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:

- 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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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
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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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 out-reach. 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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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?

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

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?

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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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 counteract 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.
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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.

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tor for Southeast Ohio Legal Services.
A chart showing the pooling of
local resources in Licking and
Fairfield counties can be viewed
at www.abalegalsservices/probono/
home.html

Maryland Adopts Pro Bono
Reporting Requirement

O
n 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 estab-
lishes 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 represent-
ing the poor or organizations that
advance the needs of the poor. The
rule does not make pro bono work
mandatory, and includes a provi-
sion that recommends that attor-
neys who do not perform pro bono
work discharge their responsibil-
ity 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 pro-
jects. 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 commit-
tee, 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 mem-
ber of the general public. The com-
mittee will act as a clearinghouse
for pro bono materials and infor-
mation, 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 organiza-
tions, and members of the general
public. The committees, in consul-
tation 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…

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.

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.

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 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.
open forum for program directors and 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.abalegalsservices.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.
Clinical Programs
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The Pennsylvania IOLTA Board did not want its support of law school clinical programs to diminish 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 service 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.

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 responsibilities.

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 (continued on page 13)
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.

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.

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

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.

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New IOLTA program directors

The IOLTA community has recently welcomed several new IOLTA directors. In September, Betty Balli Torres became the executive director of the Texas Equal Access to Justice Foundation (TEAJF). A graduate of the University of Texas School of Law, Torres has an extensive background in legal services in Texas that includes experience as a staff attorney, managing attorney and director for several legal aid and legal services organizations in Central Texas. Prior to becoming executive director, Torres was TEAJF’s director of grants, and previously worked in grants administration for TEAJF in the early 1990s.

Chuck Dunlap joined the Indiana Bar Foundation as its executive director in September. Before coming to the bar foundation, he was the assistant director of planned giving for the Indiana University Foundation. Dunlap is a graduate of the Indiana University School of Law in Indianapolis. Prior to entering the field of foundation management, he spent three years in private practice in Muncie, Indiana, where his practice included estate planning and counseling non-profit foundations regarding tax laws.

The Hawaii Justice Foundation welcomed Michael Broderick as its executive director in October. Broderick came to the Hawaii program following five years as the administrative director of the courts for the Hawaii State Judiciary. Broderick is a graduate of the UCLA School of Law. His experience also includes practicing law in California and Hawaii, serving as director of the Hawaii Center for Alternative Dispute Resolution, and working as a policy analyst for the Hawaii Board of Education and as an assistant to former Los Angeles Mayor Tom Bradley.

Dialogue will profile other new IOLTA directors in the Summer 2002 issue.

Delivery Committee Honors Winners of 2002 Brown Award

Civil Justice Inc. received the Louis M. Brown Award for Legal Access in February during the ABA Midyear Meeting in Philadelphia. The Brown Award is sponsored by the ABA Standing Committee on Delivery of Legal Services, which is dedicated to improving the delivery of services to moderate-income people who do not qualify for legal aid, yet lack the discretionary income to pay for traditional legal services.

Established in 1998 through the University of Maryland Clinical Law Program, Civil Justice Inc. is a nonprofit corporation linking a network of solo and small firm practitioners together electronically through a Listserv and a Web site, www.civiljusticenetwork.org The project provides mentoring and collateral services to assist new lawyers who are committed to providing personal legal services to moderate-income consumers.

Model program for supporting lawyers

“Civil Justice, Inc., is truly a model program for linking lawyers together to deliver legal services to those who do not qualify for legal aid, yet lack the resources to afford full representation,” said Mary K. Ryan, chair of the standing committee. “It integrates lawyers into the community, and provides those lawyers with the collegial support and tactical resources that allow them to use the law as a solution to personal and community problems.”

Under the leadership of Denis J. Murphy, its executive director, the Civil Justice network has grown to include 40 lawyers. Through the network these lawyers have access to a referral service for reduced fee and contingency fee cases, and resources such as an electronic legal research clipping service. Network members share their

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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...
Hotlines
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and assesses whether the person’s legal issue can be handled with legal advice or brief services. The attorney enters the client’s information directly into the computer, eliminating the need for paper records. A hotline panel attorney spends 10 to 30 minutes on the telephone with the client to help work through a legal issue. The services range from providing a client with basic legal information to reviewing documents that the client has faxed to the hotline attorney. If the hotline advocate believes that the issue cannot be resolved through the hotline, the case is referred for extended representation. The information regarding each case, including the notes on the advice given to the client, is then reviewed by a supervising attorney to ensure the quality of the services provided.

Telephone advice has become so commonplace that in 2001 the ABA House of Delegates adopted standards to guide their operation. (See sidebar on page 17.)

Filling a niche
There are two main reasons why a legal consumer would want a question answered without meeting an attorney in person: time savings and cost savings. Resolving an issue over the phone can mean that the client doesn’t have to deal with transportation concerns, doesn’t have to take time off of work, and doesn’t have to make child care arrangements. It can also be an economical way to address a legal issue because the client pays for time spent on the phone, not for a more lengthy office appointment.

Providing an advice panel through your LRIS program may be a way to capture an untapped market. The 1994 ABA Comprehensive Legal Needs Study found that 23 percent of the moderate-income people surveyed had handled a situation with legal implications on their own. Another 26 percent took no action at all. That means that almost half of the moderate-income people surveyed did not access the civil justice system. The study found that the reasons for avoiding the

From the Chair…
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New York State, and New Haven Bar Associations.

The wonder isn’t that such a good idea has come to fruition. It is that more programs have not yet taken advantage of it.

I suspect that some common misconceptions—about iLawyer as well as about perceived difficulties of complying with the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service—are to blame. With respect to the Model Rules, first, programs in those jurisdictions that have adopted lawyer referral regulations—such as California and Ohio—will in all likelihood be certified (provided that they are in compliance with those rules) without making any changes in their operations.

Second, in jurisdictions lacking such rules, uncertified programs are often much closer to meeting the ABA requirements than they think. Indeed, numerous programs merely need to make one or two changes to do so.

For example, the most common stumbling block—the subject matter panels requirement—is significantly easier to satisfy than is commonly believed. Space does not permit me to explain why in any detail, other than to say that programs often greatly overestimate the number of such panels they must establish. If your program is just one or two steps short of full compliance, I urge you to contact the LRIS Committee staff and/or request a visit from the committee’s Program of Assistance and Review (PAR) to learn how easy and painless it can be.

As for those programs that are already certified, but are not currently part of the iLawyer network, a word about some potential misconceptions about iLawyer:

• Start-up costs: Your program pays nothing to be connected to iLawyer. iLawyer provides free training and free technical support. No special software is required to operate with iLawyer and the service is completely accessible through an ordinary Web browser. The training time required to learn how to access and process referrals is also minimal, and well worth it to tap into a new client base.

• iLawyer will take our consultation fees: iLawyer works with programs to develop a fee structure that meets their unique needs. For example, several bar associations, which generate most of their revenue from percentage fees, compensate iLawyer by allowing it to charge, and retain, a $25 administrative fee from clients. With another program,
Hotlines  
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legal system most commonly identified by the respondents were doubts that the system would help, a fear of unmanageable costs, a sense that their problem was not serious enough, or a desire to handle the matter on their own. Brief advice panels address these concerns by offering services at a defined and contained cost, helping clients handle matters on their own, and making it easier for clients to seek legal advice at an earlier stage, when problems may be more easily resolved.

An LRIS program with an advice panel may be an answer to those concerns. Because an advice panel attorney charges for services over the telephone, the client knows at the beginning how much the legal services will cost, and has greater control over the continuation of services and charges. The client can limit expenses more easily than if he or she were meeting in person with an attorney. Additionally, as the prepaid industry learned, telephone advice can help clients resolve issues on their own. Not all clients or legal matters (continued on page 18)

ABA Hotline Standards

In August 2001, the ABA House of Delegates adopted standards for hotline operation. Formally titled “Standards for the Operation of a Telephone Hotline Providing Legal Advice and Information”, the standards were drafted and presented to the House of Delegates by the ABA Standing Committee on the Delivery of Legal Services.

Highlights of the standards include recommendations that hotlines:

• Advance the core values of the legal profession
• Ensure that the limits of service are defined and that the client consents to those limits
• Provide hotline personnel with competent information
• Comply with all ethical rules applying to law practice, including conflicts of interest and confidentiality.
• Respond promptly to calls and have adequate access to lawyers
• Inform clients if information is provided by non-lawyers
• Establish adequate database and information retention systems
• Screen for needs and provide preventative services
• Be able to refer to other legal services or non-legal resources
• Establish a system for quality control, feedback, and complaints
• Inform callers of charges for services prior to service

The full text of the standards may be accessed on the Web at www.abalegalservices.org/approvedstandards.pdf

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iLawyer charges a small fee for each completed intake questionnaire.

As to the quality of the referrals generated, keep in mind that they all come through the Internet, and that the Web-using public tends to have above-average income. In other words, these referrals can pay the freight. (Also keep in mind that a program should typically generate enough revenue from referrals to pay a reasonable cost of acquiring clients. If not, a PAR visit may be in order.)

• We have our own software and we don’t want two systems:
Integration is possible for any program that wants to feed iLawyer data into its own system, but programs can also begin to get iLawyer referrals without such integration, and then simply wait until volume makes integration worth the time and money.

Change is always hard and often daunting. But an opportunity offered by iLawyer—Web-based marketing to, and referral of, affluent potential clients at low cost and little risk—should be as hard to pass up as it is to beat. I urge you to take a look—or another look, as the case may be—at iLawyer.

Note: iLawyer soon will offer a new service: it will fax and email intakes produced by its Web site directly to bars that meet ABA standards. Recipient programs have no need to use the Internet-based features of the iLawyer system in order take advantage of this option. Programs can try the new service for $6.25 per intake, and limit their financial obligation to a set dollar amount, such as $50, $250 or $500. To learn more about this service or about iLawyer in general, send an email to Adam Slote, iLawyer’s president, at info@ilawyer.com or call him at 415-292-0660.

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are appropriate for the LRIS program to help take the self-help route. However, not all legal needs are complex, and one way to make legal services attractive to an untapped market is to make it possible for clients to obtain legal advice and still resolve issues on their own.

The question of liability
Because hotline attorneys are not involved in, and therefore do not control, all aspects of a client’s legal matter, the question of increased liability to the LRIS program and to panel attorneys has been raised. Attorneys with legal malpractice insurance should be covered for their work on the legal advice panel through their professional liability policy, which covers any and all legal work done within the lawyer-client relationship. Further, there is no evidence to date that indicates that brief legal advice or discrete task (unbundled) services result in a greater risk of legal malpractice.

While a LRIS program cannot be held liable for legal malpractice, protecting the program from negligent referral liability exposure for a brief services panel requires the same safeguards as for any other panel—objective qualifications for participation in the panel, and accurate description of panel attorney qualifications to prospective clients. If the LRIS program has negligent referral liability coverage in the bar association’s errors & omissions policy, the brief advice panel should be covered along with all other panels of the LRIS program. While this insurance coverage should apply to hotline activities, it is always a good practice to review your policy to ensure that it does contain all of the necessary coverage when you make changes to the ongoing activities of your program.

Conclusion
If you are convinced that brief advice panels can fill an underserved and attractive consumer niche by providing moderate-income clients with an alternative to high cost comprehensive legal representation, there are further questions to be resolved: how do you go about developing a panel for your own program? Are there commercial hotline programs to partner with? What are the pros and cons of this type of arrangement? Is it better to use panel attorneys, or hire in-house attorneys and pocket the legal fees? What types of cases and services lend themselves to brief advice? In the next issue of Dialogue, we will discuss the options you can select from in developing a brief advice panel for your LRIS program.

Mary Ann Sarosi is a member of the ABA Standing Committee on Lawyer Referral Information Service. Sarosi was the founding executive director of CARPLS, a legal aid hotline in Chicago.

Sheree Swetin is the executive director of the San Diego County Bar Association. She spent many years as staff director of the ABA Standing Committee on Lawyer Referral Information Service.

Brown Award
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pleadings, research and practice experience through the Listserv.

Other nominees recognized
Three other Brown Award nominees were chosen to receive meritorious recognition: the ARAG Group, which administers legal advisory plans in all 50 states; the law firm of Kimmel & Silverman, which focuses on enforcing “lemon laws” on behalf of consumers in New Jersey, Pennsylvania and Delaware; and Velie & Velie, an Oklahoma law firm which offers immigration law services via its Web site, www.OnLineVisas.com

A booklet describing the projects nominated for the 2002 Brown Award, titled “Profiles of Moderate Income Delivery Programs,” is available from the Delivery Committee. It is designed to stimulate improved access to legal information, services and representation.

To request a copy of the booklet, contact Will Hornsby, staff counsel, at whornsby@staff.abanet.org or 312-988-5761. For more information about the Louis M. Brown Award for Legal Access, go to www.abalegalservices.org/delbrown.html

Mark Your Calendars for 2002 LRIS Workshop!
Join your colleagues in historic Philadelphia on October 23 to 26 to learn about the latest innovations in the “business of public service”—LRIS! The programming for the 2002 LRIS Workshop will feature special tracks for front-line intake staff, in addition to special segments for bar leaders and experienced staff managers. New pre-conference programming will focus on the nuts-and-bolts of LRIS program management. You cannot afford to miss this opportunity to network with your colleagues.

Let us know what you would like to see and hear at the 2002 workshop. Send your message to the Workshop Planning Committee by writing to jnosbisch@staff.abanet.org
LRIS Responsibility to Hearing Impaired Clients

by Lonnie Davis

According to a Washington State appellate court decision, "treatment received in a hospital generally includes not only medical intervention but also the opportunity to explain symptoms, ask questions, and understand the treatment being performed including options, if any." This statement, in an opinion regarding a disability-based discrimination case involving the provision of American Sign Language (ASL) interpreters, probably wouldn’t generate much controversy in a room full of lawyers. However, when applied to the conduct of business in law offices, it might raise more concern.

Reasonable accommodation
What does it really take to provide nondiscriminatory, comparable legal services to people with disabilities, in particular to those who are deaf? A federal law, the Americans with Disabilities Act (ADA), forbids disability-based discrimination by places of public accommodation. Law offices are places of public accommodation, just as department stores may be. Therefore a law office is obliged to provide “reasonable accommodations” for people with disabilities.

From the perspective of civil rights compliance, the critical question is not whether a disabled person received high quality legal services, but whether he or she is given a comparable opportunity (relative to non-disabled persons) to ask questions and understand the options. A law office has broad discretion to choose the form of reasonable accommodation it will provide, but the method selected must give a person who is deaf a comparable opportunity to talk to his or her attorney. This means that a law office may be required to provide interpreters and other services in order to ensure effective communication with people who are deaf.

Under Washington law and the regulations of the Washington Human Rights Commission, it is an unfair and discriminatory practice to “charge for reasonably accommodating the special needs of a disabled person.” Federal regulations contain a comparable prohibition, as do many state regulations. Civil rights laws don’t interfere with an attorney’s right to set fees applicable to all clients. They do, however, absolutely forbid charging any extra fees to individuals with disabilities. The interpreter charges may be a factor in setting the fees charged to all clients, just as other overhead expenses are.

Often, a reasonable accommodation for a person who is deaf includes providing qualified interpreters. Absent very good reason to do otherwise, a law office should select interpreters certified by the national Registry of Interpreters for the Deaf. The best practice is to ask a disabled client what kind of interpreter he or she prefers. A law office is not required to provide the exact form of accommodation requested by a client, but it has to take reasonable steps to ensure that an individual who is deaf is given an opportunity to communicate with the attorney that is as effective as the opportunity provided to others.

For this reason, keyboard and other forms of written communication are not adequate for accommodating hearing impaired clients. Replacing direct communication with typing or writing does not serve deaf clients well. Many persons, deaf or not, do not have keyboard skills. In addition, written notes tend to avoid detail in order to save time. Most important, ASL is a separate language with its own special grammar and syntax, and the keyboard method offers no protection against miscommunication due to differences in grammar. In a legal setting, this can be disastrous.

Custom and culture
The ADA and state laws against discrimination establish the rules as to what attorneys are obligated to do, but there are also some preferable ways to do it. Respect for the individual and patience in communicating are certainly important, but attorneys also should follow some basic rules of etiquette in using a sign language interpreter. It may be necessary to ask a client for his or her second and third preferences in interpreters, but the individual’s preference should be respected. When the interpreter is working, he or she becomes transparent—an attorney’s communication is always directly with the client. That means that an attorney should not look at an interpreter and say “tell her…” or “ask him…” because deaf clients deserve the same courtesy as other clients. An interpreter must interpret everything that is said to the client, and back to an attorney.

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Ask Dr. Ethics: Client Confidences

Dear Dr. Ethics:
I know you said—or at least implied—in your very first column that LRIS programs can keep what our clients tell us confidential. And I think you promised to tell us more soon. Now we’ve got a big problem and you never did write “Confidentiality: Part 2.”

Yesterday, we had a client call our office in a rage threatening to kill his lawyer. This guy was referred on a domestic case that involved allegations of violence, and the interviewer who did the intake is not at all sure that this guy is safe. We’re worried about the lawyer. But do we have to keep what this guy says confidential? Or does our confidentiality operate only through the lawyer’s attorney-client relationship, so that we can go ahead and warn the lawyer?

—Desperate in Des Plaines

Dear Des:
Well, first, you caught us. In Dr. Ethics #1, we raised a question that we said we’d “perhaps address more fully in a future column.”

Here was our question: “Is what the client tells the LRIS confidential as it relates to the lawyer? Most LRIS programs consider what their clients tell them to be confidential, because the LRIS program is an arm of the lawyer, and thus part of the attorney-client relationship chain. But what about where the lawyer and the client are at odds? Can the LRIS program assure client confidentiality without telling the lawyer?”

If your state has adopted the ABA Model Supreme Court Rules Governing LRIS, you have your answer. Those rules set up independent confidentiality for the LRIS—a confidentiality that is not dependent on the lawyer. Your requirements of confidentiality relate directly to the client. Most of the time, this is one of a number of good reasons to try to get those Model Rules passed as the law of your state. Here, though, where there’s a danger to the lawyer, this confidentiality can become a problem.

There’s no clear right or wrong “technical” answer to your question, but Dr. Ethics is not about to take a position that would allow this dangerous client to harm an innocent lawyer (well, maybe that’s an oxymoron) without giving a warning. Technicalities don’t mean a helluva lot where lives are at stake. Besides, if you were to use a standard that parallels the Model LRIS Rules regarding the behavior of lawyers, as amended in August 2001, you would be able to warn the lawyer if it were “reasonably certain” that death or great bodily injury will occur. This would liberate lawyers from the usual requirements of confidentiality. It seems only reasonable to conclude it would liberate you, as well, to warn the attorney.

—Dr. Ethics

Dear Doc:
We’ve got a Web site up and running and we’re starting to use it for intake in some situations. We recently did an electronic intake for a business litigation case. The client filled out a form that may have shown that his business was involved in a criminal fraud. At least that’s what the local U.S. attorney thinks. They’ve just contacted me to get a copy of that form and threatened to subpoena it if we don’t turn it over. And they tell me that he didn’t hire a lawyer through us, so we can forget about the argument that we were an arm of his lawyer, and covered by the lawyer’s privilege.

—Upset in Upper Montclair

Dear Up in Up:
How quickly can you get the Model LRIS Rules passed through your state legislature? Aside from that highly unlikely solution, there is no clear answer here.

You may not be an arm of the lawyer but may still be able to claim confidentiality—and even a legal privilege. Or, on the other hand, you may not. So far as Dr. E. knows, the only time this has happened was many years ago in San Francisco, and the folks seeking the subpoena eventually caved in without getting the information.

But this result happened only because the LRIS program fought to maintain its confidentiality. The fact that there aren’t clear guidelines or precedent on point doesn’t mean that you fork over the information just because you get a subpoena. You are entitled to resist the subpoena by lawful means, such as challenging it in court with a “motion to quash” or other suitable legal action. Hopefully, a member of your committee or board of directors, or one of your panel members, will volunteer to help you litigate your opposition to the subpoena.

And meanwhile, don’t forget that your client may not have one of your lawyers, but undoubtedly has secured a lawyer. Find that person and work together to ensure the confidentiality of your records. After all, the client wants to protect against disclosing that form even more than you do.

Good luck!

—Dr. Ethics

Dr. Ethics is otherwise known as Richard Zitrin, who is the director of the Center for Applied Legal Ethics at the University of San Francisco.

The analysis and opinions in this article are those of the author, and do not necessarily represent the views, policy or opinions of the American Bar Association or the ABA Standing Committee on Lawyer Referral and Information Service.
Hearing Impaired
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without any asides or additional material.

Chairs also need to be specially arranged for using an interpreter. The client should be seated so that he or she does not have to look into the sun or bright lights in order to see the interpreter. An attorney should always face the client when speaking and never turn away from the client to face the interpreter. A client who cannot see the attorney’s face cannot see the attorney’s lips or facial expression either.

If an attorney needs to communicate with a deaf client by telephone, it can be done with a TTY device or through a relay system. Many states have relays that allow a deaf client to use his or her TTY device to communicate to another party on a regular phone. Again, the relay operator is just a conduit and the communication should be directly with the client.

Effect on LRIS Programs
If the attorneys on an LRIS panel must comply with the ADA and state discrimination laws in serving clients with disabilities, what about client intake at the LRIS level? It seems clear that the LRIS program should communicate with deaf clients either through a relay system or through a TTY device in order to make a referral. It will take the intake staff longer with a relay phone call, but it may be easier than purchasing and trying to maintain the TTY equipment. The question comes as to the payment for interpreters at the initial consultation—does the LRIS program pay or does the attorney pay? Since most LRIS panel attorneys offer the first half-hour of consultation free so the consultation fee can go to the LRIS program, it is more reasonable that the program pay the interpreter for the first consultation. The interpreters usually charge a minimum of one hour (sometimes two) and it does usually take longer for a consultation with an interpreter.

Funding a new service component is always a serious undertaking for LRIS programs. In making the economic assessment, programs should consider that making a client population welcome by providing adequate accommodation becomes a positive service factor that will be communicated to other potential clients. The LRIS program can make an initial annual budget allocation of $1000 (possibly budget sharing with a local pro bono program) to cover the costs of the initial interview process. Attorneys on the panel who properly accommodate deaf clients and make them feel welcome may also gain more than is spent on accommodations by attracting a new client population.

This issue is one that is frequently overlooked, as most LRIS programs don’t serve a large number of deaf clients. Panel members, too, are often unaware of their obligations to deaf clients under the ADA and state laws, although they are often cognizant of the requirements for wheelchair access. LRIS programs can do much to educate their panel members and to improve legal services to persons with serious hearing disabilities.

Resources regarding ADA compliance
The U.S. Department of Justice maintains a Web site at www.usdoj.gov/crt/ada/adahom1.htm with ADA information and links. A related ADA information line can be reached at 800-514-0301.

The National Association of the Deaf has information for attorneys working with deaf clients at www.nad.org/infocenter/infotogo/legal/ada3lawyer.html

Most states have a governor’s committee on disability issues and employment that may provide state-specific information on complying with the ADA. A list of state committees can be viewed at www.dol.gov/dol/odep/public/directory.htm

The Disability Rights Education and Defense Fund maintains a Web site with information and links at www.dredf.org

The ABA Commission on Mental and Physical Disability Law is another source of legal information at www.abanet.org/disability/home.html

Endnotes
2 28 C.F.R. §36.301(c)

Lonnie Davis is the director of the Disabilities Law Project in Seattle. He has been litigating cases for clients with disabilities for more than 20 years.

The information provided in this article is intended to serve as informal guidance, not as legal advice. The views expressed here are those of the author, and do not necessarily represent the views, policy or opinions of the American Bar Association or the ABA Standing Committee on Lawyer Referral and Information Service.
Civilian Attorneys and Local Bar Associations Answer the Call in Operation Enduring LAMP

by Glenn Fischer

Civilian attorneys and local bar associations have responded to Operation Enduring LAMP, the ABA’s call for assistance to mobilized reservists that was launched in November 2001. Both have provided a vital support network for members of the Armed Forces and military advocates contending with the mobilization involved with the military’s response to the September 11 terrorist attacks.

Many local bar associations report success in serving as conduits for quick and effective referrals to civilian lawyers who have volunteered to help support our nation’s military personnel. Additionally, Operation Enduring LAMP has served as a springboard for fostering a stronger bond of trust and communication between the civilian bar and military bar.

These successes most likely result from increased awareness and interaction among potential clients, civilian volunteer attorneys and the military legal assistance network. In some cases, these efforts have resulted in improvements as simple as the ready availability of legal forms. Dwight Dinkla, a judge advocate in the Iowa Army National Guard and executive director of the Iowa State Bar Association, recently commented on the ready-to-use forms and training materials available on the ABA’s Enduring LAMP Web page at www.abalegalservices.org/helpreservists Because of their easy accessibility on the Web, these materials helped Dinkla offer valuable information to lawyers, and identify a place for service members and their families to turn to for legal assistance. For example, Dinkla explained how the Web site helped one service member—an Iowa resident on active duty out of state—make a direct link to pro bono services in Iowa. The service member linked to the Iowa State Bar Web site via the ABA Web site, and secured access to legal assistance.

Similarly, Betsy Hilt, programs administrator for the Tennessee Bar Association, reported that while the level of legal assistance has varied from simply providing lists of available civilian volunteers to making direct contact between lawyers and potential clients, access to materials and services was the key. According to Hilt, one example of Operation Enduring LAMP’s effectiveness involved a service member (who had been stationed overseas) with a family law problem. The service member successfully reached a stateside volunteer, even though the service member’s permanent home was located in a very rural area.

Efforts to solidify the working relationship between the civilian bar and the military bar have received overwhelming support in Washington State. Recent changes to the state’s bar admission rules now allow JAG officers to appear in civilian courts in certain civil matters (see page 27). According to Ken Luce, current chair of the Washington State Bar Association LAMP Committee and a former member of the ABA LAMP Committee, these changes were made at a record pace (in less than six months), and received essentially unanimous endorsement from lawyers, judges, bar associations and the Washington State Supreme Court.

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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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Legal Assistance for Military Personnel

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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From the Chair... (continued from page 23)

On the metaphysical level that Plato contemplated, the answer to his question above is “yes,” but for American service members who die unexpectedly, the answer is “no!” The end of a life is often the beginning of a long, difficult process for survivors that includes insurance settlements, probate, guardianships for children, creation of trusts, claims of statutory entitlements, and transfer of stock, real estate and other property. While unexpected deaths are painful and tragic, the anguish, suffering and complexity of estate settlement and caring for surviving family members often increase exponentially when there is no will and other advance legal planning.

Thousands of American service members have died in the past 10 years in vehicle and other accidents, training mishaps, terrorist acts, and combat, or due to illness, foul play, misadventure, and suicide. From 1992 to 2001, 513 Marines perished in private motor vehicle accidents alone. Thousands more will die on- and off-duty in the years ahead. Dying is unfortunately an everyday occurrence in the Armed Forces, and what is “not swallowed up in death” is considerable.

Can and should the Armed Forces do more to ensure the readiness of service members to deploy on a moment’s notice, to leave families behind, to be injured or die by accident, illness, from terrorist act, or in combat? You bet! Our legal assistance and preventive programs should be enlarged and expanded so that they reach every adult in the military family—every enlisted member, officer, and spouse. A legal assistance attorney should periodically interview every such adult in a confidential setting to determine his or her need for a will, durable power of attorney, and other legal services. Our leadership should work with the Congress to amend 10 USC §1044 to guarantee comprehensive legal assistance for junior enlisted personnel and readiness-related legal assistance for all service members. With our all-volunteer, mostly married force, dependence on reserve and National Guard units, and the prospects of a protracted “war against terror,” the need for such action has never been greater.

Spotlight (continued from page 23)

Legal assistance at NLSO Pearl Harbor is under the Civil Law Division, headed by Lieutenant Brian Summerfield. The officer-in-charge of legal assistance is Lieutenant Charles B. Dunn. Legal assistance lawyers include Lieutenant Myoung Lee, Lieutenant junior grade Janelle Lokey and a civilian lawyer, Sarah Courageous. Legal assistance administrative support is provided by LN2 Megan Kaiser, LN3 Tiffany Breaux, Kathleen Campos, a civilian paralegal, and Mr. Fred Eberlein, a civilian secretary. The legal assistance office not only performs invaluable legal assistance at the retail level, it also provides numerous preventive law briefs and stocks a wide assortment of preventive law publications. Equally important, the Navy legal assistance office publishes a monthly legal newsletter, the Kanawai News (Kanawai is a Hawaiian word for law).

Marine Corps Legal Assistance Center

Also in the spotlight this time is the Marine Corps Legal Assistance Center, Legal Service Center, Kaneohe Bay, Hawaii. Officer-in-charge Captain Alison Daly hosted our visit. (Since then Daly received orders to 3rd MEF, and has been replaced by Captain Jason B. Ormsby.) Legal assistance attorneys Captain David Fennell and First Lieutenant John R. Lehman II staff the center. The noncommissioned officer-in-charge and longest-serving member of the legal staff (and certainly one of the most remarkable) is Corporal Joshua Whann. His staff includes Lance Corporal Jeremy Pannel and Wendy Biebie, civilian paralegal and extended legal assistance program (ELAP) coordinator. The center has an active ELAP program, which allows the Biebie to file legal forms in matters involving uncontested divorces and guardianships. At Kaneohe Bay, there are a significant number of step-parent adoptions.

After the September 11 attacks, the Marines prepared for armed conflict. The Legal Assistance Center at Kaneohe Bay, like most other Marine Corps legal assistance shops, went into pre-deployment mode, evaluating individual legal needs by checklist, conducting classes for units, and insuring that each Marine possessed a will and advance directives. The Legal Assistance Center at Kaneohe Bay was extremely productive in the months after September 11, addressing the legal needs of 10,000 individual and writing 1200 wills.
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.

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 (SCCRA) case. The Cathey case resulted in a legal precedent that has reemphasized the importance and strength of the SCCRA 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 SCCRA. The full import of Odom’s efforts became (continued on page 26)
Award Winners
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clear during the mobilization of reserve units following the attacks on September 11.

In addition to his efforts in the Cathey case, Odom has worked to lecture about the case and provide educational briefs on the SSCRA. He has also consulted with members of the United States Senate and Air Force Legal Assistance Division about areas of the SSCRA in need of reform. Colonel Odom’s passion for the SSCRA made him an obvious choice for the LAMP Distinguished Service Award.

Navy winner helped establish paralegal program
Captain Bruce E. MacDonald, JAGC, United States Navy, commanding officer of Naval Legal Service Office Northwest, was recognized for his outstanding efforts in establishing a paralegal degree program with Highline Community College in Bremerton, Washington for Navy legalmen and civilian employees. This American Bar Association-accredited program has already produced a dramatic increase in the competency and skill level of the command’s paralegal support staff. Buoyed by the program’s local success, Captain MacDonald has worked tirelessly to establish it nationwide. A satellite program is to be established in Jacksonville, Florida in spring 2002.

In addition to his outstanding work with the paralegal program,

Inaugural Legal Assistance Essay Contest Seeks Innovation

Cash prizes of $1250 and an opportunity to make your voice heard about military legal assistance are the main attractions of the inaugural Legal Assistance Essay Contest, sponsored by the ABA Standing Committee on Legal Assistance for Military Personnel.

The LAMP Committee is currently accepting submissions addressing this year’s selected topic: What is the greatest challenge facing legal assistance? The overall winner of the competition will receive $1000 and the runner-up will receive $250. Military and civilian lawyers and paralegals are invited to participate.

“We are extremely pleased to announce this essay competition and we hope that it will lead to new and innovative techniques being developed in the area of legal assistance,” said LAMP Committee Chair, David C. Hague, Brigadier General, United States Marine Corps (retired). The contest seeks papers that challenge conventional wisdom by proposing modifications to current directives, policies, customs, or practices relating to military legal assistance and preventive law. Entries should both identify the greatest challenges facing legal assistance and develop a resolution to the problem.

Contest entries must be postmarked no later than July 1, 2002 and may not exceed 3000 words, including quoted matter and citations. Entrants should include a cover page with the title of the essay, the author’s name, and identification of the essay as a Legal Assistance for Military Personnel Entry. The author’s name should not appear anywhere but on that cover page. The essay title should be repeated on the first page of the essay. For complete information on the contest rules and regulations visit the LAMP Committee’s Web site at www.abalegal-services.org/lamp/essay2002.html Entries should be sent to Edna Driver, Legal Assistance Essay Contest, ABA Staff on LAMP, 541 N. Fairbanks Court, Chicago, IL 60611, or via email to drivere@staff.abanet.org

Captain MacDonald traveled throughout Washington State to build support for an amendment to the Washington State Admission to Practice Rules that would permit the Navy’s Expanded Legal Assistance Program. The Washington State Supreme Court recently approved the amendment (see box on page 27). The extension of the ELAP to Washington will pay huge dividends for military personnel who would otherwise be unable to afford legal counsel.

Navy winner helped establish paralegal program

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Marine’s work ethic pays off for clients
A second time nominee and a first time individual award winner is Captain Jerry Alonzo Stevenson II, United States Marine Corps, stationed at the Legal
Enduring LAMP
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Luce remarked that there was a great amount of cooperation among all parties involved, and that he expected future efforts, such as establishing a mandatory CLE program for newly admitted JAG officers, to have similar results.

Overall, members of both the civilian and military bar have demonstrated their commitment to readiness in Operation Enduring LAMP. Despite these successes, however, there is more work to be done. Many local bar leaders anticipate an increase in requests for service, especially once active duty personnel begin to rotate home from their assignments.

Award Winners
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Assistance Office, Marine Corps Air Station, Miramar, California. Leading a staff that ranged from one to two attorneys, two clerks, a staff non-commissioned officer, and a civilian paralegal, Stevenson paved the way for his office to provide over $2.5 million in legal services to deserving clients. Stevenson provided the majority of the legal representation of service members, which produced over $9 million in judgments, saved damages and tax refunds.

In his “free time”, Stevenson published tax tips and preventive law articles both in the base newspaper and by email. Stevenson also was instrumental in implementing his office’s Key Volunteer Legal Liaison Officer Program. The program was developed to facilitate the flow of information to the local Marine spouse community and provide greater access to legal assistance for military family members.

Army attorney improved efficiency at Fort Dix
Making something out of virtually nothing is an accurate description of the legal assistance efforts of Captain Steven Fromm, United States Army. Prior to Fromm’s arrival at Fort Dix, New Jersey, in October 2000, legal assistance for a population of over 80,000 active and retired personnel was provided by a cadre of reserve officers. Fromm reorganized the office and created standard operating procedures for handling many tasks in order to increase the efficiency of the office. He rejuvenated the office’s preventive law program, including writing six articles for publication in the Fort Dix newspaper.

Finally, and perhaps most importantly, Fromm led the legal processing of over 1,400 soldiers from the 29th Infantry Division for deployment to Bosnia, and a month later handled the legal processing for an additional 1,000 soldiers mobilized to serve as homeland security forces in the aftermath of September 11. Not surprisingly, Fromm’s customers have rated his services as “excellent” and routinely comment that the Fort Dix legal assistance program is the “best” office they have ever visited.

Daniel K. Bean is a member of the ABA Standing Committee on Legal Assistance to Military Personnel.

The LAMP Committee will highlight the outstanding work of many worthy nominees for the Distinguished Service Award in a future issue of Dialogue.
The Armed Forces Tax Council: The Military’s Tax Advisor

By LTC Thomas K. Emswiler

What is one low-profile Department of Defense (DoD) body that regularly decides matters that affect all members of the uniformed services? The Armed Forces Tax Council, charged with coordinating the DoD’s treatment of tax issues affecting service members and the department as an employer, is actively engaged in efforts that provide significant, long-term benefits to the members of the uniformed services.

The tax council originated as the Armed Forces Individual Income Tax Council on October 22, 1951. It was created to ensure the uniform application of tax laws and regulations to the DoD as an employer, and to service members as taxpayers. Previously, the tax treatment of members of the Armed Forces sometimes varied by service. The Assistant Secretary of Defense memorandum that formed the council charged it with responsibility for coordinating all matters involving tax laws and regulations pertaining to the DoD’s obligations as an employer and to the rights, benefits, and liabilities of service members.

On December 1, 1988, a new DoD memorandum (Directive 5124.3), cancelled the 1951 memorandum and created the current Armed Forces Tax Council. The new council’s responsibilities were similar to those delegated by the 1951 memorandum. It was to coordinate matters affecting federal, state, local and foreign tax liabilities of members of the Armed Forces, and the related obligations of the service branches as employers.

The council consists of an executive director whose office is in the Office of the Assistant Secretary of Defense (Military Personnel Policy), and one member each from the Army, Air Force, Navy, and Marines, as well as from the Defense Finance and Accounting Service. Service representatives are typically assigned to the Judge Advocate General’s Legal Assistance Policy Division. The U.S. Coast Guard, the National Oceanic and Atmospheric Agency, and the Public Health Service are each represented by an unofficial member.

Each member of the council is an attorney, and most members have a master of laws degree in Taxation. The director is responsible for executing all of the council’s actions and functions as the principal advisor on council matters. He or she serves as the DoD point of contact on tax issues, acts as an interagency liaison, and responds to inquiries. The director also initiates legislative proposals, and, with the assistance of the council, prepares the DoD’s position on relevant tax legislation.

The council meets approximately every 10 weeks. It prepares interpretations of tax laws, regulations and rulings requested by DoD offices and agencies. It provides advice on matters related to tax policy as it affects members of the Armed Forces. It serves as the DoD’s liaison to federal, state, and local tax authorities. It reviews current and proposed DoD and military department publications and regulations. It responds to requests for rulings and comments on DoD regulations from the Treasury Department, the Internal Revenue Service and state taxation authorities.

Recent council actions included the Afghanistan combat zone designation, legislation that created a self-proving clause for military wills, legislation that exempted the Armed Forces Health Professions Scholarship from taxation, legislation that allowed DoD legal offices to accept voluntary legal services, and a comment on the proposed Section 121 regulations. The council also worked with the Department of the Interior, the Department of Justice, and Congressional staff members to ensure that Native Americans entering the service from a tribal reservation are entitled to maintain that tribal reservation as their tax home just as other members are entitled to maintain their state of residence as their tax home. The council continues to support amendments to Internal Revenue Code Section 121 that will ensure that members of the uniformed services are treated equitably.

Behind the scenes, the Armed Forces Tax Council works toward the most favorable tax results for the military branches and military members.

LTC Thomas K. Emswiler is a member of the Army and is executive director of the Armed Forces Tax Council.
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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From the Chair…  
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1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.

2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.

4. Defense counsel is provided sufficient time and a confidential space with which to meet with the client.

5. Defense counsel’s workload is controlled to permit the rendering of quality representation.

6. Defense counsel’s ability, training, and experience match the complexity of the case.

7. The same attorney continuously represents the client until completion of the case.

8. There is parity between the defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

9. Defense counsel is provided with and required to attend continuing legal education.

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

The full text of the resolution, including commentary to the principles and an accompanying report, is posted on the ABA website at www.abalegal-services.org.

In recent weeks, SCLAID has received numerous requests for copies of the principles from individuals working to improve indigent defense systems in states such as Texas, Louisiana, New York, Michigan, Mississippi, and Montana. Copies of the policy statement were distributed at the recent inaugural meeting of the Texas State Task Force on Indigent Defense, a legislatively created commission charged with developing and enforcing uniform standards and guidelines for indigent defense systems in all 254 Texas counties. In March, the Georgia Supreme Court Commission on Indigent Defense held an educational program devoted entirely to indigent defense standards and attributes of quality indigent defense systems, during which the Ten Principles served as an important point of discussion.

SCLAID is gratified to know that the ABA Ten Principles of a Public Defense Delivery System may be of use in these and other efforts to improve indigent defense around the country.

Loan Repayment and Forgiveness Update

ABA House of Delegates adopts resolutions

In February, the House of Delegates adopted two resolutions pertaining to loan repayment and forgiveness at the 2002 ABA Midyear Meeting. The resolutions—300A and 300B—were submitted to the House by the ABA Commission on Loan Repayment and Forgiveness and were cosponsored by several ABA entities, including the Standing Committees on Legal Aid and Indigent Defendants and Pro Bono and Public Service.

The resolutions provide the following:

- Resolution 300A supports improvements to the income-contingent repayment option (“ICR”) of the William D. Ford Federal Direct Loan Program. The ICR was created to enable graduates, including law students, with high debt to take low-paying community service or public interest jobs. The ICR caps annual loan repayment obligations based on a borrower’s income and forgives any balance remaining after 25 years. Because of the excessively long period before loans can be forgiven, very few law graduates participate in this program. The improvements recommended in the resolution would enable ICR to realize its intended goals.

- Resolution 300B supports an increase in the amount a law student may borrow annually in unsubsidized loans under the Stafford loan program to at least $30,000. This increase would permit more law students to borrow a higher percentage of the funds they need at lower interest rates, while also making a greater portion of the debt of law graduates eligible for repayment (and eventual forgiveness) under the ICR.

Commission meetings

The commission held its second meeting on February 20, 2002 in New Orleans. Members discussed progress reports from all of the
LSC Hearing
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and the Senate to ensure that the Corporation and its local grantees are focused on meeting the basic legal needs of the poor. The Corporation has demonstrated its commitment and ability to carry out the program changes. LSC management aggressively enforces the restrictions, continues to work diligently and successfully to improve the case service reporting system and has engaged in comprehensive state planning which has significantly improved the delivery of legal services.”

Referring to a 1994 ABA needs assessment study, which found that only 20 percent of those eligible for civil legal aid are being served by the current system, Ross said “the single greatest deficiency of the Legal Services Corporation is the lack of adequate resources to meet the need.”

Erlenborn also touted LSC’s reconfiguration process, stating that it is central to LSC’s efforts to drive improvements in the economic and effective delivery of civil legal aid across the country.

Congressional comments
Several members of the House subcommittee spoke during the hearing, both for and against LSC. Barr questioned Erlenborn about whether the Erlenborn Commission—created last year to review the impact of the 1996 restrictions on legal services programs—complied with governmental disclosure requirements when it met behind “closed doors.” Erlenborn testified that the commission is not in fact governed by such requirements.

Barr also asked about competition for LSC funding, case service reporting, and the ability of the LSC Office of Inspector General to

Loan Repayment
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commission’s work groups. The commission will meet again July 12-14, 2002.

Pending LRAP legislation
As of press time, legislation that would establish new loan repayment assistance programs (LRAPs) is pending in two states—Connecticut and Georgia. The Georgia bill was drafted in response to a recommendation to Governor Roy Barnes from the Georgia Legal Loan Forgiveness Task Force. The Georgia bill has passed both houses of the state legislature and awaits the governor’s signature. The Connecticut bill is pending in a committee. The Connecticut and Georgia bills vary in scope, but both propose the creation of statewide loan repayment or forgiveness programs to provide assistance to attorneys in a variety of public service legal settings, including civil legal aid attorneys, assistant public defenders and assistant district attorneys.

Both bills can be viewed online:
• Connecticut – www.cga.state.ct.us/default.htm (search for SB 53)
• Georgia – www.ganet.org (search for SB 465)

LRAP legislation is also pending in Michigan, where the state house version of the state’s judiciary budget includes funding for a debt management loan program for attorneys employed by legal services organizations. As of press time, the budget had passed the house and is pending in the state senate. The proposed judiciary budget earmarks $250,000 of the total civil legal assistance appropriation (which is $7.587 million) for the debt management loan program. For more information, visit http://MichiganLegislature.org and search for HB 5648 (Section 319).

Law school LRAP developments
Marquette University Law School in Wisconsin recently established a Loan Repayment Assistance Program that encourages its graduates to work for organizations providing access to the justice system for the underserved and poor. For additional information, contact Shirley Wieand, shirley.wieand@marquette.edu

An anonymous benefactor recently made a $1 million donation to fund the LRAP at Rutgers University School of Law - Newark. The school’s LRAP is available to graduates who make a five-year commitment to public-interest work. For more information, visit www.rutgers-newark.rutgers.edu/law/students_lrap.html

Washington University School of Law in Missouri will initiate a Loan Repayment Assistance Program to enable an increased number of the school’s graduates to pursue government or public service careers. For more information, visit http://law.wustl.edu/Whatsnew/deansstate.html

For more information about the ABA Commission on Loan Repayment and Forgiveness, please contact its staff counsel, Dina Merrell, at 312-988-5773 or merrelld@staff.abanet.org
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

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