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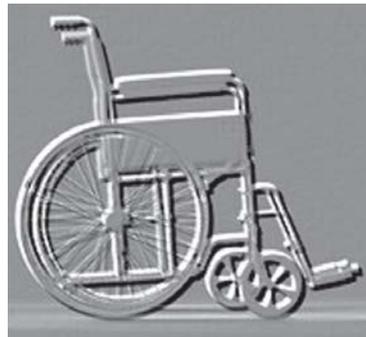
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LRIS and the Americans with Disabilities Act

by Ron Abernethy

The Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12000 et seq.) is approaching its 14th anniversary, and most lawyer referral services now fully comply with its provisions. Nevertheless, a brief review of the statute as it applies to lawyer referral & information service (LRIS) programs is in order. LRIS programs need to understand and comply with the ADA's requirements in their role as employers and as providers of services to the public.

Section I of the ADA prohibits discrimination against employees and job applicants when they have a recognized disability. The statute requires any lawyer referral service—or parent bar association—that employs 15 or more people to reasonably accommodate physical and mental disabilities of its employees and job applicants in hiring and employment practices. Section I also requires employers to post a notice describing the provisions of the ADA. An LRIS program/bar association that has less than 15 employees is exempt from the hiring and employment practice rules of Section I, but still must comply with the requirements of Section III, which deals with client access (discussed later in this article). Individual states may also have laws relating to disabilities in the workplace and customer service settings that apply to smaller programs and bar organizations.



ADA and the LRIS workplace

Section I prohibits an LRIS program from discriminating against people with disabilities in its employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and the other terms, conditions and privileges of employment. The prohibition applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.

It is a violation of the ADA for an employer to discriminate against "qualified individuals with disabilities," including both employees and applicants for employment. The statute's definition of "disability" is broader and more far-reaching than one might expect. In fact, persons not previously considered "disabled," either by themselves or by others, may be entitled to the ADA's protection.

An individual is considered to have a "disability" if he or she 1) has a physical or mental impairment that substantially limits one or more major life activities; 2) has a record of such impairment, or 3) is regarded as having such impairment. Persons with a known association or relationship with an individual with a disability are also protected.

"Individuals with disabilities" are people who have impairments that substantially limit major life activities such as seeing, hearing, speaking, walking, breathing, perform-

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DIALOGUE

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ADA

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ing manual tasks, learning, caring for oneself, and working. For example, someone in a wheelchair, or who has epilepsy, HIV infection, a substantial hearing or visual impairment, mental retardation, or a specific learning disability is covered. However an individual with a minor, non-chronic condition of short duration—such as a sprain, broken limb, or the flu—generally would not be covered. The ADA does not specifically name all of the impairments that are covered.

“Individuals with a record of a disability” includes, for example, people who have recovered or are in remission from cancer or mental illness.

The ADA’s reference to “individuals who are regarded as having a substantially limiting impairment” includes people who may not have a physical or mental impairment that prevents major life activities, but which may still cause them to be discriminated against. For example, the ADA protects a qualified individual with a severe facial disfigurement. An LRIS program could not deny that person employment because the service fears the “negative reactions” of customers or co-workers.

A “qualified” individual with a disability is an employee or applicant who meets legitimate skill, experience, education, or other requirements of a job and who is able to perform the essential functions of the position with or without reasonable accommodation. The ability to perform “essential functions” means that an individual with a disability cannot be found unqualified simply because of their inability

to perform incidental job functions. If an employee or job applicant can perform essential job functions, except for limitations caused by a disability, the LRIS program must consider whether the person could perform these functions with some reasonable accommodation.

Reasonable accommodation

A “reasonable accommodation” is a change or adjustment to a job or the work environment that would allow a person with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other individuals in the workplace. There are many accommodations that can help disabled people to work successfully. For example, an LRIS program can make physical changes such as modifying a workspace; it can provide sign language interpreters for people who are deaf; it can provide a quieter workspace to reduce noisy distractions for someone with a mental disability. Training materials can be prepared in an accessible format, such as in braille, on audiotape, or on computer disk. The LRIS program can procure devices for use with telephones by people who are deaf, and provide hardware or software that make computers accessible to people with vision impairments and to those who have difficulty using their hands. Time off can be provided for an employee who needs treatment for a disability, although if an employee lacks sufficient sick leave, the time off can be without pay.

A “reasonable accommodation” could also include reassigning a current employee with a disability when he or she is unable to do the original job because of a disability, even when provided with an

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From the Chair...



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

As I was preparing for recent discussions about the Minimum Standards for Operation of a Lawyer Referral Service in my home state of California, I found myself reflecting on the fundamental improvements we have made since my introduction to the world of LRIS in the early 1980s. I didn't know much about LRIS programs when I was sworn in as president of the San Joaquin County Bar Association, but I quickly realized that the lawyer referral service was the public face of the bar association. As I travel around the United States as a consultant with the ABA LRIS Committee's Program of Assistance and Review (PAR), I find this to be the case with each program I visit. More people have contact with local bar associations through LRIS programs than through any other bar program or activity.

During the 20 years of my active LRIS involvement, a number of states (Arkansas, California, Florida, Missouri, Nebraska, Ohio, Pennsylvania, Tennessee, Texas, and Wyoming) have enacted court rules or legislation governing referral services. In each state, the primary emphasis of LRIS has shifted away from existing primarily as a vehicle for providing cases to younger

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Voice Over IP: A New Paradigm for Telephony?

by Ken Finkelson

The winds of change are blowing in the world of voice networking and they are whistling a tune called "voice over IP." Voice over IP (VoIP) means "voice over Internet protocol" or, more simply put, voice over the data network. Its potential effect on your organization is more likely to be that of a series of small storms than of single tornado that lays waste to your current phone system.

Before reading any further, there is one message that you must consider: If you are planning on entering into any new contracts for telephone service or making any new capital expenditures, make sure that you take this new technology into consideration. If you do not, your organization could be married—via contract—to older, more expensive technology for years!

In terms of your telephone system, VoIP can apply to either the line side (the portion of your network that is within your physical premises) or the trunk side (the portion which connects your facility to the outside world, from your building to the servicing telephone company).

The line side

Let's begin the discussion with the line side. Line-side VoIP would allow you to migrate your **internal** voice traffic over the data network. You could plug in a telephone in the same manner as a computer. The voice system would recognize an individual staff member's telephone by its internal interface card on the network wherever it was plugged in, and route calls to it.

Behind the scenes, your data folks will need to make sure the data network is capable of handling this additional traffic before you can opt for line-side VoIP. Many older data networks may not be able to handle this added load. If you were to go with this technology, you would almost certainly need to replace the telephone sets as well.

Computing the total cost of ownership of a line-side VoIP system is a complicated task. By using the same wires as the data network, there is a cabling savings. If you have 50 stations and new phone jacks cost \$100 per cable run, the cost for phone wire would be \$5,000. The savings generated by avoiding these cable costs, however, could be offset by the cost of "beefier" closet data switchgear, which may be more expensive. If your existing data network is too old, or too slow, you may have to spend that money anyway. As you can begin to see, each case needs to be analyzed separately. There is no one solution for all offices.

Trunk-side VoIP

Trunk-side VoIP is scaring the telephone companies. Telephone company stock prices show a steady decline. The phone industry has made its bread and butter from providing metered service for businesses. With

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Voice Over IP

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metered service, you call your lawyer for five minutes, and you are charged for five minutes. VoIP changes this. You maintain a steady connection to the Internet, and you simply pay for that connection. You can use it as much or as little as you want.

Trunk -side services are popping up for flat rate connections at a set fee per month. This is an emerging technology but is almost

certain to stay with us. Accordingly, it would be foolish to enter into a three-year agreement with a telephone company for service at a potentially lower rate if that service may be offered at a **much** lower rate when the new technology takes hold. It may be cheaper to pay the higher rate for a one-year agreement or go month-to-month, than to take the risk of a long term, unfavorable commitment.

Hybrid technology

Much of the newer technology available is referred to as “IP

ready” (or hybrid). This technology allows IP connectivity on the line side or the trunk side, as well as traditional telephone services. This type of technology may protect existing hardware investments in phones and wiring while allowing a migration, over time, to the IP world.

An example where this might be a consideration would be where a new system was purchased within the last three years. This system could be IP ready. If you were expanding services and

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From the Chair...

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lawyers. Now, lawyer referral is known for the delivery of high quality attorney referrals to moderate-income legal consumers. Lawyer referral programs across the country are leaders in their respective communities, providing legal services to people from all walks of life. New York City and San Francisco are justly proud of their LRIS programs, and of how they rose to the challenge of providing legal services in times of tragedy, in the face of both man-made and natural disasters. This story is played out in smaller services throughout the United States. More recently, LRIS programs have been in the forefront of the legal profession by establishing programs that provide access to unbundled legal services and other practice innovations.

During my 20 years working in the field I have seen a majority of LRIS programs adopt, in some cases timidly and even reluctantly, the notion that experience-based

subject matter panels are the foundation of a quality referral service. The LRIS programs that have taken this step now embrace these panels enthusiastically and acknowledge that they have dramatically strengthened the case of LRIS. In the process, LRIS programs across the country have transformed themselves from a backwater component of the bar association into a true public service of the bar. LRIS programs have done much to enhance the reputation of the legal community by delivering on the promise of what the ABA LRIS Committee calls “The Right Call for the Right Lawyer.” Many services that operate in compliance with the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service are completely self-supporting and are in a position to fund programs that provide legal assistance to the low and moderate-income people least likely to access the justice system.

The reputation of LRIS programs within the legal community has also progressed by leaps and

bounds. Practicing lawyers have come to understand that utilizing the lawyer referral service is the right call for someone seeking quality legal assistance. Panel members take pride in their LRIS membership, realizing that it represents a certain status in the legal community.

As I step into the shoes of my predecessor as chair of the ABA LRIS Committee, Jim McLindon, and see the work he has done in expanding the number of ABA-certified LRIS services across the country I realize, more than ever, that the “The Right Call for the Right Lawyer”, is more than a catchy advertising phrase. When a legal consumer calls an ABA-certified lawyer referral service to obtain counsel, it is a fact.

The ABA Standing Committee on LRIS is committed to the provision of quality referrals through LRIS programs and will continue to provide leadership and support to local programs around the country. The growth in LRIS has been phenomenal and the future promises an LRIS world that is even stronger.

Voice Over IP

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adding 10-20 people, VoIP could save costs. As always, thorough cost analysis would be in order.

Let me share an example to illustrate these considerations. The preferred choices are indicated in the chart directly above.

As you can see, sometimes there are more questions than answers. Again—and I can't stress this point enough—each office needs to analyze its specific phone needs and resources. Many LRIS programs have to plan their phone needs in concert with a larger bar association system, although some may have separate systems. The best, and least expensive way to do this is through the request for information (RFI) process. This allows vendors to outline their pros and cons in writing, with pricing. Using a matrix, like the one outlined below can be an excellent tool.

PREFERRED CHOICES Phone System Technology

	IP	Traditional	Hybrid
1. Phone system is five years or older	X		
2. Phone system is two years old			X
3. Phone system is eight years old, works well and you are only adding two stations		X	
4. Phone system is eight years old and breaks down constantly. Parts are scarce	X		
5. You have a three- year-old system, but the telephone sets do not support caller-ID and this is necessary for bill-back purposes*	X		

* Sets are generally one of the largest expenses. If you need new ones, it may be worth replacing the whole system.

You are not alone

Don't despair if the brave new world of VoIP seems overwhelming. There are many user groups and organizations that can be of great assistance in the selection process. Additionally, most reputable vendors will provide references. You can ask them for their experiences with the operation of the systems and the quality

of the relations with the vendors and support personnel. And don't forget, vendors will always point out the vulnerabilities on their competitors' systems. Take advantage of all the available information and use it to form a knowledge base on which to make a decision.

Ken Finkelson is the former manager of network and infrastructure for the American Bar Association.

SAMPLE MATRIX Phone System for X Bar Association

Location Number of Stations Vendor	Memorial Courthouse 65			
	Avaya	Nortel	Siemens	Cisco
Switchgear	\$ 14,000.00	\$ 12,000.00	\$ 16,000.00	\$ 12,000.00
Telephones	\$ 13,000.00	\$ 12,000.00	\$ 15,000.00	\$ 9,000.00
Cabling	\$ 5,200.00	\$ 5,200.00	\$ 5,200.00	\$ 5,200.00
Installation	\$ 3,000.00	\$ 2,000.00	\$ 4,000.00	\$ 1,200.00
Training	\$ 2,000.00	\$ 1,500.00	\$ 900.00	\$ 1,500.00
Voicemail	\$ 5,000.00	\$ 4,200.00	\$ 3,920.00	\$ 5,500.00
Total Cost	\$ 42,200.00	\$ 36,900.00	\$ 45,020.00	\$ 34,400.00
Maintenance / year	\$ 3,120.00	\$ 2,184.00	\$ 3,600.00	\$ 3,000.00
Move/Add/Change Cost	75/Hr	0/Hr	0/Hr	5/Hr
Cost per Person (65)	\$ 697.23	\$ 601.29	\$ 748.00	\$ 575.38
Cost per Person (65) over 3 years	\$ 793.23	\$ 668.49	\$ 858.77	\$ 667.69

(These numbers are for illustrative purposes only. Any numbers you acquire will be different.)

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accommodation, to a vacant position for which the individual is qualified. A lawyer referral service might also consider restructuring a particular job assignment or modifying a disabled person's work schedule. However, there is no obligation to find a position for an applicant or employee who is not qualified for the position even when given a reasonable accommodation. Employers are not required to lower quality or quantity standards as an accommodation; nor are they obligated to provide personal use items such as glasses or hearing aids.

If reasonable accommodations have been made, a lawyer referral service can hold an employee with a disability to the same standards of production/performance of essential job functions as other similarly situated employees without disabilities.

An LRIS program is allowed to establish attendance and leave policies that are uniformly applied to all employees. An employer may not refuse leave needed by an employee with a disability if other employees get such leave. Employers also may be required to make adjustments in leave policy as a reasonable accommodation. While an LRIS program is not obligated to provide additional paid leave, a "reasonable accommodation" may include leave flexibility and unpaid leave.

Limits of ADA protection

The ADA does not require employers to hire or to keep persons who are unqualified to do the job; the act protects only "qualified" persons who have an ADA-

recognized disability. For example, individuals currently using illegal drugs are specifically excluded from the definition of a "qualified individual with a disability." However, a person who currently uses alcohol is not automatically denied protection. An alcoholic is considered a person with a disability and is protected by the ADA if he or she is otherwise qualified to perform the essential functions of the job. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol. A test for the illegal use of drugs is not prohibited under the ADA, so employers may conduct such testing of applicants or employees and make employment decisions based on the results.

The ADA allows an employer to select the most qualified job applicant available and to make employment decisions based on reasons unrelated to a disability. For example, if an essential function of the job is to accurately type 75 words per minute, it can make a typing test a part of the application. While the lawyer referral service must provide a reasonable accommodation to an applicant who has a disability, it is not required to hire an applicant with a disability who types 50 words per minute over an applicant without a disability who accurately types 75 words per minute. If typing speed is needed for the successful performance of the job, an employer can hire the applicant with the higher typing speed.

It is also important to note that an LRIS program is only required

to accommodate a "known" disability of a qualified applicant or employee. The requirement that an employer provide a "reasonable accommodation" generally will be triggered by a request from the disabled individual, who frequently will suggest an appropriate accommodation. If an individual does not request an accommodation, the ADA does not require the employer to provide one. The one exception is where an individual's known disability impairs their ability to know of—or effectively communicate a need for—an accommodation, and that fact is obvious to the employer.

Finally, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. An "undue hardship" is an "action requiring significant difficulty or expense" in light of several factors, including the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. An LRIS program is not required to make its existing facilities accessible until a particular applicant or employee with a disability needs an accommodation, and then the modifications should meet that individual's work needs. A lawyer referral service constructing new facilities or remodeling old facilities must comply with the ADA's construction requirements.

When the LRIS program is part of a larger entity, such as a bar association, the structure and overall resources of the bar association will be considered in determining whether the accommodation would constitute an "undue hardship".

The ADA requires that an

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ADA

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employer maintain employment-related records for one year after making the record or taking the action described in the record, whichever occurs later. Such records include application forms and other records related to hiring, requests for reasonable accommodation, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship.

LRIS, ADA and the public

While Section I of the ADA deals with employees and job applicants, Section III impacts how an LRIS program interacts with clients and other individuals who use its services. The term "customer" includes people who contact the lawyer referral service, and probably includes the lawyers who serve on the panels. Unlike Section I, the requirements imposed in Section III of the ADA apply to all LRIS operations, regardless of their size.

In most cases, contact between an LRIS program and a prospective client is handled exclusively over the telephone or Internet. Most programs do not have major issues under Section III, which focuses on public access. For lawyer referral services that use the telephone exclusively in their referral operations, the major ADA compliance issue is the need to provide auxiliary communications aids to allow disabled clients and others access to the service.

Under Section III, an LRIS program is required to comply with basic nondiscrimination provisions prohibiting exclusion, segregation, and unequal treat-

ment. For example, if a lawyer referral service allows access to its services by walk-in clients then it must comply with ADA requirements for disabled persons relating to customer access, including its architectural standards for new and altered buildings. An LRIS program must also provide an effective communication capability for people with hearing, vision, or speech disabilities.

Where an LRIS program does not utilize direct contact with clients it still must provide auxiliary aids and services when they are necessary to ensure effective communication with individuals with hearing, vision, or speech impairments. "Auxiliary aids" can include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, materials in braille, and large print materials. Some LRIS programs provide sign language interpreters for the first consultation with the attorney who receives the referral.

Auxiliary aids that would result in an undue burden, (i.e. "significant difficulty or expense") are not required by the regulation. However, an LRIS program must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or an undue burden.

An LRIS program with walk-in clients must remove architectural and structural barriers in existing facilities, when this can be readily accomplished. Examples of barrier removal measures include installing ramps, making curb cuts at sidewalks and entrances, rearranging tables, chairs, vending machines, display racks, and other furniture, widening doorways,

installing grab bars in toilet stalls, and adding raised letters or braille to elevator control buttons. First priority should be given to measures that will enable individuals with disabilities to "get in the front door," followed by measures to provide access to areas providing goods and services.

If removal of barriers is not readily achievable, the service must provide readily achievable alternative measures for handicapped clients. Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense."

Conclusion

Compliance with the ADA is the law, and it is also good LRIS business. Making services readily accessible to all individuals, and treating qualified disabled employees and job applicants fairly, is the standard practice for most LRIS programs and should be for all.

Ron Abernethy, chair of the Standing Committee on Lawyer Referral and Information Services, is the chief deputy public defender in Napa County, California. He has chaired the PAR Committee for several years.

There are many regulations and cases interpreting the ADA. If you have a specific ADA question you should contact the U.S. Department of Justice or a lawyer experienced with the ADA, preferably someone from your local lawyer referral program.

The information provided in this article is intended to serve as informal guidance, not legal advice. The views expressed here are those of the author, and do not necessarily represent the views, policies or opinions of the American Bar Association or the ABA Standing Committee on Lawyer Referral and Information Service.

ABA President Announces Release of Working Group Report at Annual Meeting

Protecting the Rights of Service Members Should Be National Priority

On August 6, 2004, immediately before ending his term as ABA President, Dennis W. Archer announced the release of the *Report of the American Bar Association Working Group on Protecting the Rights of Service Members*.

“The brave women and men who serve in our nation’s military place themselves in harm’s way to protect the rights and freedoms our country holds dear. In return, we in the legal profession must do our best to safeguard their legal rights—including the right to vote and to have their vote counted—so that they are not diminished as a result of their military service,” Archer said.

In August 2003, Archer announced the Working Group’s formation by the ABA Standing Committee on Legal Assistance to Military Personnel. The group was charged with examining current laws as they relate to the men and women serving in the military and recommending new legal protections, if necessary, for service members who increasingly are called on to serve greater lengths of time while fulfilling their duties. The report is the outcome of that work.

Areas of law examined by the Working Group include decedent’s affairs, education, family law, the Servicemembers Civil Relief Act (SCRA), taxation and real property issues, and employment issues under the Uniformed Services Employment and Reemployment Rights Act.

The Report identifies several troublesome issues and potential solutions, including:

- Consistent access to in-state tuition benefits for service members and their dependents at public colleges and universities in their state of assignment
- Better education of the state and federal judiciary about the new SCRA
- Restoration of full benefits under the Survivor Benefit Program
- Improved protections and broader interpretations of SCRA among states, to allow service members and their spouses to terminate leases if they are on active duty and receive orders to a new location
- Improved access to affordable legal representation for service members through an Expanded Legal Assistance Program
- More vigorous advocacy for returning veterans, particularly reservists reentering the civilian work force.

Underlying many of the Working Group’s findings is the urgent need for greater consistency in the laws and regulations that impact service members and their families. This may be their most pressing legal concern.

“What this report makes readily apparent is a critical lack of

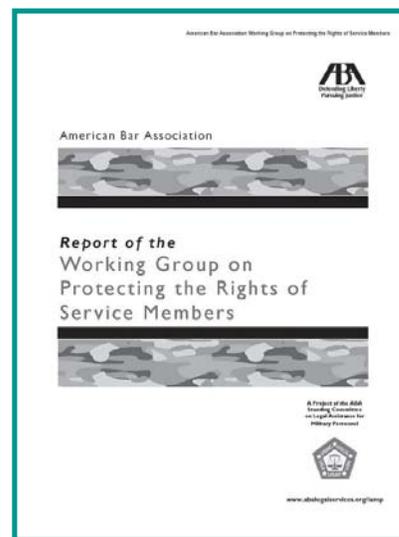
consistency among the states in laws affecting the lives of our service members and their families. They need a level of predictability—be it in civilian employment upon return from military deployment, qualifying for in-state tuition rates by a service member or her

college-age dependents, or being able to break his lease because of military relocation, no matter whether a spouse is also included on the lease—so that they can focus on their work as the defenders of our country,” said Archer.

“A major component of

improving the consistency of our laws is better education of our state and federal judges about the many laws and provisions that affect service members, particularly the SCRA, because an informed judiciary is the greatest protection against exploitation and disadvantage the men and women who serve in the military can possibly have,” continued Archer.

For a complete copy of the report and other information, visit www.abavideonews.org/ABA292/index.htm or contact Glenn Fischer, ABA LAMP Committee, at fischer@staff.abanet.org.



From the Chair...



by John Jenkins, RADM,
U.S. Navy, Retired
Chair of the ABA Standing
Committee on Legal Assistance
for Military Personnel

It is with great pleasure that I write again as chair of the Standing Committee on Legal Assistance for Military Personnel (LAMP), having been appointed to serve another term by ABA President Robert J. Grey, Jr. I look forward to continuing to build on the successes this committee had in the past year, and I hope that we can continue to work together to provide even better legal assistance services to our men and women in uniform.

We are fortunate to have a roadmap to help guide us in our efforts. The Working Group on Protecting the Rights of Service Members released its report during the ABA Annual Meeting in August (see the related story on page 8). The LAMP Committee will consider how to use the report's recommendations to continue to pursue its mission of serving the members of our military and their families. Since the subject matter of the report is fairly broad reaching, the LAMP Committee should have a good many different approaches to contemplate.

I would like to take a moment to thank our outgoing members, Dan Bean, Traci Jones and Christo

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LAMP Spotlight: Fort Lewis

by CPT Chad Balfanz

Believe it or not, legal assistance for military personnel is not an entitlement. Rather, service secretaries may exercise their broad discretion in providing legal assistance services to our Uniformed Service members. The American Bar Association, through its Standing Committee on Legal Assistance for Military Personnel (LAMP), is working to help make legal assistance for military members an entitlement. When not proposing much-needed legislation, the LAMP Committee also provides continuing legal education (CLE) opportunities for military legal assistance providers. The goal of the committee's CLE efforts is to address and to educate these providers on the core legal issues that affect an estimated nine million military personnel and their dependents. In July, the LAMP Committee brought its CLE effort to Fort Lewis, Washington.

Fort Lewis is the home to 15 of the Army's power projection platforms, including two of the Army's Stryker Brigades. Located in the beautiful Pacific Northwest, Fort Lewis lies adjacent to McChord Air Force Base, the planned home of the new C-17 transport fleet. With its abundant, high quality, close-in training areas, Fort Lewis is the premier and most-requested post in the U.S. Army. It has more than 25,000 soldiers and civilian workers and supports more than 120,000 retirees and their family members.

Rear Admiral (Ret.) John Jenkins, chair of the ABA LAMP Committee, opened the one-day conference, discussing the emerging needs of service members. Colonel David Diner, I Corps and Ft. Lewis staff judge advocate, then welcomed over 120 attendees, which included both lawyers and paralegals. Patricia Apy, of Paras, Apy, & Reiss, P.C., began the day's instruction, speaking about child custody issues both in the United States and abroad. Christopher Sutton from the Washington State Bar Association highlighted the changes and likely effects of Washington State's proposed Rules of Professional Conduct. Thomas Taylor of Luce, Lombino & Riggio, P.S., explained the pitfalls and challenges of estate and tax planning, and Colonel John Odom of the U.S. Air Force Reserves concluded a lively and animated discussion on the Service Members

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Left to right: CPT Jay Stephenson, Vernal Lee, and CPT Chad Balfanz of the legal assistance office at Fort Lewis, Washington.

From the Chair...

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Lassiter, for their efforts on behalf of the committee and for furthering the cause of military legal assistance. The contributions they made during their tenure were indeed valuable, and they will positively reinforce the strength of the LAMP Committee and its presence both within and without the ABA.

At the same time, I extend a warm welcome to our newest committee members, William Brown, Lester Goo, Gregory Huckabee and Thomas Morrison. I am confident they will find that the LAMP Committee is a vital, creative force within the ABA and an instrument of real, beneficial change. We look forward to working with them at our upcoming meeting and CLE program in Yorktown, Virginia, where the Coast Guard will host the committee at the Coast Guard Training Center.

Speaking of CLE programs, I am reminded about the importance of education in the more general sense. Indeed, one of the points

stressed quite heavily by the Working Group report is the need for greater education on the part of many: the civilian bar, the military bar, the judiciary and service members themselves. And, although last year saw substantial changes in the form of the Servicemembers Civil Relief Act and the Military Family Tax Fairness Act, these laws are most effective only if we know how to implement them to the advantage of service members. While we work tirelessly for legislative change, we should not forget that the change we seek is but part of the battle. We must begin implementing these changes by spreading the word about them, and helping others to understand them.

One of the ways the LAMP Committee helps provide this critical communication is through Operation Enduring LAMP, which is entering its third year. Begun shortly after the terrorist attacks of September 11, 2001, Operation Enduring LAMP has seen hundreds of attorneys volunteer to help provide pro bono legal assistance to our service members,

and there is an OpEnduring LAMP effort in almost every state. Yet, there is still more to do, especially once reserve and National Guard troops begin rotating back to their civilian lives. The demand for legal help with employment matters and other everyday problems is likely to be high as service members try to resume their "normal" lives. If you have not yet done so, I urge you to see how an Operation Enduring LAMP effort near you can be enhanced. A renewed call for volunteer attorneys, a program on the distinct problems faced by service members, or simply drawing attention to the sacrifices made by members of the military are all ways to help educate others on LAMP-related issues.

In closing, please do not forget that the ABA LAMP Committee stands ready to offer any assistance it can with your local efforts. Do not hesitate to get in touch with the committee's staff if you think LAMP can help make a difference. In addition, if you have suggestions for future programs or projects, we would welcome them.

Fort Lewis

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Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). Paralegals from each of the Uniformed Services followed a separate track of instruction, which focused on ethical duties, notaries, and powers of attorneys.

The Fort Lewis Legal Assistance Office

The Fort Lewis Legal Assistance Office (LAO) provides legal

services to a client base of 150,000 active duty, retired, reserve and National Guard personnel; Department of Defense civilians; and dependent family members over a four-state region. It advises clients in just about every area of the law, including domestic relations, estate planning, medical planning, consumer protection, real and personal property, landlord-tenant, economics, taxes, torts, and civilian and military administrative matters. Its lawyers and paralegals are constantly drafting correspondence and documents including wills, letters,

and memoranda. When not authoring documents, the staff aids clients in preparing OER/NCOER appeals and rebuttals to bars to reenlistment, reports of survey, and letters of reprimand. The office regularly conducts Family Readiness Group meetings and educates the local community on pertinent legal issues by drafting articles for local newspapers and offering preventative law classes. It's no wonder that the Fort Lewis LAO received the U.S. Army's Chief of Staff Award for Excellence in Legal Assistance in

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The Thanks of a Grateful Nation: Immigration Reforms for Those Who Serve

by LTC Moe Lescault

The United States has long honored those who choose to serve in the military with favorable treatment under immigration and naturalization laws. In the days since the attacks of September 11, 2001, this favorable treatment has continued, with the Congress remedying problem areas for service members seeking to become citizens. The National Defense Authorization Act for Fiscal Year 2004 (hereinafter "NDAA 2004")¹ continued that treatment, remedying some provisions that disadvantaged service members and, in cases where those service members make the ultimate sacrifice on behalf of the Nation, assisting surviving family members. This article provides a brief overview of the major provisions of this important legislation.

Addressing practical hurdles

One of the greatest practical difficulties for service members, especially in this time of increased deployments, is completing the naturalization process overseas. Normally, the final step in naturalization—the naturalization oath—must occur at a ceremony within the United States.² The NDAA 2004 requires the secretaries of Homeland Security, Defense, and State to "ensure that any applications, interviews, filings, oaths, ceremonies, or other proceedings . . . relating to naturalization of members of the Armed Forces are available through United States embassies, consulates, and as

practicable, United States military installations overseas."³ The Act went further, requiring the Secretary of Defense to "prescribe a policy that facilitates the opportunity for a member of the Armed Forces to finalize naturalization for which the member has applied."⁴ This policy must include "[a] high priority for grant of emergency leave. . . . [and] for transportation on aircraft of, or chartered by, the Armed Forces."⁵

Another practical difficulty for service members is affording the fees for naturalization processing, which can cost up to several hundred dollars, depending on the application submitted.⁶ The NDAA 2004 eliminates fees for "filing the application, or for the issuance of a certificate of naturalization upon being granted citizenship" effective October 1, 2004.⁷ The act goes further to provide that "no clerk of any State court shall charge or collect any fee" for these same services.⁸ If state law requires the collection of a fee, the clerk may only collect "the portion of the fee required to be paid to the State. . . ."⁹

Fundamental to providing benefits to those who serve is reducing the period of waiting between receiving the status of lawful permanent resident and applying for naturalization as a citizen. The NDAA reduced the wait period for service members who serve during peacetime from three years to one.¹⁰ Those serving during a recognized period of hostilities are immediately eligible

for naturalization.¹¹ Such periods are designated by statute¹² or executive order of the president.¹³ The NDAA makes clear that this provision honoring service during hostilities applies to service in the Selected Reserve of the Ready Reserve effective September 11, 2001.¹⁴

One of the purposes of the waiting period for naturalization is to enable the applicant to demonstrate good moral character. Since this period is waived for service members, the statutes authorizing the reductions in wait time also provide for revocation of citizenship for a period of time after citizenship is granted if

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Immigration

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the service member does not demonstrate good moral character by continuing to serve honorably. Citizenship granted under either the general one-year wait period for military service or the immediate eligibility for service during designated periods of hostilities may be revoked if “the person is separated from the Armed Forces under other than honorable conditions before the person has served honorably for a period or periods aggregating five years.”¹⁵ This provision was added by the NDAA 2004 and applies to citizenship granted after the date of the Act, which is 24 November 2003.¹⁶

Posthumous citizenship

The United States has long granted posthumous citizenship to those who were lawful permanent residents serving in the military, and who sacrificed their life defending the nation before their citizenship was finalized.¹⁷ The problem with this provision has been that one of the goals of most people seeking U.S. citizenship is to eventually sponsor their family to become citizens as well. In the case of posthumous citizenship, the rule was that the citizenship was honorary for the service member, but did not include any ancillary benefit for family members.¹⁸ In effect, the United States honored the service member, but dishonored the family that also sacrificed for the country in their loss of their loved one. The NDAA 2004 remedied this problem.

The Act provides benefits to family members, including spouses, children and parents, of service members who “served

honorably in an active duty status in the military, air, or naval forces of the United States, died as a result of injury or disease incurred in or aggravated by combat, and was granted posthumous citizenship under 8 U.S.C. § 1440-1.”¹⁹ Family members who have applied for an adjustment of status may have their application adjudicated as if the service member’s death had not occurred.²⁰ Relatives of service members who were lawful permanent residents may continue an existing petition as a family-sponsored immigrant.²¹ The family member may also self-petition for classification as a family-sponsored immigrant so long as they apply within two years from the date of death or the date posthumous citizenship was granted.²²

Ancillary benefits also apply to immigration as well as naturalization. Spouses of citizen service members remain an “immediate relative” for purposes of immigration for two years from the date of the citizen spouse’s death or until he/she remarries, so long as the couple was not legally separated at the time of the citizen’s death.²³ The benefit is similarly provided for children, but in this case changes in age or marital status are irrelevant. Finally, parents can also benefit and the normal requirement that the sponsor be 21 years old or older is waived. These provisions are retroactive to September 11, 2001.²⁴

Our Nation honors military service. It is entirely appropriate that this honor extends to the process of immigrating and naturalizing—those sacrificing to defend the nation should receive some consideration in the process of becoming a citizen. The NDAA 2004 was a step forward, correcting some anomalies in the process and eliminating some of the

practical hindrances to non-citizen service members.

LTC Moe Lescault, U.S.A. is chair of the Administrative & Civil Law Department, of the Judge Advocate General’s Legal Center and School.

End Notes

- ¹ Pub. L. 108-136 (24 Nov. 2003).
- ² 8 C.F.R. §337.1 (Lexis 2004).
- ³ NDAA 2004 at § 1701(d).
- ⁴ *Id.* at §1701(e).
- ⁵ *Id.*
- ⁶ The current fee schedule may be found at <http://uscis.gov/graphics/formsfee/forms/index.htm>.
- ⁷ NDAA 2004 at §1701(b).
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ *Id.* at §1701(a). *See also* 8 USC §1439 (Lexis 2004), 8 C.F.R. §328.1 (Lexis 2004).
- ¹¹ 8 U.S.C.S. §1440 (Lexis 2004); *see also* 8 C.F.R. §329 (Lexis 2004)
- ¹² 8 U.S.C.S. §1440 (Lexis 2004)
- ¹³ *Id.* President Bush exercised this authority after the attacks of September 11, 2001. In Executive Order 13269, dated July 3, 2002, he made service members immediately eligible for naturalization if they serve honorably in an active duty status during any period beginning on September 11, 2001.
- ¹⁴ NDAA of 2004 at §1702.
- ¹⁵ NDAA 2004 at §1701(c). Revocation of Citizenship is governed generally by 8 USCS §1451 (Lexis 2004).
- ¹⁶ *Id.*
- ¹⁷ 8 USCS §1440-1 (Lexis 2004). The original version of this statute was passed in 1952.
- ¹⁸ *See id.* at “History; Ancillary Laws And Directives” which shows former subsection (e).
- ¹⁹ NDAA 2004 at §1703
- ²⁰ *Id.*
- ²¹ *Id.*
- ²² *Id.*
- ²³ *Id.*
- ²⁴ *Id.* at §1705(a)

From the Chair...



by Hon. Lora J. Livingston
Chair of the Standing Committee
on the Delivery of Legal Services

We have seen some amazing changes in the delivery of legal services to people of moderate means over the past decade, including the use of technology to disseminate information and legal services, the dedication of resources in the courts for self-help centers, and the willingness of some practitioners to unbundle their practices in ways that provide more affordable services.

Even though we have seen a technology boom and bust over the past 10 years, the ability of

the Internet to provide people with information and resources about legal services has been transformative. As with other matters, people can go online 24/7 to find out more about their legal rights and remedies. Those who need a lawyer can use one of dozens of online directories or access lawyer referral services from around the country, regardless of their physical location. Law firms are using the reach of the Internet to add to their client development strategies. Some are providing online interface with their clients, saving time and money.

In the early 1990s, the Standing Committee on the Delivery of Legal Services conducted research on pro se litigation in Maricopa County, Arizona. This research led the court in that county to recognize the need to provide direct assistance to those who decided to proceed without full representation by a lawyer. As a result, they developed the nation's first self-help center. A combination of their outreach and the proliferation of

pro se litigation led to the replication of self-help centers in courts across the country.

Also in the early 1990s, an innovative southern California divorce practitioner began "partnering" with his clients, offering to divide the work by unbundling his services. Instead of buying the "soup to nuts" services offered most often by practitioners, the client could order ala carte, and obtain only those services the client needed. Forrest "Woody" Mosten has been a leading advocate of limited scope representation across the country since that time. More and more lawyers are adding this model to their practices.

These changes are examples of innovations that have been recognized by the Delivery Committee over the past 10 years through the ABA Louis M. Brown Award for Legal Access. Simply put, the Brown Award honors those who enhance the match between practitioners in the marketplace and people of modest

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Legal Assistance for Military Personnel

Fort Lewis

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the Active Component - Large Office category for 2003.

However, the true strength of the Fort Lewis LAO lies, of course, in its people. Four lawyers regularly staff the office: CPT Jay Stephenson, Mr. Vernal Lee, CPT Chad Balfanz, and CPT Sean Nguyen. The support staff runs the office on a daily basis and includes SFC Geraldine Hall, SSG Virgilio Lucero, SSG

Renato Aquino, SGT Audry Rose Lizama, SGT Matthew Stone, SPC Cassandra Miklavcic, and Ms. Carrie Falcon. Reserve Judge Advocates and accompanying staff open the office two Saturdays every month, further enabling the office to serve its designated community. When the office is short-staffed, local interns Travis Woodall and Tracy King are always willing and able to lend a hand.

Frequent personnel changes are a fact of life in the Fort Lewis LAO, but its mission has always

been constant: providing courteous, competent, and caring legal services to the commanders, soldiers, family members, and retirees who are residing in the Fort Lewis area. Thanks to the recent LAMP CLE, the members of the Fort Lewis Legal Assistance Office team are better prepared to do just that!

CPT Chad Balfanz is an attorney in the Fort Lewis Legal Assistance Office. He is a graduate of Brigham Young University School of Law and is admitted to practice in Massachusetts. Fort Lewis is his first assignment.

2004 ABA Pro Bono Publico Awards

Four lawyers and one law firm received the ABA Pro Bono Publico Award during the 2004 ABA Annual Meeting in Atlanta. Sponsored by the Standing Committee on Pro Bono and Public Service, the award recognizes the work of those who have enhanced the human dignity of others by improving or delivering volunteer legal services to the poor.



The 2004 recipients include: **Roy E. Barnes** of Atlanta, who served a six-month tenure as a volunteer staff lawyer

for the Atlanta Legal Aid Society at the end of his term as governor of Georgia, exemplifying his long-time commitment to providing legal services to the poor. During his time with the Atlanta Legal Aid Society, Barnes devoted his formidable litigation skills to helping clients, particularly elderly and disabled victims of predatory lending practices. Beyond donating his legal services, Barnes also shared his considerable legal knowledge and experience by participating in ongoing training programs at Legal Aid, and leveraged his excellent reputation among Atlanta's lawyers to improve the delivery of legal services to low-income people and to increase pro bono involvement in the city. Since returning to private practice, Barnes has committed to spending at least 10 percent of his firm's billable hours to pro bono matters.



Stephen Cullen of Towson, Maryland, who has dedicated himself to improving pro bono legal services for children caught in international

custody disputes. His work has been particularly helpful to the National Center for Missing and Exploited Children in Alexandria, Virginia, a national leader in locating and returning abducted children. In the past five years, Cullen has traveled around the world working on more than 45 international child abduction cases as a pro bono lawyer under the Hague Convention on the Civil Aspects of International Child Abduction.



Toby H. Hollander of Portland, Maine, who received the Ann Liechty Child Custody

Pro Bono Award (named in memory of dedicated child law advocate and previous Pro Bono Publico Award Ann Liechty). Throughout his law career, Hollander has displayed unwavering dedication to providing outstanding pro bono guardian ad litem services for children caught in custody cases. His solo practice now focuses exclusively on providing guardian ad litem services. Working through the Maine Volunteer Lawyers

Project, Hollander has handled more than 50 guardian ad litem matters on a pro bono basis. These include complex custody cases involving high conflict and domestic violence. In addition to donating his time and services, Hollander launched a brown bag lunch educational series for guardians ad litem where he leads discussions about the resources available to low-income children. He has also served as a mentor to other volunteer guardians ad litem.



Warren Sinsheimer of New York, who after retiring from practicing law for nearly 50 years, now volunteers as president

and managing attorney of Legal Services for Children, Inc. (LSC), an organization he established in 1999 to bring free civil legal services to disadvantaged New York children. Since opening its doors, LSC has provided pro bono legal representation to more than 2,500 children, most of whom had no other access to legal assistance. In addition to his leadership of LSC and his pro bono work, Sinsheimer has recruited, trained and utilized more than a dozen retired and other no-longer-practicing lawyers to volunteer at LSC two to four days a week representing children in need. Sinsheimer and his wife also endowed a public interest fellowship at New York University School of Law for students pursuing careers in public interest law upon graduation.

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From the Chair...



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

Each year, over three million children in the United States are impacted by decisions made about them in private custody cases. From my own experience in a legal services office, directing a pro bono program, and in private practice, I know that the vast majority of these children do not have anyone who advocates on their behalf or helps them understand the process or the outcome in their case. Nor is there anyone who makes sure judges have the unbiased information they need to make the best decisions for these children.

This is particularly problematic for the hundreds of thousands of children whose situations involve domestic violence, child abuse or extremely high-conflict parents. It is also so for the many more children whose parents are pro se and for whom the court is without critical information from any relevant person in the child's life. It is hard enough for adults to navigate the legal and psychological waters of a contested custody case. Imagine being a ten-year-old whose parents are at war with each other, who only hears distorted horror stories about the future, and who has valuable information and desires—that no one will hear.

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Building a Coalition for Changing Pro Bono Policy

by Sharon E. Goldsmith

Change sometimes appears to happen abruptly, yet it is most often the culmination of a slow, methodical process. In Maryland, years of strategic campaigning anteceded the state's new pro bono policy initiative. Maryland is now well into its second year of required reporting of pro bono activity by its lawyers. In addition to the reporting requirement, the Maryland Court of Appeals—the state's highest court—adopted revisions to Rule 6.1 and new rules requiring the establishment of a local pro bono committee in each county and the creation of a statewide Standing Committee on Pro Bono Legal Service. These changes underscore a newly energized commitment to ensure equal access to justice.

This article will focus on how Maryland built this “coalition for change” and succeeded in producing a result that looked all but impossible a decade ago.

Judicial involvement

It was clear at the outset that to succeed in truly revitalizing pro bono policy, the judiciary needed to be engaged in a cohesive and prominent fashion. On that basis, the Pro Bono Resource Center of Maryland suggested that the Court of Appeals appoint a high level commission to investigate the state of pro bono and what measures could be enacted to enhance the delivery system. Chief Judge Robert M. Bell, a leader with extraordinary vision and commitment and a proven advocate for legal services, created the Judicial Commission on Pro Bono and appointed an appellate judge, Deborah S. Eyler, to serve as its chair.

The Commission met for a year and a half, ultimately issuing a report with a series of specific recommendations. A number of them were controversial, particularly those proposing changes to the court rules. For instance, the revisions to Rule 6.1 finally clarified that pro bono is primarily about legal services to the **poor**. It included an “aspirational” goal of 50 hours of legal service a year with a “substantial portion” of those hours dedicated to those of limited means, civil rights work, or helping a non-profit that could not otherwise afford counsel. The balance of the 50 hours could still be spent on improving the law or legal profession while preserving the option of making a financial contribution in lieu of service.

Bar support

Recognizing the potential for dissent and the importance of bar support, proponents actively solicited the counsel and endorsement of the bar leadership. For close to a year, the chair and several members of the Judicial Commission made presentations to local bar associations, sought endorsements from bar committees and sections, and lobbied

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From the Chair...

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Luckily, lawyers like Ann Liechty knew what could make a difference for these children. Ann was a dedicated child lawyer and advocate in Montana. She spent hundreds of pro bono hours working with families involved in adoption and other custody cases to ensure that the children in these cases received the best results, and the best process, the courts could provide.

Following Ann's death from cancer in 1999, her aunt and uncle, Melita and Bill Grunow, honored her memory by funding a national project to promote pro bono advocacy for children in custody cases. Their gift of \$1 million to the ABA Standing Committee on Pro Bono and Public Service and the ABA Family Law Section equaled the largest personal gift ever received by the ABA's Fund for Justice and Education. Under direction of the Pro Bono Committee, the Child Custody Pro Bono Project began operation in 2001.

The goal of the Child Custody Project is to enhance the representation of children in private custody cases, including in marital and non-marital disputes and adoptions. The project's mission is to design and implement programs and policies that foster children's well-being, development and safety, as well as to provide children meaningful participation in custody decisions.

Since the Grunows' generous contribution three years ago, under the leadership of Linda Rio, the Child Custody Project has enabled hundreds of children to benefit from trained advocates in private custody cases. The project has

increased significantly the quality and quantity of representation for children. On a national scale the project has:

- Produced an in-depth, multidisciplinary, six-hour training video and accompanying materials for attorneys representing children
- Distributed and monitored almost \$100,000 in grants to local programs to increase the quality and quantity of pro bono representation of children
- Provided advice and assistance to over 300 persons and entities on policy and representation efforts
- Established an annual national Ann Liechty Award to honor attorneys providing significant pro bono representation to children in custody cases
- Helped secure passage (by the ABA House of Delegates) of the national Standards of Representation for Lawyers Representing Children in Custody Cases
- Benefited from over 20 nationally recognized experts serving on the project's Advisory Committee
- Conducted over 20 national presentations and trainings
- Designed a Web site exclusively for children in custody disputes
- Established and maintained a national Child Custody List Service
- Developed a Child Custody Resource Library, providing free access to over 300 documents on issues relating to representing children in custody cases

After completing dozens of successful initiatives, the project is launching a Five-Year Directed Grants Program. Over the next five years, the project plans to bring

important resources to dozens of areas around the country to expand advocacy for children. Among the goals for the next five years are:

- Implementing standards and trainings for children's lawyers all around the country
- Bringing mental health and social services into child advocacy efforts
- Setting up law school clinics to work with private lawyers in serving children
- Educating judges and courts on the benefits and the means of appointing advocates for children
- Evaluating outcomes for children with advocates and taking those results around the country to get more lawyers and judges to establish programs

The project has set a goal of raising \$300,000 in new funds for these efforts. These funds will be supplemented by the project's current funds, to allow the project to maintain its continuing efforts while adding an expanded grant program as a new feature.

We are seeking supporters to make either an initial one-time contribution, or a five-year pledge, to the Child Advocate program. I am proud to say that my husband and I have pledged our personal support and that my law firm, Kilpatrick Stockton, has signed on as a pace-setter firm.

Solicitations are going out to lawyers and non-lawyers—basically, to people who care about what happens to kids in our court system, especially those living in crisis custody situations. All donations are made to the American Bar Association Fund for Justice and Education and are tax-deductible as a charitable donation. Please join my firm and me in

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Coalition building

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members of the state bar association's board of governors. The personal appeals significantly contributed to expanding the coalition. When the timing was appropriate, the commission sought the formal endorsement of the board of governors and it voted to adopt all of the commission's recommendations.

The endorsement by the state bar leadership marked the launch of a full-fledged campaign. Since the recommendations included changes to court rules, the court's Rules Committee needed to review and approve them. Thus, after extensive education, numerous meetings, and the solicitation of public comments, the Rules Committee ultimately submitted three alternative versions of Rule 6.1 for the Court's consideration. The court then held a public hearing on the issues and received additional testimony and comments from various segments of the bar. In February of 2002, the

Court of Appeals adopted the proposed rules with several modifications.

More outreach to the bar

The most significant modifications to the rules included the exclusion of judges from local pro bono committee membership (although judges could be consultants to the committees) and the elimination of a specific dollar figure as a proposed "buyout" for pro bono service in Rule 6.1. The compromises were viewed as necessary to ensure that some meaningful version of the rules would, in fact, be adopted.

Ironically, after the passage of the new rules, it became even more imperative to educate the bar about the meaning of the rules and their likely impact on local bars and individual lawyers.

In the fall of 2002, Chief Judge Bell addressed the local and specialty bar associations at a state bar-sponsored conference to inform them about the new rules and alleviate some of their concerns. That forum also showcased a video, "In the Eyes of the Law," produced by the Pro Bono Resource Center of Maryland. The video featured lawyers and clients sharing stories about how pro bono service changed their lives and the many benefits experienced by all parties involved in pro bono work. The video has since been credited with helping assuage the resentment some felt due to the imposition of the pro bono rules and especially, the reporting requirement, and to understand its underlying purpose and value. A number of lawyers commented on how vital it was to focus the message on what pro bono really means to the community.

Despite its initial opposition, the implementation of a pro bono

reporting process continues to generate greater awareness of a lawyer's professional responsibility to render pro bono service and enhance participation in pro bono activities by members of the bar. The first year of reporting attracted considerable press and hundreds of inquiries from lawyers about their reporting responsibility and what qualified as pro bono service under the amended Rule 6.1. The heightened interest provided the court with an opportunity to educate lawyers. The court sent several notices to all licensed lawyers with information on how to volunteer and report appropriately. Individual inquiries were handled by the Pro Bono Resource Center on behalf of the Administrative Office of the Courts and a 24-hour/seven-day-a-week message center was established to provide ongoing information for those with questions. The court also designed a new section on its Web site dedicated to pro bono with frequently asked questions and reporting forms to file online.

Now at the end of its second year, most of the concerns about the reporting process have dissipated, consistent with a 98 percent compliance rate and substantially fewer inquiries about reporting pro bono hours. Additionally, lawyers and law firms are taking the responsibility more seriously and trying to determine how they can best fit pro bono into their practice.

Still, defining pro bono is what is helping to change the mindset of the bar. Most of the questions received in the first year of reporting related to what qualified as pro bono service and how people could become more involved. Defining pro bono, was therefore, also critical to the reporting process as lawyers were stopping

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From the Chair...

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supporting this initiative. Contact Linda Rio, the project's director, for more information or to request a fundraising brochure. Linda can be reached at 312-988-5805 or lrio@staff.abanet.org.

So many of us in the legal profession witness or hear about the serious problems for children caught up in custody cases. Now we can contribute to an effective solution to those problems, and to a healthy future for these children.

Coalition building

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to take stock in what they were doing and wanted clear guidelines as to what counted as their pro bono hours.

Comprehensive effort

The developments that have occurred over the last few years illustrate a true shift in the Maryland legal culture. While pro bono reporting is important and has yielded helpful data, it is but one component of the whole pro bono initiative. The commission's rationale for proposing such a comprehensive and multi-faceted approach was to ensure that the changes to the rules would have a permanent impact on the pro bono delivery system statewide.

Preliminary indications are that these policy initiatives are working. Pro bono programs report that the bar is more receptive to requests for help and legal services contributions have increased. In fact, lawyers handled 500 more pro bono cases through programs funded by the Maryland Legal Services Corporation in 2003 than they had in 2002 before the new rules. Firms are designing new tracking systems for their pro bono work and developing specific pro bono policies where none existed previously. On a local level, pro bono committees are bringing members of the bar, legal services community and court personnel together to discuss the most critical legal needs in their counties and develop a specific plan of action. Furthermore, lawyers in Maryland are now clearly aware of their professional responsibility to engage in pro bono legal service.

It has been an invigorating time for pro bono in Maryland thanks

Top ten ways to build a coalition for changing pro bono policy

1. Get strong leadership from the bench and the bar
2. Develop a clear strategy and vision—know where you are, where you are going, and how you plan to get there
3. Focus on the appropriate timing for success as part of your overall strategy
4. Keep the bar, bench and legal services community engaged in the process and aware of your progress
5. Be persistent
6. Be patient
7. Explain why it is necessary to make the changes you are advocating and maintain focus on the final goal and the people whose lives will be affected
8. Be willing to stand your ground when it is right
9. Be willing to compromise when it is necessary
10. Be able to demonstrate how it is in the interest of the bar to make the change

to the vision, steadfast leadership and commitment from the bar and bench. Despite all the indications of a successful endeavor, a true evaluation of the new initiative can only occur after several years of reporting data and implementation of local and statewide pro bono action plans. In the meantime, it is incumbent upon pro bono supporters to capitalize on this unique opportunity of pro bono awareness and support and pursue the institutionalization of strong pro bono policies and practices.

In sum, the fundamental lesson learned was: don't accept the status quo—reach for your ideal. Remind people why they chose this profession and reintroduce them to the privilege of helping those without access to the justice system. Change is not easy. But with the right leadership, vision and persistence, it can happen.

Sharon E. Goldsmith is executive director of the Pro Bono Resource Center of Maryland.

Delivery

Brown Award

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means who have legal problems. The committee has now assembled many of the Brown Award nominees into a database of programs that provide legal services focused on those of moderate income.

If you would like to add a program to the database or nominate a program for the Brown Award, please see the details at the committee's Web site: www.abalegalservices.org/delivery. Let's share the developments taking place today that will change the delivery of legal services over the next decade.

New York State Bar Association Sponsors First Conference on Law Firm Pro Bono

The Honorable Judith Kaye, chief judge of the New York Court of Appeals, and A. Thomas Levin, president of the New York State Bar Association (NYSBA), welcomed 60 law firm attorneys and pro bono program managers to the Law Firm Pro Bono Conference in Albany, New York. The conference was a joint venture of the NYSBA, the Albany County Bar Association, the Legal Aid Society of Northeastern New York, and The Legal Project of the Capital District Women's Bar Association. The conference was presented for free and provided 4.5 CLE credits

for attendees, who were able to attend workshops focused on invigorating the practice of pro bono in law firms throughout the state of New York.

The conference offered practical workshops on developing law firm pro bono policies, identifying appropriate pro bono projects for specific groups, and methods for promoting pro bono within law firms and in the media. The Law Firm Pro Bono Policy session high-lighted a model policy that has been developed and refined by numerous law firms around the state. This tool provides law firms with a road map for

articulating a law firm's commitment to pro bono, definition of pro bono, coordinator functions, and procedures for opening and following cases through to completion. Media-savvy approaches to recruitment and education were the focus of the session on promoting pro bono.

The daylong gathering was warmly received by both the law firm attorneys and the pro bono program directors, and the New York State Bar Association expects to partner with county bar associations and local pro bono programs annually to re-convene the conference.

Pro Bono Award

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ARNOLD & PORTER LLP

Arnold & Porter LLP of Washington, DC, which has committed itself to setting a national example of law firm excellence in providing pro bono legal services. Pro bono work has been a core value of the firm since its founding almost 60 years ago. In the 1950s, Arnold & Porter was the principal law firm representing the victims of McCarthyism, and in 1963, the firm's most famous case, *Gideon v. Wainwright*, established the right to legal counsel of poor persons accused of serious crimes. In addition to averaging more than 130 pro bono hours of legal services per lawyer at the firm,

Arnold & Porter also established a number of innovative new pro bono programs in 2003, including criminal defense of the indigent, federal appellate advocacy, and a resource center

for the D.C. Landlord Tenant Court. The firm also took on a number of new pro bono cases in a variety of areas such as discrimination against undocumented aliens, First Amendment issues, technology sharing among countries, assistance to the arts, medical services to minority communities, domestic security and human rights, and fighting HIV/AIDS discrimination.

In addition to presenting its annual Pro Bono Publico Award, this year the Pro Bono Committee also recognized the outstanding work of **Kenneth Feinberg**, who served in a pro bono capacity as Special



Master for the Victims Compensation Fund (VCF). The VCF was enacted by Congress after the terrorist attacks of September

11, 2001 and was established to provide a no-fault legal process to compensate the victims of the attacks and their families. As the special master, Feinberg has carried the major burden of implementing the directive of Congress to provide a fair and efficient process of compensation to over 7,000 claimants. He has worked diligently, without any personal compensation, carrying out his work in an exemplary manner.

Program News from the Field

Minnesota: Nancy Kleeman left her position as access to justice director at the Minnesota State Bar Association and started in her new position as executive director of the Fund for the Legal Aid Society on July 1, 2004. She has been succeeded in the access to justice director position by Nancy Mischel.

Nancy Wallrich left her pro bono support position at the Minnesota State Bar Association and LegalCORPS to pursue other career opportunities. The position is currently vacant.

New York: Bradley Kalos, executive director of the Brooklyn Bar Association Volunteer Lawyers Project, resigned from the program. The program is currently seeking a new executive director.

Texas: Heather Way resigned as director of Texas C-Bar, a statewide business law pro bono program located in Austin, to spend more time with her young son. Texas C-Bar named Frances Leos Martinez Texas as C-Bar's new executive director. Martinez, a Texas C-Bar board member and former director

of the St. Mary's Law School Community Development Clinic, became executive director of the program at the end of June 2004.

Wisconsin: Jeff Brown was hired in May as pro bono coordinator at the State Bar of Wisconsin.

Mary Triggiano left the Legal Action of Wisconsin after being appointed by Governor James Doyle to the Milwaukee County Circuit Court. Pat Risser has assumed Triggiano's former position as managing attorney and coordinating attorney for the Volunteer Lawyers Project.

ABA Releases Online Audio CLE Programs Designed for Pro Bono Advocates

The ABA Standing Committee on Pro Bono and Public Service, the Center for Pro Bono and the ABA Center for CLE recently released two complimentary CLE programs for use by pro bono program staff and pro bono attorneys. Users need a computer, an Internet connection, and Real Player software (which is available as a free download) to participate in these "ABA CLE Now" audio programs, which are available through the ABA's Web site.

Pro bono program managers and volunteer attorneys can use these CLEs to hone their skills, and as a recruitment tool for pro bono attorneys. Access these free online programs today:

Ethical Aspects of Providing Legal Advice and Legal Information
(www.abanet.org/cle/clenow/probonoethicsreg.html)

The faculty for this 60-minute

course includes Paula Frederick, deputy general counsel of the State Bar of Georgia and Will Hornsby, staff counsel of the ABA Standing Committee on the Delivery of Legal Services. This program explores the boundaries between legal information and legal advice, including the definition of permissible conduct for court administrators, lawyers and other professionals involved in pro bono or legal aid. Issues involve the unauthorized practice of law, the failure to comply with the rules of professional conduct and, ultimately, the protection of the interest of those who need legal services.

Participants in 60-minute CLE states who take this course may earn 1.0 hour of credit and those in 50-minute states may earn 1.2 hours.

Expanding Your Horizons through Pro Bono Mediation
(www.abanet.org/cle/clenow/probonomediationreg.html)

The faculty for this 60-minute course is Debra L. House, associate director of the Southern Region, Legal Aid of East Tennessee; Lillian O. Johnson, executive director of Community Legal Services in Phoenix; and Marc Kalish, mediator and chair of the Pro Bono Committee of the ABA Section of Dispute Resolution. In this three-part program, faculty members experienced in mediation and pro bono service discuss representing clients in pro bono mediation; mediating the pro bono case; and how to get involved in pro bono mediation.

Participants in 60-minute CLE states who take this course may earn 1.0 hour of credit and those in 50-minute states may earn 1.2 hours.

These CLE programs offer an easy and free way for pro bono programs to reward dedicated pro bono volunteers and recruit new ones, so please share this announcement with them.

From the Chair...



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

Earlier this year, members of the Commission on IOLTA devoted an afternoon to developing a strategic communications plan, in a meeting facilitated by the ABA Department of Media Relations.

For the Commission, it was an opportunity to consider IOLTA apart from the concerns that so often have preoccupied us in recent years, such as the litigation against programs in Texas and Washington, and the protracted drop in revenues due to low interest rates. By all accounts, the afternoon was a remarkably productive session. Commission members focused on the ABA's support for mandatory IOLTA and resolved to advocate conversion to mandatory and to redouble efforts to assist programs seeking to convert. The Commission renewed its attention to the fundamental attributes of IOLTA—that it is a constitutional, fair, and critically important method of funding legal services. The Commission also resolved to raise the message of IOLTA to a higher profile, particularly with regard to bar leaders and members of the bar, bankers, and the judiciary.

I am particularly excited about this last conclusion. Bar leaders, judges and advocates of my

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IOLTA Grantee Spotlight: The International Institute of Rhode Island Immigration Law Project

by *Helen Desmond McDonald*

The mission and goals of the Rhode Island Bar Foundation are to foster and maintain the honor and integrity of the profession and improve and facilitate the administration of justice. Administration of the IOLTA grants program allows the foundation to actively pursue a commitment to provide leadership and funding to accomplish those worthy objectives. Entering its 20th year of IOLTA, the foundation continues to support the delivery of legal services for the poor.

The well being of Rhode Island's growing foreign-born communities depends on their timely access to information and assistance regarding naturalization, family reunification, and alternatives for gaining legal status in the U.S., permission to work, asylum, deportation defenses and programs offering temporary protected status. Accordingly, the Rhode Island Bar Foundation IOLTA Fund has funded the International Institute of Rhode Island (IIRI), Immigration Law Project since 1987.

The International Institute is an independent non-profit agency serving over 20,000 immigrant, refugee and native-born individuals and families every year. The Immigration Law Project directs legal immigration services and grassroots outreach on immigration law issues to immigrants, refugees and their service providers in Rhode Island. The project employs one staff attorney who is the only lawyer providing free or substantially reduced-cost direct legal immigration services in the entire state. The program has been extremely valuable and is an essential resource for other community organizations, state entities and service providers to low-income foreign-born individuals who are unable to meet the costs of a private attorney.

Specifically, the project team consists of a staff attorney, outreach coordinator and screener. The funds received from IOLTA are used to:

- Provide low-cost and free immigration legal services to foreign-born Rhode Island residents
- Provide a minimum of 12 bilingual workshops on immigration law to low-income immigrant and refugee communities
- Staff an ongoing mini-consultation series in at least two sites in the state
- Produce written materials regarding immigration law
- Organize a series of 10-15 seminars on immigration law for various groups
- Organize four quarterly training sessions for IIRI staff and provide up-to-date information on immigration policies and changes at the training sessions
- Expand the pro bono involvement in immigration assistance and

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From the Chair...

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generation fought for and witnessed the birth of IOLTA in states across the country in the 1980s and early 1990s. Today, we can look back on the past 15 or 20 years in our states as a success story. But I am concerned that because the IOLTA community has spent much of the last decade in a defensive posture, responding to developments in the litigation against IOLTA, it hasn't been able to devote much time to informing the world—including the bar, the judiciary, the banking industry, and the public at large—about the core attributes and value of IOLTA. As a result, the latest generation of bar leaders (and judges and even bankers) may not share the commitment, appreciation, or even familiarity with IOLTA that many of my peers

developed over the years.

If current bar members know about IOLTA, they understand it as a program that might require some additional paperwork related to their trust accounts, that it has been the target of litigation, and that it is a funding source for some activities in their state. We know that the essence of IOLTA stretches far beyond these observations, though. It is time for the IOLTA community to reach out and begin to remind the bar about the critical role IOLTA plays in each of our states. We also need to tell the bar why IOLTA needs its support in efforts such as enhancing IOLTA income.

We have high hopes of bringing our message to bar leaders, bankers and the judiciary, beginning with a presentation the Commission will sponsor during the next meeting of the National Conference of Bar Presidents in Salt Lake City in February 2005. That

session will describe how IOLTA works, illustrate the kinds of vital work IOLTA funds, and help bar leaders understand how they can support the IOLTA programs in their home state.

I am excited by the prospect of bringing these messages about IOLTA back to the bar. If you have any suggestions about what should be included in the expected NCBP session, please share your ideas with the Commission on IOLTA staff by contacting Assistant Counsel David Holtermann at 312-988-5744.

* * * * *

The Winter 2005 IOLTA Workshops will take place on February 10 and 11 during the 2005 ABA Midyear Meeting in Salt Lake City. Registration information is available at www.abanet.org/midyear/2005. I hope you will plan to join us.

Grantee Spotlight

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community education for attorneys in Rhode Island

- Organize four meetings in the immigrant communities of Newport County and Woonsocket in conjunction with established social service providers, to establish the International Institute as a source of information and legal counseling on immigration and citizenship matters

In the last quarter, approximately 200 foreign-born Rhode Islanders were counseled by the project's staff attorney on a range of immigration matters, including permanent residence applications,

requests for legalization, asylum, temporary protected status, deferred enforced departure, and naturalization in the United States. Community organizations frequently contact IIRI for assistance and the staff attorney conducts question-and-answer sessions at libraries, schools, health fairs and even the Rhode Island Training School for Youth, a juvenile correctional facility. Many questions involve how to obtain employment authorization and citizenship. The project's attorney also participated as a panelist at the Racial Justice Colloquium at the Roger Williams University School of Law.

Earlier this year, an IIRI quarterly report showed that it provided direct legal services to 184 indi-

viduals during one three-month period. Of those assisted, 31 percent were from Cape Verde, Ghana, Liberia, Mauritius, Morocco, Niger, Nigeria, and Senegal. Thirty-two percent were from El Salvador and Guatemala. Other clients were from the Caribbean (Cuba, Dominican Republic, Haiti and Jamaica) and others were from Laos, Albania, Croatia, Bolivia, Colombia, Uruguay, Venezuela and elsewhere.

New challenges for immigrants

The terrorist attacks of September 11 and their aftermath, including the passage of the USA Patriot Act, precipitated drastic changes in immigration law and services at the federal level and continue to underscore the need for a combina-

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Grantee Spotlight

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tion of legal services and legal education. These changes include the abolition of the opportunity for many intending immigrants to obtain legal resident status through the INS (now the US Citizenship and Immigration Services) while present in the United States. Under current law, most immigrants now are required to leave the U.S. and apply for resident status at a United States embassy overseas.

There are now three- and ten-year bars on returning to the U.S. imposed on any alien unlawfully present in the U.S. for more than 180 days, and any alien unlawfully present for one year or more. The NACARA (Nicaraguan Adjustment and Central American Relief Act) has provided regulations by which certain eligible Salvadoran, Guatemalan and Eastern European asylum seekers can adjust their status to legal permanent residence. There are stricter economic guidelines for citizens petitioning for the immigration of close family members. There are new limitations on legal residents' access to certain types of public benefits. These changes affect many immigrant populations found in Rhode Island and have resulted in a huge workload for the IIRI staff, which assists approximately 5,000 people annually.

Outreach

In addition to the Immigration Law Project's staff attorney, Rhode Island's IOLTA program also funds a full-time outreach coordinator, which helps IIRI reach more than 2,000 additional people through community education, enhanced training programs and advocacy efforts.

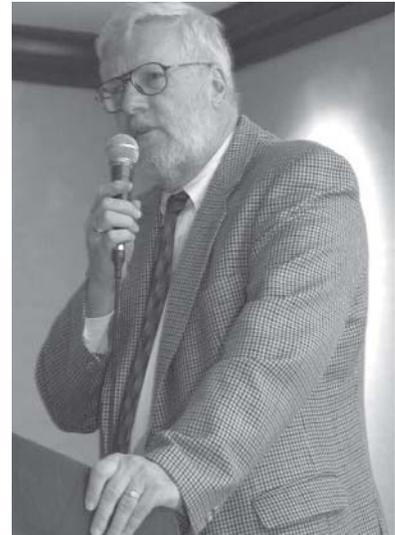
According to IIRI Executive Director William Shuey, "The Immigration Law Project's reputation as a high profile provider of accurate and timely information regarding immigration makes it a convenient focal point not only for immigrants' questions, but also for pro-active outreach to each of its varied constituencies about the effects of racism and hatred with regard to specific religious or ethnic groups."

While much of the Immigration Law Project's work is in reaction to changes in federal law and policy, it also works proactively to get reliable information to its clients and their families. Many high school students, especially those brought to the United States at an early age, are unaware of their immigration status or of the importance and benefits of attaining citizenship when eligible at the age of 18. The Immigration Law Project targets area high schools with large immigrant populations and offers the resources of the IOLTA program to young Rhode Islanders by teaching the benefits of citizenship and facilitating the naturalization process.

In addition, the project has established contacts among providers of various social service agencies in communities with a high population of immigrants. Always aware that the number of immigrants in each community is rising, IIRI educates the communities via workshops and forums and they publicize their resources, including direct representation in individual matters.

Conclusion

As United States Senator Jack Reed wrote in a letter of support: "For the past 17 years, the International Institute Immigration Law Project has been supported by the Rhode



International Institute of Rhode Island Executive Director Bill Shuey

Island Bar Foundation's IOLTA Grant Program. The Immigration Law Project has functioned as an integral service for Rhode Island's low-income foreign-born population, by providing immigration legal services and community education on immigrant law. The Immigrant Law Program has earned the widespread support of the greater Rhode Island Community."

Linguistic, cultural and social barriers can only be overcome by combining a multilingual and culturally appropriate community education and direct service program staffed by professionals in the field. The Rhode Island Bar Foundation IOLTA program is proud to support IIRI, the only source of free, direct and comprehensive immigration legal services in Rhode Island.

Helen Desmond McDonald is the executive director of the Rhode Island Bar Foundation. For more information about the foundation, please visit www.ribar.com/foundation/foundation.asp. For more information about the International Institute, visit www.iiri.org.

LSC President Helaine M. Barnett Speaks to IOLTA Community

Dialogue is proud to present this edited transcript of Legal Services Corporation President Helaine M. Barnett's remarks at the Summer 2004 IOLTA Workshops on August 6, 2004.

Being with you is a particular pleasure for me. You are truly our “partners in funding,” our partners in our mutual efforts to ensure



Helaine M. Barnett

quality in our programs, and our partners in the struggle for justice. As organizations and as individuals, we share a passion for access to justice and a deep concern about those to whom it is often denied due to their poverty. I am honored to work shoulder-to-shoulder with you as we seek to achieve our goal of equal access to justice under law.

We all appreciate the IOLTA Commission and NAIP-led campaign to preserve IOLTA funding, and in securing the significant victory in the U.S. Supreme Court. We are deeply grateful for that extraordinarily successful effort and the labor it reflects.

We at the Legal Services Corporation (LSC) recognize that each of you is a vitally important member of your state's equal justice community, and among their greatest resources. Today, as LSC president, I want you to know how much I value our partnership and my commitment to work together with the IOLTA community. I want to encourage an open dialogue and assure you that I will

keep you informed on activities where we have common concerns, and on issues that affect our organizations and grantees. I hope you will do the same with LSC since IOLTA directors can help LSC in its work. In that way, we can truly be partners, an arrangement that benefits us, our grantees and, ultimately, our clients.

It seems impossible that I have been at LSC just a little more than six months. So many events have occurred that it would seem my tenure has been far longer. Let me share a few of the highlights with you.

Relations with Congress

[Last spring] I had the privilege of testifying before both the House Judiciary Subcommittee and the House Appropriations Subcommittee on back-to-back days. LSC had last been called to Capitol Hill for a Congressional oversight hearing in 2002 and had last testified before its appropriations subcommittee in 1999. I am happy to report that the hearings were cordial and positive for LSC. I truly believe that LSC is experiencing possibly the strongest bipartisan support it has had in recent history. This is evidenced not only by the President's ongoing support for LSC, but also by the support demonstrated on both sides of the aisle at our two recent Congressional hearings.

During our oversight hearing, Chairman Chris Cannon (R-UT) remarked that LSC has gone from a controversial organization to one for which there is a great deal of support in Congress, and that for the first time there is close

to unanimity in support of the program. In our appropriations hearing, Chairman Frank Wolf noted that he felt “very comfortable” with LSC. He pointed out that there was less criticism of LSC grantees now than there has been in a long time. We received follow-up questions from both the Appropriations Committee and the Oversight Committee, and we have submitted our responses to the committees.

Overall, I think both hearings demonstrated that there is solid support for the work of LSC and our grantees from both political parties. There is a level of comfort that did not exist a few years ago. I think the positive attitudes expressed about LSC and our grantees is a reflection of the outstanding work of our programs, careful monitoring by LSC to ensure compliance with congressional restrictions, and a successful effort by my predecessors to cultivate lasting relationships with key legislators on Capitol Hill. I will certainly work tirelessly to ensure that the kind of solid support we now have continues in the future.

Loan Repayment

An exciting and surprising opportunity presented itself at the appropriations hearing, when Congressman Wolf expressed interest in the possibility of LSC conducting a pilot project to provide loan repayment assistance for legal services attorneys. There is no question that the burden of law school debt, which can average as much as \$80,000, often prevents many recent graduates from considering a career in legal services—where the starting salary nationally is around \$33,000 a year.

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Partners

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The ABA Commission on Loan Repayment and Forgiveness issued a comprehensive report in which it found that fully two-thirds of all graduating law students are dissuaded from considering public interest or government jobs because of educational debt. The report concluded "the legal profession cannot honor its commitment to the principle of access to justice if significant numbers of law graduates are precluded from pursuing or remaining in public service jobs."

I will share with you that given Congressman Wolf's interest, LSC is working on a significant pilot project on loan forgiveness in 2005, and we are preparing to make loan forgiveness an important priority. The House of Representatives included language in our FY2005 appropriations legislation that allows LSC to use up to \$1 million of previously appropriated funds to launch a pilot student loan repayment assistance program (LRAP). We certainly will be seeking input and advice from grantees with experience with LRAPs, law schools that have successful LRAPs, state-funded programs, IOLTA directors with experience with LRAPs, the National Association of IOLTA Programs, the National Legal Aid and Defender Association, Equal Justice Works, and the ABA to help inform our thinking.

We are establishing a Task Force on a Loan Repayment Assistance Program that will meet later this summer to help us design the best possible outlines of the pilot project, including addressing such issues as which programs will participate, the dollar amount of

the grant and for what period of time, whether there should be a matching requirement, whether the program should just be for recruitment or should it be for retention as well, and the length of commitment that should be required by recipients of the loan repayment assistance program. I plan to have representatives from the IOLTA community on the task force and I look forward to your ideas on this important initiative.

Technology

One of the most popular programs on the Hill and one of our most significant, collaborative achievements has been the use of technology to expand access, enhance program efficiencies, and increase availability of legal information. I hope we can continue the tradition of innovation in the delivery of high quality legal services. This year, LSC has \$2.9 million dollars to fund grant proposals. We received 83 applications for TIG funding for a total request of approximately \$6.9 million. The fact that we received requests for almost three times the amount of the available funds means that, once again, we will have to make hard decisions about who will receive these funds. And it goes without saying that, unfortunately, some proposals worthy of funding will not be funded.

Quality initiative

I would like to share LSC's primary programmatic effort, which we refer to as the quality initiative. While we continue to emphasize the need for grantees to collaborate and work together as part of a state's equal justice community, our primary emphasis and my personal priority is to focus on quality. It is not enough for a low-income person to have access to a

lawyer, if that access does not result in high quality service. Access to a lawyer is not, in and of itself, access to justice. The Legal Services Corporation Act requires LSC to ensure that the programs it funds are of the highest quality and meet professional standards. Our challenge is to determine how to define quality, how to measure quality and what our role as a funder is in helping to assure our grantees provide and their ever increasingly diverse clients receive quality legal services.

In 2004, the LSC Board of Directors has invited the national legal services community to engage in a national conversation on defining and measuring quality. Two initiatives that I am exploring to improve quality are:

- 1) Developing and testing a new protocol for an LSC visit to a program so that when LSC reviews a grantee, we look not only at compliance but also at overall program quality. This is a work in progress. The first Quality Review of Casework and Systems visit took place in Northwest Minnesota a few weeks ago. Of course, this new protocol needs to be evaluated by the grantee and LSC staff to determine what modifications or revisions need to be made and we hope to conduct a second pilot visit before the end of the year. We plan to have the LSC program staff let you know when they will be visiting a program in your state, and to involve you in those visits in ways that benefit all of us.
- 2) Determining whether LSC should renew its commitment to peer review and replicate the type of peer review that commonly occurs in other organizations, such as at institutions of

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higher learning as part of the ABA's accreditation of law schools (probably without the concept of accreditation). Many of you support peer review as part of your process of evaluating grantee performance, particularly in Michigan, New Jersey, Ohio, Florida and Texas, and there is much we can and intend to learn from you in this regard.

Regarding the first initiative, consensus has already been reached on certain quality benchmarks: streamlined and effective case management systems, competent and motivated staff, peer review, successful local and state resource development, consistently strong client outcomes, and a high degree of client satisfaction. Other standards or indicia of quality under examination include effective leadership, client involvement, organizational structure, workforce diversity, client accessibility, strategic use of scarce resources to meet the most critical needs of the client community, effective use of technology, ongoing staff training, and self-evaluation.

We want to examine how our most successful programs, many of which are funded by you who are here today, have achieved high quality and what is required to maintain it. We are providing an opportunity for a conversation among experienced members of the community to discuss the development of these qualities, and we want to examine how other professions have developed and promulgated professional standards. When the LSC Board convened in Maryland last April, Susan Erlichman joined us for a very useful discussion of how her

efforts foster quality legal services in Maryland. Information gathered from these discussions will help us plan for and carry out additional projects as we develop our quality agenda. As always, I am eager to receive input and feedback and I hope you will not hesitate to contact me at hbarnett@lsc.gov with your comments on this important initiative.

Part of this process will be working jointly with the ABA and the Standing Committee on Legal Aid and Indigent Defendants in particular, and NLADA, to update and revise the ABA Standards for Providers of Civil Legal Assistance to the Poor (which were last promulgated in 1986) and take into account, among other things, certain emerging realities in the low-income client population, such as the tremendous increase of persons of limited English proficiency, and to take into account, among other things, the development of technology and the concepts of limited representation and unbundled representation. LSC also will be reviewing its own internal performance criteria, as well.

Outcomes

I believe that a useful and important measure of quality is outcomes data. Working more with outcome measures on a national level will be helpful in programs' self-evaluation and assessment, and may help make an even more compelling case to Congress and state legislators.

This past June, LSC held its second conference on outcomes in Cincinnati. This summit was for grantees that currently collect outcomes information. It had two important goals: (1) to allow grantees who are currently measuring outcomes to share information with one another on what they do,

how they do it, and how they use the information they acquire on outcomes; and (2) to give conferees the opportunity to share with LSC their ideas and thoughts as to how we can pilot the collection of some outcome data. I am pleased that staff from programs and representatives of NLADA, SCLAID and NAIP attended. NAIP President Faith Rivers appointed Mark Braley from Virginia to serve as NAIP's representative. All of the participants actively shared their considerable knowledge and experience, and their cautions and concerns, as well. The summit provided a better understanding of how individual programs, IOLTA funders and the United Way agencies are capturing and using outcome data. LSC is drafting a report on the meeting; the final document will be posted on our Legal Resources Library website at www.lri.lsc.gov.

LSC has heightened its emphasis on the centrality of diversity and leadership in providing high quality client-centered legal services. In this regard, I thought you would also be interested to know that an LSC program letter will soon be issued setting forth guidance for grantees in dealing with persons of limited English proficiency.

In addition, LSC's Diversity and Leadership Advisory Committee made a presentation at our June Board meeting on the concept of LSC developing a national project on mentoring to help develop the next generation of leaders in legal services programs. We believe that mentoring is an important piece of leadership development that can help develop a younger more diverse corp of leaders.

It is my goal to encourage communication not only with our

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grantees but also with our partners that will be an important feature of my stay at LSC. We at LSC can learn much from you and we hope you gain from interactions with us. I hope that the members of the IOLTA Commission and of NAIP will stay in close touch with me, sharing your ideas about how we can collaborate to strengthen the quality of the legal services we provide to our clients.

I would like to conclude on a personal note. I always felt privileged to go to work every day for an organization whose sole purpose was to try to ensure some semblance of reality to the concept of equal access to justice. I, of course, never thought I would leave New York City nor be offered this position, but it was an opportunity I am very pleased I accepted. As a legal aid lawyer my entire professional life, I am enormously proud to be president of the Legal Services Corporation and to serve as its spokesperson to Congress and throughout the country. I hope to develop an agenda of quality and to work with you to maintain, support and improve the work we do. Of course, I need and welcome your continued suggestions, advice and input. It is indeed wonderful to be with you and I look forward to working with, partnering with and collaborating with all of you who are devoted to the delivery of quality civil legal services to the poor.

Helaine M. Barnett was appointed president of the Legal Services Corporation in January 2004. Before then she spent 37 years as an advocate at the Legal Aid Society of New York City, most recently as attorney-in-charge of its civil division.

IOLTA News and Notes

New Commission Members

Dennis Burnette, Hon. Susan Calkins and Scott Partridge were appointed to the Commission on IOLTA in August by ABA President Robert J. Grey, Jr.

Dennis Burnette

is the president and chief executive officer of Cherokee Bank in Canton, Georgia. He has served as treasurer and trustee of the Georgia Bar Foundation. Burnette has a long history of civic involvement locally and statewide. He is past chairman of the board of the Georgia Bankers Association, is active in the American Bankers Association, and has served on that association's Community Bankers Council.



A legal services

veteran, **Hon. Susan Calkins** is currently an associate justice of the Maine Supreme Judicial Court.

Calkins began her legal career at Pine Tree Legal Assistance and worked there in various capacities over ten years, including as its executive director and director of training and litigation. She served as a jurist in the Maine District and Superior courts before being appointed to the state's high court in 1998. Calkins holds degrees from the University of Colorado and the law schools at the University of Maine and University of Virginia.



Scott Partridge is a member of Baker Botts L.L.P. in Houston, where his practice is focused on intellectual



property. Partridge is a graduate of the Georgetown University Law Center. He is a member of several sections of the American Bar Association, and has held numerous leadership positions in the Section of Science and Technology. He is currently a delegate from that section to the ABA House of Delegates. Partridge's past work includes experience in the U.S. Patent Office, the U.S. Presidential Clemency Board, and as an adjunct professor at Georgetown University Law Center.

New Public Services Manager in Kansas

In July, **Janessa Akin** became public services manager for the Kansas Bar Association and Kansas Bar Foundation.

Akin's responsibilities include managing Kansas' IOLTA program and the daily administrative needs of the bar foundation. Akin also supervises the operation of the Kansas Bar's lawyer referral service. Before becoming the public services manager, Akin worked for the bar association as CLE planner and in communications and marketing. Akin is a graduate of Kansas State University.



Harrison Tweed Award Presented during Annual Meeting

The State Bar of Georgia and the Mecklenburg County Bar (based in Charlotte, North Carolina) received the 2004 Harrison Tweed Award during the ABA Annual Meeting in Atlanta. Presented by the ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association, the award recognizes bar associations that have made significant achievements in increasing access to civil legal services and defense services for poor people.



TOP PHOTO: SCLAID Chair Bill Whitehurst with (left to right) Wilson Dubose and Bill Barwick of the State Bar of Georgia, along with Don Saunders, director of civil legal services for NLADA (far right).

BOTTOM PHOTO: Whitehurst (far left) and Saunders (far right) along with (left to right) Jon Buchan, Stacie MacArthur, Nancy Roberson, and Todd Stillerman of the Mecklenburg County Bar.



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