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LAMP

"...[T]hose sacrificing for our freedom have a basic right to essential assistance with their personal civil legal affairs while on active duty, a right that does not disappear in challenging budget years."

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IOLTA Grantee Spotlight: Increasing Education Advocacy for Virginia Children

Public education is one of the most critically important and widely available benefits for children living in poverty in the United States. Yet in contrast to the substantial resources legal aid programs traditionally have devoted to helping clients secure other public benefits such as Medicaid, public housing or SSI, only a limited number of those programs around the country have attorneys or projects dedicated to protecting access to quality educational services for their clients.

To address this gap, and in recognition of the primary role that education plays as a pathway out of poverty, the Legal Services Corporation of Virginia (LSCV) recently decided to make a substantial IOLTA grant to help a regional legal aid initiative—the Charlottesville-based JustChildren Program of the Legal Aid Justice Center¹—become Virginia's statewide support center for education law and advocacy. LSCV has made an initial annual grant of \$75,000 to JustChildren in hopes of increasing the number of legal aid lawyers in Virginia handling education cases, improving the quality of education litigation across the Commonwealth, and focusing more attention among policy makers on the needs of low-income students and families.

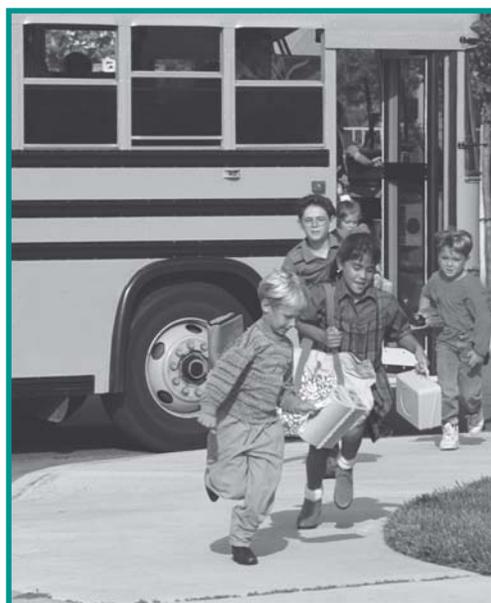
LSCV Executive Director Mark Braley explains that LSCV focused on helping JustChildren in order to leverage its expertise in education law as a local program into increased education law capacity and individual representation across the Commonwealth. According to Braley, the grant to JustChildren is good strategy: "By rewarding and taking to scale effective representation models developed at a local level, we maximize our resources by not having to re-invent the wheel. JustChildren attorneys

had, for the last few years, been providing statewide support as a secondary responsibility that they took it upon themselves to assume. We wanted this work to become one of their core priorities, and [LSCV's] board was willing to invest the resources to make this happen. We win and they win; but more importantly, the children across the Commonwealth win by having access to more informed and effective advocates."

The need for education advocacy

While Virginia is one of the wealthiest states in the country, it provides one of the lowest levels of state support for public education, ranking in the bottom 10 of the 50 states, according to Andy Block, legal director of JustChildren. The

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DIALOGUE

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Grantee Spotlight

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failure to fully fund education at the state level leaves localities to pick up the pieces. Disparities in wealth between rural, urban and suburban communities mean that the educational opportunities available to children in the Commonwealth are largely, and unfortunately, dependent on their addresses. According to the Education Trust, an education research and advocacy organization, Virginia ranks among the worst states when it comes to funding disparities between high and low-wealth school divisions.²

Recent state studies confirm the unfortunate consequences of this structure: The biggest predictor of a school's success rate on Virginia's standardized exams is the percentage of children in poverty in the school.³ Race and poverty are also significant predictors of lack of access to highly qualified teachers.⁴ Too often, in other words, the students who need the most end up getting the least.

These disparities, sadly, translate into real world education failure. For example, in high schools in urban communities such as Norfolk, Richmond and Portsmouth, only 50 percent of those who were freshmen four years earlier completed high school on time in 2005.⁵ Being out of school and not receiving a diploma are often gateways to future poverty and criminal involvement. Indeed, in studies performed by the Virginia Department of Juvenile Justice, fewer than 15 percent of incarcerated youth regularly attended school at the time of their delinquency.

In addition to being harmful for the individual child and his or

her community, a child's lack of success in school contributes greatly to family stress, according to Block of JustChildren. "Difficulty in school jeopardizes employment if parents are frequently called to pick up their children at school, it jeopardizes public benefits if a child does not attend school, and it jeopardizes public housing placements if the child engages in delinquent behavior," he says. Conversely, helping children stay and succeed in school, just like helping children access health care, has individual, family, and societal benefits.

Education needs underserved

Despite the benefits, and the fact that education is a core priority of the Legal Services Corporation of Virginia, according to Block, many of Virginia's local legal aid offices handle few, if any, education cases. Based on the enthusiastic participation in education law trainings at the annual statewide providers' conference, the lack of representation does not appear to be based on disinterest, Block believes. Rather, the issue is insufficient knowledge and experience among staff members, and a perceived lack of need or opportunity in the community.⁶

To address this problem, JustChildren proposed that, with LSCV support, it would match its skills and more than eight years of experience in the practice area with the interest of staff attorneys and project directors across the state, helping all local legal services programs become more robust defenders of the educational rights of children in poverty. According to Block, "Attorneys frequently came up to me after our training sessions saying that they

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From the Chair...



by Joanne M. Garvey
Chair of the ABA Commission
on IOLTA

Readers of this column know that efforts to increase IOLTA revenues, particularly through rule changes, have been an ongoing focus of attention for me and for the Commission on IOLTA. There is no question that this emphasis is well-placed because the need for additional funding for legal services is ever-present. But it is also important to remember that increasing revenue is only one of the important tasks handled by IOLTA programs. If you look closely at IOLTA programs around the country, you will see that many of them are leaders in statewide efforts to improve the delivery of legal services.

The most obvious manifestations of this leadership are IOLTA grant programs, which contribute millions of dollars every year to support legal aid programs both large and small. IOLTA provides a vital part of the budget for all of these programs, and enables their work year after year. But IOLTA programs do much more than write checks. They look to determine how needs in their state are changing, and how grants can respond to those needs, support innovative approaches to meeting them, or improve access to justice in general.

Several events have reminded

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A New Frontier for IOLTA: Interest Rate Comparability

by Jane E. Curran

Dialogue is pleased to bring you a two-part look at IOLTA rate comparability requirements from Jane E. Curran, executive director of the Florida Bar Foundation. The first part focuses on the basics of comparability and some common questions associated with it. Part two, to be published in the Fall 2006 issue, will focus on the specifics of implementing a comparability requirement.

Veteran IOLTA directors and trustees have long heard the phrase “revenue enhancement” in connection with IOLTA. Efforts to improve the net yield generated on IOLTA accounts are almost as old as the concept of IOLTA itself. Strategies to secure better rates have included direct negotiations with banks, campaigns by participating lawyers advocating for better rates, and public recognition of those banks paying more favorable rates. These have succeeded in producing incremental gains in many cases, and even some large gains in others.

Nonetheless, IOLTA supporters in many states have been left with a sense of frustration. After years of hard-earned agreements with banks to raise interest rates, those paid on IOLTA accounts often still fall short of those on non-IOLTA accounts. What can IOLTA programs do to level the playing field and gain access to the higher rates paid on other accounts?

Enter interest rate comparability. Interest rate comparability for IOLTA accounts may seem a jumble of vague concepts, but the result is clear. First embraced in Alabama, Florida and Ohio in the early 2000s, comparability is yielding significant increases in IOLTA revenue. A growing number of IOLTA programs have or are in the process of adopting comparability (please see the sidebar on page 7).

These comparability requirements, distinct from principal balance increases or higher rates on consumer checking generally, have generated impressive increases in IOLTA revenue in recent years. For example, Florida’s annual IOTA income has grown by 298 percent from June 2004, when the program began implementing comparability in earnest, to June 2006.¹ Over that same time, because of comparability, the range of rates paid on IOTA accounts has increased. The interest rate range for IOTA accounts in 2004 was .1 percent to 1.75 percent; today it is .15 percent to 4.22 percent.

Comparability defined

Under comparability, IOLTA accounts are paid the highest interest rate or dividend generally available at a bank to its other customers when IOLTA accounts meet the same minimum balance or other qualifications, if any.

Three key amendments to an IOLTA rule or official guidelines are needed for a comparability program to be effective. The first permits use of REPOs (backed by government securities)² and government money market funds for IOLTA accounts (the most common products banks

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From the Chair...

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me of this important part of IOLTA programs' work. In May, the Commission visited representatives of the North Carolina State Bar and its IOLTA Plan. Beyond basic support for the state's main legal aid program, IOLTA funds support a range of activities, from the North Carolina Justice Center, the former state resource center which now focuses on impact litigation, research and analysis and public policy research, to Land Loss Prevention, a program designed to help minority, low-income and elderly families retain their ownership of farmland throughout North Carolina.

IOLTA funds also support summer public interest internships for students at the North Carolina's five accredited law schools. In addition to expanding the services available to low-income people, this program provides an ingenious indirect benefit by serving as a recruiting tool for legal aid offices, and educating a new generation of law students and young lawyers about the value of legal aid and the ideal of equal access to justice. These are only a few of the highlights of North Carolina's active grants program.

Other examples of strategic grant-making exist elsewhere. The pages of this issue of *Dialogue*

include an IOLTA "grantee spotlight" feature on JustChildren, an innovative children's advocacy program in Virginia. It has just been awarded a grant by the Legal Services Corporation of Virginia, which recognized the potential for JustChildren to build on its existing approach and capabilities by expanding its services and advocacy statewide. With the help of IOLTA grants, the program will engage in legislative advocacy as the only voice for children in Virginia's schools.

In the last issue of *Dialogue* we read about the Pediatric Advocacy Initiative, a medical-legal collaboration designed to address legal issues intertwined with low-income children's health problems. That model did not originate in Michigan, but the IOLTA program there recognized the possibilities it offered, and committed substantial funding to the project when the opportunity arose.

Grants and grant-related issues have been a more prominent part of the IOLTA Workshops recently. The summer program included sessions on grantee evaluation and ensuring quality in legal services delivery. The workshops also included a compelling session on how programs should allocate increased revenues. Should emphasis be placed on building program reserves—in many cases funds depleted during the last "down" cycle for IOLTA a few

years ago? Where in the priorities should investment in capacity-building projects fit? What amount of additional funding should go directly to the field programs currently struggling to meet only a fraction of the need for their services?

There is no "right" answer to these questions. Rather, leadership means confronting these questions and other factors in each state to come to a suitable outcome—as one workshop participant remarked, "an intentional, analytical, strategic approach to distributing funds." It was clear from the workshops that many IOLTA programs are assuming such leadership. And that works to the benefit of equal justice everywhere.

* * * * *

Leadership can also be seen, of course, in the efforts to increase IOLTA revenue I mentioned earlier. I was very happy to learn that three states have succeeded in obtaining IOLTA rule changes. Connecticut and Massachusetts both have new comparability requirements which they will be working to implement later this year. Mississippi will become the latest state to convert to mandatory IOLTA, effective January 1, 2007, and has a comparability provision it will work to implement.

Comparability

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offer to customers who need checking features, but aren't willing to accept low consumer checking rates). The second

officially links participating lawyers' ability to hold IOLTA funds at a particular financial institution to whether that institution pays a comparable interest rate, or dividend in the case of a government money market fund. The third defines the

reference point for comparability as the highest rate or dividend available, without tying it to a specific bank product. (In contrast, early IOLTA rules were tied to standard interest-bearing consumer checking accounts.)

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Grantee Spotlight

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wanted to handle more special education and discipline cases, but that no one ever called. Or they would say, we get phone calls about some of these cases but nobody in our office knows how to handle them. It seemed to me that if we were able to provide more training, materials, and ongoing support, we could have a lot more education lawyers throughout Virginia.”

Building a program

JustChildren was created in 1998, when the Legal Aid Justice Center (known then as the Charlottesville-Albemarle Legal Aid Society) sponsored an application for a Soros Justice Fellowship submitted by Block. He proposed the creation of a child advocacy project to help meet the needs of children involved in Virginia’s delinquency system. Over time the project has expanded, and soon will have 10 staff members (eight attorneys and two community education coordinators) operating out of LAJC’s Charlottesville, Richmond and Petersburg offices. LAJC Executive Director Alex Gulotta has been a strong supporter of the project. “One of the many reasons that Virginia has always under-funded services for children is that we have lacked a statewide children’s law center that would hold the state accountable. It quickly became apparent that JustChildren’s local work had statewide implications, and that in addition to trying to maintain a strong local presence, we ought to have a broader vision and do more statewide work as well,” Gulotta explains.

As a result, in addition to

providing individual representation to numerous young people, during the last three years JustChildren attorneys have been at the center of successful legislative and administrative efforts to improve funding for Virginia’s at-risk four-year-old preschool program, to increase educational opportunities for children in foster care, and to mandate effective re-entry planning and service delivery for young people leaving juvenile correctional centers. In addition, during the same period these advocates have traveled the state and trained more than 1,200 parents, providers, attorneys, and judges on effective educational advocacy.

Finally, as part of its statewide campaign to improve the delivery of educational services to children in poverty, JustChildren recently assumed leadership of the Alliance for Virginia’s Students, a statewide advocacy group with sophisticated effective electronic advocacy capacities (www.vastudents.org). During the most recent legislative session, for example, the Alliance generated thousands of emails, faxes and other legislative contacts in support of public education.

New funding, new projects

With the new IOLTA funding from LSCV, JustChildren will add one member to its staff to lead its new statewide role. Among the new projects enabled by the IOLTA grant are expanded training and technical assistance offerings. JustChildren attorneys will work with regional legal services offices to design and deliver trainings on education law and representation. JustChildren staff also will help local legal aid lawyers develop the kind of referral networks that have been successful in JustChildren’s home sites. As these lawyers begin

taking and accepting cases, JustChildren staff will be available to provide technical assistance to the attorneys and, in some cases, even serve as co-counsel.

The program will also establish an electronic information clearinghouse. Staff members will compile, develop and update a brief and form bank, initiate and manage an electronic mailing list for attorneys doing education law, and launch and lead a statewide education law taskforce comprised of representatives from the various legal aid programs across Virginia, as well as private attorneys practicing in this area.

With more lawyers practicing education law in areas of the Commonwealth where low-income students have never had education lawyers, JustChildren anticipates that significant systemic failings will be uncovered. On those occasions, or when individual cases require significant resources, JustChildren attorneys will co-counsel, or will try to secure the assistance of pro bono attorneys to partner with the local legal aid lawyer working on the case.

Legislative presence

Among JustChildren’s most important new roles is statewide policy advocacy. The programs’ attorneys have, for the last several years, been working to establish a stronger voice for Virginia children through their advocacy in the Virginia General Assembly and before the State Board of Education. JustChildren has also worked to train parents and others to be effective policy advocates. Another strategy has included partnering with non-traditional allies such as the Virginia Municipal League, the Virginia First Cities Association and the Virginia

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Grantee Spotlight

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Education Association, to improve opportunities for children. With increased IOLTA support, JustChildren plans to devote more resources to building an active, consistent and robust presence before the legislature.

Conclusion

LSCV's additional support to the JustChildren Program represents an interesting and exciting direction for IOLTA. In building on locally developed practice area expertise by making it more widely available to the state as a whole, LSCV is acknowledging and rewarding an entrepreneurial approach to pressing community problems. It focuses on an area—

public education—that is of critical importance to the community served by legal service offices, but that all too often falls off of the radar screen of local programs. Finally, the grant recognizes the need for public school students to have as active and effective a voice in statewide policy making as the adults who run their schools.

For more information about JustChildren, visit its Web site at www.justice4all.org/programs/justchildren/ or contact legal director, Andy Block, at andy@justice4all.org.

Endnotes

¹ The Legal Aid Justice Center is a non-LSC funded legal services program with offices in Charlottesville, Richmond, Petersburg and Falls Church, Virginia.

² Numerous studies of state school funding by the Education Trust are available on the organization's Web site at www2.edtrust.org/edtrust/

³ See *Review of Factors and Practices Associated with School Performance in Virginia*, prepared by the Joint Legislative Audit and Review Commission of the Commonwealth of Virginia, 2004, available online at <http://jlarc.state.va.us/Reports/Rpt305.pdf>

⁴ *Id.*

⁵ Based on analyses by JustChildren of statistics collected by the US Department of Education.

⁶ According to staff at the Legal Aid Justice Center, prior to the launch of JustChildren, similar perceptions existed within the Charlottesville community. After outreach and continued presence in Charlottesville, however, there are now more requests for service than the attorneys can handle.

Comparability

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No regulation of banks

"Hold on," say some. "Doesn't comparability regulate banks?" The answer is no. What comparability requirements do regulate is the behavior of lawyers, who are required to place their IOLTA accounts at financial institutions that meet the comparability requirement. Banks are not required to offer IOLTA accounts; they do so because they are profitable. Accordingly, their decision to pay comparable rates in order to keep IOLTA business is a voluntary one.

"Alright, but doesn't comparability set bank rates?" Again, no. Significantly, comparability doesn't compare rates among banks. Rates

paid under comparability are set by each bank for its own customers and are based on all the factors a bank normally considers when it sets rates. This feature of comparability is very important to banks. For example, a bank makes REPOs available to every customer with consistent checking balances greater than \$100,000. However, even though an IOLTA account and the checking account of XYZ Company carry the same balance, XYZ Company gets a higher REPO rate than the IOLTA account. As long as the IOLTA account with more than \$100,000 receives the sweep rate given to other customers with that balance, it's okay for XYZ Company to get a bit more, because the bank also manages the company's 401(k) plan and provides its accounts receivable financing, creating a more profit-

able relationship for the bank than the IOLTA account. This is part of the bank's standard system for calculating interest rates.

Comparability vs. negotiation

A good question raised by IOLTA programs is, "Since we've had success in negotiating higher rates from banks, why should we adopt comparability?" A good answer is, "Maybe you don't need to." While the strategy of negotiation has proved to be frustrating to some IOLTA programs, it has produced concrete gains for others. Comparability may not be a one-size-fits-all solution. But it is well worth considering how your program might fare with a comparability requirement.

Under comparability, high balance IOLTA accounts—nor-

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Comparability

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mally \$100,000 or more on a consistent basis—qualify for a REPO or government money-market fund rate. Even smaller IOLTA accounts, with balances as low as \$2,500, may qualify for rates higher than standard checking account rates at banks which offer “tiered” checking to other customers, but may not to IOLTA. IOLTA programs will need to analyze their IOLTA accounts and compare their negotiated rates to what a bank pays its other customers to decide if the advantages of adopting comparability are worth the time and effort.³

Faced with these possibilities, most states adopting comparability were further motivated to move on from other revenue enhancement strategies by frustration with their limits: the “one step forward, two steps backward” uncertainty of bank negotiations, the seemingly endless cycles of bank acquisition, and rates on consumer checking accounts that go down fast and rise slowly (if at all).

Other considerations and questions

For IOLTA programs taking a close look at comparability, other questions might come up. Here are a few:

- **What if a bank doesn't offer higher-paying products for which IOLTA accounts qualify?** Then that bank is unaffected by the comparability rule, as long as it is not discriminating against IOLTA. Under comparability, banks that choose to offer IOLTA accounts no longer can claim, “We don't have a higher-paying IOLTA product.” If they pay higher rates to other customers and IOLTA accounts

Where is comparability in effect?

The basic notion behind comparability—the belief that IOLTA accounts should earn the same rates as non-IOLTA accounts of similar size—has existed in the IOLTA community for many years. The comparability requirements that are beginning to produce impressive results this decade rely on the formula described on page 1: investment products such as REPOs are permitted, lawyers can place funds only in banks that pay comparable rates, and rates are not tied to particular products such as consumer checking accounts. States that have incorporated this formula into their IOLTA rule, statute or regulatory guidelines include the following:

Alabama
Connecticut (effective September 1, 2006)
Florida
Massachusetts (effective on or before January 1, 2007)
Michigan
Mississippi (effective January 1, 2007)
New Jersey
Ohio

A number of states' rules include a comparability requirement that does not include each element in this formula. Some rules are old, and may predate the common use of vehicles such as REPOs. Other rules are new, and establish the principle of comparability while leaving some of the specific elements to be clarified in the future, when implementation may become more feasible for them.

meet the same qualifications, then they must pay a comparable rate on the qualifying IOLTA accounts.

- **What about service charges?** Banks can assess the same fees they charge other customers when the fee is tied to a higher-rate product.⁴ For example, banks normally charge customers \$75 to \$150 per month to sweep available balances overnight into a REPO. IOLTA programs should expect to pay the same. Moreover, if a bank chooses to pay the comparable REPO rate on the checking account without actually setting up an overnight sweep to a REPO—the norm when comparability is implemented—the REPO rate paid under that circumstance can be lowered to offset the loss to the bank of the monthly sweep fee.⁵ Banks can, of course, choose to waive all service charges and fees on IOLTA accounts, but they aren't required to forego fee income tied to higher rates.
- **What do attorneys and law firms have to do under comparability?** Nothing. The IOLTA programs that have implemented comparability have taken the responsibility to work directly with each bank. The result typically is that banks change their rates on existing accounts and lawyers therefore do not have to go through the

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Comparability

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steps of actually establishing a sweep account.

- **What if a bank wants to set up REPOs or government money market funds for qualifying, high-balance IOLTA accounts?**

Then the IOLTA program advises the affected attorneys and law firms that the bank has made that choice in order to comply with the comparability rule. The program provides the necessary forms for execution by the attorney or law firm, and returns them to a central bank employee identified by the bank for that purpose. The bank has made the decision for the affected attorneys and law firms.

- **What if a bank doesn't comply with the comparability requirement, but still offers IOLTA accounts?**

Ohio's comparability requirement specifically provides that the bank can be "de-certified" and attorneys and law firms advised that they must move their IOLTA accounts to a complying bank. Comparability requirements elsewhere are not as explicit, but do require that lawyers deposit IOLTA funds only at banks that pay comparable rates. Implicit in this requirement is that lawyers would have to move the IOLTA funds if the bank failed to pay these rates.

The need to take such drastic action is unlikely, however, and is not the experience in states that have implemented comparability. Even when banks pay comparable rates, IOLTA accounts remain profitable. Banks also profit from the other, fee-generating relationships with an attorney or law firm that an IOLTA account brings.

Getting help

If your program is interested in more information about comparability and revenue enhancement in general, plan to contact the ABA Commission on IOLTA and its staff:

- Commission Counsel Bev Groudine, 312-988-5771 or bgroudine@staff.abanet.org
- Assistant Counsel David Holtermann, 312-988-5744 or holtermd@staff.abanet.org

In addition to the Commission, the Commission/National Association of IOLTA Programs Joint Technical Assistance Committee and Banking/Revenue Enhancement Committee have provided significant assistance and input to a number of states with comparability requirements. Contacting the Commission staff is the best way to tap these resources and the collective knowledge and experience of the IOLTA community. It also helps facilitate the collection of good ideas from various states that in turn can be shared with others.

When implementing a comparability requirement, you may want to consider using an outside consultant to increase your program's capacity for the data-gathering and other work that is required, such as analyzing a bank's plan to comply with the comparability rule. More information on implementation will be included in the second part of this article.

Conclusion

Apart from conversion to mandatory IOLTA, adopting comparability promises to be the most significant source of IOLTA revenue gains in the coming years. Now is a good time to begin investigating the possibilities for your program, as the collective experience with these requirements grows and offers beneficial insights to programs crafting requirements in the future. For example, there are bells and whistles in recently-adopted comparability rules or official guidelines that can make implementation easier, especially for smaller IOLTA programs. They include offering banks compliance options such as "safe harbor" rates (a set percentage of the prevailing Federal Funds rate) and language permitting banks and IOLTA to agree upon a set rate for a specified time period.

IOLTA programs should expect that implementing comparability won't be done quickly. IOLTA programs will want to take a reasonable and helpful approach in working with banks. After all, IOLTA itself took some time to take hold. There will be numerous meetings, conference calls and emails. Given time and care, however, comparability can reap rewards over the long haul for IOLTA's charitable purposes.

Jane E. Curran has been the executive director of The Florida Bar Foundation since 1982. She is also a member of the ABA Commission on IOLTA.

Endnotes

- ¹ The formal name of IOLTA in Florida is the Interest on Trust Accounts (IOTA) Program.
- ² REPOs are short-term investment vehicles in which the bank sells

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IOLTA News and Notes

Revenue enhancement rule changes in Connecticut, Massachusetts and Mississippi

The past several months have seen the high courts in three states adopt amendments to IOLTA rules and guidelines with the goal of increasing IOLTA revenues. In June, the judges of Connecticut's Superior Court endorsed a proposal for an amendment adding a comparability requirement to the state's IOLTA rule. When it takes effect on September 1, the amended rule will require banks holding IOLTA deposits to pay no less on those deposits than the highest interest rate or dividend paid to a bank's own non-IOLTA customers when the IOLTA account meets the same balance or other eligibility qualifications. The Connecticut Bar Foundation, which operates the state's IOLTA

program, expects that this change will double its IOLTA revenue.

On May 18, the Supreme Court of Mississippi amended the state's IOLTA rule to convert the IOLTA program from opt-out to mandatory status. The new rule will require Mississippi attorneys who handle client funds to participate in IOLTA starting January 1, 2007. The move to mandatory is expected to boost IOLTA revenues. The new rule also contains comparability and other provisions that have the potential to further increase revenues as they are implemented. Mississippi will become the 32nd mandatory IOLTA program in the United States, and it is the fifth state to adopt mandatory IOLTA since 2004,

following Oklahoma, South Carolina, Utah and Indiana.

In late July the Supreme Judicial Court of Massachusetts ordered the revision of guidelines for the Massachusetts IOLTA Committee. The revisions are intended to "assure fair and reasonable interest rates" on IOLTA accounts and utilize comparability provisions similar to those adopted in Connecticut, Mississippi and elsewhere. The IOLTA committee has been authorized by the court to begin implementing the new requirements on or before January 1, 2007.

Turn to page 3 for an article explaining IOLTA comparability requirements in detail.

Comparability

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securities held in its own investment portfolio to a customer with the agreement to repurchase them from the customer the next day at a price which equals the original investment amount plus interest. While the interest rates paid on repurchase agreements are higher than those paid on checking accounts, there is usually a high minimum checking balance—generally \$100,000—required. Repurchase agreements are not FDIC insured and modifications to IOLTA rules or regulations may be required to allow for this investment. The safety of the principal balance is addressed by requiring

REPO investments be backed by United States government securities.

- 3 In deciding whether to pursue a comparability requirement, IOLTA programs may wish to use the services of an outside consultant and obtain up-to-date information about the rates paid by individual banks to non-IOLTA customers.
- 4 In rules or official guidelines, many IOLTA programs have prohibited negative netting or defined checking activity and other fees that banks are allowed to deduct from IOLTA account interest. Comparability does not alter such rules or guidelines. IOLTA programs should continue to make clear to banks that they may pass along to attorneys and law firms certain fees, such as

wire transfers and other special services, which cannot be deducted from IOLTA account interest. Banks have always been able to recover IOLTA reporting or other account-related fees through a "maintenance" cost; they can continue to do so under comparability. IOLTA programs may wish to include language prohibiting negative netting and defining allowable fees in proposed rule amendments or official guidelines when seeking comparability.

- 5 In the experience of programs implementing comparability, banks generally have elected to pay REPO rates on existing IOLTA checking accounts, discounted for the loss of sweep fee income to the bank, rather than setting up a sweep to an overnight REPO.

From the Chair...



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

In its simplest form, the mission of the Delivery Committee is to maximize access to justice and lawyers for those of modest means. It has been my honor to have chaired the Committee the past three years and to have advanced its agenda. Throughout my tenure, the Committee has focused much of its work on policies that have an impact on our mission. This year, Committee liaisons have served on ABA Presidential entities that have advanced policy recommendations to the House of Delegates in our efforts to expand access to justice. I am particularly pleased with the work of committee member Zona Hostetler, who served as liaison to the Presidential Task Force on Access to Civil Justice.

One particular policy recommendation resulting from this task force encourages the adoption of Principles of a State System for the Delivery of Civil Legal Aid. These 10 principles serve as the basis for a state civil legal aid delivery system self-assessment tool. The principles and assessment will provide improved direction to emerging state "access to justice" commissions.

When the Delivery Committee discussed these principles at its summer meeting, the members were impressed with the breadth

of the populations that were addressed. The comments frequently go far beyond those concerning low-income people. For example, the first principle encourages state systems for the delivery of legal aid to provide services to the low-income and vulnerable populations in the state. The comment to this principle clarifies that it addresses low-income people and "others who face financial or other barriers to access to justice...". The comments to several other principles go on to address the needs of those who are in "vulnerable populations who cannot afford counsel" or "those facing financial, physical or other barriers to access."

Since the Delivery Committee focuses much of its attention on models for legal access that are not purely subsidized systems, the members were pleased that the Task Force encourages state committees to consider and incorporate the private bar in the delivery of legal services. For example, the comment to the fifth principle states in part, "The state's system for the delivery of civil legal aid fully engages in the delivery of civil legal aid services all those who are involved in the provisions of law-related services, including... private attorneys (working pro bono and for compensation), ...".

ABA Goal II is to "promote meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition." This goal goes

far beyond meeting the legal needs of the poor. It encompasses those who we call the "working poor," who have income to meet only their most immediate needs and lack the discretionary income required to address their legal issues, yet earn too much to qualify for traditional legal aid services. The principles set out by the Task Force likewise encourage states to adopt principles that go further and thus approach Goal II.

We congratulate Justice Howard Dana and the members of the Task Force for taking an expansive approach with these principles. We encourage states to follow them and seek all avenues to provide legal services to persons regardless of their economic condition. This is truly the route to justice for all.

Stepping off my soapbox for a moment, I should note that this is my last column in *Dialogue*. After three great years as chair I pass the torch to M. Catherine Richardson. Catherine was liaison to the Committee when she served as a member of the ABA Board of Governors and I cannot image a better leader to assume this position. I also want to thank the members of the Committee who I have worked with throughout the five years I have served and especially thank those who go on to other opportunities this year. Adrienne Byers, Marvin Dang and Ron Staudt not only have made exceptional contributions to the work of the Committee, but are the kind of dedicated, insightful and fun people I like to be around. I will miss them all.

Seeking Brown Award Nominations

Nominations for the 2007 Louis M. Brown Award for Legal Access are due by December 8, 2006. The Award will be presented at the ABA Midyear Meeting in Miami on February 9, 2007. Details are available at www.abalegalservices.org/delivery/brownnomination.html, or by calling 312-988-5761.

From the Chair...

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

Two of the strongest features of ABA-approved lawyer referral and information service programs are the existence of subject matter panels (sometimes referred to as experience panels) and the pre-screening of lawyer participants to ensure their basic competence. These two features, along with the use of experienced referral counselors to determine the nature of clients' legal problems and refer them to the correct panel, are keys to fulfilling the ABA LRIS promise of "The Right Call for the Right Lawyer". These features are powerful marketing tools for any referral service. They are consumer safeguards that allow callers to have confidence that the lawyer to whom they are referred will be well qualified.

Historically, the lawyer referral service rather than the prospective client has selected the lawyer, and that selection has been made on a rotational basis. For example, a caller seeking a matrimonial lawyer is referred to the lawyer whose name appears at the top of the matrimonial rotational list. There are exceptions to rotational assignment based on the geographical convenience of the client, or when the client needs

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"Path to Citizenship" May Provide Opportunities and Challenges for LRIS Programs

by Charles J. Klitsch

Hanging in the balance of the ongoing debate about immigration reform is the fate of the estimated ten to twelve million illegal immigrants currently present in the United States. Advocates for illegal immigrants and others who support comprehensive immigration reform believe that the members of this large undocumented population cannot simply be sent packing to their home countries. They also hope that a "path to citizenship" is in the works through legislation to reform the immigration system.

While that path is still being mapped out, it is a distinct possibility that millions of illegal immigrants will be allowed to initiate legal proceedings to remain in the United States.

Regardless of what the precise details of such proceedings would look like, access to legal representation will be vitally important to immigrants seeking to change their status. The American Bar Association took notice of the need for such representation—and access to it—earlier this year, when its House of Delegates adopted a series of resolutions regarding immigration. One such resolution states, in part:

"RESOLVED, that the American Bar Association supports the due process right to counsel for all persons in removal proceedings, and the availability of legal representation to non-citizens in immigration-related matters."

A related resolution adopted by the House of Delegates provides, in part: "RESOLVED, that the American Bar Association urges an administrative agency structure that will provide all non-citizens with due process of law in the processing of their immigration applications and petitions, and in the conduct of their hearings or appeals, by all officials with responsibility for implementing U.S. immigration laws. Such due process in removal proceedings should include proceedings like those governed by the Administrative Procedure Act, in person and on the record, with notice and opportunity to be heard, and a decision that includes findings of facts and conclusions of law; availability of full, fair, and meaningful review in the federal courts where deportation or removal from the United States is at stake; and the restoration of discretion to immigration judges when deciding on the availability of certain forms of relief from removal."

As a link between the general public and lawyers who can provide representation, lawyer referral services are uniquely positioned to ensure that the due process right to counsel envisioned by the leadership of the ABA becomes a reality. If a new path to citizenship is created, lawyer

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From the Chair...

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a lawyer today and the first lawyer on the list is unavailable for an immediate appointment. Those situations aside, the client generally has little say in the selection of the lawyer.

Even prior to the information transparency of the Internet age, a strict rotational policy occasionally conflicted with another LRIS goal: meeting the client's specific needs and wants. For example, clients might demand an African-American lawyer, seek a Jewish lawyer or refuse to accept referral to a male lawyer. Their requests would not be honored by a program using a strict rotational policy.

There are a number of LRIS constituencies but clearly the two most significant are callers and panel members. A policy of strictly rotating case assignment ensures the fair and equitable distribution of referrals and is a policy designed to meet the needs of panel members. Guaranteeing an equitable distribution of cases is essential to attracting and maintaining a sufficient number of panel members.

Without a strict rotation policy, panel members and prospective panel members would always question whether they were receiving only the "chaff" while others were receiving the "wheat". Lawyer referral staff members would find themselves facing a barrage of questions from panel members about the quality and quantity of referrals directed their way. Any non-rotational referral process also carries the potential for corruption. More than one LRIS program has been forced to deal with "gifts" offered to referral

operators by panel members anxious to receive higher value cases. The reputation of an LRIS program is the lifeblood of the organization, and maintaining a reputation for honesty, fairness and integrity must be maintained at all cost.

Now, however, the availability of information on the Internet has increased the potential and likelihood of conflict between the needs and desires of these two main LRIS constituencies. Where does a lawyer referral service draw the line between the requests of the caller and the panel members' need for equitable distribution of cases?

What should an LRIS program do when a client can—and with increasing frequency, does—access information about a particular referred lawyer (either from the bar association itself or from the lawyer's Web site) and ask for referral to a different lawyer? Perhaps the client wants a lawyer from a different school or one who has been in practice longer? Maybe the request will be based on what most would consider socially incorrect reasons. How should the LRIS program respond?

How should a LRIS program respond when a caller wants additional information about the lawyer? How much information should the service provide a caller about the referred attorney? Should the LRIS program or the sponsoring bar association list information about panel members on a Web site? If so, what kind of information should be included?

When information from other legal assistance providers is readily available via the Internet, will a failure to provide specific information about panel members have an impact on the number of

calls received by the LRIS? Will it have any effect on the number of callers who access the LRIS through the Internet? Will the existence of information about panel members on the bar Web site lead consumers to bypass the lawyer referral service entirely when they are looking for legal assistance? Is there a mechanism whereby the client can take a more active role in the selection of the attorney which, at the same time, maintains an equitable distribution of cases to panel members? Would caller participation in the selection of the attorney lead to a decrease in "no show" rates? Would such a system improve client retention rates by panel members? Is there a way other than strict rotation to serve the needs of panel members?

These, and similar questions, reflect the unavoidable conflict between competing goals, each deeply ingrained in LRIS culture. Referral services must serve both callers and panel members if they are to prosper, and they must do so in a competitive legal world. Like it or not, the LRIS world must face and discuss the inherent conflict between what is necessary to attract callers and what is necessary to maintain attorney participation. There is no clear cut way to resolve this conflict and the line between the two constituencies can be drawn in many places.

It is time for all of us in the LRIS community to discuss these issues in earnest. If we cannot find a way to satisfy both of our major constituencies it will be difficult to prosper. I will be interested in hearing your ideas when we meet in Albuquerque October 11 to 14 for the 2006 American Bar Association National Lawyer Referral Workshop.

Path to Citizenship

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referral services will face challenges in guiding illegal immigrants to pro bono programs and to qualified private counsel. Nevertheless, they are surmountable.

Language barriers in outreach

The first significant challenge is that many illegal immigrants have a limited ability to communicate in English. Lawyer referral services must be prepared to serve non-English speakers through advertising, client contact and proper lawyer matching.

Many communities have newspapers, radio stations and television stations that serve immigrant populations in their own languages. Operators of these media outlets will translate advertisement copy for a fee. A lawyer referral service can save money by calling on panel attorneys to do the translation work for free. The selling point is that the business generated by the ads will come to them.

Keep in mind that newspaper publishers are always looking to fill the white space between ads with information of interest to their readers. A regular column featuring legal information on a variety of topics in the language of the readers will be welcomed by most publishers and will generate free publicity for your lawyer referral service. Again, the linguistic talents of the panel attorneys can be tapped for this purpose.

Spanish is the predominant language among illegal immigrants who are unable to communicate in English. The ABA Standing Committee on Lawyer Referral and Information Service offers Spanish language advertising templates

Another challenge is educating immigrant communities about the role of lawyers in the American justice system.

and is developing additional foreign language advertising materials. (For more information, contact Committee Counsel Jane Nosbisch at 312-988-5754 or jnosbisch@staff.abanet.org.)

Language barriers in providing service

Even without an advertising and public relations campaign, lawyer referral services can expect the possibility of receiving thousands of calls from illegal immigrants seeking qualified legal help. Lawyer referral services should prepare to communicate with these callers.

There are several telephone translation services that offer instant translation of a conversation in dozens of languages. In the last several years, the cost of such services has declined significantly. The typical arrangement between a translation service and a non-profit organization includes payment of a small monthly base fee and a charge per minute of translated conversation. Generally, the cost of a translated conversation will be significantly less than the charge for the initial consultation with the panel attorney.

Another way to provide information to callers is through the use of a recorded message. For those services with a phone tree

option in their phone systems, the initial greeting can be amended to include a statement in Spanish instructing callers who would like to hear about legal representation options in Spanish to press a certain number. A caller could then listen to information about legal aid, pro bono programs and referrals to attorneys in private practice.

Barriers in representation

Once a lawyer referral service is able to communicate with non-English speakers, it will need to have panel attorneys able to continue the conversation with the client. Contacting a local ethnic affinity bar association should generate applications, as would an article in the local bar publication seeking attorneys who speak languages other than English.

Another challenge is educating immigrant communities about the role of lawyers in the American justice system. The problem of notarios has created an unwarranted distrust of lawyers in many immigrant communities. In Mexico and other Latin American countries, a notario is a highly respected lawyer who has been granted the authority to witness and verify signatures, prepare estate plans, transfer real estate and negotiate business contracts.

In the United States, however, individuals calling themselves notarios prey on unsuspecting immigrants. They are not attorneys, although they hold themselves out as legal experts and often engage in the unauthorized practice of law by giving legal advice, preparing legal documents and representing clients before tribunals. After the notario has extracted as much money as possible, the client often learns that an asylum petition has been

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Modest Means Programs Respond to Revised Income Guidelines

A decision by the Legal Services Corporation (LSC) regarding client income eligibility for assistance has modest means programs across the country reexamining their eligibility guidelines. At its meeting on July 30, 2005, the LSC Board of Directors approved revised guidelines for client eligibility. While income eligibility remained capped at 125 percent of the Official Poverty Threshold (OPT) for many areas of service, the 150 percent and 187 percent

categories were abolished and replaced with an income ceiling of 200 percent of the OPT.

The reason for this change is simple. The OPT, never a completely accurate measure of poverty in America, is not keeping pace with the cost of living. The measure was established in 1965, part of the federal government's war on poverty. There was a call for a statistic to determine a financial "line" below which it could be said that a person was living in poverty.

The primary factor used to calculate this statistic was based on a conclusion made by the United States Department of Agriculture in the 1950s that the average household spent one third of its budget on food. The developers of the OPT used related data to determine how much a minimally nutritious diet cost, multiplied that figure by three and the result became the OPT, or "poverty line."

Over the last 40 years, the

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Attend the 2006 ABA National LRIS Workshop

The 2006 ABA National Lawyer Referral Workshop is a "cannot afford to miss" conference geared to providing the tools to equip your public service LRIS program for the future. Travel to New Mexico for this year's Workshop, which takes place October 11 to 14 during the Albuquerque International Balloon Fiesta.

The 2006 LRIS Workshop sessions will focus on enhancing the Internet visibility of your service. Whether you are contemplating building a Web site for the first time or refining your existing online presence, this Workshop has the sessions that will address your needs. Speakers knowledgeable about the operations of public service LRIS will focus on the latest techniques and technology



for optimizing the performance of your Web site.

Plan to attend these Internet-focused sessions:

- Establishing an LRIS Internet Site
- Making Your Existing LRIS Internet Site More User-Friendly
- Ensuring that Your Internet Site

Moves Up in Search Engine Selections

- Developing a Pay-Per-Click Campaign

Additional programming focuses on issues of daily importance in the operation of public service lawyer referral. All of the programming is directed at making your program successful—both as a public service to the community and as a profit center for your bar association.

The Workshop program also includes opportunities to talk with colleagues about software capabilities, establishing low-fee programs, developing hotline capability; and many more topics.

Visit www.abalegalservices.org/Iris for more details and online registration.

Eligibility Guidelines

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percentage of a family's budget spent on food has declined substantially, as farm consolidation, mass production and more efficient distribution lowered food costs. Meanwhile, the percentage of household income spent on housing, health care, day care and transportation has risen. It is now estimated that food accounts for no more than one sixth of the typical household budget. Despite this drastic change, the OPT is still calculated based on the assumption that food accounts for one third of a family's budget. Consequently, the OPT lags behind the real cost of living for a family trying to maintain a basic existence.

Ramifications for modest means

For modest means programs that

"We needed to change our income eligibility limits to keep serving the same community."

peg their income eligibility limits to a percentage of the OPT, the change in LSC's criteria and the failure of the OPT to keep pace with the cost of living have significant implications. The household income of the primary community served by modest means programs—people who do not qualify for legal aid, but who are unable to pay the full cost of private legal representation—is shifting up-

ward in relation to the OPT.

In May, the Philadelphia Bar Association raised the income eligibility limit of its Low Fee Plan from 200 percent to 250 percent of the OPT. Association Senior Attorney Amy J. Seefeld said, "We needed to change our income eligibility limits to keep serving the same community. If we did not raise the limits, clients identified as qualified would soon be so poor that they would not be able to afford even the minimal fees charged by attorneys under the plan. They would not have the disposable income to do so."

If modest means plans are to fulfill their mission, program leaders must consider making adjustments to the eligibility guidelines. For more information on modest means programs, visit the ABA LRIS Clearinghouse online at [www.abalegalservices.org /Iris/clearinghouse.html](http://www.abalegalservices.org/Iris/clearinghouse.html).

Path to Citizenship

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denied or an immigration status revoked because of the shoddy work done by the notario. Lawyer referral services must educate immigrants about the danger of notarios and the role of lawyers in the justice system in order to gain the trust of the community.

Benefits for LRIS

The benefits of reaching out to illegal immigrants as they make their way along the path to citizenship are clear. Immigrant communities will benefit through representation by qualified attorneys and that representation will engender respect for the American

system of justice. Referral services will benefit as their public image improves. Panel members will benefit from the increased business.

Immigrants who have obtained citizenship or residence status remember with gratitude the attorneys who helped them reach that point. They are also likely to remember the lawyer referral service that made the match. Success engenders respect, which leads to repeat business.

Across the country, lawyer referral programs are gearing up. "We have started the initial steps to communicate with our immigration attorneys and to recruit more immigration panel members," said Janet Diaz, executive director of the Houston Lawyer Referral Service. "We are also exploring ways to

advertise our program to those needing the service," Diaz added.

It is not too early to begin planning for a rush of clients seeking immigration counsel. The challenges are considerable, but the rewards are far greater.

Plan to attend the 2006 National Lawyer Referral Workshop, October 11 to 14 in Albuquerque, New Mexico, where marketing to Spanish-speaking communities and related technology issues will be discussed.

Charles J. Klitsch is director of public and legal services for the Philadelphia Bar Association and is a member of the ABA Standing Committee on Lawyer Referral and Information Service.

2005 LAMP Distinguished Service Awards

The Legal Assistance Distinguished Service Award is presented annually by the ABA Standing Committee on Legal Assistance for Military Personnel. It recognizes individuals and groups for their exceptional achievements or service in delivering legal assistance to military personnel.

The LAMP Committee recognized two individuals and four groups with the 2005 Legal Assistance Distinguished Service Award, which honors them for their work during 2005:

- MAJ Michael Martinez, United States Army (posthumous)
- Dwain Alexander, Naval Legal Service Office Mid-Atlantic
- Coast Guard Hurricane Response Legal Assistance Team
- Naval Legal Service Office Central
- Office of the Staff Judge Advocate, 3d Infantry Division and Fort Stewart
- Office of the Staff Judge Advocate, 81st Training Wing, Keesler Air Force Base

Individual Recipients

Major Michael R. Martinez, USA (Posthumous)

Major Martinez was chief of Legal Assistance at Fort Carson (Colorado) before volunteering to serve in Iraq with the 3rd Armored Cavalry Regiment. He deployed to Iraq in November 2005, and was one of 12 personnel who died when a Black Hawk helicopter went down near Tall Afar, Iraq, on January 7, 2006.

At Fort Carson, Martinez took on the substantial legal assistance needs of a brigade-sized unit from



Major Michael R. Martinez was recognized posthumously.

Korea following a one-year deployment in Iraq. He trained and mentored three new legal assistance attorneys fresh from the Judge Advocate Officer's Basic course, enabling them to operate independently in a matter of weeks. Martinez led the legal preparation of thousands of soldiers who were deploying from Fort Carson to Iraq during 2005. He impressed on his personnel the importance of sending soldiers forward unburdened by their personal legal issues. His leadership style was marked by a quiet insistence on taking responsibility for the most challenging cases, his volunteerism and selfless service, and his continuous support of and loyalty to his personnel, whom he was always quick to praise.

In Iraq, Martinez was Deputy Staff Judge Advocate with the 3d ACR. Upon his arrival in November, he quickly and expertly revamped the legal assistance operation. Though only part of his weekly schedule was dedicated to legal assistance programming, he always cleared his calendar when a soldier came in on another day.

He traveled to forward operating bases throughout Iraq on numerous occasions to provide legal services to service members at remote sites.

Martinez's easy-going style and ever-present smile won him instant friends wherever he went, and his service was characterized not only by his extraordinary competence as a

lawyer, but by the personal interest, care and compassion he brought to his soldier clients and his colleagues. Always focused on serving others, Martinez made the ultimate sacrifice in defense of our freedoms.

Mr. Dwain Alexander, Naval Legal Service Office Mid-Atlantic

Mr. Dwain Alexander has distinguished himself as a legal assistance innovator, teacher, public advocate, subject-matter expert and counselor. A civilian attorney with NLSO Mid-Atlantic in Norfolk, Alexander has tirelessly developed innovative legal assistance programming while handling a full load of cases. Through his personal efforts, legal assistance to thousands of Navy personnel around the world has been enhanced.

A subject-matter expert on consumer law and domestic law, Alexander initiated the Auto Fraud Symposium at Naval Station Norfolk, educating judge advocates and local legal aid attorneys about combating abusive auto finance practices, a growing problem for service members. He appeared

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From the Chair...



by Gen Earl E. Anderson, USMC (Ret.)
Chair of the ABA Standing
Committee on Legal Assistance
for Military Personnel

It's Time for Entitlement

Access to legal assistance services for active-duty personnel should be viewed as neither a luxury nor a command option. It is essential to military preparedness. Those serving our country, many in hostile and remote environments, don't need lawyers less than they did back home—they typically need them **more**, and more urgently, often due to circumstances created or exacerbated by their service-related absence from home. Domestic strains, landlord disputes, custody problems, creditor difficulties, personal estate adjustment needs—these issues inevitably become more distracting over time for service members, compromising effectiveness, unless timely and competent legal advice is at hand.

Certainly commanders in the field recognize the vital link between readiness and ready access to good legal assistance on civil-law matters. There has been no indication that field commanders' demand for essential legal counseling for their people has declined in step with defense funding. In this environment, the case for a federal statutory entitle-

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SCRA Enforcement by the Department of Justice: Let Us Help Protect Your Rights, as You Have Protected Ours

by Wan J. Kim

As a former soldier, I know that the brave men and women in our armed forces risk their lives every day and make great personal sacrifices to defend our great nation in a time of war. It is incumbent upon us, as officials of the United States Government, to do what we can to ensure that the legal rights of our service members and the families that they left behind are protected during this very challenging time in our country's history. Service members deserve our support in every respect, including protection of their rights under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. §§ 501-596.

The enforcement of these important provisions recently has been transferred to the Civil Rights Division of the United States Department of Justice. The division expects to play a key role in the federal government's enforcement of the SCRA and stands ready to enforce the important protections provided by the SCRA such as

- reducing the rate of interest for debts incurred before entering active duty to 6 percent
- tolling civil statutes of limitations
- staying civil and administrative proceedings and execution of judgments
- protecting against default judgments, evictions, mortgage foreclosures and repossessions of property
- providing the ability to terminate residential and automobile leases

The Civil Rights Division is committed to the vigorous enforcement of the SCRA, and we want to help the military legal assistance officers make sure that service members are receiving the full benefits of the law. We simply cannot afford to have our men and women in Afghanistan, Iraq or elsewhere distracted by concerns over whether someone is seeking a default judgment against them back home, or repossessing their leased car, or evicting their spouse and children, or selling their house at an auction sale, or running up penalties on credit cards with 21 percent interest rates.

Most individuals and institutions comply with these SCRA provisions as soon as a service member or JAG educates them about the law. However, where additional action is necessary, we know that military legal assistance officers are the first line of defense in enforcing the SCRA and that private practitioners also have an important role to play. We also know that bringing the power of the Department of Justice to bear on SCRA violators will do much to deter abusive practices among lenders,

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From the Chair...

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ment to adequate legal assistance services for active-duty service members is more compelling than ever. The legal assistance statute, 10 U.S.C. § 1044, states that legal assistance services will be provided "subject to the availability of legal staff resources" and at the discretion of the service secretaries. The American Bar Association, to its credit, for many years has advocated amending Section 1044 to make legal assistance for financially-eligible active-duty personnel mandatory, rather than discretionary. The case for entitlement rests upon the proposition that those sacrificing for our freedom have a basic right to essential assistance with their personal civil legal affairs while on active duty, a right that does not disappear in challenging budget years.

Support for legal assistance entitlement has faced resistance on various grounds, which collectively cannot outweigh the critical need to protect military legal assistance by placing it on a separate track, insulated to some meaningful degree from the intense pressure to divert shrinking defense dollars to other uses. A necessary first step toward creating that insulation is an entitlement statute.

One of the arguments for putting off an entitlement statute had been that a firm statutory footing for multi-jurisdictional practice of law by JAG officers was a necessary predicate for entitlement. That point is now moot, as language in the FY 2006 National Defense Authorization Act expressly authorized multi-jurisdictional practice by military lawyers, provided they are licensed to

practice in at least one jurisdiction.

Any fair discussion of the status of military legal assistance must acknowledge the superb progress of the services over the years in delivering the benefits of cutting-edge legal technology to service-members. Computer-based instruments such as wills, medical directives, tax tools and powers of attorney are now widely available. The legal leadership is also making impressive use of the Internet to deliver legal resources to lawyers and paralegals as well as directly to service members.

But those great tools should be seen only as the foundation of a robust legal assistance program, not the edifice. Our service members need meaningful access to assistance from real lawyers and paralegals, reflective of the troops' real-time legal needs and consistent with their commanders' priorities. I

would not for a moment disregard the work of the many military and civilian lawyers who continue to deliver first-rate legal assistance to clients across the globe, often in trying circumstances. But unless the trend is reversed, we are in many instances asking that dwindling, overtaxed pool of professionals to accomplish the impossible in the legal assistance arena. An entitlement statute would protect and strengthen the ability of those good lawyers to render competent legal advice to their clients and would ensure adequate staffing levels. An entitlement statute is necessary to put a floor under legal assistance levels, to insulate legal assistance from extraordinary budget pressures, and to give the military legal leadership the tools it needs to continue to honor the right of our fighting force to essential legal services.

Marines Honor Incoming ABA President



Karen J. Mathis, then president-elect of the ABA, stands at attention with Brigadier General Kevin M. Sandkuhler, then Staff Judge Advocate to the Commandant of the Marine Corps and Colonel Terry M. Lockard, commanding officer of the 8th and 1st Marine Barracks in Washington, D.C. Mathis was the guest of honor at the U.S. Marine Corps Sunset Parade at the Iwo Jima Memorial in Arlington, Virginia on July 18.

Service Awards

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before the Virginia Senate Courts of Justice to speak out against then-pending legislation that would have compromised existing consumer credit protections and limited car dealers' liability for certain types of abusive credit practices. The legislation was withdrawn.

As an instructor, Alexander was responsible for an innovative attorney education program that trained 19 accession judge advocates at NLSO MIDLANT in 2005. He compiled a substantive week-long training program and devised an innovative Personnel Qualification Standard (PQS) for legal assistance attorneys. The PQS instrument was so well regarded, it was subsequently selected for

implementation throughout the Navy JAG Corps.

Alexander selflessly shared his knowledge beyond his command. When local Coast Guard legal assistance providers sought to establish a separation agreement program, he provided substantive legal training and documents to assist. For the Office of the Judge Advocate General, USN, Mr. Alexander was a key contributor in the effort to revamp the Navy Family Care Plan, developing the initial draft and revisions of the Family Care Plan instruction. As a Commander in the JAG Corps Reserve, he published a Legal Assistance Practice Advisory on automobile transactions that was published to the Navy worldwide.

Alexander is a sought-after mentor and a major contributor to the ongoing professional develop-

ment of all attorneys in the Legal Assistance Department at NLSO MIDLANT. In many respects, Alexander has proven to be a model legal assistance attorney.

Group Recipients

United States Air Force, 81st Training Wing, Office of the Staff Judge Advocate, Kessler AFB, Mississippi

In the immediate aftermath of Hurricane Katrina, the legal assistance team members of Keesler AFB distinguished themselves by refusing to yield to physical hardship and complex legal challenges as they helped those hard hit by the storm.

Despite losing its office to Katrina's storm surge, the Keesler legal team worked tirelessly to open temporary legal assistance

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SCRA Enforcement

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landlords or others who cater to military members and their families.

A service member seeking help under the SCRA should first contact his or her appropriate military legal assistance office. If the Department of Defense determines that assistance from the Department of Justice would be appropriate, it will submit a request to the Civil Rights Division or a U.S. Attorney's Office. In addition, the Civil Rights Division encourages communications from military and civilian lawyers on enforcement of the SCRA. We hope that the division's work on SCRA will complement private enforcement actions.

In order to provide more



Wan J. Kim

information on this important area, the Civil Rights Division has launched a new Web site dedicated to the protection of the rights of service members: www.usdoj.gov/crt/military. This site provides information about how the Department of Justice—in partnership with other federal agencies—can help service members. It also details what we can do to protect their financial security through the SCRA, their civilian employment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), and their voting

rights under the Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA).

If you would like to discuss SCRA issues with attorneys at Department of Justice, please contact Steven H. Rosenbaum, chief of the Housing and Civil Enforcement Section, at 202-514-4713 or Elizabeth A. Singer, director of the U.S. Attorneys' Fair Housing Program, at 202-514-6164.

The Department of Justice views the safeguarding of the benefits of the SCRA as a very serious matter. We are proud to be of service to our nation's men and women in uniform.

Wan J. Kim is assistant attorney general for the Civil Rights Division of the United States Department of Justice.

Service Awards

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quarters within days of the hurricane and quickly developed substantive competence in bankruptcy, landlord-tenant law and insurance law to assist clients at risk in those areas. The team also proactively brought in subject-area legal experts for ad hoc training seminars and invited legal staff from other uniformed services to attend. It aggressively intervened on behalf of clients to stop and correct post-Katrina unethical practices by landlords and auto dealers, reaching out to civilian law authorities to curb business abuses, and it sought, received and applied specific post-Katrina bankruptcy law guidance from the Justice Department.

All told, the legal assistance team handled more than 2,250 office visits, 600 cases requiring attorney consultation, and 700 powers of attorney, between the time of the hurricane and November 9, 2005. The Keesler team's response to a storm that wiped out large parts of the installation and left many of their constituents facing loss of their homes and other severe hardships was extraordinary.

United States Army, Third Infantry Division and Fort Stewart, Office of the Staff Judge Advocate, Legal Assistance Office, Fort Stewart, Georgia

The legal assistance team from Fort Stewart delivered innovative and exceptional services to the soldiers of the Third Infantry Division and their families. The team developed innovative service models on several fronts. These included implementing the ground-breaking Soldier and

Family Emergency (S.A.F.E.) program, which safeguards children of deployed soldiers in circumstances where the home-based parent becomes incapacitated, and arranging the swearing-in of 66 Army personnel as U.S. citizens in the field in Iraq, a culmination of a focused year-long effort to support soldiers in their dream of citizenship. The Fort Stewart team also developed aggressive preventive programs to educate and protect soldiers and their families from unethical business practices, such as home contractor fraud, and went to extraordinary lengths to legally assist and support survivors of soldiers who died in Iraq, as well as gravely wounded soldiers and their families. The team implemented pro-active preparedness programming that proved to be of great benefit to soldiers and their families before and during deployment. Notably, members of the team deployed with division soldiers in Iraq and delivered timely legal assistance in the field.

The lawyers, paralegals and staff of the Fort Stewart Legal Assistance Office set an exceptionally high standard for legal assistance service and innovation. The family-oriented service models they developed warrant emulation.

United States Coast Guard Hurricane Response Legal Assistance Team

The Coast Guard hurricane response team consisted of 10 commands coming together from points as distant as Miami, Florida and Kodiak, Alaska. In a tightly coordinated legal-assistance response to Hurricanes Katrina, Rita and Wilma, the Coast Guard Hurricane Response Legal Assistance Team (LAT) delivered critical legal help expertly, immediately

and compassionately. Forward legal assistance teams who were deployed into the hurricane zones overcame extreme logistical challenges caused by massive infrastructure failure to reach and assist clients with urgent property-loss, housing and other challenges. In the wake of Katrina, an estimated 60 percent of Coast Guard members in the affected region of Louisiana, Alabama and Mississippi suffered near-catastrophic losses, and all members and employees required some level of legal assistance.

In many instances, the Coast Guard legal assistance teams were the first service representatives to reach and assist members stranded in badly hit areas. The Coast Guard LAT response to Hurricanes Katrina, Rita and Wilma represented the largest legal assistance effort ever undertaken by the Coast Guard. The LAT distinguished itself and the Coast Guard by its extraordinary performance in a great national emergency.

Contributing elements of the Coast Guard Hurricane Response Legal Assistance Team were

- CG Academy, New London, Connecticut
- CG Headquarters (COMDT G-L-6), Washington, DC
- CG MLCA Legal Division, Norfolk, Virginia
- CG MLCP Legal Division, Alameda, California
- Eighth CG District, New Orleans
- First CG District, Boston
- Integrated Support Command Kodiak, Kodiak, Alaska
- Ninth CG District, Cleveland
- Seventh CG District, Miami
- Thirteenth CG District, Seattle

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by *L. Jonathan Ross*
Chair of the ABA Standing Committee
on Pro Bono and Public Service

Every lawyer has the ability and responsibility to address the huge unmet needs of the poor by providing pro bono legal services. The ABA Standing Committee on Pro Bono and Public Service is the national source of information, resources and assistance to support, facilitate, improve and expand the delivery of pro bono legal assistance. We encourage lawyers to do pro bono work and help them connect with opportunities that meet their needs. Our programs, projects and services are of substantial value to pro bono programs, advocates and policymakers working to use pro bono as a tool for addressing the legal needs of the poor.

Even with all of its resources, products and services, however, the Pro Bono Committee has found it challenging to let its many constituents and potential beneficiaries know about all that we have to offer. Similarly, the voice of the ABA is not always heard when pro bono makes the news. Today's cluttered communication environment makes it difficult for any particular message from any specific group to stand out.

To address this challenge the Pro Bono Committee has taken some important steps forward in its efforts to communicate more successfully and to make our

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Pro Bono Practice

Business Law Pro Bono: Surveying the Opportunities to Volunteer

by *Allyn M. O'Connor*

When a call for pro bono legal assistance goes out, many business lawyers do not consider themselves in a position to volunteer. They have a general impression that pro bono work involves civil rights litigation or assistance with criminal or family law cases, matters a business lawyer is not typically prepared to handle. In recent years, however, the business law community has found ways to provide free or low-cost legal assistance that does not involve litigation and results in improving the lives of the poor. A few years ago, most volunteer business lawyers limited their services to providing assistance to nonprofit organizations. Now, however, business lawyers can assist in private business development, home ownership, and even international lending to citizens of developing nations.

Business lawyers can provide services through many types of programs. Some pro bono programs have in-house business lawyers assisting clients, while others match volunteer business lawyers with clients. The business law sections of many state and local bar associations sponsor volunteer transactional pro bono programs. Law firms and in-house corporate law departments frequently volunteer to provide business law pro bono services on their own or through existing volunteer programs. And more recently, many law schools have begun transactional legal clinics, designed to train students and to provide free or low-cost transactional legal assistance to clients.

Volunteer business lawyers provide a wide variety of services to just as wide a variety of clients, ranging from nonprofit organizations to for-profit micro-businesses. They provide their skills and talents to affordable housing or community economic development organizations, or work directly with low-income clients seeking first-time home ownership or trying to rectify a predatory lending situation. They establish consumer financial education programs or provide low-income taxpayer assistance. They host bankruptcy education seminars or represent consumers or small businesses in bankruptcy. They even draw on their international legal skills by assisting U.S.-based micro-lending institutions with their lending activities abroad. Several of these programs are described in more detail below.

Nonprofit legal advisory programs

Many state and local bar associations sponsor legal advisory programs for nonprofit organizations. These programs mostly serve community groups that provide or promote services to low-income individuals by addressing their transactional (non-litigation) legal needs. They offer assistance in the areas of affordable housing, job creation/training, and economic development, for example. Volunteer lawyers can help by preparing bylaws, obtaining tax-exempt status, reviewing and negotiat-

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From the Chair...

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presence more generally known. With the assistance of the ABA Division for Media Relations we have engaged in thorough strategic communications planning, established realistic expectations about what communication can do, and prepared strategies and actions that will drive us toward specific results.

As a result of the Pro Bono Committee's planning, I expect that you will notice a variety of new communications strategies from the Committee in the coming months. The three-to-five year communications plan developed by the Committee identifies key elements of strategic communication: an internal vision, communication goals, strategies, audiences, message platform and actions. Together, these elements will help the Committee communicate strategically, consistently, persuasively and in a timely manner. The discussions on each of these topics helped the committee members focus on the work of the committee and its goals.

The conversation was both philosophical and practical. Each of us learned from the experience.

I am convinced that we've made important strides forward in our work. In some ways it is like the philosophical inquiry about the tree falling in the woods. With our strategic communications plan we have developed strategies that will bring more and more people into the forest to hear the noise we have to make.

What I particularly appreciate about our plan, and why I think pro bono and legal services programs could benefit so much from similar efforts, is that we have now defined our communication goals and have developed a specific plan to achieve those goals. It is communication for a defined purpose.

As we went through this process I was reminded of the *Campaign for Equal Access: Bringing Justice Home*, an initiative of the Project for the Future of Equal Justice. The campaign was designed to provide legal aid professionals and supporters with messages, message strategies and

communications tools to use in building support at the community level. From its inception in 1999, the goal of this national campaign has been to create and convey messages that educate the public and key target audiences about the need for, and value of, civil legal aid, and to build long-term support for institutions that provide this service. Addressing a range of providers, the toolkit provides a jumpstart to helping programs with their strategic communication efforts. The Communications Toolkit, developed as one component of that project, can be found online at www.nlada.org/News/News_Education.

* * * * *

I have enjoyed working with the Committee. I know that my successor, Mark Schickman, will build on the foundation created by prior chairs and committee members and will make the best use of a tremendous and talented staff to promote pro bono service. We have much to do to bring reality to the promise of "equal justice for all."

Business Law Pro Bono

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ing contracts, reviewing and negotiating real estate transactions, providing employment and personnel advice, and handling intellectual property matters. Within these programs, volunteer lawyers most often work on discrete matters, but may also play the role of general counsel to the nonprofit organization.

Examples of programs sponsored by state and local bar

associations are the North Carolina Center for Nonprofits Pro Bono Program, sponsored in part by the North Carolina State Bar Association; the Pro Bono for Nonprofits Program sponsored by the Mecklenburg County Bar Volunteer Lawyers Program in North Carolina, the Nonprofit Project of the Multnomah (Oregon) Bar Association Young Lawyers Section, and Washington Attorneys Assisting Community Organizations, which is supported in part by the Business Law Section of the

Washington State Bar Association.

Nonprofit legal advisory services may also be available through free-standing programs, such as the Lawyers Alliance for New York and Volunteer Legal Services of Hawaii. More recently, legal advisory services have become available to nonprofit organizations through law school clinic settings. Under the close supervision of faculty members and/or practicing business lawyers, students provide a variety

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Business Law Pro Bono

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of services to nonprofit organizations. Examples of clinical programs include Seattle University School of Law's Not-for-Profit Organization Clinic and Temple University – Beasley School of Law's Center for Community Nonprofit Organizations.

Small business legal advisory programs

Many law schools, pro bono programs and state and local bar associations also sponsor small business advisory programs. Although lawyers are providing free or low-cost legal services to a for-profit enterprise, the client is frequently a micro-business, or a business earning less than \$35,000 per year, having fewer than six employees, and located in a distressed area. Lawyers providing legal services under these programs advise clients on business-related, transactional matters such as business formation, labor and employee issues, intellectual property issues, tax issues, licensing, and regulatory reporting requirements. At other times, business lawyers may host seminars covering such topics as choice-of-entity or tax reporting requirements.

Examples of small business legal advisory programs include LegalCORPS, a program sponsored in part by the Minnesota Bar Association; the Colorado Alliance for Microenterprise Initiatives; and Legal Assistance to Microenterprise (LAMP). LAMP is sponsored by Texas Community Building with Attorney Resources (Texas C-BAR) and Texas RioGrande Legal Aid, in partnership with the United States Department of Housing and Urban Development. Programs

Many law schools now sponsor small business or entrepreneurship clinics, in which local business lawyers provide instruction or mentoring.

such as these are designed to expand micro-enterprise opportunities in urban and rural areas, and often provide entrepreneurs and business owners with the training, resources and legal assistance they need to succeed.

In addition, many law schools now sponsor small business or entrepreneurship clinics, in which local business lawyers provide instruction or mentoring. Examples include the Loyola University Chicago School of Law's Business Law Center and the University of Oregon School of Law's Small Business Clinic.

Affordable housing projects

Business lawyers recognize the desperate need for affordable housing in many parts of the country. In response, some legal services organizations have established affordable housing programs. These programs promote affordable housing and economic development by providing pro bono legal services to nonprofit housing and economic development organizations and individuals who are homeless or who are at risk of becoming homeless. Legal services providers or volunteer lawyers represent affordable housing and economic develop-

ment organizations in real estate, land use, construction, corporate, and employment matters. Lawyers may also conduct training in subjects such as housing finance, zoning, and asset management.

Examples of such programs are Portland's Community Development Law Center (a program of Legal Aid Services of Oregon), Pennsylvania Legal Services' Regional Housing Legal Services Program, and the Lawyers Clearinghouse on Affordable Housing and Homelessness, Inc. (sponsored by the Boston Bar Association and the Massachusetts Bar Association).

Community economic development programs

Business lawyers can also find many volunteer opportunities through a variety of community economic development programs. Such programs often incorporate nonprofit and micro-business advisory units as well as affordable housing activities, but hope to accomplish more on a community-wide basis. They often target urban neighborhoods, facilitating access to capital and enabling home and business owners to build and preserve equity - which promotes the economic stability and redevelopment of a community. Transactional assistance may fall in the area of corporate, real estate, or tax law. Volunteer lawyers may negotiate with city attorneys and commercial lenders and assist with financing and other transactions. They may negotiate and structure commercial leases and engage in a multitude of other transactional legal services. One example of a community economic development legal assistance program is the Houston Volunteer Lawyers Program Community

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Business Law Pro Bono

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Development Project, which relies heavily on ExxonMobil Legal Department volunteers.

Law schools, too, have established their own community economic development clinics, such as the University of Michigan Law School's Urban Communities Clinic and the UCLA School of Law's Community Economic Development Clinic. Other law schools have partnered with existing legal services providers to offer legal services, such as the University of Texas School of Law Community Development Clinic, which is a partnership between the law school and Texas C-BAR.

Homeownership programs

Business lawyers may also be involved in promoting homeownership through an organized program. A home ownership program, for instance, may require legal assistance as a nonprofit organization. Again, volunteer lawyers can prepare corporate documents, handle the organization's tax-exempt status, and review and negotiate contracts and partnership agreements. In addition, volunteer business lawyers can provide services to individual home buyers by reviewing and negotiating real estate transactions. An example of such a program is the Home Ownership Program sponsored by the Community Economic Development Law Project, a project of the Chicago Lawyers' Committee for Civil Rights Under Law.

Homeownership preservation and anti-predatory lending programs

Business lawyers may also be involved in preserving home

Business lawyers may also be active pro bono participants outside of any organized program.

ownership through an organized program. Business lawyers, including consumer finance lawyers, are capable of representing clients in predatory lending matters relating to home mortgages, debt collection practices, and other unfair lending practices. Clients may be facing the loss of their homes through foreclosure or tax sale, having been victimized by predatory lending or by some other type of fraud or overreaching. Volunteer opportunities are also available to business lawyers who wish to educate homeowners on debt collection practices and mortgage lending laws by preparing materials or by offering clinic presentations, for example. The Legal Assistance Foundation of Metropolitan Chicago's Home Ownership Preservation Project and the Seattle University School of Law's Predatory Lending Clinic offer such services.

Consumer finance education

Business lawyers may also be active pro bono participants outside of any organized program. Consumer finance lawyers, for instance, prepare consumer educational materials on topics such as payday loans, refund anticipation loans, check cashing institutions, and other forms of alternative financial services. They

also volunteer their time lecturing high school students and adults on financial literacy issues, or speak at consumer finance clinics sponsored by community-based organizations.

Micro-finance assistance

Volunteer opportunities available to business lawyers once dealt with fairly routine matters, but now may require a higher level of sophistication. United States-based nonprofit organizations, for instance, engage in micro-lending activities in developing nations, but often lack the budget to engage experienced legal assistance. These nonprofits provide money to micro-lending institutions in developing countries who, in turn, lend small amounts of money to local entrepreneurs. Business lawyers can provide free or low-cost legal assistance on matters ranging from corporate governance and the establishment of offshore legal entities to cross-border tax issues. These opportunities generally present themselves outside of formal, organized legal services programs.

Bankruptcy

Business lawyers seeking to volunteer their talents may also be of great assistance to individual consumers or small businesses by providing bankruptcy assistance. Although recent federal legislation has impacted this once thriving area of pro bono work, there remain many opportunities for business lawyers to participate in bankruptcy pro bono work. Business lawyers with bankruptcy experience can develop bankruptcy training materials, conduct bankruptcy continuing legal education seminars for bankruptcy volunteers, and provide general

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Business Law Pro Bono

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guidance to pro bono bankruptcy lawyers. Lawyers may also volunteer to teach debtors about the bankruptcy filing process, help debtors prepare bankruptcy filings, or screen debtors for lawyers who volunteer for adversarial bankruptcy proceedings. Other lawyers can negotiate with creditors on behalf of indigent clients, or represent clients throughout the bankruptcy process.

Robust consumer and small business pro bono bankruptcy programs include those organized or sponsored by the Minnesota Bar Association and the Bankruptcy Pro Bono Project run by the Rutgers University School of Law – Camden. Bankruptcy pro bono projects always reflect involvement by the

Opportunities for business lawyers to provide pro bono services to persons of limited means or to organizations that improve the lives of persons of limited means are unlimited.

local bankruptcy bar and area bankruptcy judges. These programs bring together volunteer students, volunteer lawyers, bankruptcy judges, and state and local bar associations to ensure that low-income people receive the assistance they need.

Conclusion

Opportunities for business lawyers to provide pro bono services to persons of limited means or to organizations that improve the lives of persons of limited means are unlimited. These opportunities range from the simple to the complex and can involve services to individuals or large organizations. The business bar can become increasingly involved in these efforts through a partnership with the organizations and providers that currently participate in this type of legal volunteering.

Allyn M. O'Connor is assistant staff counsel to the ABA Business Law Pro Bono Project. For more information visit the project online at www.abaprobono.org/businesslaw or contact her at 312-988-6398 or oonnora@staff.abanet.org.

Save the Date: 2007 Equal Justice Conference

Are you a pro bono and legal services program staff member, judge, bar leader, corporate counsel, court administrator, private lawyer, paralegal or law student who is interested in equal access to justice? Plan now to join hundreds of your colleagues in attending the 2007 Equal Justice Conference in Denver from March 22 to 24.

The Equal Justice Conference brings together all components of the legal community to discuss equal justice issues as they relate to the delivery of legal services to the poor and low-income individuals in need of legal assistance. The 2007 conference theme is *Justice in a Changing, Diverse World: Preserving the Rule of Law through Inclusive, High-Quality Legal Services to the Disadvantaged*. Conference programming—over 80 workshops in all—will examine ways the private bar and the legal services community have come together to make a difference for a broad range of clients who have nowhere else to turn to gain effective, quality access to the legal system. There will be a particular focus on strategies for improving delivery of services to those clients.

The Equal Justice Conference is the largest event of its kind in the United States, attracting more than 950 attendees in 2006. Take these steps to include the 2007 conference in your plans for next year:

- Mark the date: March 22 to 24, 2007
- Remember the location: the Hyatt Regency Denver at Colorado Convention Center
- Visit us online and join the conference email list: www.equaljusticeconference.org



Hyatt Regency Denver at Colorado Convention Center

Pro Bono Policy News

New Judicial Conduct Rule in Indiana

Effective January 1, 2006, a new amendment to Canon 4 of Indiana's Code of Judicial Conduct clarifies that support of pro bono legal services is an activity that relates to the improvement of the legal system and the administration of justice. The amendment states that a judge may engage in activities intended to encourage attorneys to provide pro bono services, including participating in recruitment and recognition events, scheduling accommodations, and advising pro bono programs. View the rule online at www.in.gov/judiciary/rules/jud_conduct/index.html#c4.

Nevada Adopts a New Rule of Professional Conduct 6.1

In April 2006, the Supreme Court of Nevada adopted the Nevada Rules of Professional Conduct and replaced Supreme Court Rule 191 regarding pro bono with Rule 6.1. The most important aspect of this rule change is that it brings the Nevada rule more in line with ABA's Model Rule 6.1, placing an emphasis on providing direct legal service to persons of limited means. The rule also defines examples of legal services that cannot be considered pro bono such as legal services written off as bad debts, legal services to family members, and activities such as serving on the board of a charitable organization. In addition, the rule states that a pro bono arrangement should be agreed to in writing at the beginning of representation.

Another notable change is that the word "legal" was inserted in the provision regarding an

attorney's ability to provide a \$500 contribution in lieu of providing pro bono legal service. Now, the rule states that the \$500 is to be provided "to an organization or group that provides pro bono legal services to persons of limited means," which emphasizes that one's contribution be directed towards organizations providing legal services as opposed to other types of service. The rule also gives the state bar authority to impose a fine of \$100 on attorneys who, after a 30-day warning notice, do not submit their annual pro bono reporting form, as required by the rule. The new rules, including RPC 6.1, are online at www.nvbar.org/ethics/e2k.htm.

Illinois Requires Mandatory Reporting

On June 14, 2006, the Illinois Supreme Court amended Supreme Court Rule 756: Registration and Fees, and Supreme Court Rule 766: Confidentiality and Privilege, to set out new requirements mandating that attorneys disclose voluntary pro bono service. As indicated by the comments of the rules, the intention of this new reporting requirement is to increase the delivery of legal services to persons of limited means in Illinois and to remind attorneys of their obligations to provide pro bono legal service to this group.

The new reporting requirement requires that attorneys report, on an annual basis, whether they have provided pro bono legal services to the poor. Attorneys must report this information as part of the registration process and indicate the number of hours of pro bono legal services they have provided

as well as the amount of qualified monetary contributions they have made over the past 12 months.

Pro bono legal service encompasses both the actual delivery of legal services and the provision of training without expectation of a fee. It is further defined by the rule as "1) legal services rendered to a person of limited means; 2) legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means; 3) legal services to charitable, religious, civic, or community organizations in matters in furtherance of their organizational purposes; and 4) training intended to benefit legal service organizations or lawyers who provide pro bono services."

Under the rule, pro bono legal service to persons of limited means includes assistance to individuals whose household incomes are below the federal poverty threshold as well as to individuals referred to as "the working poor." In addition, client eligibility for these services need only be determined by the attorney on a "good faith" basis.

Monetary contributions that qualify under the rule are those made to an organization that provides legal services to persons of limited means or those which provide financial support to an organization that provides legal services to persons of limited means.

The rule also clarifies that in a fee-generating case, an attorney's billable hours can be considered pro bono when the attorney and client agree that additional services

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2006 ABA Pro Bono Publico Awards

On August 7 the ABA Standing Committee on Pro Bono and Public Service presented five awards to individual lawyers and law firms that have demonstrated outstanding commitment to volunteer legal services for the poor and disadvantaged.

The Pro Bono Publico Awards program seeks to identify and honor individual lawyers and small and large law firms, government attorney offices, corporate law departments and other institutions in the legal profession that have enhanced the human dignity of others by improving or delivering volunteer legal services to our nation's poor and disadvantaged. These services are of critical importance to the increasing number of people in this country living in a state of poverty who are in need of legal representation to improve their lives.

There are certain lawyers and law firms whose pro bono contributions have been above and beyond the call of duty. Their commitment, energy and new approaches to the delivery of pro bono service serve as models for others in the legal profession. Award recipients are legal professionals, law firms or other institutions in the legal profession who commit their talent and training to improve the quality of justice for

those unable to afford a lawyer. They are chosen for their longtime dedication to the delivery of pro bono legal services to the poor.

The following were selected as recipients of the 2006 award:



Debra Brown Steinberg has led the Cadwalader firm's pro bono efforts related to September 11, providing representation

to families of World Trade Center victims. In addition to personally representing several families of September 11 victims herself, she played a leading role in the creation and development of the New York Lawyers for the Public Interest 9/11 Project in early October 2001.

Steinberg has also had a role in the drafting and passage of legislation on behalf of victims' families. Specifically, she drafted the Association of the Bar of the City of New York's comments on the interim and final regulations for the 9/11 Victim Compensation Fund and a substantial portion of the 9/11 Victims and Families Relief Act in NY. Furthermore, she drafted substantial portions of legislation

to provide legal recognition and protection to family members of non-citizen victims of the attacks—known as the September 11 Family Humanitarian Relief and Patriotism Act—which is currently pending in both the House and Senate.

Steinberg has received many honors and recognition for her pro bono service including praise by the United States House of Representatives and acknowledgement in a New York State Senate Legislative Resolution. Steinberg also received the New York State Bar Association's 2003 Pro Bono Service Award.



Ward Coe is a partner and head of the litigation department at Whiteford, Taylor & Preston, LLP and has spent well over

1,300 hours working for systemic changes in the delivery of pro bono legal services in Maryland.

Coe led his firm to adopt a pro bono policy and, some years later, to become the first law firm in Baltimore to dedicate a partner to pro bono service. As a result of Coe's leadership, the amount of the firm's pro bono legal service has doubled.

In addition to firm leadership, Coe has provided direct pro bono representation, such as administering trusts for plaintiffs from a 1986 law suit against the state challenging the foster care system. He has also served as a member of the Maryland Judicial Commission on Pro Bono, which recommended

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The Standing Committee on Pro Bono and Public Service would like to thank Howrey LLP and Winston & Strawn LLP for their generous contributions to the 2006 Pro Bono Publico Awards Program.

Pro Bono Awards

(continued from page 27)

new state pro bono rules and has chaired the Court of Appeals Standing Committee on Pro Bono Service, which is charged with implementing the new rules. He has traveled the state and provided countless hours of pro bono fulfilling the obligations of these roles. In 2002, Coe received a Maryland Pro Bono Service Award from the Pro Bono Resource Center of Maryland for his successful multi-year representation of an impoverished mental health patient who had been denied benefits by his disability insurer. In September 2005 he received The Maryland Bar Foundation's Professional Legal Excellence Award for the Advancement of the Rights of the Disadvantaged, and in October 2005 he was recognized with The Pro Bono Resource Center's Pro Bono Legal Service Award.



Richard Zitrin

has been a dedicated pro bono attorney providing direct legal services to clients of the Homeless Advocacy

Project (HAP) of the Bar Association of San Francisco's (BASF) Volunteer Legal Services Program for over four years. He also created the twice-a-month drop-in legal clinic at San Francisco's Glide Memorial Church and single handedly staffs the clinic on a regular basis. In addition to his direct client work, Zitrin conducts pro bono work on a systemic level—drafting rules, codes and legislation in partnership with bar

associations and state governments.

Zitrin's pro bono commitment has been evident since his graduation from law school. After graduation, he and a group of new attorneys and law students founded the Criminal Legal Aid Collective (CLAC), a nonprofit organization in San Francisco that provided pro bono legal defense services to indigent clients in criminal cases. In total, he worked on thirty CLAC pro bono cases between 1976 and 1981.

Zitrin is also extremely active in the community and with local, state and national bar associations. He is also the recipient of several awards, including being honored by the Bar Association of the San Francisco's Foundation for volunteer work in 2004, and a Certificate of Merit from BASF for promoting "equality and justice for all" in 2002.



Debevoise & Plimpton, LLP is an international firm that has set the standard for pro bono. The firm's commitment to pro bono legal service is demonstrated by its consistent ranking among the nation's top law firms for pro bono work.

Debevoise & Plimpton gets lawyers involved right away upon joining the firm and have taken several different approaches to introduce new lawyers to pro bono. The firm has done extensive transactional pro bono work with numerous non-profit and community-based organizations serving low-income communities.

Debevoise has always taken on important and complex pro bono litigation. Traditionally, the firm

has applied its most significant resources in this arena. In recent pro bono cases, Debevoise lawyers have advocated on behalf of clients seeking to assert and defend international human rights, prisoners' rights, voters' rights, labor and employment rights, First Amendment and other constitutional civil rights, as well as the rights of individuals with mental illness.

In recent years, Debevoise has been recognized for its outstanding pro bono work by a variety of public interest organizations. In 2005, Debevoise was honored by The Legal Aid Society for its work on prisoners' rights. In 2004, Debevoise was honored with the first Marvin E. Frankel Pro Bono Award by Human Rights First, in recognition of the firm's longstanding commitment to pro bono activities in the field of human rights and, in particular, its work in assisting refugees in seeking political asylum. In 2003, Debevoise was the recipient of The Legal Aid Society's 2003 Pro Bono Publico and Public Service Law Firm Award and was recognized for its pro bono efforts by the Urban Justice Center.

WINSTON & STRAWN LLP

Winston & Strawn is recognized with the **V. Ann Liechty Pro Bono Child Custody Award**. In the late 1990's, staff from the Chicago Volunteer Legal Services Foundation (CVLS) were appointed as guardians ad litem in a handful of problematic guardianship cases in Cook County. By early 2002, the appointments grew more than the CLVS staff could handle. In response, Winston & Strawn and CVLS formed a partnership that continues to this day. This partnership has benefited both parties, as it

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Check your Inbox: The ABA's Pro Bono Email Discussion Lists

Among the 1000 email discussion lists sponsored by the American Bar Association are eight managed by staff on behalf of the ABA Standing Committee for Pro Bono and Public Service and its Center for Pro Bono.

A Business Commitment (ABC) Pro Bono List

This discussion list focused on the issues of pro bono service in the business law community. In 2005, the Center for Pro Bono adopted the list (now renamed the PB-ABC_PROBONO list) and it includes all archived discussions. It had 182 subscribers in June 2006. It is a closed list; those who wish to join must submit their request for approval. Please visit http://mail.abanet.org/archives/pb-ABC_probono.html.

Bankruptcy Law Pro Bono List

This list welcomes those who are actively involved in bankruptcy pro bono programs. It had 46 subscribers as of June 2006. It is a closed list; those who wish to join must submit their request for approval. Please visit <http://mail.abanet.org/archives/bkprobono.html>.

Child Custody Project List

This list is for those in the legal services community interested in the pro bono representation of children in private custody cases. It had 138 subscribers in June 2006.

It is a closed list; those who wish to join must submit their request for approval. Please visit <http://mail.abanet.org/archives/childcustodyproject.html>.

Faith-Based Legal Services List

Faith-based organizations are an increasingly vital component in delivering legal assistance to low-income persons. This list is dedicated to discussing the common issues of faith-based resources in the delivery of legal assistance. It is open to anyone who wishes to join. Please visit http://mail.abanet.org/archives/faith_based_legal_services.html.

Katrina Bankruptcy List

Provides a forum for those involved in bankruptcy issues in areas affected by Hurricane Katrina. It is a closed list; those who wish to join must submit their request for approval. Please visit http://mail.abanet.org/archives/pb-katrina_bankruptcy.html.

Law Firm Pro Bono Practice Leaders List

Provides a forum for discussion about the pro bono coordinator's or the firm's Pro Bono Committee's roles, initiatives, challenges, successes and any other topics relevant to the management and coordination of law firm pro bono programs including: (1) pro bono policies, generally; (2) the structure and organization of firm programs; and (3) internal and external communication about pro bono activities. This list had 196 subscribers in June. List members are either law firm pro bono coordinators or the head of the law firm's pro bono committee. It is a closed list; those who wish to join must submit their request for approval. Please visit <http://>

mail.abanet.org/archives/pb-lawfirm_probono.html.

Pro Bono List

This list provides a nationwide forum for discussion about pro bono issues, models, initiatives, challenges, successes and any other topics relevant to any aspect of pro bono. All persons interested in promoting participation in pro bono legal services are welcome to join. It had 231 subscribers in June. It is a closed list; those who wish to join must submit their request for approval. Please visit http://mail.abanet.org/archives/pro_bono.html.

Rural Pro Bono List

The Rural Pro Bono list focuses on the delivery of legal services to rural populations, particularly the use of technology to break down barriers between urban and rural pro bono programs. The list had 134 subscribers in June. It is open to all who wish to join. Please visit http://mail.abanet.org/archives/rural_probono.html.

Other Lists

The Center for Pro Bono also maintains two distribution lists to communicate with the over 1,700 hurricane relief volunteers, and to communicate news and information concerning the Equal Justice Conference. To join the Hurricane Relief Volunteers, visit www.abanet.org/katrina/volunteers.html and learn more about enrolling as a volunteer in Louisiana, Mississippi and Texas. To join the list of individuals interested in news and updates concerning the Equal Justice Conference, go to www.abanet.org/legalservices/ejc/submit_email.html.

Pro Bono News

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will be rendered voluntarily. The rule also points out, however, that legal services in cases where payment was expected but cannot be collected, do not qualify as pro bono legal service.

For those attorneys who are prohibited from providing legal services because of constitutional, statutory, rule, or other regulatory restrictions, the comments to the rule encourage them to make a financial contribution to support the provision of legal services to people of limited means instead. These attorneys are also encouraged to engage in training geared to volunteer attorneys.

Finally, the rule states that attorneys who do not provide information on voluntary pro bono service on the form will not be registered for the year and will be removed from the master roll of attorneys. To view the complete text of the rules, please see www.state.il.us/court/SupremeCourt/Rules/Amend/2006/061406.pdf.

Pro Bono Awards

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allows Winston to offer a continuing pro bono opportunity to its lawyers and provides CVLS with a larger staff base to handle the growing number of minor guardianship appointments. The significance of Winston's work is twofold: it is being done by partners, and attorneys from practice areas other than litigation are providing representation. Between February 28, 2003 and January 16, 2006, more than 40 Winston attorneys have donated more than 2,300 hours as in 74 cases. Winston is the first law firm to be honored with this award.

Catch all the information you need on **pro bono program and policy development** in the



of the Standing Committee on Pro Bono and Public Service and its Center for Pro Bono at www.abaprobono.org

Legal Assistance for Military Personnel

Service Awards

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United States Navy, Naval Legal Service Office Central – Pensacola, Florida

NLSO Central is the third group award recipient recognized for its extraordinary response to the hurricane disasters of 2005. Despite significant personal hardship from the hurricanes, NLSOC legal team members put the needs of the fleet first in providing emergency legal advice and claims assistance to disaster victims. The NLSOC team staged an exceptional campaign to assist thousands of Navy personnel and family members on the Gulf Coast suddenly left without shelter or sustenance. Among the first on the ground in Gulfport, Pascagoula and New Orleans, NLSOC personnel improvised to fit emergent circumstances, providing direct

humanitarian assistance as well as legal services. In the weeks after Katrina, the Navy team quickly developed state-of-the-law briefs to guide delivery of urgently needed legal assistance on such subjects as landlord-tenant and insurance law within the affected states.

The NLSOC team also provided more than 30 briefings on disaster assistance to Department of Defense and Navy civilian personnel. The NLSOC legal team worked with great economy and cohesion, sharing information on emerging legal issues and resources to achieve uniformity in the legal assistance rendered to victims. It also extended outreach services to thousands of displaced persons quartered on Navy ships and at NASA facilities. The NLSOC team personally contacted and assisted all Navy family members with self-assessed legal needs, resolving all emergent cases before December 15, 2005.

From the Chair...

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

This column will serve as my valedictory, as my term as a member and chair of the Standing Committee on Legal Aid and Indigent Defendants ended in August. I want to use this opportunity to recognize the work accomplished by Committee members and staff over the course of the past three years, and to thank all who have been involved with the Committee for their contributions.

It has been a remarkable three years. During this period we have issued major reports, initiated and assisted in the development of new ABA policies, and developed revised standards to guide the provision of civil legal aid.

Gideon's Broken Promise, our report on the state of the indigent defense system, detailed the significant failings of the system in nearly every jurisdiction. The report not only recounts the system's many deficiencies, but also provides guidance on how they can be corrected. The ABA House of Delegates followed this report with the adoption of new association policy articulating the steps that states should take to implement indigent defense systems that comply with the dictates of the U.S. Supreme Court in its 1964 *Gideon*

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One Year Later: Right to Counsel Still Elusive for Indigent Defendants in New Orleans

by Georgia N. Vagenas

Although one full year has passed since Hurricane Katrina flooded New Orleans, the city's indigent defense system remains inundated. Difficult as it is to believe, countless defendants have languished in jail for months without speaking to an attorney. This raises the question of whether indigent defendants who are in pretrial custody in New Orleans are being denied their constitutional right to representation.

The slow recovery effectively means that indigent defendants in New Orleans have limited, even non-existent, "access to justice." With a staff of less than 30 public defenders handling a reported backlog of over 6,000 cases, it is impossible for attorneys to effectively represent their clients. Furthermore, because between 85 and 100 arrests are made each day, the backlog continues to increase. Considering the lack of courtroom facilities, the shortage of attorneys, and the staggering backlog, it is no surprise that it was not until nine months after the storm, on June 1, that New Orleans held its first jury trial.

Katrina's immediate impact

The backlog began to spiral out of control immediately after the storm when most New Orleans public defenders were laid off due to a lack of funding. The indigent defense system is funded by court fees, primarily derived from traffic fines. In the absence of significant traffic and traffic enforcement following the evacuation, these fees became non-existent after the evacuation and led to layoffs of public defenders. During the months following the storm, it was reported that as few as seven defenders were carrying the caseload for the entire city.

Without sufficient attorneys, the system broke down. Defendants who have not been appointed an attorney wait in jail without charges. Their trials can not take place. Even defendants who wish to plead guilty must wait for counsel in order for a judge to accept their plea. The phenomenon of indigent defendants who have been waiting for trial in jail since Katrina struck has become known as doing "Katrina time."

Several reports and studies have documented these problems. In March 2006, Safe Streets/Strong Communities released a study on the Orleans Parish indigent defense system which focused on 102 defendants detained before Katrina and still in custody at the completion of the study.¹ According to the study, the average length of time that defendants had been detained prior to trial was 385 days, and the majority of those detained had no meaningful contact with their attorneys throughout their detention.

The Safe Streets study reported on individual cases that are difficult to comprehend as happening in the United States. One such case involved a man, FP, who was arrested on April 28, 2005 and charged with bank

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From the Chair...

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v. Wainright decision.

The Committee also, with the strong leadership of former member Sarah Singleton, developed revised *Standards for the Provision of Civil Legal Aid*. These standards will provide important new guidance to legal aid organizations and advocates. (See the article on page 34 for more information.) I owe a tremendous debt of gratitude to Sarah and the 15 members of the Task Force on Standards Revision for their incredible efforts to develop these new standards in a very compressed period of time.

The Committee also undertook to study the issue of the failure of

the United States to recognize a civil right to counsel for its most needy citizens. We found that the US lags far behind other Western nations in providing counsel to the needy in civil matters. After bringing this to the attention of immediate Past ABA President Michael S. Greco as he came into office in 2005, he established a special Task Force on Access to Civil Justice to further study the issue and to develop a policy proposal. That effort also succeeded in producing two resolutions adopted by the House of Delegates, one supporting a civil right to counsel, and the other articulating 10 principles for a state civil legal services delivery system. (Turn to page 34 for more information about both.)

Of course, none of this would

have been accomplished without the incredible efforts of Terry Brooks and his amazing staff. Intelligent, committed, hard-working and wise are just a few of the many adjectives that apply. The ABA and the legal service community are truly fortunate to be the beneficiaries of their talents and dedication.

It has been a pleasure to work with so many lawyers and bar leaders committed to expanding access to justice. I know that SCLAID will continue this good work under the leadership of incoming chair Deborah Hankinson of Texas, and I look forward to opportunities to join with the Committee and others in this field in common cause in further efforts to give meaning to the term "with equal justice for all."

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fraud. He alleges that he put up a fence for a woman in January and in April she paid him with a \$200 check. When FP took the check to the woman's bank, he was told that the signature on the check didn't match. He was arrested the next morning. FP's bond was set for \$10,000. At his arraignment, he was appointed a public defender. When he went back for his motion day, his public defender was on vacation, and his motion day was reset for August 29. Katrina hit that day, and he has not heard from his public defender since then. FB has now been in jail for 303 days awaiting trial on his bank fraud charge.²

In another case, a defendant named AT was arrested along with a co-defendant for purse-snatch-

ing. AT's bond was set at \$5,000. While his co-defendant hired a private attorney and was released from jail after Katrina, AT, who could not afford an attorney, waited at least 288 days for trial without any meaningful contact with his public defender.³

Cases such as these have caused great frustration with the system. Judge Arthur Hunter of the Orleans Parish Criminal District Court repeatedly warned that if defendants' constitutional rights continued to be violated due to the inadequate funding of the public defender's office, he would resort to the release of indigent defendants. Finally, on July 28, 2006, he issued an Emergency Order declaring that on August 29, 2006 the court would begin releasing indigent defendants who had not yet gone to trial on a case by case basis. In the order Hunter stated,

"If we are still part of the United States and if the [C]onstitution still means something, then why is the criminal justice system 11 months after Hurricane Katrina, still in shambles?"⁴

In the Emergency Order, Hunter explained, "The court takes no satisfaction in its [...] decision. But, after 11 months of waiting, 11 months of meetings, 11 months of idle talk, 11 months without a sensible recovery plan and 11 months of tolerating those who have the authority to solve, correct and fix the problem, but either refuse, fail or [are] just inept, then necessary action must be taken to protect the constitutional rights of the people."⁵

Deprivation of rights

There is widespread agreement that the crisis in the system is

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depriving indigent defendants of their constitutional rights. Norman Lefstein, a member of the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and chair of its Indigent Defense Advisory Group, stated, "Probably not since the Gideon decision has there been such a gross wholesale denial of the right to counsel as in New Orleans in the wake of Katrina."

After a visit to New Orleans, Robert Spangenberg, a long-time consultant to SCLAID on indigent defense issues, reported in June, "In my lifetime, there has never been a similar disaster in the United States to that brought on by Hurricane Katrina in New Orleans on August 29, 2005. For almost 10 months, the New Orleans criminal justice system hardly existed. Two days after the storm, over 6,000 prisoners housed in the jail in New Orleans were evacuated to over 40 prisons in Louisiana and others to prisons in Texas and Mississippi. Now, some 10 months later, only six of the 12 Criminal District Courts are open in New Orleans and only since June 1, 2006."

Roots of the crisis

The deficiencies in the current system cannot be squarely blamed on Hurricane Katrina. While it is true that many indigent defendants remain in detention by virtue of Katrina, the storm has become a scapegoat for the system's pre-existing deficiencies. The reality is that the system was on the verge of collapse prior to the storm, continuously allowing violations of defendants' rights. When Katrina hit, it effectively

exposed the deep-rooted deficiencies of the system and alerted the nation to the constitutional rights violations that persisted within New Orleans.

For over two decades, there have been a number of reports and studies that have concluded that there are systematic problems in Louisiana, specifically in New Orleans, that have denied indigent defendants their right to effective counsel and to a fair trial.

In 1992, the Spangenberg Group, then retained by the Louisiana Supreme Court Judicial Counsel's Statewide Indigent Defender Board Committee to review whether indigent defendants in Louisiana were receiving adequate counsel, found that throughout the state the system was severely under-funded.⁶ Five years later, in 1997, the Spangenberg Group focused on New Orleans and found the deficiencies there were among the worst in the State of Louisiana.⁷

More recently, in 2004, the National Legal Aid and Defender Association (NLADA) and the National Association of Criminal Defense Lawyers (NACDL) issued a report finding that Louisiana was failing to meet its constitutional obligation to provide indigent defendants effective counsel and a fair trial.⁸ All of these reports have recommended that major systemic reforms be implemented, starting with identifying new funding sources.

The failures of the indigent defense system long have been attributed to chronic under-funding. Louisiana is the only state in the nation that relies upon court fees, primarily derived from traffic fines, to support the indigent defense system.⁹

In *State v. Peart*, 621 So. 2d 780, 789 (La. 1993), the Louisiana

Supreme Court concluded that funding through mostly traffic tickets "is an unstable and unpredictable approach," which results in under-funding, causing serious consequences.¹⁰ The Court called upon the legislature to take action in reforming the indigent defense system; otherwise, the court stated that it "may find it necessary to employ the more intrusive and specific measures it has thus far avoided to ensure that indigent defendants received reasonably effective assistance of counsel."¹¹ Unsurprisingly, Hurricane Katrina confirmed the unreliability of this funding source, when fee collection and revenues vanished immediately after the storm. As a consequence, the public defender staff was nearly eliminated and the backlog of cases began to spiral out of control.

Moving forward

While the indigent defense system in New Orleans is still hobbled, there is some cause for hope. There has been an outpouring of support from national organizations all working toward not only repairing the damage that Katrina caused, but also working to replace the old system by implementing a long-term strategy. In June, Lefstein and Spangenberg traveled to New Orleans to provide assistance to NLADA in developing a supplemental report and recommendations about its defense system. NLADA is also working with other national groups, such as NACDL, the Brennan Center and the ACLU, to aid in New Orleans's reconstruction efforts.

In addition, the U.S. Justice Department Bureau of Justice Assistance recently released a report on Orleans Parish, outlining a short-term strategy to address the

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ABA Adopts Legal Services-Related Policies Civil Right to Counsel Endorsed

During the 2006 ABA Annual Meeting in August, the House of Delegates—the ABA’s policy-making body—adopted a new policy stating:

RESOLVED: That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human

needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

This policy was sponsored by the special one-year Task Force on Access to Civil Justice established by immediate Past President Michael S. Greco and chaired by Hon. Howard Dana, a member of the Maine Supreme Judicial Court. The House adopted the policy unanimously, following passion-

ate advocacy by Greco and Dana. Twenty-five cosponsors joined in offering the resolution, including a number of ABA entities and state and local bar associations.

The policy will enable the ABA to join in amicus briefs in courts of last resort, and in appropriate circumstances to lobby legislative and other bodies considering adoption of a right to counsel. A copy of the resolution and the

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damage that Katrina caused and a long-term strategy to build a new system that will provide adequate public defense.¹² The Justice Department based its long-term recommendations upon the American Bar Association’s Ten Principles of a Defense Delivery System, concluding that there must be, among other things, adequate funding, client-focused representation, competent representation, controlled workloads, eligibility screening, vertical representation, proper supervision, adequate workspace, and data collection.¹³ The Justice Department recommends the immediate hiring of up to 40 private attorneys to help tackle the backlog of cases. In addition, it suggests a long-term goal of hiring 70 full-time public defenders.

The Justice Department also recommends the installment of a new Orleans Parish Indigent

Defense Board, and the appointment of a short-term interim Director of the Orleans Parish indigent defense system, who could begin the development and implementation of a strategy to restructure the system. The report also concludes that \$8.2 million annually is necessary to run the Orleans Parish Indigent Defender Program: “It is imperative that a stable and adequate funding source be established for the Orleans Parish public defender program. Without that commitment, it will remain impossible to provide defendants with the representation to which they are constitutionally entitled.”¹⁴

The good news is that policymakers are listening. In May, a newly constituted Orleans Parish Indigent Defense Board was installed. Since then, the board has been working toward implementing the Justice Department’s recommendations. Already, they have selected a new interim director for the parish, Ronald Sullivan, a Yale Law

professor and former director of the Washington, D.C. public defender program. In addition, on June 20, 2006, the Louisiana Indigent Defense Board adopted performance standards for indigent criminal defense representation.

There also has been a new commitment of funds from the State of Louisiana and from the federal government. New Orleans received a federal grant of \$2.8 million dollars to aid indigent defense services over the next two years. Furthermore, the State Legislature has doubled its funding for indigent defense in the state from \$10 million to \$20 million. These funds, however, will be spread over the entire state.

While this funding certainly indicates a move forward, the amount of funding has been criticized as falling woefully short of what is needed to pull New Orleans out of its ongoing crisis. Moreover, a long-term commitment must be made that will support and maintain a system that upholds constitutional guarantees. Judge

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extensive report detailing the need for the policy is available online at www.abalegalservices.org/sclaid.

New Policy States Key Principles for State Civil Legal Aid Delivery Systems

Another policy adopted by House of Delegates sets forth the essential elements of a sound state-based system that seeks to provide legal services to those who cannot afford them. A system will meet the goal of providing a full range of high quality, coordinated and

uniformly available civil law-related services if it:

1. Provides services to the low-income and vulnerable populations in the state
2. Provides a full range of services in all forums
3. Provides services of high quality in an effective and cost efficient manner
4. Provides services in sufficient quantity to meet the need by seeking and making the most effective use of financial, volunteer, and in-kind resources dedicated to those services
5. Fully engages all entities and individuals involved in the provision of those services
6. Makes services fully accessible and uniformly available throughout the state
7. Engages with clients and populations eligible for civil legal aid services in planning and obtaining meaningful information about their legal needs, and treats clients, applicants and those receiving services with dignity and respect
8. Engages and involves the judiciary and court personnel in reforming court rules, proce-

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Hunter echoed the concerns of the indigent defense community at large by stating in his emergency order, “[t]he crisis within the criminal justice system has not gone away and will not [g]o away without significant, stable, and permanent funding for the public defender’s office.”¹⁵

Georgia N. Vagenas is assistant staff counsel to the ABA Standing Committee on Legal Aid and Indigent Defendants

Endnotes

- ¹ *Who Pays the Price for Orleans Parish’s Broken Indigent Defense System? A Summary of Investigative Findings, Safe Streets/Strong Communities*, March 2006, online at www.lajusticecoalition.org/reports+resources/studies/.
- ² *Id.* at 7.
- ³ *Id.*
- ⁴ *State of Louisiana v. Kenneth Edwards, Emergency Order*, Case No. 463-200, Criminal Dist. Ct., Sect. K (July 28, 2006).

⁵ *Id.*

⁶ *Study of the Indigent Defender System in Louisiana*, The Spangenberg Group, Prepared for the State of Louisiana Supreme Court Judicial Council’s Statewide Indigent Defense Board Committee, March 1992, online at www.spangenberggroup.com/pub_list.html.

⁷ *The Orleans Indigent Defender Program: An Overview*, The Spangenberg Group, Prepared for the Orleans Indigent Defender Program, February 1997, online at www.spangenberggroup.com/pub_list.html.

⁸ *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years After Gideon*, National Legal Aid & Defender Association, commissioned for the National Association of Criminal Defense Lawyers, March 2004, online at www.nlada.org.

⁹ www.lajusticecoalition.org; see *State v. Peart*, 621 So. 2d 780, 789 (La. 1993). Although the State of Alabama also funds indigent defense with court fees, it does not rely exclusively upon those fees because the State covers any deficit.

¹⁰ In making this determination, the court referred to an incident when the city of East Baton Rouge ran out of pre-printed traffic tickets during 1990, which effectively suspended funding for the indigent defender program for that period. *Id.* at 789 n.9.

¹¹ *Id.* at 791.

¹² *An Assessment of the Immediate and Longer-Term Needs of the New Orleans Public Defender System*, produced by the BJA National Training and Technical Assistance Initiative Project at American University, for the Bureau of Justice Assistance, Office of Justice Programs of the U. S. Department of Justice, April 2006. Available online at www.lajusticecoalition.org/reports+resources/studies/.

¹³ *Id.* See also *ABA Ten Principles of a Public Defense Delivery System*, February 2002, online at www.abalegalservices.org/sclaid/defender/

¹⁴ *An Assessment of the Immediate and Longer-Term Needs of the New Orleans Public Defender System*, at 26.

¹⁵ *State of Louisiana v. Kenneth Edwards, Emergency Order*, Criminal Dist. Ct., Sect. K, Case No. 463-200.

ABA Policy

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for legal aid provider organizations, and for advocates working within those organizations.

The ABA originally adopted legal aid standards in 1961. Those standards were subsequently revised in 1966, 1970 and 1986. This most recent revision addresses the myriad changes that have occurred in the delivery of legal services, the practice of law and the legal aid community in the past 20 years. By adoption of these

new standards, the ABA offers up-to-date guidance on difficult issues including the delivery of limited-scope legal services and cultural competence in providing legal services.

The standards were developed with the assistance of a 16-member task force established by SCLAID. The task force was assisted by liaisons from a number of related ABA entities. Working under the leadership of Task Force Chair Sarah Singleton, this group included representatives of relevant national legal aid organizations, legal aid provider organi-

zations (including both those funded by the Legal Services Corporation and others), clients, bar leadership, the IOLTA community, and others. The development process included and was informed by hearings held in conjunction with events that brought together legal aid advocates and managers, clients, related professionals and others.

The standards are available online at: www.abalegalservices.org/sclaid. A printed version of the standards will be available for purchase in November 2006.

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