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## New Tax Law and Civil Relief Act Expand Rights for Service Members

by **Kenneth Goldsmith**

The first session of the 108th Congress concluded with the passage of two significant bills that will provide service members much needed financial and legal relief from complications related to active duty. The Military Family Tax Fairness Act (PL 108-127) was signed into law in dramatic fashion on Veterans' Day. Among other things, the act will ensure that service members receive more appropriate consideration of their service when determining whether they qualify for a capital gains tax exemption on the sale of their home.

A second bill, the Servicemember Civil Relief Act (PL 108-189) was signed into law on December 19, 2003. It provides an overdue revision and update of the Soldiers and Sailors Civil Relief Act of 1940 (SSCRA) and its subsequent amendments. The modernization of the SSCRA helps to clarify and expand protections for service members who have been called to active duty by temporarily suspending or postponing civil proceedings that might prejudice their legal rights, and establishing other safeguards to protect the financial well-being and health and safety of service members and their families.

Several years of hard work by many organizations, including the ABA Standing Committee on Legal Assistance for Military Personnel, contributed to the successful passage of both bills. ABA President Dennis Archer included the legislation among his highest priorities, and lauded the Servicemember Civil Relief Act, stating, "The act gives the men and women of our military additional peace of mind, by protecting their rights and interests when they answer the call to duty."

### Tax relief

The most significant benefit of the Military Family Tax Fairness Act is to permit military homeowners to more easily qualify for the capital gains exemption when selling their homes. Since 1997, under Section 121 of the Internal Revenue Code, taxpayers may exclude earnings (up to \$250,000 for single taxpayers, and \$500,000 for married taxpayers) on the sale of their principal residence from the capital gains tax. However, military personnel deployed overseas or required to live in military housing had difficulty meeting the "use" requirements needed to qualify for the exclusion. Those requirements included a provision that the home had to be used as a principal residence for two out of the five years prior to its sale.

Several versions of legislation to correct this inequity (referred to as the Armed

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Joining other leaders of military organizations at an October news conference organized by Representative Chet Edwards (D-Texas), retired Rear Admiral John S. Jenkins, U.S. Navy (center), chair of the ABA Standing Committee on Legal Assistance for Military Personnel, urged Congress to complete work on the Military Family Tax Fairness Act. Others participating in the event with Jenkins included from left: Ambassador John W. Limbert, American Foreign Service Association; Dennis Cullinan, Veterans of Foreign Wars; retired Vice Admiral Norb Ryan Jr., Military Officers Association of America; Kathy Moakler, National Military Families Association; retired Lt. General Don Peterson, Air Force Association; and retired Major General Robert McIntosh, Reserve Officers Association.

## DIALOGUE

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**Debbie Segal**  
Chair, ABA Standing Committee on Pro Bono and Public Service

**James B. McLindon**  
Chair, ABA Standing Committee on Lawyer Referral and Information Service

**Bill Whitehurst**  
Chair, ABA Standing Committee on Legal Aid and Indigent Defendants

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

**Darrell E. Jordan**  
Chair, ABA Commission on IOLTA

**Lora J. Livingston**  
Chair, ABA Standing Committee on Delivery of Legal Services

.....  
**Terry Brooks**  
Director, ABA Division for Legal Services

**David Holtermann**  
Editor, ABA Division for Legal Services

**Gail Thompson**  
Division Designer/Webmaster,  
ABA Division for Legal Services

.....  
Comments, suggestions and proposed articles should be directed to:

David Holtermann  
ABA Division for Legal Services  
541 N. Fairbanks Ct.  
Chicago, IL 60611  
312/988-5744  
fax: 312/988-5483  
email: holtermd@staff.abanet.org

Address changes and subscription inquiries should be directed to:

Margie Bruynseels  
ABA Division for Legal Services  
541 N. Fairbanks Ct.  
Chicago, IL 60611  
312/988-5749  
fax: 312/988-5483  
email: mbruynseels@staff.abanet.org

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ABA Copyrights and Contracts Department  
750 N. Lake Shore Drive  
Chicago, IL 60611  
312/988-6102  
fax: 312/988-6030  
email: copyright@abanet.org

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## New Laws

(continued from page 1)

Forces Tax Fairness Act) had been overwhelmingly approved by both chambers of Congress during the 107th Congress. For reasons sometimes unrelated to the bills themselves, however, congressional leaders failed to call for a conference to settle differences over certain terms in the bills, such as for how long and how far away a service member's deployment must be in order to qualify for an exemption. There were also disagreements over whether certain offsets would be required to make the bill "revenue neutral."

In 2003, the ABA redoubled its efforts to ensure the bills became law. In addition to a series of meetings and calls with key members of Congress and congressional staff, the ABA issued letters to the entire House of Representatives in March, and delivered a letter from then-ABA President A.P. Carlton to the chair of the House Ways and Means Committee. The ABA sent another letter to Senators John McCain (R-Arizona) and Max Baucus (D-Montana) of the Senate Veterans Affairs and Armed Forces Committees, respectively. In October, as he attended a series of meetings on Capital Hill with past LAMP Committee Chair Brigadier General David Hague, current Chair Rear Admiral John Jenkins, appeared on behalf of the ABA in a press conference arranged by Representative Chet Edwards (D-Texas) to draw attention to the languishing legislation.

At the end of October, House and Senate leadership at last agreed to move on a singular, less controversial provision of the act related to the increase and tax

exemptions for the death gratuity benefit for military widows and their families. That bill was introduced in the House on October 21, and was approved unanimously on October 29. It was received in the Senate the following day, but worries about its passage persisted. Many were concerned that without the death gratuity provision, the remainder of the bill might not receive attention in the first session of the congress, and with 2004's partisan election season looming over the second session, the future of the Armed Forces Tax Fairness Act seemed uncertain.

Many congressional leaders played a role in the bill's progress, McCain stood out as a champion. In the Senate, McCain took a political risk by amending the popular bill and striking its language and substituting for it the text of the Armed Forces Tax Fairness Act. McCain resisted attempts to break out portions of the act, and worked to keep the language intact. The amended bill provided for both a tax-free increase in the death gratuity benefit, and a fix for IRC Section 121 for service members. The amended H.R. 3365 was renamed the Military Family Tax Fairness Act and the bill went on to receive unanimous approval in the Senate and then in the House. On November 11, a small ceremony marked the signing of the bill into law.

### SSCRA modernization

Updating the Soldiers and Sailors Civil Relief Act of 1940 was a longstanding priority of the ABA. Following Operation Desert Storm, the ABA adopted policy in 1993 to modernize and clarify the SSCRA. The SSCRA initially was enacted to give military personnel

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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

It seems only natural to greet the new year by taking stock of the advancements and setbacks experienced in the previous year. It is unfortunate that so many of our nation's service members remain in harm's way both at home and abroad, but I am happy to report that 2003 seems to have brought more good news than bad in the field of military legal assistance. As many Dialogue readers know, the LAMP Committee has very actively supported the cause of military legal assistance in a number of key areas, including tax fairness for service members, advocacy for expanded legal assistance programs (ELAP) and legal assistance as an entitlement, as well as a favorable revision of the Soldier's and Sailor's Civil Relief Act (SSCRA). At the close of 2003, much progress has been made, and the LAMP Committee is proud to have done its part to help make some very positive changes happen.

This past November and December, Congress worked diligently to provide the President with two important pieces of legislation to sign into law, the Military Family Tax Fairness Act

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## Working Group Begins Yearlong Endeavor to Protect Service Member Rights

by Glenn Fischer

When ABA President Dennis Archer commissioned the ABA Standing Committee on Legal Assistance for Military Personnel with spearheading the new Working Group on Protecting the Rights of Service Members (Working Group), the committee reached out to a variety of interested parties, while others sought to join the group on their own after hearing of its work. The Working Group now consists of representatives from LAMP and 10 other ABA entities: the Sections of Family Law, General Practice Solo and Small Firm Practitioners, Labor and Employment, Real Property Probate and Trust, Tort Trial and Insurance Practice, Taxation, and State and Local Government Law; the Young Lawyers Division and the Government and Public Sector Lawyers Division; as well as the Standing Committee on Armed Forces Law. In addition, the Working Group enjoys contributions from the chief of legal assistance from each service branch, and special liaisons from within the ABA's membership who have unique capabilities and experience in providing legal assistance to military personnel.

The Working Group will fulfill its mission under the guidance of co-Chairs Brig. Gen. David C. Hague, USMC (Ret.) and RADM John S. Jenkins, USN, JAGC (Ret.), and develop what promises to be a compre-

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Members and liaisons to the ABA Working Group on Protecting the Rights of Service Members at its first meeting at Naval Base Coronado in San Diego. First row (left to right): Mark Sullivan, Gary Anderson, Fletcher D. Handley, Jr, John Jenkins (Working Group co-chair and chair of LAMP), CAPT Jane Dalton, Patricia Halsey-Munroe, Col Steve Strong, Patricia Apy, Daniel Bean; Second row (left to right): John Meixell, Greg Huckabee, Kevin Flood, David Hague (Working Group co-chair), Capt Brian Keller, Col John Odom, James C. Dockery, Nick Grasselli; Not pictured: Christopher Dong, Dwight Merriam, Richard Shaw, LCDR Benes Aldana, Kenyon Luce

## LAMP Spotlight... San Diego

by Traci Jones

The LAMP Committee held its Fall 2003 CLE program and committee meeting at Naval Base Coronado in San Diego. Assisted with outstanding support by LT Conlon of Naval Legal Service Office Southwest, the committee put on a well attended eight-hour CLE and had a productive meeting. Speakers for the CLE included Patricia E. Apy, a partner with the law firm of Paras Apy & Reiss in Red Bank, New Jersey, who spoke on child custody. Captain Kevin P. Flood (Ret.), Naval Legal Service Office Southeast, lectured on DL Wills, introducing a new prototype wills program expected to be available early 2004. John Meixell, OTJAG Legal Assistance Policy Division, addressed ethics issues, and Colonel John S. Odom Jr., U.S. Air Force Reserves, discussed the Soldiers' and Sailors' Civil Relief Act (SSCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The LAMP committee chose Naval Base Coronado because of its close proximity to San Diego and the many military installations in the area. The base, with a military population in excess of 50,000, lies just across the harbor from downtown San Diego. It is connected to the mainland on the south by a long narrow sandbar known as the Silver Strand and is accessible over the two-mile-long San Diego-Coronado Bridge as well as by frequent ferry service.

Naval Base San Diego is home to the Naval Legal Service Office Southwest Legal Assistance Department. It is the home port for approximately 60 Navy ships



Staff of Naval Legal Service Office Southwest (from left to right): First row: LT Smith, SM3 Allen, LT Kraus, GSM3 Rhodes, LT Cruz; second row: LT Southall, Ms. Weldon, LN2 Harwell, LTJG Fan, Mr. Reingold, Ms. Coker, LT Rojas, LT Keeton, LN2 Mitchell; third row: LN1 Linhart, LT Greer, LT Kosky

and home base to 50 separate commands, each having specific and specialized fleet support purposes. It is the workplace for approximately 48,000 military and civilian personnel.

Having so many military personnel—active, dependent and retired—in the area makes the mission of the NLSO legal assistance office even more vital. The office provides free comprehensive legal support to Navy commands and individual service members throughout the San Diego area. NLSO SW and its detachments serve Naval Station San Diego, Naval Air Station North Island and Naval Amphibious Base Coronado, as well as all the ships home-ported and visiting in the San Diego area. Through its legal assistance detachment offices, NLSO SW also provides service to Arizona, Colorado, Kansas and a host of other states.

The office provides notary and power of attorney services daily. Attorney consultations concerning issues including motor vehicles, consumer disputes, estate planning, family law,

dependent support, landlord/tenant disputes, and the SSCRA are also available daily, on a walk-in basis. The office also offers weekly seminars on marriage dissolution, immigration and estate planning.

NLSO SW also recently increased the legal assistance services offered at its North Island Legal Assistance Office. The North Island office has expanded its hours of operation and serves active-duty military members and their dependents. This expansion of service was intended to make legal assistance more accessible to those eligible clients living or working at Naval Base Coronado.

NLSO SW also has its own reserve-drilling unit, Naval Reserve Legal Service Office, Southwest 119, which provides critical legal assistance as well. Like an extended family, NRLSO SW 119 assists the NLSO with offering to mobilizing reservists and deploying units pre-legal assistance services, together with briefings on the SSCRA and USERRA and other related legal

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## San Diego

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issues. In addition, NRLSO SW 119 provides income tax preparation services for the thousands of service members and family members in the San Diego area,

many of who face the added urgency of completing income tax filing while preparing for deployment.

In the wake of September 11, NRLSO SW 119 members provided onsite mobilization briefings to ships, squadrons and commands of all description. The reserve unit

prepared thousands of wills and living wills, together with durable, general and special powers of attorney for active duty and reserve members, winning the San Diego MLUW Rear Admiral Hugh H. Howell, Jr. Award of Excellence (Reserve Law Unit) two years in a row.

## From the Chair...

(continued from page 3)

(to create greater equity for military homeowners), and the Servicemembers' Civil Relief Act (which expands the protections of the former SSCRA). [See the article on the front cover for more information about both.] Now that President Bush has signed both into law, our men and women in uniform will have greater peace of mind while they focus on their first priority—protecting our country and our freedom.

It is important to note that 2003 found the LAMP Committee lobbying key members of Congress on these issues during its May meeting, under the leadership of Immediate Past Chair David Hague. I am sure that General Hague views these developments with great satisfaction, knowing that his four years as chair were an investment in bringing them about. The ABA Government Affairs Office should share in this acknowledgement, as its staff lent invaluable guidance and assistance in these efforts. The LAMP Committee itself should be commended, for its tireless efforts to focus attention on the cause of military legal assistance. Keeping issues such as these at the forefront has been, and will continue to be, an

ongoing ABA and LAMP Committee goal.

With more hard work, and hopefully some good luck, 2004 will see the committee continuing its efforts to promote adoption of the Model ELAP Rule, which the ABA House of Delegates endorsed in February 2003. This rule encourages state courts to allow judge advocates to appear in court on a limited basis, and to represent the interests of service members in situations where the judge advocate does not hold a license in the jurisdiction in which he or she happens to be stationed. An ELAP rule in your state is a simple answer to a complicated and troubling problem in the daily lives of many service members. Through concerted ELAP efforts, and in connection with a strong Operation Enduring LAMP effort in your state or local area, it is possible to provide military members with a security blanket within our justice system, similar to the safe shelter they provide for our way of life. If you are interested in spearheading an ELAP effort or OpEnduring LAMP effort in your area, contact the LAMP Committee staff.

The Committee will also continue to advocate for making military legal assistance an entitlement for service members. Currently, the Committee is

focusing on helping to forge new legislation to amend the statute that provides for legal assistance, 10 USC §1044, for possible submission to Congress in early 2004.

These activities, as well as the committee's rigorous CLE schedule and support for ABA President Dennis Archer's initiative—the Working Group on Protecting the Rights of Service Members—will keep us busy in 2004. The Working Group hopes to identify those legal problems that most affect the daily lives of our service members, and plans to propose the means and methods to fix them. An arduous task to be sure, but, we shall be emboldened in our work by reflecting upon the progress that has been made, and the changes that have occurred in just this year.

In doing so, however, we cannot ignore that these changes were the culmination of activities that occurred over the course of many years, and with the assistance and hard work of many players, both on stage and behind the scenes. From simply thinking about the issues, to bringing them up for debate and communicating the message, to working with government and policy makers to effect real, beneficial change, it is proof that, while progress can be slow, it does indeed happen, and with good results for those we serve.

## LAMP on the Web—A Resource Guide

The LAMP Committee traditionally has had a strong presence on the Web, and the committee continues to use its Web pages both as source of information, and as a lens for focusing advocacy in the area of military legal assistance. The pages, accessible at [www.abalegalservices.org/lamp](http://www.abalegalservices.org/lamp), have evolved over time, but still serve these two important functions.

### Information and education

LAMP concentrates its efforts in two main areas: the lay public (including both civilians and military), and military legal assistance providers. For the public, the LAMP Web pages contain resources such as a legal readiness checklist, a helpful tool for gauging the constantly changing need for a legal “check-up” when life events (such as birth, death or relocation) warrant. In addition, the LAMP Web pages are the digital home of the ABA’s Operation Enduring LAMP effort.

Operation Enduring LAMP offers pro bono legal assistance to service members across the country, coordinated via a network of state and local bar associations that have pledged volunteer time and resources. Those in need of help can find a local Operation Enduring LAMP effort in their area by consulting the directory of volunteer programs that can be accessed by clicking on “Operation Enduring LAMP” on the LAMP Committee’s main page. The Operation Enduring LAMP page also contains valuable overviews of key laws that protect service members, as well as guidance on mobilization and deployment issues, such as

individual and family readiness.

For lawyers and legal staff, military and civilian alike, the LAMP Web pages provide a virtual storehouse of free CLE materials. The library of resources includes everything from print materials (white papers, outlines, and articles) to PowerPoint and streaming multimedia (both audio and video) presentations.

Each quarter, the LAMP Committee hosts a CLE seminar (usually aboard a military base) targeted toward increasing the knowledge base of legal assistance attorneys. The materials used in the seminars are available on the Web for free download before, during and after the CLE presentation. These may be accessed by clicking on the “CLE Materials” tab on the LAMP main page, and then clicking on “CLE Materials Clearinghouse” on the drop-down menu. Topics range from family law, consumer law, estate planning and ethics, to more military-oriented programs like the Soldier’s and Sailor’s Civil Relief Act and the Uniform Former Spouse’s Protection Act.

In addition, the LAMP Committee houses its complimentary distance-learning programs under the same “CLE Materials” tab. Offerings include will drafting for blended families using DL Wills software, advanced issues arising under the Soldier’s and Sailor’s Civil Relief Act, and interstate family support and child custody issues. Each of these presentations incorporates streaming internet audio/video with live links to other useful Web-based resources.

[www.abalegalservices.org/lamp](http://www.abalegalservices.org/lamp)

They are particularly useful for civilian attorneys who may serve military clients. Although registration is required, each program may be viewed for free.

### Advocacy

The LAMP Committee also uses its Web pages as a mass communication tool in connection with its advocacy of legislative changes that will benefit service members. To promote one of the committee’s primary legislative initiatives—making legal assistance an entitlement for service members and their dependents—the committee has posted its recommended revision to 10 U.S.C. §1044. In addition, the committee maintains a posting concerning the Working Group on Protecting the Rights of Service Members. Using the power of the Web helps increase visibility of these issues, and help disseminate information to those who may not be on the military’s “inside track.” You can even find links to electronic editions of *Dialogue*.

### Bookmark it!

Utilizing the LAMP Committee’s Web pages is a sure way to stay abreast of the committee’s activities. More importantly, however, the pages serve as an important source of knowledge in the field of military legal assistance by bringing together in one place the products of rare talent and ABA resourcing to form a repository of information—all for free. Bookmark the committee’s main page on your browser, or list it among your favorites, and visit it often.

## Working Group

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hensive product that examines the legal ramifications of military service on individual service members and the military as a whole.

### A sizeable job

While the Working Group contains a great wealth of talent, it has only one year—until August 2004—to complete its mission of examining the legal needs of service members to ensure that they and their families are protected from unequal treatment, discrimination and economic disadvantage. At the same time, the group will analyze and recommend protections that may be needed to ease the legal burdens borne by service members.

Ultimately, the Working Group hopes that its efforts will result in model or uniform legislation that

assists individual states concerned about protecting service members' rights and reducing disincentives to service in the military.

### The ABA wants you

In the face of such a monumental undertaking, the Working Group welcomes both the assistance and input of others, both within and outside the ABA, to help complete its work. One of the many difficulties facing the group is simply obtaining the perspective of those who may gain the most from its work: the individual, active duty service members, reservists and National Guard members who stand in harm's way. Accordingly, the Working Group welcomes comment, suggestions and proposals from anyone who has experience with the legal difficulties faced by uniformed service members.

### The right thing to do

Although apparent in the past,

recent events have demonstrated even more clearly that the United States military is not only one of the nation's greatest assets, but also the standard against which others are judged in the world community. It is fitting, then, that we consistently and conscientiously reflect upon and consider how we can best protect that asset and encourage its continued success. By helping the Working Group to identify and address the various legal problems of service members, you can be an important part of the solution.

**Glenn Fischer** is assistant staff counsel of the ABA Standing Committee on Legal Assistance to Military Personnel.

*Please provide your comments on the unique legal difficulties that confront service members by contacting Glenn Fischer by phone at 312-988-5755; via fax at 312-988-5483, or by email to [fischer@staff.abanet.org](mailto:fischer@staff.abanet.org).*

## New Laws

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peace of mind by granting special protections to their rights and property interests while they served abroad. Active duty service members and their families benefit from SSCRA protections that delay court proceedings related to bankruptcy, foreclosure, divorce, and other civil lawsuits while service members are overseas or otherwise unable to appear in court due to active duty status. Despite subsequent amendments, however, the SSCRA's effectiveness eroded over time as the US economy grew and the way of doing business in

many aspects of life changed.

Legislation to restore the SSCRA's comprehensive level of protection through revisions and clarifications was introduced in the House in January 2003. In addition to Hill visits and other advocacy, the ABA sent letters to the chair of the House Ways and Means Committee on two occasions. The bill subsequently received unanimous House support on May 7, 2003, with a vote of 425-0. In July, the Senate Committee on Veterans Affairs held hearings on companion legislation to the House bill and on similar legislation introduced by its chair, Senator Arlen Specter (R-Pennsylvania). In September, Specter's bill unanimously was

reported out of the Senate Veterans Affairs Committee. In procedural moves that reflected the bipartisan respect shown among military members of both chambers of Congress on such matters, the Senate ultimately chose to consider the original House version of the bill. By unanimous consent, the Senate went on to approve the bill unanimously on November 21, and the new Servicemember Civil Relief Act was signed into law on December 19.

### Hopes for more protection

The ABA will continue its advocacy on these and related issues during the second session of the 108th Congress in 2004. Legisla-

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## From the Chair...



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

As the Standing Committee on the Delivery of Legal Services advances its mission of maximizing access to legal services and justice for moderate-income people, we find great value in working collaboratively with other ABA entities.

For example, last year the committee joined several of the entities within the Division for Legal Services to work with the Presidential Commission on Access to Lawyers. The commission crafted a series of strategies designed to enhance affordable access to lawyers and legal services.

One of these strategies set out in the Commission's report encourages the ABA to produce an annual report that identifies

the status of access to legal services for both poor and moderate-income populations. At its fall meeting, the Delivery Committee found this particular recommendation to be of value. An annual report could help provide a focus on accomplishments obtained through the year, as well as raise the consciousness of issues that need to be addressed. In the long run, we could provide specific direction to bar leaders who share our dedication to improved access and track our successes from year to year.

To further pursue the idea of an annual report, I wrote the chairs of several ABA entities that share our mission and asked them to send a representative to meet with the committee at the Midyear Meeting in San Antonio. If you are interested in the development of an annual report on access to justice and would like to join us to discuss this further, let me know.

As another example of collaboration, the committee joined with the Law Practice Management Section and its e-Lawyering task force to develop the Best Practice Guidelines for Legal Information Web Site Providers. These guidelines were passed by the House of Delegates a year ago. Since then, we have worked with the section

to promote the guidelines both within the ABA and to the public at large. They have been featured in several newspaper and magazine articles. Most recently, the guidelines were discussed on NBC's Today Show, as Richard Granat, the committee's LPM liaison, spoke about online legal services.

To further this discussion and explore the appropriate role of technology in the delivery of legal services, the Law Practice Management Section produced a program at the Midyear Meeting entitled, "Do-It-Yourself Law on the Internet Versus Us, the Lawyers." Delivery Committee member Prof. Ron Staudt and our staff counsel, Will Hornsby, joined Richard Granat among the panel members for this program. I am pleased that the Delivery Committee is collaborating with other ABA entities in examining this dynamic issue.

The ability to collaborate both within and outside of the ABA allows us to further our message and expand our mission well beyond the boundaries permissible within the resources of our individual members. I look forward to exploring other opportunities as we continue our journey toward equal access for all.

### Legal Assistance for Military Personnel

## New Laws

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tive objectives include additional protections that fall under the umbrella of the Servicemember Civil Relief Act, and making legal assistance for military personnel an entitlement. The strong statement made by Congress through

these modest actions in support of US troops is encouraging, and the ABA hopes they represent merely a start to more fully protecting those who sacrifice everything to protect the nation and the principles upon which it was founded.

**Kenneth J. Goldsmith** is legislative counsel for the ABA Governmental

Affairs Office.

*For more information on the new laws or the ABA's other LAMP-related legislative priorities, contact Ken Goldsmith at 202-662-1789 or [goldsmithk@staff.abanet.org](mailto:goldsmithk@staff.abanet.org), or LAMP Committee Counsel Jane Nosbisch at 312-988-5754 or [jnosbisch@staff.abanet.org](mailto:jnosbisch@staff.abanet.org)*

## From the Chair...



by *Debbie Segal*

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

Judges hold a unique position in our profession. We closely observe what they do and say, and we respect their positions and opinions. Because judges have dedicated themselves to improving the administration of justice, they are in a special position to influence pro bono and public service work. They have both the honor and the obligation to look towards increasing access to justice in our society.

The most commonly recognized challenge in this arena is that judges are prohibited from doing anything that would compromise their objectivity or create the perception that they would unduly influence attorneys who appear before them in court. So, the question becomes: How can judges encourage and promote pro bono within the bounds of their ethical obligations? This question is answered state-by-state, mostly through the judicial codes of conduct enacted by the courts and based upon the ABA's Model Code of Judicial Conduct.

Judges face special restrictions under their ethics rules that limit their participation in raising money and soliciting membership for charitable organizations, including those that support pro

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## Clark County Legal Services Pro Bono Project: Opening the Door to New Volunteer Attorneys

by *Marilyn Smith*

The Pro Bono Project of Clark County Legal Services has been hard at work re-invigorating the culture of pro bono in Nevada, and 2003 was a banner year for results. With new funding and two important rule changes in hand, the program hopes that these accomplishments will take root and lead to a lasting transformation of pro bono in 2004.

When the Clark County Pro Bono Project merged into Clark County Legal Services (CCLS) in June 2000, pro bono efforts were lagging. According to CCLS Executive Director Barbara Buckley, pro bono initiatives were underway, but volunteer recruiting was down. One of the major breakthroughs for the organization was hiring its dynamic, dedicated pro bono project director, Lynn Etkins. Etkins brought her knowledge and experience in rejuvenating pro bono and helped form a powerful partnership between CCLS, Nevada Legal Services, the State Bar of Nevada, the 8th Judicial District Pro Bono Foundation, members of the judiciary, legal educators, and many individual attorneys who were committed to improving pro bono in the state. This informal coalition took a two-pronged approach: improving the recruitment, retention, training and fundraising aspects of pro bono, and going before the Nevada Supreme Court to request specific policy rule changes that would ignite pro bono in Nevada.

At the beginning of 2003, CCLS received a \$1.3 million matching grant from the Lied Foundation. This grant matched attorney volunteer hours with money from the foundation for the purpose of paying off the mortgage on CCLS's building—a novel and exciting approach to fundraising. With the hard work of the staff and volunteer lawyers of the CCLS Pro Bono Project, this challenge was met. Now the organization owns its headquarters outright.

### Reporting requirement

In May 2003, the Nevada Supreme Court approved an amendment to Supreme Court Rule 191 (its pro bono rule) that now requires all members of the bar to submit annual reports on their pro bono service. Nevada is the third state in the country, following Florida and Maryland, to require annual reporting of pro bono service. The rule also asks lawyers to contribute a minimum of 20 hours annually of free pro bono services, or 60 hours of services at reduced fees to persons of limited means, or a minimum cash contribution of \$500 yearly to organizations providing pro bono services. This rule change, encouraged by CCLS and its coalition partners, has had a direct and positive impact on the number of lawyers volunteering with the organization.

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## Pro Bono Bulletin Board

### Renewing Our Commitment to Justice—The 2004 Equal Justice Conference

Registration is now open for the 2004 Equal Justice Conference, which will be held April 15 through 17 at the Hilton Atlanta Hotel. The Equal Justice Conference brings together advocates from all components of the legal community to discuss justice issues as they relate to the delivery of services to low and moderate-income people in need of legal assistance. Through plenary sessions, workshops, networking opportunities and special programming, the conference provides a wide range of learning and sharing experiences for all attendees.

The 2004 Equal Justice Conference is titled **Renewing Our Commitment to Justice**. The core theme is partnering to make a

## From the Chair...

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bono and volunteer attorney service. Even with these restrictions, there is a broad playing field upon which judges can encourage and facilitate pro bono participation.

How can the legal profession assist judges in increasing access to justice? One way is to clarify what exactly the playing field is, so that judges and attorneys understand what behavior is acceptable (such as participating

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difference to clients and communities. The main conference will explore partnerships that must be created, resources that must be developed, and new issues facing clients. The conference provides essential resources to pro bono and legal services program staff, bar leaders, law firm representatives, judges, corporate counsel, court administrators, pro bono lawyers, paralegals and many others.

For conference details, including a tentative agenda and information on several discount registration opportunities, visit [www.equaljusticeconference.org](http://www.equaljusticeconference.org). You can register online or download a printable registration form.



### 2004 Pro Bono Publico Award Nominations

The ABA Standing Committee on Pro Bono and Public Service is seeking nominations for the 2004 ABA Pro Bono Publico Awards of individual lawyers and institutions in the legal profession

that have demonstrated outstanding commitment to volunteer legal services for the poor and disadvantaged. The award will be presented to five recipients at the Pro Bono Publico Award Luncheon on Monday, August 9, 2004, during the ABA Annual Meeting in Atlanta.

The award is presented to legal professionals who commit their talent and training to improve the quality of justice for those unable to afford a lawyer. Some will be nominated for their longtime dedication to and leadership on behalf of the delivery of pro bono legal services to the poor. Others, newer to the field, might be nominated for their creative approaches to the delivery of volunteer legal services or their commitment to representing low-income persons. One of the awards is designated the Ann Liechty Pro Bono Child Custody Award. This award honors individual lawyers who have enhanced the lives of children by improving or delivering volunteer legal services to children in custody proceedings.

Nominations for the award are due by March 10, 2004. You can download nomination forms at [www.abaprobono.org/probonopublicoaward.html](http://www.abaprobono.org/probonopublicoaward.html) and also find award criteria and information on the selection process and former award recipients. Please call Dorothy Jackson at 312-988-5766 for further information or if you have questions.

# Using Pro Bono Emeritus Rules to Encourage Volunteering by Retired Lawyers

by Stephanie Edelstein

In 1959, the following question was posed to the Ethics Committee of the State Bar of Texas:

*A retired lawyer, 70 years of age but in vigorous health, desires to defend, without compensation, indigent and needy defendants appearing before the courts of his home county. Would it be unethical or in violation of the principles of the State Bar for him to so volunteer his services?*

The committee responded:

*The interest and concern of the attorney in the inquiry should be commended. For many decades public-spirited lawyers have volunteered free legal advice and assistance to the needy. "There is nothing whatever in the Canons to prevent the lawyer from performing such an act, nor should there be." (ABA Opinion 148). So long as such services is [sic] not performed with the improper motive of self-advertisement it is both ethical and commendable. Under the facts of the inquiry the attorney's suggested course of assistance seems eminently proper.<sup>1</sup>*

This opinion demonstrates how much has changed, and how much remains the same, in the world of senior lawyer volunteering. It shines a light on the fact that retired lawyers have been working for the public good for a very long time, and it raises practical and ethical issues relevant for those who wish to do pro bono today.

Let's call the lawyer who posed the question to the Texas

Bar George Johnson. We'll assume that he recently retired from a mid-sized firm but is not prepared to spend all his time on family and leisure activities. He hopes to put his legal skills to good use by helping those less fortunate than himself. In 1959, the thrust of Johnson's query was whether offering his services free of charge in the courthouse would be perceived as self-advertising. He apparently also felt the need to assure the ethics committee that he was in good health despite his age. His concerns might be somewhat dated but they raise interesting opportunities for comparison with senior lawyers volunteering today. In 1959, there were no organized pro bono programs, few legal aid programs, and institutional support for his efforts would have been unknown. Johnson was likely to have relied on personal contacts and word-of-mouth to find pro bono clients unless he was able to set up a small office in the courthouse. In effect, he was on his own.

If we move Johnson ahead to 2004, we will see that while he might not be able to do quite the sort of independent pro bono he envisions, he will have far more volunteer options and support for his efforts.

## Why volunteer after retirement?

Few endeavors are better suited to the unique skills of retired lawyers than pro bono legal work for persons and organizations of limited economic means. Across

the nation, retired lawyers are contributing their talents to the provision of legal services to low-income and older persons and to non-profit organizations in their communities. It is not necessary for senior lawyers to have a background in areas such as poverty or consumer law to make a significant contribution as a volunteer. Substantive skills are frequently transferable, and many legal services programs employ experienced staff members who stand ready to train volunteers on specific issues.

With active encouragement from the courts and the organized bar, retired lawyers are volunteering in increasing numbers across the country. They come from solo and large-firm practices, from corporate and government work, from the judiciary and from academic work. Their reasons for volunteering vary. Career government lawyers may be continuing the commitment to public service on which their careers were founded. Private practitioners may have decided to give something back to their particular communities. Corporate lawyers may volunteer in recognition of their professional obligations.

What do these volunteers gain? Some find new venues for addressing issues with which they are familiar. Others are learning about legal issues that they did not encounter in their years of practice. They enjoy flexibility in the scheduling of their time and in the kinds of work they do,

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## Clark County

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### Judicial Involvement

After years of attempted revisions of Nevada's Code of Judicial Conduct, in October, 2003, the Nevada Supreme Court amended the commentary to Canon 4C(3) of the code to eliminate language that discouraged members of the judiciary from assisting legal services organizations in recruiting attorneys and law firms to provide pro bono assistance. In the revision, the court affirmed that the provision of pro bono legal services furthers the administration of justice by improving access to the courts. The commentary to Canon 4C(3) now states explicitly that:

*A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. . . .*

These revisions were not only practical improvements of Nevada's Code of Judicial Conduct, but they also represented a deeper victory for many judges who had been supporting pro

**The court affirmed that the provision of pro bono legal services furthers the administration of justice by improving access to the courts**

bono and felt unfairly penalized by the ethical canons.

CCLS hopes and expects that the policy victories of 2003 will lead to delivery successes in 2004. The operating principle of the organization is that action speaks louder than words. The board president has every member of her law firm take a pro bono case at all times. Following the amendment to Rule 191 adopting mandatory pro bono reporting, the chief justice of the Nevada Supreme Court and the president of the state bar sent a letter advising all of Nevada's lawyers that the need for legal services was intense, and asking them to volunteer. Within one week, over 100 lawyers called CCLS and financial contributions started arriving in the mail. Currently there are over 600

attorneys signed up as volunteers for the CCLS Pro Bono Project with about 350 active cases. In 2003, they logged 6,000 hours of volunteer time and hope to increase that number for this year.

In conjunction with the state bar, CCLS has developed free continuing legal education (CLE) classes for attorneys willing to take a pro bono case representing an abused or neglected child. The first CLE was attended by over 20 lawyers and resulted in placement of 23 cases with the Children's Attorney Project, which represents children who have been placed in foster care or institutionalized.

CCLS views its greatest challenge going forward as taking advantage of the successes of 2003 to improve recruitment and retention of volunteer lawyers. Lawyers in Nevada are realizing their pro bono responsibilities more now than ever. With the influx of new volunteers, CCLS wants to understand better what these lawyers need and make the pro bono process as easy as possible for them. The ultimate goal, as always, is to increase the capacity to help clients and improve access to legal services for those needing help.

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

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in trainings for pro bono attorneys; attending recognition events for volunteer lawyers; improving courtroom procedures to benefit pro bono attorneys) and what

behavior is unacceptable (such as signing a fundraising letter for a pro bono organization)

The ABA developed its Model Code of Judicial Conduct to guide judges in their ethical obligations and this year, the ABA is reviewing the code with the intention

of revising and improving it. The Joint Commission to Evaluate the Model Code of Judicial Conduct is in the process of receiving comments from interested parties on a broad range of important issues that affect judges' ethical obligations. (continued on page 15)

## Emeritus Rules

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receive training, substantive and administrative support and malpractice coverage, and have the opportunity to network with colleagues of all ages. What they have in common is personal and professional commitment, and what they gain is satisfaction.

### Opportunities for retired lawyers

Much of the volunteer work performed by retired lawyers takes place in legal services programs such as those funded by the Legal Services Corporation (LSC) or state IOLTA programs, or providing legal assistance to older persons under the Older Americans Act (known as Title III legal assistance). These programs handle issues related to housing, government benefits, family, health, and consumer law. Some work in the area of community development. Programs receiving Older Americans Act funds represent seniors on such issues as government benefits, long-term care, incapacity and estate planning, and guardianship. They also conduct community education programs, and may send staff to senior and other community centers to speak on specific topics or even to interview clients. Volunteer lawyers can help these programs stretch their very limited resources.

Not all retired lawyers volunteer in traditional legal services programs. However, some provide information and advice on telephone hotlines. Others work with legal services programs to conduct self-help programs, staff courthouse resource centers, provide discrete task legal services, or respond to calls on

telephone hotlines. Some have found satisfaction working with court-annexed dispute resolution programs, and with senior health insurance counseling projects. Retired lawyers also serve as court appointed special advocates and assist long-term care ombudsman programs. Some retired lawyers are working in the international arena.

Opportunities are not limited to litigators. Retired lawyers do legislative advocacy, serve as liaisons to community or professional boards or bar committees, and help with fundraising or the recruitment of other volunteers. There is also a need for corporate, tax, transactional, probate, real estate, and many other non-litigation specialties. The opportunities are endless, and the need is great.

### Challenges and solutions

Retired lawyers wishing to volunteer encounter issues that are quite different from those faced by lawyers who handle pro bono cases as part of their practices. In traditional pro bono representation, requests for assistance are screened by the local bar association or legal services pro bono program and referred to a volunteer lawyer, who handles the case from beginning to end. This system is not well-suited to retired lawyers who do not maintain an office or secretarial support, who no longer carry professional liability insurance, or who may be unfamiliar with the kinds of issues on which low- and moderate-income individuals most commonly seek advice. During the past decade, a number of legal services programs, senior lawyer groups, and state bars have addressed these issues through encouragement

and support to prospective volunteers, training in how best to meet the needs of those volunteers, and development of court rules to promote volunteering while ensuring that professional standards are maintained.

### Pro bono emeritus rules

The first issue confronting lawyers contemplating legal volunteer work is their bar status. Lawyers who retire or otherwise leave practice often convert their bar membership to inactive status to avoid the expense of mandatory bar dues and continuing legal education programs. Some retired lawyers move to a state in which they are not licensed. To address these hurdles to volunteering, states began to adopt pro bono emeritus rules in the mid-1980s.

These rules (also known as emeritus, active emeritus, inactive pro bono, and pro bono publicus rules) have a common goal—to encourage pro bono by experienced lawyers no longer in active practice. The rules originally were aimed at retirees, allowing them to continue to practice law under certain conditions. In recent years, the target audience has broadened beyond senior lawyers to attract younger lawyers not in active practice but interested in public service. At the same time, the rules in many states have grown more prescriptive as a way to protect consumers from unlicensed legal practitioners. All require the volunteer work to be performed under the auspices of an approved legal services or other not-for-profit program. Several require certification or acknowledgment of the volunteer's status to be filed with the court, along with proof of malpractice insurance and

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## Emeritus Rules

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supervision by a licensed attorney.

Pro bono emeritus rules differ from pro hac vice rules that permit lawyers to enter their appearance for a particular purpose in a jurisdiction in which they are not licensed. They are not the same as rules that allow admission on motion but require lawyers, once admitted, to comply with all the rules of the bar. They differ from rules allowing lawyers to work for legal services or other not-for-profit programs for a limited time (typically two years) pending bar admission. Moreover, they differ from rules—also called emeritus rules in some states, that waive dues or other professional requirements unconditionally for retired lawyers (such as in Nebraska, New York, or Wisconsin).

Depending on the state, pro bono emeritus rules often include the following provisions:

### Requirements for prospective volunteers:

- Admitted to practice before the highest court of that or another state
- In active practice for a minimum number of years (usually 10 of 15) prior to applying for emeritus status
- Member of the bar in good standing and not disciplined for professional misconduct within a certain number of years
- If not licensed in current state, have not failed bar examination of that state three or more times
- Agreement to abide by rules of professional conduct and submit to jurisdiction of the court for disciplinary purposes
- Agreement to neither ask for nor receive compensation of

### Emeritus rules nationwide

Jurisdictions with pro bono emeritus rules include Arizona, California, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Montana, Oregon, South Carolina, Texas, Utah and Washington. Delaware's rule has two levels—"inactive" and "retired" with somewhat different standards; Oregon takes a similar approach with its "active pro bono" and "active emeritus (formerly known as retired)" lawyer rules. Most rules include a length of practice requirement (usually 10 years); those in Delaware, the District of Columbia and Oregon do not. Georgia and Minnesota restrict application to lawyers of a certain age (70). California, Delaware, and Georgia allow emeritus or inactive status only for those licensed in that state, while the rules in Arizona, District of Columbia, Florida, Idaho, South Carolina and Texas apply also to lawyers licensed in other states.

any kind for legal services to be rendered

- Will volunteer for a qualified not-for-profit legal services organization
- May obtain waiver or reduction of bar dues and continuing legal education requirements

### Requirements for sponsoring organizations:

- Must be qualified not-for-profit legal services organization
- Must provide malpractice insurance coverage
- Must not accept fees for services rendered by volunteer
- Will supervise volunteer.
- Supervisor must be member of bar in good standing, employed by or volunteer in organization
- Supervisor must co-sign pleadings and assume personal professional responsibility for volunteer's legal work

### Permissible activities:

- Volunteer may render legal advice in consultation, where appropriate, with supervising attorney
- Volunteer may appear in court or administrative proceeding

(in some states only with client's written consent and supervisor's written approval)

- Volunteer may accept reimbursement from organization for actual expenses incurred
- Organization entitled to court-awarded attorney fees for representation by volunteer

Let's return now to George Johnson, the Texas lawyer. Texas rules establish the Emeritus Attorneys Pro Bono Participation Program. Johnson need not be a member of the Texas bar to participate. If he is not admitted in Texas he must be a member in good standing of another state bar, have graduated from an ABA accredited law school, have not failed the Texas bar exam more than twice, and have been in active practice for five out of the past 10 years. Licensed in Texas or not, he must volunteer through an approved legal services provider under the supervision of an active member of the Texas bar. He and his supervisor will need to meet certain requirements if he plans to appear in court, including co-signing of pleadings. His bar dues and fees for CLE programs

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## Emeritus Rules

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will be reduced.

As Johnson begins his exploration of volunteer opportunities, he will want to consider how he might use his previous experience, the kind of work he'd like to do, and any geographical and scheduling needs he might have.

Retired lawyers are increasingly giving their time to provide access to justice for low-income people, and legal services pro-

grams are growing more aware of the benefits those lawyers can provide. It might take some energy on the part of Johnson and the program for which he volunteers to get started in this endeavor, but as other senior lawyer volunteers will tell him, his enthusiasm will be appreciated and his experience will be valued.

### Endnote

<sup>1</sup> *Texas Ethics Reporter*, <http://www.law.uh.edu/ethics/Opinions/201-300/O225.html> (visited July 18, 2003)

**Stephanie Edelstein** is associate staff director of the ABA Commission on Law and Aging.

*For information and materials about starting a senior attorney project, or expanding an individual volunteer arrangement into a more structured program, contact Jan May at AARP Foundation Legal Counsel for the Elderly by phone at 202-434-2164 or via email at [jmay@aarp.org](mailto:jmay@aarp.org); or Stephanie Edelstein at the ABA Commission on Law and Aging at 202-662-8694 or [sedelstein@staff.abanet.org](mailto:sedelstein@staff.abanet.org)*

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While the Model Code of Judicial Conduct does not specifically mention "pro bono," many states have interpreted the code to permit judicial involvement in civil pro bono activities as long as it does not affect a judge's impartiality, demean the judicial office or interfere with the judge's duties. Canon 4 of the code, in particular, states that: "A judge shall so conduct the judge's extrajudicial activities as to minimize the risk of conflict with judicial obligations." This canon allows a judge to be involved in activities and organizations "devoted to the improvement of the law, the legal system or the administration of justice" and allows a judge to "assist such an organization in planning fund-raising" but prohibits a judge from "personally participating in the solicitation of funds or other fund-raising activities."

The ABA Pro Bono Committee believes that while some activities—such as fundraising or representing clients—are clearly

prohibited for judges, there is a broad area of pro bono participation that should be specifically noted, defined and encouraged in the Model Code. The Pro Bono Committee supports judges who sponsor help desks, pro se support centers and other pro bono based initiatives within their courts. The committee knows that judges can and do use their position wisely and prudently to demonstrate the value of volunteerism within the judicial system while still maintaining their ethical obligations.

One of the best examples of national leadership on this issue is from the Conference of Chief Judges, which adopted a resolution in February 1997 that encourages individual members of the conference, in their respective states, to recruit lawyers to do pro bono work, participate in events to recognize lawyers who do pro bono work, and consider special procedural or scheduling accommodations for lawyers who are volunteering their services. Since 1997, chief justices in a number of states have heeded this call to service.

A good example of effective judicial encouragement of pro bono can be found in rural counties throughout New York, where judges are partnering with the Rural Law Center of New York, local bar associations and legal services programs to offer free CLE credit courses to attorneys. In exchange for free curriculum designed and taught by judges, attorneys agree to take on pro bono cases.

As this demonstrates, judges can work effectively for pro bono within the confines of their ethical obligations. Judges can make training available to pro bono attorneys in specific procedural issues and substantive law questions. They can speak eloquently on the profound benefit that is provided by a pro bono attorney assisting a client in need. Judges can thank volunteer lawyers for their efforts and strive to make their courtroom rules more user-friendly and hospitable for pro bono attorneys. Clarifying the Model Code of Judicial Conduct will only enhance judicial participation in and support for pro bono efforts.

# Funding the Mandate for Language Access

by Paul M. Uyehara

**H**ow well do your grantees serve clients with limited ability to communicate in English? Do programs rely on relatives or friends to interpret for clients, or do they have formal arrangements in place to obtain professional interpreters? Have staff members been trained in interpreting techniques? Do program databases track the primary language of clients? Are policies in place regarding serving limited English proficient (LEP) clients? Do programs translate letters, or do case handlers mail untranslated letters (or no letters at all) to LEP clients?

Across the country, recent demographic changes and seemingly new legal requirements are pushing legal services programs to improve their services to LEP clients, and make the answers to the above questions all the more urgent. Meeting the needs of LEP clients can no longer be an afterthought for legal services grantees, but must be a matter of deliberate policy and planning.

## IOLTA role

IOLTA programs have an instrumental role to play in helping their grantees improve. Funding program efforts to change is an obvious role for IOLTA, but not the only one. IOLTA programs can also take a leadership role in educating grantees about the imperatives behind serving LEP clients and in ensuring that they implement necessary changes. This article will examine the need to improve language access, identify the steps legal services programs must take to do so, and

examine how IOLTA funding in Pennsylvania is helping efforts to increase language access there.

## Changing demographics

The demographic makeup of the client eligible population has changed dramatically since the advent of legal services programs in the 1960s. The proportion of the U.S. population that is foreign born has doubled since 1970 and today is higher than at any time since the early part of the 20<sup>th</sup> century. The Latino population has soared more than 40 times since 1960. Two-thirds of the Asian Pacific population is foreign born, with half having arrived in the past ten years. Not only has the number of immigrants grown tremendously, but the rate of change has been accelerating. The newest Americans, moreover, have not all settled in traditional immigrant strongholds. States and localities unaccustomed to immigrants have to adjust on the fly to influxes of newcomers from different parts of the world.<sup>1</sup> In light of this rate of change, some legal services programs have been hard pressed to respond to the changing linguistic makeup of the client community.

## Requirements under federal law

Against this demographic backdrop are a number of other, urgent reasons why legal services programs must quickly develop new capacity to deliver services in languages other than English, or even English and Spanish. First, most programs are subject to legal

or contractual requirements to provide access to LEP clients. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, prohibits recipients of federal



Paul Uyehara

funding from discriminating on the basis of national origin. The courts and the federal departments that disburse the funds; have construed the national origin protections set forth in Title VI to apply to those not proficient in English. Spurred by President Clinton's Executive Order 13166, federal departments and agencies have promulgated guidance to recipients that set standards of service necessary to avoid discrimination against LEP consumers. Programs that receive federal financial assistance, directly or indirectly, are required to comply with that guidance.

Many legal aid offices are also subject to new language based requirements if they receive funding from the Legal Services Corporation (LSC). LSC has just issued guidance to its grantees in the form of a proposed program letter.<sup>2</sup> The guidance sets forth standards of service to LEP clients, which must be met in order to comply with the non-discrimination assurance set forth in the contract between LSC and each field program.

## Quality of assistance

Second, programs must consider

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## From the Chair...



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

The beginning of 2004 is a good time for IOLTA advocates to take stock of the past year and look forward to the opportunities the new year will bring. At the start of 2003, we were all on edge, awaiting the Supreme Court's decision on the fate of IOLTA in *Brown v. Legal Foundation of Washington*. As you know, the Court ruled in favor of Washington State's IOLTA program, and a large cloud was lifted. But IOLTA continues to face other challenges in 2004—this business is never easy—however, there are many reasons to feel optimistic about IOLTA's future.

In the spirit of that optimism and the fresh start a new year provides, I believe it is important that the Commission on IOLTA, in collaboration with the National Association of IOLTA Programs, lead the way out of survival mode and take positive steps to shape IOLTA's future. Fortunately, several projects that are now or will soon be underway are helping us take that initiative.

The first, as you have read about before, is the Commission/NAIP Joint Rules Task Force. That group has been meeting for over six months and is issuing important guidance to IOLTA programs

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## IOLTA Grantee Spotlight: Atlanta Legal Aid's Home Defense Program

by William J. Brennan, Jr.

When "Mr. R," a client of the Atlanta Legal Aid Society, was solicited by a home improvement company's door-to-door salesman in March 2000, he was a disabled senior citizen living in a home inherited from his mother. In desperate need of roofing and other repairs, Mr. R agreed to pay the company \$13,700. Knowing that Mr. R could not pay this amount on his limited Social Security income, the company offered to provide mortgage financing that would cover the home improvement work and pay other bills for him.

Engaging in a practice called "spiking," the company began the roof repairs immediately, well before Mr. R signed the mortgage loan closing documents; this assured that Mr. R would not be able to back out should he later object to the terms of the mortgage loan. The ensuing mortgage loan was for \$25,000, repayable over 25 years at an annual percentage rate of 12.902 percent with monthly payments of \$250, making it difficult for Mr. R to pay his other bills and have enough money left for food. An expert later retained by Atlanta Legal Aid determined the value of the work performed to be only \$4,400 and said that the work had not been properly performed.

Mr. R's case presents a classic example of what are now widely known as predatory mortgage lending practices. In these schemes, mortgage brokers are used to originate high-cost mortgage loans with abusive features that include exorbitant fees, lending without regard to the borrower's ability to pay, and balloon payments that trigger abusive refinancing. In cases such as Mr. R's, it is tacitly understood that the home improvement companies that work in tandem with abusive, high-cost mortgage lenders will be further compensated by overpricing and under-performing the work. If a mortgage broker is used, the borrower will pay a broker's fee, but the lender will further compensate the broker by paying a so-called "yield spread premium." (This premium is actually paid by the borrower because the borrower's interest rate is raised to reimburse the lender for the fee without the borrower even knowing it.)

Thanks to intervention by Atlanta Legal Aid Society, Mr. R's story had a positive ending: The organization's attorneys partnered with a private consumer lawyer to file suit against the several companies that originated and subsequently purchased Mr. R's mortgage. The suit alleged violations of the Federal Truth In Lending Act and sought damages for the faulty, overpriced home improvement work. After extensive litigation, Mr. R obtained a favorable settlement and his home was saved from a threatened foreclosure.

### The Home Defense Program

Over 12 years ago, attorneys at the Atlanta Legal Aid Society became

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## From the Chair...

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on rules, policy issues and program operations in the post-*Brown* era. Now is an excellent time for IOLTA programs to retool their rules and policies where appropriate.

As crucial as those recommendations are, the second phase of the Task Force's work—a systematic review of revenue enhancement efforts by IOLTA programs—will be just as important. The Task Force has begun this work, and plans to issue another set of recommendations regarding revenue enhancement later in 2004. With the major legal challenges behind us and the economy beginning to regain steam, the time is ripe for programs to maximize their potential to generate revenue, and I have high hopes that the Task Force will make a significant contribu-

tion toward that effort, and that individual programs will be able to take concrete steps toward improving revenue.

A third project involves media outreach efforts. With the input of NAIP, the Commission has been considering ways to develop positive messages about IOLTA and the work it supports. The Commission is interested in exploring what might be done on a national level, and also how it can support state-based media outreach efforts by individual IOLTA programs. After years of playing defense in responding to news generated by the litigation, now is a good time for IOLTA to tell the world about the great work it supports.

On a fourth front, NAIP is now poised to move forward with the development of the IOLTA.org Web site in cooperation with the Commission. While IOLTA.org

will complement the Commission's own site at [www.abalegalservices.org/iolta](http://www.abalegalservices.org/iolta) as a source of public information about IOLTA, it also promises to be a useful, secure forum for IOLTA program staff, trustees and others to share information and resources online. In doing so, IOLTA.org can help programs overcome the isolation that comes with having more than 50 IOLTA programs scattered in different jurisdictions across the country.

There may be other initiatives afoot or likely to emerge this year. In all of these cases, the Commission and NAIP can provide leadership and resources to move them forward, but their ultimate success will depend on the input, energy, and commitment of individual IOLTA program staff members, trustees and allies. I am excited to see where these projects lead us in 2004.

## Grantee Spotlight

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aware that many of its low-income and elderly clients like Mr. R were losing their homes through questionable mortgage lending and other practices. Moreover, other clients were subjected to fraudulent home purchase scams. In response, Atlanta Legal Aid—a major and longstanding grantee of the Georgia Bar Foundation, the state's IOLTA program—created the Home Defense Program (HDP).

Today the HDP operates with a director (who carries a load of active cases), two attorneys and a paralegal. The program helps individuals who have been

victimized by various schemes that result in the loss of their homes or substantial sums of money. Often, after many years in their homes, these homeowners have seen the value of their homes dramatically increase, making their property an appealing target for abusive schemes, such as:

- foreclosure assistance frauds, in which homeowners are made to believe they are getting a loan to avoid an imminent foreclosure and are actually giving up title to their homes
- predatory mortgage lending, which saddles consumers with mortgages with extremely high interest, exorbitant fees, and balloon payments. These

predatory mortgages often originate from home improvement frauds, in which home improvement contracts are used as a pretext to rope homeowners into abusive mortgage loans, while overpricing and under-performing the work.

- home purchase schemes, in which investors purport to “sell” homes to unqualified low-income persons, usually charging large down payments and high monthly payments; the purchasers never obtain permanent ownership of the home
- While they differ in detail, the first two of these schemes are designed to steal the title to the

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## Language Access

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the risks inherent in failing to adopt new methods of practice for assisting LEP clients. The primary risk is that accurate communication between advocates and clients will be impeded because they do not speak the same language, or because untrained or incompetent interpreters are used. Using friends, relatives or especially children of clients, for example, falls far short of adequately meeting a legal representative's need to communicate effectively with a client. Failing to negotiate the language barrier results in further risks: that advocates will not obtain an accurate factual recital from the client; or a sound understanding of the client's goals and needs; that LEP clients will not grasp the options available to them or the actions that they should undertake to protect their legal interests; and that impeded communication may result in missed deadlines, inaccurate legal filings, or other mistakes that could lead to a malpractice claim.

### Unique legal issues

Third, because new client communities don't necessarily have the same legal issues as the existing client base, programs that fail to reach out to language minority clients will become increasingly isolated from and irrelevant to these communities. Immigrant and refugee clients have many of the same problems as native-born clients, but they also have problems related to their language ability or immigration status. Non-citizen clients, for example, have been hard hit by post September 11 restrictions on

issuance of driver's licenses and state identification cards in ways that generally have little impact on citizens. Many legal services programs have engaged in advocacy initiatives to help mitigate the harm to English speaking clients of welfare-to-work requirements, but not all have realized how onerous issues such as job training and work search rules are for LEP recipients.

Improving legal services programs' ability to serve LEP clients is thus an imperative. Legal aid programs carry the burden of communicating with their clients, not the other way around.

### Increasing access

Many program directors are concerned that increasing language access will consume valuable program resources. Faced with client populations that speak dozens of languages, some directors may also despair of ever attaining sufficient access. The good news is that with the deliberate allocation of resources and thoughtful attention to policy and procedures, legal services programs can achieve meaningful improvements in access.

While cost concerns tend to be exaggerated, there is no avoiding the fact that money and staff time need to be invested. The first logical step for many programs is expanding their in-house capabilities for communication. But while hiring bilingual staff is an essential component of any effort to make a program accessible to language minorities, this alone may not provide the breadth of languages needed to meet the needs of most multi-lingual service areas. Arrangements usually need to be made to provide trained interpreting

and translating services. Although volunteers can help to provide language services, most programs will need professional interpreters and translators to obtain the quality and number of languages needed. Most programs also need a telephone-based interpreting service to assist on telephone calls with clients and brief conversations in the office.

Programs also must invest substantial administrative time to develop new habits for working with LEP clients. Elements of this shift—which require a substantial commitment of time over a period of years—include:

- creating written program policy on language access
- devising protocols on how to serve LEP clients
- modifying data systems to track clients by language
- gathering demographic and caseload data to assess language needs in the program and to measure whether LEP clients are receiving services in appropriate numbers
- training all staff members that come in contact with clients on the new policies and procedures.
- training bilingual staff on interpreting methods
- training staff who work with interpreters on properly taking part in interpreted discussion
- monitoring to ensure that proper procedures are being followed

### IOLTA support

In 2003, the Pennsylvania IOLTA Board allocated \$35,000 to Community Legal Services of Philadelphia (CLS) to enable its Language Access Project (LAP) to provide training and consultations to other Pennsylvania programs in

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## Language Access

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language access. Although CLS relies on other funding sources to support the LAP, the IOLTA grant is a concrete step toward helping other legal services grantees in the state to build and improve their own language access capabilities. For example, CLS updated and consolidated a formal language access policy that is serving as a model for other programs. CLS is planning statewide trainings for program managers on Title VI and the new LSC guidance, which CLS staff helped to devise. CLS will provide training for staff at a state conference in the spring on legal interpreting. Regional consultations are also in the works to assist programs in implementing language access policies. The time needed to devise and present these various trainings and to provide individual consultations would not be possible without the IOLTA grant.

The IOLTA grant also supports CLS's advocacy work on language issues that benefit LEP clients throughout the state. For example, CLS has continued to push for change in the welfare department in how it serves LEP recipients, and is advocating for more language assistance for LEP litigants in the state court system. When programs take up language rights issues, it is natural that staff will gain sensitivity and insight into the nature of the problem and the appropriate solutions. Those advocates can spark internal change in their programs as well. IOLTA support for new language based advocacy initiatives is an effective, indirect method of promoting greater language access to legal services.

### Online Language Access Resources

- A copy of the Language Access Policy of Community Legal Services, as well as other articles on improving access to legal services for language minority clients, is available at [www.clsphila.org/language\\_access\\_project.htm](http://www.clsphila.org/language_access_project.htm)
- Resources on LEP issues for legal services programs are available at [www.lri.lsc.gov/sitepages/diversity/div\\_lep.htm](http://www.lri.lsc.gov/sitepages/diversity/div_lep.htm)
- General information and guidance by federal departments and agencies is available at [www.lep.gov](http://www.lep.gov)

### Initial support key

Assisting programs in improving services to LEP clients is a perfect activity for IOLTA support. A significant portion of the cost—though certainly not all—is for start up. Basic tasks such as assessment, planning, procurement of language services, and training are most time consuming at the outset. In some ways, helping programs get over the initial hurdles in addressing language is the toughest part, because many of the changes needed are a matter of overcoming inertia and changing ingrained bad habits. A shot in the arm in the form of an IOLTA grant is a great carrot to counterbalance the stick that the new LSC guidance represents. IOLTA grants can help programs break out of the seeming conundrum of providing better services for underserved client populations when the needs of existing clients cannot be met.

IOLTA programs should also consider funding efforts by groups of legal services grantees to develop shared language resources. Programs in Los Angeles and the Washington, D.C. area, for example, have created two new and different systems to provide language services to serve the various Asian populations. These innovative programs meet the challenge of obtaining qualified advocates and interpreters in a variety of lan-

guages by setting up cooperative arrangements between a number of programs in a geographic area.

The time is ripe for legal services programs to develop capacity to serve LEP clients in their own languages. IOLTA programs can plan a key role in facilitating change across the country.

**Paul M. Uyehara** is a staff attorney in the Language Access Project of Community Legal Services, Inc., in Philadelphia.

### Endnotes

- <sup>1</sup> This demographic information is drawn on data collected by the U.S. Census Bureau in the 2000 census. Specific sources include Table DP-2: Profile of Selected Social Characteristics: 2000; Census 2000, Table PHC0T01 tbl, 4; and *Census Brief, From the Mideast to the Pacific: A Profile of the Nation's Asian Foreign Born Population*; available online through [www.census.gov](http://www.census.gov). Historical information is drawn from Cambell J. Gibson and Emily Lennon, *Historical Census Statistics on the Foreign-born Population of the United States: 1958 to 1990* (1999), online at <http://landview.census.gov/population/www/documentation/twps0029/twps0029.html>
- <sup>2</sup> The Legal Services Corporation's draft program letter with guidance on serving LEP clients may be viewed at [www.lri.lsc.gov/annc.htm#comlep](http://www.lri.lsc.gov/annc.htm#comlep)

## IOLTA Litigation Update: Texas and Washington Celebrate Dismissals

On November 4, 2003, the U.S. Court of Appeals for the Fifth Circuit filed an order dismissing with prejudice the lawsuit brought against the Texas IOLTA program by the Washington Legal Foundation. Nearly two months later, on February 3, 2004, a stipulated dismissal order was filed in the U.S. District Court for the Western District of Washington in the Washington Legal Foundation's suit against the Washington State IOLTA program. Both dismissals were by agreement of the parties, and followed the Supreme Court's decision in *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003). In *Brown*, the Court found that Washington State's IOLTA program did not violate the Fifth Amendment.

The Texas dismissal leaves in effect the 2000 judgment of District Court Judge James P. Nowlin, which followed a bench

trial on the merits of the case. In that decision, Nowlin found that no just compensation was due the plaintiffs, and found the Texas IOLTA program to be constitutional. *Washington Legal Foundation, et al. v. Texas Equal Access to Justice Foundation, et al.*, 86 F.Supp.2d 624 (W.D. Tex. 2000)

The Washington Legal Foundation's appeal of that decision led to a reversal by the Fifth Circuit Court of Appeals and the subsequent petition for writ of certiorari to the Supreme Court by TEAJF in 2002. Shortly after the Court issued the *Brown* decision, it granted certiorari, vacated the Fifth Circuit decision and remanded the Texas case to the Fifth Circuit for proceedings consistent with its decision in *Brown*.

The agreed dismissal comes nearly 10 years after the Washington Legal Foundation and other plaintiffs sued TEAJF in 1994, alleging that the IOLTA program

violated the First and Fifth Amendments.

In Washington, the dismissal came after the case was remanded to the district court for hearing on the plaintiffs' First Amendment claims. The case was filed in 1997, and after being dismissed by the district court, was appealed to the Ninth Circuit Court of Appeals, which ruled in favor of the IOLTA program. The Supreme Court granted certiorari regarding that decision in 2002, and issued its decision in *Brown* in 2003.

\* \* \*

IOLTA litigation persists in other states, however. State court actions raising Fifth Amendment claims filed against the Illinois and Missouri IOLTA programs are in their respective state appellate courts. The appeals follow decisions by trial courts in both states to dismiss the initial claims.

### Grantee Spotlight

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house or the equity out of it. They often result in a high-cost mortgage loan that will generate high monthly payments for the lender and too frequently send the struggling homeowner into foreclosure. Most victims of these scams are elderly homeowners who are equity-rich but cash-poor. The home purchase schemes use the dream of homeownership to take the savings of hard-working but financially unsophisticated people.

### Multifaceted advocacy

The HDP has responded to these abusive schemes by employing a multifaceted advocacy approach: litigation, media exposure, legislative advocacy, community education, and referrals to private attorneys, "good" mortgage lenders (for refinances) and real estate agents (to sell the home, if necessary).

The HDP's litigation efforts have included direct representation of individual clients and collaboration with private attorneys. In the late 1980s, HDP represented a

homeowner who had lost title to her home in a foreclosure assistance fraud scheme. HDP sued the perpetrators for RICO violations and worked with private attorneys who had sued the same defendants. HDP provided expert testimony in one case. That case resulted in a jury verdict of \$379,000; and the 15 other cases were settled for \$2.4 million. In the case handled by HDP, the client obtained a judgment for \$170,000 and the return of her house. In another instance,

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## Grantee Spotlight

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HDP represented a number of homeowners against Fleet Finance in federal court and state courts alleging violations of the federal and Georgia RICO statutes. After four years of litigation, HDP obtained confidential settlements for its clients.

HDP also worked with other private attorneys suing Fleet, including Roy Barnes, who later became governor of Georgia. HDP cooperated with the Georgia Attorney General who had undertaken an investigation of Fleet at HDP's request, ultimately resulting in an unprecedented \$115 million settlement with Fleet affecting 18,000 to 20,000 homeowners. The private attorneys settled two class actions for \$20 million.

### Media exposure

HDP attorneys have worked extensively with the media to expose the abusive lending practices it has discovered and to demonstrate their effect of the lives of elderly homeowners. Segments have appeared on CBS's 60 Minutes, NBC Nightly News, ABC Prime Time Live, and Fox 5 News in Atlanta. Numerous major stories have appeared in the *Atlanta Journal-Constitution*, the *Boston Globe*, and *The New York Times*.

### Legislative work

Through their litigation and appearances in the media, HDP attorneys have become known as experts in the state and nationwide on issues relating to predatory mortgage lending. As a result, legislators have invited their input and assistance.

**HDP serves its community on a daily basis by assisting individual homeowners who have been harmed by local and national companies with abusive, predatory mortgage lending practices, foreclosure assistance fraud, and fraudulent home purchase scams.**

In 1993, HDP participated in legislative advocacy efforts addressing these issues in the Georgia General Assembly, and a law subsequently was enacted that licensed mortgage lenders, mortgage brokers and home improvement companies. In 1994, HDP testified before the U.S. House and Senate banking committees before passage of the Home Ownership and Equity Protection Act (HOEPA), which requires special disclosures for high-cost mortgage loans and prohibits certain identified abusive terms in these loans.

At the invitation of U.S. Senator Charles Grassley (R-Iowa), HDP's director testified before the U.S. Senate Committee on Aging in 1998 to provide information. Similarly, he testified in 2000 before the U.S. House Banking Committee (on proposed legislation that is still pending), at the request of Rep. James Beach (R-Iowa). Responding to requests from elected legislators and the governor of Georgia, HDP worked on anti-predatory lending bills in the Georgia General Assemblies during 2001 and 2002. 2002 saw

the enactment of then-Governor Roy Barnes's Georgia Fair Lending Act (GFLA), the strongest anti-predatory lending law in the country. Barnes was not re-elected in 2002, and emboldened by his absence, the mortgage lending industry successfully sought amendments that dramatically weakened GFLA in 2003.

### Community education and referrals

HDP regularly participates in community education efforts to teach homeowners about ways to avoid abusive mortgage lending schemes. Another preventative technique is, where appropriate, to refer homeowners to local non-profit agencies to assist them in refinancing their high-cost mortgage loans through low-cost, legitimate mortgage lenders. HDP refers many older homeowners for reverse mortgages.

### Conclusion

With the help of funding sources like IOLTA, HDP serves its community on a daily basis by assisting individual homeowners who have been harmed by local and national companies with abusive, predatory mortgage lending practices, foreclosure assistance fraud, and fraudulent home purchase scams. Due to the persistence of predatory schemes and practices, as well as the willingness of the mortgage lending industry to resist protections for consumers, HDP's work to fight predatory lending remains as crucial for Atlanta Legal Aid's clients as it was when the project was formed.

**William J. Brennan, Jr.** directs the Home Defense Program and has been a staff attorney at the Atlanta Legal Aid Society for 35 years.

## From the Chair...



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

In the last decade or so, lawyer referral programs have hit upon a new method of preventing burn-out, promoting continuing LRIS education, and encouraging networking. I'm talking about the increasing number of regional LRIS conferences taking place annually around the country.

The granddaddy regional conference was in California. Conducted yearly in different parts of California, the conference was put on by the State Bar of California, with some assistance from the ABA LRIS Committee. The state bar's involvement ceased a few years ago during a budget crisis. The conference has been mounted occasionally since then by several of the local California bars, with substantial programming help from the LRIS Committee.

Over the last few years, additional regional conferences have been held in Florida, New York, Ohio, and the Mid-Atlantic states (Delaware, Maryland, Pennsylvania and Virginia). We believe these regional conferences provide an important opportunity for state and local programs to stay abreast of LRIS developments between editions of the LRIS Committee's

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## What a Game: Purchasing a Telephone System

by Ken Finkelson

*"If you want more home runs, you have to get back to basics."*

**T**his baseball analogy applies to almost every professional endeavor. It certainly cannot be truer than when approaching telecommunication needs. Going back to the fundamentals of purchasing saves costs both in capital outlay and recurring business expenses. Let's play our baseball game on two fields: the purchase of a new telephone system and an analysis of your monthly telecom expenses.

When buying a new telephone system, an organization must address several key questions:

- Why are we doing this?
- What specific business needs are we trying to solve?
- How does this specific system complement our strategic objectives?
- Will it accommodate foreseeable growth?

Many times, a vendor will parade a multitude of slick equipment features that may not address any of your organization's needs. You may just need good bats and gloves. If the fancy stuff was not on your list, tell the vendor "no thanks" (unless the items are free, which is rare indeed). It is important to focus on getting the first hit. If you are buying a system because you cannot get parts for the old one, or the old one is too troublesome, then do just that. If you have a compelling need for detailed call reporting—such as number of calls or which interviewer is available or signed out—then new technology could support this game plan. If you have a strategic objective of grossing \$15,000 per month in referral fees, but your existing system can't handle the increased volume anticipated to reach this goal, it may be time to upgrade.

Finally, plan for reasonable growth by building in enough room for growth when making the original purchase, so you are not restricted later. For example, if you were buying a system that handled 20 stations and you already have 18, how would you accommodate a grant that required five new full time staff members? (Ok, these numbers are a little excessive, but you get the picture.)

### Formalized process

The fundamental strategy for this game is the formalized procurement process. Using the request for information (RFI) and request for price/quote (RFP/RFQ) is an absolute requirement. Such requests should outline the following:

- Minimum requirements (such as):

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## From the Chair...

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own National Lawyer Referral Workshop each October.

That is to say, in an era of text messaging, email, teleconferencing, video-conferencing, Listservs and more, there remains no

substitute for getting everyone in the same room to talk. These conferences do just that: they afford attendees the opportunity to reconnect with old colleagues, meet new ones, hear from regional and national experts on the latest developments in LRIS, and just generally talk shop. Attendees can compare notes on the particu-

lar issues they face, talk about the joys and miseries of their work, participate in programming aimed at areas in which they want their programs to improve, and in so doing, ward off burnout.

State and local lawyer referral programs can also use these conferences to organize around

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## Purchasing

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- Eight trunks equipped, and 12 wired for future use
- Twenty 10-button sets with caller-ID and speakerphone capabilities
- ACD reporting software
- Call detail recording
- Recorded announcement device
- Due dates for return of the RFI or RFP document, installation of trunks in the building, and cut over (when service goes live)
- Line item pricing
- Non-required but desired items
- Post cutover labor, maintenance and equipment charges
- Vendor suggestions

### Monthly expenses

Analyzing the monthly telephone expenditures is a whole different, adventurous game that could intimidate even the most athletic player. Telecom billing is generally represented to customers using tools that were written when the company was a monopoly. Since there was no competition, there was no incentive on the part of the company to change to an understandable

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## Free Telephone Technology Assistance Is Just an Email Away

Do have questions on how to optimize your telephone system or how to integrate more technology into your LRIS call center?

The ABA Standing Committee on LRIS has partnered with the ABA Network Infrastructure Group, and offers free telephone technology consulting services to your LRIS program. Ken Finkelson, manager of the ABA Network Infrastructure Group, extends the invitation to LRIS directors and other bar executives to seek counsel on all issues surrounding phone technology, with the only "bad" question being the one that remains unasked.

Services are offered free of charge on a first-come, first-served basis, with priority given to LRIS Model Rules-compliant programs that are approved to use the ABA Logo and Slogan. Finkelson has spoke on this topic at the National Lawyer Referral Workshop, and his sessions are consistently praised and well attended.

Consider the questions below, and if you think you need help with your telephone technology issues, email LRIS Committee Staff Counsel Jane Nobsch at [jnobsch@staff.abanet.org](mailto:jnobsch@staff.abanet.org) for further details.



Ken Finkelson

- How old is your system?
- What are your local rates per minute? Per month?
- Do you have an 800 number?
- Are you happy with your services?
- Are you looking to cut expenses? Expand services?
- Do you own your telecommunications system?
- Who is the vendor that maintains and/or sold you the system?
- Do you have a maintenance contract?

# Back to Basics: Highlights of the 2003 National Lawyer Referral Workshop

by Katherine M. Knudsen

An audience of lawyer referral program staff members, bar executives and committee members from across the country converged on Denver to spend three warm October days at the 2003 National Lawyer Referral Workshop. These attendees brought with them a “Rocky Mountain High” level of enthusiasm, evidenced by the energy, participation and spirited discussion among the attendees and program speakers.

The workshop began with the annual pre-conference “Nuts and Bolts” program designed to introduce newcomers to the world of lawyer referral and information service (LRIS). The session provided an overview of LRIS program operations, quality standards and current issues plaguing LRIS programs. Claire Jeffries of the Akron Bar Association LRIS and Audrey Osterlitz of the New York State Bar Association, two highly experienced program directors, talked about LRIS “lingo” and put meaning to the “business of public service” ethic that guides this public service field.

## News update

New to the workshop was the “LRIS News Update” during the opening plenary. The newscasters were James McLindon, chair of the ABA Standing Committee on LRIS, and Grace Fonseca, a member of the LRIS Committee and executive director of the Alameda County Bar Association

*Many LRIS programs are investigating whether to include a limited representation panel for referrals*

LRIS. McLindon and Fonseca, along with a team of informed commentators, presented the news on legal referral services around the country.

## Featured programs

Under the theme of *Back to the Basics*, the attendees had the choice of attending break-out sessions on multiple topics. These topics included:

- Operating a reduced fee program
- Adding a brief advice panel
- Telephone technology suitable for your program
- An analysis of LRIS software
- Collaboration among lawyer referral services
- Marketing
- Techniques to motivate and manage the staff
- Best practices of program operations
- Establishing a percentage fee program
- Implementation of subject matter panels
- Examining critical ethical issues

There were also break-out sessions on the hot new topics of limited scope representation and collaborative lawyering.

## Limited scope representation

Joan Andersen of the King County Bar Association LRS, Ayn Crawley of the Maryland Legal Assistance Network, and Lisa Reep of the Contra Costa County LRIS presented a session on limited scope representation. Sometimes called unbundling, limited scope representation refers to attorney-client relationships in which the client and the attorney agree that the client will perform some of the tasks associated with the client’s matter and the attorney will perform others. Family law cases are often well suited to limited representation. Thus, many LRIS programs are investigating whether to include a limited representation panel for referrals.

The thought-provoking and lively discussions at the session revolved around how to set up and run a limited scope representation panel, resulting issues, and trends across the country relative to limited representation. Other issues discussed included the challenges of court resistance to unbundling, lack of public awareness and skills, and the lack of a delivery system structure for matching lawyers and clients interested in unbundling. Unbundling is clearly a hot topic that will be featured next year as a

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## “And the Award Goes To...” 2003 Cindy A. Raisch Award Recognizes Kansas’ Lawyer Advice Line

The 2003 National Lawyer Referral Workshop in Denver added yet another event to its already momentous schedule—the Cindy A. Raisch Award presentation.

During the Workshop attendees’ luncheon, ABA Standing Committee on Lawyer Referral and Information Service Chair James McLindon honored the Kansas Bar Association in conjunction with Kansas Legal Services for their Lawyer Advice Line, a brief advice service offered to LRIS clients via a 900 number. On hand to accept the award were Kansas Bar Association Lawyer Referral Director Roseann Hiebert and Marilyn Harp, director of Kansas Legal Services.

### A program innovation, and a delivery model

The KBA Lawyer Advice Line is designed to provide clients with valuable legal advice, but also preserve a panel attorney’s

*“This is an example truly worthy of emulation, in the spirit of the Raisch Award.”*

place in the referral rotation when clients need very limited help, not a full consultation. Additionally, the service provides yet another avenue for the LRIS program to give legal information to middle and lower-income consumers, with the added value of generating further revenue for the bar association.

Often, callers to the LRIS program seek an answer to a legal question or are merely curious about a potential legal problem, but have no real intention of hiring a lawyer. These callers often do not qualify for pro bono assistance, and do not know who to ask for help. A brief advice line

helps fill this gap by providing a low cost alternative to an in-person consultation, while still providing quality legal advice from lawyers.

Of particular note is the elegant way in which the KBA incorporated its existing technology, and with a very small additional investment, expanded its ability to serve the public. Hiebert, in addition to accepting the Raisch Award on behalf of the Kansas Bar Association, presented a workshop session on how to effectively set up a brief advice panel based on the KBA model. (*Hiebert also wrote about this issue in the Summer 2003 issue of Dialogue.*)

According to Jane Nosbsich, staff counsel of the ABA LRIS Committee, “The KBA Lawyer Advice Line won the attention of the committee for two important reasons. First, of course, the KBA developed a very successful brief advice program. But almost more importantly, KBA’s accomplishment showed that a statewide program located in a rural area could be financially successful.” Nosbsich added, “This is an example truly worthy of emulation, in the spirit of the Raisch Award. If your lawyer referral service has interest in a brief advice line, contact LRIS Committee staff and request an LRIS Clearing-house packet of information and materials on how to do it.”

The Raisch Award is named for Cindy A. Raisch, an innovator and national leader in the quest

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LRIS Committee Chair Jim McLindon (left) presents the Cindy A. Raisch Award to Roseann Hiebert, director of the Kansas Bar Lawyer Referral program (center) and Marilyn Harp (right) regional director of Kansas Legal Services.

## Purchasing

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device. To further complicate the bill, federal, state, local and taxes will create additional charges on your bill. Some are mandatory, but others are not.

Once again, keeping the focus on fundamentals is of paramount importance. Your request should list the types of services requested, and should be distributed to various vendors. For example, if you were in Chicago, you would send it to SBC/Ameritech, AT&T, MCI, Sprint, and any other reputable vendor. Such a set of pricing requirements could be as simple as the one below:

- Intrastate costs (per minute)
  - 0-8 miles
  - 8-16 miles
  - 16-50 miles
  - >50 miles
- Intrastate interlata (expensive in-state long distance

calls with mandated state tariffs)

- Interstate Costs (per minute)
  - State-to-state in continental US
  - State-to-state for Hawaii/Alaska
- International pricing (per minute) by country
- Do you have contracts/terms/minimum revenue commitments (MRCs)?
- Are there penalties involved in your MRCs?

Using fundamental procurement methods will give you the best change to win the game, which in this case means getting the best pricing. Take the time to do it right, and you'll hit that home run clear out of the ballpark.

**Ken Finkelson** is manager of network and infrastructure for the ABA's Department of Information Services. For assistance, contact him directly at 312-988-6373 or email [finkelsk@staff.abanet.org](mailto:finkelsk@staff.abanet.org)

## From the Chair...

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and respond to common problems, such as the Yellow Pages listings issue that recently has impacted many programs in certain regions around the country.

The LRIS Committee has supported regional conferences and will continue to do so. We are available to brainstorm programming ideas, identify and in some cases provide knowledgeable speakers, supply written materials, and even offer mini-PAR visits, consistent with our resources.

Regional conferences cannot supplant the LRIS Committee's annual National Workshop for at least two reasons. First, no regional group of state and local bars has the time or resources to mount such a program. Second, one of the most important aspects of the Workshop is, as the name implies, the national perspective that it provides, a perspective that would be difficult for any single region to provide.

What regional conferences do provide is an excellent supplement to the annual National Lawyer Referral Workshop. If you would be interested in starting such a workshop in your state or region, please contact LRIS Committee Staff Counsel Jane Nosbisch for assistance at 312-988-5754 or [jnosbisch@staff.abanet.org](mailto:jnosbisch@staff.abanet.org). She'll be happy to help.

## Raisch Award

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to improve the quality of service provided by Lawyer Referral and Information Services. It was established by the LRIS Committee in 1996, and recognizes the enhancement of public service-oriented lawyer referral and information programs that provide access for moderate-

income consumers across the country. Award recipients may be any individual, group or organization that demonstrates exceptional achievement(s) or superior service to or support of a public service-oriented lawyer referral and information program. Watch the LRIS Committee Web page at [www.abalegalservices.org/Iris](http://www.abalegalservices.org/Iris) for information concerning the nomination process for the 2004 Raisch Award.

### Mark Your Calendar

The 2004 National Lawyer Referral Workshop will take place in San Diego from October 13 through 16. Please check in at [www.abalegalservices.org/Iris](http://www.abalegalservices.org/Iris) for more information.

## Back to Basics

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session at the 2004 Workshop in San Diego.

### Collaborative law

Another hot topic featured in a break-out session was collaborative lawyering. This session was presented by Vivian Miller of the Kentucky Lawyer Referral Service, and Carol Woods of the Bar Association of San Francisco LRS. Collaborative law, mainly utilized in family practice, is a new model for handling cases. The concept is as follows: Both parties and their lawyers agree, usually in writing, that they will negotiate a settlement in the case. Neither side will resort to court or even threaten to take the matter to court during the collaborative process. If the parties cannot reach a resolution and the matter proceeds to court, the parties' respective lawyers must withdraw and the parties will need to hire new lawyers to litigate the matter.

The concept is to defuse the adversarial approach and create an incentive to settle the matter in a cost-effective and cooperative manner. As in traditional litigation, both parties have access to each other's financial information and other records. But unlike litigation, there are no protracted battles in getting the information. Nothing is revealed in a collaborative session that would not be discoverable at trial, but the attitude is different—the parties and lawyers are working together to value assets and divide them, to decide what is best for the children and to create a more positive relationship for future interactions.

**In many jurisdictions, the collaborative law process is being driven by consumer/client demand. As such, as public interest programs, many LRIS programs are looking to add a collaborative lawyering panel.**

In many jurisdictions, the collaborative law process is being driven by consumer/client demand. As such, as public interest programs, many LRIS programs are looking to add a collaborative lawyering panel. In this session, there was an active discussion among the panelists and attendees relative to how an LRIS program can adapt and enhance its role as a "match-maker" between client and lawyer in the collaborative lawyering context, as well as the ethical considerations attributable to collaborative lawyering. As collaborative law is becoming the trend for certain family law matters, this topic will likely be featured at future workshops.

### Marketing

LRIS programs are intended to operate as non-profit public services. In order to survive, however, programs must generate revenue to keep the service operating and growing to serve the ever-increasing needs of moderate-income consumers.

This year, the Workshop featured a showcase of marketing options to serve the needs of small, moderate and large LRIS programs. Attendees had the choice of attending one or all of the three different marketing sessions: *Doing it on a Shoestring—Extremely Limited Money, Very Limited Staff and Volunteer Resources* presented by Grace Fonseca of the Alameda County Bar Association LRS; *Some Money, But Not Ready for Prime Time* presented by Karen Kelly of the Florida Bar Lawyer Referral Service, Stephen Laskin of the Boston Bar Association LRS and K. Martin White of the LRS of Bar Association of Northern San Diego County; and *Lights, Camera, Action—Are You Ready for Primetime?* presented by Marion Smithberger of the Columbus Bar Association and Howard Shalowitz of the Bar Association of Metro St. Louis. Each of these sessions was informative, educational and entertaining.

### New ideas roundtable

The workshop concluded with a roundtable discussion with all of the participants to discuss what hot topics and other ideas for the next workshop. The dialogue generated pages of notes collected by the LRIS Committee staff, and will provide substantial input regarding the 2004 workshop.

The 2004 National Lawyer Referral Workshop will take place from October 13 to 16, 2004 in San Diego. Visit the LRIS Committee's Web site at [www.abalegalservices.org/lris](http://www.abalegalservices.org/lris) for registration information.

**Katherine M. Knudsen** is a member of the ABA Standing Committee on Lawyer Referral and Information Service.

## From the Chair...



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

We were delighted to learn of the appointment of Helaine Barnett as the new president of the Legal Services Corporation. Helaine has been an outstanding leader in both the bar and legal services communities for many years. She has brought special insight and understanding about legal services matters to her work with the ABA Board of Governors, the ABA House of Delegates and numerous other bar leadership posts. Her long experience on the front lines of legal services advocacy and in bar leadership positions is certain to be invaluable as she assumes this important new responsibility. The ABA, and our committee, look forward to working with her and the LSC board as they continue their important work, seeking to make justice more readily available to our nation's poor.

The Standing Committee on Legal Aid and Indigent Defendants continues to manage a broad range of programs affecting the delivery of civil legal services to the poor and criminal defense services to indigent clients. We have just concluded the last in a series of hearings on compliance by the states with the dictates of the 1964 Supreme Court decision

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## Hearings Reveal Shortcomings in Indigent Defense System

March 18, 2003 marked the 40th anniversary of the U.S. Supreme Court's landmark decision in *Gideon v. Wainwright* on the right to counsel for poor persons accused of crime. Throughout 2003, the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) held a series of public hearings to examine whether indigent defendants are receiving effective and meaningful legal representation in keeping with the spirit of the *Gideon* decision.

SCLAID held four hearings at which 32 witnesses testified about the delivery of indigent defense services in the following states: Alabama, California, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia, and Washington. Witness testimony revealed a number of shortcomings common to indigent defense systems in many states, including:

- Lack of independence of indigent defense counsel from judges and politicians
- Absence of sufficient training, qualification standards, and performance evaluations for indigent defense counsel
- Inordinately high caseloads of indigent defense counsel
- Lack of indigent defense system standards and accountability
- Lack of uniformity of indigent defense services within individual states
- The absence of statewide oversight of indigent defense services
- Inadequate funding for indigent defense services
- Lack of resources for investigative, expert and other support services
- Inadequate compensation for indigent defense counsel
- Disparity in funding and resources for indigent defense versus prosecution

Norman Lefstein, of Indiana University School of Law in Indianapolis and chair of SCLAID's Indigent Defense Advisory Group, summarized the state of indigent defense across the nation at the final hearing: "As of 2003, virtually everywhere in this country, defense services are deficient. And in some places, they are just woefully inadequate. Recently, the problems seemingly have gotten worse as state and local governments have wrestled with very difficult budgetary problems." Lefstein testified that inadequate funding for indigent defense routinely results in wholesale violations of national criminal justice standards as well as rules of professional conduct. "There is another enormous implication, though, of the system under which defense services are now provided," added Lefstein, "and that is the constant risk and reality of convicting truly innocent people."

The information obtained through these hearings clearly demonstrates that, a full 40 years after *Gideon*, indigent defense systems across the nation remain in immediate and urgent need of substantial reform.

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## New State Studies Document Civil Legal Needs

by Bob Echols

A new round of state legal needs studies reveals that the gap between the civil legal needs of low-income people and the resources available to meet them remains enormous. Most low-income people with a civil legal problem either try to handle it on their own or simply do nothing about it. Only a fraction of those facing a problem obtain legal assistance of any kind. Many do not understand that there may be a legal solution to their problem, and many do not know that they may be eligible for free legal assistance.

In 2003, Connecticut, Massachusetts and Washington completed studies of the civil legal needs of low-income people in the state. Other states that have completed studies in the past few years include New Jersey (2002), Missouri (2002), Vermont (2001) and Oregon (2000).

All of these studies were based upon statistically valid surveys of low-income people in the state. Most used a random telephone survey methodology, supplemented with in-person interviews for people in categories that cannot be reached effectively by telephone, such as immigrants, the homeless, migrants, and institutionalized people. The questions asked in the studies were all based to some degree on those used in the ABA's *Comprehensive Legal Needs Study*, released in 1994. However, each state updated and modified the questionnaire to reflect its own particular circumstances and concerns.

### Results consistent

While the questions considered—and thus the findings—varied from state to state, the results were broadly consistent with

one another and with the ABA's 1994 findings. If anything, civil legal needs have increased over the past decade. The ABA study found that approximately half of the households surveyed had experienced a civil legal need in the preceding year. In the 2003 Washington study, the equivalent figure was more than three-quarters. In the Connecticut and Massachusetts studies, it was more than two-thirds. The Massachusetts study notes that this figure was much higher than the 38 percent found in a similar survey conducted in the state in 1993—an increase that only partially can be attributed to methodological differences.

Similarly, the Connecticut and Massachusetts studies showed that the average number of legal problems per low-income house-

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## From the Chair...

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in *Gideon v. Wainwright*, and are preparing a report and recommendations based on our findings. We have completed a major study of the indigent defense system in Virginia. We continue to provide technical assistance in the improvement of defense systems in a number of states. We have accepted responsibility for the ABA's efforts to promote loan repayment assistance programs. Our new subcommittee on the topic is chaired by Diane

Kutzko, who was our liaison to the predecessor ABA Commission on Loan Repayment and Forgiveness. Our subcommittee on access to justice is working to develop the annual meeting of state access to justice commission chairs, to be held in Atlanta on April 16 in conjunction with the ABA/NLADA Equal Justice Conference. At the same time, the committee is actively engaged in monitoring—and where appropriate, responding to—important developments in the delivery of civil or defender legal services at the state and national levels.

It is my firm belief that the civil and defender communities have much in common, and can each benefit from a full sharing of experiences and expertise. For that reason, we have sought to bring together previously separate civil and defender sub-groups within our committee and within the ABA to promote greater communication and interaction. We encourage bar, civil legal services and indigent defense advocates to convey to our committee their perspectives, views and concerns on topics within our purview.

## Civil Legal Needs

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hold per year was somewhere between two and three, compared an average of one per household per year in the ABA study. These figures reflect the fact that most households that experience legal needs face more than one legal problem. Most of the respondents considered the problems that were identified to be important or very important.

### Few seek legal help

The studies found that most households with legal needs either tried to handle the problem on their own or simply did nothing about it. Only a small percentage obtained the help of an attorney: 10 percent in Connecticut, 17 percent in Massachusetts, and 12 percent in Washington. These figures included full-fee private attorneys as well as pro bono attorneys and legal aid advocates. Several of the studies found that the percentage of respondents who obtained help from legal aid programs was in the single digits—for example, seven percent in Massachusetts and just over three percent in Connecticut.

The studies show that many low-income people are not aware that there may be a legal solution to the problems they face. For example, the Washington study found that half of the respondents with a legal problem did not know that there were laws to protect them or that the legal system could provide relief. Others did not know where to turn, were afraid, believed they could not afford legal help, or faced language barriers. Awareness of the availability of free

legal aid varied from state to state, from a high of around 50 percent to as low as 15 percent.

### Areas of need

While the distribution of areas of need varied somewhat from state to state, legal problems related to housing were typically the most common, followed by family, consumer, and employment-related problems, with each category generally ranging from 10 to 20 percent of all problems. Other areas include public or municipal services, benefit programs, health, wills and estates, civil rights, education, disability, and immigration. Respondents were most likely to seek legal help for family problems. This is consistent with the fact that many legal aid and lawyer referral programs report that family cases are disproportionately represented among requests for assistance.

Not surprisingly, respondents who obtained legal help for their problem generally felt better about the outcome than those who tried to handle it on their own or did nothing. Those states that asked respondents about their attitudes toward the legal and judicial system found that those who obtained legal assistance were much more likely to have a favorable view of the system.

The various studies explore these issues and others in more detail. All are available online, along with supporting material, through SPAN's Web site at [www.nlada.org/Civil](http://www.nlada.org/Civil) (click on the button for "SPAN: Access to Justice Partnerships" and go the SPAN Access to Justice Library).

Equal justice advocates in the states involved are using the findings of the various studies

to build support for increased resources for civil legal assistance. The three most recent studies were conducted for the Connecticut Bar Foundation, the Massachusetts Legal Assistance Corporation, and the Washington State Supreme Court Task Force on Civil Equal Justice Funding, respectively. Sponsors of studies in other states include Legal Services of New Jersey, the Missouri Bar, the Vermont Committee on Equal Access to Legal Services, and the Oregon State Bar. Additional studies are currently underway in Illinois, Montana, and Tennessee, while several other states are planning or considering studies.

**Bob Echols** is the director of SPAN, a joint project of the ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association. SPAN supports state-level partnerships among the bar, the courts, and legal aid providers to expand access to civil justice for low-income people.

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## Shortcomings

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Much work lies ahead to ensure that *Gideon's* promise is finally realized in this country. Toward that end, SCLAID plans to release a report later this year with its findings from the hearings and recommendations for improving indigent defense systems.

*For more information on the forthcoming report or SCLAID's work on indigent defense issues, please contact Shubhangi Deoras, SCLAID assistant counsel, at 312-988-5765 or [deorass@staff.abanet.org](mailto:deorass@staff.abanet.org)*

## ***Nominations Sought for 2004 Harrison Tweed Award***

The ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association invite nominations for the 2004 Harrison Tweed Award.

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

The award will be presented in August during the 2004 ABA Annual Meeting in Atlanta, in

SCLAID has obtained a new Web address to assist users in accessing indigent defense content on the ABA Web site. A wide variety of ABA indigent defense reports, policies and other relevant information is available on the web. Please visit our pages at: [www.indigentdefense.org](http://www.indigentdefense.org)

recognition of work accomplished during the year beginning April 1, 2003. Projects that began prior to that date will be considered if substantial services have been provided between April 1, 2003 and March 31, 2004. Nominations must be postmarked by April 1, 2004.

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

## ***Barnett New LSC President***

The Legal Services Corporation has announced the appointment of Helaine M. Barnett as its new president. Barnett has devoted her entire professional career to providing legal services to the indigent in New York City. She has held various management positions with the Legal Aid Society of New York City for the past 37 years, and has served as the civil division attorney-in-charge since 1994. Barnett has also been very active as a bar leader on the local, state and national levels. She has served on the ABA Board of Governors and on its executive committee, as well as on numerous bar and governmental committees and commissions. Barnett succeeds John N. Erlenborn, a former Congressman from Illinois, who is retiring. Her appointment became effective January 20, 2004.

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