

From the Chair...



by Debbie Segal

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

Last week I heard from one of the partners in the Winston-Salem office of Kilpatrick Stockton, the firm at which I am the full-time pro bono partner. My colleague was reporting proudly on a pro bono case a new associate had just completed. The associate, Jim Hefferan, represented a woman sued for divorce by her abusive husband. He had infected her with HIV and was now trying to obtain equitable division of her only asset, their house. Through the course of his diligent work, Jim discovered that the “husband” in question had not dissolved a prior marriage, and he was able to defeat the divorce and the division of the house. Everyone was pleased with the result, and the story could have ended there.

Instead, Jim followed up on an outstanding criminal warrant against this man for domestic violence, and managed to have him arrested at the divorce hearing. Jim appeared at the bond hearing and convinced the judge to set bail high enough to keep the defendant in jail to cool off. Everyone was pleased with the result, and the story could have ended there.

But then, Jim was put in contact with a former girlfriend of this

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Taking Pro Bono International: 1992 Pro Bono Publico Award Winner Suzanne E. Turner

by Marilyn Smith

When Suzanne Turner received the ABA Pro Bono Publico Award in 1992, she was a young associate in the Philadelphia law firm of Ballard Spahr Andrews & Ingersoll. She started her law career at the law firm in 1986 and then accepted a one-year clerkship with U.S. District Court Judge Edmund V. Ludwig of the Eastern District of Pennsylvania in 1987. As a clerk for Judge Ludwig, Turner created the Plaintiff’s Employment Panel, which provided pro bono legal assistance for plaintiffs who otherwise would represent themselves in claiming employment discrimination or filing actions under the Rehabilitation Act or the Americans with Disabilities Act. Sixteen years later, this program is still up and running.

When Turner returned to Ballard Spahr in 1988, she arrived armed to make a pitch for creating a pro bono policy and coordinator position for the law firm. She envisioned that the firm’s pro bono manager would concentrate on doing pro bono cases and facilitating opportunities for other attorneys in the firm to do pro bono. When Turner approached the senior partner at her firm—suggesting that she was the ideal candidate for the position—she was delighted to learn that the detailed presentation she had prepared was unnecessary. The firm had been thinking about creating such a position but no one had ever proposed running it. As Turner recalls, she was in the right place at the right time.

Turner always knew that she wanted to become a lawyer who fought for social change. As she describes it, “Whatever drew me to the law in the first place is what drew me to pro bono work.” She always intended to be a public interest lawyer and her experience in law school solidified this intention. When she discovered she could do

public interest law in a law firm, this seemed like a particularly good fit.

Under Turner’s leadership, Ballard Spahr’s pro bono program grew and flourished. From a fledgling project, it developed into a strong part of the firm’s culture and continued to expand in size and in the depth of subject matters and cases. During her tenure at the firm, Turner also served as head of the Public Interest Section of the Philadelphia Bar Association and board chair of the bar’s Volunteers for the Indigent Program. In 1996, she was awarded



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defendant in Florida, who had no idea that he was HIV positive and that she could now be infected. Jim discovered a Florida statute that makes it a felony to have sex with someone without disclosing HIV, and helped to coordinate with the US attorney's office and state officials in Florida to file charges against him for this crime. Having misled both his wife and girlfriend about being HIV positive, the defendant will likely reside in a Florida prison for some time.

The benefits Jim provided to his pro bono client are many. She was able to restore her financial well-being and her faith in a system that can protect the rights of the poor. She was also able to move on with her life safely, with the assurance that her ex-husband would not harass her. But an unintended beneficiary was Jim, who discovered what an impact he could make on a person's life by using his law degree. His success no doubt created confidence in his advocacy skills, taught him that being thorough was a great asset, allowed him to think creatively and energized him in the way that a great victory for the underdog can do.

Lawyers doing pro bono work make a great impact on people's lives—both their client's and their own. Shortly after joining the law firm Dechert LLP as a lateral associate, Teresa Bittenbender received a pro bono request to represent a woman seeking political asylum. The woman was a national of Liberia, which had been wracked by civil war for over 10 years, and she was seeking asylum in the United States because she claimed to be

the mother-in-law of a prominent opposition leader.

Teresa spent all night reading her client's heartbreaking story. Soldiers broke into her home at night and terrorized her family. They raped her little girl in front of her, staged a mock execution of her in front of her children, and dripped melted rubber onto her body. The soldiers also murdered her father, stepson and mother-in-law. After escaping from Liberia, she arrived in the United States and requested political asylum. Due to her misunderstanding of one of the questions in the asylum application, the INS denied her application. In reading her file, it was clear to Teresa that her client was telling the truth, and that if she was deported back to Liberia, she would be executed as soon as she stepped off the plane. Teresa realized her client's life literally depended on having a good lawyer and that she couldn't make a mistake.

Through the course of many months of hard work, Teresa and her pro bono team located a U.S. missionary nurse in her 80s and a midwife in Rhode Island, both of whom could testify to the truth of her client's story. They found an expert witness who understood the conditions in Liberia and had personal contact with the client's family members.

Two weeks before the asylum hearing, the judge moved for administrative closure, which would have virtually ensured that the client would never have received asylum. Through persistence and strong advocacy, Teresa convinced the judge to proceed with the hearing.

Teresa's client was an amazing witness. She answered almost 400 direct exam questions. She was consistent and credible. The

expert witness gave a moving testimony on human rights atrocities in Liberia. He convinced the judge that the client would still be persecuted if she returned to Liberia. After a grueling five and half hours in court, the judge granted her asylum.

The client believes Teresa saved her life. She doesn't realize that she changed Teresa's life as well. Living a safe and comfortable life in the United States, it is easy to forget what happens in this world. This case woke Teresa up. She notices that she doesn't complain about trivial annoyances in her life quite so much after working with this brave woman who endured such atrocities. Teresa felt that she was able to truly help someone, and that feeling was addictive. She wants to do it again.

Attorneys in large law firms do pro bono work for many reasons besides training and hands-on legal experience. Beth Colgan is a fourth-year litigation associate at Perkins Coie in Seattle. In addition to carrying a full billable case load as a commercial lawyer, Beth has averaged over 300 pro bono hours a year in her work representing low-income clients serving life sentences who she believes have strong innocence claims. In one of these cases, Beth has been working with a Seattle legal services attorney seeking clemency for their client, a woman who was sentenced to life in prison without the possibility of parole after being convicted of a murder that occurred when she was 16 years old.

After studying the case carefully, Beth concluded that there was a lack of credible evidence connecting her client to the crime, and she filed a clemency petition

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the Fidelity Award, the Philadelphia Bar Association's highest honor for public service, and in 2001 the Pennsylvania Legal Services' Striving Toward Excellence Award.

When Turner had the opportunity to move to London with her family in 1999, she continued working for the firm on a part-time basis while she made the transition to a new country. In London over the last four years, Turner has demonstrated her ongoing dedication to pro bono and public service. She has worked as a legal consultant for an international human rights group, Interights. In this capacity, she prepared a comparative study of the delivery of legal aid in Europe and worked on access to justice and right to counsel issues.

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with 47 prison guards submitting statements in support of the petition. Beth argued on behalf of her client at the state clemency board in late February 2004 and the board voted 4-0 to recommend clemency to Washington's governor. As of this date, they are awaiting a decision from the governor. For Beth Colgan, doing pro bono work is a way to insure that the promise of justice is delivered—to protect both the system and the individuals involved. Beth's client, who has already been in prison for 19 years, is overwhelmed and thankful for her attorneys' hard work.

Try pro bono. You'll change someone's life. You'll change your own.

Turner spent time as a visiting fellow at the Institute of Advanced Legal Studies at the University of London, where she focused her work on an international comparative study on pro bono work. She has worked on increasing funding for public interest organizations and has become a leader in examining how the private bar can best provide pro bono assistance where gaps in the legal services delivery system exist.

As she made a transition to life in London with her husband and two daughters (aged eight and three), Turner was offered a position as pro bono partner at the law firm of Dechert LLP in October 2003. Dechert is an international law firm with approximately 750 lawyers in 17 offices (six in Europe and 11 in the United States). Turner now works full time running the firm's pro bono program—managing a wide diversity of projects that come in; working on cross-office initiatives; and personally handling a large pro bono caseload. Many of her own cases focus on access to justice, right to counsel and fair trial issues.

Turner has already made a strong impression on the pro bono and legal community in the U.K. She was named one of the "Top

100 Hot Lawyers" by *The Lawyer* magazine in January 2004. She serves on the board of the Solicitors Pro Bono Group—an organization that promotes pro bono work throughout the U.K.

Turner continues to see the true value of pro bono as being able to make a concrete contribution to people in need. "Helping a person who can't afford legal services by giving them access to a lawyer gives them access to a whole system of justice. The way a doctor can help someone physically or a social worker can help someone's mental health, attorneys can provide justice for people."

She notes that though the pressures of billable hours in firm life are real, law firms that develop policies that value pro bono, and then put these policies into action, can make substantial profits and fulfill their roles as corporate citizens at the same time.

Suzanne Turner feels lucky to be able to carry the pro bono message with her to Europe, while still impacting pro bono in America through Dechert's U.S. offices. She is confident that pro bono will always play a critical part of her professional career.

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

Rural Pro Bono

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the project's Listserv. The center designed a half-day statewide training for rural pro bono program managers in Indiana that focused on identifying innovative strategies for recruiting and retaining volunteers. The center

plans to use this training module when designing other regional rural pro bono trainings.

The publication of the Rural Pro Bono Delivery manual in 2003 was the result of studying dozens of collaborative rural pro bono projects and identifying creative models for tapping into urban

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Pro Bono Bulletin Board

Maryland Report on Lawyers' 2002 Pro Bono Activity is Released

The Administrative Office of the Courts of Maryland recently released its report on the mandatory reporting of attorney pro bono activity for 2002. Covering the first year for which pro bono reporting was required, the findings note that 47.8 percent of responding attorneys recorded doing some pro bono activity in 2002. With over 97 percent of active Maryland lawyers responding, the total number of pro bono hours was 995,615. The top pro bono service area was in family and domestic law. Among lawyers who provided pro bono service, 54.1 percent offered their services to people of limited means; 13.4 percent provided services to organizations helping the poor; 5.7 percent worked with entities on civil rights issues; and 26.7 percent worked with organizations such as non-profits where they were furthering the organization's purpose. The full text of the report is available online at: www.courts.state.md.us/probono/probonoreport_2002.pdf.

Louisiana Adopts Revised Rule 6.1

The Supreme Court of Louisiana

recently approved revisions to Rule 6.1 of the Louisiana Rules of Professional Conduct. The changes to the rule, which address lawyers' professional responsibility to provide pro bono service, became effective March 1, 2004. They are based on the recommendations of the Louisiana State Bar Association House of Delegates with the language modeled on Model Rule 6.1 of the ABA Model Rules of Professional Conduct. The new Louisiana Rule 6.1 encourages lawyers to render at least 50 hours of pro bono service per year, and to provide the majority of this legal service without fee to persons of limited means. A copy of Louisiana's new Rule 6.1 is online at www.lsba.org/Legal_Library/rules_of_professional_conduct_.asp.

New York Court System Releases Report on Pro Bono

The New York State Unified Court System published two highly anticipated reports in January 2004 under the title *The Future of Pro Bono in New York*. Volume One is the "Report on the 2002 Pro Bono Activities of the New York State Bar." This report summarizes the results of the 2002 statewide survey on attorney pro bono activity. The survey found that 46 percent of New

York State's attorneys performed pro bono work for the poor in 2002 and the average number of hours spent by attorneys who performed this pro bono work was 41.3 hours.

Volume Two is the "Report and Recommendations from the New York State Unified Court System's Pro Bono Convocations." This report summarized the series of four pro bono convocations held around the state in 2002 in order to "brainstorm issues and develop tangible, feasible ideas and strategies for expanding pro bono service in New York." The findings in the report include:

- Increased pro bono services are needed in New York State
- A formal statewide initiative is necessary and desirable
- All stakeholders should be involved in the statewide program that is developed to expand pro bono
- The judiciary should have a significant role in the statewide program, but local leadership, design, implementation and control are essential for a comprehensive and workable program
- Pro bono service should be voluntary

Both reports are available online at www.nycourts.gov/reports/probono/index.shtml.

Rural Pro Bono

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resources, engaging local communities, experimenting with volunteer recruitment strategies,

effectively using pro se resources, collaborating with state and local bar associations, and training, supporting and recognizing the accomplishments of volunteers. In addition to best practices and models for creative programs,

the manual includes extensive resource lists for pro bono organizations, rural projects and public interest law.

As the results of the Rural Pro Bono Initiative continue to

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Program News from the Field

Alaska: The Alaska Bar Association Board of Governors recently approved a new pro bono position at the bar association to help recruit volunteer attorneys, coordinate existing pro bono efforts and generally promote and support pro bono within Alaska. The position has not yet been advertised. Contact: Deborah O'Regan at 907-272-7469 or oregand@alaskabar.org.

Hawaii: Volunteer Legal Services Hawaii named a new executive director, Moya Gray. Gray was previously the director of the Hawaii Office of Information Practices. Contact: Moya Gray at

808-528-7051 or moya@vlsh.org.

The Legal Aid Society of Hawaii recently established a pro bono coordinator position within the program, staffed by Rebecca Anderson. A second staff person, Lori Shimabukuro, will also be working on pro bono issues. Contact: Rebecca Anderson at 808-527-8088 or reander@lashaw.org and Lori Shimabukuro at 808-527-8056 or loshima@lashaw.org.

Mississippi: Shirley Williams started as executive director of the Mississippi Bar Association VLP in January 2004. Contact: Shirley Williams at 601-948-4476 or swilliams@msbar.org.

Texas: The Houston Volunteer Lawyer Program (HVLP) hired a new Pro Bono Coordinator, Sean Palmer. Contact: Sean Palmer at 713-228-0735 or Sean.Palmer@ehvlp.org.

Washington: The Washington State Bar Association hired Marla Elliott, of Columbia Legal Services, as the statewide pro bono support coordinator, a newly created part-time position. Contact: Marla Elliott at 360/943-6585 or Marla.Elliott@ColumbiaLegal.org.

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Rural Pro Bono

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deepen and grow, the Center for Pro Bono seeks to engage more communities and pro bono providers in the satisfying work of developing rural pro bono resources where none currently exist. These project gains will endure as the center continues to provide the rural advocate community with research, networking opportunities, and technical assistance. As part of its commitment to institutionalizing the work of the initiative, the Center will continue to maintain the rural Listserv, revising and updating the online Rural Pro Bono Delivery manual, keeping a rural focus in its Peer Consulting Project, and supporting the development of innovative models for delivering pro bono legal services to rural clients.



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

For more information about joining the rural Listserv or using the

Center for Pro Bono's Clearinghouse Library, visit the center at www.abaprobono.org or contact Dina Merrell at merreld@staff.abanet.org or 312-988-5773.

Program Evaluation as a Tool for Equal Justice

by Ken Smith

Program evaluation has always caused ambivalence in legal aid. Initiated in the 1970s as a tool for promoting quality among programs funded by the expanding Legal Services Corporation, evaluation became politicized during the 1980s to such an extent that many legal services programs felt that it was being used as a weapon against them. In the 1990s, however, civil justice communities in some states began to rely on evaluation to demonstrate accountability for their use of public funds and to promote high performance in legal services programs. In recent years the focus has shifted to the local level as some legal aid providers apply “program-owned” evaluations to learn how well they are serving their clients.

As legal aid funders, state IOLTA programs have embraced evaluation for similar reasons: to improve the quality and effectiveness of their grantees, to support requests for legal aid funding from other sources, and to demonstrate accountability in administering state and other funds. This article looks at how IOLTA programs in Virginia, Ohio and California have used various evaluation models to expand equal justice efforts in those states.

Virginia: Demonstrating outcomes and accountability

The Legal Services Corporation of Virginia (LSCV) distributes state general revenues, filing fee funds and IOLTA revenues to 11 legal aid grantees. Since the Virginia legislature transferred the IOLTA program from the state bar

foundation to LSCV in 1995, the program’s total revenue has grown from \$2 million to more than \$8 million (in 2002) and total funding for the legal aid delivery system from \$9 million to almost \$20 million.

These funding increases come in part due to LSCV’s embrace of a statewide evaluation system that highlights annual reporting and tracking of the outcomes produced by legal aid programs.

With attacks on legal aid

growing at the federal level during the mid-1990s, Mark Braley—LSCV’s executive director since 1992—and the LSCV board felt it was important for the program to be able to show a significant level of oversight. “We needed to assure state legislators they didn’t have to worry; that we had things under control,” Braley says, “and we were very concerned that those attacks would trickle down to the

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Program Evaluation in Legal Aid: A Glossary

Peer review: An evaluation method in which a team of two or more experienced legal aid managers or advocates visits a program, collects information through face-to-face interviews, and delivers an assessment of the program’s performance orally and/or in writing.

Desk review: An assessment based on a review of a program’s reports, proposals, quantitative data, publications and other information. A desk review might assess a program based on quantitative and qualitative benchmarks.

Outcome measures: Used to assess the benefits received by clients as a result of the legal assistance provided—for example, disability benefits, child support payments, protection from domestic abuse or preservation of one’s home—and/or the extent to which individual clients achieved the results for which they sought legal aid.

Performance standards: Criteria against which a program is evaluated. These may be explicit; for example, the ABA *Standards for Providers of Civil Legal Services for the Poor*, or they may be based on the expert judgment of experienced evaluators as to what constitutes good performance based on empirical observation of legal aid practice across the nation.

Funder-driven evaluation: An evaluation that is carried out or commissioned by a program’s funding source as a part of its oversight function.

Program-owned evaluation: A self-evaluation that is carried out or commissioned by a legal aid program or project as a means of obtaining feedback about how well it is achieving its intended results.

The Evaluation Toolkit: A set of seven evaluation tools assembled in California to support relatively simple program-owned evaluations by grantees of the Equal Access Fund. Copies of the Toolkit and further information about the evaluation for which it was developed may be obtained from the web site of the Legal Aid Association of California (LAAC), at www.pic.org/toolkits.

The Ten Evaluation Case Studies: Ten profiles of legal aid program leaders that show how program-owned evaluation is being used effectively for performance improvement and resource development. These were produced in 2003 under a project jointly sponsored by NLADA and the AARP Foundation and can be obtained by searching the document library at www.nlada.org under “program owned evaluation”.

From the Chair...



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

Since 2000, interest rates paid on IOLTA accounts have sunk to historic lows. For some IOLTA programs, 2004 will be the third or fourth consecutive year in which they must struggle to maintain grants and pay expenses while contending with reduced income. This environment has lent more urgency than ever to the IOLTA community's search for effective revenue enhancement strategies.

I am surprised that a good portion of the IOLTA community is not utilizing what may be the most effective tool for revenue enhancement: conversion to mandatory IOLTA. Of the 52 jurisdictions in the United States with IOLTA, (all 50 states plus the District of Columbia and the Virgin Islands), only 27 are "mandatory", meaning that they require the participation of all attorneys who handle client funds. This means that today, 25 other programs could begin taking steps—toward conversion—that could increase IOLTA income in the foreseeable future.

You may have heard previous calls to conversion—for example, during the 1980s when the ABA House of Delegates endorsed mandatory IOLTA, in the early

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IOLTA Grantee Spotlight: Maryland Legal Aid Bureau Focuses on Low-Income Tenants

by Joe Surkiewicz

Woodsedge, a low-income housing development on Maryland's rural Eastern Shore, is well off the beaten path. But it has a history of legal problems that is decidedly mainstream. Located miles from the nearest town along a back-roads route used by drug runners avoiding major East Coast interstate highways—and with no public transportation or regular police patrols—the isolated community was overrun with drugs and crime.

"A lot of the residents were living inside, afraid to do anything," recalled Bill Leahy, chief attorney of the Legal Aid Bureau's Upper Shore office in Easton. But that changed after Legal Aid helped the tenants form a community association. Today, residents of Woodsedge point with pride to a new community center, after-school programs, a summer camp for children, and state funding for additional police patrols that have significantly reduced crime. One key to the change? Legal Aid's Greg Countess, assistant director of advocacy for housing and community economic development, who worked with the Upper Shore office to help the residents apply for grants and to convince the development's owner to convert an empty unit into a community center.

"Greg played an enormous role at Woodsedge," Leahy said. "He relates to the tenants well and they respect him. That's extremely beneficial. He has the big perspective—and that's a real benefit of being a statewide operation and not just a couple of people in a law office." To Countess, Woodsedge is a basic example of how legal services can support low-income communities in prioritizing their needs and developing solutions.

"We do more than simply solve landlord-tenant disputes," explained Countess, who joined Legal Aid in 1976 as a law clerk and then, after graduating from the University of Maryland School of Law in 1978, as a staff attorney. "We serve as counselors and advisors to help residents and resident associations achieve the changes they want in their lives. The residents seize control of their destiny. We simply serve, as private lawyers do for their clients, as the 'technicians.'"

The Legal Aid Bureau

Founded in 1911 and headquartered in Baltimore, the Legal Aid Bureau is one of the oldest and largest civil legal service providers in the U.S. A major grantee of the state's IOLTA program, Maryland Legal Services Corporation, Legal Aid has more than 120 lawyers and nearly 250 employees in 11 offices statewide, and helped over 45,000 people last year. Why the focus on housing preservation and community economic development?

"Unstable housing is one of the most serious threats to familial and

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1990s when conversion was a frequent topic in the IOLTA Update newsletter, and perhaps again during the most recent IOLTA workshops in San Antonio. I suspect you may hear more calls in the future, when the Joint Rules Task Force concludes its work studying rule changes related to revenue enhancement and makes its recommendations. But for now, I will add my own voice to these calls to convert.

Why do I support mandatory IOLTA? First and foremost, I believe that conversion is the most critical revenue enhancement tool for those programs that are not yet mandatory. To cite an example of this that is close to me, let's look at the Texas Equal Access to Justice Foundation (TEAJF), which converted to mandatory IOLTA in July 1989, at the beginning of my tenure as president of the State Bar of Texas. TEAJF's monthly IOLTA income was \$27,000 before conversion; by the end of 1990, that figure had grown to \$445,000 a month. Bear in mind, of course, that a state converting in 2004 is unlikely to see an increase of this magnitude, in part because of today's low interest rates, and because Texas converted from voluntary, not opt-out, status. Nevertheless, conversion to mandatory partici-

pation produces real gains in income, gains that will never be realized by programs that remain opt-out or voluntary.

As a practicing attorney and bar leader, I also support mandatory IOLTA because it is a concrete manifestation of our professional ideals, and can serve as a unifying project for lawyers to support. In the case of IOLTA, the legal profession can embrace a pragmatic and efficient system for enhancing one of the pillars of our legal system—the promise of equal access to justice.

Some IOLTA programs are actively considering mandatory IOLTA. After months of hard work, the Oklahoma Bar Foundation recently took the bold step of filing a motion in the Oklahoma Supreme Court to convert to mandatory IOLTA. The IOLTA programs in several other states attended the session on conversion during the IOLTA Workshops in San Antonio, and some have contacted the Commission's staff for more information.

I am heartened by this activity, but I am puzzled that other states are not pursuing conversion with more vigor. Since the Supreme Court upheld Washington State's mandatory program in *Brown v. Legal Foundation of Washington*, I do not believe that litigation should be an obstacle. I suspect that programs are hesitant for other reasons, most significantly

concern about a lack of support or outright opposition from members of the bar.

I can speak to this based on my own experience as president of the State Bar of Texas in 1989 and 1990. Many were concerned that mandatory IOLTA would have insufficient political support from the profession. Some even worried that the move would be divisive. In practice, however, no organized or widespread opposition materialized. The IOLTA rule changed, and lawyers complied. (The constitutional challenge to Texas's IOLTA program only surfaced several years later, and as we know, was driven by the Washington Legal Foundation, an out-of-state organization pursuing a political agenda.) Today the vast majority of Texas lawyers accept IOLTA as part of the regular course of business, and appreciate what IOLTA has accomplished.

The benefits of converting to mandatory IOLTA are too great to ignore, considering what is really at stake. Every new IOLTA dollar is another dollar that can go toward the ultimate beneficiaries of IOLTA, particularly indigent people in need of legal services. If your program has opt-out or voluntary participation by attorneys, it is time to consider making that participation mandatory. The Commission and its staff remain ready to assist you in these efforts.

Evaluation

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state level." Those fears were confirmed in 1998 and 1999 when the Virginia Farm Bureau lobbied hard for far-reaching restrictions.

By then LSCV had put in place a statewide evaluation system that includes a comprehensive grant application and a standardized annual report from every grantee. The report includes a narrative description of the program's achievements and

a statistical summary of outcomes generated for clients, such as the number of people receiving specific benefits ranging from protection from domestic violence to dollar awards for child support. Using this information as the

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Grantee Spotlight

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community stability for low-income people and the working poor,” responded Hannah Lieberman, Legal Aid’s director of advocacy. “You can get a low-paying job and then not afford a place to live. The barriers to finding affordable housing are formidable—in Baltimore, in Maryland and across the country. Affordable housing also needs to be safe and to provide access to services and supports to help families move out of poverty.”

Subsidized housing at risk

In Baltimore, for example, 92 low-income developments with approximately 8,300 units are at risk of losing project-based Section 8 subsidies when their contracts expire in December 2005—representing 83 percent of all subsidized units in the city. The success rate for people with vouchers searching for an apartment has hovered in the 38 percent range over the past couple of years, Lieberman noted. Nationally, more than a million units of low-cost rental housing were lost during the 1990s, according to the Joint Center for Housing Studies at Harvard University. By 2005, contracts for 900,000 of the remaining 1.5 million Section 8 units will have passed their initial expiration mark, allowing owners to “opt out” of the program and charge market-rate rents. Meeting the challenge of preserving affordable housing requires new skills and strategies, Lieberman noted.

“We think it’s so important that it requires legal services to develop new tools and pro-

grams,” Lieberman explained. “It’s not the typical bread-and-butter service. But we chose to focus significant resources on housing preservation.” Those efforts include the Housing Preservation Unit, the program staff who provide outreach and training for tenants to help them preserve existing housing and to help create new housing—and to reach out to developers when opportunities to partner in efforts to renovate or build new affordable housing arise. “We make tenants aware of their rights and opportunities,” Lieberman said.

For sophisticated pro bono assistance, the program tapped Venable, Baetjer and Howard, one of Maryland’s largest private law firms, in a partnership designed to provide transactional assistance to push forward complicated real estate ventures for low-income residents. Other efforts include the use of traditional litigation tools when either private owners or public entities fail to adhere to federal or state laws designed to prevent involuntary displacement.

An example: Uplands Apartments in Baltimore, a 900-unit, formerly subsidized apartment complex located on 50 acres of rolling, wooded areas on the city’s western edge. In May, 2003, the U.S. Department of Housing and Urban Development (HUD) announced it would move residents to a hotel for 30 days, purchase the run-down, post-World War II complex at a foreclosure sale, and sell it to Baltimore City for demolition and redevelopment. Yet redevelopment plans for Uplands failed to include affordability restrictions on new units that would allow former residents to return to the site. When negotiations with HUD

failed to resolve the problems, the residents sued in federal court to prevent the displacements and to force HUD to comply with its own disposition obligations. After a two-day hearing, Legal Aid lawyers were successful in getting HUD to agree not to force residents to move and to undertake its statutorily mandated disposition process. But the story isn’t over. After issuing a final disposition plan, whose adequacy residents continue to challenge, HUD sold the property to the city—which immediately condemned it and took steps to move the few remaining residents to a motel. Again, with the help of Legal Aid residents succeeded in enjoining the forced move and the city agreed to provide residents with relocation benefits. The lawsuit against HUD and the city regarding the future of affordability at the new Uplands is continuing.

Another example: Chapel NDP Apartments, a 173-unit, low-income complex in east Baltimore near the world-renowned Johns Hopkins Hospital. The owner of the complex notified the approximately 110 households that their leases would be terminated and they would have to move so that the complex could be redeveloped. After negotiations failed to resolve the problem, Legal Aid helped residents file a lawsuit in federal court challenging the owner’s eviction efforts and seeking, among other things, to retain the property as low-income housing and to allow the residents the opportunity to exercise a right of first refusal to purchase the property. In February, Legal Aid convinced the court to issue a preliminary injunction

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preventing the evictions. A trial is scheduled for this summer.

"The residents have actively pursued a development partner [that they can work with] if it turns out they can purchase the property and preserve it on their own," Countess said. "That's important because otherwise they feel like pawns on a chessboard."

Legal Aid's Housing Preservation Unit—paralegals Karen Forbes, Claudia Dock and Shonyah Hawkins—were critical in educating the Chapel tenants, Countess added: "With lawyers, they helped inform residents of what was happening at the property and the options available to them."

Bloomsbury Square

The crown jewel of Legal Aid's advocacy for low-income tenants may be Bloomsbury Square in historic Annapolis, the state capital and one of the largest yachting centers in the country. Ending a 25-year legal struggle over the community adjacent to the state house, last fall more than 100 Bloomsbury Square residents moved into new housing—marking a victory for the low-income residents in one of Maryland's most affluent areas.

"It's not the way things normally work out," said Florence Roisman, an Indiana University law professor and nationally recognized expert on low-income housing. "It's a great story." The residents, including many elderly and handicapped people in the mostly African-American community, relocated into new brick townhouses constructed by the

state 100 yards from their old homes, which will be razed for the expansion of a legislative office building.

"The project preserved low-income housing in historic downtown Annapolis and residents' access to jobs, transportation and schools," said Janet LaBella, the community's Legal Aid attorney. "It really is model public housing that everyone should be proud of—the state, the city and the residents. It's a win for everyone."

Successes such as Bloomsbury Square and many others, as well as ongoing efforts in Uplands, Chapel NDP and other threatened low-income communities, aren't going unnoticed by Maryland's legal community.

In December, Countess' work was recognized by the Maryland Legal Services Corporation, which awarded him its Benjamin L. Cardin Distinguished Service

Award. Maryland Court of Appeals Chief Judge Robert M. Bell—a vocal supporter of legal services—and MLSC President F. Vernon Boozer made the presentation. More recognition of the work of Countess and Legal Aid comes from academia. Brenda Bratton Blom, the director of clinical programs at the University of Maryland School of Law and an expert on community economic development, was unstinting in her praise.

"The work Greg is doing is so fundamental to the residents of not just Baltimore, but to the rest of the state," Blom said. "There's a huge segment of the low-income population that wouldn't be served but not for this unit."

Joe Surkiewicz is director of communications for the Legal Aid Bureau. Before joining Legal Aid in 2002, he was a legal reporter at *The Daily Record*, Maryland's legal newspaper.



Maryland Court of Appeals Chief Judge Robert M. Bell (left) and Maryland Legal Services Corp. President F. Vernon Boozer (right) present Gregory L. Countess of the Legal Aid Bureau with the 2003 Benjamin L. Cardin Distinguished Service Award at a ceremony in December.

Evaluation

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principal source, LSCV publishes a comprehensive annual report to the legislature, which Braley uses extensively in his lobbying efforts. In addition, in intervals of approximately three years, LSCV reviews the performance of each grantee against state standards based on the ABA's *Standards for Providers of Civil Legal Services for the Poor*. The evaluation is done in two stages, beginning with a comprehensive desk review, followed by a site visit to the program by Braley and/or a peer review team to discuss issues that LSCV or the program wishes to address.

Rather than create an in-house evaluation bureaucracy, LSCV outsources the technical work to a consulting firm. This has enabled LSCV to focus on its core mission with a very small in-house staff. The consultant receives the grantee reports, processes the data, conducts desk reviews and assists in producing the annual report to the legislature.

Braley credits the evaluation system for providing strategic information he needs for his work with the legislature and the banks. "In my early days, it was common to get questions like, 'Don't you guys sue this agency or that agency? Why should we give you more money to sue us?' We were always defending ourselves, not getting to the issues we wanted to talk about. Now I walk in the door and the talk is about the good work we do, the return on investment. And the ability to show accountability to the legislature helped us to fend off the attempts to restrict the state and IOLTA funding stream."

Is evaluation an essential capacity for a state civil justice community? "No question," says Mark. "With all the public money we have responsibility for spending wisely, how could we not have an evaluation system? You have to ask, does your legislature have confidence in you? Do they understand the good work you're doing? We've gotten our legislature to the point where they have confidence in us. They want to fund us. The only question is, can they find the money? That's a great place for us to start the conversation."

Ohio: Using peer review to promote quality

When Bob Clyde came on board as executive director of the new Ohio Legal Assistance Foundation in 1994, IOLTA and filing fees were producing \$3 million annually. That figure has grown to \$16 million. In 1998, Clyde realized that to keep this engine going he needed to get a better handle on how the legal aid programs were doing. The state assembly had become more conservative, and a no-new-tax attitude prevailed. "I told the program directors, 'We've raised all this money, but we can't raise much more without showing we are good stewards,'" he says.

The directors agreed that an evaluation system would not only demonstrate accountability but also give them valuable feedback about their programs. Peer review was the method of choice. As a former legal aid manager, Clyde knew that legal aid directors would be skeptical of any evaluation that did not come from people they respected. "I've been there," he says. "My program was evaluated by a team of people from LSC, some of who had

less than three years' experience. They tried to pressure me into making some changes I knew were wrong."

Right from the beginning, Clyde hired peer reviewers of the highest quality, tapping into his extensive network of contacts in the national civil justice community to recruit executive directors and legal aid advocates who had national reputations as leaders in their fields. "When you do evaluations, you need to have people whose credentials can't be challenged. These people have been around. They have obvious skills." Because of the quality of the evaluation teams and their work product, the evaluation reports have rarely been challenged.

The first round of peer reviews served as a basis for making state planning decisions especially regarding program reconfiguration. "When we started out, we had 19 programs, many of them small, covering one county. There had been no oversight for 15 years." The evaluations showed what was working and what wasn't. Ultimately the 19 providers were consolidated into six regional programs.

There are payoffs for the legal services programs. Joe Tafelski, program director of Advocates for Basic Legal Equality in northwestern Ohio says, "The peer assessments are making a big difference in what we're doing, [OLAF's] approach as a funder is to be supportive of our efforts, but also to make us be accountable. Not just for the money but for quality. It's not 'monitoring' in the sense that LSC did it in the 1980s. It's looking at where we're going: our strengths, our weaknesses, how we can improve. [OLAF] is always challenging us to do

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Evaluation

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better. The bottom line is: "What does it mean for our clients?"

"Evaluation is not cheap," says Clyde. Some of the peer reviews have required weeklong site visits by four to six evaluators. With travel expenses and fees, the cost can go over \$25,000. But according to Clyde, this expense is worthwhile. "Absolutely," he says. "When you think about how much public money is at stake, the cost of an evaluation is a pittance. After years of paper reviews on our part and 15 years of neglect of quality by LSC, we had to do this. We had to exercise oversight."

California: Evaluating from the bottom up rather than the top down

Judy Garlow is executive director of the Legal Services Trust Fund Program, which administers IOLTA and state funding for legal aid in California. The Trust Fund began evaluating its grantees in 1989. Its principal method is a one-day site visit to each grantee, generally on a three-year cycle. The grantee is asked to complete a checklist that focuses on compliance with grant requirements and the ABA *Standards for Providers of Civil Legal Services for the Poor*. The Trust Fund also performs a desk review of reports submitted annually by each grantee. Together with the site visits, these provide a level of oversight that keeps the Trust Fund informed and the burden on grantees within reasonable bounds.

Garlow believes that much of the value of this approach comes from the preparation grantees do for the visits. The biggest impact has been on the smaller programs.

"It has brought them into the fold of the statewide system," she says. "It says to them, 'This is not a grant from your community foundation. This comes with strings attached. We expect your board to exercise quality control. Here are standards you can apply. We are going to discuss it when we visit you.' Over the years it has changed the way people run their programs."

In 2002, the program partnered with the Administrative Office of the Courts (AOC) to develop what is becoming a hallmark for civil justice program evaluation. It was prompted by a legislative mandate to evaluate the results of the Equal Access Fund (EAF), a \$10 million annual state appropriation administered by the Trust Fund. The appropriation funds more than 200 projects in 100 organizations providing legal aid, state support and court-based self-help assistance.

The scale of the EAF program presented a formidable challenge: developing an evaluation approach that would provide credible results without breaking the bank. The Trust Fund, the AOC and the Legal Aid Association of California put in place a unique system featuring voluntary, "program-owned" evaluations by the grantees. In addition to submitting a core set of case service and funding data (which is mandatory), grantees may, if they wish, perform more extensive evaluations of their funded projects and submit the evaluation reports for inclusion in the final report to the legislature. A centerpiece is the "Evaluation Toolkit," a menu of seven evaluation tools that grantees can apply themselves, including client satisfaction surveys, focus groups and outcome measures.

Garlow feels that the "program owned" approach has great

promise for other states. She says if she were starting today to develop an evaluation approach she would lean toward some mix of peer reviews and/or program-owned evaluations. "For us, the cost of peer reviews would be overwhelming," she says. "For a state with a small number of grantees it would be an option. I tell people, 'Talk to your grantees about what they think would be helpful.'"

Is evaluation essential? "Yes," she says. "The expectations of funders are very important to grantees. A funder's recognition of quality and performance can have a powerful impact. And it's enormously important for programs to find out whether they are having the effect they're trying to have. Evaluation needs to be on the list of things we do."

A view from the bench

Rick Teitelman sits on the State Supreme Court in Missouri, giving him a unique perspective on accountability in a state civil justice system. His perspective is further enriched by his past experience as executive director of Legal Aid of Eastern Missouri, based in St. Louis. His first encounter with evaluation came in 1978, when he was a legal aid managing attorney in St. Louis. Joel Stein, a legal aid managing attorney from Chicago, paid a visit as a member of an LSC peer review team. "It was a wonderful experience," Rick recalls. "We talked for half a day. He became a mentor to me. Later I'd go up to Chicago, meet with him. We'd talk about what I was doing, what makes sense, what data we have."

In the 1980s, LSC evaluations changed. "It wasn't like the '70s, focused on mentoring, on development. It was less developed

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IOLTA News and Notes

The IOLTA programs in Arizona, Hawaii and Maryland have all welcomed new staff leadership during the past year.



Kevin Ruegg

Arizona

In March, **Kevin Ruegg** became executive director of the Arizona Foundation for Legal Services and

Education. In that newly created role, Ruegg will oversee the operation of Arizona's IOLTA program as well as the other foundation activities including law related education initiatives. Although she is a newcomer to the IOLTA community, Ruegg brings more than 20 years of experience working with non-profit agencies focused on empowerment and advocacy. Her most recent work was with Family Housing Advisory Services, an Omaha-based nonprofit housing agency, where she served as executive director. She also has worked with domestic violence and youth services programs.

Ruegg's educational background includes a business degree from Kansas Newman with a minor in theology, and a master's degree in human resource development from Webster University. She is currently finishing her doctoral degree in management from Walden University.

"I'm honored to serve," says Ruegg. "The foundation provides a vital service to Arizona that benefits far more than those receiving direct services. If one person does not have access to justice or knowledge of his or her legal rights, then the scales of justice have tipped for all."

In her capacity as director of the IOLTA program, Ruegg succeeds Kelly Carmody, who left the foundation in March after five years to pursue other opportunities.



Susan Erlichman

Maryland

Susan Erlichman became executive director of the Maryland Legal Services Corporation in December.

A graduate of Temple University School of Law, Erlichman served as MLSC's deputy director for 12 years before her promotion to director of operations in 2000.

Prior to joining MLSC, Erlichman was the executive director of the Senior Citizen Judicare Project in Philadelphia, and also practiced law in Philadelphia with the firm of Montgomery, McCracken, Walker & Rhoades.

"This is an exciting and challenging period. I look forward to celebrating successes as we proceed with our efforts to expand the resources and

delivery of services," Erlichman said. "I'm honored the board provided me with the opportunity to continue working on behalf of low-income people in Maryland."

Erlichman succeeds Bob Rhudy, who left as executive director of MLSC after 17 years to pursue other opportunities.



Robert Leclair

Hawaii

Robert LeClair assumed responsibility for administering the Hawaii Justice Foundation

in July 2003. A professor and chair of the Kapi'olani Community College Legal Education Department, LeClair is also a former member of the foundation's board of directors.

LeClair practiced as a legal aid attorney after graduating from Harvard Law School. A past president of the American Association for Paralegal Education, he has been recognized numerous times in Hawaii for his teaching and his work on behalf of legal education for the public.

LeClair is operating the foundation on a part-time basis as it works to overcome financial and organizational challenges experienced during the past several years as a result of dropping interest rates and the loss of value in the financial markets.

The ABA is moving! Effective May 15, the ABA's new mailing address will be 321 North Clark Street, Chicago, IL 60610. Current ABA phone and fax numbers will remain unchanged.

Evaluation

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and supported. We had so many monitoring visits... people with checklists... a total waste of time." Dissatisfied with the LSC evaluations, Teitelman decided to pursue meaningful assessments on his own. He recruited a team consisting of a judge, a chief U.S. attorney, a community activist and a client and instructed them to talk to clients, attorneys, bar associations and community groups and "then tell me how I'm doing." It was an early example of "program-owned" evaluation.

"There's an old saying in the law," Teitelman says. "If you have the facts, pound the facts.

If you have the law, pound the law. If you have neither, pound the table.' Without evaluation you have nothing, just opinions... people pounding the table."

Is evaluation worth the cost? "In Missouri, legal aid programs spend \$13 million a year. It's lunacy not to spend a fraction of that on evaluation," Teitelman says. He points to the substantial payoffs for the state justice system. "Enhancing and improving services to clients. That's the first priority. Then it's giving everyone the assurance that your system has integrity."

Conclusion

Evaluation is not a luxury; it is an essential cost of doing business

for any institution responsible for the use of public funds. IOLTA programs in Virginia, Ohio, California and elsewhere have shown that evaluation is a tool for improving program quality and demonstrating that legal aid is a mature system with integrity. This ultimately holds the key to the kind of sustainable growth and diversification in funding that every state justice community seeks.

Ken Smith is president of The Resource for Great Programs, a national corporation that provides strategic support to IOLTA programs, non-profits and community-based organizations. Contact Smith for more information at ken@greatprograms.org.

Pro Bono

Program News

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ABA Center for Pro Bono Data Collection Projects

The Center for Pro Bono is in the process of updating its national directory of pro bono programs in the United States (available at www.abaprobono.org) through a survey of pro bono programs nationwide. While updating its directory, which will be available for programs, attorneys and clients, the center will seek to learn more about the numbers of attorneys volunteering, the types of volunteer work attorneys are doing, and the amount of hours attorneys are donating to provide legal services to the indigent.

Knowing more about the amount of pro bono work attorneys are providing will help pro bono programs and the center in

several ways:

- Regional breakdowns will help the center identify policies and models that increase pro bono participation
- The center will be able to identify statewide, regional and national trends in pro bono participation and delivery that can serve to expand opportunities for networking and training
- The center will be able to provide more current information about pro bono participation to increase public awareness and education

Center for Pro Bono staff members are distributing the survey to pro bono programs this spring. The center encourages pro bono program managers to participate and help establish a benchmark data collection process that can serve to strengthen pro bono programs nationwide. For more information about

the survey or the directory, contact Dina Merrell at merrelld@staff.abanet.org or 312-988-5773.

In addition, the center is in the process of surveying the pro bono state support community regarding the staffing, structure, funding, and activities of the various pro bono state support programs. The survey responses will provide an updated picture of efforts to promote pro bono from a statewide level and existing models of statewide support. This information will assist other states in examining and establishing statewide support positions as well as facilitate the exchange of information within the community. The Center for Pro Bono will distribute the aggregate survey results in April 2004. For more information, please contact Cheryl Zalenski at zalensk@staff.abanet.org or 312-988-5770.

From the Chair...



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

If I told you that I would sell you a product that would not only make your professional life easier, but would also pay for itself, would you buy it? What if I threw in a trip to beautiful San Diego in October? Would we have a deal?

I trust your answer would be yes. The product I'm talking about is the National Lawyer Referral Workshop, sponsored by the Standing Committee on Lawyer Referral and Information Services, which will take place in San Diego October 13 through 16, 2004.

Over those four days, you'll have the opportunity to learn how to increase your business, your quality of service, and your revenues. What more could an LRIS director or bar executive ask for? How about a fun place to visit while you learn? Did I mention we're in San Diego this year, home of Sea World, the San Diego Zoo, a lot of nightlife, and near-perfect weather?

At this time of year, the LRIS Committee and its staff are well underway with the planning for the workshop. As we go to press, here are some of the ideas for programming that we are considering for San Diego:

- Improving LRIS fiscal manage-

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On Tour with Lawyer Referral The ABA's LRIS Radio Media Tour Reaches a National Audience

by Glenn Fischer

ABA President Dennis Archer hit the airwaves last July, bringing the message of lawyer referral to approximately 17 million radio listeners nationwide. The theme of his message? Lawyer referral and information services provide valuable assistance to consumers who think they may have a legal problem, and who don't know where to



ABA President Dennis Archer

turn. Archer stressed the idea that uncertainty with one's legal situation, compounded with a lack of knowledge about lawyers and the legal system in general, may lead many people to avoid seeking legal help. Lawyer referral services help address that problem by giving the public an easy, inexpensive way to take a positive step toward diagnosing and remedying their legal ills.

This message is simple and clear, but unfortunately, it often goes unheard. One of the taller hurdles many LRIS programs routinely face is the difficulty of informing the public about the very services that bar associations design and operate for the public's benefit. The task, then, is to make consulting with a

lawyer referral service the natural response for those who think they need legal help. So, how does one get the LRIS "message" into the consciousness of consumers on both the local and national level without breaking the budget? Enter the Radio Media Tour (RMT).

The RMT concept is relatively simple, and, although it helps to feature a figure with national celebrity or recognition, an effective RMT does not require professional talent. For example, featuring a prominent lawyer in the community (such as the local bar president, or a local lawyer with a well-known case) may garner sufficient interest to support the effort. In fact, anyone who can speak thoughtfully and authoritatively on an issue is a strong RMT candidate. As a veteran litigator and the former mayor of Detroit, ABA President Archer more than fit the bill, of course.

The process of creating the RMT started early in 2003 with alerts to local and national media outlets that Archer would be available for either live or taped interviews, from professional interviewers (like

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From the Chair...

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- ment (such as how to develop and implement a business plan)
- Implementing quality control in fiscal management (such as developing effective client and attorney follow-up to capture all the revenue your program is owed)
- Satisfying the legal obligations of LRIS programs under the Americans with Disabilities Act
- Working with 211 systems (an information line for community services in many areas)
- Resolving common ethical dilemmas in the LRIS environment
- Implementing collaborative lawyering panels

In addition to these topics, a number of oldies but goodies will likely be back by popular demand, including:

- Implementing percentage fees
- Establishing brief advice programs
- Establishing modest means programs
- Improving your marketing efforts
- Leadership training

On top of the programming, attendees get to tap into what may be the workshop's most valuable feature: The opportunity to access the wealth of information possessed by your colleagues from across the country and to share your own, both formally and informally.

All that, and you'll spend four days and three nights in San

Diego for a last bit of sunshine before winter.

So what are you waiting for? If the expense of attendance is an issue for you, as it is for some programs, consider this: your expenses to attend the workshop may be approximately \$1250, but you'll gain the opportunity to learn new techniques such as better marketing, the implementation of percentage fees, and effective follow-up to obtain the fees you are owed. Those techniques, in many cases, can offset the expense of attendance in whole or in part. Your program, frankly, may not be able to afford **not** to come.

I hope you'll join us in San Diego later this year. For information and registration, please watch your mail for the 2004 National Lawyer Referral Workshop brochure.

Radio Media Tour

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radio program hosts) or even the public (during a call-in program). These alerts were coupled with press releases and other promotional print materials that briefly set out the issues and topics Archer would speak about. He volunteered to tackle questions on the legal topics most frequently encountered by the general public, such as family law, wills and estates, and personal injuries, all within the context of how lawyer referral can help people find a **good** lawyer for their particular needs—one who is knowledgeable and experienced in the area of expertise required. Additionally, Archer stressed that a lawyer referral service is a valuable source of information regarding the availability of local community services.

Overall, Archer's approach on the RMT likened contacting the local lawyer referral service when seeking legal help to consulting with a trusted friend or relative.

The RMT also addressed the growing trend toward using the Internet to seek legal information and representation. Since virtually anything and anybody can be found in cyberspace, finding lawyers and information about the law online has become commonplace. But not everyone feels comfortable on the Web, and its anonymity can be daunting. Most often, legal information Web sites do not offer the opportunity to have a trained person listen to your issue, determine whether your question even involves the law, and offer a link to non-legal help if warranted. But, by visiting the ABA's online Lawyer Referral Directory, even Web-surfers can

take advantage of the services offered by their local bar.

In 2003, the RMT broadcasted the LRIS message across the country in several local and national markets, including Dallas, New York, Tampa and Cincinnati. Coupled with the other elements of the LRIS Committee's national public relations campaign, such as its camera-ready LRIS artwork, the ABA is making great strides in getting the LRIS message out to the public. The LRIS Committee plans to continue these efforts with an online media kit, featuring excerpts from Dennis Archer's RMT broadcast, as well as sample press releases and downloadable LRIS graphics. Visit the LRIS Committee's Web page at www.abalegalservices.org/lris for more information on these and other committee offerings.

Maintaining a High Quality Panel: Information Gathering and Dealing with Problem Attorneys

by Allen Charne and Linda Katz

The Fall 2003 issue of Dialogue featured views from six lawyer referral service directors on how interviewing lawyers before admitting them to panel membership helps to ensure high quality panels and referrals. In this article, Dialogue turns to the task of maintaining high quality panels.

Lawyer referral programs pride themselves on referring callers to experienced, competent and ethical lawyers. One element of maintaining high quality referrals and improving overall panel quality is the use of the initial application process. But what can LRIS programs do to consistently maintain a high level of quality after the panel is established?

Two of the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service emphasize the importance of an ongoing quality-assurance process:

A qualified service shall periodically survey client satisfaction with its operations and shall investigate and take appropriate action with respect to client complaints against panelists, the service, and its employees. Model Rule VII

A qualified service shall establish and publish a procedure for admitting, suspending or removing lawyers from its roll of panelists. Any lawyer adversely affected by the decision of the service may appeal to the Committee. Model Rule VIII

Client surveys

The client surveys mentioned in

Model Rule VII are probably the broadest way to gather information about the level of service your program provides. In addition, they are often easy to do. Periodic random surveys are part of most LRIS software programs, and allow you to generate a certain number of surveys based upon your needs. How to assess your needs? The number of surveys you want to send depends on several factors, including: what number are normally returned, how many your staff can process, and the size of your budget for postage (since more clients are likely to return the survey if you include a postage-paid business return envelope). You can also send surveys to clients with retained cases when their cases close.

Random surveys often yield more information about the LRIS and less about individual attorneys, unless you can randomize without including no-contact referrals. Sending surveys to all closed-case clients gives you more specific information about those attorneys and their fees.

If you have sufficient staff time, you can also do phone surveys of selected, recently referred clients to see if the client retained the attorney or, if not, why not. Sample survey forms can be obtained from the ABA LRIS Clearinghouse.

Communication

Frequent and consistent communication with panel members can

also help in quality control. Sending a panel member newsletter keeps the members apprised of your efforts to make the referral service better, and lets them know in general that you are really interested in a quality service. Attorney complaints can also provide clues to a panel member's attitude toward your service and the quality of referrals. For example, if a particular attorney persistently complains that she doesn't like any of your referrals, you may want to survey those specific clients to see how they were treated. It is dangerous to assume that the potential client is the source of the problem, and not the attorney.

Handling complaints

Complaints about panel attorneys come from many different sources, including other attorneys and the courts. Many services require that complaints be made in writing, but you can develop a standard form to record phone complaints as well. Even if the client does not grant permission to talk with the attorney about the specific complaint he or she has made, you may still keep track of the complaint to make sure that it is not a recurring problem. Be aware, however, that some attorneys feel that discussing the complaint without a written permission from the client is a violation of the attorney-client privilege, so consider developing a form for the client to sign that contains a privilege waiver.

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Panel Quality

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Sometimes questions about a panel attorney's conduct require a more immediate response than a written inquiry. Consider the following illustration. During your regularly scheduled LRIS committee meeting, the committee chair reads a newspaper article to the group. According to the article, an attorney on the referral panel was arrested for embezzling client funds. A quick review of your database reveals that some of the clients mentioned by name in the article were LRIS referrals. The committee quickly decides to stop all referrals to this attorney, and instructs you to take action. You immediately suspend the attorney from participating in the referral service, and write a letter to him informing him of your action.

A few days later, you get a letter from the suspended attorney's lawyer, demanding that the attorney be restored to the referral panel. The lawyer claims that the suspended attorney should be considered innocent until proven guilty and therefore has a right to continue to receive referrals. The lawyer also points out that your rules do not authorize you to suspend a member without a hearing. What do you do?

Although LRIS programs

provide a service to its panel members, their highest obligation is, of course, to the public. It is essential that each program have rules that reflect this obligation, and allow the LRIS to protect both its clients and its reputation.

LRIS rules

To begin the process of establishing effective rules to deal with suspension of panel members, consider the types of conduct you want to prevent, and what procedures will provide reasonable notice and fairness to the lawyer under scrutiny without causing an excessive burden upon your LRIS. Rules should be flexible enough to handle the need for immediate suspension, as well as less exigent circumstances.

It is fairly easy to develop rules that suspend an attorney's membership for purely objective reasons, like failure to comply with LRIS administrative procedures. High quality lawyer referral services condition panel membership on compliance with administrative matters such as submitting proof of current professional liability insurance, paying required fees, keeping records of referred matters, or returning completed documents and reports. You can structure your rules to provide for summary suspension, without further involvement of the committee, if a panel member fails to provide

required documentation.

Subjective complaints—those evidenced only by the word of the client—may require different and more complex processes. It may be useful to appoint a subcommittee of your LRIS Committee to consider alleged attorney conduct and recommend appropriate action. Alternatively, the LRIS program director could communicate with the both the panel member and the complaining party to conduct an investigation, and submit to the subcommittee a report containing a summary of the complaint and response, and a recommendation for action.

Even though some form of investigation is necessary in these situations, some instances make it necessary to take some immediate action. A rule authorizing such action is important. Examples of actions that could trigger an investigation and immediate committee action are:

- Conduct that violates state ethics rules or the LRIS program rules
- Rude or belligerent behavior towards clients or referral staff
- Failure to return phone calls or answer letters of clients or referral staff
- Repeated fee disputes with clients
- Failure to keep clients informed of the progress of their case
- Failure to either file legal action or decline representation in a timely manner
- Providing false information to the service or the client
- Charging fees in excess of those allowed by the service (such as adding to the pre-established consultation fee or increasing the hourly fee to recoup percentage fees)

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It's New and Improved!

The ABA LRIS Committee is currently revamping its Web site at www.abalegalservices.org/Iris. Improvements to the site include a fresh new look, updated content and an ongoing series of additions to the online LRIS Clearinghouse. Visit today to see what is now available online.

Panel Quality

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- Non-compliance with any fee arbitration rules
- Referring LRIS-referred clients to other attorneys without following the LRIS program's rules regarding such referrals
- Giving LRIS clients the impression that they are entitled to less consideration than other clients
- Ongoing refusal to meet with LRS-referred clients
- Failing to cooperate in the investigation of a client complaint
- Threatening to sue a client for making a complaint to the LRIS program
- Other behavior which raises questions of the attorney's ethics or competence, or which damages the reputation of the LRIS

Process for review and suspension

After receiving a complaint like those described above, one must ensure that the complaint review process is clear and closely followed. The appointment of an investigative subcommittee of your LRIS oversight committee has the advantage of removing staff, who need to deal with the panel attorneys on a day-to-day basis, from the "line of fire." On the other hand, in some situations, having the director make the initial investigation and reporting to the committee might speed the process. Each service's review process should be tailored to provide a system that works best for its particular situation.

A good review process should include the following elements:

- Reviewing and verifying information to decide whether

there is reason to immediately remove the attorney

- Notifying the attorney of the nature of the complaint and that an investigation is proceeding
- Investigating the complaint by interviewing (by phone or in-person) the complainant and any other reliable sources of information, and by obtaining additional information if necessary and possible
- Interviewing the panel member under scrutiny
- Reporting to the oversight committee—making specific findings whether there have been violations of the rules and whether the panel member has engaged in conduct harmful to the goals, reputation or interests of the service, and recommendations

Based on the report, the oversight committee can make a decision on whether and how to proceed. Outcomes may vary from letting the panel member continue with no adverse finding, issuing a warning and requiring certain changes, or terminating membership on some or all panels.

Your review process should include an opportunity for the attorney to submit a defense. That may include submitting written information or appearing before the committee in person. Some LRIS programs provide a right of appeal of the committee's final decision, although others do not. Many allow a terminated panel member to apply for re-admission to the LRIS at some future time.

The overwhelming majority of attorneys who join an LRIS panel are conscientious and reliable. Sometimes, however, a member's conduct proves to be harmful, either to clients or the LRIS

program, or both. In such cases it is essential that the program have rules that allow appropriate measures to be taken, up to and including removal from the panel membership. Flexibility is the key to allowing any type of complaint to be addressed. Much latitude can be built into the quality control procedures to give the program director and the LRIS oversight committee the tools to handle a wide array of situations, while at the same time giving panel members due process. Sample rules can be obtained from the ABA LRIS Clearinghouse. If you would like to request copies of these, contact Jane Nosbisch, staff counsel to the ABA Standing Committee on LRIS, at 312-988-5754.

Al Charne is executive director of the Legal Referral Service of the Association of the Bar of the City of New York.

Linda Katz is assistant director of the San Francisco Bar LRIS

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From the Chair...



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

At the ABA Midyear Meeting in San Antonio the Standing Committee on the Delivery of Legal Services celebrated the 10th Anniversary of the Louis M. Brown Award for Legal Access. The award is presented each year to a program or project that advances innovative delivery of legal services in the marketplace.

I stress the role of the marketplace because the Delivery Committee operates under the belief that it is there—within legal commerce—that changes need to be made to advance affordable access to those who do not qualify for legal aid or pro bono representation. We need to develop, foster and expand the ways that lawyers can provide their services cost effectively while clients meet their legal needs in affordable ways. Unlike programs that provide legal services to the poor, those that represent people of moderate income cannot be wholly dependent on subsidies and good will. When they rely on gratuitous means, they redirect resources that may be better dedicated to those who are destitute and lessen the likelihood that the programs will be institutionalized and long lasting. On the other hand, delivery models that succeed in the marketplace are a win-win for

the lawyers who provide the services and the clients who receive them. This is the philosophy that has driven the Louis M. Brown Award for the past decade and hopefully will do so far into the future.

The 2004 Brown Award was presented to the California Commission on Access to Justice. The commission is a collaborative statewide entity. In 2001, it established a Limited Representation Committee. The purpose of the committee was to study the practice of delivering legal services known as “limited scope legal assistance” or “unbundling.”

Later that year, the Limited Representation Committee issued its report, including a series of recommendations that were subsequently approved by the Board of Governors of the State Bar of California. Since then, the committee has been working to implement its recommendations.

Among its accomplishments and activities, the Limited Representation Committee is:

- Collaborating with the California Judicial Council and the Administrative Office of the Courts to develop and advance new rules and forms that better enable limited representation in family law proceedings
- Developing a set of risk management materials for practitioners, including sample retainer agreements, checklists and client information materials
- Advising the California Commission for the Revision of the Rules of Professional Conduct, as that commission reviews the California rules in light of recommendations from the ABA’s Ethics 2000 initiative
- Providing extensive training to both courts and practitioners about best practices in limited representation

- Developing client education materials explaining the advantages and disadvantages of limited representation

As it addresses changes in policies and the training and education of practitioners, judges, court administrators and clients, the work of the committee demonstrates the collaborative nature of the changes that are necessary to advance affordable access to legal services. It serves as an exemplary model for states that are dedicated to improving the delivery of legal services. I encourage other jurisdictions that are in the process of examining unbundled services to learn from the work of the Limited Representation Committee.

The Delivery Committee also took the occasion of the 10th Anniversary of the Brown Award to present a lifetime achievement honor to Forrest S. Mosten. Known by his friends as Woody, Mosten considered Lou Brown to be a friend and mentor for over 25 years. He has advanced Lou Brown’s dedication to affordable delivery and spearheaded the movement to provide unbundled legal services around the country. Under his vision of increased access and consumer-oriented lawyering, the law office is a classroom for client education where lawyers serve as coaches, representing clients in discrete tasks such as counseling, document preparation, negotiations and advocacy.

Woody also has a long history of bringing concepts of unbundling and other innovations beyond his individual practice and to the legal community at large. In the 1970s, he was a partner in the first private legal clinic in America. More recently,

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From the Chair...



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

The ABA LAMP Committee's mission is to help the military and the Department of Defense improve the effectiveness of legal assistance provided on civil matters to an estimated nine million military personnel and their dependents. By definition of this charter, it is obvious that the LAMP Committee spends a good portion of its time and resources acting in liaison with the Armed Services and the Department of Defense. But in addition to these activities, one of the most important ways the Committee accomplishes its mission is by collaborating with other entities within the ABA. I would like to take this opportunity to describe some of the LAMP Committee's successful efforts at collaboration, both as a way to report on some of the things LAMP has done recently, but also to acknowledge the value the LAMP Committee places on its relationships with these other entities.

A prefatory note comes to mind about why the LAMP Committee finds collaboration so vital. It is important to understand the relatively unique juxtaposition LAMP enjoys in the ABA by

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LAMP Spotlight:
*Legal Assistance Education a
Priority at Army JAG School*

by LTC Maurice Lescault

The Judge Advocate General's School, United States Army (TJAGSA) in Charlottesville, Virginia has long been dedicated to excellence in educating legal assistance practitioners within the federal government. Offered every spring and fall, the school's legal assistance instruction serves as the flagship courses in this area of practice for attorneys of all military services, both uniformed and civilian.

Reviewing the Basic Course

Of course, TJAGSA's educational offerings will not produce exceptional and experienced legal assistance practitioners unless it builds a solid foundation for attorneys entering military service. We establish that foundation for new Army Judge Advocates in what we refer to as "The Basic Course." This course is 14 weeks long, with the first four weeks consisting primarily of soldier skills training. Determining the curriculum for the remaining 10 weeks presents difficult choices and the need to balance because there is much more to teach new judge advocates than time allows. To ensure that it is meeting the needs of our new judge advocates and, more importantly, the soldiers they serve, TJAGSA conducted a comprehensive curriculum review in fall 2003.

The review began with a survey to Staff Judge Advocates in October to confirm the types and durations of duties that new judge advocates face in their first two years of service. The survey confirmed that the majority of judge advocates initially serve in legal assistance, with most moving into a criminal law litigation position some time during their second year. TJAGSA decided to maintain its traditional weighting of hours toward legal assistance based on these results. However, the number of hours devoted to other topics in the curriculum was reduced to allow more time for students to work on practical assignments and reflect upon and internalize the topics covered.

Relieving the time pressure on students was a significant improvement because schedules in the basic course had expanded to the point that students were in classes most days from 0800 to 1730 hours. With a 0550 PT formation and the need to take care of personal preparation, such as uniform care and attending to family issues, students were left with precious little time for studying, absorbing, and applying the large volume of material being covered in the course. Accordingly, the curriculum review committee freed two academic hours per day to relieve this pressure. Initial indications from the 163d Judge Advocate Officer Basic Course, currently in residence at TJAGSA, are extremely positive. Young judge advocates in previous courses have always excelled, but student attention, preparation, and work product have all shown noticeable improvement since the schedule was changed.

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From the Chair...

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nature of its constituency and subject matter. Addressing military legal assistance—and especially the needs and problems of service delivery—is made particularly difficult because of the broad swath of topics military legal assistance attorneys are challenged to address on a daily basis. They are a part of that dying breed of legal generalists in an age when the luxury of specialization allows attorneys in the private sector to choose their work based on economies of time and money. Not so for the legal assistance attorney, who is typically a “jack-of-all-trades” in family law, consumer law, tax law, estate planning, real estate and a host of other issues that are woven into the fabric of modern, everyday life.

Fortunately, one of the factors that sets apart the ABA from many other voluntary associations is that it serves the diverse interests of its members by supporting entities that focus on a discrete subject matter area. At the same time, however, the ABA encourages and facilitates interaction among these entities for the betterment of the entities themselves and the ABA as a whole. In my humble opinion, LAMP is a prime example of these ideas at work, as illustrated by these recent examples.

LAMP has enjoyed a long relationship with the ABA Section of Family Law. Service members are like any other members of society, and have the same

domestic issues. They are husbands and wives, mothers and fathers, siblings and children. They marry, divorce, and blend families. They require effective counsel on these topics, but with an orientation toward the particularities of military life that most civilians (fortunately) do not have to contend with, not the least of which are frequent, involuntary changes in location, and sudden mobilizations in response to our country’s military needs. The Section of Family Law has a Military Law Committee, currently chaired by Mark Sullivan, as well as an appointed liaison to the LAMP Committee, Patricia Apy. Both Mark and Patricia, along with Jacqueline Valdespino (another leader in the Family Law Section), participated in the LAMP Committee’s latest distance learning project. This project addressed the extremely complex, but all too common, problems that service members face with multi-jurisdictional family support and custody issues. In return, the LAMP Committee is providing support and assistance to the Family Law Section, which hosted a military-related CLE seminar in Puerto Rico in April. My specific mention of the individuals above should in no way be taken to diminish the contributions that other ABA volunteers have made and continue to make on an ongoing basis; they are simply too numerous to mention.

Other recent events come to mind as illustrations of successful collaboration between LAMP and other ABA entities. At the

Midyear Meeting, the Section of General Practice, Solo and Small Firm Practitioners (through the auspices of its Military Law Committee) hosted the Keithe Nelson Memorial Luncheon, and invited President Archer to present the first prize in the LAMP Essay Contest to Col. Linda Strite Murnane. This helped to raise the visibility of not only LAMP and GPSolo, but also the pinnacle of ABA leadership. It was a shining example of a section, a committee, and ABA leadership meeting on common ground to advance the cause of our nation’s military.

Next, LAMP and the Section of Taxation collaborated on a new brochure detailing the benefits of the Military Family Tax Fairness Act, to be posted online at the section’s public awareness site www.taxtips4u.org. As more and more people turn to the Internet for information, the importance of efforts like these grows exponentially. And the ability to link entities electronically via the Web provides a great number of new opportunities for entities to reach more people, members of the bar and public (and military) alike.

In closing, motivated by the LAMP Committee’s success, I urge you to think about ways your entity can collaborate toward the enhancement of your own constituents and the Association. Consider your reading of this issue of *Dialogue*, itself a fine example of how different entities with diverse interests can effectively bridge gaps and bring together great minds for the benefit of all.

The ABA is moving! Effective May 15, the ABA’s new mailing address will be 321 North Clark Street, Chicago, IL 60610. Current ABA phone and fax numbers will remain unchanged.

LAMP Spotlight

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Allocating hours

Statistical analysis conducted by the Legal Assistance Policy Division, Office of The Judge Advocate General, United States Army formed the basis for the curriculum review's allocation of hours within the legal assistance area. The majority of work done in the field for the last several years involved estate planning. Family law was a close second, with consumer law issues third. The weighting of hours within the curriculum reflects this allocation of work that attorneys would face at their first duty station. The curriculum maintains the exceptional 14-hour estate planning sequence developed by Lieutenant Colonel (ret.) Curt Parker. For the current basic course, retired Navy Captain Kevin Flood, now the chief of legal assistance at Naval Air Station, Jacksonville is demonstrating TJAGSA's cooperation with the Navy by covering the estate planning instruction as Lieutenant Colonel Parker retires. The family law curriculum reflects the culmination of the efforts of MAJ Evan

Stone over the last several years. That curriculum includes a renewed focus on applying the substantive knowledge learned in other areas to separation agreements in the military context. Consumer law instruction continues to be expertly presented by MAJ Carissa Gregg and focuses primarily on protections against fraud and debt issues, including debt collection protections.

Practice-oriented evaluation

Perhaps the greatest change to the legal assistance curriculum coming out of the review, however, is the decision to eliminate objective testing and, instead, rely on practice-oriented evaluation periods. Objective testing led students to focus excessively on narrow details in particular areas. While instructors carefully crafted questions to address common areas of military legal assistance practice, the examinations did little to practically prepare the students for their military practice, nor to face the clients waiting for them immediately upon arriving at a new duty station. With the pressures placed on the military and its families by the

level of military activity since 9/11, legal readiness has taken on renewed importance. Consequently, the shift in focus for evaluation on testing the student's ability to handle issues through effective professional processes (issue analysis, research, and communication of legal advice orally and in writing) is timely and appropriate to current conditions.

The evaluation periods present students with realistic issues to evaluate, research, and resolve within time constraints similar to those that exist in the field. Each session requires students to prepare oral advice, written advice or a written client product. In each evaluation period, the class is broken into four sections. Students rotate through four stations with 50 minutes allocated for each event and a ten-minute break between. During the evaluation event, a faculty member presents the students with a factual situation. The students must evaluate the issue, research the solution, and present the solution in the assigned format. Issues examined in the first

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What Is the Greatest Challenge Facing Legal Assistance? The LAMP Essay Contest Seeks Entries

The LAMP Essay Contest challenges writers to test conventional wisdom and propose realistic modifications to current directives, policies, customs, or practices relating to military legal assistance and preventive law.

First prize is \$1,000.00, second prize: \$500.00. The deadline is July 1, 2004.

The contest is open to all military and civilian lawyers, law students, and paralegals, and is co-

sponsored by the American Bar Association and the Tacoma, Washington law firm of Luce, Lombino & Riggio. It is administered and judged by a subcommittee designated by the ABA Standing Committee on Legal Assistance for Military Personnel.

For more information on the 2004 LAMP Essay contest, visit the LAMP Committee Web page at www.abalegalservices.org/lamp/essay2004.html

LAMP Practice Guide: Servicemembers Civil Relief Act Replaces Soldiers' and Sailors' Civil Relief Act

by John T. Meixell

On December 19, 2003, President Bush signed Public Law Number 108-189¹, a major amendment to the Soldiers' and Sailors' Civil Relief Act (SSCRA)². Prior to these changes, the last major revision of the SSCRA occurred in 1940.³ Now, after over 60 years, the SSCRA has been relegated to history and we will now operate under the new Servicemembers Civil Relief Act (SCRA).⁴

The SCRA reflects the combined effort of the House and Senate Committees on Veterans Affairs and will serve as a source of important protections for our service members, active and reserve, in the future. Much of the resulting legislation reflects a 1991 Department of Defense draft revision of the SSCRA, which was updated in 2002. The three goals of this draft were:

- to make the Act easier to read and understand by clarifying its language and putting it in modern legislative drafting form
- to incorporate into the Act many years of judicial interpretation
- and to update the Act to take into account generally accepted practice under its provisions and new developments in American life not envisioned by the original drafters⁵

This article is intended only to alert practitioners to some of the more important provisions of this legislation. Citations in this article to the SCRA refer to the sections of the final version of H.R. 100.

Even experienced practitioners under the SSCRA will have to acquaint themselves with these new section numbers. (See the sidebar on page 27 as a reference.)

Title I – General Provisions

The SCRA definition of "military service" incorporates the changes made to the SSCRA in 2002.⁶ This extends coverage to members of the National Guard serving "more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds."⁷ Prior to the 2002 amendment, the SSCRA only applied to members of the National Guard if they were serving in a Title 10 status. The SCRA applies to National Guard personnel serving in either Title 10 status or Title 32 status as defined in the Act.

Next, the SCRA expands the definition of "court" to include "an administrative agency of the United States or of any State."⁸ Previously, the SSCRA did not apply to administrative hearings. The increasingly widespread use of administrative hearings had left a large gap in the intended protection of service members. This extension to administrative proceedings is emphasized again when the SCRA specifically defines its applicability as including "any judicial or administrative proceeding commenced in any court or agency."⁹

Finally, Section 109 of the SCRA adds a provision concerning a legal representative of the service member. A legal representative is defined as either "[a]n attorney acting on the behalf of a service member" or "[a]n individual possessing a power of attorney." Under the SCRA a service member's legal representative can take the same actions as a service member.¹⁰ Also, the SSCRA referred to dependents, but never defined the term. Section 101(4) of the SCRA now contains a definition of the term "dependent."¹¹

Title II – General Relief

Section 201 of the SCRA establishes requirements that must be met before a court can enter a default judgment. This clarifies the procedures required before a court can enter a default judgment but provides little substantive change from the SSCRA. One addition is language defining when a court should grant a stay when the defendant is in military service and has not received notice of the proceedings.¹² The court must grant a stay for at least 90 days upon request of the court-appointed attorney if there may be a defense that cannot be presented in the absence of the service member, or the attorney has been unable to contact the service member to determine the existence of a defense. This stay procedure is unrelated to the new required stay procedures where

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the service member has received actual notice of the proceedings and requests a stay.¹³

The SSCRA gave the court discretion to grant a stay of proceedings when the service member's military service materially affected his ability to participate in the case.¹⁴ The SCRA substantially revises this provision, mandating an initial stay. Additionally, the extension of the SCRA to administrative hearings expands the reach of this stay provision to include administrative proceedings. The SCRA mandates an automatic stay for at least 90 days upon the service member's request.¹⁵ The request¹⁶ must explain why the current military duty materially effects the service member's ability to appear, provide a date when the service member can appear, and include a letter from the commander stating that the service member's duties preclude his appearance and that he is not authorized leave at the time of the hearing.

Prior practice discouraged a direct application to the court for a stay in fear that the court may treat such a request as an appearance. Section 202(c) of the SCRA eliminates this concern, making clear that a request for a stay "does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense."¹⁷ Service members who remain unable to appear may use similar procedures to request further stays at the discretion of the court.¹⁸ In another new requirement, the court must appoint counsel to represent the service member if the court denies the

SSCRA/SCRA Reference Guide

<u>Provision</u>	<u>SSCRA</u>	<u>50 U.S.C.</u>	<u>SCRA</u>
	<u>Section</u>	<u>App.</u>	<u>Section</u>
Definitions	101	510	101
Application & Jurisdiction	102	512	102
Persons Liable on SM's Obligation	103	513	103
Waiver of Benefits	107	517	107
Effect on Future Financial Acts	108	518	108
Legal Representatives	N/A	N/A	109
Default Judgments	200	520	201
Stay of Proceedings	201	521	202
Statute of Limitations	205	525	206
Maximum Rate of Interest	206	526	207
Eviction and Distress	300	530	301
Installment Contracts	301	531	302
Mortgage Foreclosures	302	532	303
Termination of Leases	304	534	305
Extension to Dependents	306	536	308
Residence for Tax Purposes	514	574	511
Anticipatory Relief	700	590	701
Professional Liability Protection	702	592	703
Reinstatement of Health Insurance	703	593	704
Residency for Voting	704	594	705

request for an additional stay.¹⁹

The six percent interest cap²⁰ was one of the most frequently used provisions of the SSCRA. This provision requires the reduction of interest on any pre-service loan to six percent. One area of ambiguity was whether the interest in excess of six percent is forgiven, deferred, or subject to some other treatment. Section 207 of the SCRA resolves this issue, and for the first time, details the steps that a service member must take to obtain the interest rate reduction. The service member must make a written request to reduce the interest to six percent and include a copy of his applicable active duty orders.²¹ Once the creditor receives notice, the creditor must grant the relief effective as of the date the service

member is called to active duty. The creditor must forgive any interest in excess of the six percent with a resulting decrease in the amount of periodic payment that the service member is required to make.²² As under the SSCRA, the creditor may avoid reducing the interest rate to six percent only if it can convince a court that the service member's military service has not materially affected the service member's ability to pay.²³

Title III – Rent, Installment Contracts, Mortgages, Liens, Assignment, Leases

Section 300 of the SSCRA provided that, absent a court order, a landlord may not evict a service member or the dependents of a service member from a residential

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lease when the monthly rent is \$1200 or less.²⁴ The SCRA increases the applicable rent ceiling to \$2400 per month for the year of 2003.²⁵ The Act provides a formula to calculate the rent ceiling for subsequent years.²⁶ Using this formula, the 2004 monthly rent ceiling is \$2465.²⁷

Perhaps the most significant changes are found in Section 305 of the SCRA. Its counterpart in the SSCRA allowed a service-member to terminate a pre-service "dwelling, professional, business, agricultural, or similar" lease executed by or for the service-member and occupied for those purposes by the service member or his dependents.²⁸ This provision did not provide any relief to an active duty soldier required to move due to military orders. It also failed to address automobile leases. Section 305 remedies these problems. Leases covered under Section 305 include the same range of leases that the SSCRA covered.²⁹ The section still applies to leases entered into prior to entry on active duty.³⁰ It adds a new provision, however, extending coverage to leases entered into by active duty service members who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more.³¹ The section also contains a totally new provision addressing automobiles leased for personal or business use by service members and their dependents.³² Service members may cancel pre-service automobile leases if the service member receives orders to active duty for a period of 180 days or more.³³ Also, service members may terminate

automobile leases entered into while the service member is on active duty if the service member receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.³⁴

Title IV – Life Insurance

Article IV of the SCRA permits service members to request deferments of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veterans Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the service member will have two years after the period of military service to repay all premiums and interest.³⁵ The total amount of life insurance that this program could cover was limited to \$10,000.³⁶ The SCRA increases this total amount to the greater of \$250,000 or the maximum limit of the Service members Group Life Insurance.³⁷

Title V – Taxes and Public Lands

The important changes within this title are found in Section 511, Residence for Tax Purposes. The SSCRA provided that a nonresident service member's military income and personal property are not subject to state taxation if the service member is present in the state only due to military orders.³⁸ Some states, however, have included the amount of the nonresident service member's military income when calculating the applicable state income tax bracket for the service member's spouse. The result often places the spouse in a higher tax bracket. Thus, while the military income

is not directly taxed, the service member and spouse pay more in state income tax than if the state did not consider the service member's military pay. This practice will end as Section 511(d) of the SCRA precludes states from using the military pay of nonresident service members to increase the state income tax of the nonresident service member or spouse. Section 511 also contains a new provision that clarifies that the protections of this section extend to service members who are legal residents of a Federal Indian reservation.³⁹

Title VI – Administrative Remedies

Changes within this title merely clarify language and update the legislative format.

Title VII – Further Relief

The final significant change will have special meaning to reserve judge advocates. The 1991 amendment to the SSCRA⁴⁰ allowed an individual with a pre-service professional liability (malpractice) insurance policy to suspend such coverage during the period of active military service. The insurance provider is responsible for any claims brought as a result of actions prior to the suspension. The insurance provider would not charge premiums during the period of suspension, and must reinstate the policy upon the request of the professional. This provision applied to a person "engaged in the furnishing of health-care services or other services determined by the Secretary of Defense to be professional services."⁴¹ Mobilization orders since 1991 contain Secretarial determination that legal services are "professional ser-

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vices." The SCRA eliminates the need to include this provision in mobilization orders by modifying the definition of a person covered to specifically include a service-member providing legal services.⁴² The remaining changes within this Title merely clarify language and update the legislative format.

Conclusion

The SCRA's changes represent a long overdue update to the important protections that the SSCRA provided to service members. With the prospect of continued mobilizations and deployments, service members will increasingly rely on the improved protections of the SCRA. Legal assistance attorneys must become familiar with these changes and update their SSCRA correspondence to reflect these new provisions. It will become progressively more important to educate judges, attorneys, landlords, lessors, lenders, and other affected parties of these new provisions.

John T. Meixell is an attorney advisor in the U.S. Army's Legal Assistance Policy Division.

Endnotes

- ¹ Servicemembers Civil Relief Act, Pub. L. No. 108-189 (2003)
- ² 50 U.S.C. app. sections 501-594 (2000)
- ³ Act of October 17, 1940, ch. 888, 54 Stat. 1178 (codified as amended at 50 U.S.C. app. sections 501-593 (1994))
- ⁴ Pub. L. No. 108-189 (2003). Section 1(a) provides that the act shall be known as the "Servicemembers Civil Relief Act"
- ⁵ Memorandum, Colonel Steven T. Strong, Director, Legal Policy, Office of the Under Secretary of Defense (Personnel & Readiness), to Service Legal Assistance Chiefs (October 3, 2001) (on file with author)
- ⁶ Veteran Benefit Act of 2002, Pub. L. No. 107-330, 116 Stat. 2820 (2002)
- ⁷ Pub. L. No. 108-189 section 101(2)(A)(ii) (2003)
- ⁸ *Id.* section 101(5)
- ⁹ *Id.* section 102(b)
- ¹⁰ *Id.* section 109(b)
- ¹¹ *Id.* section 101(4)
- ¹² *Id.* section 201(d)
- ¹³ *Id.* sections 201(e) & (f)
- ¹⁴ 50 U.S.C. app. section 521 (2000)
- ¹⁵ Pub. L. No. 108-189 section 202(b)(1) (2003)
- ¹⁶ *Id.* section 202(b)(2). As a condition to stay proceedings, the statute requires a written request.
- ¹⁷ *Id.* section 202(c)
- ¹⁸ *Id.* section 202(d)(1)
- ¹⁹ *Id.* section 202(d)(2)
- ²⁰ 50 U.S.C. app. section 526 (2000)
- ²¹ Pub. L. No. 108-189, section 207(b)(1) (2003).
- ²² *Id.* sections 207(a)(2) & (3)
- ²³ *Id.* section 207(c)
- ²⁴ 50 U.S.C. app. section 530 (2000).
- ²⁵ Pub. L. No. 108-189 section 301(a)(1)(A)(ii) (2003)
- ²⁶ *Id.* section 301(a)(2)
- ²⁷ Email, Colonel Steven T. Strong, Director, Legal Policy, Office of the Under Secretary of Defense (Personnel & Readiness), (December 31, 2003) (on file with author)
- ²⁸ 50 U.S.C. app. section 534
- ²⁹ Pub. L. No. 108-189 section 305(b)(1) (2003)
- ³⁰ *Id.* section 305(b)(1)(A)
- ³¹ *Id.* section 305(b)(1)(B)
- ³² *Id.* section 305(b)(2)
- ³³ *Id.* section 305(b)(2)(A)
- ³⁴ *Id.* section 305(b)(2)(B)
- ³⁵ 50 U.S.C. app. sections 540-547 (2000)
- ³⁶ *Id.* section 541
- ³⁷ Pub. L. No. 108-189 section 402(c) (2003)
- ³⁸ 50 U.S.C. App section 514 (2000)
- ³⁹ Pub. L. No. 108-189 section 511(e)
- ⁴⁰ *Id.* section 592
- ⁴¹ *Id.* section 592(a)(2)(A)
- ⁴² Pub. L. No. 108-189 section 703(a)(2)(A) (2003)

LAMP Spotlight

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evaluation period include family law, consumer law, responses to adverse administrative actions, support and advice to reserve component soldiers, and claims assistance.

Several larger exercises that require additional time to prepare are conducted overnight to allow

the students to develop a more realistic product. Estate planning is evaluated with two exercises embedded in the core instruction to enable the students more time to properly draft the estate planning documents. In short, the evaluation periods require comprehensive knowledge of the topics taught, but in a realistic way that provides maximum opportunity for faculty to assess their students' readiness for the rigors of

military Legal Assistance practice.

Inter-service collaboration

In recent years, TJAGSA has enhanced its legal assistance education by partnering with the schools of other military services to tap into their exceptional offerings. Through this cooperation and sharing of expertise, we have improved training for all of the military services. For example,

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LAMP Distinguished Service Award Winners

by Christo Lassiter

The ABA Standing Committee on Legal Assistance for Military Personnel (LAMP) is pleased to announce the winners of its 2003 Distinguished Service Awards as follows: Ken Luce, Navy Lieutenant Jeremy Kimball Call, Navy Lieutenant Edward K. Westbrook II, and Coast Guard Captain Peter Seidler for individual awards and the Army's Legal Assistance Office for the 311th Support (Corps) (COSCOM) for a group award. The award recognizes individuals and groups that provide outstanding military legal assistance or perform exceptional service in support of the military legal assistance effort. The award criteria include: legal assistance innovation, maintaining a quality legal assistance program despite limited resources, and exceptional support of the Uniformed Services legal assistance effort.

The nominees for the 2003 award honor the aims of the LAMP Committee in ensuring military and family readiness by providing an astounding number of wills and powers of attorney toward military readiness as well as more involved legal work involving issues of family law, consumer law, landlord-tenant, automobile and low-level civil law issues. Among this year's nominees were legal assistance attorneys who provided critical legal support to military members and their families concerning immigration, naturalization, and even Japanese civil law issues. Award nominees also demonstrated creative energy in facilitat-

ing legal assistance at the wholesale level through development of materials for other legal assistance attorneys and using the Internet and paper-based delivery systems to increase awareness of, and access to, legal assistance for the client. Other nominees developed innovative methods to facilitate the delivery of legal assistance to military personnel through legislative initiatives or rule-making arms of state and local bar associations.

The 2003 Distinguished Service Award winners and their accomplishments are highlighted below.

Ken Luce is an attorney in private practice in the Seattle/Tacoma area. He provides legal assistance in the 13th Coast Guard District. Luce is the chairman of the Legal Services to the Armed Forces Committee of the Washington State Bar Association (WSBA). Luce's achievements are in the legislative arena. In 2003 he spearheaded efforts that resulted in the passing of a law in Washington State to permit any member of Uniformed Services, including National Guard and Reserves, to terminate a lease without penalty upon the receipt of reassignment or deployment orders regardless of the existence or non-existence of a military clause in the lease agreement. Luce was also instrumental in moving the Supreme Court of the State of Washington to pass Practice Rule 8(g), which allows military attorneys to represent junior military personnel on civil matters in state courts even if the

military attorney is not a member of the state bar. Luce continues to work with the WSBA to expand its activities to improve legal services to Uniformed Services members in Washington. In addition to his volunteer work at the state level, Luce has demonstrated his personal commitment towards military legal assistance by supplying the cash prizes for the LAMP Legal Assistance Essay contest. Finally, he serves as the legal assistance lawyer's lawyer, providing legal expertise to other practitioners in numerous areas including family law and estate planning.

Captain Pete Seidler is the chief counsel for the United States Coast Guard and the head of the Coast Guard's Office of Legal Policy & Program Development (G-LPD) in Washington, D.C. In both capacities, Seidler made legal assistance a preeminent concern. He reorganized several elements of the Coast Guard's chief counsel staff with an eye towards assuming responsibility for providing legal assistance to Coast Guard personnel in the Washington, D.C. area. Legal assistance in the Coast Guard remains an unfunded program, so funding must be diverted from other sources. Despite the absence of a line item budget, Seidler was able to obtain and provide resources to provide quality legal assistance throughout the Coast Guard. Further, Seidler successfully lobbied for \$84,000 to fund legal assistance attorneys in the

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Award Winners

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supplemental appropriations received by the Coast Guard. G-LPD provided funding, technology, planning, and personnel to the legal assistance program and implemented a new training and qualification program for enlisted staff assigned to legal offices. He initiated several changes that led to dramatic improvement in the Coast Guard's ongoing legal assistance efforts critical to Homeland Security as well as Operation Iraqi Freedom such as the concept of a rapid deployment kit (RDK). These kits include the tools necessary to take legal assistance to the field. This innovation required a significant re-direction of office resources toward the acquisition of materials, new software and hardware computer technology. Seidler also implemented innovative technology for case and document management. Under his direction, the Coast Guard conducted its third biannual Legal Assistance Management Conference in conjunction with the ABA LAMP quarterly meeting in Pensacola. By virtue of his Herculean efforts and results, it is not too much to say that Seidler is the father of Coast Guard legal assistance.

Lieutenant Jeremy Kimball Call, serving in his first tour of duty, is stationed at NLSO PAC in Yokosuka, Japan. Call provided basic legal assistance services to a large base of clients in 2003. What sets Call apart is his service as the command's Japanese legal advisor, in which capacity he provided legal assistance services to clients with legal issues in the local community. The perfor-

mance of these duties required mastering the intricacies of Japanese language, law, legal terminology, and customs. In addition, Call enhanced the value of legal assistance to military families by assisting with adoption in Japan. His outstanding work ethic and language skills exemplify the Navy JAGC and enhance the status of the United States legal community among Japanese counterparts.

Lieutenant Edward K. Westbrook is stationed at NLSO SW Branch Office Lemoore, Naval Air Station in California. Westbrook demonstrated superior effort providing basic legal assistance to numerous clients in the year 2003. With over 13,000 non-citizen sailors serving in the Navy, learning the maze of naturalization regulations and assisting with the naturalization process is one of the most valuable services a legal assistance attorney can provide. Because most sailors cannot stay in the Navy beyond their first enlistment, speed is essential for a successful naturalization process and Westbrook's legal assistance was crucial to ensuring naturalization for deserving sailors in a timely manner. In addition, Westbrook proved worthy of recognition for his efforts in shepherding family members through the probate and survivor benefits process.

311th COSCOM. The Army's Legal Assistance Office for the 311th Support Command (Corps) (COSCOM) provided exceptional legal assistance to the members of its Command spread throughout California, Oregon and Washington. This office's community outreach program includes a toll free number and email address

that insures soldiers and their family members are aware of the availability of legal services. Similarly, their pre-deployment legal assistance reflects a proactive approach. Each newly assigned soldier receives a legal screening. Once a unit is scheduled for pre-mobilization legal preparation (PLP), the command surveys the unit and meets with soldiers one day ahead of the PLP to address individual legal needs. The 311th also facilitated expedited citizenship for numerous soldiers by assisting with the application process and monitoring the administrative process through the oath of citizenship. The SOP for their Soldier Citizenship Program is posted on JAGCNet. In addition, the 311th regularly monitors the Legal Assistance Forum and frequently provides guidance on immigration related issues.

The ABA LAMP Committee takes great pride in recognizing the foregoing individuals and group for their distinguished service. Through their efforts these award recipients have not only readied these military members for death, but also helped with fundamental legal necessities while living. Currently, the ABA LAMP Committee's number one priority is advocating for military legal assistance as an entitlement safeguarded by federal law. We live in a world of legal rights and responsibilities where lawyers are necessary shepherds. This is as true for those who defend our lifestyles as well as those who enjoy it. These award winners and nominees overwhelmingly demonstrate the virtue in this priority. We are honored by their service.

Christo Lassiter is a member of the ABA LAMP Committee.

LAMP Spotlight

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the Naval Justice School in Newport, Rhode Island offers an exceptional estate planning course using primarily Navy instructors, supported by some Army instructors. Additionally, many of the experts from the other military services support TJAGSA's legal assistance courses with their expertise and exceptional presentation skills. In most courses, every military service is represented on our rostrum. Most recently, TJAGSA partnered with The Judge Advocate General's School, United States Air Force to offer a joint tax course at Maxwell

Air Force Base, Alabama. The course was highly successful and added efficiencies to the training efforts of both schools. The partnership and cooperation among the service legal training institutions have never been better in all areas, but this is especially true in legal assistance.

TJAGSA is dedicated to excellence in legal assistance education within the federal government. The recent comprehensive curriculum review confirmed the strength and direction of the basic course, our program for new judge advocates. It also provided the impetus for focused change that improved the schedule for students and the means and

methods of evaluation. These changes ensure that practitioners reach the field after a more rewarding experience that has better prepared them for the mission they will face. TJAGSA's partnering and mutual support with other military service schools has only made its training and education stronger. Since this mission is to care for the legal needs of those risking their lives in defense of our nation, this preparation, training, and education could not be more important.

LTC Maurice (Moe) Lescault is chair of the Administrative and Civil Law Department at the Judge Advocate General's Legal Center and School.

Delivery

From the Chair...

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he wrote *Unbundled Legal Services: A Guide to Delivering Legal Services a la Carte*, a book published by the ABA Law Practice Management Section. He has spoken to numerous bar groups and court organizations around the country about innovations in the delivery of legal services. These include presentations at national seminars sponsored by the Maricopa County Self-Service Center and a keynote speech at the 2000 National Conference on Unbundling, sponsored by the Maryland Legal Assistance Network. His advocacy to advance improved access to legal services has been outstanding.

Information about the Louis M. Brown Award for Legal Access is maintained online at www.abalegalservices.org/delivery/brown.html

Pro Se/Unbundling Resource Center Available

The Standing Committee on the Delivery of Legal Services has completed a revision of its Pro Se/Unbundling Resource Center, which is online at www.abalegalservices.org/delivery/delunbund.html. The center provides access to articles, reports, cases, ethics opinions, court rules, self-help centers and other resources. Materials that are available online are linked from the center. Many materials, including cases and ethics opinions, are annotated at the site.

The center is intended to be a resource to policy-makers who are examining issues associated with the delivery of legal services to those who are pursuing their legal issues as pro se litigants. The center is not designed to be a resource to pro se litigants themselves and redirects pro se visitors to directories that can help them locate a lawyer. The Delivery Committee believes the center will provide a consolidated source to those who are weighing in on policies that must strike the balance between client protection and full access to justice.

From the Chair...



by Bill Whitehurst
Chair of the ABA Standing
Committee on Legal Aid and
Indigent Defendants

We celebrate an anniversary this year, though I am not sure that “celebrate” is the right word to use. Forty years ago—on January 8, 1964—President Johnson declared that the United States would wage a new war. His was not a war in a foreign land, but a war at home: a war on poverty. His attorney general, Robert Kennedy, said in a Law Day speech that year:

“Helplessness does not stem from the absence of theoretical rights. It can stem from an inability to assert real rights. The tenants of slums, and public housing projects, the purchasers from disreputable finance companies, the minority group member who is discriminated against—all these may have legal rights which—if we are candid—remain in the limbo of the law.”

But we have not triumphed over poverty, nor have we even made significant strides to reduce it, or to better serve the legal needs of those whom it drags down. The poverty rate today is little changed from the 1960s, and most of the legal needs of the poor go unaddressed.

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ABA Report Finds Defects in Virginia's Indigent Defense System Rights of Poor Defendants Unprotected

Virginia's indigent defense system fails to adequately protect the rights of poor persons accused of crimes, providing “little more than assembly-line justice,” according to a study released in February. Commissioned by the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID), the nine-month study was completed by The Spangenberg Group, and is perhaps the most comprehensive review produced to date of the commonwealth's indigent defense system.

The commonwealth provides for indigent defense with a combination of 21 public defender offices serving 48 of 134 localities, and court-appointed counsel who represent clients in all localities.

The report labeled Virginia's appointed-counsel fee caps “shocking.” Maximum fees are \$112 for misdemeanors or juvenile cases eligible for jail or prison sentences, \$1,096 for felonies punishable by more than 20 years of confinement, or \$395 for all other non-capital felony cases. No funds are available to pay investigators in appointed-counsel cases.

While 21 other states also cap fees for appointed counsel in non-capital cases, the caps elsewhere may be waived and range up to \$25,000. The Virginia cap creates an incentive for appointed lawyers to steer their clients to plead guilty, and appointed lawyers spend as little time as possible on each case.

The study concludes that poor defendants in Virginia are denied fundamental fairness, and in extreme situations innocent people may be wrongfully convicted of crimes. The study noted that the Virginia system has grossly inadequate resources and provides no oversight structure for defense services. The system fails to provide lawyers with tools, time and incentives to adequately represent defendants. The shortcomings have persisted despite 30 years of studies and reports identifying the same problems and recommending the same solutions. Because no official state entity effectively advocates for indigent defense needs in Virginia, and elected officials have not responded to previous analyses, there has been no meaningful way to seek solutions, according to the report.

“The commonwealth has an opportunity now to reverse this history, and authorize creation of an indigent defense oversight commission as a first step in moving toward fulfilling the promise of the Constitution of the United States,” said ABA President Dennis W. Archer in releasing the report.

“Recognizing Virginia's current fiscal realities, it may take some time to fully implement all of the necessary changes, but the creation of an oversight commission is a crucial component of bettering our indigent defense systems,” said ABA President-Elect Robert J. Grey Jr. of Richmond. “This report, with its detailed findings and recommendations, offers Virginia a great opportunity to move forward and effect real

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From the Chair...

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A September 2003 report by the District of Columbia Bar Foundation estimates that less than 10 percent of the need for civil legal assistance is being met in the district. A similar study in Washington State, also released in September 2003, found that 87 percent of that state's low-income households encounter a civil legal problem each year, and that only 12 percent of these households are able to obtain assistance from a lawyer.

Things are only a little better in Massachusetts, a state with significant legal services resources. That state studied the legal needs of its poor citizens in 1993 and again in 2002. The Massachusetts study found that the occurrence of civil legal problems among the poor increased significantly over that period, and by 2002 at least 53 percent of the poor households in the state had at least one unmet civil legal need. Only 13 percent of households experiencing legal problems resolved all those problems.

Similar studies have been conducted in six other states over the last four years. We should hardly be surprised that each produced similarly dismal statis-

tics. The 2000 Census found a nearly 6 percent increase in the number of poor people in the U.S., with over 35 million people living below the poverty threshold. The number of people in need is increasing while the resources to provide help are shrinking.

The sad fact is that our society fails to care adequately for poor people in trouble. We can reach the moon and the planets, we can free the oppressed around the globe, but we do not seem to be able to meet the legal needs of our neighbors at home.

We all share culpability in this regard—the executive, legislative and judicial branches of government, **and** the organized bar.

The principal national funding source for all our local legal aid programs is the federal Legal Services Corporation—a program created by President Nixon in 1974. This program has never been given adequate resources to do its job. It reached its highest, but still inadequate, funding level in 1995 with a \$415 million appropriation. But opponents whittled that amount down, and LSC now only receives \$338 million. If its appropriation had not increased at all, but had merely kept up with inflation, it would now be receiving \$490

million. So we can see how far behind it has fallen.

President Bush has been supportive of the Legal Services Corporation, and we are grateful for that. But on the whole and over the years, our political leaders have not found a way to put aside their differences and provide adequate resources to respond to the desperate need of the poor for legal help. We must all join together to seek an adequate appropriation for LSC, and greater state funding for legal aid.

Please make sure your voice is heard in support of LSC by contacting your representatives in Congress. Let your state government representatives know that the state must share responsibility for meeting the legal needs of the poor, too. Speak out in your community about the need for increased support for legal services for the poor. Together we can make equal access to justice a reality!

You can also assist by joining the ABA Grassroots Action Team to receive updates about the LSC at critical stages of the legislative process. To join the team, visit www.abanet.org/polado/survinfo.html or contact Julie Strandlie at jstrandlie@staff.abanet.org or 202-662-1764.

Virginia Report

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change within the commonwealth's legal system, to assure that adequate representation is provided to those Virginians for whom the state provides counsel," said Grey.

Among other findings were:

- Virginia ranked last in average cost per indigent defendant case among 11 states for which data were collected for FY 2002
- The deep systemic flaws put lawyers representing indigent defendants at substantial risk of violating professional rules of conduct
- Court-appointed lawyers and

public defenders make very limited use of services, such as expert witnesses, that often are essential to proper representation

- Virginia's statutory cap on fees for court-appointed lawyers is the lowest in the country, and acts as a disincentive to as-

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Virginia Report

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signed counsel doing work necessary to provide meaningful and effective representation

- There is a great disparity between the resources afforded to public defenders and to prosecutors, and there is an unfair and illogical disparity in pay between court-appointed lawyers representing parents in abuse and neglect cases and the guardian ad litem lawyers representing the best interests of children in those cases

The report recommends five major systemic changes:

- The general assembly should fund indigent criminal defense services in cases requiring appointed counsel at a level that assures defendants receive

effective and meaningful representation

- The commonwealth should establish a professionally independent statewide indigent defense commission to organize, supervise and assume overall responsibility for the indigent defense system
- The commission should have broad power and responsibility for delivery of indigent criminal defense
- The commission should adopt performance and qualification standards for both private assigned counsel and public defenders, addressing workload limits, training requirements, professional independence and other issues, to ensure effective and meaningful representation
- The commission should

establish and implement a comprehensive data collection system to provide an accurate picture of services provided

On March 13, 2004, the Virginia General Assembly passed legislation consistent with four of the report's recommendations by establishing a Virginia Indigent Defense Commission to oversee both assigned counsel and public defenders. The legislation does not increase the compensation for court-appointed lawyers or provide additional funding for indigent defense services.

The report is posted online at www.indigentdefense.org. The study was supported by a grant from the Gideon Project of the Open Society Institute and contributions from the SCLAID, Covington & Burling and the National Association of Criminal Defense Lawyers.

Maryland High Court Rules in Civil Gideon Case

On December 11, 2003, the Maryland Court of Appeals—the state's highest court—issued its decision in *Frase v. Barnhart*, a case through which equal justice advocates had sought to establish a right to counsel in certain civil cases in Maryland. Referred to as a “civil Gideon” case, *Frase* involved a child custody dispute that also implicated questions related to the right to counsel.

The Court of Appeals found that the lower courts had erred in placing conditions on the custody rights of appellant Deborah Frase, as she had been found to be a fit parent. But the court declined to address Frase's claim that she had

a right to counsel under the Maryland Constitution.

Frase, a single mother, brought suit to defend her custody of her children against unrelated third parties who were represented by counsel. She could not afford counsel, and repeatedly requested that the court appoint counsel to assist her. Her pleas were ignored or denied. On appeal, she asked the Court of Appeals to consider whether she had a right to counsel under the Maryland Constitution. By a narrow 4-3 margin, the court decided not to decide this important question. But an eloquent concurring opinion written by Judge Dale Cathell and joined

by Chief Judge Robert Bell and Judge John Eldridge, disagreed with decision not to address the right to counsel, and stated: “this issue will not go away...[t]he poor need a yes or no.”

Cathell and the other two concurring judges would not only have addressed the issue but would have resolved it “by holding that in cases involving the fundamental right of parents to parent their children, especially when the parent is a defendant and not a plaintiff, counsel should be provided for those parents who lack independent means to retain private counsel.”

