

Dialogue

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Law Schools and Community Lawyers

by Deborah Howard



There is no question but that the dream of meeting the legal needs of underserved individuals and communities through federally funded legal services has not been, and is not likely to be, met. The lack of access to the legal system remains an urgent problem. Most efforts under way to address the unmet

legal needs in our communities involve expanding *pro bono* and government-funded legal services. The Law School Consortium Project, funded by the Open Society Institute, is aimed at another potential resource: solo and small-firm practitioners.

The purpose of this Project is to enable learning about ways that law schools, in new relationships with solo and small-firm practitioners, can help address the unmet legal needs of low and moderate income individuals and communities.

The four member law schools served by the Project's Central Staff—City University of New York School of Law; Northeastern University School of Law; University of Maryland School of Law; and St. Mary's University School of Law—have developed programs (also funded by the Open Society Institute) to help community-based lawyers develop practices that are economically viable, and professionally and spiritually satisfying. Each school has created a *Community Legal Resource Network* (CLRN) as a vehicle for these schools to provide resources and services to solo and small firm lawyers engaged in community-based law practices.

Each member school CLRN is designed to break down the private/public distinction in the delivery of legal services to traditionally underserved communities, to transform the relationship between law schools and their graduates in solo and small firm practices, and to use community-based practices as the concrete experiences to re-envision law and lawyering into the new century.

The shared vision of the Consortium's member schools is the development of successful and sustainable community-based practices that are nurtured and supported by law schools. Each member school has selected a different approach to enable the testing and evaluation of various models with the goal of creating a menu of "best practices" for review and selection by other law schools around the country. Despite their various approaches, all of the CLRNs share the same overarching strategies for

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Law Schools

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accomplishing their shared vision. Each of the member school CLRNs provide examples of how law schools can extend "longitudinally" into the community by supporting law graduates' practices and demonstrate various ways that law schools can play a significant role in fostering community-based lawyering. These member schools hope that, by helping solo and small firm practitioners, they will be able to increase the number and quality of the practitioners delivering legal services. They envision that the success of these models will serve to have a significant impact on legal education, the delivery of legal services, and the role of law schools in instilling a sense of professionalism among law graduates.

These Community Legal Resource Networks include: faculty and practitioner mentors; access to library and web-based resources; affordable, relevant continuing legal education; law office management training; joint purchasing discounts; referral opportunities; education about and support for the use of technology to help make their practices more efficient; and networking opportunities with other community-based solo and small firm practitioners.

Each of the member law schools strives to:

- develop new structures for law practice in underserved communities;
- facilitate community education and empowerment;
- experiment with non-litigation models for resolving disputes;
- create opportunities for discussion of ethical issues involved in community-based law practices;

- provide information and curriculum for continuing legal education programs, as well as law schools' substantive, professional responsibility and clinical courses; and
- nurture practice settings for law graduates that are financially, professionally and personally satisfying.

The CUNY Law School CLRN was organized as a Practice Group model in which eight to ten solo and small firm community-based lawyers were organized into the following four groups: (1) the Family Law Group; (2) the Immigration Practice Group; (3) the General Practice Group, and, most recently, (4) the New Practice Development Group (for practitioners just beginning to develop their own solo and small law firms to serve low and moderate income individuals and communities).

Northeastern Law School has developed two CRLNs, one focusing on domestic violence and the other on economic development. The Economic Development CLRN focuses on helping solo and small firm practitioners who serve low income, inner-city neighborhoods to provide high quality economic development services to their clients. Project Staff provide network members with marketing and firm practice management training.

The Domestic Violence CLRN has a different format. This CLRN brings together senior family law practitioners who have expertise in domestic violence cases, less experienced practitioners, and students who have a background in domestic violence advocacy and an interest in family law litigation, to address substantive,

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From the Chair...



by Robert N. Weiner
Chair of the ABA Standing
Committee on Pro Bono
and Public Service

We are at a pivotal point in the history of the legal profession. Accounting firms, or multidisciplinary practices, are hiring partners away from law firms and competing for clients. Web sites are offering free legal advice, and major law firms are selling subscriptions to legal documents over the Internet. The number of pro se cases continues to increase, with on-line and non-legal assistance. In the meantime, the salaries of associates at many large law firms have surged dramatically, increasing pressure for higher billable hours to offset the rising costs. Where we are going is uncertain, but it is clear that the legal profession will look very different in 10 years than it does today.

In the face of this revolution, abstinence or to "just say no" is not a realistic response. We are going to have to identify the core values of our profession that we are willing to fight to preserve. We're going to have to ask ourselves what is really important to our self-image as lawyers, what is essential to distinguish ourselves as a profession from engineers and computer programmers and accountants.

I believe that pro bono is a core
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Cultures of Commitment: Pro Bono for Lawyers and Law Students

by Deborah L. Rhode

Editor's Note: This article first appeared in *Researching Law*, Vol. 10, No. 2, Spring 1999, published by the American Bar Foundation. It is reprinted here with permission. The article is presented in *Dialogue* in two installments. The first installment appeared in the fall 1999 issue of *Dialogue* (Vol. 3, No. 4). It addressed the rationale for pro bono services. This installment discusses the origins of pro bono commitments and the rationale for law school pro bono programs.

The Origin of Pro Bono Commitments

Despite the substantial scholarly literature and bar resources focusing on pro bono contributions, surprisingly little attention centers on their origins. Few systematic attempts have been made to explore the roots of commitment among public-interest or pro bono lawyers, and virtually none have addressed law students. Nor have there been significant efforts to draw on research concerning altruism and volunteer activity among the general public for insights relevant to the legal profession.

My own contributions toward filling that void are detailed elsewhere in a recent symposium on the delivery of legal services. For present purposes, let me briefly summarize a few key points about the motivations and characteristics of volunteers. The limited evidence available indicates that attorneys' public service contributions are influenced by the same range of intrinsic and extrinsic factors that account for voluntary assistance by other individuals. Intrinsic factors include the personal characteristics, values, and attitudes that influence decisions to help others. Extrinsic factors involve the social rewards, reinforcement, costs, and other situational characteristics that affect voluntary assistance.

Of the intrinsic factors linked to volunteer activity, two personal characteristics appear most significant: a capacity for empathy and a sense of human or group solidarity. Socialization of children and young adults clearly plays an important role in encouraging these characteristics. Students who participate in volunteer activities and observe such participation by parents or other admitted role models are much more likely to volunteer later in life than individuals who lack these experiences. And those who observe others' failure to assist people in need similarly tend to replicate such behavior. In this, as in other contexts, actions speak louder than words and example works better than exhortation.

Other extrinsic factors also influence the likelihood of volunteer assistance. Such work presents obvious benefits, including opportunities to gain knowledge, skills, and personal contacts. Those who receive a specific request for aid or direct personal exposure to the needs of others have much higher rates of assistance than those who do not. Conversely, responsiveness is likely to decrease where costs are high in relation to

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benefits because of the time required or the controversial nature of the activity.

Taken together, these research findings offer some useful insights about pro bono programs for lawyers and law students. As a threshold matter, the capacities of even the best designed programs should not be overstated. By the time individuals launch a legal career, it is too late to alter certain personality traits and experiences that affect public service motivations. If these formative influences are lacking, pro bono programs may have limited impact.

Yet while the potential effectiveness of such programs should not be over-estimated, neither should it be under-valued. The preceding research suggests that well-designed strategies by law schools, bar associations, and law firms could significantly affect pro bono commitments. A request for involvement, coupled with an array of choices that match participants' interest with unmet needs, is likely to increase participation. Providing face-to-face exposure to the human costs of social problems could prove similarly important. As Arthur Koestler put it: "Statistics don't bleed." Pro bono commitments can be further reinforced by educational efforts that focus attention on the urgency of unmet needs and on the profession's obligation to respond.

Other incentives could include awards, publicity, recognition on academic transcripts, and credit toward billable hour requirements. The point of all these efforts should be to help participants see pro bono service as a crucial part

of their professional identity.

A more complicated question is whether a mandatory or voluntary program would better serve this goal. On this point, social science research yields no clear answers, although it clarifies relevant tradeoffs. A pro bono requirement offers several advantages. Most obviously, such a requirement would make failure to contribute services morally illegitimate, and reinforce the message that such contributions are not only a philanthropic opportunity but also a professional obligation. And at least some individuals who would participate only under a mandatory but not voluntary program are likely to become converts to the cause and to provide assistance beyond what a minimum requirement would demand.

The potential disadvantages of compelling service are equally clear. By diminishing participants' sense that they are acting for altruistic reasons, a pro bono requirement could erode commitment and discourage some individuals from contributing above the prescribed minimum.

If adequate programs are not in place to train participants, accommodate their interests, and monitor their performance, the results could be unsatisfying for clients as well as participants.

Similar trade-offs are likely under voluntary pro bono initiatives. Their advantages are readily apparent. By reinforcing participants' sense of altruism, such programs may foster deeper moral commitments than mandatory approaches. Those who volunteer also are likely to pick an area of practice where they are competent or wish to become so. Those compelled to serve may lack adequate choices or motivation. On the other hand, if purely elective programs fail to attract widespread participation, they undermine the message that pro bono service is a professional responsibility. In the absence of a formal requirement, some law firms and law schools may remain unwilling to provide appropriate pro bono resources or credit. And individuals who might learn most from direct exposure to unmet needs

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From the Chair...

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value. It is a measure of our professional worth, creating a path to our professional satisfaction—individually and collectively. However important we thought pro bono was to the ongoing vitality of the legal profession—however important it used to be—it is more important now. For in addition to all the reasons for pro bono work you have heard and will hear, in addition to the imperative to

serve clients in need, there is this compelling truth: we cannot maintain pro bono as a core value of the legal profession by lofty rhetoric. We are going to have to demonstrate that pro bono is central to what we do, that we're committed to it, that we are in fact doing it, even—particularly—in face of the intensified quest for the billable hour.

We face now a battle for the future of our profession. Whatever the shape of things to come, our task is to ensure that pro bono remains central to our mission as lawyers.

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procedural, and advocacy skills in family law, with a particular focus on domestic violence cases. The seminar serves to build the skills of all involved, build community among practitioners, and provide students with access to that community, even before they graduate. And, the seminar increases the level and quality of services to women seeking representation, and strengthens the bonds between the law school and the relevant professional community.

The University of Maryland has created Civil Justice, Inc., a demonstration law office and a CLRN. The demonstration law office's two primary specialties (consumer/home equity defense and economic, housing, and community development) were selected based on a statewide legal needs survey to identify the unmet legal needs of low and moderate income individuals and communities. The goals of the demonstration law office and CLRN are to model best practices for small and solo law firms, and to provide a broad range of support services to lawyers who represent low and moderate income communities, organizations, and individuals. In addition to representing the underserved in Baltimore, where the project is located, Civil Justice provides case referrals, education, consultation, and a variety of other support services to Network members.

St. Mary's University School of Law has created a sophisticated Internet "virtual" network through which it provides resources and services to its solo and small firm graduates in South Texas. The St. Mary's CLRN, the People's Legal

Assistance Network (PLAN), provides graduates with access to a state-of-the-art website which has legal resources, on-line legal forms, legal document software, bulletin boards, chat rooms, and a web-based e-mail and calendaring system. PLAN also provides its members with access to faculty and practitioner mentors to help with substantive and procedural issues.

The meetings of the law school CLRN network members provide practitioners with a vehicle to counteract the isolation experienced by many solo and small firm practitioners. Group members meet regularly and communicate via e-mail and phone. Through these connections, CLRN members have been able to develop a network of fellow community-based practitioners, discuss cases and practice issues, create practice synergies, share valuable information, and provide each other with referrals and emotional support. The group meetings support the members' professional development by providing opportunities for reflection, developing expertise, and tapping into creative initiatives, while maintaining the autonomy of the small firm practitioner. And, the CLRNs provide the network members with mentoring and access to law school faculty expertise.

Comments from CLRN members include:

"CLRN has been very helpful to my firm in providing stimulating conversations among the members...providing referrals and giving my firm hardware and software that have now become indispensable to our day-to-day operations."

"CLRN has provided me the luxury of a law firm; I now have a group of lawyers...with whom

I can discuss strategies, procedural issues, legal issues, etc. I am not alone out there."

As the member school CLRNs develop, it is hoped that they will serve as models that can be replicated and sustained at other law schools across the country. Some question whether it is an appropriate role for law schools to move beyond the traditional clinical structure and provide resources to *law graduates* to help them deliver legal services. However, it is believed that these CLRNs provide at least four benefits to the law schools that house them. They serve: (1) as a means to provide visible support to law school alumni; (2) as mechanisms to assist graduates with career development and planning and provide a realistic opportunity for them to practice public interest law in a private practice setting; (3) as a recruitment vehicle to attract applicants interested in pursuing community-oriented work after graduation; and (4) as a resource to help faculty develop relevant, courses that enhance the law school's curriculum.

The central staff of the Law School Consortium Project, which is independently funded by the Open Society Institute, coordinates communication between the member schools; serves as a clearinghouse of information about the activities of the member school and related projects; develops and maintains relationships with other law schools, bar associations, and related projects; and conducts research with the member law schools on evaluation and replication.

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may be least inclined to volunteer.

How these trade-offs will balance out in particular contexts is difficult to predict. Any adequate assessment would require much more comparative review about mandatory and voluntary programs than is currently available. However, the experience of law school pro bono programs yields at least some basis for comparative evaluation.

The Rationale for Law School Pro Bono Programs

The primary justifications for pro bono service by law students parallel the justifications for pro bono service by lawyers. Most leaders in legal education agree that such service is a professional responsibility and that their institutions should prepare future practitioners to assume it. Advocates of pro bono programs believe that public service experiences encourage future involvement, and that they have independent educational value. What limited evidence is available supports those views. Schools with pro bono requirements have found that between two-thirds and four-fifths of students report that their experience has increased the likelihood that they will engage in similar work as practicing attorneys. However, no systematic studies have attempted to corroborate such claims by comparing the amount of pro bono work done by graduates who were subject to law school requirements and graduates who were not. Nor do we have research comparing the effectiveness of such required programs with well-run volunteer opportunities.

Yet there are reasons to support pro bono initiatives whatever their effects on later public service. These initiatives have independent educational value. Like other forms of clinical and experiential learning, participation in public service helps bridge the gap between theory and practice and enriches understanding of how law relates to life. For students as well as beginning lawyers, pro bono work often provides valuable training in interviewing, negotiating, drafting, problem solving, and working with individuals from diverse backgrounds. Aid to clients of limited means provides exposure to urgency of unmet needs and to the law's capacity to cope with social problems. Students also can get a better sense of their interests and talents, as well as a focus for further coursework and placement efforts. And as this audience knows, pro bono programs offer crucial opportunities for cooperation with local bar organizations and for outreach to alumni who can serve as sources, sponsors, and supervisors for student projects. Successful projects can contribute to law school efforts in development, recruitment, and community relations. Yet too many law schools have failed to realize the benefits. Only about a quarter to a third of their students participate in law-related pro bono programs. Average time commitments are quite modest and some seem intended primarily as resume padding.

Not all faculty or administrators seem interested in setting a better example. Most law schools do not even have a policy requiring or encouraging professors to engage in such work. Nor does expanding pro bono participation appear to be a priority at most institutions. About two-thirds

of law school deans report satisfaction with the level of pro bono participation at their schools. Given the absence of involvement among most students and the absence of data concerning faculty, that level of satisfaction is itself somewhat unsatisfying. But it is scarcely surprising. Why should deans see a problem if no one else does? And at most institutions, no one is complaining. Nor is the extent of any problem plainly visible. Neither ABA accreditors nor AALS membership review teams ask for specific information on pro bono contributions by students and faculty. The absence of such information makes it easy for administrators to draw unduly positive generalizations from involvement that is easily visible and especially vivid. High-profile cases handled by faculty or student clinics or widespread participation in public interest fundraising events are likely to skew perceptions in positive directions.

So too, although most alumni and central university administrators undoubtedly support public service in principle, they have not translated rhetorical support into resource commitments. Public service initiatives generally seem less pressing than other budget items more directly linked to daily needs and national reputations. National rankings, such as those by *U.S. News and World Report* have become increasingly important. And not only are pro bono opportunities excluded from the factors that determine a school's rank, they compete for resources with programs that do not affect its position.

Meeting these challenges is no small task, and appropriate

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strategies will vary across institutions. Designing an appropriate program requires schools to assess their own priorities, resources, community networks, faculty support, and student culture. But certain strategies are likely to prove beneficial no matter what kind of program is in place.

The most obvious and essential initiatives must come from law school administrations. They need to provide adequate resources, recognition, and rewards for public service. At a minimum, as the Association of American Law Schools' Commission has recommended, law schools should seek to make available for every student at least one well-supervised pro bono opportunity and ensure that the great majority of students participate. The AALS and ABA should also require specific information about pro bono participation as part of law school accreditation and membership processes.

Moreover, pro bono strategies need to be part of a broader effort to increase professional responsibility for public interests. As research on legal education has long noted, the "latent curriculum" at most law schools works against that sense of responsibility. Concerns regarding legal ethics and access to justice are not well-integrated in core courses. Traditional teaching methods offer a steady succession of hard cases and doctrinal ambiguities that leave many students skeptical at best and cynical at worst: "there is always an argument the other way and the devil often has a very good case." Legal coursework too often seems largely a matter of technical craft, divorced from the broader concerns of social justice that led many students to law school.

Countering these forces will require a substantial commitment; public services initiatives are only part of the reform agenda necessary in legal education. So too, increases in lawyers' pro bono work are only part of the answer

Look for the 1999/2000 Directory of Pro Bono Programs on our website <http://www.abanet.org/legalservices/probono> April 17, 2000.

to the nation's unmet legal needs. Yet while we should not overstate the value of public service initiatives, neither should we overlook their potential. As CUNY Law School Dean Kristin Glen notes, exposing individuals to pro bono and public interest opportunities "reinforces their best instincts and highest aspirations." By making those opportunities a priority, lawyers and legal educators can reinforce the same aspirations in themselves.

Ed. note: Original footnotes have been omitted.

Deborah L. Rhode is a Professor and the Director of the Keck Center on Legal Ethics and the Legal Profession at Stanford Law School.



Mark Your Calendar A National Conference on Unbundled Legal Services October 12-14, 2000

Conference Background - The intent of the conference is to bring together the varying perspectives of the judiciary, law school clinicians, mediators, the Bar and legal services providers around the issues that arise at the nexus of pro se litigation, unbundled legal services (a.k.a. discrete task representation) and technology.

This conference is being planned by the Maryland Legal Assistance Network (MLAN), a project of the **Maryland Legal Services Corporation**. Conference co-sponsors include: the American Judicature Society, the ABA Standing Committee on

the Delivery of Legal Services, the Legal Services Corporation, the National Legal Aid and Defender Association, the Maryland State Bar Association, the University of Baltimore Law School and the University of Maryland Law School.

The conference is set for **October 12-14** at the Hilton Hotel in Baltimore, MD. The conference begins mid-day on October 12th and concludes mid-day on October 14th.

For more information on the conference contact:
Ayn Crawley, MLAN Maryland Legal Services Corporation,
410/576-9494 or conference@unbundledlaw.org

Delivery Committee Presents 2000 Brown Awards

The ABA Standing Committee on the Delivery of Legal Services presented the 2000 Louis M. Brown Award for Legal Access and three meritorious recognition honors during the ABA Midyear Meeting in Dallas.

The 2000 Award was presented to the Houston Bar Association for its Modest Means Project. The Bar has developed this multifaceted program to assist those of modest means gain access to information and services. The Bar's projects help those who proceed on legal matters without full representation through its telephone legal line, legal handbook series and pro se family law clinics. The program also enables people to secure affordable representation through its elder law visitation project and its lawyer referral service reduced fee program.

In addition, the Committee selected three nominees to receive meritorious recognition: The Honorable Robert M. Bell, Chief Judge of the Court of Appeals of Maryland; the Mobile Self-Help Legal Access Center of the Superior Court of California, County of Ventura; and the Self-Help Legal Center of Illinois, operated by the Southern Illinois School of Law.

Chief Judge Bell was recognized for his leadership in initiatives to enhance the delivery of legal services throughout Maryland. He established an Alternative Dispute Resolution Commission and the Maryland Legal Assistance Network Oversight Committee. He has also advanced the implementation of recommendations from the Maryland Advisory Council on Family Legal Needs, resulting in fundamental changes to the court structure.



(L to R) **Michael Ruiz**, Project Coordinator, Self-Help Legal Center; **Herbert Garten**, accepting for the Honorable Robert M. Bell; **John S. Skilton**, Chair, ABA Standing Committee on the Delivery of Legal Services; **Andrew S. Hanen**, President, Houston Bar Association.

The Mobile Self-Help Legal Access Center is a specially equipped 35-foot mobile home, modeled after library "book mobiles." The Center includes computers, video stations, books, pamphlets and self-help instruction manuals for those who need to pursue their own legal resolutions, but find it difficult to get to a courthouse.

The Self-Help Center of Illinois is a technology-based service, with a web site at <http://www.siu.edu/~lawsch/clinic/selfhelp>. The Center provides resources directly to self-help litigants and serves as a clearinghouse for all those involved in use of the courts for dispute resolution. The Center disseminates information with a focus on the rural populations of southern and central Illinois.

The Louis M. Brown Award for Legal Access is sponsored by the ABA Standing Committee on the Delivery of Legal Services, which is dedicated to improving the delivery of legal services to moderate income people who do not qualify for subsidized legal assistance yet lack the discretionary income to pay for traditional

legal services. The award honors Louis M. Brown for his 60 year-long dedication to expanding access to legal services.

Past recipients of the Brown Award include the Philadelphia Senior Citizen Judicare Project, the AARP Legal Hotlines Project, the Superior Court of Arizona in Maricopa County Self-Service Center, the Orange County (CA) Bar Modest Means Program and Tele-Lawyer, Inc.

The ABA Standing Committee on the Delivery of Legal Services has produced a booklet describing projects nominated for the Brown Award. The booklet, entitled "Profiles of Moderate Income Delivery Programs," encourages replication of the various projects that advance access to justice. The booklet is available on a complimentary basis from the Committee. The information is also available at the Committee's web site at <http://www.abanet.org/legalservices/delivery.html>.

For more information contact: William Hornsby, Staff Counsel for the Division for Legal Services, at 312/988-5761, or whornsby@staff.abanet.org

From the Chair...



by Herbert S. Garten
Chair of the ABA
Commission on IOLTA

Members of the IOLTA Community breathed a collective sigh of relief on January 28, 2000. As most of our readers already know, on that date Federal District Court Judge James Nowlin dismissed with prejudice all claims raised by the Washington Legal Foundation (WLF) against the Texas Equal Access to Justice Foundation in the case of *WLF, et al. v TEAJF, et al.* (see story on this page). The case was before the District Court on remand from the United States Supreme Court, where it was captioned *Phillips, et al. v WLF, et al.*

During a two day bench trial in September, Judge Nowlin was presented with testimony and documents regarding whether IOLTA interest was unlawfully taken by the Texas IOLTA program and if so, whether any just compensation was due plaintiffs. In addition, the Court considered whether participation in IOLTA amounted to a violation of the First Amendment rights of the client plaintiff, William Summers.

In his 40 page opinion, Judge Nowlin carefully considered the evidence presented at trial and ruled in favor of defendants on the First and Fifth Amendment claims. Judge Nowlin's ruling is a vindication of the view that we

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Federal District Court Upholds Constitutionality of Texas IOLTA Program

by Bev Groudine

On January 28, 2000, U.S. Federal District Judge James Nowlin dismissed with prejudice all constitutional claims raised against the Texas IOLTA program in *Washington Legal Foundation, et al. v. Texas Equal Access to Justice Foundation, et al.* The case was before the District Court on remand from the U.S. Supreme Court where it was captioned *Phillips, et al. v. Washington Legal Foundation, et al.*

In *Phillips*, the Supreme Court held that under Texas law, the interest generated in IOLTA accounts is the property of the owner of the principal. The Court remanded the case for a determination of whether the state had "taken" the interest generated from IOLTA accounts and if so, whether plaintiffs were entitled to any "just compensation" under the Fifth Amendment to the U.S. Constitution. In light of the Supreme Court's ruling, the District Court also decided to revisit the issue of whether the Texas IOLTA program violated the First Amendment rights of the plaintiffs. After holding a two day bench trial in September 1999, Judge Nowlin issued his 40-page decision in January, finding in favor of defendants on all significant issues of law and fact related to the constitutional claims.



First Amendment Claims

Judge Nowlin began his analysis by noting that the U.S. Supreme Court has acknowledged two distinct lines of cases regarding compelled speech: the right not to speak and the right not to be compelled to subsidize others' speech. The Court noted that the first line of cases involved requiring individuals to engage in involuntary affirmations of public belief, and the second line of cases involved compelled financial support of private organizations.

Plaintiff William Summers, who was the client of plaintiff Michael Mazzone, claimed that his participation in the IOLTA program caused him to be identified with causes he found objectionable. However, the Court rejected that claim, finding that no specific message was dictated by the variety of legal services that the Texas IOLTA program funds. In addition, the Court found that Summers was free to publicly disassociate himself with the views of any IOLTA funded litigation with which he disagreed, and that to a limited degree he had already done so by filing the law suit that was presently before the Court.

Judge Nowlin also found against Summers on his claim that the IOLTA program compelled his financial support for ideological and

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Texas IOLTA

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political speech to which he objects. The Court noted that taken as a whole, the U.S. Supreme Court's rulings in this area required that three factors be present to establish a valid claim: a) a contribution must be involuntary; b) the message supported by the involuntary contribution must be political or ideological; and c) even when the message supported by the involuntary contribution is political or ideological, no First Amendment violation exists if the message supports the government's policy interest.

After assuming *arguendo* that the client plaintiff was compelled to contribute to IOLTA, the Court addressed the issue of whether the activities funded by the Texas IOLTA program are ideological and/or political in nature. The court held that "[t]he concept of helping ensure equal access to the justice system for low income citizens is in itself a non-controversial idea and therefore does not qualify as a political or ideological activity." As a result, the IOLTA program itself does not engage in expressive activity. However, the Court did find that the IOLTA program's "activities in funding certain litigation could be ascribed certain political or ideological components and therefore potentially qualify as expressive activity against which Plaintiffs may lodge a First Amendment claim." Nonetheless, the Court held that the First Amendment claims failed.

Those claims failed because the Court held that supplying legal services to the poor, as the Texas IOLTA program does, is germane to the "government's vital policy interest" of making legal services accessible to all.

Specifically, the Court held that "[t]he sole purpose of TEAJF is to fund legal services to the poor. Its activities in funding various programs are germane to this government interest."

Fifth Amendment Claims

The Court made clear at the beginning of its analysis of the Fifth Amendment claims that it viewed those claims as the central issues in the case. Judge Nowlin noted that the Fifth Amendment does not proscribe the taking of property, but it does proscribe the taking without just compensation. As a result, the Court viewed the specific issue of just compensation as the "crux" of the case, and addressed it first.

Relying upon Supreme Court precedent to determine what just compensation is due, the Court noted that "the question is what has the owner lost, not what has the taker gained." That is, the Court must seek to place a claimant "in as good a position pecuniarily as if his property had not been taken." The Court viewed the specific factual issue before it as what monetary amount of net interest or net benefit was lost by the plaintiff because his funds were placed in IOLTA.

The Court carefully reviewed the evidence presented at trial regarding plaintiffs' claim that the use of sub-accounting and/or in-firm pooling of client funds could result in the receipt of net interest by clients. In addition, Judge Nowlin examined evidence presented regarding plaintiffs' theories on how net benefit could accrue to clients in the absence of IOLTA. In light of all the evidence presented, the Court held that Summers did not suffer a compensable loss. In reaching this decision, the Court ultimately found in favor of defen-

dants' witnesses and discredited plaintiffs' witnesses. Throughout his analysis, Judge Nowlin repeatedly referred to the fact that by definition, client funds are only placed in IOLTA accounts if they cannot earn net interest for the client.

Although the Court believed its finding that no just compensation was due was dispositive of the case, it nevertheless followed the directive of the Fifth Circuit and Supreme Court and addressed the issue of whether there had been a taking of property. The Court determined that the proper test to employ was whether a regulatory taking, as opposed to a *per se* taking had occurred. The Court noted that the *per se* taking analysis applies in cases involving the physical invasion of real property, which was not at issue in this case. Using the regulatory taking analysis, the Court ruled that "applying the fundamental principles of justice and fairness the Court finds that a taking has not occurred. The IOLTA program is not in any way unfair to plaintiffs."

Reaction to the Decision

The IOLTA community, bar leaders and other advocates for legal services hailed the decision. ABA President William Paul stated, "The American Bar Association is gratified that the District Court has upheld the constitutionality of IOLTA, which provides tens of thousands of the most needy members of our society meaningful access to the civil justice system. Our support for this vital funding source for the provision of legal services to the poor and the administration of justice has been and will continue to be unwavering." Lorna Blake, President of the National Association of IOLTA Programs, stated that "even though

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Grantee Spotlight . . . New York State IOLA Grantees Provide Legal Assistance to Elderly

by Sabena Leake

New York's over-60 population tops 3 million and is growing at a rate faster than the population as a whole,¹ with over 10% of this population living below the poverty level.² Given these statistics, the task for legal services providers has been, and continues to be, the mobilization of dwindling resources to preserve affordable housing, income, and health care in order to ensure the continued health, well-being, and independence of the state's aged.

Recognizing that the elderly population has its own set of issues that warrant special attention, many of New York's IOLA grantees have established programs which provide a range of legal services to needy elderly. Several others have in-house staff or units solely dedicated to providing these services. Grantees provide legal representation on the most critical issues facing the

elderly: housing, government and medical benefits, health care, and elder abuse. They do so with the expertise and patience needed to effectively relate to and assist these clients.

Elder Abuse

Mrs. C is a frail 67-year-old woman with many serious medical conditions. Throughout her 50-year marriage to her husband, Mrs. C has been subjected to verbal and physical abuse by him. A little over a year ago, Mr. C assaulted Mrs. C, and for the first time ever she called the police. Mr. C was arrested and charged with assaulting his wife. Excluded from the home via the criminal order of protection, Mr. C, a retired New York City employee with a substantial pension, moved in with his sister and refused to continue to support Mrs. C, who had been financially supported by her

position that IOLTA advocates have held since the inception of the program: IOLTA takes nothing from clients, but rather creates value where there previously was none. And that "value" continues to be utilized by IOLTA programs in all 50 states and the District of Columbia to fund programs that further the administration of justice and provide critically needed legal services to the poor.

Bev Groudine is Counsel to the ABA Commission on IOLTA.



PHOTO BY RICHARD YOUNKER

husband during their marriage and had no alternative source of income. Moreover, Mr. C's compulsive gambling had resulted in their home being heavily mortgaged. When he stopped making the mortgage payments, Mrs. C was faced with the threat of foreclosure and the turnoff of her phone and utilities. She became depressed and anxious, and her health deteriorated.

Mrs. C went to Brooklyn Family Court and petitioned pro se for spousal support. There she was confronted by her husband and his aggressive lawyer. Terrified and feeling utterly alone, Mrs. C sought help from a social worker at a Brooklyn senior center, who called Sanctuary for Families' Center for Battered Women's Legal Services. Sanctuary staff immediately applied for a grant from the Havens Relief Fund to cover the money Mrs. C owed Con Edison and secured \$500 to cover those costs. Further, with the assistance of Sanctuary staff, Mrs. C obtained a temporary order requiring her husband to pay monthly mortgage payments and half the costs of utilities. Recently, negotiations have commenced in earnest, and a settlement seems likely.

—Sanctuary for Families'
Center for Battered Women's
Legal Services
New York, New York

In 1996, there were over 400,000 seniors, nationally, just

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Texas IOLTA

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we expect the plaintiffs to appeal, we are confident the decision will be upheld."

On February 18, 2000, the Washington Legal Foundation did file its notice of appeal with the United States Fifth Circuit Court of Appeals. Thus, the Texas IOLTA litigation is far from over. Nevertheless, at this juncture the District Court has vindicated the

New York IOLA

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like Mrs. C who were victims of domestic abuse and neglect.³ Of those cases reported to Adult Protective Services (APS) agencies, 48.7% involved neglect, 35.4% involved emotional abuse, and 25.6% involved physical abuse.⁴ Many victims of elder abuse are physically and mentally frail; almost half of seniors maltreated are physically unable to care for themselves, and a significant number suffer from some form of depression and/or disorientation.⁵ Statistics go on to indicate that many perpetrators of elder abuse are the victims' caregivers, who are often their children (~48%⁶) and spouse (~22%⁷). What's startling is that a significant portion of elder abuse is committed domestically, i.e. in the privacy of the home environment, and that many elderly abuse victims feel too humiliated or confused to report the abuse, or simply lack the resources—legal and social—to stop it. This suggests that the actual figures might be higher.

The Center for Battered Women's Legal Services at Sanctuary for Families provides a haven for these and other battered women. The Center helps victims break the cycle of abuse by providing representation in family offense, protective order, matrimonial, immigration, and spousal support cases; technical assistance to domestic violence program staff, social service providers, medical personnel, criminal justice agencies, and other lawyers; and leadership in the development and implementation of city, state and federal legislation and policy.

Home Equity Fraud

Ms. D is a senior citizen who lives alone in the home she has owned in Bedford-Stuyvesant, Brooklyn for nearly 25 years. Her husband passed away in 1993, and she survives on the \$700 per month that she receives from her husband's Social Security and pension survivor's benefits. She is highly vulnerable and unsophisticated, and her competency to sign a mortgage is questionable. Last year she was induced by an unscrupulous broker, contractor, and lender into a \$99,000 mortgage that she had no hope of ever repaying. The monthly payments of \$1,017.57 were more than \$300 over her monthly income, in violation of federal and state law. Although Ms. D's house had been fully paid off years ago, the lender refinanced over \$40,000 in very low interest, forgivable home repair loans issued by the City into an unmanageable debt with an APR of over 14%. The contractor never completed the work, leaving Ms. D's house in a total mess. The lender paid the broker a kickback of over \$6000 out of the proceeds of the loan. Unable to make payments on the loan, Ms. D went into default almost immediately, and now the lender is trying to foreclose on her home.

—Foreclosure Prevention Project for Seniors South Brooklyn Legal Services Brooklyn, New York

While physical abuse is the most visible type of mistreatment committed upon the elderly, a significant number of seniors are victims of financial abuse. Their checks are cashed without permission, possessions are stolen, and they are coerced or deceived

into signing documents to their financial detriment. The victims' own children are usually the perpetrators of financial abuse;⁸ however, a growing number of cases involve the practices of unscrupulous mortgage brokers and contractors. The vignette above paints a picture of financial exploitation familiar to many seniors who own and live in their own homes. Since the early 1990s, foreclosure rates, particularly in New York City, have been extremely high. The foreclosure problem in low-income neighborhoods of color is greatly exacerbated by the abusive practices of mortgage companies, brokers, and contractors who aggressively target elderly homeowners, and induce them to sign high-rate home equity loans that they are often unable to repay.

Elderly homeowners are particularly vulnerable to home equity fraud because they have fixed incomes, are often trusting and lack financial sophistication, and have equity invested in their homes. Unscrupulous brokers and contractors prey upon these individuals, suggesting home repairs that are often not even needed, and/or inducing desperate homeowners who are behind in their mortgage payments to sign high-rate refinancing agreements that they will not be able to afford.

Consequently, these home improvement loans and refinancing agreements leave many homeowners burdened with extremely high monthly payments, making repayment of the mortgage difficult, and often resulting in the homeowners losing their equity in the homes they have lived in for many years. Sometimes they lose their homes entirely.

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Even if this does not happen, the lender sometimes pays the contractor before the work is completed, leaving the borrower with unfinished or inadequate repairs in addition to a huge debt burden. Losing their homes means that many individuals are uprooted from their communities, and because of their limited

incomes, are often shut out of the rental market so that many end up in adult homes or, in the worst cases, on the street.

The Foreclosure Prevention Project for Seniors at South Brooklyn Legal Services has been set up to handle these types of predatory lending practices. The Project combines both preventative and interventional strategies to eliminate the problem and mitigate the results. It not only

provides foreclosure defense representation to homeowners threatened with the loss of their homes, it conducts extensive outreach in order to educate low-income homeowners about home equity fraud, the dangers of overfinancing and the available alternatives. The Project identifies and exposes unscrupulous mortgage brokers, lenders and contractors, as well.

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From the Chair . . .

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have always held—IOLTA takes nothing from clients, rather it creates value where there previously was none. Because Judge Nowlin found in favor of the Texas IOLTA program on all significant questions of fact related to the constitutional claims, TEAJF should be in a position of strength before the U.S. Fifth Circuit Court of Appeals when the case reaches that level. Yet, in the immortal words of Yogi Berra, we know “it ain’t over ‘til it’s over.” Nevertheless, we should all be gratified by this important victory.

I want to take this opportunity to thank the many people who were involved in the district court litigation. Darrell Jordan, David Schenk and Beth Bivans of Hughes and Luce, and Richard Johnston and Francine Rosenzweig of Hale and Dorr did an exceptional job as pro bono counsel for the TEAJF. Aileen Carr, a legal assistant with Hale and Dorr, provided stellar support to the litigation team. Allen Morrison of Public Counsel Litigation Group was an insightful advisor to the litigators, as was

Dean Frank Newton, the former chair of TEAJF. Several members of the National Association of IOLTA Programs provided input, as well. As a community, we are greatly indebted to everyone involved.

The Winter 2000 IOLTA Workshops held in Dallas provided an excellent opportunity for IOLTA directors and board members to gather to discuss the decision and personally thank counsel. The TEAJF hosted a reception for that very purpose which was attended by many and enjoyed by all.

In addition to addressing the current IOLTA litigation, a wide range of other topics were explored during the two days of IOLTA workshops. Sessions on IOLTA program leadership, banking, technological development within programs, joint fundraising, funding decision-making and IOLTA program accountability were discussed and debated. My heartfelt thanks goes out to the members of the Commission on IOLTA/National Association of IOLTA Programs Joint Meetings and Training Committee for their hard work in making the sessions such a success: Calien Lewis and Lora Livingston, co-chairs; Tina Abramson, Jane Curran, Susan Erlichman, Ellen Mercer Fallon,

Matt Feeney, Lynn Nagasako and last but not least, Lorna Blake. Special thanks are also in order to Stephen Brooks who, as a member of the Joint Banking Committee, assisted the Meetings Committee in developing a session on banking.

Both banking workshops highlighted a fact that many of us are aware of: declining interest rates and increasing bank fees and service charges are adversely affecting IOLTA income. The Commission/NAIP Joint Banking Committee is acutely aware of this problem and is researching alternative banking products that may prove to be more profitable for IOLTA programs. In particular, the recent enactment by Congress of the Financial Modernization Act of 1999 may enable IOLTA programs to utilize certain banking products that were not previously available to them. The Joint Banking Committee is hard at work on this project and will report its findings at the Summer 2000 IOLTA Workshops, which will take place in New York City on July 6-7. I hope this will provide members of the IOLTA community with added incentive to attend those workshops, which I am confident will be interesting and informative.



PHOTO BY RICHARD YOUNKER

New York IOLA

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Preservation of Income and Affordable Housing

The New York City Housing Authority (NYCHA) was on the verge of evicting a frail 93-year old man, when the judge asked the Bronx Legal Services' Office of the Elderly to step in as the tenant's counsel. The tenant, a resident of the building for more than 30 years, had not been listed as an official tenant in recent years. Unbeknownst to him, and no doubt as a shortsighted cost-saving measure, his wife had reported his death to NYCHA approximately a decade earlier. He spoke no English, and had left the "bookkeeping" aspects of their tenancy to her. When the wife passed away, NYCHA's records showed the apartment as vacant.

—Office of the Elderly
Bronx Legal Services
Bronx, New York

Legal representation made all the difference. The tenant, pro se, had

been playing a purely defensive game, trying to answer NYCHA's unanswerable questions (e.g. "Why did your wife tell us you were dead?" "Are you sure you're really the man who was married to her?") Counsel let NYCHA know that they, too, had a series of unanswerable questions facing them, if the case went to trial (e.g. "What kind of proof do you require when a tenant reports that a family member died?" "Is that proof in the tenant's file?" "Weren't your workers in the apartment for three solid weeks in 1995 and again for a week in 1997?" "Didn't employees of the on-site management office see [the tenant] in the building and on the grounds?").

With the Office of the Elderly's involvement, the case settled on terms very favorable to the tenant.

A 64 year old woman had been denied Supplemental Security Income (SSI), although she had continuing pain and limited use of her arms and hands, among other things. The Senior Legal Services staff attorney discussed

the client's work history and medical problems with her at length, contacted the client's physicians and assembled medical records documenting her problems. The attorney then represented her at a hearing. The client received a favorable decision and will be granted SSI benefits.

—Senior Legal Services
The Legal Aid Society of
Northeastern New York

While preventing and undoing the damages of fraud in the home equity market have become recent areas of increasing need for legal services, it is simply a subset of the ongoing, larger task of preserving affordable housing, and maintaining or obtaining income for indigent seniors. Faced with a growing senior population, 26% of whom live alone,⁹ over 40% of whom live in rental housing,¹⁰ and over 67% of whom receive benefits in the form of social security and food stamps,¹¹ legal services providers in New York have continued to rise to the task of ensuring that this population has the financial resources and quality housing which enable it to remain independent and autonomous.

The Legal Aid Society's Brooklyn Office for the Aging which, at 25 years old, is proudly the oldest community-based legal services program in the nation dedicated exclusively to indigent senior citizens, serves over 1,000 clients in Brooklyn each year, primarily in housing and benefits matters. Its service delivery system draws upon an extensive network comprised of legal services staff, community organizations, government agencies, and bar associations. And its triage system of case management ensures that

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those seniors who are most at risk of losing their benefits or housing are assisted.

Health Care

The majority of New York's poor seniors over 65 are covered by Medicare.¹² And while Medicaid is offered to most poor seniors between the ages of 60 and 65, the limitations on income and assets so severely narrow the definition of "poor" that, in effect, only a small number of seniors even qualify for Medicaid coverage. While some seniors in this age bracket continue to rely upon employer-sponsored coverage,¹³ many seniors between 60 and 65 are left without coverage, or must dig into their pockets for the full-costs of premiums,¹⁴ making it unlikely that they will receive the quality or type of medical services that they need. In addition, limitations on benefits, recent Medicare eligibility and enrollment changes, and the emergence of Medicare and Medicaid managed care often leave seniors struggling to navigate the various bureaucracies within the different components of the health care system, which can also result in gaps in the continuum of care.

Mr. S was enrolled in Oxford's Medicare HMO in Suffolk County, New York. When he found out that Oxford was terminating its Medicare contract with Health Care Financing Administration (HCFA) for the year 2000, he requested an Empire Blue Cross/Blue Shield HMO application in September and again in November. Because he still had not received an application in December, he called a third

time and was informed that Empire had closed enrollment for the year and would not be accepting applications again until next November. Upset because Empire is offering the only premium-free HMO in Suffolk County, Mr. S called Medicare Rights Center (MRC) for assistance. A MRC staffperson reported Empire's failure to provide Mr. S, as well as two other callers, with an application to HCFA and succeeded in getting applications for all three clients.

—**Medicare Rights Center
New York, NY**

Mr. S's problem is one of many that seniors currently face as they try to adjust to the new Medicare managed care system. Confusion, questions, and frustration about HMO options, rights, benefits, and eligibility overwhelm some seniors, who may end up going without vital health services at all. Through its telephone hotlines, the Medicare Rights Center staff responds to questions from individuals about Medicare and, when appropriate, represents clients who cannot get care or coverage. Providing services on both statewide and national levels, MRC also publishes educational material and conducts training about Medicare options and rights; does public policy work that addresses Medicare consumer issues and concerns; and works closely with local and national media outlets to ensure public awareness and understanding of Medicare issues.

Similarly, the Brookdale Center for Aging at Hunter College seeks to educate and advocate for the aging on issues related to health care insurance and services. Through the Samuel Sadin

Institute on Law, the Brookdale Center provides legal support for social workers, paralegals, attorneys and other professionals throughout the State engaged in providing advocacy to the elderly poor. This support includes training on a variety of topics; technical assistance and policy analysis on public benefits laws to elected officials; and legislative and regulatory developments monitoring.

Building Lasting Relationships Between IOLA Grantees and New York's Elderly in Need

The case of E.B. was opened in August of 1997 as financial exploitation by a nephew and has evolved over the years from issues of safe living to temporary placement in a nursing home. It took a great deal of time to gain his confidence, but now he trusts our opinion and knows that we will represent him against any agency who does not treat him fairly. We have worked regularly with Protective Services for Older Adults, the Department of Social Services Legal Department, Long Term Care and residential facilities in trying to keep him healthy and happy. It is an ongoing case.

—**Legal Services for the
Elderly, Disabled and
Disadvantaged of
Western New York, Inc.
Buffalo, New York**

The development of long-term relationships like the one above between IOLA grantees and elderly clients is common. The compassion, patience, and expertise of legal services staff result not only in financial benefits for clients, but also high levels of client satisfaction. Consequently, many clients feel comfortable

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Computers—Leading the Way in Making a Difference

by Len Horton

Last year, when I began my search to replace my only employee of the last decade, I noticed something unusual. All the applicants for the position had one thing in common. Their resumes reported significant computer experience. Since my former employee had confessed that she knew next to nothing about computers, I was surprised by the computer skills of my new applicants.

As a writer who had worked at *The Atlanta Journal* when the computer was introduced, I instantly loved the increase in productivity I experienced when writing articles. I vowed to become

knowledgeable about these new typewriter-like machines.

By the time I came to the State Bar of Georgia to run the IOLTA program in 1986, I had become what some called a computer nerd. In addition to my foundation duties, I had fun showing the Bar how the computer could produce name tags, newsletters, budgets, special databases and even process balloting in a Board of Governors meeting. Virtually everything that needed to be done by the staff could be done better



with the computer.

Not all employees, however, were quick to agree. I'll always remember one who was intimidated by the computer. She stormed into my office one day and screamed, "I hate the

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returning to their advocate(s) when they are again in need of assistance or advice.

As the vignettes illustrate, New York's IOLA grantees have a long-standing commitment to their role as advocates for the State's elderly poor. Nevertheless, as New York's aging population steadily expands, the issues facing this population continue to pose challenges to New York's legal services community. Elder abuse, the lack of affordable housing, the lack of affordable health care, and Medicaid and Medicare reform represent only the *critical* issues that face senior New Yorkers. Several others threaten their

independence and well-being. However, IOLA looks forward to its continued support of programs which provide these vital resources to those in need.

Sabena Leake is the Program Associate at the IOLA Fund of the State of New York.

Footnotes

¹ "Older New Yorkers in 1990: Official 1990 Census Counts for New York State Counties, Summary of Statewide Trends," *New York State Office for the Aging*, 1993.

² "Table 2. Economic Characteristics of Persons Aged 60-Plus," *New York State Office for the Aging*, 1993.

³ "Section 4. Findings – Incidence of Abuse and Neglect of the Elderly," *The National Elder Abuse Incidence Study; Final Report*, September 1998.

⁴ "Section 4.3. Characteristics of Elderly Victims, Reported to APS," *ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ "Table 1. Demographic Characteristics of Persons Aged 60-Plus," *New York State Office for the Aging*, 1993.

¹⁰ "Table 3. Characteristics of Housing Units with Householders 60+," *New York State Office for the Aging*, 1993.

¹¹ "Table 2. Economic Characteristics of Persons Aged 60-Plus," *New York State Office for the Aging*, 1993.

¹² "Health Coverage Among Persons Age 50 Through 64," *AARP Public Policy Research*, 1999, 2000.

¹³ *Ibid.*

¹⁴ *Ibid.*

Computers

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computer and...I hate you."

Less than a year later her computer suffered a crash associated with a power outage before we started using surge suppressors. In all seriousness she asked her supervisor for permission to go home because "I can't do anything without my computer."

That employee who in less than one year went from hating the computer to having no way to be productive without her computer is, I think, typical of what has happened to the way bar foundations and the entire IOLTA community have changed because of the computer.

All 38 programs answering a recent technology survey from the National Association of IOLTA Programs (NAIP) are using the computer. Every one of them. And the responses indicate that most executive directors consider themselves no longer to be technological beginners. Listen to Jane Curran, executive director of the Florida Bar Foundation, or Linda Rexer, executive director of the Michigan Bar Foundation, talking about computers, and you will hear the future of IOLTA program management. The computer is not some aid for secretaries being told what to do by the manager, who doesn't even know how to turn on the computer. The computer is the mission-critical component that makes IOLTA program operations the envy of non-automated businesses the world over.

Just about everyone responding to the NAIP Technology Survey considers themselves to be at least an intermediate in terms of technical knowledge, and some consider themselves to be experts.

A total of 37 of 38 programs use IBM compatible computers running Windows NT, 2000, 98 or 95. One program was using the Apple Macintosh and OS8.5 and 9. More than 86 percent were connected to the internet, and most of those access the internet every day. Most executive directors now can use the megabyte - and RAM/ROM-lingo with the same confidence they can discuss the importance of legal services for the poor.

As knowledgeable as IOLTA Directors have become, however, they know their limitations. A total of fourteen programs outsource some data processing activities such as bookkeeping, payroll and even IOLTA revenue tracking. Two programs outsource attorney compliance.

For those who do their own accounting, Quickbooks was the favorite program. Nine programs reported using it. Peachtree Accounting was second with five, One Write Plus was used by three foundations and Great Plains by two.

While many programs are using the IOLTA software developed by Roger Lilavois for Florida, a large number are using Microsoft Access tailored to their special needs by local programmers. Three IOLTA programs are using FoxPro and several, including Texas and Tennessee, are using Al Kaufman's predominantly DOS program. Other software used includes Paradox, AREV-2, dBase II and Filemaker Pro.

Even though all states are using the computer, some states have gone farther in implementing technology. The extent to which IOLTA program directors have embraced automation determines which software is being used and how revenues are tracked in each state.

The IOLTA programs using primarily manual methods receive

checks from banks along with paper reports containing IOLTA account information. These programs key enter almost all the account data and make deposits of most of their IOLTA revenues by hand.

A second group of IOLTA programs has concentrated on obtaining IOLTA account information electronically from the banks. The IOLTA staff either dials into the bank's database and downloads a file including account information or else receives the data in Excel, Lotus or text format via floppy disk or the internet. By eliminating a large part of data entry for IOLTA accounts from banks, these programs have dramatically increased the productivity of their employees. These programs, however, tend to continue making deposits manually. Only recently have they begun to explore lock boxes and the use of the Automated Clearing House (ACH) system of the Federal Reserve to deposit funds quickly and maximize the investment return on IOLTA revenues.

The third group, following the lead of Glenn Baker, executive director of the Missouri Lawyers Trust Account Foundation, and Roger Lilavois, embraced ACH as a way to speed up the collection of IOLTA revenues and, then, added the electronic transfer of IOLTA account information.

A bank sends IOLTA account information to the program electronically or on paper via FAX. The IOLTA staff converts that information into a special ACH type file, which they send to their bank where they keep most IOLTA revenues. The bank checks the file and sends it to the Federal Reserve, which transfers interest from each lawyer/firm IOLTA account to the IOLTA program's account using the ACH system. If the bank cannot

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Computers

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send the account information electronically, IOLTA program staff still must enter it manually into the computer system.

IOLTA programs, no matter how technologically sophisticated, are heading toward the same result: automated data entry of IOLTA account information and automated deposit of IOLTA revenues.

In Georgia, I now encourage all banks to send an Excel or Lotus file of IOLTA account information as an attachment to an e-mail to my Internet e-mail address. The data can be read directly into my database with only minor checking. In fact, this computer system is the real reason I am able to run the Georgia Bar Foundation's mandatory IOLTA program with only two employees. Our annual IOLTA revenues are now about \$5 million.

Everything we do in IOLTA programs, not just revenue tracking, is fair game for computer automation. The Michigan Bar Foundation, under the leadership of Linda Rexer, has taken computerization where no other program had gone before. She has significantly streamlined her grant process with the aid of the computer.

For the computer to help, it became clear that the grant application process itself would have to be computerized. Michigan, with the assistance of Deputy Director Rick Winder, came up with a solution. He applied Informs and Informs Filler software to their grants process. Instead of sending the 50-page grant application form to each applicant, Michigan sends a diskette, which includes the Informs Filler software and the actual grant application form.

The applicant fills out the electronic form and returns the completed application file on the diskette, which Michigan then reads into its computer system. Rick has programmed the Informs software to extract the information in the file and to produce a number of reports from it. Using this approach, the 50 pages are condensed into 30 pages for each grant applicant, which is bound into what he calls "the blue book." The separate "justice-for-all" book includes a two-page summary of each grant request. The Informs software costs about \$300 and the Informs Filler costs \$200 for each grant applicant. The latter is provided at no charge to each grant applicant. Typically the

Michigan Bar Foundation receives 16-20 applications each year.

The NAIP Technology Survey uncovered other interesting facts. Internet Explorer has the edge over Netscape by a 14-4 margin. Outlook Express is the preferred email program of 16 IOLTA programs, with Eudora at four.

Grants management software includes AIM Software by Roger Lilavois (4), Excel (4), Word (4) and a number of other programs. The battle of the spreadsheets is almost over. Microsoft Excel has 21 users, Quattro Pro has five and once powerful Lotus has four. Word processing is still a contest, with WordPerfect in use at 10 programs and Word at 19.

IOLTA leaders throughout the nation have come a long way since their employees hated being forced to learn computer skills. Before effective computer use, these executive directors found a way to help grant recipients make a difference in the lives of millions of Americans. With effective computer use, IOLTA directors are now leading the way for grantees to make an even bigger difference.

Len Horton is Executive Director of the Georgia Bar Foundation.

Bereavement Notice

It is with great sadness that *Dialogue* informs you of the death of Jim Tiemann, director of the Wyoming State Bar Foundation and IOLTA Program. Jim died on January 24, 2000 after an extended battle with cancer. He was 46.

Jim began working at the Wyoming State Bar in June 1995, as the Director of the State Bar Foundation IOLTA Program. During his tenure, the program raised over \$500,000, which was distributed primarily to fund pro bono legal services to the indigent. Jim also served as the state bar's chief lobbyist on bills that pertained to the administration of justice and access to the courts. Prior to joining the state bar, Jim was a reporter for the *Rawlins Daily Times* and Press Secretary for Kathy Karpan, a 1994 Democratic candidate for governor.

Jim's dedication and contributions to the cause of equal justice will be sorely missed by his many friends in the IOLTA community, as well as in the greater legal services community. Memorial contributions can be directed to the Tiemann Village in Greeley, Colorado, a Habitat for Humanity project, at Greeley Area Habitat for Humanity, 134 11th Avenue, Greeley, CO 80631.

From the Chair . . .



by John Busch

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

On February 10, 2000, at a luncheon of the National Conference of Bar Executives at the Midyear Meeting of the ABA in Dallas, the Cindy A. Raisch Award was presented to the Bar Association of San Francisco. The award honors the leadership and achievements of the late Cindy A. Raisch. Ms. Raisch was instrumental in developing California legislation creating standards for Lawyer Referral Services and in urging the ABA House of Delegates to adopt model rules for lawyer referral programs. A former Chair of the ABA LRIS committee, she was a PAR consultant, and a regular speaker at the annual LRIS Workshop prior to her death in 1994.

The Raisch Award recognizes "superior lawyer referral and information programs worthy of emulation." The millennium winner of that award, the Bar Association of San Francisco, is truly exemplary and a profile of its services will be helpful to other lawyer referral programs.

The Bar Association of San Francisco (BASF) was established in 1946, and more than 500 attorneys participate in panels for over 100 categories of law. BASF assists more than 70,000 people annually

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Litigation Update

by Sheree Swetin

The courts have recently issued decisions in two major cases affecting the operations of lawyer referral programs.

In Pennsylvania, the Appellate-level Superior Court found no cause of action for negligent referral. In *Bourke v. Kazaras*, the Philadelphia Bar and the LRIS director were sued for legal malpractice, negligence, vicarious liability and breach of contract when an attorney provided by the LRIS failed to file the client's lawsuit within the statute of limitations.

The trial court dismissed the claimant's suit, stating that the LRIS did not owe the client a duty to inform her that the attorney was no longer covered by malpractice insurance, rejecting her claim that by responding to the LRIS' advertisement she had entered into a contract with the referral service, and dismissing her claim that the attorney was an agent of the LRIS. The trial court decision was affirmed by the Superior Court.

The Pennsylvania Superior Court relied on a federal decision, *Felker v. O'Connell*, for direction, as there were no state decisions on these issues. According to the court, "Many bar associations maintain referral services and many attorneys routinely refer cases because they cannot or do not want to handle them, or because they believe that the receiving attorney has greater expertise in the relevant subject area. Any holding that they nevertheless should be liable for the receiving attorney's conduct of a case would be logistically and legally unpersuasive, and could unduly disrupt a process integral to the profession which has helped to meet the demand for legal services in a responsible way."

In the second case, *Richards v. SSM Health Care Inc., et al*, the matter was referred to a long time panel member of the West Suburban Bar LRS in Illinois. The lawyer accepted the medical malpractice case, negotiated a settlement, received a contingency fee of \$125,000, and then refused to pay the 25 % fee owed under the LRS Rules. She contended that the Illinois ethics rules prohibit fee sharing between attorneys and non-attorneys, that the fee agreement was against public policy and that the 25% fee was not a "usual" fee.

The Illinois 1st District Court of Appeals found that "the fee remittance agreement between Dahlgren and the WSBA was legally and ethically proper," and that "there are strong policy reasons to hold percentage-fee sharing without the assumption of legal responsibility by a non-profit referral service is a positive force. People unfamiliar with the lawyer selection process can make informed decisions. They can receive affordable services they did not know existed. They can obtain critical information concerning legal issues that have impact on their lives." The court stated that the fees paid by the underlying plaintiffs were not greater as a result of the fee-sharing agreement, but noted that the 25% fee "was at the high end of acceptable percentage referral fees." The court further found that there was no indication that the percentage fees were used by the WSBA for inappropriate purposes, but were used to finance public service activities. These factors convinced the court to affirm the decision in favor of the West Suburban Bar.

Sheree Swetin is Staff Director of the ABA Standing Committee on Lawyer Referral and Information Service

From the Chair...

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and has a multilingual staff of trained interviewers to screen calls and make appropriate referrals.

Delivery mechanisms include:

Regular Fee Referrals. A \$25.00 administrative fee entitles the client to an initial consultation, scheduled by the LRS staff. In personal injury and workers' compensation cases or in the event of financial hardship, the fee may be waived.

Low-Fee Referrals. Persons who are not eligible for pro bono services may be eligible for referral to a low-fee panel comprised of volunteer attorneys who agree to substantially reduce their usual rates.

Volunteer Legal Services Screening. The LRS staff screens clients who meet eligibility for pro bono services provided through the BASF's Volunteer Legal Services Program.

Information and Referral. The program refers callers with non-legal problems to an appropriate entity. Approximately 80% of the callers to LRS are referred to other agencies, rather than to a panel attorney.

Criminal Conflicts Program. LRS provides qualified criminal attorneys when Public Defender's offices have conflicts of interest.

Juvenile Delinquency Conflicts Program. Patterned after the Criminal Conflicts Program, this program provides services to minors involved in the juvenile justice system.

Dependency Representation Program. LRS staff coordinates the appearance of three attorneys each day who accept appointments in cases involving abuse and neglect, child custody matters, etc. when the client is entitled to a court-

*the BASF is indeed
"worthy of emulation"*

appointed attorney. In 1998, the court system in San Francisco requested help from LRS when the Public Defender withdrew from these types of cases.

Peer Review. LRS has established peer review advisory committees for each category of conflicts cases and also conducts a Fee Audit Program to review attorney fee petitions by conflicts panel attorneys.

Extended telephone hours. LRS employs eight legal interviewers handling calls between 8:30 a.m. and 5:30 p.m., Monday through Friday. More than one-third of the callers to the service are handled immediately and holding time for callers who must wait averages less than two minutes.

Off-site programs. BASF provides monthly free legal advice and referral clinics at public libraries; a call-a-lawyer program on a local public radio station; a brown bag law lunch where attorneys speak to local companies, unions and neighborhood groups; and attendance at round-tables sponsored by the Chamber of Commerce, community forums, etc.

Newly-formed panels. Disability Rights Panel is the most recently formed panel.

The BASF is also taking active steps to improve client accessibility to LRS. Improved access includes:

E-mail referrals. By providing e-mail referrals, LRS further extends the hours available to

serve the public and responds to these requests within a day, making an appropriate referral.

Accommodations for disabled clients. The service provides information about attorneys who have wheelchair accessibility.

Pro Bono Immigration Court Program. LRS recruits and schedules a pro bono attorney-of-the-day to represent clients held in custody by the Immigration and Naturalization Service.

Family Law/Criminal Contempt Panel. Panel attorneys are available for appointment by the Court when indigent clients face criminal contempt proceedings arising from family law disputes.

Attorney Preceptor Program. LRS attorneys volunteer to mentor less experienced panel counsel.

Legal Advice and Referral Clinic. Legal interviewers staff a monthly clinic, where members of the public can get free legal advice from volunteer attorneys.

Under the able direction of Carol Woods and her staff, the BASF is indeed "worthy of emulation." For the first time, the Cindy A. Raisch Award was given to a major city bar association. The services provided will hopefully be an incentive to other programs to enhance and improve their LRIS. It would be great if each of you could strive to be "the best of the rest." The LRIS Standing Committee extends its sincere congratulations to the Bar Association of San Francisco.

Correction

In the last issue of *Dialogue*, we incorrectly attributed the article "1999 National Workshop a Major Success." The author is Marion Smithberger of the Columbus Bar Association. We regret the error in attribution.

Lawyers on Call Expand LRIS Services

by Janet Diaz and Jeannie Rollo

Unfortunately in life, sometimes people make bad decisions. As Murphy's Law would have it, many times these decisions are made "after-hours" and require a lawyer's help. The person hurrying to get out of town for the weekend who is stopped by the police for driving over the speed limit; someone who decides to drive home from a bar and is stopped by the police for driving while intoxicated; the family who finds an eviction notice on their door after arriving home from work. It's a fact of LRS life that legal emergencies can't tell time.

How does your referral service handle phone calls after the office has closed? When the Houston Lawyer Referral Service (HLRS) or Austin's Lawyer Referral Service offices receive calls for legal help either after regular business hours or on the weekend, volunteers with Houston's Lawyer on Call program and Austin's Lawyer of the Day program are available to help.

Houston

In the early 1970s, the increasingly sophisticated legal needs of the general public became apparent to the HLRS staff and its Board

of Directors. Serving those needs was no longer an "8 to 5" job. In 1976, the HLRS Board of Directors supported its commitment to offer access to legal help 24 hours a day by establishing the Lawyer on Call (LOC) program.

Over 60 HLRS panel members currently participate in this important service. Stanley Topek, who practices primarily criminal law, is a long-time HLRS panel member and Lawyer on Call volunteer. "I generally respond to questions about criminal law, family law and access to children, or simple landlord/tenant problems," observes Mr. Topek. In his opinion, "This program provides valuable public service because an individual can speak directly to an attorney and be given information immediately. Additionally, it provides an opportunity to create good will towards lawyers and the legal profession."

The HLRS solicits attorney volunteers for the LOC through its quarterly newsletter. The newsletter periodically highlights the program by recognizing attorneys participating in the program and by recruiting new volunteers. Any HLRS panel member can volunteer to be the

Lawyer on Call for weeknights, but because of the nature of calls received on the weekends, the weekend Lawyer on Call must practice criminal law.

The HLRS informs the public about the Lawyer on Call program through the different advertising media it utilizes on an on-going basis. The HLRS office sends out bi-monthly public service announcements to over 100 local media. These announcements highlight information about the HLRS's community services including the LOC program. The HLRS also provides information about the LOC program through its consumer brochure and Yellow Pages advertising.

The key to the program is the ability of the HLRS telephone system to permit the recording of a special "night mode" message each evening that gives callers the attorney's contact information. In this way, callers have access to an attorney from the time the office closes until the next morning. The participating attorney decides which telephone number they want listed on the recorded message. Some attorneys choose to give out a pager number or use

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Advice On-line for LRIS

The LRIS listserv, first established in 1998, now has more than 130 of your colleagues available to consult at fingertip notice. Listserv is a FREE automatic e-mail distribution list managed by the Committee, and limited to LRIS managers and staff. Recent topics have included recruiting for phone call-in events, percentage fees, and software. This is a not-to-be missed resource that features a wide-range of program sizes.

For questions or to subscribe to the listserv, contact Colleen Glascott at the ABA LRIS office at glascotc@staff.abanet.org

Lawyer on Call

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an answering service to relay calls to them. Other attorneys prefer to "call forward" their office phone number to their homes. Whichever method the attorney chooses, they are accessible at all hours of the night. Barbara Ramirez, has been participating with HLRS's LOC program for approximately six years. Ms. Ramirez told the HLRS staff that "Calls usually drop off about 11 p.m. Only occasionally do I receive a phone call in the middle of the night. Usually, I provide jail release information or assist with a domestic law matter." The phone system assists the HLRS office in determining community needs by tracking the number of incoming calls. On average, the HLRS office receives 50 phone calls on weeknights and 80 calls on weekends.

To thank participating attorneys for providing this valuable service, HLRS does not require the remittal of percentage fees for the cases accepted through the program. HLRS member Ned Gill stated, "I never miss the opportunity to participate as the Lawyer on Call. Not only do I provide a valuable service to the public through the Houston Lawyer Referral Service. I get some lucrative cases. I primarily handle

Front side of the form used by the LRS of the Travis County Bar Association in Austin.

Responsibilities of the Lawyer of the Day:

- Be available at all times by telephone to provide the public with information and emergency assistance with legal problems. If you have to leave your phone for any reason, make sure your phone is "covered" while you are unavailable.
- Obtain the name, address, and phone number of all callers. Use the reverse side of this letter to record caller information. Please mail the list to the LRS office the next business day. You will be obligated by the terms of your agreement with LRS to contribute the \$20.00 consultation fee. You may take the cases on which you receive calls in the areas that you are competent to handle.
- Be prepared to assist callers in obtaining release from jail, even if you do not want to represent them further. You are entitled to a fee for your time spent in attempt to obtain their release. If you do not want to represent that person, tell them to call LRS the next business day.
- Be prepared to courteously respond to a wide range of questions even though no emergency legal services may be required. Many people call LRS thinking they can obtain answers to legal questions. Suggest they call LRS on the next business day if they are searching for a lawyer.

criminal-related matters. I estimate that 10% of the people calling after-hours retain me for additional service."

One HLRS staff member administers the LOC program. This employee is responsible for scheduling the attorneys, on a rotating basis, one month prior to the on-call date. The same staff member is responsible for confirming the date, contacting the attorney the morning of their scheduled day, and preparing the "night mode" message. The burden on staff, therefore, is not great.

Austin

The Lawyer Referral Service of the Travis County Bar Association in Austin has a similar after-hours service called the Lawyer of the Day (LOD) program. It too was established in the 1970s primarily to accommodate callers who needed jail release assistance.

A recent telephone call to an Austin referral service LOD attorney dramatically illustrates how important this service is to the members of our community who have legal emergencies after regular business hours. A client contacted LRS after hours and was put in touch with an LRS attorney. Although she originally called to inquire about a divorce, the situation escalated into an emergency that threatened her and her children. The safety of her family became a priority and the LRS attorney on call was able to put her in touch with the Crime Victims Assistance Program and the

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LRIS Managers Gathering in New Orleans

October 18-21, 2000 are the dates set for the 2000 National LRIS Workshop in New Orleans at the Le Meridien. Scheduled topics include upgrading telecommunication systems, evaluating public relations efforts, building an interactive Internet presence, managing staff for maximum productivity and planning. Learn from experts from allied fields and also discuss with your colleagues how they are addressing day-to-day operational issues.

Mark your calendar for October 18-21, 2000 in New Orleans

Lawyer on Call

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Williamson County Attorney's Office to insure the safety of her and her children.

Most of the attorneys participating in the Austin LOD program practice in the criminal law area. Even if an LOD attorney does not take a caller's case, he or she still provides valuable assistance to callers who are sometimes in desperate situations at a time when help is hard to come by. When Austin's LOD attorneys take calls outside their areas of practice and it is not an emergency, the caller is asked to contact the LRS during regular business hours.

The Austin and Houston programs operate in much the same way. The attorneys are both assigned on a rotating basis; marketing is conducted through brochures and Yellow Pages ads; and the attorneys can choose how they want to receive the calls—through forwarding directly to their number or by a message left on LRS phones. The difference between the two programs is that the Austin LOD attorneys log the calls they receive and report retained clients to LRS for tracking of percentage fees. Austin also requires its LOD attorneys to remit referral fees to the service for cases they accept just like any cases referred during business hours.

The Austin program sends a confirmation form to each LOD participant. The front side of the one page form indicates the date that the attorney has agreed to take calls and lists the responsibilities of the program. The back page of the form gives the attorney the opportunity to log five callers.

Upon receipt of this information, ALR staff records the client information into the computer

The back page of the form gives the attorney the opportunity to log five callers.

On the first business day following your tour of duty, please return this form with a record of all calls received to the following address:

Lawyer Referral Service
P.O. Box 218
Austin, TX 78767

Your name: _____

Phone: _____

1. Caller Name: _____

Address: _____

Phone: _____

Disposition: I took the case: ___ yes ___ no / \$20.00 enclosed ___ yes ___ no

Type of Case: _____

database for continued tracking.

However administered, a Lawyer on Call program provides an important community service with insignificant operating costs. If your service doesn't already provide a similar program, consider establishing your own Lawyer on Call program. It will

add another professional dimension to your service and help those with after-hours legal emergencies.

Janet Diaz is Executive Director of Houston Lawyer Referral Service

Jeannie Rollo is Administrator of Travis County Bar Association Lawyer Referral Service

2000 Cindy A. Raisch Award Winner



The Bar Association of San Francisco: (L to R, Front Row) Lily Montalvo, Carol Woods, Shane Nye, Kennedy Helm, Carole Conn; (Back Row) BX Long, Yvonne Ng, Melissa Hatton, Mia Thibeaux, Lisa Jensen, Linda Katz, Christopher Cohade and Taylor Watson.

ABA Announces 2000 LAMP Award Winners

The ABA LAMP Committee is proud to announce the 2000 winners of the LAMP Distinguished Service Award. These awards are for exceptional achievements, or for exceptional service to or support of the military legal assistance effort. There were 33 nominations for the award this year, all from outstanding legal assistance programs.

The 2000 winners are:

- Legal Assistance Office at Marine Corps Air Ground Center, Twenty-nine Palms, CA
- Marine Corps Base, Quantico, VA
- Mr. Lou Sherman, Ft. Polk Legal Assistance Division, Ft.

Polk, LA

- 3WG/JA Legal Assistance Program, Elmendorf AFB, AK
- Captain James Key, Anderson AFB, Guam
- John McHenry, Naval Legal Services Office Southwest, San Diego, CA

Group awards are in recognition of a superior legal assistance program worthy of emulation by peers, a major legal assistance innovation, the maintenance of quality legal assistance service through outstanding effort despite limited resources, or exceptional service to or support of the military legal assistance effort.

The individual awards are in recognition of a major legal assistance innovation, demonstrated superior effort exceeding the performance of routine duties dedicated to providing legal assistance service over a specified period, or exceptional service to or support of military legal assistance effort.

Nominations for the award are submitted by the installation to the service Chiefs of Legal Assistance, where they are reviewed and passed on to the LAMP Committee. The LAMP Committee selects no more than six winners each year.

Happy 57th Birthday Army Legal Assistance!

Established 16 March 1943 in War Department Circular 74, Army Legal Assistance providers around the world annually advise soldiers, family members, and other eligible clients on their legal affairs in a timely and professional manner by delivering preventive law information on personal legal matters and resolving personal legal problems whenever possible. They have done so continuously since March

1943, providing professional legal advice to tens of thousands of clients on many matters, including family law, landlord/tenant, tax, wills and estates, powers of attorney, and notarial services.

War Department Circular 74, para 1 provided:

The War Department and the American Bar Association have agreed to sponsor jointly the following plan to make adequate legal advice and assistance

available through the Military Establishment to military personnel in the conduct of their personal affairs. . . .

para 3: Legal assistance offices will be established, as soon as possible and wherever practicable, throughout the Army, so that military personnel can obtain gratuitous legal service from volunteer civilian lawyers and from lawyers who are in the military service.

Upcoming LAMP CLE Events

April 27, 2000

Air Force JAG School, Maxwell AFB; Contact: Major Bill Carranza 334/953-2802

July 27, 2000

Naval Station Bremerton, Everett, WA; Contact: Captain Bruce MacDonald 360/476-2156 X234

Please note that all LAMP CLEs are approved for credit in most MCLE states. For further information contact Colleen Glascott at 312/988-5760 or glascotc@staff.abanet.org.

From the Chair...



by David C. Hague
Chair of the ABA Standing
Committee on Legal Assistance
for Military Personnel

I am beginning this report like my last one ended, with a request that you, the legal assistance providers—staff judge advocates, legal assistance attorneys, paralegals, legalmen, and legal clerks—tell us how the Legal Assistance for Military Personnel (LAMP) Committee can better serve you.

The mission of the LAMP Committee is to foster and otherwise support legal assistance in the Armed Forces. To that end we have, since 1941, successfully supported beneficial federal legislation, helped to effect salutary changes within DoD and the services, and directly assisted thousands of legal assistance providers through CLE, one-on-one advice, publications, and other means.

We will do even more in the future, reaching out more aggressively to paralegals and other non-lawyers who provide legal information and other forms of assistance. We will also include in our CLE other professionals, such as social workers, family advocates, chaplains, and medical personnel, who work in concert with legal assistance providers. Family law and domestic violence will receive more of our attention. We will expand our distance

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Lamp Spotlight...

Legal Assistance Offices at Camp Pendleton, CA and Fort Hood, TX

by Bryan Spencer

The LAMP Committee visited Camp Pendleton in January and Fort Hood the previous November. These are two of the largest troop installations in the world, each with high quality legal assistance.

Fort Hood is the Home of III U.S. Army Corps, its supporting units and the 1st Cavalry Division and the 4th Infantry Division (Mechanized). About 42,000 soldiers plus 55,000 dependents and a large retired/family member population of 72,000 receive legal services from the three legal assistance offices on post.

Under the auspices of the Corps SJA, Colonel Rich Rosen, the LAMP Committee presented a six hour Continuing Legal Education program to over 90 judge advocates and administrative personnel.

The III Corps Legal Assistance Office is headed by CPT Daniel Z. Crowe, a former armored-cavalry officer who heads an office of 4 JA officers and three administrative personnel. The III Corps Legal Assistance office provides legal assistance to the Corps and Corps support troops and their dependents, all retirees and their dependents in the area as well as soldiers stationed at outlying bases. Video conferencing is used to provide legal assistance to soldiers at Goodfellow Air Force Base in San Angelo, Texas.

The legal assistance office helped insure that soldiers of the 49th Armored Division, Texas National Guard, had their legal affairs in order prior to their mobilization and departure for Kosovo, where this task force commands all US ground forces. CPT Crowe was pleased that he had help from some of the 49th Division judge advocates, as well as USAR judge advocates from the 90th Regional Support Command and 2d Legal Support Organization. These judge advocates provide legal assistance to those soldiers' family members residing in the Fort Hood area.

As in most legal assistance offices, family law, landlord/tenant and consumer protection issues comprise most of the work. The VITA Tax program was being scheduled during the Committee's visit. In 1999, the VITA office filed over 13,000 federal tax returns, 12,400 of which were filed electronically, and 2,000 state returns.

The 1st Cavalry Division Legal Assistance Office Chief is CPT Steven Patoir from New York. He has three other legal assistance officers and an NCO and civilian administrator to support the 12,000 soldiers in the CAV. During their deployment to Bosnia, they had over 26 active duty and reserve component judge advocates provide legal assistance in 1999. That year the legal assistance office saw over 8,000 soldiers, prepared and executed almost 3,000 wills, prepared and notarized 8,400 POAs

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Offices

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and taught over 100 classes to soldiers and their family members.

A major part of their recent legal assistance effort was split between Fort Hood and Bosnia, where they commanded the US ground forces. E-mail between Bosnia and Fort Hood made legal assistance a rapid response for the soldier. Again, family law, consumer protection/debt and landlord/tenant problems were the most common.

CPT Edward Reddington is Chief of the 4th Infantry Division Legal Assistance Office. He has three other judge advocates to provide legal assistance, an NCO and two soldiers for administrative support. As units deploy overseas, a legal assistance team goes to the unit and remains for a week, insuring that all soldiers have their legal and personal affairs in order. In addition, they counsel the spouses who will be remaining behind on any problems or questions that they have.

CPT Reddington supported 25 such deployments in 1999. Like the other two legal assistance offices on base, they provide counseling and paperwork for uncontested pro se divorces, adoptions, name changes and paternity statements. Another duty of the legal assistance section is to assist soldiers in military administrative actions such as report of survey rebuttals, general officer letter of reprimands, and efficiency report appeals.

In January, the Committee visited Camp Pendleton's legal assistance program and presented another six hour continuing legal education program. Major Bob Kilmartin is the Chief of the Joint

Legal Assistance Office and provides legal and tax assistance to the 40,000 marines at this major military installation. The base, with over 125,000 acres including 17 miles of prime Pacific Ocean coastline, is home to the 1st Marine Expeditionary Force, the 1st Marine Division, and the School of Infantry, as well as other air and support commands.

Major Kilmartin has been at the camp for four years and his office has won the Commandant's Award for Legal Assistance three years running. Last year the office won the IRS Tax Assistance Award for Excellence. Major Kilmartin has five other legal assistance officers, six enlisted and one civilian support personnel.

Deployment readiness issues are paramount with the major combat units at Camp Pendleton. All deploying units/personnel receive will and power of attorney support. In a recent deployment, over 8,500 wills and powers of attorney were prepared in a 96-hour period by Kilmartin's office.

"Preventive Law" says Kilmartin, is the only way to keep up with the legal assistance workload. Fortunately they are seeing fewer clients than five years ago. Family law is 75% of the workload. Over 3,500 marital separation agreements were prepared last year. Weekly talks by legal assistance attorneys, and video programs on topics such as family law, consumer credit, and auto insurance are typical ways used to keep the marine from getting into trouble, which is much easier than getting him out of trouble. In addition, presentations at newcomer briefings, articles in the base newspaper, unit classes, and programs aired on the Base TV station are all used to stop problems before they occur. The



Capt Theresa A. Bruno and LtCol Mark R. Ruppert, SJA, 21st Space Wing, Peterson AFB, CO. Capt Bruno was presented the LAMP Committee's 1999 Distinguished Service Award on Aug 2, 1999 by BGen David Hague USMC (Ret.), Chairman, LAMP Committee.

School of Infantry course, attended by all new marine infantrymen, includes a class by the legal assistance officer and presentation to each student of a copy of the Preventive Law Handbook that Major Kilmartin prepared.

It's just another day for Major Kilmartin, as he described his activities of the previous day: briefing the surviving spouses of the five marines who died in the December helicopter crash on survivor benefits and tax consequences of DIC, SGLI insurance, the death gratuity, social security and other related problems, presenting an income tax class on 1040 EZ preparation to members of one of the marine battalions, researched an old capital gains roll over problem involving the sale in 1994 of a home, in addition to the usual myriad of phone calls, e-mails and faxes, and personnel issues involved in running this 13 person legal assistance office for 40,000 marines, their family members and area retirees.

Bryan Spencer is a member of the LAMP Committee and the editorial liaison to *Dialogue*.

ABA House of Delegates Adopts Resolutions to Assist Military Members and Their Families

At the ABA Midyear Meeting in Dallas, the House of Delegates adopted two resolutions proposed by the LAMP Committee that will provide assistance and protection to service members and their families. The first resolution urges Congress to amend Chapter 53 of Title 10, United States Code, by adding a new Section 1044d to require

states to recognize a will prepared for a person eligible to receive legal assistance if the will is executed under procedures in the section. Persons eligible to receive legal assistance are specifically defined as members and former members of the armed forces and their families, including reserve components when their units are mobilized.

The second resolution urges Congress to protect military homeowners from capital gains penalties on the sale of their principal residence if these penalties result from the military service member's absence due to official active duty by amending Section 121 of the Internal Revenue Code of 1986 to suspend the

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From the Chair...

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learning activities.

Please let us hear from you about what **you** want done to improve legal assistance. E-mail us with your ideas at ABA Headquarters in Chicago: Chair, LAMP Committee, c/o sswetin@staff.abanet.org. Your input produces results. I can report two recent successes that resulted from suggestions made by legal assistance attorneys.

The ABA House of Delegates at their Midyear Meeting in February in a strong show of support for the Armed Services adopted two proposals of the LAMP Committee as policy. As a result the ABA, through its powerful Government Affairs Office in Washington, DC will now urge Congress to: 1) add Section 1044d to 10 USC, requiring states and other jurisdictions to recognize "military wills" prepared in accordance with the section; and 2) amend the IRC to restore and provide military homeowners fair and equitable tax treatment regarding home sale exclusion

rules under Section 121, IRC.

LAMP Committee activity in support of the Armed Forces is continuous year round. Four times a year the seven volunteer committee members, service liaisons and advisors, and ABA professional staff meet at military facilities to conduct business, provide CLE, and visit with legal assistance providers and commanders. Our most recent meeting and CLE were in January at Marine Corps Base, Camp Pendleton, CA. Thanks to Major General Ed Hanlon, the Base Commanding General, and to his Staff Judge Advocate, Colonel Don Davis, his staff, and especially our liaison, Lieutenant Colonel Carl Lewke, for their support and hospitality. Our next meeting/CLE is at the Air Force JAG School, Maxwell AFB, Montgomery, AL on 27-28 April 2000. We will then meet and conduct CLE at Naval Station Bremerton, WA on 27-28 July 2000.

More than 50 judge advocates and civilian attorneys attended the ABA-accredited CLE at Camp Pendleton. Among other business conducted at our meeting, six

LAMP Legal Assistance Award recipients were chosen for the year 2000. Congratulations to those chosen: Captain James Key, Anderson AFB, Guam; Mr. Lou Sherman, Ft. Polk, LA; Mr. John McHenry, Naval Legal Service Office Southwest, San Diego, CA; and the Legal Assistance Offices at Marine Corps Base, Quantico, VA, Elmendorf AFB, AK, and Marine Corps Air Ground Combat Center, 29 Palms, CA.

The winners were selected from an impressive field of 33 individuals and offices nominated by the Army, Navy, Marine Corps, Air Force, and Coast Guard. The energy, enthusiasm, legal talent, and professional commitment documented in the award submissions were remarkable and are a source of pride to everyone in uniform. We were only able to select six award recipients, but all those nominated are winners. The same can be said of the legal assistance attorneys, paralegals, and others who give life to the legal assistance, preventive law, and tax programs in all of the services. Congratulations to each and every one of you.

Deploying Reservists: What Employers Need to Know

by Adam Siegler

The ongoing crisis in the Balkans has led to the call-up of reservists in the armed forces. Employers, many of whom support the NATO intervention in the former Yugoslavia, may now be surprised to hear their employee announce: "I have orders to leave for Kosovo; I will be back in nine months."

While it may be convenient to replace the activated reservists instead of rehiring them, it is against the law. In fact, many employers are not aware that they are prohibited by state and federal law from discriminating in any way against employees who take time off for active duty in the armed forces.

In 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) was signed into law. 38 U.S.C. §§ 4301-4333. USERRA protects all employees who are also reservists in any of the uniformed services, including

the Army, Navy, Air Force, Marines and Coast Guard. USERRA applies to all "service in the uniformed services," which includes active duty, active duty for training, and initial basic training. In other words, USERRA applies equally to weekend drills, two-week annual training, and a 270-day overseas deployment. USERRA applies to all employers, including any person or company, the federal government, any state and any agencies or political divisions thereof. Unlike other federal statutes, such as the Americans' With Disabilities Act, USERRA does not contain an exception for small businesses. Cf. 42 U.S.C. § 12111.

USERRA provides that, upon completion of military service, the returning soldier "shall be promptly reemployed." The general rule is that the returning employee is entitled to the posi-

tion that the person would have achieved had he or she been continuously employed. In other words, the returning soldier is entitled to the same job plus the advancement that would have accrued during the period of active service. In some cases, the employer may provide an equivalent job with similar seniority, status and pay. If, after reasonable efforts by the employer, the employee cannot become qualified to assume the new duties required by the more advanced position, the employee is entitled to his or her original job.

Reemployment may mean that an interim worker will have to be moved or displaced. Employers should advise temporary replacement workers that their jobs are subject to displacement if the returning reservist requests reemployment.

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ABA House

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five-year period during which the ownership and use requirements of Section 121 must be met for time spent away from home for official active duty.

Recent revisions to the Internal Revenue Code (IRC) have resulted in the inequitable treatment of military service members and their families by imposing, under certain circumstances, capital gains penalties on the sale of their principal residence. Under the

revised Code, service members who do not use their principal residence for at least two of five years preceding the sale of the residence must pay a pro rata share of capital gains tax on the proceeds of the sale, even if their absence was due to extended duty away from home. Previous amendments to the IRC recognized this inequity with regard to rollover time periods, and offered an extension to service members on extended duty assignments or who were required to live in Government housing while

stationed in the United States. This remedy was not included in the Taxpayer Relief Act of 1997, despite a 1998 Sense of Congress recommending specific relief.

Now that these resolutions have been adopted as policy by the ABA, we will work with the ABA Governmental Affairs Office to introduce legislation in support of these changes. If you would like further information on these issues, or a copy of the ABA House Reports, please contact Sheree Swetin, Staff Director, at sswetin@staff.abanet.org.

Deploying

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Employers are not obligated to provide reemployment for a returning reservist if "the employer's circumstances have so changed as to make such reemployment impossible or unreasonable." Also, employers are not obligated under USERRA to reemploy where the employment is "for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period." 38 U.S.C. § 4312(d)(1)(C).

USERRA also protects the health, pension and vacation benefits of reservists. A deploying soldier is entitled to continue coverage under a company health plan, but may be required (for deployments longer than 30 days) to pay for the premium under the plan. Returning soldiers who were covered by a company health plan are entitled to immediate reinstatement with no waiting period. 38 U.S.C. § 4317.

With regard to pensions, a person reemployed under USERRA is treated as if he or she never had a break in service. 38 U.S.C. § 4318. Where the plan requires employee contributions, benefits are payable only to the extent that the employee contributes, but the employee has an extended period following reemployment in which to make such contributions. Any discussion of pension benefits is beyond the scope of this article and should be referred to an ERISA specialist.

Employees are entitled, on request, to use their paid vacation for military absences. However, employers cannot force employees to use their vacation or leave time for military duty. Absent service

members are entitled to receive the same benefits that would be given to persons who are on furlough or leave of absence. 38 U.S.C. § 4316.

USERRA also requires employers to make reasonable efforts to accommodate the disability of a returning soldier. If the particular job cannot be performed by the injured soldier, the employer must provide the "nearest approximation" to the previous job in view of the limits of the disability. 38 U.S.C. § 4313(a)(3)(B). However, an employer is not obligated under USERRA to reemploy a disabled veteran if such accommodation would "impose an undue hardship on the employer." 38 U.S.C. § 4312(d)(1)(B). An injury or disability will also extend for up to two years the time that the soldier has to give notice after completion of service. 38 U.S.C. § 4312(e)(2).

USERRA also prohibits employers from terminating reservists who have been reemployed after service of more than 30 days. A person reemployed under USERRA shall not be discharged except for cause within one year after the date of reemployment, if the active duty service was for more than 180 days. If the deployment was for more than 30 days but less than 180 days, the prohibition on at-will termination is 180 days. 38 U.S.C. § 4316(c).

In addition to providing the deploying soldier with specific reemployment benefits, USERRA broadly prohibits all forms of discrimination against reservists on the basis of military service. 38 U.S.C. § 4311. For example, an employer cannot terminate or discriminate against an employee who is frequently absent from work due to military training, even if the soldier is not mobilized

or shipped overseas. Moreover, an employer cannot discriminate against any other employee who takes any action to enforce or assist in enforcing rights under USERRA. The burden is on the employer to prove that an action is not discriminatory. An employer is deemed to have discriminated against a service member employee if the employee's service-related activity "is a motivating fact in the employer's action, unless the employer can prove that the action would have been taken in the absence of such [service-related activity]." 38 U.S.C. § 4311(c)(1).

There are several restrictions on the applicability of USERRA. For example, reservists are limited to a cumulative 5 years of USERRA benefits. 38 U.S.C. § 4312(a)(2). Most deployments, however, will be for a maximum of nine months or less. 10 U.S.C. § 12034(a) (270 day limitation on Presidential mobilization during peacetime). USERRA may not be invoked by soldiers who are separated from service with a dishonorable or bad conduct discharge, or under other than honorable conditions. 38 U.S.C. § 4304. Neither of these restrictions is likely to apply in the case of a normal nine month deployment to the Balkans.

The employee is required to give notice to the employer upon deployment and upon return. Upon deployment, the employee is required to give "advance written or verbal notice" of deployment for active duty, but no notice is required if "precluded by military necessity" or is "otherwise impossible or unreasonable." 38 U.S.C. § 4312(a), (b). Upon return, the amount of notice required from the employee depends on the length of the

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deployment. For active service less than 31 days, the employee must give notice to the employer on the next workday. For an absence of more than 30 but less than 181 days, the employee must give notice to the employer within 14 days. For active duty service of more than 180 days, the returning soldier must give notice within 90 days. 38 U.S.C. § 4312(e).

The employee who fails to comply with the notice provisions "shall not automatically forfeit such person's entitlement" to the protections of USERRA. Instead the employee will be subject to the "conduct rules, established policy, and general practices of the employer" with regard to absence from scheduled work. 38 U.S.C. § 4312(e)(3).

Employee service members are also required to provide to their employer, upon request, documentation to their entitle-

ment to the benefits of USERRA, but the employee cannot be refused reemployment if the documentation is not readily available. 38 U.S.C. § 4312(f).

The enforcement mechanism for USERRA is comprehensive. Soldiers are entitled to assistance from both the Department of Labor and the Attorney General. The employee may also file suit directly in federal district court. Remedies include injunctive relief, reinstatement, compensation for back wages and other benefits, a "liquidated damages" penalty equal to the award of wages and benefits, and attorneys' fees. 38 U.S.C. §§ 4321-4326.

Employers and counsel should also be aware of California Veterans Code § 394, which provides additional protections to reservists. Veterans Code § 394 makes it a misdemeanor to discriminate against reservists in any aspect of employment, and provides for an award of attorneys' fees against the employer who

violates the statute.

Together, USERRA and the California Veterans Code provide a comprehensive set of protections and remedies for reservists serving on active duty. Employers and their counsel should ensure that their human resources and labor policies are in compliance with USERRA and Veterans Code § 394, because non-compliance can expose the employer to substantial damages awards, civil and criminal penalties, and attorneys' fees.

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The views expressed herein are solely the opinion of the author and do not reflect the views, opinions or policies of the United States Army, the Department of Defense or the American Bar Association.

Legal Services Corporation Partners with LEXIS

The Legal Services Corporation (LSC) announced it has partnered with LEXIS Publishing Company to provide online legal research tools at reduced prices to legal services offices. All LSC-funded programs and all National Legal Aid and Defender Association (NLADA) members are eligible to participate in the program.

LEXIS has agreed to provide four levels of service, from "state law only" to full Lexis with citation services, at these reduced rates. Instead of the traditional

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discounts on any LEXIS Publishing Company product, including print and CD-ROM subscriptions from Matthew-Bender, Shepard's and Michie. Third, participants will have access to free, unlimited training throughout the agreement.

The service is accessed through the Internet and requires no software other than an Internet browser, allowing advocates to do research from any computer that is connected to the Internet. To get more information, contact LEXIS Publishing Company at 800/356-6548.

From the Chair...



by Doreen Dodson
Chair of the ABA Standing
Committee on Legal Aid
and Indigent Defendants

We applaud the dedication of the more than 40 representatives of the judiciary, the bar and legal services programs who have, as of this writing, accepted our invitation to participate in an important regional meeting in New Orleans on March 24th on improving legal services for the poor. ABA President William G. Paul invited bar and legal services leaders from Alabama, Arkansas, Mississippi, Louisiana and Texas to come together to examine progress in each state toward developing a legal services system that can answer the needs of all the poor. The agenda—focusing on resource issues and solutions—gives participants the opportunity to share their experiences and meet with resource development experts.

Four years ago, former ABA President N. Lee Cooper, of Alabama, convened the first in a series of meetings with leaders of the bar and legal services to discuss the crisis in legal services delivery. Representatives from Alabama, Arkansas, Louisiana and Mississippi gathered at the Mississippi Bar for a full day of discussions of how, in an era of diminished federal resources, states could both preserve and expand systems to serve the legal

LSC Seeks \$340 Million FY 2001 Appropriation

Legal Services Corporation (LSC) President John McKay and Vice Chairman John Erlenborn asked a House Appropriations subcommittee Feb. 17 to fund the LSC at \$340 million, a \$36 million increase for the program.

According to McKay and Erlenborn, \$24 million of the increase would go to local programs providing legal services to the poor, while another \$10 million would be used to complete the funding of a technology initiative designed to increase significantly access to legal information and assistance for low-income Americans. The remaining \$2.1 million would go toward research to provide the Corporation, Congress and the administration with a national, up-to-date and comprehensive legal needs study. The most recent study was completed by the ABA in the early '90s.

The LSC budget was cut from \$415 million to \$278 million in fiscal year 1995, and this budget request would help restore resources eliminated as a result of that cut.

The biggest challenge for the LSC, McKay testified, is reaching millions

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needs of the poor. Similar meetings were subsequently convened in other regions. As a result of these meetings, broad-based coalitions in many states have emerged and undertaken comprehensive planning efforts for legal services. Marshalling sufficient resources to support an effective legal aid system has been among the most significant challenges for these state planners.

The organized bar has long been instrumental in guiding and supporting state and local legal services programs. We are particularly grateful that representatives of the bar associations in these states took time from their busy schedules to attend this year's meeting. Though at the time I write this the meeting has not yet occurred, I am confident that a good and productive time will be had be all, and by the time you read this further progress will have been made toward funding for healthy and vibrant systems that provide legal services for the poor in each state.

I also want to recognize the

leadership of the Supreme Court of Texas in exploring solutions to the problems confronting poor Texans in obtaining access to justice. On January 27th the full Court held an all-day hearing on Civil Legal Services for the Poor. The Court took testimony from 17 witnesses, including clients of legal services programs, lawyers, program directors and the Chairman of the Board of the federal Legal Services Corporation. Witnesses provided detailed information about the extent of unmet legal need, the nature of the legal problems encountered by the poor in the state, and the efforts that have been undertaken by the State Bar of Texas, legal services programs and others to try to address the situation. Members of the court asked numerous questions, probing the potentials of technology and mandated pro bono service to expand access to justice for the poor. We understand that the Court will be considering various actions it might take to improve access to justice in Texas.

LSC

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of eligible individuals who need legal aid but do not know the LSC exists. McKay reported that the LSC Board of Directors recently approved a new set of "Strategic Directions" for 2000-2005 to develop and implement initiatives to ensure that a dramatically increased number of these individuals have access to the American civil justice system and that they receive quality services.

To achieve these goals, he said the LSC has plans for strengthening partnerships at the state level and establishing Internet access and toll-free numbers in both rural and urban areas as ways to disseminate information.

McKay and Erlenborn assured the members of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies that the Corporation is aggressively enforc-

ing restrictions that Congress has imposed on the LSC and is improving its case reporting process—an issue that sparked heated discussions last year when it was found that several programs had over-reported the number of cases they were handling.

Responding to questions from subcommittee Chairman Harold Rogers (R-KY) about progress made in the accuracy of case service reporting by local programs, McKay and Erlenborn emphasized that the problem resulted from sloppy recordkeeping by the programs and confusing guidance from the LSC rather than from fraud or misuse of funds. The Corporation clarified and reissued its case service reporting manual and now requires programs to certify their case data. Programs unable to do so are placed on corrective action plans.

The LSC also undertook other corrective action, including implementing General Accounting

Office audit recommendations and conducting program site visits.

McKay and Erlenborn expressed confidence concerning the accuracy of the case data for 1999 that will be provided to Congress by April 30 and will be assessed by the LSC inspector general by July 30.

Rep. Jose Serrano (D-NY), a strong LSC supporter, made a bipartisan request for making sure that the upcoming case statistics are accurate. Several other members of the subcommittee complimented the LSC on its work. Rogers said that he is hearing fewer complaints about the Corporation, and Rep. Tom Latham (R-IA), who severely criticized the LSC last year, said he supports the program's current efforts.

Increased funding for the LSC is a legislative priority for the ABA, which maintains that the Corporation is a model private-public partnership that has been a lifeline for Americans in desperate need for the past 25 years.

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