about pro bono data collection have reminded us why we went to law school and did not become mathematicians! To help us with our future discussions, we will be consulting with experts in the field to determine if there is an efficient and accurate way to collect data that is statistically significant. Through the Center for Pro Bono, we will assess how organized pro bono programs currently collect data and we will provide programs with strategies for producing meaningful data.

Faced with a continually growing need for legal services for the poor, the committee is dedicated to expanding and promoting pro bono work in our profession. The challenge of how to encourage pro bono service and the role of data collection in this endeavor are integral to our task and will remain at the forefront of our research and debate.

establish organized pro bono programs. Today, over 900 pro bono programs exist, compared to 50 when he started his campaign.

In 1981, while president of the ABA, Smith spoke out in defense of the Legal Services Corporation (LSC) when the Reagan Administration announced it would recommend to Congress that it be de-funded. He invited representatives of state and local bar associations to join him in petitioning members of Congress to support the LSC and over 4,000 responded. Their efforts proved successful, and LSC survived the Reagan years.

Around the time he received the ABA Pro Bono Publico Award in 1994, Smith had begun slowing the pace of his practice. However, he has remained dedicated to meeting the legal needs of the poor. For example, he became involved in the organized bar's professionalism movement, which he relates closely to pro bono. For more than a decade, he has taught professional responsibility at Stetson University College of Law. With great pleasure, he stresses the importance of pro bono to the approximately 150 students he teaches each year.

Pro bono became Smith's favorite activity over time. Early in his career, he got the idea that lawyers are members of a profession, not a business; and that the law is a learning profession that exists so lawyers can serve others and improve the condition of society. He began representing indigent persons locally in 1949 as a solo practitioner, and his pro bono involvement grew from there.

Smith joined Carlton Fields in 1953. As an associate and then as a partner he played a key role in the development of the firm's pro bono culture. These days, he works with the firm's other part-

ners to design, modify and expand its pro bono program. His firm has always supported his pro bono endeavors and over time, it has institutionalized pro bono itself. It pleases Smith to see pro bono work thriving there.

Smith believes that the future success of pro bono expansion depends on continued effort, dedication and re-emphasis on the basics. Pro bono advocates should loosen their grip on "fancy" initiatives and instead focus on recruiting lawyers, and writing and giving speeches about the importance and value of doing pro bono work. Lawyers should be reminded constantly that they have a professional obligation to provide services to all who need them, including those who cannot afford to pay.

In terms of pro bono stamina and drive, Smith is unquestionably a long distance runner. He has been at the front of the pack of those working to meet the legal needs of the poor for more than 50 years. His work has dramatically benefited the legal profession, the legal services community and multitudes of clients served by pro bono and legal services programs across the country.

**Jenny McMahon Webb** served as assistant counsel to the ABA Standing Committee on Pro Bono and Public Service from 1997 to 2002.

*The ABA Standing Committee on Pro Bono and Public Service is accepting nominations for the 2003 Pro Bono Publico Awards. See page 15 for more details. The National Association of Pro Bono Professionals is accepting nominations for the William Reece Smith Jr. Special Services to Pro Bono Award. For more information, turn to the announcement on page 15.*

## Register Now for the 2003 Equal Justice Conference

The 2003 Equal Justice Conference will be held April 10-12 in Portland, Oregon.

The theme of the conference is "The Power of Partnerships." It will focus on how the effective delivery of quality legal services depends on the different components of the legal system working together toward a common vision of service.

Featured speakers will include ABA President Alfred P. Carlton Jr. and David Hall, former provost of Northeastern University and former dean of the Northeastern University School of Law.

A day of pre-conference sessions is slated for April 9, and for the fifth year, the Partners for Justice forum will take place

during the conference.

Register online at [www.equaljusticeconference.org](http://www.equaljusticeconference.org) For more information, call Dorothy Jackson at 312-988-5766.

The conference is sponsored by the ABA Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Association.

## New Chair and Members for Pro Bono Committee

The ABA Standing Committee on Pro Bono and Public Service welcomes its new chair, **Debbie Segal** of Atlanta, along with six new members: **S. Kendall Butterworth** of Atlanta, **Mary M. Connolly** of Boston, **Kathleen J. Hopkins** of Seattle, **Elizabeth Barry Johnson** of Birmingham, Alabama, **J. Tate London** of Seattle, and **Mark Schickman** of San Francisco.

**Debbie Segal**, the pro bono partner for the law firm of Kilpatrick Stockton LLP, has devoted her career to the delivery of legal services to low-income clients, community groups and people in need. She is former executive director for the Atlanta Volunteer Lawyers Foundation and former managing attorney at the Atlanta Legal Aid Society. Segal has served as a member of the ABA Standing Committee on the Unmet Legal Needs of Children and the ABA Commission on Domestic Violence. She serves on the State Bar of Georgia's Access to Justice Advisory Committee and is a member of the Judicial Selection Committee of the Atlanta Bar Association.

**S. Kendall Butterworth** is senior litigation counsel at BellSouth Corporation, where she also serves as the chair of the legal

department's pro bono committee. Butterworth is a member of the ABA House of Delegates. She serves as a director of the ABA's Young Lawyers Division Cabinet and she is an ABA Section of Business Law Fellow. Butterworth is a member of the Board of Governors of the State Bar of Georgia and past president of the Georgia Young Lawyers Division.

**Mary M. Connolly** is the executive director of the Volunteer Lawyers Project of the Boston Bar Association. Connolly serves as a peer consultant for the ABA Center for Pro Bono and is a member of the Standing Committee of the Massachusetts Supreme Judicial Court on Pro Bono Legal Services. She is also a former co-chair of the Boston Bar Association's Section on the Delivery of Legal Services

**Kathleen J. Hopkins** is the founding member of Real Property Law Group, LLC, with a practice in commercial real estate. She is a member of the ABA House of Delegates and the chair of the General Practice, Solo and Small Firm Section's Real Estate Committee. She has served on the ABA Commission on the Billable Hour and the ABA Commission on Homelessness & Poverty. She is on the editorial board of *Busi-*

*ness Law Today* and co-editor of *Commercial Law Newsletter*, both published by the ABA Business Law Section.

**E. Barry Johnson** is a litigation attorney with the law firm of Johnston Barton Proctor & Powell LLP. She is the Alabama co-chair for the Women's Advocate Committee of the ABA Section of Litigation and a 2001 recipient of the ABA Pro Bono Publico award.

**J. Tate London** is an assistant U.S. attorney for the Western District of Washington. He is a member of the ABA House of Delegates and a former committee director for the ABA Young Lawyers Division. London is also a past president of the Northwest Indian Bar Association.

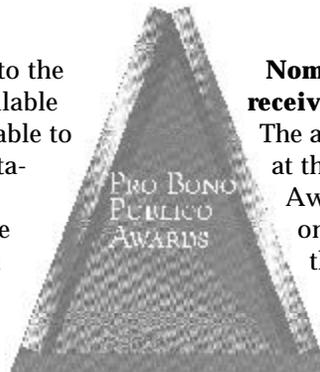
**Mark Schickman** is an employment and labor relations attorney at Cooper, White & Cooper LLP. He has served in the ABA as chair of the General Practice Section's Labor and Employment Law Committee, vice-chair of the Tort and Insurance Practice Section, and as a member of the Standing Committee on Legal Aid and Indigent Defendants. Schickman is a former president of the Bar Association of San Francisco and the current vice-chair of the Judicial Nominee Evaluation Commission of the State Bar of California.

## Nominations Sought for 2003 ABA Pro Bono Publico Awards

The American Bar Association Standing Committee on Pro Bono and Public Service invites nominations for the 2003 ABA Pro Bono Publico Awards. The awards seek to identify and honor individual lawyers and small and large law firms, government attorney offices, corporate law departments and other institutions in the legal profession that have enhanced the human dignity of others by improving or delivering volunteer legal services to our nation's poor and disadvantaged.

The Pro Bono Committee is seeking nominees—both individuals and organizations – who have

made a contribution to the quality of justice available for those who are unable to afford legal representation. The committee looks especially at the nominee's dedication to delivery of legal services; development of innovative approaches; efforts to expand and fulfill unmet legal needs; and legislative or litigation achievements that favorably affect legal services to the poor. The committee will select up to five awardees and encourages people to nominate deserving candidates.



**Nominations must be received by March 10, 2003.**

The awards will be presented at the Pro Bono Publico Awards Assembly Luncheon on August 11, 2003, during the ABA Annual Meeting in San Francisco.

For more information about the awards, the nomination criteria and instructions on submitting a nomination please visit [www.abaprobono.org/2003nominationsolicitweb.pdf](http://www.abaprobono.org/2003nominationsolicitweb.pdf) or call Dorothy Jackson at 312-988-5766 to obtain a copy of the Pro Bono Publico Awards brochure.

## NAPBPro Seeks Nominations for Awards

The National Association of Pro Bono Professionals, the professional association of pro bono managers, is seeking nominations for two awards: the **Pro Bono Professional of the Year Award** and the **William Reece Smith, Jr. Special Services to Pro Bono Award**.

The Pro Bono Professional of the Year Award recognizes a pro bono professional who has demonstrated outstanding dedication and commitment to pro bono and has achieved outstanding results. Nominees for the award must have been in the profession at least two years. Self-nominations are encouraged, as are nominations from project directors, managers, colleagues, and board members.

The William Reece Smith Jr. Special Services to Pro Bono Award recognizes the efforts of persons whose exceptional efforts advance

the work of pro bono coordinators and volunteer attorneys through innovation and the generation of support on a statewide, regional or national basis.

The submission deadline for both awards is **February 7, 2003**. The NAPBPro Executive Committee will review all nominations and select the recipients. The awards will be presented during the Equal Justice Conference, April 9 to 12, 2003, in Portland, Oregon.

Submit nominations to Elma Moreno, NAPBPro Nominating Committee Chair, Texas Tech University School of Law, P.O. Box 40004, Lubbock, Texas 79409-0004. Moreno can be contacted at 806-742-3990 x 312 or via email at [emoreno@lawttu.edu](mailto:emoreno@lawttu.edu) For more information about the awards, visit NAPBPro's Web site at [www.abaprobono.org/napbpro.html](http://www.abaprobono.org/napbpro.html)

### NAPBPro Membership

The start of the new year is also a reminder to renew (or begin) your NAPBPro membership for 2003. NAPBPro provides members with mentors, a national pro bono Listserv, the Hanna Cohn Scholarship to the ABA/NLADA Equal Justice Conference, and a voice for pro bono issues at the national level for only \$30 per year. In addition, NAPBPro is initiating a professional certification process in 2003. Visit NAPBPro's Web site for more information about the organization. For information about NAPBPro membership contact Brenda Schexnider, NAPBPro membership chair, at [bschexnider@la-law.org](mailto:bschexnider@la-law.org) or Patty Murto, NAPBPro president, at [patty@volunteerattorney.org](mailto:patty@volunteerattorney.org).

# Expanding Resources: IOLTA Programs Lead Efforts to Create New Revenue Sources

by **David Holtermann**

For years IOLTA programs have sought ways to increase revenues by working to increase bank yields and expand the participation of attorneys in IOLTA. Most programs have benefited from these revenue enhancement efforts, but in the current environment of sharp drops in interest rates, many are finding that revenue enhancement is not enough to continue their grants at the same level as one or two years ago. At the same time, factors such as the reallocation of Legal Services Corporation grants have cut the amount of funding for legal services in some states. Finally, the unmet need for legal assistance persists in every state, and fuels the search for new revenue sources by IOLTA programs and their partners in the equal justice community.



Ruth Ann Schmitt

In recent months, legal services advocates in Illinois and Pennsylvania have achieved notable successes in tapping into new funding sources that

will be administered through each state's IOLTA program. In this issue, *Dialogue* talks to Ruth Ann Schmitt, executive director of the Lawyers Trust Fund of Illinois. In future issues, *Dialogue* will look at the success in Pennsylvania, and will provide an overview of other ways IOLTA programs can lead

their states toward greater funding for legal services.

**Dialogue:** *Tell us about the new revenue source for your program.*

**Ruth Ann Schmitt:** After nearly a year of discussion with the Lawyers Trust Fund (LTF), the Illinois Supreme Court (under its authority to regulate the profession and assess attorney registration fees) amended its court rules to increase attorney registration fees by \$49. Of that increase, \$42 will be passed through to the LTF to fund legal services in Illinois. (The other seven dollars were earmarked for the Lawyers' Assistance Program through an earlier, unrelated request approved by the court.) This fee increase went into effect for calendar year 2003 registrations, and is expected to raise about \$2.5 million per year.

**Dialogue:** *What spurred LTF to pursue this?*

**Schmitt:** The Federal Reserve Bank began dropping interest rates in January 2001. LTF's board saw the downward trend in interest rates, and we remembered what happened during the 1990s when rates dropped from five percent to 2.5 percent. At that time, we were forced to reduce

grants and used \$4 million in reserves, which we have never been able to replace. At the same time the Fed was dropping rates at every meeting, the value of our stock portfolio was declining. We did not have as large a reserve in 2001 as we did in the early 1990s, so we knew we did not have the

ability to sustain a prolonged period of low rates.

**Dialogue:** *What did the board do?*

**Schmitt:** In fall 2001, the president of our board appointed a committee to look at LTF's future and

determine what we could do to increase our revenues. The committee had our accountant prepare pro forma financial projections with several scenarios of projected revenue and grant expenditures through FY2004. Based on those projections, it was clear that without new revenue, we could not survive 18 months at the low interest rates and maintain current grant levels without depleting most of our sizable (\$3.4 million) reserve. The committee studied three specific revenue-enhancing options to address our needs:

- shifting the cost of bank fees and charges to attorneys (as had been done in Massachusetts)

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**“Without a new source of revenue, Lawyers Trust Fund would have to cut grants or deplete its reserves to maintain grants at current levels.”**

## From the Chair...



by Darrell E. Jordan  
Chair of the ABA  
Commission on IOLTA

On December 9, the U. S. Supreme Court heard oral arguments in *Washington Legal Foundation v. Legal Foundation of Washington*. The Court was considering the Washington Legal Foundation's Fifth Amendment challenge to IOLTA. Those of us in the IOLTA community had anticipated that day for a long time. I am pleased to write that our advocates did an excellent job in presenting the case to the Court, and the justices appeared to be familiar with the relevant issues and were actively engaged during the lively arguments.

David Burman of Perkins Coie appeared on behalf of the Legal Foundation of Washington, and former acting Solicitor General Water Dellinger of O'Melveny & Myers argued for the Justices of the Washington Supreme Court. Both of them made the necessary points in defense of IOLTA, responded well to questions by the Court, and addressed the problems with the arguments made by the Washington Legal Foundation represented by former Solicitor General Charles Fried. Additionally, they forcefully explained why the Supreme Court should rule in favor of the Legal Foundation of Washington

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## IOLTA Grantee Spotlight: Rural Domestic Violence Advocacy Project of New Hampshire

Since 1999, a collaborative project between two of New Hampshire's largest legal services providers and a statewide domestic violence prevention program has provided vital advocacy for victims of domestic violence in the most impoverished and isolated regions of the state. The Rural Domestic Violence Advocacy Project (the Project), created by the New Hampshire Coalition Against Domestic and Sexual Violence (the Coalition), the Pro Bono Program of the New Hampshire Bar Association, and New Hampshire Legal Assistance (NHLA), has responded to the urgent need for extended legal representation for low-income victims of domestic violence. The project has also demonstrated how cooperation between organizations using different delivery models (which often can be at odds with one another) has leveraged assistance to a greater number of vulnerable clients.

The collaboration received funding as a demonstration project through the Violence Against Women Act (VAWA), which is administered by the United States Department of Justice. The New Hampshire Bar Foundation, the state's IOLTA program, has also provided key planning and financial support. As 2003 begins, the Project faces the expiration of its VAWA funding (the demonstration grants are designed to end after three years to allow funds to be distributed to other states). But the Project is working hard to secure new funding, and looks ahead toward continuing to represent clients in rural New Hampshire.

### Unmet rural need

The availability of VAWA funds catalyzed the three groups to develop the Project in 1999. "It was an opportunity to get funding to target domestic violence prevention work and for the participating organizations to work more formally with one another," says NHLA Executive Director John Tobin. All three were responding to an existing gap—documented by a survey and other data—in legal assistance for victims of domestic violence in rural areas.

Lay advocates at the Coalition's 14 domestic violence crisis centers help numerous victims of abuse obtain immediate restraining orders, but there is a great unmet need for extended legal representation to protect victims' rights regarding child custody and visitation, financial support for their children from the abusers, and peaceful permanent possession of their homes. Battered women must be able to secure meaningful access to the court systems of the state in order to obtain temporary and permanent restraining orders and to resolve child support, custody and visitation issues related to their minor children. Without personal and economic security, the women and their children who are victims will be unable to leave violent households and achieve

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## Expanding Resources

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- changing the definition of financial institutions eligible to hold IOLTA accounts and requiring parity with similar non-IOLTA accounts (as done in Florida)
- increasing the attorney registration fee with an add-on for legal services (which was pioneered in Minnesota and Ohio).

After studying these alternatives, the committee concluded that the only reasonable course of action for us in Illinois would be to seek an increase in the attorney registration fee.

### Dialogue: Why is that?

**Schmitt:** The committee, and by extension the board, were interested in a solution that was fair (i.e. shared by the entire profession), immediate, certain (not subject to economic fluctuations), efficient, simple and consistent with attorneys' professional obligation to support access to the justice system. The registration fee option met all of these criteria, whereas, the other two

options would not work in Illinois. For example, shifting fees would have placed a disproportionate burden on small firms and solo practitioners in the state, and would only raise about \$500,000 a year. Changing the definition of qualified financial institutions would have put LTF in the position of policing the compliance of the 529 banks in the state, would potentially place the downstate lawyers at a great disadvantage (there are fewer banks to choose from outside of metropolitan Chicago), and at least in this interest rate climate, would produce a minimal financial benefit. For us, increasing the attorney registration fee was the only option that met our criteria.

### Dialogue: How did LTF persuade the Supreme Court to approve a \$42 fee increase?

**Schmitt:** Our success started with the composition of our board. The Illinois Supreme Court, the Illinois State Bar Association, and the Chicago Bar Association each appoint three directors and a justice of the court serves ex officio, as court liaison. Our former liaison served for three years,

until she became chief justice in September and appointed our current liaison, who was a legal aid attorney for seven years. In addition to the strength of our board, we also have a very effective legal services provider network, and their work is well known within the legal community. So, I believe both the bar and the Supreme Court had an appreciation for the legal aid work IOLTA supports and a direct understanding of the effect prolonged low interest rates would have on our ability to support needed services.

In December 2001, we sent a report to the court that included our accountant's financial projections. The report concluded that without a new source of revenue, LTF would have to cut grants or deplete its reserves to maintain grants at current levels. In this report we also presented information showing that Illinois' attorney registration fees were not particularly high compared to those in other states [*Illinois' fees ranked 28th out of 50 states in 1999*], and that the fees would remain moderate even with an increase.

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## From the Chair...

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on the merits in this case.

Of course, it is impossible to predict how the Court will rule. The oral arguments demonstrated the Court is clearly divided on some of the issues. What we do know is the Court was well briefed and understood the issues, and that those representing IOLTA (and the large network of individuals and organizations that

participated in preparing the case and in filing amicus briefs) gave this case their very best shot. As I left the Supreme Court chambers, I remained cautiously optimistic the Court will render a decision upholding the operation of Washington State's IOLTA program and I continue to feel that way.

Next month we will gather in Seattle for the 2003 Winter IOLTA Workshops. The program agenda once again is packed with topical and informative sessions. There will be sessions on handling

media inquiries; the role of audits in non-profit organizations, and on ways IOLTA staff and trustees can address these interesting times. In addition, the programming will include the newer directors breakfast, hot topics, banking breakouts, and another edition of the "Let's Talk" forums that began in Philadelphia last year. February 6 and 7 will be busy days. The 2003 Workshops come at an important time for IOLTA, and I hope to see you in Seattle.

## Expanding Resources

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We also provided data on state per capita funding for legal services that showed Illinois ranked ninth of the 10 most populous states, and seventh of the 10 midwestern states. We hoped this information would demonstrate to the court that Illinois should do more to fund legal services and that it was reasonable to increase attorney registration fees to do so.

### **Dialogue: What challenges did LTF encounter along the way?**

**Schmitt:** Although supportive of a fee increase, the court initially wanted to establish a collection mechanism through legislative action. A bill was introduced in the legislature in March 2002, but it was the last week in the session and too late to garner the necessary support. Everyone was excited about the support the court showed in introducing the bill, however, there was genuine concern within the bar about using the legislature as the mechanism to collect the fees and distribute the funds to LTF.

We continued to update the court about the challenges facing IOLTA. We sent supplemental reports to the court in March 2002 (which contained updated projections) and another in September 2002, after the Legal Services Corporation announced its \$920,000 reduction in funding for Illinois programs based on the 2000 census reallocation and after the Supreme Court granted certiorari in the Washington State IOLTA case. In May, the board decided to use reserves to maintain grant levels for 2003, but

warned our grantees that without an infusion of new funds, FY 2004 would not be a happy year.

The court heard the concern about the legislative mechanism and investigated alternative mechanisms for collecting and distributing the funds collected through a fee increase. In September the Court entered an order amending the rule governing registration fees and directed the Attorney Registration and Disciplinary Commission (ARDC), to collect and distribute to LTF the \$42 add-on fee.

### **Dialogue: How immediate was the impact of the fee increase?**

**Schmitt:** We are very fortunate that the court acted in time for the 2003 attorney registration process. In November, we received \$591,000 from the initial registrations, and we expect to receive the entire \$2.5 million by mid-January 2003. This allows us to immediately stop drawing on our reserves.

### **Dialogue: Did the major bar associations in the state take a position on the fee increase?**

**Schmitt:** Both the Illinois State Bar and the Chicago Bar Association have always been great supporters of legal aid. The only question for them was the mechanism for getting the funds to LTF, but the court solved that problem by avoiding the legislature and using the ARDC to collect and disburse the funds.

### **Dialogue: Has LTF received any negative feedback from individual attorneys?**

**Schmitt:** We received only one call from a lawyer who had some questions. He was satisfied after we explained the change to him. Neither bar association has reported negative feedback.

### **Dialogue: What would you advise someone from another program who was considering a similar initiative in his or her state?**

**Schmitt:** The way we approached this was determined by the structure of our board and our relationship with the Supreme Court. We had the support of the court and the bars. You really need to understand the politics of your situation and proceed accordingly. The legal aid network is a critical piece of every state's justice system. The strength of each legal aid program that IOLTA funds and the extent to which IOLTA grantees work together to meet the state's legal services needs are both very important. The better the programs and the system, the more likely the courts and the bar will recognize the peril created by a crisis in IOLTA and the more likely they will be willing to help preserve funding.

We are lucky to have a knowledgeable and supportive bar and a strong board of directors. The kudos and thanks, however, go to our court, with seven justices who understand the importance of access to the courts and what IOLTA means to the fragile network of legal services providers in our state who work to provide that access to those who cannot afford to pay for it. In 2001, acting on its own, the court approved the addition of an IOLTA compliance statement on the annual attorney registration form. This year, they voted 7-0 to approve our request for the increase to fund legal aid. We think their support is evidence of their confidence in the work IOLTA does and the legal aid programs we fund.

## Grantee Spotlight

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safety and self-sufficiency. As more batterers obtain aggressive private counsel, many of their victims face extended and confusing legal battles about their children that they cannot cope with on their own.

The New Hampshire Bar Association's Pro Bono Program focuses on providing such extended representation, and enjoys one of the highest volunteer attorney participation rates of any such program in the country. But most of the state's lawyers are concentrated in the urban centers of the state such as Concord, Manchester and Portsmouth. With relatively few attorneys in the rural northern and western areas of the state, there is a corresponding lack of pro bono assistance available for many cases, especially extended domestic violence matters. This limited supply of potential pro bono attorneys in the rural counties only exacerbates the difficulties facing victims of domestic violence: geographic isolation, widespread poverty, high rates of alcoholism, economic stagnation, and long winters.

### Current operation

The launch of the Project in May 1999 was designed to devote full time staff resources to such extended representation. Since 1999, NHLA has supplied staff attorneys funded by the Project to serve domestic violence victims statewide, but especially in rural Coos, Grafton, Carroll, Cheshire and Sullivan counties. The Project has provided extended representation to dozens of clients since its inception, in many cases involving complex matters in courts across

**As more batterers obtain aggressive private counsel, many of their victims face extended and confusing legal battles about their children that they cannot cope with on their own.**

the state. Prior to the Project, NHLA annually represented 35 to 40 victims of domestic violence in obtaining emergency orders of protection only.

The full time attorneys are only one component of the Project, however. The other partners in the collaboration have also expanded their efforts. The Pro Bono Program has continued to recruit and train volunteer private attorneys, as well as to provide training for the staff of the crisis centers. During the first three years of the Project, more than 800 domestic violence cases were referred to volunteer attorneys. The Pro Bono Program has committed to continue to recruit and train new volunteers.

The Project relies on the Coalition-affiliated crisis centers to act as the entry point for the Project's clients. Developing this intake function has required close work between the Coalition's members, the 14 local crisis centers, and with the pro bono program and NHLA to connect victims to the legal help that the Project provides.

The program continues to strive toward its objectives:

- increasing the level of service and representation to victims of domestic violence in the state
- increasing access to and

awareness of civil legal services for domestic violence victims and their families

- increasing identification of and response to systemic legal issues of New Hampshire domestic violence victims and their families.

On this latter point, the Project partners have worked with the New Hampshire District and Family Courts on the court system's statewide protocols for handling domestic violence cases. The Project's director was appointed to a governor's commission on domestic and sexual violence, and is leading efforts to revise state Superior Court case-handling protocols.

### Collaboration is key

Although the collaboration between the Coalition, the Pro Bono Program and NHLA came together due to the federal funding opportunity, Tobin feels that it owes its success to earlier efforts at state planning and coordination in the state.

None of the partners is funded by the Legal Services Corporation and therefore mandated to take part in state planning. Nonetheless, Tobin credits that process for helping set the stage for the collaboration. "We have internalized the ethos of state planning. Since the LSC funding crisis in 1994, 1995, and 1996, we have worked together, and understand that things work better together. No one program can see the whole picture by itself." When the VAWA funding opportunity developed in 1999, the relationships helped the programs to coordinate with one another to apply for the grant.

The New Hampshire Bar

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## Supreme Court Hears Oral Arguments in Washington State IOLTA Case

by David Holtermann

On December 9, 2002, IOLTA returned to center stage as the U.S. Supreme Court heard oral arguments in *Washington Legal Foundation vs. Legal Foundation of Washington*, No. 01-1325. Attorneys for the Washington Legal Foundation, the Legal Foundation of Washington (the IOLTA program), and the justices of the Washington Supreme Court presented arguments to the Supreme Court regarding the constitutionality of Washington State's IOLTA program.

The oral arguments followed months of briefing since the Court granted the Washington Legal Foundation's petition for certiorari in June 2002. Earlier the Ninth Circuit Court of Appeals had ruled that the IOLTA program does not violate the Takings Clause of the Fifth Amendment, finding that there was no taking of client property by the program, and that no just compensation was due.

The interchange between the justices and attorneys during the hour-long argument was spirited. Seven of the eight justices present actively participated, interjecting questions and comments throughout the argument. (Chief Justice William Rehnquist was absent due to his recovery from knee surgery, but will participate in deciding the case.) There was no evident consensus among the justices, indicating that the Court likely remains split on this issue,

as it was when it rendered its 5-4 decision in 1998 in *Phillips v. Washington Legal Foundation* 524 U.S. 156, 118 SCt 1925 (1998).

Two attorneys argued in support of IOLTA: David Burman of Perkins Coie for the Legal Foundation of Washington, and former Acting Solicitor General Walter Dellinger for the Justices of the Washington Supreme Court. Former Solicitor General Charles Fried argued on behalf of the Washington Legal Foundation.

In his argument, Burman challenged the Washington Legal Foundation's case, calling the group's purpose in bringing the suit a "subjective, ideological" one. He focused, however, on the key constitutional issues in the case, particularly why no just compensation is owed to the plaintiffs: "There is an independent requirement...that [the plaintiffs] show that there was just compensation due and denied by the State of Washington. That has not happened here."

Dellinger challenged the conclusion that there was a taking

of property: "...it is a taking when the government takes your property without a sufficient regulatory basis." He then discussed the significant regulatory involvement the government has both with the banking industry and the legal profession.

Both advocates made clear presentations that established compelling reasons for the Court to rule in favor of IOLTA. A decision is expected no later than the end of June 2003.

The entire IOLTA community owes a great debt to the Washington State legal team, which devoted countless hours to representing the parties. Perkins

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Representatives of the Legal Foundation of Washington and its legal team from Perkins Coie are pictured in front of the Supreme Court on December 9. Front row: (left to right) Kay Frank (president of the LFW Board of Directors), LFW Executive Director Barbara Clark and Katie O'Sullivan of Perkins Coie. Back row (left to right), Nick Gellert, David Burman and Charles Sipos of Perkins Coie, and LFW board members David Leen, Ragan Powers and John Phillips.

## Litigation Update

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Coie, led by attorneys Burman, Nick Gellert, Katie O'Sullivan and Charles Sipos, has represented the Legal Foundation of Washington on a pro bono basis throughout the case. Carter Phillips of Sidley Austin Brown & Wood also assisted the Perkins Coie team at the Supreme Court level. The Washington State Office of Attorney General (led by Senior Assistant Attorney General Maureen Hart) has represented the Justices of the Washington Supreme Court since the beginning of the case. Dellinger of O'Melveny & Myers represented the justices of the Supreme Court as co-counsel to the attorney general.

Many organizations, including the ABA and the National Asso-

ciation of IOLTA Programs (NAIP), assisted the Washington State litigation team in preparing the case and filed amicus curiae briefs with the Supreme Court in support of the IOLTA program. The ABA was represented in these efforts by Marc Goldman and Paul Smith of Jenner & Block and by Steve Rummage and Jeffrey Fisher of Davis Wright Tremaine. NAIP was represented by Ohio attorney Richard Cordray, and by Tom Brown, Charles Freiberg and Joanne Garvey of Heller Ehrman.

Forty-nine state bar organizations co-sponsored the brief filed by NAIP. Other organizations that filed amicus briefs in support of IOLTA include:

- the attorneys general for 36 states
- AARP, Legal Counsel for the Elderly, Inc., National Legal Aid & Defender Association,

and the Brennan Center for Justice

- the Conference of Chief Judges
- the National League of Cities, the International Municipal Lawyers Association, and Trial Lawyers for Public Justice
- the City and County of San Francisco
- the Texas Equal Access to Justice Foundation and the Justices of the Supreme Court of Texas

The ABA Commission on IOLTA will post news of developments in the case on its Web page at [www.abalegalservices.org/iolta](http://www.abalegalservices.org/iolta). Background information about this case and other IOLTA cases is also available on the site.

**David Holtermann** is assistant counsel to the ABA Commission on IOLTA.

## Grantee Spotlight

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Foundation has also played a critical role in the collaboration. "The bar foundation played a big role in the culture of collaboration and planning in New Hampshire, says Tobin. "Because LSC is a minor player [in terms of funding], the bar foundation has been a driving force in a lot of ways. It has played a significant leadership role."

Tobin notes that with only 20 percent of legal services funding in New Hampshire coming from LSC, state-based funding sources such as the United Way appreci-

**"Since the LSC funding crisis in 1994, 1995, and 1996, we have worked together, and understand that things work better together. No one program can see the whole picture by itself."**

ate the collaboration as well. The inclusion of several partners has also helped the Project garner a broader base of political support

than it otherwise would have.

### Conclusion

In the face of funding difficulties, the collaboration is holding strong, and Tobin is optimistic that a funding solution will develop to preserve the necessary funds. But he also observes that regardless of the financial situation, the partners have a stronger bond to carry into the future: "Now we have forged some relationships."

*Dialogue acknowledges John Tobin of New Hampshire Legal Assistance and Tina Abramson of the New Hampshire Bar Foundation for their assistance with this article.*

## From the Chair...



by James B. McLindon  
Chair of the ABA Standing  
Committee on Lawyer Referral  
and Information Service

For many lawyer referral programs, attracting and keeping panel attorneys are as difficult as getting the good referrals that keep those panelists satisfied. If I'm talking about you, I hope you know that a vigorous and ongoing in-reach program to your bar members is essential to keeping your panels filled with good attorneys—the kind you'd be comfortable referring your best friend to.

For many well-intentioned program directors, there's just one problem: how do you persuade the lawyers you've never been able to convince before that now's the time to join your LRIS? Let me offer a suggestion, one predicated on the fact that the solid majority of panel attorneys in most programs are those solo and small firm practitioners for whom LRIS panel membership is a key component of their marketing strategy.

Remember that such attorneys are often extremely limited in their advertising dollars, a fact they're made painfully aware of every time they pick up their Yellow Pages and see the full-page back cover ads of their competitors staring back at them. These attorneys know they'll

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## Managing Change: Highlights of the 2002 LRIS National Workshop

by Bette Nelson Alexander

**M**ore than 125 lawyer referral program staff members, bar executives and committee members from 32 states converged in Philadelphia last October to attend 2002 ABA National Lawyer Referral Workshop. The workshop theme was "The Changing Face of LRIS."

The workshop kicked off with the newcomers breakfast, which was an ideal forum for first-time attendees to become better acquainted with their colleagues, get an overview of the workshop and set their attendance priorities.

The newly expanded annual pre-conference session, "Nuts and Bolts of LRIS," offered attendees insight into the secrets of a well-run lawyer referral service. The presentation by Christine Albrektson of the Dayton Bar Lawyer Referral Service and Claire Jeffries of the Akron Bar Lawyer Referral Service and the excellent supporting materials exposed the secrets to managing an organized, profitable service.

### Highlights

The opening session, "Lessons to Learn for Innovations in Service Delivery," was chaired by ABA Standing Committee on LRIS Chair James McLindon, and featured a panel that included Will Hornsby, counsel to the ABA Committee on the Delivery of Legal Services; Denis Murphy of Civil Justice, Inc., and Sheree Swetin, executive director of the San Diego Bar.

The discussion centered on the Delivery Committee's publication, *Innovations in the Delivery of Legal Services: Alternative and Emerging*

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LRIS Committee Chair Jim McLindon (standing), joined Denis Murphy (director of Civil Justice, Inc.), Sheree Swetin (executive director of the San Diego Bar Association), and Will Hornsby (staff counsel of the ABA Standing Committee on Delivery of Legal Services) (from left to right, seated) in presenting the plenary session "Lessons to Learn from Innovations in Service Delivery" at the 2002 National Lawyer Referral Workshop

## LRIS Workshop

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*Models for the Practicing Lawyer.* Ten practice models were discussed from the viewpoint of their impact on the management of lawyer referral services. These models included: collaborative lawyering, holistic lawyering, micro-niche practices, networked practices, online case matching, preventive law, and unbundled legal services. While some of these methods will most likely go the way of the dinosaur, others may prove successful. Some, such as unbundled legal services and niche practices, may become part of the services offered to lawyer referral customers. LRIS programs must take stock of the status of these innovations in their commu-

nities, and respond in a way that enhances public service and ensures the continued viability of LRIS. To help determine what is likely to work in practice at the local level, there were breakout sessions on operating a brief service telephone system, establishing an unbundled panel, and a developing a reduced fee program.

Attendees faced a multiplicity of options when deciding which of the eight breakout sessions to attend. One of these, "Examining Critical Ethics Issues," moderated by Lish Whitson and Ron Abernethy, provided a lively exploration of issues that confront every LRIS program. The session addressed questions such as:

- How much information can a non-lawyer interviewer provide without giving legal advice?
- Does the LRIS program have

an obligation to inform past or current LRIS clients about a panel member's problems such as a developing drug or alcohol addiction, or removal from the panel due to cancelled malpractice insurance?

- Does a LRIS program need to disclose that it receives funds from the attorney to whom a client is referred?

The discussion generated considerable audience participation, which allowed all to benefit from exploring the issues concerning other programs.

LRIS directors seeking to enhance their business plans could find answers by attending the related sessions on "Operating Your LRIS for Fun and Profit" and "Let's Do the Numbers" presented by Marion Smithberger of the

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## From the Chair...

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never be able to outspend their rivals, so they're constantly searching for innovative approaches to promote the quality of their services in a way that gives them a fighting chance against the big-gun advertisers.

So, all you have to do is offer them such an approach, and membership in your program suddenly becomes far more attractive. But how?

Easy. Okay, pretty easy. Begin by considering the dilemma of the typical consumer in need, perhaps for the first time, of an attorney. Unless she can manage to secure a good recommendation from a friend or relative, sooner or later she's likely to end up poring over those same Yellow Pages. But in many cities she'll be confronted

with dozens of pages of lawyers: full-page ads, half-page ads, quarter-page ads; with images of gavels, blindfolded lady justices, law books and so on. In short, the ads include everything except helpful information about which of the hundreds of attorneys listed would be appropriate for her case.

So how does she decide? Such a consumer is a drowning woman searching for a life ring of objective information. And your LRIS can throw it to her—if your LRIS is logo-certified. The ABA logo proclaims to the public that your program meets the ABA's standards for lawyer referral. That's an invaluable asset to your marketing because it is a critical aid to the confused and despairing prospect thumbing through the Yellow Pages. You'll provide objective evidence from a well-respected organization of lawyers that your service provides quality assistance

in finding the right lawyer.

If your program is (or becomes) logo-certified, the logo and slogan you are thereby authorized to use should be a part of everything you use in your own marketing. And it should be a featured part of your in-reach to your membership when you recruit or retain panel members. Make sure they know that your program is entitled to—and does—hold itself out to the world as a superior LRIS. And make sure they understand the advantage that the logo gives both of you as you compete together against your well-heeled competition.

Your lawyers will be hard pressed to find a better use of their marketing dollars than to devote a relatively few of them to membership in your program. And your executive director should be happy with you for providing the bar association with another member benefit to tout.

# Ask Dr. Ethics: Solicitation, and When Does Legal Information Become Legal Advice?

## Dear Dr. Ethics:

Every couple of years we have this same issue come up. Sometimes it's more convenient for our clients to have a lawyer call them, rather than the other way around. But can an LRIS panel attorney call the referred client without hearing from the client first? What if the client tells LRIS that it's OK for the attorney to make that first contact? Our lawyers are very nervous about solicitation issues, and they are reluctant to make these calls.

**Nosy in N'Awlins**

## Dear Schnozz:

Lawyers do indeed get very uptight when the "S-word"—solicitation—is mentioned. And with good reason. The law is all over the lot. First, there is a long string of U.S. Supreme Court cases, with a lot of space between the cracks. Second, each state's lawyer disciplinary agency has its own view about what's OK and what's improper. Third, a state agency's own regulations may or may not comport with the Supreme Court rulings. After all, few lawyers will go out on a limb to challenge a state bar that says "no" even if the Supremes seem to say "yes."

So what to do? First, Dr. Ethics does the smart thing for himself, making a very clear disclaimer that he can't possibly say what's right in all 50 states and all the ships at sea. Having said that, however, Dr. Ethics does not see how a lawyer can be "soliciting" a client if the client has already been matched with the lawyer by the LRIS. This sounds like

whether the boy or the girl is going to call up to make a date for the club social. It's not about who calls, but rather about getting to the dance.

Dr. E. understands that there have been some ethics opinions on this subject, and they don't all agree. But if our job is to serve the needs of clients, why does it make any difference who calls who, *so long as* the client agrees to the procedure?

**Dr. E.**

## Dear E-Man:

A simple but important query: How much information can the intake interviewer provide without stepping over the line into giving legal advice?

**Need-to-know Basis**

## Dear Needy:

Ahhh, this brings back the good old days, when this issue came up at every annual meeting ethics session. In fact, our first several ethics sessions focused on this exact issue.

All legal interviewers, including LRIS staffers, walk the tight-rope between giving enough information to clients to help them, and actually giving legal advice. There is no bright line test to draw the line, to mix a metaphor. In California, for example, "the practice of law" has been defined in the leading cases of the last 80 years as "the practice of law." Helpful, isn't it?

Perhaps of more help is this: Nonlawyers can give legal information, while only lawyers can give advice. Legal information includes where the courthouse is

located, but not whether the statute of limitations has run. That statute stuff is legal advice. But artful LRIS interviewers have been known to say something like this: "I'm just a poor, underpaid LRIS interviewer and can't give you legal advice, but I can tell you that when we try to refer injury cases to lawyers and tell them the claim is from 1979, we usually can't find anyone to take the case."

When the client asks "why not?" Dr. E. says it's okay to add: "Because they all seem to feel that if the case is that old, either the statute of limitations has run or there will be too many other problems. But" (and this BUT is important, folks) "if you still really want me to find a lawyer for you (pause for effect) I'll be happy to do my best."

Is this the practice of law? Well, folks, let me put it this way: When I drive past a school with my mother and she tells me "Slow down, dufus (a term of endearment in Yiddish), it's a 15 mile per hour zone!" she is **not** practicing law, merely "kvetching," another Yiddish term meaning "giving information only."

**The Ethics "Bubula"**

**Dr. Ethics** is otherwise known as Richard Zitrin, director of the Center for Applied Legal Ethics at the University of San Francisco.

*The analysis and opinions in this article are those of the author, and do not necessarily represent the views, policy or opinions of the American Bar Association or the ABA Standing Committee on Lawyer Referral and Information Service.*

## Expanding Service: Possible New Subject Matter Panels

As the law develops, new areas of practice emerge. At first these new areas may appear more appropriate for pro bono programs than for a lawyer referral service, but often they involve potential attorney fees that could make them attractive to panel members. Here, Dialogue takes a look at two emerging areas of practice: predatory lending cases and medical insurance coverage cases.

Merf Ehman begins by describing the issues behind predatory lending cases. He is the Volunteer Legal Services staff attorney at the King County Bar Association, manages the KCBA Housing Justice Program in King County, Washington, and is KCBA liaison to the King County Coalition for Responsible Lending.

Following is an interview with Lish Whitson about medical coverage

cases. Whitson is an experienced personal injury attorney who has represented patients, primarily women with breast cancer, in gaining insurance coverage for important treatments after initial denial. He is a past chair of the ABA Standing Committee on LRIS and participates with the ABA Commission on Women in the Profession in providing training for these cases.

### A Predatory Lending Panel

In recent years the term “predatory lending” has developed to describe certain home equity lending abuses that are unscrupulous and harmful to consumers.

Homeowners with poor credit histories, but who want to refinance their mortgages, often are able only to secure “sub-prime” loans. These loans are called sub-prime because the interest rate borrowers are charged is above the prime interest rate that is available to homeowners with good credit. Lenders’ rationale for the increased interest rate is that it is related to the increased risk of default for borrowers with poor credit.

The sub-prime lending market has grown substantially in the last decade. The rise in the sub-prime market can be attributed to such factors as the deregulation of the consumer loan market, tax reform, the rise in real estate values, and the developing practice of originating lenders selling high interest rate mortgage loans on the secondary market (usually) in bulk, to investors. Although not all sub-prime loans involve predatory lending, many abusive

lending practices are associated with high interest rate loans.

#### Spotting abusive practices

There are warning signs that indicate possible abusive lending practices. These warning signs should be looked for in all phases of the loan process, including the marketing and sale of the loan, the application, the actual loan terms, and following the closing. Some warning signs that appear in the marketing, sale and application process are:

- door-to-door solicitation
- forged signatures
- the shifting of unsecured debt such as credit card debt into the home mortgage loan
- the allocation of large fees to mortgage brokers from lenders.

When talking to a caller about the loan itself, LRIS staff should check to see if:

- if the interest rate is high
- if there are excessive fees or closing costs
- if the lender has required the borrower to purchase credit insurance

- if the loan was based on the value of the home rather than the borrower’s ability to repay.

The intake staff member may also want to ask about the amount of the loan payment and what it includes. Often borrowers will be told they have a lower monthly payment, but the stated amount of that payment no longer includes taxes and insurance as their original higher payment did. LRIS staff should ask the callers about the closing process, noting whether a caller felt rushed or if the terms of the loan at closing were different from what the borrower anticipated. Finally, LRIS staff should ask how many refinances have occurred on the home loan, whether there are any excessive late fees or prepayment penalties, and about the type of collections practices used by the lender.

#### Referral

If any of these warning signs exist, the loan would be appropriate to refer to a panel attorney for review. These cases are complex

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## A Panel for Medical Insurance Denials

**W**ith rapid advancements and research in the medical field to treat life-threatening illnesses, patients not infrequently discover that their insurance carriers deny payment for some treatments, claiming it to be “experimental” or excluded under the policy for other reasons. Lawyer referral programs may get calls from some of these patients requesting attorney assistance to challenge the denial. Lish Whitson, who has been representing such clients for more than ten years, has some answers and suggestions that an LRIS program may use to help such clients.

**Dialogue:** *What panel(s) should these cases be referred to?*

**Whitson:** You should have an entirely separate panel that consists of attorneys who already are familiar with this area or who have been trained. Although the issues are based in contract law, there are various federal or state

laws with somewhat convoluted requirements that apply. An attorney **must** be familiar with the applicable statutes and administrative requirements as well as with contract law. The ABA Commission on Women in the Profession has developed a training package that has been funded through the Susan G. Komen foundation. There will be one of these trainings at the ABA Midyear Meeting in Seattle, in the afternoon on February 8, 2003. If any of your panel members are attending the meeting, you could give them information about this training.

**Dialogue:** *How does an attorney on the LRIS panel get paid in these cases?*

**Whitson:** Generally a client can pay some fees, because these are usually people who have medical insurance through employment and so have an income. If the benefit is through the employer,

ERISA rules apply and a prevailing patient can get an award of attorney fees from the court. If the policy is an individual one, there may be provisions for attorney fees in state law.

**Dialogue:** *Which panel members should be encouraged to take this training and the related cases?*

**Whitson:** Panel members who are experienced in complex personal injury matters, insurance policy interpretation, or complex contract litigation might be good candidates, as they could probably master the area fairly quickly with a little training. It is not a field for new attorneys.

**Dialogue:** *If an LRIS program's panel members are not coming to the ABA Midyear Meeting, how do they get the training?*

**Whitson:** There will be a video made of the training at the Midyear  
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## Lending Panel

*(continued from page 26)*

because they involve both federal and state statutory schemes as well as claims of fraud, unjust enrichment, conversion, or breach of fiduciary duty. Due to this complexity, many lawyers are not comfortable taking them on because they may be familiar with the law relating to only one aspect of the case, but not the others. To recruit attorneys to take these cases, a LRIS program can provide continuing legal education classes on the related issues for local attorneys. The training could be an all-day training or

a series of short noontime sessions. Another method of recruitment is to find attorneys in the community who are familiar with each of the different laws and see if they are willing to either mentor other attorneys on these issues, or to participate in the cases as co-counsel.

Another innovative idea that has been effectively implemented across the country is to partner private attorneys interested in these cases with local legal services attorneys. This kind of arrangement can work well, especially when a legal services provider cannot seek attorney's fees (many legal services providers are prohibited from seeking

fees). An important detail to point out to potential panelists is that attorney's fees **are** available under many of the federal and state laws.

Predatory lending can be very rewarding area of concentration both for attorneys and for LRIS staff as they work together to right a wrong and prevent someone from losing their home.

—Merf Ehman

*[Sources of detailed information about predatory lending are: Stop Predatory Lending: A Guide for Legal Advocates, National Consumer Law Center, 2002 and Early Warning Signs: 31 Indicators of a Predatory Lender, Neighborhood Reinvestment Corporation, 2000.]*

## Medical Denials

(continued from page 27)

Meeting, and that will probably be made available through the ABA in a streaming video format on the Internet. In addition, if [a future] training were to focus on breast cancer treatment, a live presentation may be possible through the funding for that project.

**Dialogue:** *Do most of the cases involve breast cancer patients?*

**Whitson:** The cases certainly started that way, and they have continued to be a major portion of the requests. This is possibly because of the activity of women's groups that have gotten the word out to patients with breast cancer that there are possible solutions to an insurance denial.

**Dialogue:** *Do you win the majority of these cases?*

**Whitson:** Not necessarily. The bottom line is contract law, and if there are no ambiguities in the provisions of the insurance contract that can be interpreted to the patient's advantage, then there is no magic wand that can produce coverage. I can't give a percentage of how many cases are successful, but in my experience, after an initial insurance denial, a patient has virtually no chance of obtaining denied treatment without the assistance of an attorney.

**Dialogue:** *How should a lawyer referral service screen clients?*

**Whitson:** The intake specialist should find out several things:

- Has the insurance company denied payment for the treat-

ment, saying it's "experimental" or otherwise not covered?

- Will the client's doctor make a strong statement that the treatment is needed?
- Is the need for the treatment immediate?

If the client says yes to these basic questions, then a referral should be made to this panel. The interviewer is not equipped to determine if the client will succeed in getting the insurer to pay and should not try to figure that out.

*Additional information about the ABA Commission on Women in the Profession Breast Cancer Legal Advocacy Initiative can be accessed at [www.abanet.org/women](http://www.abanet.org/women) or by writing Tamara Askew at [askewt@staff.abanet.org](mailto:askewt@staff.abanet.org)*

## LRIS Workshop

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Columbus Bar and Janet Diaz of the Houston Lawyer Referral Service. Elements of business plans for LRIS programs were reviewed in the first session. This served as encouragement to analyze program data in order to begin the planning process. In the second session, suggestions were offered regarding riding out the ups and downs that programs inevitably encounter from year-to-year. These include paying close attention to reserves and cost cutting ideas.

Mary Ann Falzone's sessions on effective phone techniques again provided important instruction for LRIS staff members. Actual taped calls were analyzed and scored in the "Key Success Factors for More Effective Referrals" in order to demonstrate how

calls can be more accurate. Jeannie Rollo from Travis County Bar and Robyn Day from San Diego assisted in the hands-on workshop "Using Focused Feedback to Coach and Counsel." Attendees in this session learned how to assist phone personnel in their own development by coaching based on real taped calls. These phone technique training sessions were videotaped and will be made available through the ABA LRIS Committee.<sup>1</sup>

Lish Whitson, former chair of the LRIS Committee, presented information to the entire conference about breast cancer and other medical insurance cases as the subject matter for possible new LRIS panels. [*The ABA Commission on Women in the Profession sponsors grant-funded training for attorneys interested in taking these cases. See page 27 for an interview with Whitson on this topic.*]

## 2003 Workshop

At the end of another conference packed with topical and thought-provoking programming and enthusiastic participation by attendees, the focus shifts to the next year. Ideas from the closing session breakout groups were taken up by the ABA staff to plan for 2003 LRIS National Workshop in Denver. Visit the LRIS Committee's Web site at [www.abalegalservices.org/lris](http://www.abalegalservices.org/lris) to learn more about registering for the 2003 Workshop on October 22-25, 2003 in Denver, CO.

## Endnote

<sup>1</sup> These phone technique training sessions were videotaped and will soon be available through the ABA LRIS Committee. Check your mailboxes in March 2003 for further information or visit [www.abalegalservices.org/lris](http://www.abalegalservices.org/lris)

**Betty Nelson Alexander** is the lawyer referral director of the Tarrant County Bar Association in Fort Worth, Texas.

## From the Chair...



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

Forty years ago, a Florida prison inmate named Clarence Earl Gideon wrote a letter to the U.S. Supreme Court that resulted in the single most significant transformation in criminal justice history. In *Gideon v. Wainwright*, the Supreme Court decided that, because all persons accused of a crime are guaranteed the right to counsel, the government must provide legal representation for defendants who cannot afford an attorney. In other words, *Gideon v. Wainwright* holds the promise of justice for even the poorest and most vulnerable of citizens in our society.

March 18, 2003 marks the 40th anniversary of the Court's ruling in *Gideon v. Wainwright*. Although we have come a long way over the years, the promise of *Gideon* remains largely unfulfilled. Poor people accused of crime are often denied the criminal defense representation that is required by the Constitution.

Inadequate counsel often results in the wrongful conviction and incarceration of indigent defendants. One example—of the many I could cite—is the case of Jimmy Ray Bromgard, who was 18 years old when, in 1987, he was convicted for the rape of an eight-year-old girl in Montana. His

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## 2001-2002 Resource Development Successes

Legal aid programs around the country are facing reduced grants from traditional revenue sources because of the reallocation of LSC funds due to the 2000 census and because IOLTA grants have fallen due to the drop in interest rates. At the same time, legal aid advocates have under-taken a number of successful initiatives recently to help generate additional resources. Examples of these include:

**Private Bar Campaigns:** Arizona and Missouri each garnered more than \$400,000 in 2001 through new or revitalized private bar campaigns. In 2002 New Hampshire kicked off a coordinated statewide bar campaign (for three organizations) with commitments from leadership firms totaling \$300,000.

**Attorney Registration Fees:** In October 2002, the Illinois Supreme Court enacted an attorney registration fee surcharge of \$49, \$42 of which will go to the state's IOLTA program to disburse to legal aid programs. It will generate \$2.5 million annually. The surcharge is modeled after the \$50 attorney registration fee surcharge for legal services in Minnesota. In Ohio, the Supreme Court has been allocating \$500,000 annually from bar fees to legal services for several years. This year, the Court has increased that amount to \$1 million to help make up for the loss in IOLTA funding. (A detailed account of the Illinois fee increase begins on page 16.)

**Pro Hac Vice:** The Oregon legislature recently authorized the Oregon Supreme Court to institute a pro hac vice fee, with the proceeds to go to legal services. The \$250 fee generated \$75,000 (as of June 2002, its first year).

**Bar Dues Opt-out:** The Texas Supreme Court, over a two-year period, modified the dues check off for legal services from a voluntary opt-in to a \$62 opt-out provision, increasing revenue from \$70,000 to over \$1 million.

**State Appropriations:** The Florida legislature made a new appropriation of \$2 million in 2002, to be used to provide legal assistance relating to family law, juvenile law, entitlements to federal government benefits, protection from domestic violence, elder and child abuse, and immigration. In Pennsylvania, legal services providers received \$2 million in 2002 in one-time funding from TANF dollars for systems improvements (primarily technology-related). In Texas, in 2001, the state legislature allocated \$2.5 million to Texas legal aid providers from the Crime Victims Compensation Fund to provide civil legal assistance to crime victims (primarily domestic violence victims).

**Court Fees and Fines:** The Nebraska legislature in 2002 agreed to increase an already existing filing fee surcharge devoted to legal services from \$750,000 to an estimated \$1.55 million annually. The New Mexico legislature in 2001 enacted a filing fee surcharge for legal aid,

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## Nominations Sought for 2003 Harrison Tweed Award

The ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association invite nominations for the 2003 Harrison Tweed Award.

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

The award will be presented in August at the 2003 ABA Annual Meeting in San Francisco, California in recognition of work accomplished during the year beginning April 1, 2002. Projects which began prior to that date will be considered if substantial services have been provided between April 1, 2002 and March 31, 2003. Nominations must be postmarked by April 1, 2003.

A full description of the award, a list of past recipients, and nominating procedures are available at [www.abalegalservices.org/sclaid/harrisontweedmain.html](http://www.abalegalservices.org/sclaid/harrisontweedmain.html) or by calling 312-988-5767.

## Successes

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which is generating \$1.2 million annually. In October 2002, the Pennsylvania legislature enacted a filing fee surcharge for court improvements and legal services. In the early years, the court will get more of the funds for what are mostly one-time technology improvements. The funds to legal services will increase each year, as the court's expenditures are completed. In the first year, legal services will receive approximately \$3.8 million and by year four, that amount is expected to reach \$7.6 million.

*The information for this article was gathered and compiled by the ABA's Project to Expand Resources for Legal Services. For more information, contact Meredith McBurney at 303-329-8091 or via email at [mm8091@aol.com](mailto:mm8091@aol.com)*

## From the Chair...

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defense counsel failed to conduct any investigation; failed to hire any expert to debunk the fraudulent scientific evidence presented by the state's expert; failed to file any motions to suppress the identification of the young victim who, by her own testimony, was only 65 percent certain of the identification; failed to give an opening statement at trial; did not prepare a closing statement; and failed to file an appeal after Bromgard was convicted. Bromgard spent fifteen and a half years in prison before he was exonerated through DNA evidence on October 1, 2002.

There is a severe lack of funding for public defense systems—although it is the state's responsi-

bility to provide public defense services, many states abdicate this responsibility to cash-strapped counties. The widespread lack of state funding and oversight for public defense services leads to a patchwork of local systems with no uniformity with respect to quality of services from state to state or even county to county. Staggeringly high caseloads for public defenders and court-appointed counsel make it difficult to provide meaningful representation for each defendant. There is a glaring lack of access to important resources, such as investigators and expert witnesses. The low fees paid to assigned counsel do not always attract the most qualified attorneys. As a result of these and other factors, we believe that

indigent defense is in a state of crisis in this country.

This situation can be improved only when state and local policymakers are convinced of the need to improve their public defense systems. The Standing Committee on Legal Aid and Indigent Defendants will conduct a series of hearings throughout 2003, bringing together bar leaders, private attorneys, public defenders, prosecutors and others to shed further light on the details and dimensions of the problems. We will then develop a report, built on a solid record of recent evidence, for use by policymakers nationwide in efforts to improve public defense systems everywhere. We invite you to participate in these hearings, and to join us in seeking the necessary systemic improvements.

## Report Finds Debt Squeezes Lawyers Out of Public Service Jobs

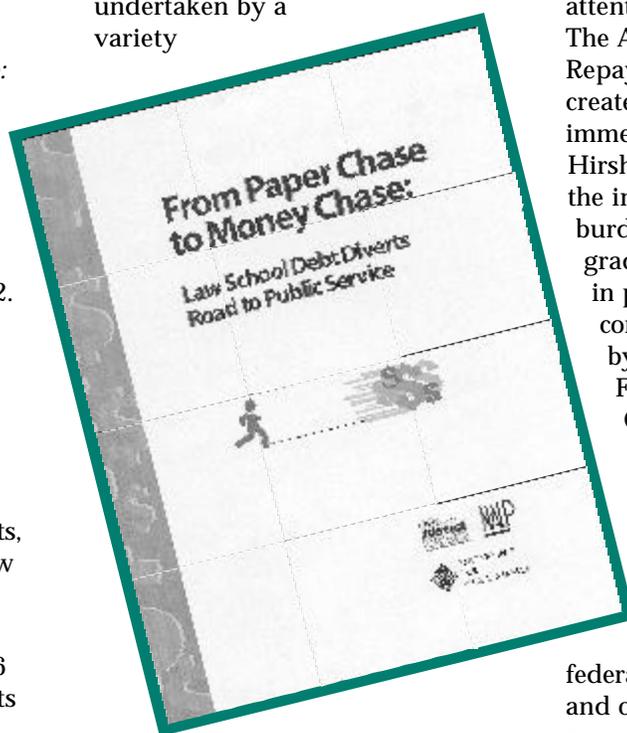
Three national organizations promoting public interest legal work—Equal Justice Works, the National Association for Law Placement, and the Partnership for Public Service—joined forces to recently release a report dealing with the impact of rising law student debt burden on student public service options following graduation. The report, titled *From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service* summarizes findings from two nationwide surveys—the first, a survey of public interest employers and the second, a survey of third year law students in spring 2002.

The report includes the following findings:

- 94 percent of student respondents report financing their legal studies through school loans
- Of the class of 2002 respondents, 50 percent graduated with law school loans debts of \$75,000 or more
- Law school debt prevented 66 percent of student respondents from considering a public interest or government job
- 68 percent of public interest employers surveyed reported difficulty recruiting the attorneys they need while 62 percent reported difficulty retaining experienced attorneys

The report suggests that loan repayment assistance programs (LRAPs), which assist graduates working in lower-paying public service jobs with their loan

payments, represent one of the best solutions to the law school educational debt crisis. Approximately 55 law schools and 40 public interest employers currently administer LRAPs. Loan repayment assistance programs exist in approximately seven states, with administration undertaken by a variety



of entities including state governments, IOLTA programs, bar foundations, access to justice commissions or stand-alone non-profit organizations.

The report recommends the creation and/or expansion of LRAPs by such organizations as law schools and public interest employers. It also calls on law schools to create more scholarship programs. Loan repayment

advocates may use the report's findings and recommendations to support their call for the development of loan repayment assistance programs in their state. The report can be accessed online at [www.equaljusticeworks.org/choose/lrapurvey20.php](http://www.equaljusticeworks.org/choose/lrapurvey20.php)

The ABA is also focusing attention on this important issue. The ABA Commission on Loan Repayment and Forgiveness—created in August 2001 by ABA immediate past President Robert Hirshon—continues to explore the impact of the law student debt burdens the ability of law graduates to pursue and remain in public service jobs. The commission, which is co-chaired by Curtis M. Caton of San Francisco and Judge Frank M. Coffin of Portland, Maine, is working with other national organizations to promote LRAPs and to guide ABA efforts to stimulate more LRAPs, scholarships and fellowships provided by law schools, state bars,

federal and state governments and other organizations. The commission provides technical assistance and information resources to state bar leaders and others interested in creating or expanding an LRAP. The commission is preparing its final report for release in August 2003. For more information on the commission, visit [www.abalegalservices.org/lrap](http://www.abalegalservices.org/lrap) or contact Dina Merrell, commission counsel, at [merrelld@staff.abanet.org](mailto:merrelld@staff.abanet.org)

# Second National Meeting of Access to Justice Chairs Set for April

by **Robert Echols**

**C**hairs of state access to justice commissions, bar committees with a broad access to justice charge, and other state access to justice leaders will gather this spring for the second time in two years to share their experiences, discuss challenges and concerns with their peers, and learn from experts in the field.

The second National Meeting of State Access to Justice Chairs will take place on Saturday, April 12, 2003, in Portland, Oregon, in conjunction with the 2003 Equal Justice Conference. The event will include focused, small-group sessions to provide opportunities for in-depth discussion of issues selected by the participants. An opening plenary session will provide broad national perspective and showcase particularly successful or promising access to justice initiatives from a diverse group of states.

More than a dozen states currently have an active access to justice commission or similar entity—a formal, independent state-level body dedicated to expanding and improving civil legal assistance in the state, composed of appointed representatives of the bar, the courts, legal services providers, and other key constituencies—while several others are in the process of creating such a body. In other states, a committee of the state bar or bar association or some other body with a broadly representative membership performs a similar function.

Invitations to the meeting are being sent to the chairs or co-chairs of all such entities. In states without a formal access to justice structure, invitations are being sent to the volunteer leaders whose roles are most closely related to the access to justice mission, including bar presidents, bar foundation

officers, supreme court justices, and others, depending on the circumstances in the state.

The 2003 meeting follows up on the first such national meeting, held in conjunction with the 2002 Equal Justice Conference. Over 60 state access to justice leaders from 35 states participated in that event. Participants overwhelmingly agreed that holding a similar meeting in 2003 would be beneficial.

Like last year's event, the 2003 meeting is being convened by SPAN, a joint project of the ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association. SPAN's mission is to support state Access to Justice partnerships. Additional information about the meeting is available from SPAN at [span@nlada.org](mailto:span@nlada.org)

**Robert Echols** is the coordinator of SPAN.

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