In 1999, Hunton & Williams was awarded the Pro Bono Publico Award by the ABA Standing Committee on Pro Bono and Public Service in recognition of its strong and consistent institutional support for direct, free legal services to the poor. Now, almost six years later, we revisit with the firm to learn how it is building and thriving on its pro bono accomplishments.

Throughout its offices, Hunton & Williams lawyers are expected to do a substantial amount of pro bono work each year. Lawyers average about 64 hours a year of pro bono service, and these hours are taken into consideration in the annual review process for both associates and partners. Every attorney is given 50 hours of billable credit for the first 50 hours of pro bono work done, and those attorneys who do more than 100 hours of pro bono are honored with an award given in the name of one of the firm’s founding partners, E. Randolph Williams Pro Bono Award. Last year, approximately 125 attorneys qualified for this award.

Beginning in 1989, the firm’s managing partner commissioned an in-house review to determine how they could more effectively develop a firm-wide pro bono culture. As a result of this study, the firm opened an office in Church Hill, one of the oldest and poorest communities in Richmond, Virginia. The purpose of this office was to provide free legal services to the working poor—a portion of the legal needs of the poor.

Hunton & Williams’s commitment to direct client service is evidenced by its office in the low-income Church Hill community in Richmond. ABA President Robert J. Grey, Jr. is among the Hunton & Williams attorneys providing pro bono services there.

Direct service emphasis

Early on, the firm made a decision to focus its pro bono efforts more on direct legal services to individuals than on large cases. The original Church Hill office, which handles family law, landlord-tenant, guardianship and occasional real estate cases, now serves the entire city of Richmond and seven surrounding counties. Approximately 100 Hunton & Williams lawyers volunteer their time at the office each year.

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The program handles about 350 cases annually and is preparing to celebrate its 15th anniversary in June 2005. In the mid-1990s, following the success of the Church Hill project, the law firm opened a similar office on the south side of Atlanta, and started to engage its Atlanta attorneys in developing a similar pro bono culture.

Since the mid-1990s, the firm has had two full-time pro bono fellows. The fellowship is a two-year position for law school graduates seeking to pursue a career in public service. In Richmond, the Hunton & Williams Pro Bono Fellow devotes approximately 80 percent of the time working directly as a legal aid attorney and the remaining 20 percent with the firm’s Church Hill office. In Atlanta, the fellow works full-time with the firm’s south side pro bono project. In addition to receiving a remarkable career opportunity, these two fellows serve as mentors to other pro bono attorneys and share their expertise to strengthen the law firm’s pro bono resources.

**Firm-wide planning**

When the ABA issued its Law Firm Pro Bono Challenge in the mid-1990s, Hunton & Williams again re-evaluated its pro bono approach and moved forward with a more forceful and comprehensive plan for expanding pro bono service firm-wide. A separate pro bono committee was formed in each city and chaired by a partner. The firm-wide pro bono committee, which is headed by George Hettrick and includes the pro bono partner from each office, meets monthly with the intention of sharing important information and keeping the pro bono inspiration alive. In 1995, the law firm met the challenge of devoting 3 percent of its attorney time to pro bono and has continued to meet that challenge every year since.

Since receiving the Pro Bono Publico Award in 1999, Hunton & Williams has continued to seek out pro bono initiatives in its offices world-wide, including new projects in Brussels, London and Africa. In the last two years, the Richmond office of the law firm has partnered with the University of Virginia Law School to develop a pro bono asylum and immigration project that is run with four law firm attorneys and eight law students. The first year of this law firm/law school collaboration has proven to be tremendously successful. Plans are in place to expand the project to include a domestic violence clinic, to be opened in the fall 2005 at the University of Virginia in Charlottesville.

When asked about the secret to the firm’s successful pro bono culture, George Hettrick responds...
From the Chair. . .

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

One of the greatest resources for lawyers interested in pro bono work is the ABA Center for Pro Bono. The center has existed in one form or another since the late 1970s and continues to be a work in progress. While its core purpose always has been to maintain a wealth of material on pro bono activities nationally and to activate state and local organizations to form robust pro bono programs and partnerships, the center’s name and the way it fulfills its mission have adapted with the passage of time.

One cornerstone of the center’s mission has been to provide technical support through its Peer Consulting Project. A specially selected team of consultants is dispatched to a requesting organization to work with it regarding pro bono initiatives. Requesting organizations include pro bono programs, state planning groups, in-house corporate legal departments, government attorney offices, judges, minority bar associations, and law schools. The team spends two to three days on site, meeting with stakeholders in the organization’s community in order to analyze and address the issues facing it, and concludes with an oral presentation and

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Pro Bono Policy News from Around the Country

Mississippi revises Rule 6.1 to include mandatory pro bono reporting
On March 21, 2005, the Supreme Court of Mississippi adopted a new Rule 6.1 of the Mississippi Rules of Professional Conduct. The new rule now requires attorneys to annually report the number of hours they dedicate to pro bono legal services and whether this obligation was satisfied through a collective plan, or whether the obligation was met through a financial contribution.

The new Rule 6.1 states that the pro bono obligation is aspirational in nature—not mandatory—and that failure to do pro bono service is not a basis for discipline under the Rules of Discipline for the Mississippi Bar. The rule states that an attorney may satisfy the pro bono obligation by:

- Providing 20 hours annually of pro bono legal services to the poor
- Providing 20 hours annually of pro bono legal services to charitable, religious, civic, community, governmental or educational organizations for the purpose of giving legal counsel to the poor

or

- Making an annual contribution of $200 to the Mississippi Bar for the purpose of providing legal services to the poor through legal aid organizations

The new rule also allows lawyers who perform more than 20 hours of pro bono per year to carry over those additional hours for up to two years. The revised rule also allows law firms to collectively satisfy these obligations.

New York State Bar Association adopts expanded definition of pro bono
On April 2, 2005, the New York State Bar Association House of Delegates adopted a new definition of pro bono that expands the scope of activities covered under “pro bono publico” to include legal services to a variety of nonprofits serving the public good, activities to improve the law or the legal system, and financial contributions to nonprofits serving the basic needs of persons of limited means. The revised definition emphasizes that pro bono legal services for the poor are the primary focus of a lawyer’s pro bono obligation.

Supporters of the new rule state that the expanded definition acknowledges the many ways attorneys serve the public good other than by providing direct services to the poor. Critics have expressed concern that expanding the definition will dilute the private bar’s commitment to increase access to legal services for the poor.

Supreme Court of Wisconsin mandates lawyer assessment while court committee recommends changes to Rule 6.1
On March 24, 2005, the Wisconsin Supreme Court issued an order imposing a $50 annual assessment on each active State Bar of Wisconsin member to support civil legal services for the poor. On January 12, the

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From the Chair...
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written report. Sometimes the goal is to start or revitalize a project and other times it is to assist with long-range planning. Regardless, the project is an extremely valuable resource that is free to the chosen programs.

Having participated as a consultant and as the “client” in a number of these visits, I can attest to how intensely exhausting and exhilarating it is for both the consultants and the recipients, and how mutually beneficial as well. Armed with the team’s report and recommendations—and ongoing support from the center—the client is always well-prepared to make important programmatic changes that will ultimately expand services.

Many of you have participated in another major project of the center: the Equal Justice Conference, which is being held this year on May 5 to 7 in Austin. (If you haven’t participated, you should!) At the conference, the center develops scores of pro bono workshops and offers special pre-conference programming for new pro bono program managers, more experienced managers, and law school pro bono coordinators and staff. The Equal Justice Conference, a partnership between the ABA and the National Legal Aid and Defender Association (NLADA), remains the largest conference held each year focused on delivering legal services to the poor.

One of the center’s great strengths is the ability of its staff to identify emerging national issues and respond quickly. Many of you remember the center’s leadership in the Children’s SSI Project when low-income, disabled children were faced with swift termination of their benefits. The center became the command center for individual statewide projects, produced and coordinated the development of materials and models, and helped save benefits for thousands of children.

A few years later, the center undertook to provide guidance for the special challenges that face organizations that provide rural communities with necessary pro bono legal services. Out of that concern, the Rural Pro Bono Delivery Initiative was born, resulting in a legacy of wonderful resources for those communities. A common denominator for these initiatives is that both attracted funding from the Open Society Institute—long known for its support of innovative projects that impact lives in a significant way.

The center currently houses the ABA Child Custody Project, created as the result of a $1 million gift to the Pro Bono Committee and the ABA Family Law Section to enhance and expand the delivery of legal services to poor and low income children involved in divorce, adoption, guardianship, parentage, and protective order matters. With emphasis on identifying and developing “best practices,” training, and technical assistance to courts and pro bono programs, this project has become a critical national resource in the important area of child custody.

The best way to discover the depth of assistance available from the Center for Pro Bono is to go to www.abaprobono.org. You will find an online, searchable clearinghouse library with over 4,000 documents, a national directory of local pro bono programs, and a directory of law school pro bono and public interest programs. In addition, the center prepares and revises invaluable online publications. A few examples of material you can read online include:

- The ABC Manual: Starting and Operating a Business Law Pro Bono Project
- BLUEPRINT for Constructing a Pro Bono Project in a Mid-Sized Law Firm
- How to Begin a Pro Bono Program in Your Bankruptcy Court: A Starter Kit for Lawyers and Judges
- Making Pro Bono a Priority: A Bar Leader’s Handbook
- Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means

Most importantly, the center’s staff members are national experts in the world of pro bono. They are an invaluable resource to anyone with a question or issue about how to grow pro bono in their community. Whether your concern is about an operational issue like how to refer cases to pro bono lawyers, about how to engage lawyers in handling particular cases on a pro bono basis, or what strategies you can use to involve the judiciary in supporting your pro bono efforts, Center for Pro Bono staff can help.
Pro Bono Policy
(continued from page 3)

court granted a petition filed by the state’s IOLTA program—the Wisconsin Trust Account Foundation—requesting the assessment. The order also requires the state bar to conduct a study of the civil legal needs of the poor in Wisconsin.

Concurrently, the Wisconsin Supreme Court Ethics 2000 Committee has recommended changes to the current Rule 6.1 that include an aspirational goal of 50 hours per year of pro bono legal service and a mandatory pro bono reporting requirement. At its January 2005 meeting, the state bar board of governors voted to support adopting the ABA Model Rule without the mandatory pro bono reporting requirement.

2003 Maryland pro bono reporting results released

The Administrative Office of the Courts of the State of Maryland recently released a report, titled Current Status of Pro Bono Service among Maryland Lawyers, Year 2003 which summarizes the results from the second year of the state’s requirement that attorneys report their pro bono activity.

Maryland Rule 16-903 (effective July 1, 2002) requires that all Maryland attorneys authorized to practice law in the state annually report on their pro bono activities. The definition of pro bono service was redefined by the Maryland Court of Appeals in Rule 6.1 with an “aspirational” goal of 50 hours of service for full-time practitioners, with a “substantial portion” of those hours dedicated to legal services to people of limited means.

A copy of the full report can be found online at www.courts.state.md.us. Its key findings include the following:

- 31,153 Maryland lawyers filed their pro bono service report by the final cutoff date and were included in the report (representing a 99 percent compliance rate)
- Among full-time lawyers with business addresses in Maryland, 63.7 percent reported engaging in some pro bono activity in 2003 (compared to 61.8 percent in 2002)
- Tracking Rule 6.1, the breakdown of services provided by Maryland lawyers was as follows:
  - 50.2 percent rendered their services to people of limited means
  - 14.5 percent assisted organizations serving people of limited means
  - 8 percent worked with entities on civil rights matters
  - 27.3 percent gave organizational help to non-profits
- Of those hours donated to assist people of limited means, 33.6 percent were provided through a pro bono or legal services organization
- The largest number of pro bono hours was donated in the family/domestic practice area even though family/domestic law ranked seventh as a primary practice area. About 60 percent of the family law pro bono service was provided by lawyers who identified their primary practice areas as family, litigation or general.

State Bar of Nevada releases statistics for first year of mandatory reporting

The State Bar of Nevada Pro Bono Service Report for 2003: Summary of Results was recently released by Downey Research Associates in Las Vegas. As this was the first year of reporting, there were various problems in gathering and compiling the data in a clear and concise way. As a result, there are few concrete conclusions to be drawn from the report. The report noted that 51.7 percent of respondents did some pro bono service (continued on page 8)

Hunton & Williams
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that the law firm’s leadership walks the walk. They take on cases themselves, encourage others to do so, and they put the law firm’s financial resources behind their commitment. Hettrick notes that last year, Hunton & Williams’ managing partner and chairman both won the award for contributing more than 100 hours of pro bono, and that Hunton & Williams partner and ABA President Robert Grey serves as a pro bono lawyer at the firm’s Church Hill office. This type of leadership goes the distance in building a strong foundation for pro bono and teaching young lawyers by example why it matters. The firm’s leaders believe strongly that their lawyers are stronger advocates and better people as a result of their pro bono work, and that the collegiality that is a trademark of the Hunton & Williams’ culture is a precious commodity that comes in no small part from its personal and institutional commitment to pro bono work.
ABA Child Custody and Adoption Pro Bono Project Announces 2005 Grants

The ABA Child Custody and Adoption Pro Bono Project has awarded grants totaling $50,000 to enhance the connection between legal advocacy for children in custody cases and critical mental health and social services. Awarded to five programs around the country, these grants will (1) address the need for more mental health and social service training, mentoring, partnering, consulting and cross-education of legal professionals with mental health or social service professionals; (2) identify ways for children’s attorneys to tap into free or low-cost mental health and social services for their clients; and (3) support the development of local mental health and social service resource materials for children’s attorneys and their clients.

The five grants and grant recipients are as follows:

**New Orleans Pro Bono Project, Children’s Law Program - $16,000**
The Pro Bono Project was established in 1986 to provide free civil legal services to the poor through the use of pro bono attorneys. The organization launched a Children’s Law Program to train and support volunteers in representing children in abuse and neglect cases, and expanded that representation to custody cases in 2004. The ABA grant will fund a social worker consultant to research and develop a referral tool and referral resources for mental health and social services for children in custody cases. The social worker will also support the project in expanding and training the volunteer attorney pool for custody cases, and will develop partnerships with social work and psychology programs and universities to support the pro bono volunteers. The social worker will produce educational materials for staff, volunteers, judges, parents and children regarding mental health and social service issues and resources.

**Children’s Legal Services of Houston - $15,000**
Children’s Legal Services of Houston (CLS) provides legal advocacy to children in dependency cases. CLS serves as attorneys ad litem for children, and provides resource information, legal research, and holistic services to lawyers and child welfare organizations. The ABA grant will be used to expand these services to custody cases in the Harris County Family Courts. CLS is partnering with the University of Houston Psychology Clinic to provide mental health evaluations and services to children in these cases for free or very minimal cost. The clinic will consult with the attorney on each case to develop a treatment plan, and will either provide services or make referrals for appropriate services for the children. CLS and the University of Houston Clinic will set up a network of social service referral sources, including assistance with housing, education, day care, transportation, social security and other government benefits, health care and insurance.

**Montana Legal Services Association - $10,000**
The Montana Legal Services Association (MLSA) is a statewide agency providing access to justice for low income individuals in need of civil legal assistance. Many of the cases handled by MLSA involve family law custody disputes. MLSA locates and assigns pro bono attorneys for children in custody cases when requested by the court, including divorce, parenting plan, and civil protective order cases. The ABA grant will be used to develop information packets for Montana attorneys who volunteer to represent children in custody and parenting plan actions. MLSA will convene a team of professionals to design a Co-parenting Child Assessment Tool, which pro bono attorneys will utilize to determine the mental health and social service needs of the children they represent. A videotape training on the use of the assessment tool will be produced for use by the pro bono attorneys. AWARE, a statewide mental health agency, will provide clinical psychiatric consultation and assist with referrals to other providers.

**Community Justice, Inc., Wisconsin - $5,000**
Community Justice, Inc. (“CJI”) is a non-profit public interest law firm providing legal services to low-income individuals. Approximately half of CJI’s caseload involves family law and custody matters. CJI is partnering on this grant with the Rainbow Project, a non-profit mental health agency serving children who have been victims of child abuse, sexual abuse, or witnesses to domestic violence. The ABA grant will be used to provide legal services to

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Program News from the Field

Arkansas: Mickey Quattlebaum has resigned her position as executive director of the Arkansas Legal Services Partnership.


Minnesota: The Minnesota State Bar Association welcomed Caroline Palmer and Nancy Mishel as the new Pro Bono Director and Access to Justice Director, respectively.

Nevada: Lynn Etkins resigned as director of the Pro Bono Project of Clark County Legal Services. Kimberly Mucha succeeded Etkins as director on October 1, 2004.

Oregon: The Oregon State Bar has hired Debra Maryanov as the Pro Bono Program Developer, a newly created position at the Bar.

South Carolina: Andrew Walsh, Public Services Director of the South Carolina Bar, changed positions within the Bar to become the new ADR Director. On November 1, 2004, Joan Brown became the Pro Bono Director, a newly created position.

Child Custody Grants (continued from page 6)

children who disclose abuse during the divorce process and to children seeking civil protective relief, and to provide mental health training and support to attorneys representing these children. The Rainbow staff will provide individual case consultation to the pro bono attorneys and will develop resource materials on the issue of child abuse disclosures for use by attorneys, guardians ad litem, parents, and community members.

Kansas Legal Services - $4,000

Kansas Legal Services (KLS) has provided legal services statewide since 1977. In 2001, KLS opened the Guardian Ad Litem Support Center as part of its Children’s Advocacy Resource Center. The

ABA grant will be used to develop an interactive sourcebook for youth ages six to 14 to encourage them to work through emotional and mental health issues that may arise from their experiences in court proceedings. The sourcebook will include activities to familiarize children with court personnel; “how-to” activities on dealing with anger, confusion and other emotions; education on expectations and accepting feelings; and ways to express themselves in the legal process. KLS will then run four training sessions for guardians ad litem, attorneys, and mediators on how to use the sourcebook with children involved in custody cases and how to help youth access services and information. A mental health professional will assist with creating the workbook, and law students will help develop the trainings and place the sourcebook on the KLS web site.

The grants will run from May 2005 through May 2006. Since a major goal of the Child Custody and Adoption Pro Bono Project is to identify successful projects that can be replicated by other groups, all grant recipients will provide the project with an extensive report and relevant materials at the end of the grant period.

This is the third year of grants by the Child Custody and Adoption Pro Bono Project. The Project is jointly sponsored by the ABA Standing Committee on Pro Bono and Public Service and the ABA Family Law Section, and administered by and housed at the ABA Center for Pro Bono. It was established in February 2001 through a grant from Bill and Melita Grunow, in memory of their niece, Ann Liechty, a dedicated child law advocate. The mission of the project is to design and implement programs and policies that foster children’s well-being, development, and safety during custody matters, including in divorce, guardianship, adoption, parental, and civil protective order cases.

The funds for these grants were made possible through the ABA Child Custody Grant Advocate Program. Child Custody Grant Advocates have made a five-year pledge or an upfront contribution to this grant program. Almost $130,000 has been raised thus far, with an ultimate goal of raising $300,000. The project is actively seeking additional Grant Advocates to make future grants possible.

For more information about the grants, the project, or becoming a Grant Advocate, contact project Director Linda Rio Reichmann, lrio@staff.abanet.org or 312-988-5805.
Pro Bono Policy
(continued from page 5)

and included a list of all the agencies for whom lawyers did pro bono work and to which they made financial contributions. Of the valid responses received, 93.4 percent of attorneys reported providing at least 20 hours of pro bono services.

Supreme Court of Indiana adopts universal IOLTA plan
The Indiana Supreme Court has adopted a new universal IOLTA rule, effective July 1, 2005, which will require Indiana attorneys to participate in the state’s IOLTA program. The move is expected to generate an additional $75,000 to $200,000 annually for programs that encourage Indiana lawyers to provide pro bono civil legal services to the indigent. The action by the court follows a nearly unanimous approval by the Indiana State Bar Association’s House of Delegates of a resolution on October 15, 2004 that supported the move to universal IOLTA.

Indiana is unique in that since the formation of its IOLTA program in 1997, IOLTA has directly funded pro bono programs and the state’s judicial circuit-based pro bono committee structure.

Colorado adopts CLE credit for pro bono work
Effective January 1, 2005, the Colorado Rules of Civil Procedure have been amended to add a new Rule 260.8 that allows lawyers to receive CLE credit for approved pro bono representation of indigent clients. The Colorado Supreme Court adopted this new rule on November 10, 2004 and, with it, implemented a program to give lawyers a maximum of nine units of CLE credit during each three-year reporting period for providing free legal services to clients who meet the Legal Services Corporation poverty guidelines or who fall slightly above those guidelines but can still not afford legal representation. A lawyer may receive these pro bono CLE credits by working through an approved organization. A lawyer is entitled to one unit of CLE credit for every five hours of direct pro bono service provided. A lawyer who serves as a mentor to another lawyer may receive one unit of CLE credit per completed matter; and mentoring a law student doing pro bono work gives a lawyer two units of CLE credit for each completed matter.

Second Circuit forms new pro bono panel
On December 1, 2004, the United States Court of Appeals for the Second Circuit Criminal Justice Act/Pro Bono Committee began accepting applications for service on the court’s newly-formed Pro Bono Panel. Panel members will represent pro se litigants in civil appeals that present issues of first impression, involve complex issues of law or fact, or raise potentially meritorious claims warranting further briefing and oral argument. The court will choose pro se litigants who are eligible for pro bono representation based on an assessment of whether the litigants would benefit from the representation and whether they would be unable to afford an attorney on their own.

Massachusetts Supreme Court adopts new rule for retired/inactive attorneys
In November 2004, the Supreme Judicial Court of Massachusetts adopted a new SJC Rule 4:02(8), which allows retired and inactive attorneys to engage in pro bono work through an approved legal services organization without paying attorney registration fees.

Florida honors judges who support pro bono
The Florida Supreme Court recently created a Distinguished Judicial Service Award to recognize active and retired judges for outstanding service to the public, especially as it relates to supporting pro bono work. The award is based on the ideals outlined in Canon 4B of the Florida Code of Judicial Conduct, which encourages judges to contribute to the improvement of the law, the legal system, and the administration of justice. The Canon views the support of pro bono legal services as an activity that relates to improvement of the administration of justice. The court has interpreted this Canon to mean that judges may engage in activities intended to encourage attorneys to perform pro bono services, including, but not limited to: participating in events to recognize attorneys who do pro bono work, establishing general procedural or scheduling accommodations for pro bono attorneys as feasible, and acting in an advisory capacity to pro bono programs.

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From the Chair...  

IOLTA Grantee Spotlight: Legal Aid Service of Broward County  
by Camille Murawski

Using her good arm, Susanna carried her 9-month-old baby girl to the threshold of Broward County’s Center for Law and Social Justice. Susanna’s 3-year-old—a cute boy with blonde ringlets—straggled behind them, clutching his tattered blanket. Susanna had made the trip to the central Broward legal aid office many times before, but today she was determined. Beaten, but not beaten down, Susanna gathered the last of her courage and walked through the double doors into the bright, airy lobby. There, as tears rolled down her bruised cheek, Susanna told a receptionist she needed help because her husband had hurt her again and she didn’t want it to happen anymore. Susanna was then quickly ushered into an attorney’s office.

For more than 30 years, attorneys at the Legal Aid Service of Broward County (LAS) have focused on a wide variety of matters ranging from domestic violence, elder law, and landlord-tenant issues, to the rights of the homeless and the complicated legal issues common to those suffering from HIV/AIDS. The organization is funded by an array of private and public sources, including The Florida Bar Foundation.

With 28 attorneys on staff in Broward County, the collective brain trust rivals that of a similarly sized law firm. But unlike private firms—where some of the legal aid attorneys at LAS started their practice—clients arrive here carrying their lives in a shoebox and the weight of the world on their shoulders. Susanna was not alone.

Domestic violence assistance
Susanna’s story, said attorney Mindy Jones of the domestic violence unit, is not much different from most of the cases she hears. Each one is tragic, but there is always an element of hope. “You feel for them,” Jones said, “They have finally taken the step.” For those of us who return home each night to the embrace of a loving spouse, it is difficult to conceive that not everyone is so fortunate, Jones said. “Nothing surprises me anymore.”

And it’s not just poor, uneducated people who are battered, Jones said. One woman came to Jones for help after her police officer husband had beaten her. There was one bruise so large, Jones said, “It ran the entire length of her thigh.” The woman, who had gone to college and had a good-paying job, knew it wouldn’t do any good to call the police; she had done so in the past and nothing had happened. This time, however, the woman’s teenage son made her drive to a local drugstore, where he selected a camera to document the cuts and bruises.

Then, with photos in hand, the woman went to her husband’s supervisor, and to the legal aid office.

Money is never an issue when domestic violence is the case, said

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Soon I will complete my three-year term as chair of the ABA Commission on IOLTA.

Iam proud of all that I have seen the IOLTA community accomplish during the past three years, particularly in overcoming the challenges posed by the IOLTA litigation (which ended up before the Supreme Court in 2002-2003) and a significant drop in interest rates.

Those involved in defending IOLTA from the legal challenges always believed that it was constitutional, and were optimistic that the Supreme Court would come to the same conclusion. IOLTA faced a serious threat, however, and the uncertainty of the outcome made for anxious times. Nevertheless, the IOLTA community came together, shared information, pooled resources, and supported the defense effort. What could have been divisive and a negative influence instead revealed the strength and unity of our community.

At the same time the legal challenges were making their way through the courts, a protracted drop in interest rates began eroding the bottom line for many IOLTA programs. In most states, it would be an understatement.

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to say that the past three or four years have been tough. We know that nationwide, IOLTA revenues dropped from a high of $164 million in 2001 to $133.9 million in 2003 (the last year for which we have revenue data). That’s an 18 percent decrease overall, but we know that individual programs suffered even greater percentage losses.

IOLTA programs could be excused for feeling discouraged, but as they did regarding the litigation, they stayed in the game and engaged in the fight. This is what I find most inspiring today.

A great example of this is the embrace of mandatory IOLTA by four states in the past year—Oklahoma in 2004, and South Carolina, Indiana and (most recently) Utah in 2005. The leaders of these programs all assessed their options, and took the risk of seeking conversion to mandatory attorney participation in IOLTA. In their success, they are expanding their programs’ resources and ability to support legal services and other grantees for years to come.

Other programs have also taken the initiative, by pursuing rule or policy changes that will increase their ability to negotiate for better yields on IOLTA accounts. As difficult and delicate as some of these changes may be to accomplish, they will pave the way for more revenue and more support for IOLTA grantees. IOLTA programs continue to innovate, and are looking for new projects to fund, developing new ways to increase the effectiveness of ongoing grants, and providing additional support for grantees. Programs also are investing in their own community—robust participation in the IOLTA Workshops and the launch of the IOLTA.ORG Web site are two examples that come to mind.

IOLTA programs are focused on the big picture and are investing in the future. I am proud to be part of a community that is so determined to look forward and build on the accomplishments of the past two decades.

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As I depart as chair, the Commission on IOLTA will also bid farewell to three other members at the end of their terms. Kent Gernander has served as co-chair of the Joint Banking Committee, and also was a dedicated member of the Joint Rule Task Force. Joe Roszkowski provided three years of loyal service to the Commission, reprising his time on the Commission during the 1990s. Also departing is Dwight Williams, who has provided exceptional service during his five years with us. Among other things, he served as the Commission’s liaison to the ABA Commission on Loan Repayment and Forgiveness, and has acted as co-chair of the Joint Meetings Committee (and MC of the IOLTA Workshops) for several years. The Commission will miss them.

I would like to thank everyone who has served the Commission as a member, advisor, and liaison during the past three years. Your active participation on the Commission and support for IOLTA’s mission has made serving with you a privilege. I would also like to thank the Commission’s exceptional staff—Bev Groudine, David Holtermann, Janice Jones, and Mickey Glascott—for their hard work and service.

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attorney Jones. Often a husband will force his wife to turn over her paycheck, and the woman will not even have access to her own money. When questioned during court proceedings to issue an injunction for protection against the woman’s spouse, Jones said the husband claimed his wife had “kicked herself,” causing the substantial bruising. Although the criminal case and the internal affairs investigation are ongoing, Jones succeeded in winning an injunction for protection against domestic violence against the officer. “It’s all about having someone there to represent you,” Jones said.

Fellowship program benefits hard cases

In addition to helping the county’s poorest residents obtain clean, safe housing, the Broward legal aid attorneys tackle the issues no one else wants to touch. When Melissa Zelniker began working for legal aid, she was a new graduate who had received a prestigious national fellowship addressing dependent juveniles with delinquency issues. The fellowship from Equal Justice Works—co-funded by The Florida Bar Foundation—allowed Zelniker to concentrate on her project for (continued on page 11)
two years. And even after her fellowship was over, Zelniker stayed because of the overwhelming need in the community.

“These are the most difficult kids in the system,” Zelniker said. Since 2002, Zelniker has served as attorney for hundreds of abused, abandoned, and neglected children. “I stay on the case until every legal issue is resolved,” Zelniker said. Her cases involve children like “Matthew.” Matthew was born addicted to crack cocaine, and never knew his parents. His mother died when he was two, and he was shuffled from relative to relative. He had a low-functioning IQ, Zelniker said, and some trouble with the law, but a therapist told Zelniker he had “potential.”

Matthew didn’t have much to give, but he gave Zelniker “A piece of my heart,” a poem he wrote:

“I give you a piece of my heart, to remind you I’m here for you. No matter if we are far apart, our friendship will always be true.

“I give you a piece of my soul, a part of me reserved for you. Hold it dearly and don’t let it go, no matter what you do.

“Whether it’s a bright and happy day, or you’re troubled and struggling to smile, remember the special piece of my heart that reaches you across the miles.

“I will always be there for you!”

Zelniker’s eyes mist over when she re-reads the poem. “He’s the most amazing kid I’ve ever met in my life,” she said.

**Battling for seniors**

Each attorney has similarly heartbreaking stories—whether their case involves a child like Matthew, a young adult with AIDS who needs help making a last will, or senior citizens who have been victimized by scam artists. “I call them thieves,” said attorney Deborah Koprowski, who specializes in senior citizen law. Those thieves watch the legal ads in the area’s newspapers, Koprowski said, and decide who their next target will be. Using a foreclosure notice as their “lead,” the scammers will introduce themselves to a senior citizen, and portray themselves as someone who wants to help. Somehow, the scammers convince the unwitting senior to sign a quit-claim deed. Before the senior knows it, their house is no longer their house, and the scammers have filed eviction notices against them.

Koprowski—who said she decided to champion the rights of the defenseless after reading a John Grisham novel—must then...
Broward County
(continued from page 11)

dialogue 12
children who may not have the best project. I advocate for attorney Ann Siegel. She says, “I fight for a client is also a specialty board of government-types and Being able to stand in front of a Education rights

Koprowski also succeeded in getting the fines abated. Koprowski she had dropped the official paper behind her couch.

Koprowski said she waited, breathlessly, on the phone for nearly 20 minutes as the woman searched behind the couch for her notice to appear before the code enforcement board. The attorney was sure her client was never going to get back up. The story has a happy ending, however. Koprowski said she appeared before the board the next day, and asked for a 45-day extension to get her client’s property up to code. Koprowski also succeeded in getting the fines abated.

Education rights
Being able to stand in front of a board of government-types and fight for a client is also a specialty of attorney Ann Siegel. She says, “I have the best project. I advocate for children who may not have been identified as having a learning or developmental disability.”

Siegel became interested in education legal rights when her older daughter was three years old. At the time, Siegel was an undergraduate, and not familiar with the ins and outs of the educational system. But she knew her daughter needed help. It took a year to diagnose Siegel’s daughter, during which time Siegel noted “There were very few people advocating for children’s legal rights. ‘This is what I want to do’,” Siegel remembered saying. Siegel’s personal story had a successful outcome, she said. Her daughter—after spending some of her preschool years in a special education class—is in regular classes at her junior high, and is on the honor roll. “She benefited from early intervention and a wonderful teacher,” Siegel said.

But, the attorney added, other parents may not know there are solutions to their child’s educational crisis. “Sometimes, our parents don’t know enough to ask the right questions. There are so many kids; they fall through the cracks, especially ‘my’ quiet kids.” Once Siegel informs the parents of their child’s legal right to education—including the right to be tested for learning disabilities, for example, Siegel is able to advocate for the child.

Avoiding eviction
Just down the hall, Janet Riley is counseling a client who has been served with a three-day eviction notice for non-payment of rent. In order to defend the eviction notice in court, Riley said, the tenant must deposit the equivalent of one month’s rent in a special court registry fund. That money stays in the fund until a judgment is reached, but assuming a client has already paid rent for the month, the amount could be a huge burden to the client.

So Riley and other attorneys in the housing unit came up with the idea of a special fund to assist their clients. Funded by United Way, the grant helps clients who would probably be evicted. The fund—$5,000—might seem like a small amount of money, but it is often the leverage necessary for effective negotiations with a landlord. “Once you’ve been evicted from these low-cost housing units,” Riley said, “There is no place for you to go.” Riley cited a 2004 study by the National Low Income Housing Coalition which stated that in order for a wage-earner to afford a typical one-bedroom apartment in Florida, he or she must earn $12.96 an hour. If that wage-earner were to move to Broward County, he or she had better get a raise. The amount necessary to afford a typical one-bedroom apartment in that county jumps to $15.96 an hour. That disparity is particularly worrisome to Riley, who is extremely concerned about the future of affordable housing for Broward County’s poorest residents.

But Riley, like the other dedicated attorneys and staffers at the legal aid organization, will continue to fight for the legal rights of Broward County’s most defenseless residents. With each heartbreaking, legally challenging case, attorneys and staffers vow to continue their quest for justice. “We’re going to keep trying,” Riley said.

Camille Murawski is communications coordinator for the Florida Bar Foundation.
Expanding Resources: Converting to Mandatory IOLTA

Beginning in the late 1980s, many IOLTA programs began shifting from models of voluntary participation by attorneys in IOLTA to mandatory participation requirements. The conversion to mandatory IOLTA was believed to be an effective means of increasing IOLTA revenues, and the results largely have borne this out. When IOLTA litigation ended on a national scale following the Supreme Court’s decision in Brown v. Legal Foundation of Washington in 2003, IOLTA programs began to reexamine the possibility of converting to mandatory IOLTA. This was a particularly urgent issue in light of steep drops in revenue due to low interest rates. Since the beginning of 2004, four programs have obtained rule changes from their state supreme courts to convert to mandatory status: Indiana, Oklahoma, South Carolina and Utah. Today, 30 programs are mandatory, 20 operate on an opt-out basis, and two are strictly voluntary.

On behalf of Dialogue, Alfred Azen—then as executive director of the Pennsylvania IOLTA Board led that program’s conversion to mandatory IOLTA in 1996—talked to the directors of three programs. Charles Dunlap is executive director of the Indiana Bar Foundation, which will begin operating under a mandatory IOLTA rule on July 1. Nancy Norsworthy directs the Oklahoma Bar Foundation, whose mandatory rule took effect July 1, 2004. Shannon Willis Scruggs recently became the executive director of the South Carolina Bar Foundation, which became a mandatory program on March 1, but was involved with the conversion process while serving as interim executive director.

Alfred Azen: Each of your states has recently converted to mandatory IOLTA. What was the dominant reason for pursuing mandatory at this time?

Nancy Norsworthy: Oklahoma had a voluntary IOLTA program since 1983, and was unique in that many other states that had started as voluntary had converted to opt-out or mandatory long ago.

“The foundation’s board members concluded it would be their fiduciary responsibility to seek mandatory in the event of a favorable outcome in Brown.”
—Nancy Norsworthy Oklahoma Bar Foundation

Over the previous years, declining interest rates had placed our grants program in a dire situation and at the same time the U.S. Supreme Court was considering Brown v. Legal Foundation of Washington. The Oklahoma Bar Foundation decided that if the Brown decision was favorable to IOLTA, we would immediately seek to convert our program to mandatory. The foundation’s board members concluded it would be their fiduciary responsibility to seek mandatory in the event of a favorable outcome in Brown.

Charles Dunlap: The depressed interest rate environment was the greatest factor motivating the Indiana Bar Foundation to seek a mandatory program. Our IOLTA program was recently established (in 1998) and had no financial reserves. In order to maintain the status quo for grants and to build a reserve to protect against future interest rate declines, we needed to consider converting to mandatory to increase revenues. The Brown decision provided an opportunity to make the conversion.

Shannon Willis Scruggs: There was no single factor that caused the South Carolina Bar Foundation to seek mandatory status. Falling interest rates and the Brown decision led the foundation’s board to research the conversion successes of New Jersey, Pennsylvania and Georgia.

Azen: What role did your program play in achieving a mandatory rule?

Scruggs: The foundation’s board reviewed other states’ IOLTA rules and considered information provided by the ABA Commission on IOLTA and the National Association of IOLTA Programs. The board then submitted a letter to the South Carolina Supreme Court with background material and the court ordered the establishment of the mandatory program. There was close communication between the foundation and the state bar because many of the foundation board members also sit on the South Carolina Bar Board of Governors.

Dunlap: The Indiana Bar Foundation initiated the conversion to
Mandatory IOLTA

(continued from page 13)

mandatory and used much of the same information as South Carolina. In Indiana, the IOLTA money goes from the Indiana Bar Foundation to the Pro Bono Commission which distributes the funds to 14 local pro bono districts throughout the state. Each local district uses the funds to operate their local pro bono programs. The bar foundation and commission members began to make the case for mandatory through the pro bono grantee organizations and then sought the support of the state bar association board of governors and the house of delegates. After gaining this support, the foundation and the commission approached the state’s supreme court.

Norsworthy: The Oklahoma Bar Foundation initiated the request for a mandatory program. The foundation board received a unanimous resolution of support from our state bar association, and both the bar president and president-elect accompanied the foundation’s leadership to meet with the Oklahoma Supreme Court.

Azen: Talk about your board’s discussions and deliberations before deciding to pursue a mandatory program? What issues did they struggle with?

Dunlap: Generally there was generally broad support on the foundation board for pursuing mandatory, but there were concerns about the impact the foundation’s involvement in that might have on other fundraising activities by the foundation. The board realized some members of the bar may not support a mandatory IOLTA program, but ultimately it decided that few attorneys would view the foundation negatively and that increasing IOLTA revenues was a priority.

Scruggs: The foundation board met intensively and studied conversion from all aspects, including current levels of attorney and bank participation. While it was aware of large revenue increases in other states, the board acknowledged that conversion would not necessarily result in increases of the same magnitude as states that converted in the 1990s realized. That’s due to dramatically lower interest rates now.

Norsworthy: The Oklahoma Bar Foundation board was concerned about how the membership might perceive the move toward mandatory, but was pleasantly surprised to learn that our members wanted to help and that banks wanted to help as well. The bar foundation’s leadership in pursuing a mandatory program gave each an opportunity to help our state.

Azen: What was the role of your state’s bar association and supreme court in pursuing mandatory IOLTA?

Dunlap: Approaching our state bar association was one of our first steps, and the board of governors passed a resolution in support of mandatory IOLTA. One of the last steps, and perhaps the most important, was gaining the support of the state bar house of delegates, because the supreme court wanted to see broad-based support for mandatory IOLTA before it would act. The house passed a resolution in support of mandatory IOLTA with close to unanimous support. The overwhelming support by the bar signaled to the court that conversion would be embraced by the bar.

Norsworthy: The Oklahoma Bar Foundation asked individual lawyers, law firms and related groups to sign on to the motion in support of mandatory IOLTA. More than 100 influential law firms and over 200 prominent bar members signed the motion that was presented to the supreme court. Even though support of the house of delegates was not requested, the supreme court was impressed with the overwhelming support for the motion.

Scruggs: For South Carolina, the hard work and support of the

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**Mandatory IOLTA**

(continued from page 14)

board was crucial. In presenting the materials for the supreme court, the IOLTA Committee (comprised of members of the board) did such a thorough job that the case for support was very clear. The materials not only included the history of South Carolina’s IOLTA program, but also painted a picture of our program in comparison with other programs across the nation.

**Azen:** What revenue increases are expected from the mandatory program?

**Norsworthy:** Oklahoma had hoped to double its IOLTA revenues, but by the end of December 2004, revenues had more than tripled.

**Scruby:** South Carolina is just a month into the mandatory program; however we already have seen some increases. The top five banks’ remittances increased by almost 21 percent between February and March. (Our effective date was March 1.) Also, more than 1,000 additional accounts have been established and 25 new banks have joined the program since the January 2005 announcement of the program’s conversion.

**Dunlap:** Indiana reviewed post-conversion increases in other states and there was a very broad range of increases from 23 percent to over 200 percent. We are hoping to double revenues within the next year or so. As far as projections, however, we are planning for a 50 percent increase. But, it is difficult to project revenues since new accounts are being established and interest rates are beginning to increase.

**ABA Support for Mandatory IOLTA**

In 1988 the ABA endorsed, as a matter of policy, mandatory IOLTA. The resolution approved by the ABA House of Delegates encouraged states with voluntary IOLTA programs to convert to a mandatory program under which “all lawyers in the state who are required to maintain trust accounts will be required to participate. Since 1988, seventeen states have converted to mandatory IOLTA and one new mandatory IOLTA program has been established.

**Azen:** How will your program use the additional revenue?

**Scruby:** The three priorities for grants have not changed, but there is a gap between the amount of funding available and the need for services. With mandatory IOLTA, we hope to close that gap. Also, we anticipate new organizations will apply for IOLTA funding.

**Dunlap:** Indiana wants to restore grant funding to previous levels which had declined because of low interest rates. After that, we want to build a reserve that can help in future years. Grant priorities are identified by the court, and they have not changed.

**Norsworthy:** Oklahoma has formed an Access to Justice Commission (AJC) that will receive funding in addition to the usual grantees. Oklahoma’s IOLTA funding had been so limited in the past that we are excited about the opportunities additional funding will create.

**Azen:** Nancy, could you describe the AJC and what it will do?

**Norsworthy:** The AJC is a separate organization that is made up of members from the bar association, the bar foundation, gubernatorial and legislative appointees, a law school representative, and also appointees from the supreme, appellate and district courts. There are nine members from across the state. The AJC will look into innovative ways of providing equal access to justice for Oklahoma residents and will help coordinate grants for legal aid providers in Oklahoma. One of the first initiatives the AJC is considering is a statewide telephone intake system that will direct callers to legal aid, pro bono attorneys, or attorneys who charge reduced fees in their areas.

**Azen:** What steps were taken to prepare attorneys for the conversion and their new responsibilities?

**Dunlap:** An initial mailing was sent to attorneys who currently have an IOLTA account to let them know about the change and to identify all of the attorneys who use the IOLTA account. The next mailing will be to attorneys who are not linked to an IOLTA account and will advise them of the new rule and will include a question and answer pamphlet and an IOLTA account enrollment form. Much of the same information will be printed in the April 2005 issue of the bar association magazine. Our Web site has been updated with the program conversion information, and of course, we

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Overview of States with New Mandatory IOLTA Rules

<table>
<thead>
<tr>
<th>Effective date of</th>
<th>Indiana</th>
<th>Oklahoma</th>
<th>South Carolina</th>
</tr>
</thead>
<tbody>
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<td>1/1/86</td>
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<td>3/1/05</td>
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<td>Licensed attorneys</td>
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<td>15,000</td>
<td>11,467</td>
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<tr>
<td>Size of board</td>
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</tr>
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<td>Size of IOLTA staff</td>
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<td>2.5</td>
<td>2.5</td>
</tr>
</tbody>
</table>

PRE-MANDATORY

IOLTA revenues
Average 3 years $565,000 $232,600 $1,865,900
Grants
Legal aid/pro bono 100% 70% 67%
Legal education none 26% 23%
Administration of justice none 4% 9%

POST-MANDATORY

Anticipated annual revenue increase 50% 100% No estimate
Anticipated grant priorities No change No change No change

Mandatory IOLTA
(continued from page 15)

are handling many telephone calls from attorneys.

Norsworthy: Oklahoma published a special compliance alert in the bar journal advising attorneys of the new program and its immediate effect. The bar foundation staff began to immediately work with attorneys to get them signed up. The bar foundation’s Web pages were updated and a mailing was sent to the entire bar membership. This was the foundation’s first trust account certification mailing ever, and we are categorizing the members as to their IOLTA status. Our staff is updating our data base with information gained from the certification. Attorneys are required to report all of their trust accounts on the compliance statement.

Scruggs: We embarked on an attorney educational campaign. We sent a letter to all attorneys with a copy of the new rule and an IOLTA manual that we developed. We also sent letters to managing partners at firms offering assistance to make certain of each firm’s compliance for its attorneys. We used various publications, our Web site and the South Carolina bar convention as opportunities to market the new program and to answer questions. Our materials also notified members that the South Carolina bar annual license fee statement would be the primary means for attorneys to indicate their compliance.

Azen: What has been the reaction from attorneys?

Scruggs: In a month’s time we received over 350 telephone calls, most of which were from attorneys seeking information about coming into compliance with the new rule.

Norsworthy: We have had thousands of telephone calls from attorneys over the months seeking clarification about what to do, but there have been very few complaints.

Dunlap: The effective date of implementation isn’t until July 1, 2005, so there has been little reaction from attorneys, except those calling for clarification as a result of our first mailing. There have been more clarification questions than complaints.

Azen: What steps were taken to prepare the financial institutions for the change?

Dunlap: The Indiana Supreme Court initially approved the concept of mandatory IOLTA, after which the bar foundation began working on the details of the mandatory IOLTA rule. In that process, meetings were held with the bankers association representatives since there is language in the new rule that require interest rates on IOLTA accounts be comparable to those of other account holders with similar balances. After adoption of the rule, the handbook for financial institutions was updated and mailed to the financial institutions with a cover letter explaining the changes and alerting them of questions to expect from attorneys. The mailing was also used to refresh the financial institutions on the IOLTA program generally.

Scruggs: We embarked on a bank education campaign. Many of the banking provisions that went into our mandatory rule were already foundation board policies. An (continued on page 17)
initial letter advised banks that if they were already in compliance with the existing foundation policies, the biggest change would be more accounts enrolled in IOLTA. Special letters were also sent to the bankers association and the top five banks to offer additional assistance.

Norsworthy: We did much of what Indiana and South Carolina did. We negotiated with the bankers association representatives concerning changes that would be needed for our financial institution guidelines. We also offered the opportunity to the bankers association to present a seminar on IOLTA at the Bar Center, which they accepted. The foundation provided lunch for the attendees and had representatives (including a few grant recipients) at the seminar to welcome the bankers and answer questions about IOLTA.

Azen: What has the reaction been from the financial institutions?

Norsworthy: The reaction has been great. About 95 percent or more of the financial institutions are waiving service charges. However, IOLTA revenues are still being affected by the economy and low interest rates.

Scruggs: Previous improvements to our program by way of board policies regarding service fees and negative netting were included in the mandatory rule. Also, our previous rule had allowed attorneys to participate with one or more IOLTA accounts. The new rule requires all IOLTA eligible funds to be placed in an IOLTA account.

Dunlap: From here on out, I will give specific time deadlines for responses and similar actions. Generally, we do this, but I have found it is important to make the deadlines very clear in our correspondence.

Scruggs: We could have benefited by sending out regular updates to attorneys during the conversion as common questions arose. Also, with additional time, we could have had a more comprehensive program.

Norsworthy: I would have liked to have been better staffed at the time of conversion.
Mandatory IOLTA
(continued from page 17)

have developed more fully the process by which attorneys request exemption from the program prior to the effective date.

Azen: Is there any advice you would offer to another state considering conversion to mandatory?

Scruggs: I think it is essential to utilize the experiences of other states that have gone through the conversion process. I had many conversations with others, and if my specific questions could not be answered, I usually received valuable insight into the issues related to my question.

Dunlap: I totally agree. Talking with others who have gone through this process is the best preparation you can have. Although the politics of pursuing mandatory are going to be unique to each state, much can be learned from talking to others who have gone through this process.

Norsworthy: Also, it is important to have your board’s enthusiastic support. It is essential. Our board had the background knowledge and political savvy to make mandatory happen.

The ABA Commission on IOLTA maintains information about conversion past and present in the IOLTA Clearinghouse. The commission, along with the National Association of IOLTA Programs, provides technical assistance to IOLTA programs considering conversion and/or other rule changes. For more information contact David Holtermann at 312-988-5744 or holtermd@staff.abanet.org.

IOLTA News and Notes

Utah Converts to Mandatory IOLTA
On June 27 the Utah Supreme Court signed an order that approved a petition by the Utah Bar Foundation to convert the state’s IOLTA program from opt-out to mandatory status. The state’s new mandatory rule, which requires attorneys who handle client funds to participate in IOLTA, is effective immediately. Utah is the 31st mandatory IOLTA program in the United States. It also is the fourth state to adopt a mandatory rule in the past year. Oklahoma converted to mandatory on July 1, 2004, South Carolina converted on March 1, 2005, and Indiana’s new mandatory rule took effect July 1, 2005.

New directors in three states
Three states have welcomed new IOLTA directors in recent months.

Colorado
Elizabeth Steele became executive director of the Colorado Lawyers Trust Account Foundation in November. Steele previously served as vice president/general counsel of Jones Intercable, Inc., and prior to that was a partner in the Denver law firm of Davis, Graham & Stubbs, LLP. Steele is also a former member of COLTAF’s board. In addition to her duties with COLTAF, Steele also serves as the executive director of the Legal Aid Foundation of Colorado, which shares staff with COLTAF.

Oregon
Judith Baker became executive director of the Oregon Law Foundation, succeeding the late Rich Cecchetti. A graduate of the University of North Dakota School of Law, Baker worked as a staff attorney for Southern Minnesota Regional Legal Services’ Migrant Farmworker Program and later went into private practice in Minnesota. She then worked in non-profit program management for two different non-profit organizations in Oregon, and joined the Oregon State Bar as legal services program director in 2002. Along with her role as director of the law foundation, Baker will continue as the legal services program director, providing oversight over the filing fee funds that go to the Oregon legal aid offices.

South Carolina
 Earlier this spring Shannon Willis Scruggs became the executive director of the South Carolina Bar Foundation after serving as interim executive director since September 2004. Scruggs joined the staff of the bar foundation in 2000 as a program assistant and then as program director. She is a graduate of Wofford College and has an MBA from the University of South Carolina. (Scruggs is featured in an interview on page 13 about programs that recently converted to mandatory IOLTA participation. South Carolina adopted a mandatory IOLTA rule effective March 1, 2005.)
From the Chair . . .

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

The first lawyer referral service programs were established more than 50 years ago and a majority of services have been referring clients to attorneys for more than 20 years. Since their inception, these programs have morphed from a mechanism designed to provide clients for young lawyers and touted as a bar association membership benefit at dues renewal time into a major legal delivery system for the moderate-income consumer.

The public is exposed to your lawyer referral service in many ways: through the Yellow Pages, placards at the local courthouse, articles in local newspapers, radio and television advertisements, Law Day booths in the local mall, and through brochures found at the local library or in the basket delivered by the local welcome wagon. Lawyer referral services are contacted by more than a quarter of a million people a year, all seeking legal assistance and all choosing to contact the bar association for that assistance.

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While few bar associations recognize it, the sheer volume of contacts with the bar’s lawyer referral service by members of the public reflects reality. Your

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Let’s Remember the Good Stuff
by Joan Andersen

Sometimes when we’re struggling to make ends meet or having a day when we can’t seem to satisfy either the callers or the panel members, we forget the good stuff that happens in lawyer referral programs. Some of the good things involve our referrals to panel members, some involve the work front line staff does to help when referral won’t work, and some relate to special projects to meet special needs. Here is a collection of (rather randomly collected) super stories from around the country.

From the Association of the Bar of the City of New York come reports about several inspiring cases, including two that had a major impact on a whole group of people in addition to the referred client. One involved issues of domestic violence and custody like the ones we deal with on a daily basis, but with a truly Kafkaesque twist. It was immediately recognized by the phone counselor as a very significant issue. The New York City Administration for Children’s Services had removed the client’s children because it defined her as a neglectful parent for “allowing” them to witness abuse against her. The case was referred to an attorney the lawyer referral service knew to be committed to serving victims of domestic violence. The attorney not only took this client’s case, but, after being contacted by others with the same problem, started a class action on behalf of similarly situated mothers in New York City mothers. The ground-breaking result has been cited by advocates across the country.

Another client was a restaurateur whose arm was amputated after being caught in a pasta machine that lacked an appropriate safety mechanism. Many attorneys had rejected the case. The machine was manufactured in Italy and it would be difficult to obtain jurisdiction, and to prove that it had been used properly. Only two weeks before the expiration of the statute of limitations, the lawyer referral service referred the case to an attorney it knew thrived on challenges. Ultimately, the case was settled for more than a million dollars.

Another case referred by the New York program also ended up as a class action. The client had worked for a company for more than 10 years when his division was sold to another company and the employee stock option plan terminated. A panel attorney who handles plaintiff’s ERISA litigation accepted the case. The attorney argued that the plan document provided for employees to have a proportionate share of surplus assets in such a situation. The end result was a settlement in the millions for 1100 employees.

The Lawyer Referral Service of Central Texas runs an after-hours program staffed by volunteer criminal defense panel members, primarily to handle calls for jail releases. Director Jeannie Rollo says her program often gets other calls, and always tries to help. One night a call came from a woman embroiled in a domestic violence crisis. The attorney got assistance from the sheriff to help her leave her home, and then coordinated contact with other agencies to provide shelter for the caller and her children. Such immediate help is hard for any of us to provide, but the steps initiated by the Central Texas program can provide unexpected benefits to members of the public who don’t know where to turn.

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From the Chair...
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The public’s perception of your bar association—and through the bar its member lawyers—is formed by its contact with your referral service. This presents both a challenge and an opportunity. The challenge is in putting your association’s best face forward. Reversing, or at least ameliorating, the often-held negative perception of the legal profession is a goal of most bar associations. Since the lawyer referral service is the public face of the bar, changing negative perceptions needs to start with the lawyer referral service.

Your lawyer referral service is the perfect vehicle for improving both the delivery of legal services and the public perception of the profession. Give your lawyer referral service a “face lift.” Make it more attractive to legal consumers and reap the benefits, both financial and in perception. Ordering a facelift for your referral service is absolutely within your capability. In a very manageable period of time you can put a new, more attractive public face on your association.

The LRIS Committee can and will provide the technical assistance you will need for the facelift. The model rules adopted by the ABA in the early 1990s are blueprints for a successful lawyer referral service. Our Program of Assistance and Review (PAR) provides technical consulting services from lawyer referral experts at no cost to local bar associations. Our annual LRIS Workshop provides materials and speakers who can answer your questions, save you money, improve your performance and provide an antidote to staff burnout. The ABA provides access to rules, forms, operating procedures and an extensive set of materials on advertising. The ABA Lawyer Referral Listserv provides almost instant answers for any LRIS problem you are likely to encounter. There really is nothing holding you back from shaping a new face for your bar.

The new more attractive face you all want to develop centers on your referral service obtaining ABA certification—a guarantee that your program complies with the model rules. Certification allows you to market your service using the ABA LRIS logo and to make true what people who call expect, “The Right Call for the Right Lawyer.” A high quality lawyer referral service will provide a new and positive face for your bar association and represent a significant step toward improving the reputation of lawyers in this country.

From Problem Solver to Supervisor:
Finding the Right Employees for Your LRIS

by Connie Pruitt

Hooray! Your lawyer referral service is adding a new position. Oh no! Now you have to change from being just a problem solver to being a problem solver and a supervisor. What do you do now?

First, congratulate yourself on the growth of your program. Then, think about where to find that person, what qualifications you desire, which of those qualifications are really needed, and how you plan interview candidates.

The ideal candidate

In defining the ideal candidate, think of your job needs and the organization’s limitations. Think of education levels, work experience, work style, specific skills, and other credentials. Do you like someone who has multi-line experience? Someone who previously worked in an office atmosphere? A candidate with a college degree? One who previously worked with volunteers? Put this ideal candidate’s job knowledge, skills and work behaviors in writing. Then you can develop the written job description along with the qualifications.

Now that you’ve got your ideal, what are you willing to accept? If the ideal candidate should be able (continued on page 21)
Finding Employees
(continued from page 20)

to grasp the role and responsibilities in a week, what learning curve are you willing to accept? If you can tolerate a three to four week learning curve, you can accept a different set of skills than if there is less time to learn. You now know better what you are looking for in your candidates.

Now, assuming you’ve done all that work, advertised the position, and received a pile of resumes, you have to review your applications. Determine which individuals you feel have the skills levels. Focus on how they will fit into the office and work with LRIS clients. Set interviews and do behavioral interviews. You want to find out how they react in certain situations, if they are flexible and team players, if they have listening skills and are detail oriented, and have a sense of urgency. You want to know what their motivators are, and their priority-setting ability.

Interview questions
Ask open-ended questions designed to elicit information about the applicant’s qualifications, such as, “Please briefly tell me about yourself.” If the candidate goes on and on, this will tell you something about his or her prioritizing skills. Questions can be designed to have the candidate describe prior behavior in the work setting, such as: “Have you ever had a disagreement with a supervisor?” “What was the disagreement and how did you resolve it?” If the answer is “No,” follow up with, “How have you avoided confrontations?”

You probably want to structure questions for either the candidate or a reference to elicit information about specific behaviors. Some of those might be: dependability, listening skill, initiative, flexibility, organizational skills, good judgment, getting along with others, and learning speed. You might also want questions about specific skills needed for the position, such as, “What is your technique when a caller becomes angry?” (See the table on this page for more suggested questions.)

Questions should not contain a suggested answer or permit a yes/no answer. Avoid asking questions that follow a pattern. Ask questions relating to skill level, then ask a question that covers another area, then come back to skills. If the candidate’s answers are uniformly short, keep following up. For example, a candidate may respond by saying, “My most enjoyable task in my job is filing.” Follow up with, “What about filing do you like?” Don’t lose focus on the information you got from the answer to the original question.

After the interview
Once you’ve completed your interviews, you need to evaluate the candidates and do your reference checks. It is important that each candidate be evaluated by the same standard. Develop a standard set of questions to use in evaluating each candidate. Some sample questions are listed below, but you will want your own list of questions that work for you and your office.

1. Was the candidate prepared?
2. Was she attentive or did you have to repeat the questions?
3. Did he listen to the questions before answering?
4. Were the answers responsive?
5. Were the answers spontaneous or measured?
6. Was the candidate easy to understand?
7. Did the answers indicate performance at the required skill level?
8. Did the candidate contradict the resume?
9. Was there a sense of self-confidence?
10. Were former bosses and co-workers criticized?

Sample interview questions
1. Tell me briefly about yourself.
2. Why do you want to change positions?
3. What do you like most about your present position?
4. What are three personal traits which best describe you? Give an example of a past situation that demonstrates one of them.
5. What do you dislike most about your present position?
6. What is important to you in a job?
7. What characteristics do you like most in a supervisor?
8. Describe your strengths and weaknesses.
10. Describe a time where you had a disagreement with a boss. How did you handle it? What was the outcome? (Repeat the question with a co-worker.)
11. What type of work environment is best for you?
12. What is the most important thing a prospective employer should know about you?
Handling the Clients of Problem Attorneys
by Clara Schwabe

The successful referral of clients to pre-qualified attorneys is only the beginning of the quality referral process. No matter how well we initially screen panel members, inevitably some will falter in their representation. Sometimes difficulties arise from a panel member who has slipped through our screening process; more often, highly skilled attorneys who are oppressed by personal problems fail to fulfill their professional responsibilities.

What follows are actual cases using fictitious initials to protect the identity of the affected lawyers. These are regrettably familiar scenarios here in New York. CH was a prominent and successful personal injury attorney, with excellent office management practices and a panel member for over twenty years. Yet when our director called on a routine matter, he noticed that the attorney’s speech was slurred. After consultation with committee members, it was determined that the director should meet personally with him. It was discovered that CH was suffering from a progressive neurological disease and was closing his office. Once the problem was exposed, we assisted him in the orderly distribution of his pending matters to substitute counsel.

JQ was a solo practitioner specializing in family law. A client complained that he had accepted a retainer but had failed to complete the divorce and did not return calls. Nor did he return our calls. With client permission, we called the court to ascertain the status, and reassured the client that her divorce would be completed. We left messages with the attorney advising him that we wanted to help. He finally called, having filed the final judgment. He thanked us and confided that he had been deeply depressed over the collapse of his own marriage. Because of his failure to respond to the complaint, he was suspended from the panel and subsequently removed.

MW was a highly successful personal injury attorney, but a client we had referred complained that she was not returning his calls. She had reported the referral as a “conference only”. Our investigation discovered that the statute of limitations had passed. The attorney was removed from the panel and the client was given her malpractice insurance information.

Quality control essential
While these examples demonstrate the need to promptly and effectively address client complaints, quality control mandates continued involvement. By the time a client has complained, her legal rights (and the referral service’s reputation) may already have been compromised.

It is vital to have quality control mechanisms in place that can intercept problems. A referral service must request and carefully review client feedback. Negative comments can portend problems. Our supervising committee has a subcommittee to review client satisfaction responses, and someone may contact unhappy clients and panel members to investigate further. Conversely, when we receive positive feedback, we circulate this among staff and send copies to panel members with a thank-you note. This gives panel members satisfaction that their work has been acknowledged and reinforces the positive efforts.

Thorough investigation of complaints is obviously a must. We request that complaints be put in writing, and they are promptly evaluated by the director to determine if the panel member should be immediately suspended. The member receives a copy of the complaint and is asked to respond in writing within ten days. Further documentation may be requested, or an opinion of expert counsel solicited. A subcommittee may be formed to undertake an in-depth examination of the management of the case and the conduct of the panel member. A problem panel member with numerous complaints of a similar nature may be suspended, even though a particular complaint does not, on its face, appear egregious. During the investigation or at its conclusion, the client is advised of options under our rules. The client may be advised of the attorney’s malpractice coverage, if the rights of the client appear irreparably compromised, and how to file a formal grievance with the disciplinary committee.

Annual renewal
Each year panel members must renew membership, and client feedback is valuable in determining if attorneys should be renewed. Each year at the time of renewal we request a report from the disciplinary committee as to any complaints that may have been filed against our panel attorneys. Some clients bypass the lawyer

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Problem Attorneys
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referral service and file complaints directly with the disciplinary committee. Our rules require that panel members report any complaints to the disciplinary committee, whether or not they involve LRS-referred clients. These complaints are reviewed by the director and can further serve as early warning of a panel member in trouble. Failure to so report is cause for suspension.

A pattern of complaints may make it appropriate to contact non-complaining clients of the affected attorney. In a recent instance, a panel member was the subject of multiple complaints within a short period of time. The attorney had neglected several family law matters because of the attorney’s illness. In this case we contacted all clients with open matters, determined what fees had been paid and what services were needed. The clients were advised of their right to fee arbitration, and that our panel members are required to maintain malpractice insurance. In some of the matters, we attempted to obtain substitute counsel to complete the work. We have at times asked other panel members to help pick up the pieces on a pro bono basis, and it is testimony to the compassion of our panel members that many have gone to great lengths to assist abandoned clients and fellow attorneys in trouble.

In situations like this one there are two major problems: unearned fees and malpractice that may have irreparably compromised clients’ rights. With regard to fees, our rules require all panel members to submit to arbitration upon a client’s request. Our supervising committee has designated a member to assist any client seeking fee arbitration by explaining the process and even by helping them prepare documentation. These fee arbitrations, conducted before arbitrators selected by a Joint Committee on Fee Disputes and Conciliation, are generally conducted without cost to the clients. Where a case appears to be irreparably compromised, we will advise the client of options including filing a disciplinary proceeding and/or a malpractice action, and we will refer counsel to represent them.

The value of vigilance
In order to serve the public and to maintain a reputation for excellence, a legal referral service must constantly be alert to any failure by its attorneys to fulfill their professional responsibilities. Quality control systems, such as those presented here, are the best way to mitigate attorney failings, and, more importantly, prevent them from occurring.

Clara Schwabe is managing attorney of the Legal Referral Service of the Association of the Bar of the City of New York.

Meet Up in Memphis: The 2005 Lawyer Referral Workshop
Join your colleagues in Memphis on October 26-29 to discuss cutting edge issues in the management of public service lawyer referral programs. Programs this year will include information on business planning, staff management, targeted-panel attorney recruiting, and effective client intake. New this year will be several sessions on the role of bar leadership in the delivery of legal services to the moderate income public.

There is no substitute for the professional development and management skills that are acquired through participation in the national LRS Workshop. The national conference has become a catalyst for productive change in programs across the country. This program is geared to connecting you with knowledgeable peers and outside consultants who offer expertise in key areas. Look for program information in your mailboxes soon.

Conference details will also be posted at www.abalegalservices.org/lris/conference.html

Don’t miss this opportunity to enhance your program!

ABA LRIS National Workshop
October 26-29, 2005
Memphis Marriott Downtown
October 26-29, 2005
www.abalegalservices.org/lris/conference.html
The Good Stuff
(continued from page 19)

Audrey Osterlitz, the New York State Bar LRIS director, tells how her program responded to a need for attorney assistance for deploying Reserve and National Guard troops. The program asked panel members to give up a weekend day to assist when the active JAG officers were not able to handle the volume. Panel attorneys set up laptops and printers to produce documents on the spot. Osterlitz notarized documents and witnessed wills. Questions that seem rather mundane during an ordinary estate planning appointment (Do you have cemetery plot? Have you made funeral arrangements? Who is your doctor? Who will have your power of attorney if you become incapacitated?) suddenly became almost overwhelming in this context. No matter what the opinions of the panel attorneys about the reasons for the deployment, they saw the need and stepped up to meet it.

Some other good works from lawyer referral intake are related by Marion Smithberger, director of the Columbus Bar Association LRS. An elderly gentleman was complaining about an insurance company refusing to settle a lightning damage claim, but it turned out that the damage had happened too long ago for any legal recourse. But then he complained that the gas company had inexplicably turned off his gas and that he was going to turn it back on himself. The intake operator was alarmed, having visions of large explosions and fires. The operator kept the caller on the line while another operator contacted the state Adult Protective Services with the address. It turned out that the house was so overgrown with vegetation that the gas company assumed that it was abandoned, and turned off the gas. The state agency was able to help the caller find a new living arrangement.

Another senior citizen called from jail, not a normal situation. She had been trying to care for her dying husband at home but it had overwhelmed her. The neighbors called police, and she confessed to all the things she couldn’t do to care for him. They arrested her on an endangerment charge. The LRS operator patched her through to a criminal defense attorney who persuaded her to stop talking to the police until he could get there. Later she was released and no charges were filed.

Carol Woods, director of the Bar Association of San Francisco LRIS, describes a formalized system for doing good works with its surplus revenue. The LRIS established an LRIS Fund for Public Service administered by an oversight committee comprised of members of the LRIS Committee and the BASF board. An amount equal to half the expenses is kept as a reserve for LRIS, and the other half is available to support charitable programs. Formal requests are made, and the oversight committee makes the decisions. Grants have been made to support minority law students, to create publicity for BASF’s public service programs, and to support BASF’s Volunteer Legal Services Program, which serves low income clients. This looks like a great way to keep any surplus directed to activities within the LRIS mission.

These stories illustrate the kind of service and impact lawyer referral service programs deliver. When you’re feeling stretched to the “nth” degree, keep stories like this in mind to understand how worthwhile your work is.

Joan Andersen is director of the King County Bar Association Lawyer Referral Service.

Dialogue thanks the contributors to this article: from the Association of the Bar of the City of New York, Jayne Bigelsen, director of communications, and Al Charne, executive director of the Lawyer Referral Service; Jeannie Rollo, director of the Lawyer Referral Service of Central Texas; Audrey Osterlitz, LRIS director, New York State Bar Association; Marion Smithberger, director of the Columbus Bar Association LRS; and Carol Woods, lawyer referral director of the Bar Association of San Francisco.

Finding Employees
(continued from page 21)

11. Did the candidate ask questions which were related to the position?
12. Did she try to rephrase questions?
13. Did he interrupt or attempt to avert a sensitive question? Remember, even though you have a wonderful interview, things may not work out perfectly—you may need to try to find the right employee again. Stay focused on the bottom line: having someone in the position that will be of benefit to the organization and to other LRIS employees.

Connie Pruitt is a director of the Hillsborough County Bar in Tampa, and is a member of the ABA Standing Committee on LRIS.
From the Chair... 

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

The mission of the Standing Committee on the Delivery of Legal Services is to maximize access to legal services and justice for moderate-income people. The Louis M. Brown Award for Legal Access creates an important platform for the committee to advance that mission.

Each year the committee honors an award recipient, along with those singled out for meritorious recognition. The 2005 Brown Award was presented at the ABA Midyear Meeting, at an awards luncheon graciously hosted by the National Conference of Bar Presidents and National Association of Bar Executives.

Recipients of meritorious recognition were MdFamilyLawyer.com and Rosen Divorce. Both firms use technology to effectively provide their services. Richard Granat created MdFamilyLawyer.com to provide an affordable online resource for people in Maryland. Richard has been an innovative pioneer in the use of technology to delivery legal services for many years, having served as the initial chair to the ABA Law Practice Management Section’s e-lawyering task force. This Web site demonstrates viable economic strategies, illustrating how small law firms can expand their markets and add revenues to their practice through technology. At the same time, those of moderate income have greater access to information and services.

Rosen Divorce is a traditional, bricks and mortar law firm in North Carolina that has added an exemplary Web site to augment and support its services. The firm provides an online child support calculator and a legal fees calculator to help determine the cost of a divorce at the beginning of the process. The firm provides online forms with clear instructions and an online forum, enabling people to pose questions, with answers posted on the open forum. Rosen Divorce has gone far beyond the standard law firm Web site template to provide extensive information and services that are important to those facing a divorce and the issues surrounding it.

While MdFamilyLawyer.com and Rosen Divorce are unique examples of the experimentation and innovation in the delivery of legal services in the marketplace, the recipient of the 2005 Brown Award is itself a stimulator of innovation. The Law School Consortium Project is a national collaborative of law schools that works with individual school members to initiate, support and expand solo and small firm practices that are dedicated to providing legal services to moderate-income communities.

The Consortium endorses no preconceived model, but instead works with each law school member to develop projects that are most suitable for their communities. One project under the Consortium umbrella is the Baltimore-based Civil Justice Network. This organization was the recipient of the 2002 Brown Award, honored for its development of a group of lawyers tied together through a listserv, sharing insights, trading cases and joining to work toward an improved community. The Consortium serves as a vital bridge, linking resources of the law schools with the needs of practitioners who serve those with moderate incomes. It also serves as the vehicle for the individual projects to share information with one another. The projects within the 17 law schools that participate in the Consortium not only assist the participating practitioners, but they also work to elevate the status and dignity of those providing personal legal services and, ultimately, use the rule of law to build stronger communities. The Delivery Committee looks forward to working with the Consortium in various ways to advance its worthy agenda.

While the recipients of the Brown Award tell us that they are highly honored to be chosen, we have not fulfilled our objective by merely giving the award and moving on to the next year. Our purpose in highlighting innovative programs is to encourage others to replicate these programs, if not in whole at least in some part. While the need to enhance the delivery of affordable legal services becomes more apparent with every day, we cannot do enough to encourage practitioners, bar associations and law schools to take from the Brown recipients the ideas that serve as experiments and further them. Break these ideas down. Think about the ways the marketplace can be a catalyst for innovation and take the steps to better serve those who do not qualify for legal aid and lack the resources for full traditional legal services. When we do that, then we will effectively address our mission of maximizing access to legal services and justice.

Read more about the Brown Award at www.abalegalsonices.org/delivery/brown.html
LAMP Essay Essay Contest Special

The ABA Standing Committee on Legal Assistance for Military Personnel and Dialogue bring you excerpts from the two award-winning submissions from the committee’s 2004 LAMP Essay Contest. Both essays addressed the question posed in the 2004 contest: “What is the greatest challenge facing military legal assistance?” The excerpts have been edited for publication in Dialogue. Visit www.ablegalservices.org/lamp to read the complete essays or for more information about the contest.

First Place Winner
The Legal Assistance Attorney Faces the Domestic Violence Giant
by Rebecca Cates Moody

Intimate violence is primarily a crime against women and a serious societal problem. Even a cursory glance at the 200 recommendations of the Defense Task Force on Domestic Violence demonstrates the seriousness of this problem within the Department of Defense. Domestic violence negatively impacts mission readiness, it is contrary to the core values of the military service, and it kills women and children. Domestic violence may very well be the greatest challenge facing the legal assistance attorney.

Congress has provided us with a patchwork of laws and regulations. Leaders agree we must do a better job. How? What weapons or avenues of approach do we have? Legal assistance can be a powerful avenue of approach. Unlike the military victim assistance liaisons and the Family Advocacy counselors, legal assistance attorneys offer confidentiality. They also offer zealous representation. Let us follow the story of one such attorney. His name is David.

The Legal Assistance Challenge to Face the “War at Home”

David’s 0830 client is early. She is in the waiting room with her two young children. She is the wife of a military member stationed there and she wants to know what her rights would be if she were to divorce her husband. David arms himself with the Uniformed Services Former Spouse’s Protection Act (10 USC §§ 1072, 1076, 1086, 1408, 1447, 1450, and 1451) and the state child support guidelines. As David pauses to open the Defense Finance Accounting Service Web site (www.dfas.mil/money/milpay/), which provides information on military members’ pay rates and allowances, he notices his client is not making note of all this important information he’s been explaining to her. In fact, she seems distracted. Being a sensitive legal assistance attorney, he asks, “Are you sure you want a divorce, are you perhaps interested in marital counseling? I can refer you to someone...” But before he can finish his sentence, she responds, “No! Don’t call anyone! I thought it was confidential if I came to you.”

David assures her that information he receives from her during legal assistance is confidential... She then proceeds to tell David what happened two days ago that prompted her to make a legal assistance appointment. She describes how her husband had been growing increasingly tense and how she had tried to appease him in the prior weeks. She describes how he becomes angry with her for watching too much television and how their argument two days ago ended with him holding her down and choking her on the couch. She says the children were sleeping.

She didn’t call law enforcement. There’s slight finger bruising on her left upper arm.

She just does not know if she can stay with him even if he does threaten to kill himself again. She wants to know what is available for her and the children in the event she decides to leave... The situation described could be even more complex with just the addition of a fact or two. Assume she is a resident alien. Assume she is pregnant. Assume David checks with Family Advocacy and they have a thick file of prior reported incidents that the Case Management Team deemed unsubstantiated because his client would not come in and speak with the Family Advocacy social workers. Assume she went to the doctor complaining of a sore throat the day after the strangulation incident and the medical record is available as evidence. Assume she is not married to the service member even though he is the children’s biological father. Each one of these assumptions would require a different reaction from David.

The Legal Assistance Attorney Accepts the Domestic Violence Challenge
Legal assistance attorneys give clients options and make recommendations on these options based on likely outcomes. David’s client is seeking to separate from her husband. Because her husband is a batterer, to advise her to leave her husband unless and until she has a workable plan is unthinkable. David decides to set aside the conventional protective armor of referring and deferring to (continued on page 28)
Legal Assistance for Military Personnel

State Bar of Texas Operation Enduring LAMP
by Bryan Spencer

T
exas’ Operation Enduring LAMP, a program of the State Bar of Texas, enables local bar members to provide pro bono legal assistance to members of the reserve and National Guard units called to active duty in the wake of the September 11 terrorist attacks the subsequent military actions in Afghanistan and Iraq. Legal assistance may also be provided to military family members in communities beyond the reach of an active duty legal assistance office. The program also provides pro bono probate for service members who have died in Iraq and Afghanistan.

Operation Enduring LAMP is modeled after the Operation Desert LAMP program run by the State Bar of Texas during the first Iraq war in 1990 and 1991. That program title, Operation Desert LAMP, was coined by Col. (then Major) D. Grant Seabolt, USMCR, a Dallas attorney. It is operated by Texas Lawyers Care—a department of the state bar—and the bar’s Military Law Section. Texas Lawyers Care provides office space, computer access, telephone service, and produces the free CLE materials. The Military Law Section provides a volunteer director to operate the program.

Educational support
The bar provides sponsoring local bar associations with a free four-hour CLE program with course book. The program is designed to help local attorneys upgrade their skills regarding federal laws they don’t normally encounter in their practice, but which are specifically applicable to service members. The CLE topics include the new Service Members Civil Relief Act (SCRA) (50 U.S.C. §§501-596) signed into law in 2003, the Uniformed Services Employment and Reemployment Rights Act, (USERRA) (38 U.S.C. §§4301-4333), military estate planning, and military benefits.

The CLE program course material is obtained from the military service JAG schools, the ABA Standing Committee on Legal Assistance to Military Personnel, and the ABA General Practice, Solo & Small Firm Section. The program also utilizes experienced civilian attorney practitioners for expertise in their respective fields, including CAPT Kevin P. Flood, USNR (Ret.) regarding legal assistance; Professor Gregory M. Huckabee, LTC, USA (Ret.) regarding SCRA; COL John Odom USAFR (Ret.) regarding SCRA; COL Mark E. Sullivan USAR (Ret.) regarding military family law; and Capt. Samuel F. Wright, USNR-USERRA.

The Operation Enduring LAMP CLE is provided to local bar associations on request. Normally local attorneys who are reserve component Judge Advocate officers are chosen to present the CLE. Where no Judge Advocate officers are available for example, local experts in areas such as estate planning are utilized.

Local bars are requested to provide a site for the CLE program and to recruit volunteer attorneys who have agreed to provide pro bono assistance. In addition, the local bars provide a point of contact with local reserve centers and National Guard armories and military bases. Ar-

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From the Chair...
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armed services liaisons) is considering how it can achieve positive change by introducing resolutions to the ABA House of Delegates consistent with the protections described in the Report.

At the same time, the LAMP Committee is considering how to expand the role of Operation Enduring LAMP in providing pro bono civil legal services to service members via its network of state and local bar association volunteers. Specifically, the committee is curious about the feasibility of providing assistance beyond mobilization related services, and increasing the different types of services offered to military personnel. Areas of particular need seem to be family law, consumer law and landlord-tenant law. Collaboration with other entities that may already have efforts in place to assist members of the military and their families is also a possibility. We encourage and welcome your ideas, and if there is a way you think Operation Enduring LAMP can be made more effective, please contact the committee via staff counsel Jane Nosbisch at 312-988-5754.

In the meantime, LAMP will continue its educational efforts both in terms of CLE programs offered on base, as well as serving as an information resource for legislators, the judiciary, and advocacy groups interested in enhancing the lives of our service members. LAMP will continue to participate in programs like the SCRA presentation sponsored by the General Practice, Solo and Small Firm Section at the ABA Midyear Meeting in Salt Lake City. We look forward to additional collaboration with our colleagues from the Military Lawyers Committee within GP Solo, as well as the Military Law Committee of the Section of Family Law, the Standing Committee on Armed Forces Law, the Government and Public Sector Lawyers Division, and the host of other ABA entities with a military or military-related constituency.

We also hope to continue to build on successes like the ELAP effort, and we are happy to add Mississippi as the most recent state to adopt a form of the Model ELAP Rule devised by the committee. (Read more about ELAP and the latest success in Mississippi on page 51.)

Thank you for your continuing support for our efforts.

LAMP Essay Winners
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a private attorney. He has his trusty slings, a law degree, and in his pocket are three smooth stones. He has slain cheating car dealers and unfair landlords in the past. He will face this giant. The first stone is assistance under the Victim/Witness Assistance Program. The second is Family Advocacy intervention, and the third is advice on developing a personal protection plan unique to his client.

The First Stone: David’s first inclination is to request assistance for his client under the auspices of Victim/Witness Assistance Program (VWAP) which implements the Victim and Witness Assistance Protection Act of 1982 (42 USC §§10601-10605), and the Victims’ Rights and Restitution Act of 1990(42 USC §§10606-10607), but because communications made to the VWAP representative are not confidential, he is unable to do so. The VWAP representative is, however, able to give David generic information about transition compensation for abused dependents (DODd 142.24) . . .

Currently the VWAP is a liaison service between the victim and Military Justice system after a case has been investigated and handed over to Military Justice for recommended action. The objective of the program is not to advocate on behalf of the victim but rather to gain the victim’s cooperation in the Military Justice process and to mitigate harm to the victim during this process.

The Second Stone: David’s client wants the abuse to stop, and she realizes her husband needs help. Family Advocacy offers counseling for both or either of the parties. The social workers are trained to understand the issues about power and control. Again, however, we run into the obstacle of confidentiality. To “force” the member to counseling, Command encouragement aimed at the member and close monitoring of the situation is essential. David’s client cannot make her husband attend counseling. The Family Advocacy social worker identifies needed counseling services and advises Command (AFI40-30) . . .

The Third Stone: A Workable Personal Protection Plan

A workable safety plan is different from a “plain” safety plan. A “plain” plan is little more than an expectation that the victim will leave the batterer accompanied by a standardized checklist. A workable plan flexes for the needs of the client. If a client is not prepared to leave, a workable plan includes strategies for responding when the violence reoccurs. It also includes strategies for empowering her and improving her situation while she stays. A workable plan will also include strategies for leaving in a moment’s notice amidst
LAMP Essay Winners
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another violent incident, or many
months later once needed support
is securely in place. These strate-
gies begin with providing informa-
tion and gathering information.

Providing Information and Giving Advice

David understands the importance
of explaining the tools available
within the legal system. He explains
the jurisdictional nuances and
applications of temporary protec-
tive orders as related to the Armed
Forces Domestic Security Act (10
USC §1561a), civil restraining
orders, and military protective
orders (DD Form 2873, April 2004).
He advises her that when she is
ready to leave, she should seek
both a temporary protective order
(TPO) from the local superior court
and a military protective order
which incorporates the superior
court’s TPO through the VWAP.
He details how each of these
orders can and cannot assist with
the state legal aid and obtains
commander (AFI32-6001). He calls
the photo lab to take photographs of the bruises.
He calls the photo lab to take photographs of the bruises.
He tells her to photocopy her
military medical records, and he
assists her in making a statement
for record of the incident. He tells
her that bruises fade and she may
need that evidence later. He tells
teen records “mysteriously”
disappear once violence is reported.
He discusses how the details of
the most recent incident are fresher
now than they will be six months
from now when she may be ready
to do something about the abuse.

Second Place Award
Reviving the Creative Spark: The Mission
Tactics of Legal Assistance
by Capt. Todd G. Monahan

A popular Marine Corps
recruiting poster depicts the
Trojan Horse of Greek mythology
with the caption: “Superior Think-
ing has Always Overwhelmed
Superior Force.”

Historically, superior weaponry
and creative soldiering have often
triumphed over greater numbers.
To this end, the 21st century
Marine Corps champions maneu-
ver warfare, a combat philosophy
“of a bold will, intellect, initiative,
and ruthless opportunism,” of
striking the enemy quickly where
he is most vulnerable (MCDP-l).
Maneuver warfare in practice
requires mission tactics, whereby
a subordinate leader, guided by
sound judgment, initiates action
to execute the commander’s intent,
often making bold, unconventional
decisions (MCDP-l). Frequently,
the combat officer’s best weapon
is imagination.

Like the combat officer, the legal
assistance officer (LAO) often finds
himself in situations that reward
creativity and opportunism. Yet,
in education and practice, the
“mission tactics” of legal assist-
ance (LA) get little shrift. Re-
sources—including the LAO’s
imagination—go untapped, prob-
lems remain unsolved, and costly
litigation ensues.

Therefore, the greatest
challenge facing legal assistance
is creating a professional culture
that looks for creative and, more
importantly, effective solutions
to client problems.

The LAO’s need for creative
problem-solving skills stems, in part,
from LA’s regulatory boundaries.
Quality is the driving force behind
the Navy-Marine Corps Legal
Assistance Program (NMCLAP)
(NMCLAP 7-1.1b). Attorneys unable
to provide quality services must
refer clients elsewhere (NMCLAP
7-1.1b(2)). Sometimes the LAO—
(continued on page 30)
whether because the issue is obscure, prohibited by regulations, or outside the LAO’s competence—truly cannot provide quality services, and the civilian attorney referral is appropriate. In other situations, such as those involving Servicemembers’ Civil Relief Act (SCRA) or DOD-directed interim support, where the LAO is the ultimate authority, quality is assured. Between those extremes lies a sprawling frontier, conquest of which is limited only by the individual LAO’s boldness and imagination . . . As with infantry mission tactics, the creative problem-solver focuses sharply on the client’s problem, brainstorms solutions, and then quickly executes without navigating the labyrinth of rote, default solutions . . .

Some Judge Advocates choose legal assistance solely for the client interaction, useful in building “people skills” for a later litigation billet. Even in ambitious offices, the “second letter problem” occurs. The LAO, taught to believe that her services cease at the second letter (at which point she must refer civilian counsel), fears exacerbating the client’s problem, pushing it out of her competence, and having to dump the worsened problem in client and civilian counsel’s lap.

The LAO, afraid of such consequences of aggressive representation, becomes timid, and, indeed, stops at the second letter. The LAO might as well have referred civilian counsel at the start. The self-fulfilling prophecy comes full circle: LA becomes a civilian attorney referral service.

Building a creative, effective professional culture for LA must begin at the accession education level. New Marine Corps lieutenants attend The Basic School (TBS), where the six-month Basic Officer Course splits time 60/40 between classroom education and field and practical exercises applying skills learned in lecture. Similarly, accession legal training should split time evenly between studying statutes, cases, and regulations, and applying them realistically by addressing typical and unusual scenarios, face-to-face with a mock client. Ideally—for even more quality time—the student can learn statutes, cases, and regulations in reading assignments, freeing more class time for mock client interaction . . .

LAOs should learn about using the news media and the Armed Forces Disciplinary Control Board (AFDCB) to their advantage. Internet research—knowing which sites to trust and which to avoid—should get several hours. A workshop about developing a networking strategy in one’s area, including court clerks, civilian attorneys, and business owners, must be included. In short, CLE must emphasize lawyering, not just law . . .

Conjuring creative solutions, however, would be worthless without putting them into practice. Realizing such solutions requires an infrastructure in the three key areas in which the LAO practices: tenant commands, and the local civilian legal and business communities. Effort here will create a fertile soil in which the germ of creativity can blossom. The LAO must develop a rapport with legal officers, senior enlisted members, and, ideally, commanding officers at her post. The attorney’s office cannot be a bastion in which the LAO stagnates on the defensive; it must be a launching point for goodwill to the local military community . . .

Local civilian attorneys are the LAO’s greatest resource for both substantive knowledge and familiarity with local practice, customs, and important persons.

This resource is not always exploited, and even when it is, the nature of LA often undermines good efforts. The LAO spends, on average, six months in LA, and turnover is frequent, as veterans move elsewhere and newcomers accede to their billets. Poor or no intra-office continuity impairs the LAO’s efforts to resolve lengthy and complex cases. New to a case, the LAO must establish a rapport with the client, opponent, and important persons . . . A solution to ensure inroads into the local civilian community is to place a state bar-certified civilian attorney in each LA office or within a region serving several offices . . .

Local and regional attorney networks, like LAMP’ Operation Standby, are also valuable sources of legal and practical guidance. The local business community is the LAO’s area of operations. Like the infantryman’s tactical area of operation, the LAO’s area contains friends and foes. The LAO’s task is to find and develop a rapport with friendly forces, so she is better prepared to uncover and counter hostile forces. The LAO must make his presence known in the community by, among other things, attending chamber of commerce functions and meeting business owners personally. The LAO should never miss an opportunity to discuss a client’s problem face-to-face with the opposing party; often, the goodwill of a personal visit will yield a favorable result . . .

Furthermore, the business operator who knows that military legal assistance has a direct conduit to him is less likely to deal unscrupulously with military customers . . . The LAO must learn how to prudently but effectively wield an AFDCB threat to force opponents’ compliance. The threat of an “off limits” determination usually softens stances of formerly
recalcitrant opponents. Another of the LAO’s most powerful weapons is the local news media. Television and newspapers reach a wide audience and, usually, lend credibility to a scenario that might otherwise be dismissed as rumor. Predatory and fraudulent businesses will scramble to avoid bad press, often giving in to client demands . . .

Legal assistance is considered a “core competency” for JAs, legal officers, and legalmen in the fleet Navy and Marine Forces, knowledge of which is essential to ensuring and maintaining the welfare of command members. In a larger sense, however, legal assistance is a boundless and ever-expanding frontier, a vast repository of different areas of expertise, including consumer, family, landlord-tenant, tax, and real estate law, as well as federal and military law and regulations. For the LAO, armed with precious few—but silently powerful—weapons, often restrained by enabling law or circumstances of practice, the challenge will always be to make much out of little; to tap the water of success from the stone of adversity. Like the combat officer, the LAO’s “mission tactics” will forever stress boldness, ingenuity, initiative, and vigorous execution . . .

Capt. Todd G. Monahan, U.S.M.C. is a legal assistance officer at the Marine Air Station, Cherry Point, N.C. He recently served in Iraq as a legal liaison officer between the Central Criminal Court of Iraq and the First Marine Expeditionary Force.

LAMP Essay Winners
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State Bar of Texas
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arrangements are made to provide pro bono assistance on a routine basis (such as one Saturday a month) or through appointments with an attorney in his or her own office, as appropriate.

The pro bono assistance service includes, at a minimum, legal counseling, telephone calls, and letter writing—for signature by the client or the attorney. Any out-of-pocket expenses are to be paid by the client. It does not cover in-court services. The Operation Enduring LAMP pro bono Texas probate program for service members dying in Iraq or Afghanistan includes routine probate matters. Any court costs, if not waived by the probate judge, are to be paid by the executrix or executor.

Outreach
The casualty assistance and legal assistance offices at the department level are periodically reminded that the State Bar of Texas provides pro bono Texas probate for those members dying in Iraq and Afghanistan. Pro bono attorneys are secured through the local bar’s LAMP project attorney, a member of the State Bar of Texas Military Law Section, or by direct request to the president of the local bar.

All Texas attorneys are encouraged to volunteer for these pro bono programs. Reserve and National Guard Judge Advocates may receive retirement points for providing assistance. In addition, Texas’ Operation Enduring LAMP encourages law schools and state bar sections to include SCRA and USERRA material in any administrative law or employment law CLE programs that they produce.

Bryan S. Spencer, Colonel, JAGC, USA, Ret., is director of Operation Enduring LAMP for the State Bar of Texas. For more information, contact him at 1-800-204-2222 x2157 or bspencer@texasbar.com.

ELAP Success in Mississippi

Military attorneys stationed in Mississippi will be able to provide in-court representation to armed forces personnel under a new procedural rule modeled on the ABA’s Expanded Legal Assistance Program (ELAP) rule.

The rule was adopted by the Mississippi Supreme Court on January 24, 2005, and allows a military legal assistance attorney licensed in another state to apply to become a Registered Military Legal Assistance Attorney in Mississippi, and provide civil law assistance to service members and their families.

The rule is modeled on the ELAP rule adopted by the ABA House of Delegates in August 2003, which recommended that states provide a means for low-income military service members and their dependents to access free legal assistance from military attorneys in certain areas of civil law. The new rule is an amendment to existing the Rule 46 Admission, Withdrawal and Discipline of Attorneys, of the Mississippi Rules of Appellate Procedure.

If your jurisdiction is interested in adopting an ELAP rule, please contact Paul Haskins, staff counsel to the Standing Committee on Legal Assistance for Military Personnel, at (312)888-5755 or phaskins@staff.abanet.org.
State Legal Needs Studies Point to “Justice Gap”

Recent studies validate findings of 1993 ABA study regarding lack of access by low-income people

by Robert Echols

Recently completed state legal needs studies in Illinois and Montana have joined the growing collection of studies conducted since 2000. Other states that have completed studies are Oregon (2000), Vermont (2001), New Jersey (2002), Connecticut (2003), Massachusetts (2003), Washington (2003), and Tennessee (2004).

All nine of these state studies were based on the methodology of the Comprehensive Legal Needs Study conducted by the ABA in 1993 (released in 1994), which remains the most recent national study of the legal needs of low-income Americans.

Among the major findings of the ABA study were the following:

• Nationally, on average, low-income households experience approximately one legal need per year
• The combined efforts of the private bar and publicly funded legal services providers serve only a small portion of these legal needs; help was received from a legal aid provider or the private bar for only 21 percent of all problems identified.

Analysis of the nine state studies indicates that these findings are still valid today, and if anything, they actually under-represent the level of need:

• All nine state studies found levels of legal need equal to or higher than the level in the ABA study. The state studies found a per-household average ranging up to more than three legal needs per year.

• Like the ABA study, all nine state studies found that the combined efforts of the private bar and publicly-funded legal services providers serve only a small portion of legal needs reported by low-income households. The comparable findings in the recent state studies were even lower than those in the ABA study.

Methodology

The state studies all used a survey questionnaire based on the questionnaire used in the ABA study. Although each state modified the questionnaire somewhat to reflect local circumstances and concerns, the general approach used and the majority of the questions asked were the same as in the ABA study.

The ABA study was based on roughly 1800 random telephone interviews with low-income Americans conducted during the spring and summer of 1993. (For comparative purposes, a group of moderate-income people was surveyed as well; however, their responses were not included in the findings discussed here.) Respondents were asked about a set of circumstances that anyone in their household might have experienced during the preceding year. A panel of attorneys ensured that the situations described to the respondents contained a legal issue and met a threshold of seriousness. When respondents reported such circumstances, follow-up questions asked what the household did or did not do about the situation and what contacts, if any, it had with the civil justice system.

Overall level of need

Eight of the nine state studies show a level of need substantially higher than the ABA study. One (Vermont) shows a level roughly equal to that in the ABA study.

Table 1 (on left) sets out the findings of ABA study and the nine recent state studies on the average level of need reported by the respondents to the survey.

Table 1: Legal Needs

<table>
<thead>
<tr>
<th>Study</th>
<th>Average number of legal needs in preceding year per low-income household</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABA</td>
<td>1.1</td>
</tr>
<tr>
<td>Oregon</td>
<td>3.2</td>
</tr>
<tr>
<td>Vermont</td>
<td>1.1</td>
</tr>
<tr>
<td>Connecticut</td>
<td>2.7</td>
</tr>
<tr>
<td>Washington</td>
<td>2.9</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>2.4</td>
</tr>
<tr>
<td>Tennessee</td>
<td>3.3</td>
</tr>
<tr>
<td>Illinois</td>
<td>1.7</td>
</tr>
<tr>
<td>Montana</td>
<td>3.5</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1.8</td>
</tr>
</tbody>
</table>

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From the Chair . . .

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

Earlier this year the Standing Committee on Legal Aid and Indigent Defendants released a new report finding that 40 years after the landmark Supreme Court decision in *Gideon v. Wainwright* (which established the constitutional right to counsel in state criminal proceedings) the American legal system still fails to protect the rights of the nation’s poorest defendants. State indigent defense systems are almost universally inadequately funded, and more often than not fail to provide properly trained and prepared defense counsel, resulting in the risk of wrongful convictions.

The report, *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice*, culminates a year-long series of public hearings to examine whether the promise of the *Gideon* decision is being met.

While there are many reasons why innocent people are convicted, the best defense against (continued on page 36)

Civil Legal Aid News

State funding for Arkansas

The Arkansas legislature passed and the governor has signed legislation to add a $20 “re-opening” fee for civil case filings. The funds generated from the fee, estimated to be between $200,000 and $400,000 annually, will be used to support the work of the Center for Arkansas Legal Services and Legal Aid of Arkansas, the two Legal Services Corporation-funded programs in the state.

New Mexico implements new pro hac vice fee

In late 2004, the New Mexico Supreme Court authorized a pro hac vice fee of $250. Funds will be paid to the New Mexico State Bar Foundation for distribution to legal services providers. New Mexico is the fifth state, following Oregon, Texas, Missouri and Mississippi, to institute a pro hac vice fee to benefit legal services programs.

New ATJ commissions in the District of Columbia and Massachusetts

The District of Columbia Access to Justice Commission was created by the District of Columbia Court of Appeals in January 2005, chaired by Georgetown University Law Center Professor Peter Edelman. The Massachusetts Supreme Judicial Court has approved a proposal to create a permanent Massachusetts Access to Justice Commission, to be chaired by former Chief Justice Herbert Wilkins.

Updated edition of Access to Justice report

The new, May 2005 edition of the report *Access to Justice Partnerships, State by State* is now available online at www.ATJsupport.org. The report describes state-level structures and initiatives in each state that bring together the courts, the bar, legal aid providers, and other partners to expand and improve access to justice.

LSC funding update

The White House sent its FY2006 budget to Capitol Hill in early February. Unlike the last four years, when the President’s budget has included $329,000,000 for the Legal Services Corporation (LSC), the FY2006 budget proposes across-the-board cuts for many programs including LSC, requesting that it receive only $318,250,000. Shortly before the release of this budget, the LSC board of directors reaffirmed its support for a FY2006 budget request of $363,809,000.

In June, the House of Representatives passed an appropriations bill funding LSC at $330.8 million for FY 2006 (the same amount as in the current year). In early July, the Senate appropriations committee recommended $324.5 million for LSC for that year; less than LSC’s FY 2005 budget and the House appropriation. The bulk of this cut would come directly from the funds that go to the field programs. Negotiations are continuing as of this writing.

The House and Senate Appropriations committees and subcommittees have been reorganized for this Congress. The former House Subcommittee on Commerce Justice State (with funding jurisdiction over LSC) has become the Subcommittee on Science, State, Justice and Commerce and Related Agencies, taking on jurisdiction of NASA and other science programs. Rep. Frank Wolf of Virginia remains the chair. Rep. Alan

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Justice Gap
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divorce, domestic violence, child custody and support). Other major problems areas were employment-related issues, personal injury, government benefits, and health care. The recent state studies found problems falling into the same categories, although the reported frequency of the different problem areas varied somewhat from state to state.

Legal help received/sought
Like the ABA study, all nine studies show that only a small portion of the legal needs identified in the survey were met by the private bar or legal aid programs. The state studies report this information in different ways. Five studies reported the percentage of problems for which legal help was received, as the ABA study did. The New Jersey study reports both the percentage of individual respondents with a problem who received legal help, and the percentage of problems for which legal help was sought. The other three studies report only whether legal aid was sought.

There are several other differences among the studies in how this issue is defined (for example, whether “legal help” is limited to help from a lawyer, or also includes others such as court personnel). Consequently, not all these findings can be compared directly to one another in strictly quantitative terms. However, meaningful comparisons can be made regarding the relative share of problems for which legal help was sought or received. In all nine studies, this figure was very low in relation to the overall level of need. Table 2 (below) sets out these findings, using the terminology employed in each respective report.

Why help not sought
The ABA study also explored the reasons why so many households with a legal need did not seek legal help, but instead either did nothing or sought to resolve the problem on their own. The predominant reasons given by respondents were notions that getting a lawyer would not help and that it would cost too much. A majority of respondents did not know about the availability of free legal assistance or understand that they were eligible.

Seven of the state studies asked people who had experienced a legal problem but who had not sought legal help to give their reasons for not doing so. These studies confirm that a large percentage of low-income people with a legal problem are not aware that their problem has a legal dimension and potential solution. As in the ABA study, many respond that “there was nothing to be done” or that “it was not a legal problem, just the way things are.”

In addition, many respondents stated that they were unable to afford a lawyer. Most of the studies also asked the respondent whether

<table>
<thead>
<tr>
<th>Study</th>
<th>Received legal help (by percentage of problems)</th>
<th>Sought legal help (by percentage of individuals with problems)</th>
<th>Sought legal help (by percentage of households with problems)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABA</td>
<td>21 percent of problems, help received from private bar or legal aid attorney</td>
<td>16 percent of individuals with problems legal help received legal help</td>
<td>16.6 percent of households (no more than; could be less) with a legal need sought legal help from private bar or legal aid</td>
</tr>
<tr>
<td>Oregon</td>
<td>18.1 percent of problems, help received from private bar or legal aid attorney</td>
<td>11 percent of problems, legal help sought</td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>12 percent of problems, help received from private bar or legal aid attorney</td>
<td>10 percent of problems, help sought from private bar, legal aid, family/friend, other</td>
<td></td>
</tr>
<tr>
<td>Montana</td>
<td>16.4 percent of problems, help received from private bar or legal aid attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td>9 percent of problems, help received from private bar, legal aid, courts, or other legal source</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>16.4 percent of problems, legal assistance received</td>
<td>16 percent of individuals with problems legal help received legal help</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>11 percent of problems, legal help sought</td>
<td>10 percent of problems, help sought from private bar, legal aid, family/friend, other</td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>16.6 percent of households (no more than; could be less) with a legal need sought legal help from private bar or legal aid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>29.2 percent of households that identified their biggest legal problem sought legal help from private bar or legal aid</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(continued on page 35)
they knew of a place that provides free legal services and whether they knew they would be eligible for free services. All of these states found low awareness among respondents about their eligibility for free legal assistance. The lowest percentages of respondents who knew about free legal aid were in New Jersey (26 percent) Tennessee (21 percent), and Illinois (23 percent).

### Importance of needs

The ABA study did not ask respondents to characterize the importance of the particular problems they experienced. In contrast, several of the recent state studies did ask respondents to rank the importance of the legal needs they experienced in some way and/or to identify those needs for which they thought they needed a lawyer’s help. Although the results are not all directly comparable to one another (because the questions asked differed from state to state), these studies indicate that respondents considered the legal needs covered by these questionnaires to be of real importance:

- **Montana:** Respondents characterized 53 percent of the problems identified as “extremely important” and 91 percent as “important”
- **New Jersey:** 84 percent of people with a legal problem thought the problem was highly serious and important, and 52 percent thought that they needed a lawyer to help with the problem.
- **Washington:** Respondents characterized 56 percent of their legal problems as “extremely important” and 93 percent as “important”.

These findings indicate that for most of those with legal needs who did not seek help, the reason was not that they regarded the problem as unimportant. Rather, many did not understand that their problem had a potential legal solution, and many others did not know that they were eligible for free legal assistance.

### Conclusion

The nine state legal needs studies released 2000-2005 indicate that the findings of the 1993 ABA study concerning the gap between the legal needs experienced by low-income people and the services they receive from private attorneys and legal aid programs remain valid today. Indeed, the state studies suggest that the rate of legal problems and the size of the “justice gap” are actually larger than found by the ABA study.

### Endnotes

1. In addition, the report of the Washington State Supreme Court Task Force on Civil Equal Justice Funding, based on data from the study, concludes that “140,000 low-income households will experience a legal problem each year that they understand has a legal dimension and requires some level of assistance.” This is roughly 50 percent of the total number of households with legal problems.

Robert Echols is the director of the Access to Justice Support Project, a joint project of the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and the National Legal Aid and Defender Association. He conducted the analysis of state legal needs studies discussed here on behalf of SCLAID.

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## Legal Aid News

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Mollohan of West Virginia is the ranking member. In the Senate, the subcommittee with jurisdiction over funding for LSC will be the Subcommittee on Commerce, Justice, and Science, which has gained jurisdiction over NASA and other science programs. It is chaired by Sen. Richard Shelby of Alabama, with Sen. Barbara Mikulski of Maryland serving as the ranking member. The impact of these changes is yet to be seen, but some observers have expressed concerns that NASA will receive a disproportionate share of attention and funding under this arrangement.
From the Chair...
(continued from page 33)
such miscarriages of justice is the availability of effective, well-trained defense lawyers.

In addition to extensive findings concerning the problems in the system, the report makes a number of recommendations on how the United States can improve its indigent defense systems. Chief among these recommendations is the call for states to increase funding for indigent defense to a level that ensures uniform quality legal representation, and for the federal government to provide financial support for indigent defense services in state courts as well. The report includes other findings:

- Too often lawyers are not provided to defendants in proceedings in which a right to counsel exists. Prosecutors often seek waivers of counsel and guilty pleas from accused persons without representation, while judges accept and on occasion encourage waivers of counsel that are not knowing, voluntary, intelligent and on the record
- Indigent defense systems often lack basic oversight and accountability
- Model approaches to providing indigent defense services do exist in the United States, but often they are not adequately funded and are difficult to duplicate without substantial financial support

In addition to advocating increased funding of states’ indigent defense systems, the report offers other recommendations:

- State governments should establish oversight groups to ensure independence, uniformity and quality in the delivery of representation
- Lawyers and defense programs should refuse to accept new cases when their workloads are so excessive that to do so would compromise the quality of their legal services or would lead to the breach of their constitutional or professional obligations
- State and local bar associations, as well as other organizations, should be actively involved in evaluating and monitoring criminal and juvenile delinquency proceedings, and in efforts to reform indigent defense systems.

We hope that this report will stimulate increased attention on the part of state policymakers and the organized bar to the problems plaguing the indigent defense system. To assist bar leaders in examining these issues, SCLAID sponsored the first-ever National Summit of State Bar Indigent Defense Chairs in February 2005. More than 50 bar and indigent defense leaders gathered for a day of presentations by experienced bar leaders who have lead indigent defense reform initiatives, and for interactive workshops on specific issues in systemic improvement. We plan to repeat this event at regular intervals.

The full Gideon report is available online at http://www.indigentdefense.org