Division for Legal Services
Access to Justice

Dialogue

SPRING 2002, VOL. 6 NO. 2

Issue Highlights

A Discussion about Evaluating a Pro Bono Program

by Greg McConnell

Since the development of local pro bono programs and PAI projects in the mid-1980s, program executives, bar leaders and funders have struggled to find the appropriate tools for measuring program success and value. In recent months, the ABA Center for Pro Bono has seen an increased interest in developing effective evaluation systems for programs, and a growing frustration about the difficulty of this work.

The increased interest in program evaluation can be traced to a number of factors, including the following four:

ABA CENTER FOR PRO BONO
A Project of the ABA Pro Bono Committee

- As pro bono programs mature (some are nearly 20 years old), many recognize the importance of stepping back to assess their impact on the legal services delivery system.
- As available IOLTA funds level off or decrease as the result of declining interest rates, IOLTA programs feel pressure to ensure that every dollar granted is a dollar well-spent.
- The role of pro bono in state delivery systems is being considered more closely in the context of LSC-driven state planning, competitive bidding and mergers.
- The increasing diversification of legal services funding streams has brought in non-traditional funders of legal services that seek to apply different measurement models than have historically been applied to pro bono programs.

The Center for Pro Bono has received several requests to assist in the evaluation of pro bono programs, often in the context of requests for a Peer Consulting Project visit or through questions about the use of and adherence to the *ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means.*[1]

Program evaluation typically involves assessing programs against objective criteria and/or in comparison to other programs. Neither the center's Peer Consulting Project nor the standards are evaluative by design. The center does not evaluate programs as part of its mission. The Peer Consulting Project strives to review programs in their own context, and aims to offer guidance and information that will allow them to improve their current operations. The *Pro Bono Program Standards* were designed as "guidelines," not as requirements or minimum standards. Nonetheless, it is true that both the standards and the Peer Consulting Project involve examining program effectiveness.

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ABA Defending Liberty Pursuing Justice

DIALOGUE

Published by the American Bar Association DIVISION FOR LEGAL SERVICES

Dialogue is a quarterly magazine serving as an exchange of information on the funding and delivery of legal services, offering timely, relevant and proactive articles, developments and emerging issues from the ABA Standing Committee on Pro Bono and Public Service, Standing Committee on Lawyer Referral and Information Service, Standing Committee on Legal Aid and Indigent Defendants, Standing Committee on Legal Assistance for Military Personnel, and the Commission on IOLTA.

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***Dialogue's* Web Address is http://www.abalegalservices.org/dialogue/**

 ISSN 1092-2164

Program Evalution

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IOLTA programs lead in program evaluation

Not surprisingly, the IOLTA community has done some of the most active thinking about pro bono program evaluation. IOLTA programs in almost every state fund pro bono programs. Many fund several and most do so in an environment where programs are competing for funding. IOLTA programs are finding that evaluation of all of their grantees is an important tool for making wise funding decisions and in helping programs to improve.

As part of planning a workshop at the Winter 2002 IOLTA Workshops, the center engaged Paul Doyle, director of the Florida Bar Foundation's Legal Assistance to the Poor Grant Program, and Ruth Ann Schmitt, executive director of the Lawyers Trust Fund of Illinois, in a discussion about how to effectively evaluate pro bono programs. Under Doyle's direction, the Florida Bar Foundation has become among the most active IOLTA programs in the evaluation of pro bono programs, sometimes employing outside consultants to make grantee evaluations. Schmitt has a long history of shaping pro bono systems and has led the Lawyers Trust Fund for over a decade in making grants to dozens of pro bono programs.

The discussion with Doyle and Schmitt shaped a helpful framework for those who evaluate pro bono programs and for programs themselves as they conduct self-evaluation exercises. The following major points were raised during the conversation:

It is important to distinguish between the different delivery systems a program may employ. When examining a pro bono program, and particularly when comparing program outputs, the examiner must understand the type of system that the program employs and the differences between them. One kind of system is a "pure" pro bono system that uses program staff (some are attorneys and some are not) to link volunteer lawyers to clients in need of service. While staff may undertake some direct legal representation (particularly as a fallback option), their overriding role is to oversee or administer cases that other lawyers handle on a volunteer basis. At the opposite end of the spectrum from the pure pro bono model is the "pure" direct service program, which does not use volunteers but employs staff attorneys to represent clients directly. In between these extremes is a "mixed" model that provides service to clients through volunteers and through staff attorneys. Mixed models come in two varieties. In one variation, program staff maintain their own caseload and also oversee cases placed with volunteer lawyers. Another variation is a program that employs different staff members to conduct the separate functions of direct representation and pro bono management, exclusive of one another.

Depending on how the program operates, it will have different outputs and conduct business differently. For example, if one measure of a successful program is the number of attorneys utilized, the pure pro bono model would typically use a greater number of volunteers than a comparably sized (in terms of

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From the Chair. . .

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

In the last issue of *Dialogue*, Jon Ross (chair of the ABA Standing Committee on Legal Aid and Indigent Defendants) and I discussed how staff legal services programs and pro bono initiatives could enhance their impact by working in partnership with one another. We encouraged both the private bar and the legal services communities to talk with each other about how to use pro bono to increase the scope and amount of legal services to the poor.

I want to follow up by suggesting that part of this dialogue, or perhaps its forerunner, should be an evaluation of the overall system for delivering legal services in your community. There are people who make their career in evaluating such systems. I do not. But what I do know—what stands out as a matter of plain common sense—is that each individual program that is part a system for delivering legal services will work better and provide greater access to justice if it functions in sync with the rest of the "team."

Evaluating the overall system for delivery of legal services is not the same as evaluating individual programs. To be sure, assessing individual programs is critical (*see this issue's cover story on*

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Ohio Interfaith Legal Services Pro Bono Clinics: An Overview

by Steve Wrone

Ohio Interfaith Legal Services (ILS) is an alliance of the private bar, legal services organizations, social services providers, the judiciary, college students, and members of the clergy in central and southeastern Ohio. This uncommon collection of interests is organized around the principle that all religions, as a basic tenet of faith, call for justice on behalf of the poor. ILS also recognizes that attorneys, regardless of religious affiliation, have a corresponding professional obligation to provide pro bono assistance to those in need.

ILS grew out of a committee formed in 1999 to develop a CLE on faith and law for the Ohio State Bar Association. That committee included lawyers, many of whom are ordained in various religious faiths and denominations, as well as pastors, rabbis, seminarians, and other interested parties. Following the CLE, the committee resolved to channel its interests in faith and law into the development of a services delivery project designed to improve access to justice for the poor.

In little more than two years, that one project has grown into three separate monthly brief counsel and advice clinics at which volunteer attorneys are able to answer the call to give back to their communities. One clinic is in metropolitan Columbus and the others are in semi-rural Licking and Fairfield counties. It bears emphasizing that neither Licking nor Fairfield County sponsored an organized pro bono project prior to adopting the ILS clinics. The success of the projects in these counties strongly suggests that the interfaith model is especially suitable for adaptation in rural areas, where a community's churches often remain the strongest and most credible organizers of charitable activities. In 10 clinic sessions in Franklin and Licking counties, 177 clients received brief counsel and advice from 31 volunteer attorneys, including some from the Southeastern Ohio Legal Services program, and 27 cases were referred for pro bono representation beyond the clinic session.

Loose network of partnerships

The term "ILS," though grammatically handy as a subject and modifier, does not denote a discrete, self-contained entity. In its present iteration, ILS consists of a loose confederation of partnerships representing a number of organizations and interests. A central steering committee meets about every six weeks in Columbus to evaluate the progress of the project and to implement changes to ensure its ongoing viability. As the project has expanded, each clinic has spawned a *de facto* steering committee of its own, consisting of the leaders directly responsible for operating the clinic from one month to the next. These subcommittees operate more or less independently and are free to adapt the clinic model to fit the needs of the communities they serve. The central steering committee, in addition to maintaining the organization's institutional memory, provides support services to the clinics, from developing a centralized database to coordinating some of the publicity.

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Program Evalution

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staff and funding) mixed model.

An evaluator should understand the different service models a program may utilize. The examiner must also take into consideration the different service models that a pro bono program (either mixed or pure) employs. Some examples are:

- brief advice (often conducted through a clinic or hotline);
- brief advice plus (attorneys who provide brief service may accept for full representation a more complex matter that arises during a brief service session);
- case referral/full representation (attorneys accept matters of more than limited complexity for full representation); and
- unbundled matter (attorneys accept one component piece of full case representation and leave remaining portions for staff or other volunteers).

Full representation systems typically require a greater level of staff involvement and are more time-intensive than brief service systems. Packaging a case for distribution to an attorney, recruiting attorneys, training attorneys and case monitoring all absorb significant staff resources. Brief service systems typically serve many more clients and handle many more matters than full representation models.

Similarly, an examiner must understand how a program conducts intake. If the program conducts intake independent of another organization (such as a legal services program), that effort requires significant staff resources for gathering information from clients and also for client outreach. Programs that accept intake matters from another provider may be able to avoid the personnel costs associated with the actual intake functions, which could reduce their cost as a percentage of cases placed. On the other hand, programs that outsource intake may face the burden of placing clients without the benefit of meeting them and gaining the full understanding of their needs that comes from the interview process. They also lose control over the decision about whether a case should be placed with a pro bono attorney at all. These limitations may cause inefficiencies in client placements and decreased attorney satisfaction.

Beware the allure of numerical comparisons. The old cliché about "lies, damn lies and statistics" is no more pertinent anywhere than in the pro bono world. Without understanding the information described above, the number of cases placed or cost per placement is rendered meaningless. The same is true for the percentage of lawyers that volunteer with the program. In many cases, a significant influx of attorney volunteers would be a disastrous event. Many programs are at or close to full capacity in their ability to place cases with attorneys and ensuring the volunteer experience and client representation is satisfactory. New volunteers without additional staff resources to handle them only results in underutilized attorneys or poorly managed cases.

If maximizing levels of volunteer participation is a goal, the examiner must also gain sufficient information to understand the number of **eligible** volunteers. For example, in the District of Columbia many attorneys are licensed to practice but either do so to obtain a waiver into another state or as a secondary practice locale. Similarly, the District is home to an unusually high number of attorneys who do not engage in the traditional practice of law and are more difficult to recruit and train. Similar issues are present in almost every jurisdiction.

The critical question: How does the program engage the bar?

What emerges is the absence of a hard-and-fast formula that can effectively measure a pro bono program's output. Does that mean the task is impossible? No. It does mean that the examiner must first develop an understanding of how a program is organized, how it delivers services, and the nature of the legal community, as described above. With this foundation in place, the examiner should examine the program from a broad view that Paul Doyle describes as "how the program engages the private bar." For insight into this issue, Doyle asks these questions:

1. What percent of the private bar available does the program utilize in some manner to help the poor with legal assistance or help the program to provide services to its clients?
2. What does a numerical and percentage breakdown of the answer to the previous question show regarding each of the key activities of the pro bono mechanism, such as case handling, clinics, and intake?
3. What is the range of case types handled by private lawyers and does it extend beyond the types of cases

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From the Chair…

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program evaluation), but individual programs are only pieces of the puzzle. Examining each piece in isolation obscures the full picture.

To assess the overall system, we need to know how the individual components relate to each other. And we need to measure against a goal, an understanding of what the system should look like, of how it should work. We need to develop a community "vision" of what the legal services system should achieve to reach consensus about what we want the system to become. We need this global approach because even if each individual program is operating well, if we do not work together, we will not fully utilize our resources. Stated directly, we will not help as many people as we could.

A systems evaluation, then, would explore whether access to services is coordinated, whether services are unnecessarily redundant, whether groups or individuals are left unserved, whether certain legal problems are unaddressed, whether resources are

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Program Evalution

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handled by program staff attorneys? Are private bar specialties such as real property, bankruptcies, taxation and corporate law utilized?

4. Are private attorneys utilized in impact and community group representation?
5. How does the pro bono program "market" itself and present the unmet need for legal assistance? Does it maintain a balance between congratulating the private bar (the formal bar and lawyers generally) for what they do and at the same time point out the tremendous unmet need and challenge private lawyers to do more?
6. Does the program engage the private bar in political and resource development support activities, both for the program and clients?
7. Does it provide training to the private bar, particularly to encourage and develop capacity to handle specific case priorities?
8. Does it engage large law firms (if available in the service area) in special advocacy projects?
9. Does it seek to develop and use judicial leadership to encourage volunteerism and increase awareness of the "unmet need" and the private bar's responsibility to address it?
10. Does the program provide for direct intake by the pro bono program or is intake funneled through a staff case acceptance system?
11. Does the program provide and operate effective recognition activities and accountability systems?

Peer Consulting Project helps programs expand resources

Through the Peer Consulting Project, the Center for Pro Bono makes available the expertise of experienced volunteer consultants. Center staff and these volunteers provide telephone and onsite consulting to pro bono programs and others regarding pro bono initiatives. The project aims to link pro bono programs with new partners that can provide additional resources for expanding pro bono efforts. For more information about the Peer Consulting Project, please contact Cheryl Zalenski at the Center for Pro Bono at 312-988-5770 or via email at zalenskc@staff.abanet.org

Conclusion

As the pro bono community continues to mature in an economy that is stagnant compared to a few years ago, and in a changing legal services landscape, the center expects continuing interest in developing effective methods for evaluating pro bono programs. The points raised in the center's conversation with Paul Doyle and Ruth Ann Schmitt should inform the evaluation process. The center invites others to join in this conversation and share their thoughts and concerns about evaluating pro bono programs.

Endnote

[1] The *ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means* are available as a free download on the Center for Pro Bono Web site at www.abalegalservices.org/pbpages/pbstandards.html

Greg McConnell is the director of the ABA Center for Pro Bono.

Interfaith Legal Services

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Adaptability has been key to the success of ILS since its inception. What works in metropolitan Columbus may not work in rural Licking County. And notwithstanding the national impulse to think of rural America as one vast, harmonious Rockwell canvas, what works in rural Licking County may not work in rural Fairfield County. In Fairfield County, for example, the local legal services office enjoys an unusually good relationship with the local welfare department. The director of the welfare department also happens to be a licensed attorney who last spring initiated discussions with a local judge about increasing pro bono assistance in the county. ILS was able to facilitate a partnership among the local legal services office, the welfare department, and the court that ultimately produced a model for sharing resources that differs from (and is not exactly replicable in) Franklin and Licking counties. In Licking County, students from a local university take care of much of the clinic intake and publicity; by contrast, the Fairfield County clinic has at its disposal the welfare department's support staff and marketing department to take care of these tasks. Both models work, and both offer variations on a theme: They take advantage of the unique configuration of resources available in their respective communities.

A kind of planned serendipity that has characterized the development of the faith-based clinics: **serendipity** in the sense that many of the partnering groups were brought together seemingly by a happy convergence of events, **planned** in the sense that each group, prior to partnering, had independently committed itself to finding a way to increase access to justice for indigent and low-income persons. To those of us who are invested in these successful clinics, the partnerships embodying the ILS concept now seem so logical as to be axiomatic: After all, legal services offices, welfare departments, churches and college students are all associated to varying degrees with a tradition of social reform. But it is instructive to recall that two years ago, these partnerships did not exist in any sustained form—at least not in central and southeastern Ohio.

Conclusion

This gives rise to a question: How to ensure the proliferation of faith-based partnerships to serve the legal needs of the poor? In recognition of our Midwestern origins, ILS is sorely tempted to provide you with a homespun recipe for guaranteed success in

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From the Chair…

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going to waste, and whether delivery components are being marginalized. A comprehensive systems evaluation would also seek information on community perceptions, measure client satisfaction, assess outcomes in cases handled and quantify cost effectiveness.

I have long advocated full integration of the private bar into the system for delivering legal services. Some jurisdictions have done this effectively. Others have not. Even some strong legal services programs have not fully tapped the potential of the private bar in their communities. As strong as they are, they suffer, in my view, because of the opportunities lost—for them and for their clients. Other programs that are not as strong have also given short shrift to the private bar, producing systems that are stagnant and ineffective. The needs are too great, the resources are too scarce and the time is too short to countenance such missed opportunities.

The clients, frankly, do not care whether the services they receive come from pro bono lawyers or from legal services programs. What they care about is that someone applies their skill and learning to solve their problems. Our job is to do just that, to do it effectively, and to extract from the resources available the most we possibly can in service of those who need our help. And that means adopting a global, system-wide view.

If nothing else, the first system evaluation will engender increased communication, foster strategic thinking, build or strengthen relationships, stimulate planning, and generate new energy. In my view, evaluating the overall system inevitably will lead to further integration of pro bono lawyers into the process. I understand that involvement of these lawyers comes at a price for legal services organizations—a price in time, in effort and even in aggravation. But that price is unavoidable if we are to meet the needs of the poor in our communities. And the costs, steep as they may be in the short term, will be more than offset by the ultimate benefits not only to those clients, but to all the participants in the system.

Interfaith Legal Services

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developing a clinic of your own. A recipe, however, is by definition formulaic, and if we've learned one thing from the process of developing these clinics, it is (again) that adaptability is key. And so with a nod to the Midwestern fondness for bumper sticker wisdom, we leave you not with a rigid formula for establishing faith-based clinics, but with a list of Lessons Learned from our very own experiences, each lesson urging in its own way patience and an open mind, no lesson promising the miracle of universal application.

Lessons Learned (and Still Being Learned):

- **Be Opportunistic:** Remain open to the possibility of forging alliances with persons and groups with which you might not expect to partner.
- **Recognize Common Interests**: Remember that yours is not the only agency or group of people with an interest in expanding access to justice, helping the poor and strengthening communities.
- **Keep Your Model Flexible:** Your job is to support and facilitate a community's vision of what it needs–not to impose your idea of what you think a community needs.
- **Concede That You Can't Do It Alone**: Enlisting the **active** support of the judiciary or (a) respected member(s) of the local bar is critical. If you can't get that person involved, move on to another community.

Steve Wrone is the pro bono coordinator for Southeast Ohio Legal Services.

A chart showing the pooling of local resources in Licking and Fairfield counties can be viewed at www.abalegalservices/probono/home.html

Maryland Adopts Pro Bono Reporting Requirement

On July 1, 2002, Maryland will join Florida as the only two states to require attorneys to report their pro bono involvement. The Maryland Court of Appeals (the state's high court) mandated this change in February, when it voted to revise Rule 6.1 of the Maryland Rules of Professional Conduct, which governs pro bono service by lawyers, and to adopt two new court rules regarding pro bono service.

The revised MRPC 6.1 establishes an aspirational standard of 50 hours per year of pro bono service for Maryland attorneys, with a substantial portion of those hours to be devoted to representing the poor or organizations that advance the needs of the poor. The rule does not make pro bono work mandatory, and includes a provision that recommends that attorneys who do not perform pro bono work discharge their responsibility by making a $350 contribution to a legal services organization.

One of the two new rules, Rule 16-903 establishes a state pro bono action plan. Under this rule, every Maryland lawyer must submit an annual pro bono report to the Administrative Office of the Courts. The reports will remain confidential, but non-identifying information in the reports will be used by a newly created Standing Committee on Pro Bono Service to evaluate the amount of pro bono service being performed by lawyers and the success of pro bono projects. Lawyers who do not report can be decertified from the practice of law after appropriate notice.

The rule provides for the creation of the standing committee, to be chaired by a lawyer and consisting of eight lawyers from every region of the state, two judges, a designee of the public defender, a representative of a legal services organization, and a member of the general public. The committee will act as a clearinghouse for pro bono materials and information, and will study long range pro bono issues, receive reports from local pro bono committees about pro bono needs and efforts in the counties, report annually to the Court of Appeals, and in three years develop a detailed state action plan for pro bono.

The other new rule, Rule 16-901, calls for the establishment of a local pro bono committee for each county that will consist of no more than 11 members, including lawyers, members of legal services and pro bono referral organizations, and members of the general public. The committees, in consultation with court personnel, will develop and implement local action plans to promote pro bono service.

The revisions to MRPC 6.1 and the new pro bono rules were patterned after recommendations made by a special Commission on Pro Bono in March 2000. That commission, which included 10 lawyers from across the state and five judges from each level of state court, was established by Chief Judge Robert M. Bell in late 1998, and was chaired by Judge Deborah S. Eyler, of the Maryland Court of Special Appeals. Its mission was to examine the role of the courts in increasing pro bono service, and thereby promoting access to justice for those in need.

More IOLTA Revenue Enhancement Initiatives

by David Holtermann

Dialogue *continues its look at revenue enhancement initiatives by highlighting developments in South Carolina and Maryland. The first part of this article in the Fall 2001 issue of* Dialogue *focused on efforts in Minnesota and Florida.*

In recent years the South Carolina Bar Foundation has employed several strategies to increase bank yields and improve its revenues. These changes include a shift in policy toward participating banks and the fees they are allowed to charge to the IOLTA program, a reconfiguration of the program's staff, and most recently, the creation of an honor roll of banks.

According to South Carolina Bar Foundation Executive Director Faith Rivers, the foundation wrote to banks seeking to clarify what it considered to be legitimate service fees. The letter also advised banks that non-routine fees—such as those charged for ordering checks, account reconciliation and negative collected balances, along with insufficient funds fees and stop payment fees—should be considered part of the cost of doing business and not charged to the IOLTA program.

The foundation's board adopted this position in May 1999 after reviewing research about the high costs incurred on accounts at one of the largest participating banks. Rivers investigated the costs and identified the non-routine fees as one of the contributing factors.

As a result, during the 2000-2001 fiscal year, the foundation saw fees at one of the larger participating banks decline from $130,000 to $66,000. At the top six participating banks in South Carolina (which produce around 80 percent of the state's IOLTA revenues), fees decreased by close to $153,000, according to Rivers.

In another revenue enhancing move, the foundation reconfigured its staff, which enabled the hiring of Shannon L. Willis, MBA, to more closely monitor the financial end of the IOLTA program. Described by Rivers as "a good investment of resources," the hiring was a matter of adding to the program's capacity to perform the kind of monitoring some larger programs have been able to do for some time. For example, the staff change allowed for closer tracking of information reported by attorneys on their annual law license fee statement. In one instance, a bank account identified by a law firm as an IOLTA account was never identified as an IOLTA account by the bank. After catching this discrepancy, the foundation was able to collect $28,000 in back interest. In another case, Rivers and Willis realized that an interest rate increase promised by a bank had not materialized. The foundation brought it to the attention of the bank, which made a difference of nearly $30,000.

The South Carolina Bar Foundation also established an honor roll. The foundation's board adopted the honor roll in May 2001, and sought commitments from banks by October 1, 2001. The honor roll is comprised of two tiers—a Platinum Partners level, for banks that: (1) pay an interest rate of 2 percent or more, (2) waive all fees. The Gold Partners level is for banks that pay an interest rate of 2 percent or more. The foundation researched data from over 70 banks participating in IOLTA in South Carolina, and selected recognition levels it considered achievable.

The foundation's board members contacted banks to urge their participation in the honor roll. Ads recognizing the honor roll banks have been produced for the South Carolina Lawyer magazine, and for the publication of the state bankers' association. In fact, outreach to the banks was an important component of the initiative. Rivers and Willis attended a convention last year. This allowed the foundation to build relationships with bankers and with banking association staff.

The South Carolina Bar Foundation's efforts resulted in an eight-percent increase in IOLTA revenues in the last fiscal year. The bar foundation is on target to exceed its 2001 revenues.

Maryland seeks to close gap through improved reporting

In October 2001 the Maryland Legal Services Corporation (MLSC) received formal approval from the Maryland Court of Appeals (the state's highest court) to require Maryland attorneys to report their compliance with the IOLTA rules beginning January 1, 2002. According to MLSC Director of Operations Susan Erlichman, the first round of annual IOLTA certification forms was mailed to Maryland's 30,000 attorneys at the end of January. MLSC administered the mailing.

Lawyers are required to state

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From the Chair. . .

by L. David Shear
Chair of the ABA
Commission on IOLTA

Earlier this year I joined many of you in attending the Winter IOLTA Workshops during the ABA Midyear Meeting in Philadelphia. Once again the workshops offered a wonderful opportunity for members of the IOLTA community to reconnect with one another, to share ideas, and to look ahead to future goals and challenges. This opportunity to talk was complemented by another outstanding program of workshops planned and organized by the Joint NAIP/Commission Meetings Committee.

In addition to hearing the latest litigation news and hot topics, attendees learned about the role IOLTA programs can take in improving pro bono services by their grantees and in their states. The well-received Banking 101 and 201 workshops offered practical strategies for maximizing revenues and limiting the fees and surcharges that can deplete IOLTA accounts. A session on grant management addressed that vital aspect of program management.

The Meetings Committee also presented two innovative and well-received sessions that departed from the typical workshop format. Thursday afternoon's "Let's Talk" sessions provided an

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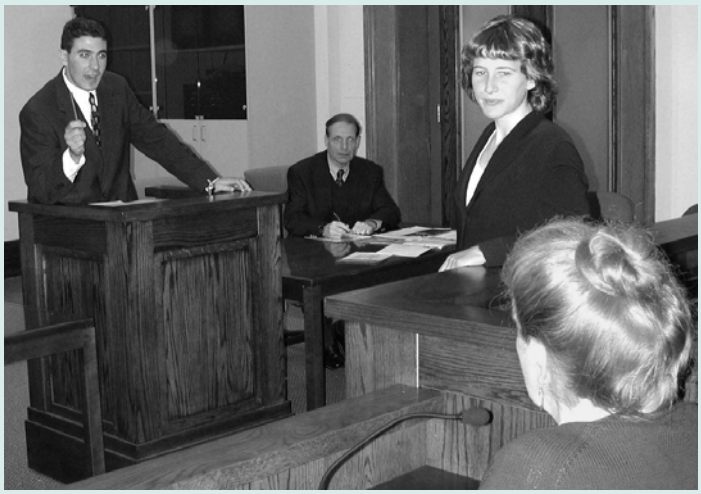
IOLTA Grantee Spotlight… Law School Clinical Programs Foster Legal Skills and the Pro Bono Ethic

by Carl Oxholm III and Alfred J. Azen

In 1996, the Pennsylvania Supreme Court assumed jurisdiction over the state's IOLTA program and made the participation of lawyers mandatory. At the same time, the court also changed the rules to require the IOLTA program to fund law school clinical programs in addition to legal services and pro bono organizations.[1]

The court's motivation for action was rooted in mounting evidence that the profession's soon-to-be newest members were entering practice without the necessary lawyering skills, and in the face of a growing crisis in the delivery of legal services to the poor. Consequently, the court sought to increase the practical skills of new lawyers and instill in them the ethic of pro bono service.



University of Pennsylvania Law School students "mooting" a case prior to trial with Professor Louis S. Rulli observing in the background.

Five years and $5.1 million later, the court's innovation is a success. IOLTA's support for clinical legal education in law schools has helped to rekindle a spirit of volunteer service among Pennsylvania lawyers, has helped provide free civil legal services to thousands of Pennsylvanians who had nowhere else to turn, and has ensured that law students really do know what it means to practice law when they leave academia. It proves that skills training and pro bono work can be linked successfully to the benefit of students, law schools, the community, and the profession.

Previous clinical opportunities inconsistent

When the IOLTA rules changed in 1996, the clinical offerings at Pennsylvania's seven law schools[2] varied widely. Some law schools offered no clinical legal education. In several, the opportunity to participate was restricted by enrollment limits, academic course requirements or scheduling conflicts. One clinical program was housed within a computer lab, where students only contact with clients was via email. Other schools embraced a more comprehensive vision of clinical legal education and offered a range of opportunities. One school even had a mandatory public service requirement for all law students.

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From the Chair…

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open forum for program directors and trustees to gather with representatives of similar programs and discuss their most pressing concerns and their programs' biggest accomplishments. Friday morning featured an experiential workshop on negotiation that introduced invaluable skills to novice negotiators, and served as a useful refresher course for those with more experience.

The Meetings Committee deserves our hearty thanks for presenting an excellent program.

Several issues ago I wrote about the valuable contributions of the Joint Meetings Committee and the Joint Technical Assistance Committee. The two other joint committees—the Resource Development/Banking Committee and the Communications Committee—also deserve attention for their work on behalf of the IOLTA community. Led by co-chairs Lynn Nagasako and Ellen Ferrise, the Banking Committee focuses on some of the most important aspects of IOLTA: the trust accounts themselves, the financial institutions holding the accounts, and the relationships between the banks and individual IOLTA programs. Addressing these details is challenging, but we are fortunate that the banking committee is comprised of dedicated members who devote a great deal of energy to the task, always seeking ways to help IOLTA programs maximize their resources. The committee monitors developments such as interest rate fluctuations, policy changes by major banks, and changes in banking rules, regulations and legislation. The committee follows revenue enhancement innovations by IOLTA programs, assessing their effectiveness and studying how other programs can replicate them.

The Banking Committee also assists in planning the banking programming that takes place during the workshops. During the 2001 Summer Workshops, the banking program featured a session on interest rates presented by a Federal Reserve Bank official. The Banking 101 and Banking 201 sessions I mentioned earlier focused on building effective relationships with banks, monitoring the effects of service fees and rates on program revenues, and developing strategies for increasing income under unfavorable circumstances.

Led by co-chairs Matt Feeney and Al Azen, the Communications Committee also plays an important role. Among the bread-and-butter tasks of the committee is identifying and developing ideas for the IOLTA-related articles in *Dialogue*. Typically this involves selecting ideas for both the grantee spotlight pieces and the feature stories that appear in each issue. In addition to its work regarding *Dialogue*, the committee has worked to develop litigation "talking points" to distribute to IOLTA programs following significant decisions in the Texas and Washington State IOLTA cases. The committee also provides valuable feedback regarding the Commission on IOLTA's Web page on the ABA site, www.abalegalservices.org/iolta.html

Of particular importance, the Communications Committee has been instrumental in the project to develop a new IOLTA Web site, IOLTA.org, which is co-sponsored by the Commission on IOLTA and NAIP. While the detailed planning and construction of that site is just beginning, the committee has been extensively involved in this project since last summer, when the Commission partnered with NAIP regarding the site. The committee has helped finalize the request for proposals seeking bids from site developers, and has been engaged in the time-consuming process of selecting a vendor. The committee will continue to participate and oversee the creation of the site, which we hope will be launched later this year.

The invaluable contributions of the Resource Development/Banking Committee and the Communications Committee, as well as those of the two other joint committees, are possible only because of the enthusiasm and commitment of the Commission and NAIP volunteers who serve on them. We owe them our gratitude for their work.

IOLTA Litigation Update:

Certiorari petition filed in Washington State case

The Washington Legal Foundation (WLF) and the other plaintiffs in the case of *Washington Legal Foundation v. Legal Foundation of Washington* filed a petition for writ of certiorari with the U.S. Supreme Court on March 7, 2002. The petition seeks the Court's review of the November 14, 2001 decision of the Ninth Circuit Court of Appeals, which upheld Washington State's IOLTA program. In that decision, an *en banc* panel of the Ninth Circuit Court found that the operation of Washington's IOLTA program was not a "taking" under the Fifth Amendment, nor was any just compensation due the plaintiffs.

Briefs in opposition to the petition for certiorari from the Washington State IOLTA program and the other respondents were to be filed by May 8, 2002.

Clinical Programs

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The Pennsylvania IOLTA Board did not want its support of law school clinical programs to dimish its commitment to the delivery of legal assistance to the poor. For that reason, the board made awards to law schools dependent upon satisfaction of four criteria that complemented its other grant programs:

1) The funds must be used to address the current civil legal needs of the poor, organizations assisting the poor or other charitable organizations.
2) The law school must consult with local area programs that provide free or low-fee legal services to the poor.
3) The funds must be used for live-client or other real-life practice experience.
4) The law school itself must participate financially in the clinical program.

By including the fourth requirement, the board hoped to make each law school a partner in every IOLTA-funded clinic, not only to leverage IOLTA dollars, but also to push the school to consider the program integral to its other offerings, and not just an "add-on" that could be eliminated if IOLTA funding was later ended. It would also force each school to become involved with, and perhaps even invested in, their local legal services network

Over five years, the results have been an impressive range of projects. At the Temple University Beasley School of Law, the Immigration Law Program was initiated in partnership with a community-based organization providing services to immigrants in Philadelphia. The students work with indigent clients on matters including asylum, non-asylum deportation, family petitions, citizenship cases and other matters. Four other law schools—Duquesne University Law School, Widener University School of Law, the University of Pennsylvania Law School, and the University of Pittsburgh School of Law—expanded their civil practice clinics to allow students to participate in administrative hearings and court proceedings. Villanova University School of Law established a Farmworkers Legal Aid Clinic.

Professor Michele Pistone (left), director of the Villanova Law School Clinical Programs, discusses an asylum case with student Manpreet Dhanjal.

Pennsylvania State University Dickinson School of Law and the University of Pennsylvania Law School established summer internship programs with legal aid organizations across the state. The Dickinson students are required to take a poverty law course taught by poverty law practitioners before applying for the competitively available summer internships. Two other law schools, Beasley and Duquesne, expanded their community economic development law clinics. In those clinics, students have an opportunity to help community-based non-profit organizations form, meet zoning requirements, acquire buildings, and obtain federal non-profit tax status in order to establish shelters for homeless people and for women and children seeking to escape domestic abuse.

While most of the clinical activities funded by IOLTA are for-credit offerings, the IOLTA impetus has also helped spawn other public service opportunities. Every Pennsylvania law school now has some form of pro bono program in place. Some are operated by IOLTA-funded positions, and others by law school staff.

Pro bono ethic taking hold

To gauge the success in meeting the IOLTA objectives, the board recently surveyed the law schools, current and former students who participated in IOLTA-sponsored clinics and internships, and legal services organizations. The results are impressive. Representative of the comments from the law schools, one clinical director noted "[e]ach clinical course has a two-fold educational mission. First, students acquire the traditional lawyering skills, including substantive and procedural law and the practical competencies fundamental to practice. Second, students learn to appreciate the special needs of the poor, and the impact students can have by applying their lawyering skills

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Clinical Programs

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to help them. The transformative impact of this experience is often seen in students' and supervisors' accounts, as they acknowledge the personal change as a consequence of their clinical work."

One hundred ninety-one students responded to the survey. All of these students reported that their experience increased their knowledge of public service legal work. Indeed, 70 percent indicated that the impact was significant. The results were similarly encouraging when students were asked if the experience helped in their understanding of the needs of the poor and underserved for legal assistance: 80 percent of the students thought the impact was significant, and 90 percent stated an interest in pursuing public service work after graduation, or in providing pro bono services after entering private practice.

The survey also revealed that students gained a deeper appreciation of their public service responsibilities as lawyers. A representative quote from a law student who participated in a clinic offering: "The clinic has made apparent to me how important and [necessary] pro bono legal representation is to members of the community who rely upon it. I feel more of an obligation and overall duty to perform pro bono legal work as a result of the clinic." This sense of duty appears to be sustained among students after graduation. Commented one former student: "In my search for a private practice employer, one of the critical concerns was whether or not satisfaction of the ethical pro bono requirements was supported and encouraged, and if so, how." It is very clear from student responses to the survey that the clinical and internship experiences significantly influence the ethical and professional views held by the students, and helped ingrain the effect that lawyers have on the lives of those they touch, and in particular, those of limited means.

Collaboration valuable to local providers

As a matter of grant criteria, law schools are required to consult with poverty law and pro bono programs in their areas. For most, this has led to collaboration in the operation of their clinics and pro bono programs. In some instances, law schools have hired staff lawyers from the poverty law programs to serve as adjunct professors and in-house clinical supervising attorneys. At several schools externships have been established at neighborhood offices of the poverty law programs. Some of the legal services programs are even compensated for the supervisory responsibili-

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Survey identifies challenges

The Pennsylvania IOLTA Board's survey of law schools, law students and legal services organizations revealed other issues that challenge the goals of its legal clinic funding.

- Students have confirmed that large educational debts are making it difficult to pursue or accept jobs in the public interest. Law schools and the state legislature should be encouraged to increase programs that will forgive loan payments for lawyers willing to work in the field of poverty law.
- Law firms must assure that the pressure for billable hours is not so great as to foreclose the pro bono service that many young associates desire to perform. As one law graduate warned after praising the experience in an IOLTA-sponsored clinic, "[t] he demands of law firms for billable hours directly impacts a lawyer's ability to do pro bono work. More demand needs to be placed on managing partners than on young associates."
- Placement of students at legal aid organizations provides excellent supervised practical experiences to reinforce the theoretical and doctrinal aspects of traditional law school course work. However, although the law students help the legal aid organizations achieve their missions, the supervision needed for the students diverts precious time from program advocates. Efforts should be made to assure that appropriate funding is provided for the supervision provided by the legal aid organizations.
- The profession must have a legal aid job creation strategy since governmental funding for legal services has been stagnant or declining for more than 20 years. One strategy private lawyers should consider is establishing their own fellowships for students willing to take jobs (summer or permanent) in legal aid offices.

—Carl Oxholm III and Al Azen

Clinical Programs

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ties mandated by the externships. The pro bono programs that responded to the survey speak highly of the law schools and the valuable help law students provide when partnered with pro bono counsel. Said one director: "Client cases are referred to either volunteer or supervising attorneys who are matched with either volunteer law students or paralegals. Approximately 40 percent of all of [our program's] client case referrals are handled by law students from [the surrounding law schools]. Considering [our program's] 600 clients per year, this is an enormous contribution to [our] success."

Conclusion

As a result of IOLTA funding, Pennsylvania law schools have expanded and improved their supervised practice opportunities for their students in the past five years. IOLTA funds not only educate law students, but also use service-based learning to inculcate a pro bono ethic while providing desperately needed services to the community. This funding is having a profound impact on students, on clients, on neighborhoods, and on the law schools. It has the potential of having a profound impact on the legal profession as well.

Carl (Tobey) Oxholm III, a past recipient of the American Bar Association's Pro Bono Publico Award, is a member of the Pennsylvania IOLTA Board.

Alfred J. Azen
is the executive director of the Pennsylvania IOLTA program.

Endnotes

[1] Rule 1.15 of the Pennsylvania Rules of Professional Conduct provides for IOLTA funds to be used for "educational legal clinical programs and internships administered by law schools located in Pennsylvania."

[2] Duquesne University Law School, Pennsylvania State University Dickinson School of Law, Temple University Beasley School of Law, Widener University School of Law, University of Pennsylvania Law School, University of Pittsburgh School of Law, and Villanova University School of Law.

IOLTA Revenue

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whether they have any IOLTA accounts and to identify the accounts and the banks holding them. Practitioners in large firms who do not directly handle client funds may identify the administrator or other person in the firm responsible for client accounts. Attorneys in government service, the judiciary or not in active practice can indicate that they are exempt from the IOLTA requirements due to their status.

According to Erlichman, MLSC previously lacked a good mechanism for ensuring compliance with the mandatory IOLTA rule. One benefit of the reporting requirement will be to thwart the small number of attorneys who willfully fail to comply with the IOLTA rule. However, the rule change is expected to have a larger impact by eliminating honest mistakes, such as when an attorney believes he or she is participating in IOLTA, but the bank holding the attorney's account has not set it up as an IOLTA account. This scenario "is not a rare occurrence," according to Erlichman.

MLSC has worked, with the help of the Client Security Fund of Maryland, to add the names of every attorney registered in Maryland to its database. As attorneys return their compliance forms, the bank and account data on those forms will be entered into the database as well, and matched with pre-existing account and bank data. Cases in which there is no "match" will be investigated further. In this manner, it is expected that mistakes regarding account status and identification will be uncovered.

Erlichman says that obtaining approval for the initiative from the MLSC board and from the Rules Committee of the Maryland Court of Appeals was not a "tough sell." After ascertaining that the IOLTA rules would need to be amended to allow for a reporting requirement, MLSC petitioned the high court and explained the requirement was a tool necessary to do its job.

The initial costs of the initiative are significant, however. MLSC has budgeted an extra $30,000 for the first year of the requirement. In addition to substantial redesign work already completed on the MLSC database, Erlichman expects that there will be a great deal of data entry generated during the first year, which could require hiring temporary workers. MLSC does not anticipate the need for additional permanent staff, as it has reconfigured its current staffing to accommodate the newly created position of "IOLTA compliance manager."

Erlichman believes those initial costs will be worthwhile. Although MLSC cannot predict the increase in IOLTA income with any certainty, Erlichman hopes revenues will go up by at least 10 percent, or about $380,000, during the first year of the requirement.

David Holtermann is assistant staff counsel to the ABA Commission on IOLTA.

From the Chair. . .

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

Four years ago, iLawyer approached the LRIS Committee with an intriguing new idea. It proposed creating an Web site that would provide online referrals directly to those programs which the LRIS Committee certified as complying with the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service.

That site is now a reality. It can be accessed through a number of Web sites, including the ABA's site (https://abanet.ilawyer.com/client_menu.jsp), at iLawyer.com, and on a number of local bar association Web sites. iLawyer is not a referral service itself. Rather, its service is designed to connect potential clients in search of attorneys to the appropriate state or local program.

The LRIS Committee was (and remains) impressed. iLawyer offers a sophisticated online referral application that few programs could otherwise afford. Today, in cities like Seattle, San Diego, Denver and New York, consumers in need of legal help are finding it through iLawyer. The network continues to expand with the recent addition of the Alameda County (California),

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Are Hotlines for Your LRIS Program?

by Mary Ann Sarosi and Sheree Swetin

How many times have you called your doctor's office seeking the answer to a basic question only to be told that you have to make an appointment to come in to see the doctor? Now imagine that you don't have health insurance and it will cost you the price of a regular office visit to get your question answered.

A moderate-income person with a legal question faces a similar quandary. There are basic legal questions that can be answered over the telephone rather than during an in-person appointment with an attorney. Naturally, not every legal question can or should be resolved over the telephone, but there are situations where it is appropriate and economically efficient for both the attorney and the client. In those instances where delivering brief legal assistance over the telephone is appropriate, a lawyer referral and information service (LRIS) program is a natural conduit for providing that help to moderate-income consumers.

In this two-part article, we will describe the historical use of telephone legal advice, why providing brief legal services may fill a niche among moderate-income consumers, and how a LRIS program can provide those services in a high quality manner through an advice panel.

The prepaid and legal aid experiences

The prepaid legal services industry has long used the telephone to provide legal advice to middle and upper middle income subscribers. The industry's experience has shown that:

- Subscribers are willing to pay a minimal annual fee to have unlimited telephone access to free legal advice and brief services.
- People place a value on telephone advice and brief legal services.
- Some issues can be resolved much faster over the telephone than face-to-face.
- Over 70 percent of matters can be resolved by these services.
- The availability of telephone services encourages consumers to take preventative action for certain legal problems and empowers subscribers to resolve some matters on their own.

Legal aid programs serving low-income people took the experience of the prepaid industry and adapted the telephone advice model to their services. Since about 75 percent of legal aid cases nationwide involve advice and counsel or brief legal services, some advocates believed the telephone could be used as a vehicle for handling those cases in a more effective and efficient manner. Often referred to as "hotlines", these vehicles exist as stand-alone programs or departments within larger legal aid programs that are specially designed to provide high quality legal advice and brief legal services by telephone.

How do these telephone services work? A trained interviewer, often an attorney, talks to a person in need of legal assistance over the phone

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From the Chair . . .

by David C. Hague
Brigadier General,
U.S. Marine Corps, Retired
Chair of the ABA Standing Committee on Legal Assistance for Military Personnel

"Must not all things at last be swallowed up in death."
—Plato

The American military is both a fighting force and family (not a corporation or similar entity) that should provide comprehensive, readiness-related legal services to every member. We should, but we don't!

We are the best in the world at preparing our warriors to live healthy, safe and socially responsible lives. We require regular physical fitness tests and medical and dental examinations, and provide continuous occupational, safety and health instruction. We teach personal hygiene and fiscal accountability. We even provide sensitivity training. But what about taking care of our warriors' "legal health" and preparing them to die? We do not require regular legal evaluations. We do not seem to care if those who need wills and powers of attorney have them or not. Nor are we bothered that we do not know a service member's wishes concerning continued life support when he or she is faced with no chance of recovery from a wound, illness, or injury.

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LAMP Spotlight...

Naval Base Pearl Harbor and Kaneohe Bay, Hawaii

by Christo Lassiter

On January 23 and 24, 2002, the LAMP Committee held its quarterly meeting and CLE program at Naval Base Pearl Harbor, located on the Hawaiian island of Oahu. Captain Carleton Cramer, U.S.N., Naval Legal Service Office, No Ka Oi, Pearl Harbor, hosted the meeting and CLE. Cramer helped make the CLE program a success from the outset by facilitating the attendance of over 90 military and civilian legal assistance lawyers and paralegals from the local commands.

CLE

This CLE featured substantive programming that justified the large turnout. Program Chair Captain Lori Kroll, U.S. Army Reserve, organized the CLE. Presenters and topics included Commander Ann Delaney, U.S. Navy, OJAG, who spoke about immigration; Patricia Apy of Paras Apy & Reiss, P.C., who presented on international child custody issues; Kevin P. Flood, Captain U.S.N., (Ret.), NLSO S.E., who discussed wills; and Colonel John Odom, U.S. Air Force Reserve, whose presentation addressed the Soldiers and Sailors Civil Relief Act (SSCRA). The speakers were not only well informed, but also able to inform well.

LAMP Committee Chair Brigadier General David C. Hague, U.S. Marine Corps, (Ret.) welcomed those in attendance with words of gratitude and inspiration for those responsible for providing retail legal assistance. The spotlight reflected back on Hague, however, as he was asked to take center stage with Rear Admiral John Jenkins, U.S.N. (Ret.) (six decades) and Flood (five decades) to receive a service plaque honoring these men for sixteen decades of military service between them. Hague's plaque stated: "Five decades of Service to Country and Still Going Strong." The others received similarly worded plaques.

NLSO Pacific

The Naval Legal Service Office Pacific, Detachment Pearl Harbor was established in 1997 as a result of a split between the Trial Service Office Pacific and the Naval Legal Service Office Detachment. Lieutenant Commander Charles N. Purnell, JAGC, USN, came on board as officer-in-charge in July 2001. Seven major commands are headquartered in Pearl Harbor, including the commander of the U.S. Pacific Fleet. The detachment services these commands as well as over 60 others on the islands of Oahu and Kauai, including 18 attack submarines and 13 ships home-ported at Pearl Harbor. The majority of the detachment's clients come from the more than 15,000 sailors that are attached to the various commands in Pearl Harbor. These sailors combined with retirees and family members form a naval community of over 40,000 persons. The detachment also provides legal assistance to Marine Corps, Army, Air Force and Coast Guard personnel stationed on the island.

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LAMP Committee Honors 2001 Distinguished Service Award Winners

by Daniel K. Bean

The American Bar Association Standing Committee on Legal Assistance for Military Personnel is proud to announce the six winners of the 2001 LAMP Distinguished Service Awards. It should be no surprise that a substantial majority of the award winners played a significant role in providing legal assistance after the attacks of September 11, 2001. The achievements of the remaining individual winners were equally impressive. "The Committee was extremely pleased with both the number as well as the quality of the applicants this year," said LAMP Chair David C. Hague, Brigadier General, United States Marine Corps (Retired). "It made our job of selecting six finalists extremely difficult."

Joint Services Family Assistance Center Legal Team

The first award winner is a combined effort nominated as the "Joint Services Family Assistance Center Legal Team". This group, which provided assistance to victims and next of kin in the aftermath of the September 11 attack on the Pentagon, consists of legal assistance components from the Army, Navy, and Coast Guard in the capital region. Specifically, the participants consisted of the Army's Military District of Washington (including units from Fort McNair, Washington D.C.; Forts Myer, Belvoir and A.P. Hill, all located in Virginia; Fort Meade, Maryland; Fort Hamilton, New York and the 10th Legal Support Organization, a reserve unit); the Naval Legal Service Office North Central, Washington D.C. branch office, and the United State Coast Guard Office of the Chief Counsel.

These units assembled near the Pentagon within hours of the first request for help, and went to work assisting victims and relatives in a multitude of legal areas. Working through various casualty area commands, individuals from each of these units provided timely information on military and civilian survivor benefits, probate, insurance and wills. In addition, members of the 10th LSO manned the Pentagon Family Assistance Center for 15 hours a day, and within the first 48 hours of operation met with 74 family members and 54 casualty assistance officers.

September 11th Pro Bono Legal Relief Project

The second award winner is another composite nominee, called the "September 11th Pro Bono Legal Relief Project." This conglomerate of civilians was lead by Scott Memmott, an attorney with Shaw Pittman L.L.P. Memmott, a former Coast Guard lieutenant commander, conceived the relief project as a vehicle to supplement the legal services provided by area military legal assistance officers. The project has served victims and family survivors of anyone killed or injured in the attack on the Pentagon.

Memmott served as the liaison to the DC Bar Pro Bono Program, the Fairfax Bar Association, the Law Foundation of Prince George's County, Inc., and 25 firms as well as his own, and helped enlist a plethora of civilian attorneys willing to provide free legal assistance. The project established a hotline and at the time of its nomination for the distinguished service award had already assisted over 60 families and provided over 400 hundred hours of pro bono service.

Odom

Air Force reservist worked on landmark SCCRA case

One of four individual awards goes to Colonel John S. Odom, Jr., United States Air Force Reserve. Odom is one of the first reservists to win the award, which recognizes his successful representation of Army reservist Lieutenant Colonel Stewart A. Cathey in a highly publicized Soldiers' and Sailors' Civil Relief Act (SSCRA) case. The Cathey case resulted in a legal precedent that has reemphasized the importance and strength of the SSCRA to both civilians and military personnel. The case established that a bank's failure to reduce the interest rates on business loans Cathey received in his civilian capacity was in violation of the SSCRA. The full import of Odom's efforts became

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From the Chair. . .

by L. Jonathan Ross
Chair of the ABA Standing Committee on Legal Aid and Indigent Defendants

On February 5, 2002, the ABA House of Delegates approved a resolution sponsored by SCLAID to adopt the *ABA Ten Principles of a Public Defense Delivery System*. The principles constitute the fundamental criteria for the delivery of high-quality representation to persons accused of crime who cannot afford to hire an attorney. Resolution 107 was co-sponsored by the Criminal Justice Section, the Government and Public Sector Lawyers Division, the Steering Committee on the Unmet Legal Needs of Children, the Commission on Racial and Ethnic Diversity in the Profession, the Standing Committee on Pro Bono and Public Service, and the Commission on Homelessness and Poverty. It recommends that jurisdictions use the principles as a quick and easy reference for assessing the needs of public defense delivery systems and communicate them to those policy makers who are responsible for funding and creating the systems.

The *Ten Principles* state that a public defense delivery system must contain the following elements in order to deliver effective, efficient, high quality, ethical, and conflict-free representation:

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Erlenborn and Ross Defend LSC in House Oversight Committee Hearing

On February 28, the Commercial and Administrative Law Subcommittee of the House Judiciary Committee, chaired by Rep. Bob Barr (R-Georgia.), held an oversight hearing on the Legal Services Corporation (LSC). The hearing, occurring in a climate of stable federal funding for LSC and after the least contentious Congressional appropriations process involving LSC in years, was the first such hearing since 1999.

LSC President John Erlenborn and L. Jonathan Ross, chair of the ABA Standing Committee on Legal Aid and Indigent Defendants, testified along with former Attorney General Ed Meese, now with the Heritage Foundation, and Kenneth Boehm, head of the National Legal and Policy Center.

Testimony critical of LSC

The testimony of both Meese and Boehm focused on LSC's system of competition for grants and its enforcement of the 1996 restrictions on grantees. According to Meese, the current system of competition is "far from what Congress intended," and the creation of non-LSC funded legal services organizations is a "regular tactic" to evade Congressional restrictions. Meese argued that reforms initiated by Congress have not been adequately enforced by the LSC. Meese also criticized the use of taxpayer dollars on behalf of H2A agriculture workers to challenge growers' treatment of them, denouncing the practice as akin to unfairly placing a "thumb on the scales of justice."

Boehm, one of LSC's most vocal antagonists, asserted that LSC has failed at attempts to reform. Like Meese, he argued that with the blessing of the LSC board, legal services lawyers have continually found ways to evade reforms, filing class action suits and lobbying in spite of the restrictions mandated by Congress.

Erlenborn and Ross defend LSC efforts

Erlenborn rebutted the contentions that LSC was not diligent in requiring it grantees to abide by the 1996 restrictions. "LSC has not only upheld the restrictions, it has zealously defended them all the way to the Supreme Court," he testified, alluding *to Velazquez v. Legal Service Corporation*, in which the court found the restrictions regarding welfare reform unconstitutional. Erlenborn added that the LSC will continue to defend the restrictions in a new legal challenge, *Dobbins v. Legal Services Corporation*. He also stated that LSC is prepared to sanction delinquent programs.

Ross vigorously praised the work of the Corporation, its board and its grantees, calling it "a vital and necessary program." "LSC (has gone) beyond what Congress asked," he said. "Since 1996, LSC's leadership has worked closely with congressional leadership in both the House

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LSC Hearing

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access LSC grantee's records. Rep. Jeff Flake (R-Arizona) reminded members of Texas Rural Legal Assistance's 1996 challenge to county elections in Val Verde, Texas and referred to TRLA's listing on a political Web site as evidence that LSC does not adequately monitor the activities of its grantees. Rep. George Gekas (R-Pennsylvania) asked whether LSC management decisions should be subject to judicial review. Ross countered this suggestion, stating, "I don't think it's necessary and I wouldn't support it."

Subcommittee member Rep. Maxine Waters (D-California) spoke of the dire need for legal assistance in her district, and assailed the restrictions on lobbying by LSC grantees. Rep. Melvin Watt (D-North Carolina) spoke on a number of points raised by Meese and Boehm. Regarding the competitive grant-making process, Watt explained that his experience with competition in North Carolina indicated that despite a number of inquiries "at the front end," the interest of potential competitors waned as they realized "how difficult it was to comply with requirements imposed on LSC and how time consuming it was." Watt decried that lack of substantive recommendations from Boehm despite his submission of a lengthy written report. He also characterized the Inspector General and case reporting issues as "old news."

Conclusion

"Old news" may best sum up the tenor of the entire hearing, with perennial opponents of LSC continuing to voice complaints despite the imposition of Congressional restrictions and LSC's efforts to enforce them. At the same time, LSC continues to enjoy strong bipartisan support and White House backing for stable funding.

The written statements of the hearing witnesses can be viewed at www.house.gov/judiciary/commercial.htm

Dialogue *gratefully acknowledges the staff of the National Legal Aid and Defender Association and the NLADA Update for contributing this article.*

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