

# DIALOGUE

News and Perspectives from the ABA Division for Legal Services

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## A Decade of Development: The Evolution of Pro Bono in England and Wales

by Suzanne Turner

Pro bono is not a new concept in the United Kingdom. Indeed, the obligation to provide pro bono services in both criminal and civil cases has been traced back to at least the fifteenth century, when sergeants at law in England could be required by the Court "to plead for the poor man."<sup>1</sup> However, after the introduction of the Legal Aid and Advice Act of 1949 pro bono in its purest sense declined as the provision of legal services to the poor was increasingly seen as the state's responsibility.

The recent development of pro bono in the UK has clearly been influenced by pro bono movements in other countries like the United States, Australia and Canada. However, pro bono in the UK is developing its own character, reflecting the unique experience of the UK legal profession. The UK highlights this distinction by holding an annual National Pro Bono Week, celebrating the range and impact of the pro bono work of the attorneys in Great Britain and Wales. From November 12-17, 2007, the UK held its sixth National Pro Bono Week and the week ended with its first ever Joint National Pro Bono Conference. While this was not the first UK pro bono conference, it was the first that was jointly planned by various segments of the profession—including LawWorks (representing solicitors), the Bar Pro Bono Unit (representing barristers) and the ILEX Pro Bono Forum (representing legal executives).

Over 350 people attended the conference, including solicitors, barristers, students, academics, representatives from the charity sector, Bar and Law Society leaders and judges. There was clearly a sense of energy and the conference sessions were filled with spirited debate on issues including the definition of pro bono, whether there should be aspirational goals or a rule of professional ethics for pro bono and how to ensure better coordination and cooperation between the different segments of the legal profession in delivering pro bono services. There was an overwhelming sense that while the pro bono movement had made substantial progress during the past decade, developing considerable momentum, the work was not yet complete and that challenges lay ahead.

As pro bono providers know, an organized pro bono delivery system involves

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Statue of Justice at the west entrance to Westminster Abbey, London, England.

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**Pro Bono Evolution**

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many players who, hopefully, collaborate to ensure an effective and efficient delivery system. As such, to understand the current pro bono landscape in the UK it is instructive to look at the role of some of the major players—the government, law firms, providers, law schools and professional bodies—and the progress and contribution they have made in developing pro bono in England and Wales.

**Government**

The legal aid system in England and Wales is well-funded and sophisticated. As noted above, a national legal aid scheme was established in 1949. Since then it has gone through substantial changes and reform initiatives with which many are not happy. Nonetheless, the current legal aid budget in England and Wales is over 2 billion pounds annually (which is equivalent to approximately \$4 billion) and, according to the government, this equals about 35 pounds for each citizen. Of the 2 billion pounds, 900 million is designated for civil legal matters with the remainder allocated to the Criminal Defense Service.

Initially, the government had to walk a fine line in promoting pro bono work, as some critics argued that pro bono might be used to justify less government spending on legal aid. However, government representatives

have consistently argued that pro bono is an “adjunct” and a “complement” to legal aid and not a substitute—and, to date, there has been no sign that the development of pro bono has had a negative impact on legal aid funding. Additionally, there has been a growing recognition that, regardless of funding levels, there will always be gaps in the legal aid system and that pro bono can be an effective tool to fill those gaps.

The government has taken an active role in the promotion of pro bono work, creating the Attorney General’s Pro Bono Coordinating Committee in 2002 with the stated purpose of trying to raise the profile of pro bono and coordinate its delivery at a national level. The Committee includes representatives from many of the organizations involved nationally in providing legal advice and support, including both the Bar Pro Bono Unit and LawWorks.

The Committee has worked on a number of initiatives, usually in partnership with other groups. These initiatives include the development of National Pro Bono Week and a pro bono website, [www.probonouk.net](http://www.probonouk.net), providing easy access to information. Additionally, the Committee was involved in the development of the Joint Protocol for Pro Bono Legal Work of the Bar Pro Bono Unit and the Solicitors Pro Bono Group. The Protocol establishes a definition and quality standards for the delivery of pro bono services. To date, the Protocol has garnered over 100 signatories.

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**From the Editor...**

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## From the Chair...

by Mark I. Schickman

**Chair of the ABA Standing Committee on Pro Bono and Public Service**

### Expecting the Unexpected

I find it challenging to wrap my mind around the idea of disaster planning. First, we more than have our hands full attempting to solve the chronic ongoing legal problems of the poor, as we fail to address 80% of that need. Secondly, the concept of disaster implies the unexpected—almost, by definition, something that cannot be planned in advance.

But, disaster preparedness can be planned. Contingency planning for legal assistance to disaster victims is a vital component of disaster planning from the international and national levels right down to the level of the local community.

When disasters strike, American lawyers are quick to offer assistance. When the Loma Prieta earthquake hit the San Francisco Bay Area, and when San Diego's fires filled Qualcomm Stadium with displaced people, local bar associations were out in force to provide legal triage, and the State Bar of California developed a Disaster Legal Services Manual to aid in those efforts. The Florida Bar published an extensive Legal Assistance Disaster Manual in 2006 to disseminate best practices to help people—and legal services programs—whose existence was threatened by a succession of hurricanes. Many law firms and bar associations across the country have excellent disaster assistance manuals.

Nationally, the ABA has devoted

great resources to address this challenge. The House of Delegates has passed policies designed to make it easier for out-of-state lawyers to provide help in affected jurisdictions. The Government Lawyers Division has compiled a catalogue of the public sector help which is available, while the ABA Young Lawyers Division has contracted with FEMA to provide first line, fast-track advice to disaster victims. The ABA Standing Committee on Pro Bono and its Center for Pro Bono provide written materials and expert human resources to help the troops of pro bono lawyers who give greatly of their time in the wake of a disaster. These items and law firm and bar association disaster planning materials can be found at [www.abalegalservices.org/probono/katrina](http://www.abalegalservices.org/probono/katrina) and [www.katrinalegalaid.org](http://www.katrinalegalaid.org).

Knowing all of this, the concept of "Disaster Legal Assistance" still didn't leave its proper mark on me. That has recently changed, for two reasons.

### Way Down Yonder in New Orleans

We've all read about the devastating effect of Hurricanes Katrina and Rita on the Gulf Coast. But, as the Pro Bono Committee found during the meeting that it held in the Big Easy in January 2008, newspaper and TV reports can't come close to showing the whole truth.

You don't notice it much if you never leave the French Quarter or the Jazz Festival grounds. But if you go into the neighborhoods (as we did, guided by local pro bono expert Rachel Piercey), you see proof of the statistic that 40% of the city's population has not yet returned. Entire neighborhoods, missing thousands of erstwhile residents, remain trashed and devastated—worse than any ghost town. Destroyed mansions in the toniest neighborhoods stand obviously vacant, like a blackened

tooth in the center of an elegant smile. Rows of expensive lakeview homes, destroyed in a single mass wave, remain untouched since their destruction 30 months ago.

Brave organizations such as New Orleans' "The Pro Bono Project" and the New Orleans Legal Assistance Corporation have been desperately struggling to meet their clients' needs since Katrina hit, with the help of lawyers across the country. Anyone who is concerned that students have lost their volunteer spirit should see the New Orleans "spring break" phenomenon—droves of law students converging on New Orleans for two weeks to make a dent in the legal troubles that follow natural disasters. Numerous other legal services and pro bono programs throughout the region—from Louisiana's legal aid providers to the Mississippi Center for Justice, to Appleseed/Alabama, to Texas RioGrande Legal Aid, and many more—are providing legal assistance to hurricane victims, and other assistance to besieged colleagues in the region.

None of this legal assistance effort could have occurred or be sustained without the remarkable and courageous leadership of state and local bar associations in Mississippi, Louisiana, Texas, Tennessee and elsewhere. At the risk of missing many of the other pro bono heroes who have stepped up, Frank Neuner and Joy Phillips (presidents of the Louisiana and Mississippi bars, respectively, at the time of the Gulf Coast disasters) stand as examples of those who, despite the devastating effects of the hurricane on themselves and their families, displayed remarkable generosity, courage and grace under fire. Our nation is blessed with legal professionals like those who have put the needs of others ahead of their own.

Still, almost three years later, New Orleans' poor are still being battered by Katrina's

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## From the Chair...

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legal aftermath. In addition to the problems they faced before Katrina hit, they now must battle predatory contractors, combatants over title to property, insurers who refuse to pay claims, and landlords of uninhabitable homes. They are families who have lost every important legal document they ever had, homeowners facing foreclosure, and families split in an attempt to find work or shelter. Life remains far from normal, on a huge scale.

Many were poor before Katrina, others were impoverished by the storms, and their legal needs persist and escalate, even as they struggle to recover. But,

so do the needs and stresses on the local legal community, who find themselves and their clients continuing to recover, and in need of help. Consequently, finding those extra hours to represent a disaster victim pro bono is ever more daunting. The national legal community must continue to provide vital support to the legal communities and pro bono programs and clients affected by the 2005 Gulf Coast storms. The donation of both volunteer time and financial resources to pro bono and legal services efforts in the Gulf Coast is essential to help continue these states on the road to recovery.

### **The Hits Keep Coming**

The second thing that makes planning for disaster relief such an important issue is this: there are

more and more natural disasters on the way. The fires, earthquakes and floods that afflict us are not going to disappear. Rather, the prospect of climate change is likely to exacerbate the problem. According to a United Nations report, the poor and disadvantaged will bear the brunt of future disasters, as they have the least resources to cope with such events.

All of this means that the provision of disaster assistance for our pro bono clientele is neither a luxury, nor an occasional need. Rather, it appears to be a new reality for which we must prepare. If you have any doubt as to the problems that natural disasters may cause, take a trip to the Gulf Coast to see the extent of the devastation that remains, and the need to put in place a long-term planning solution.

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## Pro Bono Evolution

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Additionally, the government has provided funding. Both the Department for Constitutional Affairs and the Legal Services Commission has provided funding to assist with various pro bono initiatives.

### **Law Firms**

The past decade had seen a great expansion of law firm pro bono initiatives, particularly among large London-based international firms. Similar to US law firms, many of these firms have developed highly structured pro bono programs, run by full-time pro bono managers with the support of senior management. They offer a diverse array of pro bono opportunities, including direct advice at clinics, human rights work and assisting charities with a range of transactional matters. They also have started

promoting their pro bono efforts on their websites and in other media.

Arguably influenced by the international firms, the larger national and regional firms are beginning to expand their pro bono initiatives as well. Some believe there may be tension between the large city based firms that participate in pro bono and the smaller High Street firms that have always provided free advice to those who cannot afford legal assistance, but may not have publicized or delivered their activities in a structured way.

US law firm pro bono culture and structure has definitely had an impact on the development of pro bono in the UK, particularly in London where dozens of US firms have offices. These firms are increasingly making their pro bono programs "global" in nature and, as such, bringing the same policies and dedication to their pro bono efforts in their foreign offices.

A distinguishing factor between many UK and US firm pro bono

programs is that UK pro bono is often part of a much larger Corporate Social Responsibility program. As such, pro bono is simply one component of a much larger strategic initiative that may also involve a focus on environmental sustainability, charitable giving, diversity and other workplace issues. With this in mind, discussion frequently centers on developing metrics to assess programs. Dissatisfied with measuring pro bono success by participation rates and hours billed alone, firms are working to develop alternative metrics to measure programs focusing on outcome and impact. To date, the law firms have been firmly against the development of published rankings to competitively assess and compare their performances.

Many of the UK firms cite drivers similar to those of US firms in developing their programs, including the recruitment, training and retention of attorneys and the

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## Pro Bono Evolution

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impact of the pro bono efforts on the firm's reputation. Additionally, there is an increasing "business case" to perform pro bono work. It is becoming more common for in-house counsel and potential corporate clients to request details of a firm's pro bono and corporate social responsibility programs before selecting their lawyers

### Providers

Initially, one of the biggest hurdles of initiating pro bono in the UK was not the willingness of law firms to develop programs, but the ability to easily find pro bono projects. However, that has now changed markedly, and an increasingly sophisticated group of pro bono clearinghouses and providers has developed.

The legal profession in England and Wales has two branches—solicitors and barristers. Barristers represent clients in the courts, while solicitors prepare the case and provide guidance to the barristers (although, in more recent years, some also appear in court). Barristers are organized into sets of Chambers, but are essentially self-employed.

Solicitors are organized into firms of varying size from sole practitioner to large multinational practices.

In 1997, seeing the need for an organization to promote and facilitate pro bono work across the solicitors' profession, a number of London-based law firms joined forces to fund and form LawWorks (the operating name of the Solicitors Pro Bono Group). Since that time, LawWorks has grown substantially and now has a staff of thirteen. While still a membership organization, LawWorks receives outside funding and is national in scope.

LawWorks offers a comprehensive menu of volunteer opportunities, including LawWorks Clinics, a



*Statue of Truth at the west entrance to Westminster Abbey, London, England.*

network of over 75 clinics offering free advice sessions; LawWorks for Community Groups, which matches small charities with law firms seeking to provide transactional assistance (e.g., employment, intellectual property, incorporation, registration); LawWorks Mediation, which provides pro bono mediators; and LawWorks Web, which uses the power of the Internet to deliver free legal advice and assistance. LawWorks also provides extensive training and support for its members and hosts a forum enabling those running pro bono programs to collaborate and share information.

For barristers, the Bar Pro Bono Unit acts as a clearinghouse, matching barristers prepared to undertake pro bono work with those who need their help. Established in 1996 with 350 panel members, today the number of panel members is in excess of 2000.

Other structured sources of pro bono referrals include the Free Representation Unit, established in 1976 and providing representation in social security and employment

tribunal matters, both areas where legal aid is not available. ProHelp, another referral organization that serves community groups, distinguishes itself by serving as a multi-sector professional referral source. Professionals from other fields such as accountants and surveyors are also able to engage in assisting the community. A wide range of human rights and civil liberties NGOs, including Liberty and JUSTICE, are increasingly looking to pro bono work to leverage their ability to provide services.

Finally, there is also a growing interest in providing pro bono assistance on an international basis. By way of example, Advocates for International Development (A4ID), launched in 2006, works with development organizations and developing countries to facilitate the provision of pro bono services in the areas of international trade, debt and development.

### Law Schools

Approximately 80 colleges and universities in the UK offer undergraduate degrees or vocational qualifications in the law. The most recent survey conducted by LawWorks shows that 53% of these programs now involve pro bono work. These law school programs are diverse and range from purely student driven projects to programs that are comparable to US-based clinical education programs. As a result of this growth, LawWorks has started a student pro bono project funded by a Law Society grant.

Students have demonstrated a considerable interest in pro bono programs and, as in the US, this interest is beginning to impact law firms as students question law firms about their commitment when interviewing.

### Professional Bodies

Finally, there is the issue of the role of the professional bodies—the Bar Council for barristers and the Law Society for solicitors—in

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## Pro Bono News

### **ABA Supports Development of Identity Theft Pro Bono Programs**

At the February 2008 ABA Midyear Meeting in Los Angeles, the ABA House of Delegates adopted Report 102B, which urges national, federal, state, tribal, territorial, and local bar associations, in cooperation with state and local pro bono, lawyer referral, and legal aid programs, to establish programs to assist or provide legal representation for victims of identity theft who need assistance in recovery from the crime. For more information, contact Michael Asimow, Chair of the ABA Section of Administrative Law and Regulatory Practice, at [asimow@law.ucla.edu](mailto:asimow@law.ucla.edu).

### **New Pro Bono Guidelines for Immigration Judges for Facilitating Pro Bono Legal Services**

On March 10, 2008, the Department of Justice's Executive Office for

Administrative Review released Operating Policy and Procedures Manual 08-01 "Guidelines for Facilitating Pro Bono Legal Services" to all Immigration Judges, Court Administrators and other court staff. The manual provides guidance and best practices on how immigration courts and court administrators can encourage and facilitate pro bono legal services for individuals. Some of the recommendations include: 1) designating a "pro bono liaison judge" in each court; 2) creating a pro bono committee in each court; 3) having regular meetings between court staff and local pro bono legal service providers; 4) providing training on immigration courtroom practice and procedure and 5) implementing flexible courtroom practices for pro bono attorneys. For more information about this manual, please contact Steven Lang, Coordinator of the Legal Orientation and Pro Bono Program,

Executive Office for Immigration Review, at 703-305-1295.

### **New York Adopts Rule on Limited Pro Bono Legal Service Programs**

The Appellate Divisions of the Supreme Court amended the Disciplinary Rules of the Code of Professional Responsibility regarding participation in limited pro bono legal services programs. The rule reflects the language of ABA Model Rule of Professional Conduct 6.5 in excusing conflicts checks for attorneys providing short-term pro bono services through the court, a government agency, a bar association or a not-for-profit legal services organization. The rule can be found at: <http://www.courts.state.ny.us/rules/jointappellate/1200-20a.pdf>. For more information, contact John Ritchie, Office of the Deputy Chief Administrative Judge for Justice Initiatives, at 646-386-4712 or [jritchie@courts.state.ny.us](mailto:jritchie@courts.state.ny.us).

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## Pro Bono Evolution

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the development of pro bono.

The Bar Council was an early leader, providing substantial funding for the Bar Pro Bono Unit. The Law Society has become increasingly supportive of pro bono, having most recently created two new staff positions to promote pro bono work. In addition to funding a position to coordinate the student pro bono program noted above, the Society appointed a pro bono coordinator to support and promote the legal profession's pro bono activity and to develop new activities facilitating pro bono work by

solicitors and trainees. The Law Society has also been active in National Pro Bono Week, assisted in establishing a helpline for victims of the July 7th bombings, is actively involved in providing opportunities for pro bono work in its international projects and has completed a number of studies examining solicitor participation in pro bono work.

The last decade has truly seen a huge amount of activity aimed at the development of pro bono culture and infrastructure throughout all segments of the legal profession in England and Wales. While there have been growing pains, great progress has been made, resulting in the energy and enthusiasm seen at the

national pro bono conference. I believe this bodes well for many exciting developments in the future.

*Suzanne E. Turner is a partner and chair of the firm-wide Pro Bono practice at Dechert LLP. She is a trustee of the London-based LawWorks and the Budapest headquartered Public Interest Law Institute. She is also on the board of the U.S.-based Lawyers' Committee for Civil Rights Under Law and a member of the American Bar Association Standing Committee on Pro Bono and Public Service.*

### **Endnote**

<sup>1</sup> PA. Boon and R. Abbey, "Moral Agenda? Pro Bono Publico in Large Law Firms in the United Kingdom." *Modern Law Review* 630, 632 (1997)

# Opening Wider the Doors of Equity with Emeritus Pro Bono Attorneys

by Holly Robinson

“...I am pleased to submit to the Court for its consideration the attached draft rule which would become Supreme Court Rule 39, if adopted. In so doing, I would be remiss if I did not also transmit the extremely enthusiastic support for the rule which was expressed during the discussion at the Board of Governors’ meeting. The Board thinks that the rule will do much to alleviate the shortage of pro bono legal services for Arizona’s indigent elderly, and I concur in that assessment.”

*From a letter dated 31 July 1987 from Bruce Hamilton, Executive Director, State Bar of Arizona to the Honorable Frank X. Gordon, Jr., Chief Justice, Supreme Court of Arizona regarding adoption of an emeritus attorney pro bono rule.*

The reasoning behind the adoption of emeritus attorney pro bono rules was clear—to encourage retired attorneys “to represent and provide legal services for persons unable to pay for the same.”<sup>1</sup> The rules provide a limited license for retired and non-practicing lawyers—who otherwise may retire from the active practice of law—to practice on a volunteer basis for non-profit legal services providers serving vulnerable seniors and low and moderate-income individuals. Many lawyers who retire or otherwise leave the active practice of law convert their bar membership to inactive status to avoid the expense of mandatory bar dues and continuing legal education programs. Some lawyers, particularly retirees, may have moved to states in which they are not licensed to practice law. Therefore, these retired and otherwise inactive lawyers, face barriers to doing pro bono work because they are no longer active bar members or may live in a state in which they are not licensed to practice law. And, with changes in the rules, these lawyers could effectively serve low income persons, as more than 80 percent of the civil legal needs of this group are not being met.

In 1981, the Florida Bar Board of Governors voted to support the concept of an emeritus attorney program on a one-year experimental basis. The Florida Bar Board of Governors

authorized the creation of the first Emeritus Attorney Pro Bono Participation Rule, which went into effect on October 24, 1985. Arizona, California, and Oregon adopted similar rules in 1987. Between 1985 and 1996, 12 states adopted emeritus attorney pro bono practice rules, and between 2001 and January 2008, 14 more states followed. These rules were originally aimed at retirees and were designed to allow them to continue to practice law under certain circumstances. In recent years, the target audience has broadened beyond retired lawyers to attract otherwise qualified and experienced younger lawyers who are not in active practice but who are interested in public service. Emeritus attorney pro bono rules may also be a key element of efforts to help those lawyers who wish to continue actively practicing law but who wish to transition to positions providing greater community service, or who wish to continue to practice in a limited capacity to provide pro bono legal services. An emeritus attorney pro bono program is a great tool to encourage and assist lawyers who are considering transitioning to a second career in pro bono service.

## **Emeritus Volunteers Can Serve in a Variety of Capacities**

The policy implications of emeritus attorney pro bono rules span local, state, and national

levels. These rules offer the potential for expansion of legal services delivery and advocacy. In addition, emeritus pro bono attorneys can become effective volunteers as they become familiar with the aging network and opportunities to serve low-income individuals and vulnerable seniors.

Emeritus attorney pro bono rules have at least three implications for delivery of direct services. The first is that the rules offer additional resources and are one method of supplementing existing legal services in light of growing need and finite resources. The second is that emeritus attorneys are well-equipped to present community legal education programs, which have the potential to help seniors and low- and moderate-income individuals avoid legal crises. The third is that emeritus attorneys may be more readily used to reach out to provide legal services to homebound residents; residents of hospitals, long-term care facilities, and hospices; clients in rural and urban areas with limited transportation; and others who are unable to come to an office or clinic. The volunteer attorney becomes a broker between a senior or a low income client and a complex social and legal system. At the same time, the volunteer attorney gains an awareness of the unique challenges facing their vulnerable clients. Emeritus

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## Emeritus Pro Bono

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attorneys can become a critical component of efforts to address the unmet civil legal needs of individuals in the greatest social and economic need.

Few endeavors are better suited to the unique skills and experience of retired and non-practicing attorneys as pro bono legal work for vulnerable seniors, low income persons, and non-profit organizations. An emeritus attorney does not need to have a background in specific legal areas, such as government benefits, landlord/tenant law, estate planning, family law, or consumer law, to make a significant contribution as a volunteer. Emeritus attorneys can choose from a wide range of pro bono opportunities that accommodate their interests, skills, and schedules. They may choose to:

- Provide advice and brief services on a hotline or in person
- Develop and present community legal education programs
- Conduct client intake interviews and screenings
- Mentor less experienced attorneys
- Staff senior center clinics
- Draft advance directives, simple wills, and other basic estate planning documents
- Engage in public speaking and consumer education
- Provide transactional pro bono legal services to non-profit organizations, community development projects, and individuals.
- Conduct outreach activities
- Conduct telephone hearings
- Serve on the board of directors of social service agencies and non-profit legal service providers
- Staff self-help or courthouse

resource centers

- Provide mediation and dispute resolution services
- Work for long-term care ombudsman programs
- Assist with fundraising for legal services or social services programs
- Provide litigation support
- Assist with outreach and recruitment of volunteer attorneys
- Maintain a client caseload
- Assist with document analysis
- Conduct legislative research and bill analysis

### Creating and Implementing an Emeritus Rule

An effort to enact an emeritus attorney pro bono rule or implement an emeritus attorney pro bono program requires support from a broad-based, non-partisan coalition of legal services organizations, the aging network, the judiciary, the private bar, bar foundations, state access to justice commissions, and state and local bar associations. This coalition should be committed to expanding, coordinating, and promoting effective and economical civil legal services delivery for vulnerable seniors and low income individuals. This partnership can form the foundation of an effort to draft and submit to the state supreme court a rule proposing an emeritus pro bono status or develop an emeritus attorney pro bono program. During 2007, for example, emeritus attorney pro bono rules were proposed by a state bar pro bono services committee, a state bar executive director, a state access to justice commission, and a coalition of groups representing these organizations and others in the access to justice community.

It should be noted, however, that passage of emeritus attorney pro bono rules alone has not been effective in engaging

retired attorneys to volunteer to provide pro bono legal services to vulnerable seniors and low-income individuals. More important than the creation of a rule is establishing an emeritus attorney pro bono program to implement the rule. In 2008 the ABA Commission on Law and Aging surveyed the 26 jurisdictions in the United States that have a version of an emeritus attorney pro bono practice rule. The survey results were similar to a 2006 survey conducted by the Commission, both of which found that without a program responsible to implement the rule, very few attorneys volunteer as emeritus attorneys to provide pro bono legal services. The survey also found that states that operate emeritus attorney pro bono programs produce the intended results. The State Bar of California, the Oregon State Bar, and the Washington State Bar Association have long operated emeritus attorney pro bono programs. Staff associated with Washington and Oregon's Emeritus Attorney programs recently reported having 122 emeritus attorneys each and California's program developer reported 84 emeritus attorneys, for a total of 328 emeritus pro bono attorneys.<sup>2</sup> Program staff are responsible for implementing their emeritus attorney pro bono rules by providing information to bar members about the limited license status, handling emeritus applications, assisting with recruitment of attorneys, or facilitating the placement of attorneys with legal services providers. Emeritus attorney pro bono programs can educate retiring and non-practicing attorneys about the option of changing one's bar status and the opportunities emeritus pro bono status provides, encourage attorneys to volunteer, provide support to legal services providers and other non-profit organizations in recruiting and maintaining

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## Emeritus Pro Bono

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volunteers, and participate in a state's overall efforts to expand access to justice.

One example of efforts to effectively implement an emeritus pro bono program can be found in Washington, where the Washington State Bar Association Pro Bono and Legal Aid Committee recently conducted two surveys regarding emeritus attorneys. These surveys were undertaken in an effort to improve and expand the WSBA Emeritus Program and enhance the pro bono experience for WSBA Emeritus members. One questionnaire was sent to emeritus attorneys; a second questionnaire was sent to qualified legal services providers. The results will be available in late March 2008. In addition, WSBA is planning to send a questionnaire to 1200 attorneys in active status who are close to retirement age to raise awareness of the WSBA Emeritus Program and encourage their participation.

Another example of proactive implementation is provided by the Oregon State Bar, which in March 2008 hosted a three hour roundtable discussion for active pro bono and active emeritus attorneys. The participants expressed incredible enthusiasm about the pro bono work they do, encouraged OSB staff to create an emeritus panel to refer attorneys who have questions about the status, and provided valuable information on ways to improve and expand the program and enhance the pro bono experience.<sup>3</sup>

Alaska's Emeritus Attorney rule went into effect on October 15, 2007. Through an outreach campaign that involved an article in the Alaska Bar Rag, a letter from the Chief Justice of the Alaska Supreme Court, and a personal follow up to potential volunteers, more than a dozen attorneys

have submitted volunteer forms and five attorneys have formally registered with the bar association as emeritus attorneys under Rule 43.2.<sup>4</sup>

### Conclusion

The Florida Bar Board of Governors was visionary when it adopted the first emeritus attorney pro bono rules in 1985 to permit retired attorneys who were members of the Florida State Bar or another state bar to continue to practice in a limited capacity as a way of increasing access to legal services for those who were unable to afford it. But experience has demonstrated that an emeritus attorney pro bono rule is only as valuable as the number of attorneys who volunteer, and ultimately, the number of vulnerable seniors and low and moderate-income clients they serve.

David Ackerly, Director of Private Attorney Involvement at the Legal Aid Foundation of Los Angeles and Chair of the State Bar Standing Committee on the Delivery of Legal Services, wrote:

"For many years, California has had a hundred emeritus attorney program participants. Oregon, which has 10 percent as many attorneys as California, also has a hundred attorneys in its pro bono emeritus program. If California could match Oregon's success by recruiting 900 more lawyers, each donating 100 hours, we would have an additional 90,000 hours per year, opening the doors of equity wider."<sup>5</sup>

### For a list of State Emeritus Attorney Pro Bono Rules and State Contacts and Checklist for Creating an Emeritus Attorney Pro Bono Participation Program, see:

<http://www.abalegalservices.org/probono/emmeritus.html>.

An attendee at the most recent WSBA Emeritus Attorney Training and Orientation program commented, "I wasn't aware of the program until I got the letter (describing WSBA's emeritus attorney program). It's a wonderful program."

Who's sending the invitation in your state to open wider the doors of equity?

*Holly Robinson is associate staff director of the ABA Commission on Law and Aging, specializing in housing, economic security, and legal services delivery issues. She is the project director for the Older American's Act-funded National Legal Assistance Support Project and administers the Partnerships in Law and Aging Program mini-grant project.*

### Endnotes

- <sup>1</sup> Petition to Amend the Florida Bar Integration Rule by the Addition of Article XXII- Emeritus Attorneys Pro Bono Participation Program, Filed January 31, 1985.
- <sup>2</sup> Emails from Sharleen Steele, Access to Justice Programs Liaison, Washington State Bar Association, March 11, 2008, Cathy Petrecca, Pro Bono and LRAP Coordinator, Oregon State Bar, March 10, 2008, and Rodney Low, Program Developer, The State Bar of California, March 7, 2008.
- <sup>3</sup> Email from Cathy Petrecca, Pro Bono and LRAP Coordinator, Oregon State Bar, March 10, 2008.
- <sup>4</sup> Email from Krista Scully, Pro Bono Coordinator, Alaska State Bar, March 12, 2008.
- <sup>5</sup> David Ackerly, Justice for All, Legal Aid Foundation of Los Angeles, <http://www.lafla.org/news/view.asp>, June 7, 2007.



## From the Chair...

by M.  
Catherine  
Richardson

### Chair of the ABA Standing Committee on the Delivery of Legal Services

One of the highlights of chairing the Standing Committee on the Delivery of Legal Services is the presentation of the Louis M. Brown Award for Legal Access, which is given each year at a Midyear Meeting Awards Luncheon, hosted jointly by the National Conference of Bar Presidents, National Association of Bar Executives and National Conference of Bar Foundations.

The Brown Award recognizes innovators who are dedicated to improvements in the delivery of legal services to those of moderate incomes—those who do not qualify for legal aid, yet lack the resources to readily afford traditional legal services. The Committee has honored a wide variety of entities since the award began in 1995. Past Brown Award recipients have included the Maricopa County Self-Help Center, the AARP Hotlines for the Elderly, the New Hampshire Bar Association, the Legal Resolutions Center of the Legal Aid Society of Orange County California, and Legal Grinds, a coffeehouse “serving Java and Justice Daily.”

This year, the Committee presented special recognition of an individual in addition to granting the Brown Award. M. Sue Talia was honored for her selfless work promoting unbundled legal services across the country, while the 2008 Brown Award was presented to the Chicago-Kent College of Law Center for Legal Access & Technology.

For only the second time in its 14 years, the Delivery Committee recognized an individual. After developing an unbundling training program for practitioners in 1998, Sue Talia began teaching principles of limited scope representation first across her home state of California and then across the nation. She has presented over 100 programs to lawyers, judges and court personnel.

Targeting solo and small firm practitioners who represent middle-income clients, Sue gives them the tools and skills to reach many more clients than they can reach through traditional full legal services. In addition to her presentations, Sue has created risk management materials that include best practices, fee agreements, office checklists, client handouts, office forms and tips for implementing a limited scope practice. In recent years, Sue has contributed over 1,000 hours per year to these pursuits and has never accepted compensation for them.

The Chicago-Kent College of Law Center for Access to Justice & Technology, under the leadership of Prof. Ron Staudt, is dedicated to making justice more accessible to the public through the use of the Internet in teaching, legal

practice and public access to the law. The Center operates three law and technology initiatives: the A2J Author Project, the Access to Justice Student Editorial Board, and the Self-Help Web Center.

The Committee was particularly impressed with the Center’s A2J Author, a unique software tool that empowers those from the courts, legal services programs and educational institutions to create Guided Interviews. Viewers going through a Guided Interview are lead down a virtual pathway to the courthouse. As users answer simple questions about their legal issues, the technology then translates the answers to create, or assemble, the documents that are needed for filing with the court. In addition to document assembly, the program enables electronic filing and data collection.

The Committee is proud to honor Sue and the Chicago-Kent College of Law, and to recognize all of those who participated in the 2008 Brown Award for Legal Access. As we encourage others to embrace, adopt, adapt and advance similar models, information about the Award recipients is posted at <http://www.abanet.org/legalservices/delivery/brown.html>.



Prof. Ronald Staudt (left) accepts the 2008 Louis M. Brown Award for Legal Access on behalf of the Chicago-Kent College of Law Center for Access to Justice & Technology. Presenting the Award are Harold Brown (second from left), son of Louis M. Brown, and M. Catherine Richardson (second from right), chair of the Delivery Committee. M. Sue Talia (right) was also honored for her selfless work promoting unbundled legal services across the country.



## From the Chair...

by Jonathan D. Asher

### Chair of the ABA Commission on IOLTA

One of the greatest strengths of the IOLTA community is its willingness to share information and expertise. Both the IOLTA Workshops and the activities of the Joint Commission on IOLTA/NAIP Technical Assistance Committee provide wonderful opportunities for that sharing to occur.

At the Winter 2008 IOLTA Workshops held in Los Angeles, IOLTA staff and trustees from 27 states and 5 Canadian provinces met to discuss current issues of interest. For the first time, a half day session was devoted to reports from each of the IOLTA programs represented. Each speaker presented a program overview and then focused on current issues and initiatives. While only a short time was allotted to each speaker, a wealth of information was provided.

Many of the speakers discussed the increases in IOLTA income that have occurred over the past two years. Amendments to rules or legislation that implement mandatory IOLTA or require that IOLTA accounts be paid interest rates comparable to those paid to other customers when the IOLTA account meets the same minimum balance or other requirements (IOLTA interest rate comparability), accounted for these increases in a number of states. For example, Michigan noted that its income has increased more than three times in the past two years, with 80% of the increase due to comparability

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## Grantee Spotlight: Covenant House New Jersey Provides Critical Legal Services to Homeless Youth

by Jill Rottmann

### Overview

Homeless teens arrive at the front door of Covenant House New Jersey's Crisis Center in Newark at all hours of the day and night. An exceedingly high percentage of them have had childhoods marked by trauma and instability.

Many homeless young adults grew up in state foster care and were subject to multiple placements and transience. Familial dysfunction and neglect were the norm; sexual, physical, and emotional abuse commonplace; developmental delays, learning disabilities, and behavioral problems frequent; and addiction or exposure to parental substance abuse likely. In fact, 70% report physical or sexual abuse during childhood, and close to 30% have been diagnosed with a mental illness or learning disability that impedes their ability to become independent without long-term professional interventions.

The traumatic impact of such experiences is unlikely to dissipate merely by the passage of time. Without a focused and day-to-day response, any of these risk factors alone can impair independent functioning. Taken together, they may become insurmountable, greatly increasing the probability that homelessness will become chronic.

It is the job of Covenant House to help these youth stabilize their crises and transition to a healthy living environment. A team of highly educated and committed professionals—social workers, nurse practitioners, teachers, vocational specialists,

psychologists, drug counselors and lawyers—work together every day to achieve those goals.

### Covenant House New Jersey's Youth Advocacy Center

Nearly a decade ago, Covenant House's Youth Advocacy Center (YAC) was founded to focus on providing legal services to homeless youth. Recognizing that homeless youth are often unable to move forward without legal advocacy, the YAC helps them defend their rights in a wide range of matters including illegal evictions, wrongful terminations, denial of SSI applications or sanctions on public benefits.

### YAC's Homeless Education and Disability Rights Project

Since the opening of the YAC, the number of mentally ill and learning disabled homeless youth has grown dramatically throughout New Jersey. As a result, the Covenant House's lawyers, psychologists and teachers created the Homeless Education and Disability Rights Project, which is funded by the IOLTA Fund of the Bar of New Jersey. The comprehensive advocacy provided by the Project is vital to ensure that these youth receive the public benefits to which they are entitled and, in most cases, these benefits represent their only avenue to avoid becoming a part of the adult homeless population.

YAC, through its Homeless Education and Disability Rights Project, has adopted a three-pronged approach:

- Inform the public of issues

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## From the Chair...

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rule changes and the other 20% due to increases in interest rates. A number of states including Kentucky, Maryland, Oregon and South Carolina reported successful bank negotiations as the source of their increased income.

Many programs reported grappling with the issue of how to allocate effectively the increases in IOLTA income. In order to inform that decision making, several programs including those in the District of Columbia, Michigan and Massachusetts reported holding meetings with grantees to obtain their input and perspective. Each found these sessions to be valuable in identifying current needs and providing useful ideas about how those needs might best be met.

Recruitment and retention of legal aid attorneys is an issue that several IOLTA programs are attempting to address. Florida, Massachusetts, Oklahoma and South Carolina are states in which the IOLTA program reported it has made a commitment to awarding grants to be used for increasing

legal aid attorneys' salaries. The Indiana program provided information on a new loan repayment assistance program it is launching to help legal aid attorneys who face the burden of significant law school debt. We also learned that in Arizona, plans are underway by the IOLTA program to host the second statewide conference for legal services advocates where training and networking opportunities take place.

I know that obtaining all of this information from one another during the IOLTA Workshops was appreciated by the workshop attendees. Not only did the positive evaluations of the session substantiate its value, but I was pleased to see a number of IOLTA staff and trustees talking with one another after the session, seeking information on various initiatives discussed during the short presentations.

While the IOLTA Workshops provide a valuable opportunity for information sharing and I hope to see many of you at the Summer 2008 IOLTA Workshops in New York (see page 13 for details), I am aware that not every program is able to attend the workshops. Fortunately, the Commission

on IOLTA and NAIP have a long established Joint Technical Assistance Committee through which IOLTA staff and trustees may obtain helpful information, expertise and assistance on a wide variety of issues.

The Joint Technical Assistance Committee is co-chaired by the experienced and most able IOLTA leaders, Linda Rexer and Jane Curran. Both have devoted countless hours to providing guidance to IOLTA programs that are pursuing IOLTA interest rate comparability or converting to mandatory IOLTA. I am most grateful for their efforts. More importantly, the states that have benefited from their advice are grateful, as well. The co-chairs and members of the Joint Technical Assistance Committee have also helped IOLTA programs with operational issues and responded to numerous questions related to grantmaking, program evaluation and more. The committee is a valuable resource, and I urge you to take advantage of its expertise. The help is there for you, you just have to ask for it. Please contact Bev Groudine, Commission Counsel, for more information on receiving the committee's assistance.

## Covenant House

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pertaining to special education and education of homeless youth;

- Advocate to secure Supplemental Security Income (SSI) as a means towards accessing comprehensive support services, including health care coverage under Medicaid, employment assistance from the Division of Developmental Disabilities (DDD) and/or the Division of Vocational Rehabilitation Services (DVR)

and, significantly, long-term supportive housing; and

- Challenge improper and incomplete transition plans by demanding that Individualized Education Plans (IEPs) are meaningfully constructed and implemented for disabled youth pursuant to federal and New Jersey law.

### **Educational Issues**

Education is inextricably linked to the ability of homeless youth to achieve self-sufficiency. For most, obtaining a living wage is nearly impossible without a high school diploma or GED; tragically, nearly 60% of New Jersey's homeless

youth have neither. The problem is more severe for young people with developmental disabilities or those who have been classified with special needs while in school. Statewide, the number of children classified with special education classifications rose 9% from the 2001-2002 school year to the 2005-2006 school year; in Essex County, the jump during that same time period was just shy of 22%. Nationwide, mental health disorders affect about one in five children, yet only a fifth of these children receive the mental health services they need. The rate of unmet needs is higher for minorities.

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## Covenant House

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### Advocacy Within the Educational System

Many homeless teens, despite having been classified as disabled students, do not receive fair and appropriate services from their school districts, and find themselves in an educational limbo as their school records are lost in the shuffle. Contrary to the law, schools often refuse to enroll them without their records. Additionally, many school districts are unaware of homeless youths' educational rights arising under the McKinney-Vento Act, such as a homeless student's right to transportation to and from school. Most importantly, IEPs are poorly constructed. In fact, Covenant House's YAC attorneys report they have yet to see an IEP that complies with the spirit and mandates of the law and presents a viable transition plan for the youth. The attorneys regularly advocate for school systems to follow the legal mandates required of them to foster effective educational plans for their most vulnerable and needy students.

### Advocacy for SSI Benefits

Some homeless youth received SSI as children, but are denied continuing benefits when reevaluated under more stringent "adult" criteria upon reaching the age of eighteen. Many then find themselves without SSI support at a time when they need it the most—when they are completely alone and transitioning to adulthood and have lost the crucial support of the foster care system, the school system, or family assistance. By maintaining and/or obtaining SSI, disabled youth are eligible for health care coverage under Medicaid, employment assistance from the Division of Developmental Disabilities (DDD) and/or the Division of Vocational Rehabilitation Services (DVR) and

## IOLTA News and Notes

### Mandatory IOLTA Update

Nevada has joined the growing list of states that have adopted mandatory IOLTA. In February 2008, the Nevada Supreme Court approved an amendment to the state's IOLTA rule converting the IOLTA program from opt-out to mandatory status. The new rule, which will require attorneys who handle client funds to participate in IOLTA, becomes effective May 1, 2008. With these revisions, Nevada becomes the 37th state to adopt mandatory IOLTA. All states that have converted to mandatory IOLTA have reported healthy increases in IOLTA revenues.

Assistance in exploring, drafting and implementing mandatory IOLTA and other IOLTA revenue enhancement strategies is available through the Commission on IOLTA and National Association of IOLTA Programs Joint Technical Assistance Committee. Contact Commission Counsel, Bev Groudine, at 312/988-5771 or [bgroudine@staff.abanet.org](mailto:bgroudine@staff.abanet.org) for more information.

### Summer 2008 IOLTA Workshops

The Summer 2008 IOLTA Workshops will be held on Thursday and Friday, August 7-8 at the Marriot Marquis Hotel in New York City in conjunction with the ABA Annual Meeting. The workshop sessions will address many timely topics, and the two days of programming will provide a wonderful opportunity for IOLTA staff and trustees to share information and network. A preliminary program will be available at the end of May. The registration deadline for the workshops and hotel is July 8, 2008, but hotels fill up quickly, so be sure to register as soon as possible. To register online go to <http://www.abanet.org/annual/2008/>

significantly, may be eligible for supportive housing programs. Therefore, Covenant House's YAC attorneys navigate the complex SSI application eligibility requirements and application process, appealing SSI denials and terminations, and seeking waivers for alleged—but chronically unfounded—overpayments.

### Mike's Story

Despite the tireless advocacy and hard-won results that Covenant House's YAC attorneys achieve for homeless teens, nothing speaks more to their work than an actual story of one of the many young people who benefited from their advocacy.

Mike was diagnosed as a child as bipolar and was tested to have an IQ of 67. He did not know his father, and his mother couldn't care for him and ran off when he was eleven. Mike was shuffled around to fourteen different foster

homes until he was dropped off at Covenant House's doorstep on his eighteenth birthday.

From the day he arrived, the staff spent a tremendous amount of energy engaging in relentless advocacy for Mike and doing their best to care for him. A social worker and an attorney sought every possible service and benefit for Mike and finally realized some success—fighting appeal after appeal to secure the benefits that entitled him to health insurance, job coaching, a literacy tutor and a supportive housing program that will care for him for life.

During his 23 months at Covenant House, Mike struggled. He saw kids around him coming in, getting jobs and moving out. He wondered why he couldn't do the same. Despite his seniority in the program, he never fit in and made few friends. He suffered from the highs and lows of his disorder

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# The Frugal Lawyer Referral and Information Service Director

*In 2008, Lawyer Referral and Information Service (LRIS) directors are looking cautiously at the bottom line. How can LRIS directors keep the phones ringing and maintain cash flow in turbulent economic times? In this three part series, we will examine free and low cost ideas to promote LRIS and ways to ensure that LRIS remains relevant to the changing needs of the community.*

## Part I: Build Relationships with Reporters to Promote LRIS

by Charles J. Klitsch

**H**ave you ever issued a news release about your LRIS only to find that no media outlet picks it up? Developing working relationships with local reporters can be an inexpensive and effective way to improve the chances that news from your LRIS gets noticed.

If your sponsoring organization has a public relations person, talk with him or her about the wonderful resource LRIS and its panel members can be for reporters in your area. If you do not have the benefit of a regular staff person who handles publicity, this article is for you. The following tips offer a road map to developing relationships that will pay off in publicity for your LRIS.

### 1. Be organized

Make or obtain a list of local media outlets—newspapers, magazines, television stations and radio stations. In some areas, media directories are available.

Merely having the main phone number for the station or publication, however, is not enough. Call each media outlet in advance and ask who is responsible for reporting on legal and consumer matters.

Karin Phillips, community affairs reporter for KYW Newsradio in Philadelphia explains, “The person you are pitching to may not be the person for that particular story. Call the station, they will tell you... What person

there is really interested in medical-legal issues? What person does community affairs? Just that little investment of extra work will get your story on the air.”

Once you know who to contact, pick up the phone and get to know the reporter. Does the reporter prefer to be initially contacted about a story by e-mail or phone? What constitutes a newsworthy story for the station or newspaper? In what format would the reporter like to receive the story?

### 2. Be informed

Read your local newspapers and monitor radio and television news programs and talk shows. What are the legal issues being reported in the news? How do these issues relate to the services provided by your LRIS?

### 3. Be a planner

Key in on the issues most commonly reported in the media and plan events around those issues. Draw on the resources of your wide-ranging practice panels to find volunteers to staff special events.

Contact the reporters on your list well in advance of the planned event. This will allow reporters to put your event on their schedules or at least give them enough lead time to prepare their stories.

### 4. Be relevant

Before you pitch an event or story to a reporter, decide whether it

may be newsworthy.

Phillips describes her thought process and priorities when she receives a pitch about a proposed story. “How is it going to effect me? How is it going to effect so-and-so across the street? Why would my listeners care? Then explain it to me in a way that I can explain it to my listeners.”

What kind of story meets this test? This year, the sub-prime mortgage crisis and resulting spike in mortgage foreclosures is on everyone’s mind. Media outlets report on every new development, locally and nationally. Plan a special call-in program with volunteer panel attorneys answering callers’ questions about foreclosure, mortgage lending and bankruptcy. Then let the appropriate reporters know what you are doing. Where can the public get additional help and legal representation? LRIS, of course!

### 5. Be a resource

A good relationship with a reporter is a two way street. Make yourself stand out from the dozens of people who call and e-mail reporters every day with unsolicited stories. Have something to offer.

Many bar associations have a speakers bureau. At the Knoxville Bar Association, the speakers bureau is open only to LRIS panel attorneys. “It’s one of the

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## From the Chair...

by Ron Abernethy

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

Improving the quality of service provided to moderate income legal consumers is a constant goal of lawyer referral services, both large and small. The ABA Model Rules for Operation of a Lawyer Referral Service address the issue by focusing on the establishment of subject matter panels.

This policy stems, in no small part, from the realization that screening attorneys admitted to practice panels is a major component of any quality control program. Services that require prospective panel members to meet objectively determinable experience standards before receiving referrals have taken the first step toward improving the quality of the service they provide.

When effective screening of panel attorneys is combined with targeted marketing to consumers and prospective panel members, the result is a dramatic improvement in the quality of cases referred. When this happens, everyone is delighted—particularly panel members.

To a large degree, the general public's perception of the sponsoring bar association is determined by their interaction with the bar's lawyer referral service. Subject matter panels, because they improve the quality of lawyer referral, have a positive influence on this perception.

Moreover, an attorney's perception of a bar association is also colored by the attorney's perception of the association's

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## Maximizing the Return: Clear Rules for Collecting Percentage Fees Benefit Lawyer Referral Programs and Panel Members

by Allen J. Charne

Lawyer Referral and Information Services (LRIS) are sometimes referred to as being in "the business of public service." The vast majority of the bar association referral services that meet the requirements of the ABA Model Rules for the Operation of a Lawyer Referral Service ask panel members to remit a percentage of the fees received on referrals to the bar association. This business model supports a viable program that permits the LRIS to provide valuable services to the public. LRIS income is used to offset costs and support reasonable growth. Excess income may also support pro bono programs.

Among most bar associations that responded to an informal survey, percentage fee income constitutes between 60% and 90% of LRIS income. The actual percentages charged range from about 10% to 1/3 of the fee collected by the lawyer exclusive of disbursements. Percentages of 25% and higher are often restricted to contingency fee matters and/or to cases generating very substantial fees.

By paying a percentage of the fees generated by referrals, the panel members who receive the greatest financial benefit pay a fair share of the cost of LRIS operations. Without a percentage fee component, the referral service would either have to operate a very modest program, receive substantial funds from the sponsoring bar association or charge listing fees that would be so high as to discourage widespread panel membership.

Regardless of the percentages charged or the formula used, it is important that the panel members and the bar association know what is expected. This reduces the likelihood of confusion and disputes.

The best way to accomplish this is with clear rules in the contract between the panel members and the bar association. Panel members should be assured that fees will be used to improve the service's ability to handle calls, increase advertising and marketing and generally improve the LRIS for their benefit and the benefit of the public.

Many bar association referral services that include a percentage fee payment as a component of their budget have policies that say that the fees are owed based upon:

- a. The initial matter referred; **and/or**
- b. Any matter directly related to or derivative of the initial matter referred.

These policies raise two very important questions. First, should the LRIS share be restricted to the matter identified in the initial referral? Second, what is the initial matter and what is related or derivative to it?

The bar association referral counselors handling calls are generally not lawyers. However, even lawyers with the most brilliant legal minds would not be expected to identify each potential cause of action, type of damage, viable defendant, etc., in the brief time speaking to an often uninformed caller. Moreover, the referral counselor has no ability to review documents, medical records, interview witnesses, do research or have access to other useful information.

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lawyer referral service. Having subject matter panels assures that legal consumers will be referred to attorneys capable of handling their legal problems. Consequently, when bar members view the lawyer referral service as a quality resource, their attitude toward the bar association is much better than if they perceive the lawyer referral service as a place of last resort for clients seeking legal services.

The extent to which lawyers are willing to refer their own clients to the lawyer referral service is absolutely dependent on how they view the quality of the service. Lawyer referral services that understand this dynamic and implement subject matter panels find that attorneys in the community become a significant source of good referrals.

Given this reality, what other steps should referral services consider as they try to upgrade both the reputation of the referral

program and the quality of service the program provides? Is there something else a service can do to help assure local attorneys that sending the good cases they cannot handle to the referral service is a smart move?

One possibility is the addition of some form of peer review to the experience requirements that are a condition of panel participation. Several services have instituted some form of peer review as part of either the application or renewal process.

Peer review in these services is designed to address such issues as substance abuse, inappropriate behavior by the lawyer, failure of the lawyer to return phone calls and a diminution of a lawyer's faculties.

In California, for example, bi-annual peer review was mandated by the initial set of rules governing lawyer referral services. Individual services were allowed to determine the method and scope of the review.

Services often learn of a problem through specific client

complaints, comments from other lawyers and from client surveys—but not always. A modest peer review process, which can be as simple as a periodic meeting with individual panel members, can often alert the service to potential substance abuse or senility issues.

Such a system would provide an opportunity to inform panel members about service operations and provide an opportunity for team building. More importantly, the very existence of peer review can be used to encourage local attorneys to refer cases to the lawyer referral service.

Because the words “peer review” will assuredly evoke negative connotations in the minds of panel members, even discussing the issue will require considerable thought and advance work. Whether peer review is appropriate for your service is a local decision. However, engaging in a discussion of the topic is worthy of your consideration. Peer reviews are just one more step in the process of establishing a reputation for being “The Right Call for the Right Lawyer.”

## Returns maximized

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A panel member who accepts a matter will often learn of new defendants, causes of action and remedies as the matter is investigated and pursued. I would argue that it is the client who is being referred and it is for the lawyer to decide how to get the best result for that client. Certainly if the client calls to complain about the panel member, the complaint will not be excluded from consideration because the matter handled has a different title than the one listed on the referral statement.

We expect the panel member

The bar association expects that the lawyers to whom cases are referred will bring the best claims that they can fashion.

to do a good job in the case. In responsibly representing clients the bar association refers, no viable theory of liability or damages should be ignored. The bar association expects that the

lawyers to whom cases are referred will bring the best claims that they can fashion. The lawyers will prosecute those claims vigorously based on the facts presented and learned during discovery, including a class action where it is warranted.

The bar association also expects panel members to file amended complaints when facts will sustain additional claims and certainly expects that, to the extent possible, the cases it refers will be successfully prosecuted.

Success in pursuing novel theories, alternate defendants and additional claims is not a reason to avoid a fee, but rather the fulfillment of the best expectations of the parties. Good legal work and

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## Returns maximized

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the fees received for such work, in accordance with obligations freely made and understood by the panel member, must also redound to the benefit of the bar association and its mission to serve the public.

In deciding what kind of percentage fee rule will work best for your referral service, consider the following scenarios in the context of your existing rules. In addition, apply the two policies mentioned above. Do either your rules or the above policies address all of the concerns raised in these examples? And where they do address the concerns, are you happy with the answer?

### A. Torts cases

1. A disabled client wants to sue the garage attendant who shot him a year ago. The garage attendant is judgment proof and the one year statute of limitations on an intentional tort has run. Should the lawyer be exempt from paying a portion of the fee to the bar association because the lawsuit was filed against the parking facility for negligent hiring and supervision?
2. A client calls the bar association for a workers compensation lawyer because he was injured when a defective metal brake chopped off his fingers. Should the lawyer be exempt from paying any fees on the third party products liability claim against the manufacturer?
3. Several members of the same family were injured in the same accident. The referral listed only the mother who called. We will assume there are no conflicts and the lawyer represents all family members. Are the bar association fees restricted to the mother's case even though the serious injuries are those of the children?
4. A client has come to the LRIS with a new matter, but also has a serious prior injury that was being

Wills and estate planning, particularly for elderly and ill persons, may be handled for modest fees.

handled by another lawyer. The client is disappointed with the prior lawyer and after meeting with the lawyer recommended by the bar LRIS, decides to fire the previous lawyer and have this lawyer handle both matters. Should the lawyer be exempt from paying any fees on the prior matter, even though the client never would have met the lawyer but for the efforts of the referral service?

5. A client is referred for a legal malpractice case and the lawyer realizes that the legal malpractice case is not ripe because the underlying case is still viable. The lawyer knows that a legal malpractice suit will be dismissed on motion and the lawyer may even become a cross-defendant for not pursuing the underlying case. Is the lawyer exempt from LRIS fees on the only viable case the client has?

### B. Trusts & Estates

Wills and estate planning, particularly for elderly and ill persons, may be handled for modest fees partly in hopes of more substantial fees in the estate administration. Clients may entrust the lawyers with the original will. The testator may be given materials imprinted with the lawyer's contact information to be kept in the testator's safe deposit box with instructions for the executor. For these examples, assume that all ethical requirements are met.

1. A husband and wife call the LRIS to find a lawyer who would go to the hospital to prepare a will for the terminally ill husband. Wills are prepared and executed. The husband dies a few days after the wills were executed and wife (executrix) goes back to the same lawyer for probate and estate administration. Does the lawyer owe the LRIS fees for only the matter involving initial drafting of the will, or also for the probate of the estate?
2. A person is referred by LRIS to a lawyer to prepare a will and trust. The testator is comfortable with the lawyer and has confidence in the recommendation from the bar association. The client directs in the will that the referred lawyer should be hired by the executor. The person dies six months later and the executor hires the lawyer as the will directs. Is the LRIS due fees from the lawyer only for the initial matter involving preparation of a will and trust, or for the probate of the estate?
3. A single elderly woman is referred to a panel member who prepared and executed a will. She dies 3 months later. The executor sees the lawyer's name on the will and calls the lawyer to handle probate and estate distribution. Consider the same questions as above. Suppose she dies five years later. How would you apply the "derivative matter" policy in that situation?
4. The child of an elderly or ailing parent calls for a referral. Consultation took place in which basic information to prepare a will or estate plan was given for a \$25 consultation fee, but the lawyer is not actually hired to prepare any documents/plans. Six months or a year later the client contacts the same lawyer to administer the intestate estate. Does the lawyer owe the LRIS a percentage fee? Suppose the referral was made, but an initial consultation did not take place, the parent died and

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## Returns maximized

(continued from page 17)

the client is now calling the same lawyer to probate the estate. Does the lawyer owe a percentage fee in this situation?

5. One member of a family calls the LRIS for a lawyer to prepare a will or estate plan. That person comes in with other family members. The lawyer prepares wills for all family members. Does the lawyer owe a percentage fee only for the first matter, or for each family member served?

### C. Family/Matrimonial Law

1. A client is referred to a lawyer who advises the client regarding a pre-nuptial agreement; three months later the same client hires the lawyer for a divorce and enforcement of the pre-nuptial agreement. Is the lawyer obliged to remit a percentage fee for the divorce case? Suppose the client returns two years later. Does the lawyer owe a percentage fee for the divorce case in that situation?

2. A client is referred to a lawyer who is hired for a divorce and, one year later, the lawyer is hired to enforce visitation and support orders. Does the lawyer have to pay a percentage fee to the LRIS?

3. A client is referred to a lawyer who is hired for divorce and there are ancillary matters the attorney agrees to handle, such as real estate transactions, business matters or bankruptcy proceedings. For which matters is the lawyer obliged to pay a percentage fee to the LRIS?

### D. Real Estate and Landlord-Tenant

1. A referral is made to represent a landlord in an landlord-tenant matter. At the first consultation, the client is impressed and also hires the lawyer for a large commercial real estate transaction and to handle all tenant disputes in a large apartment complex. Must the lawyer remit a percentage fee for

A well chosen rule will eliminate confusion for panel members, reduce stress for LRIS directors and increase revenue for your program.

the additional work, or only for the initial subject of the referral?

2. An LRIS refers a tenant who brings in several others with the same issues with the same landlord. Does the lawyer owe a percentage fee for all the cases handled, or only for the initial single tenant matter referred?

### E. Multiple Matters

1. A bank calls because they want new foreclosure counsel. The bank decides to use the firm for all foreclosure work for the next ten years. Must the firm pay a percentage fee to the LRIS for every foreclosure matter handled over the next ten years?

2. A lawyer receives a referral of one of several employees who were terminated by a particular company. All of the terminated employees come to the initial consultation together and the lawyer is not retained by the referred client but by one of the others, or by all of them. How should the percentage fee due, if any, be calculated?

3. A lawyer receives a referral of an employee of company that has not paid ERISA benefits properly. The lawyer files a class action for the referred employee and all others similarly situated. For which cases is a percentage fee owed?

4. A lawyer receives a referral for defense of a contract/tort action. The lawyer decides that the matter is not defensible. But

the client hires the lawyer to file bankruptcy instead. And the lawyer determines that the client has a viable cross complaint in the contract action. For which matters is a percentage fee due?

### Recommendation

Collection of percentage fees owed can make the difference between solvency and debt for a lawyer referral program. Is it the matter that is being referred or the client who is referred to which the percentage fee should be applied? And what is meant by "the matter"?

A rule that would be client centered instead of case centered might provide:

### Payment of case fees from Referred Clients

For purposes of these rules, fees are owed to the bar association LRIS for:

1. The initial matter referred and any related transaction, proceeding or action.
2. Any other matter which involves the same client and is undertaken within three (3) years of the date of the service's referral or the initial retention, whichever is later;
3. Any other matter which involves the same subject matter as the initial referral, arises from the initial referral, and is undertaken within three (3) years of the date of the service's referral or the initial retention, whichever is later.

Whichever rule you decide is right for your LRIS, be sure that it is clear and addresses the concerns raised in the above examples. A well chosen rule will eliminate confusion for panel members, reduce stress for LRIS directors and increase revenue for your program.

*Allen J. Charne is executive director of the Legal Referral Service sponsored by the New York City Bar and the New York County Lawyers Association.*

## Build Relationships

(continued from page 14)

great benefits of membership," says LRIS director Robin Cox. Speaker bureaus that draw on the wide-ranging practice areas and experience of LRIS panel attorneys are ready when a reporter needs an attorney to comment on a case that is in the news or to provide background information for a legal issue or trend.

Harold Jackson, editorial page editor for *The Philadelphia Inquirer* explains, "Writing editorials, we deal with so many different subjects. And we are looking for people who can give us background information. Not necessarily for attribution or for publication, but to give us some

understanding. Whether it's criminal law, constitutional law, medical liability, torts... we are always looking for people to call."

Reach out to your LRIS panel members and make lists of attorneys by practice area who are articulate, available on short notice and interested in being contacted by reporters to assist with background information, provide legal commentary or appear as a guest. Then let your media contacts know they can call on you to be the point person when they need help with their stories.

### 6. Be available and responsive

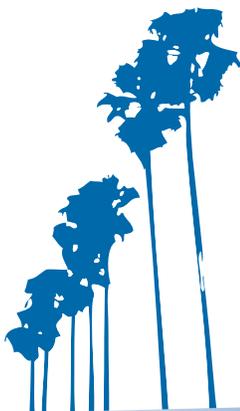
With the proliferation of news websites that need to be fresh, reporters' deadlines are shorter than ever. When reporters try to

contact you for help with a story or to return your call about an LRIS story, they will want to reach you quickly. Provide reporters with your e-mail address, office telephone number and, if you are comfortable, your cell phone number.

When you establish a good rapport with reporters, you can dispense with cold press releases and build on those relationships to spread the message that contacting LRIS is "The Right Call for the Right Lawyer" in your community.

### Next issue: Staying Relevant in Changing Times

*Charles Klitsch is director of public and legal service of the Philadelphia Bar Association*



# SAVE THE DATE

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## Covenant House

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and saw no one around him doing the same. He knew he was treated differently.

Because of the benefits secured

by his Covenant House YAC advocates, Mike now lives in a program with other young adults like himself. He has learned to read and holds a part-time job. Most importantly, he now has a life... friends, a small income, a home, some hobbies. Nothing

could please the Covenant House staff more, or provide better proof that our legal advocacy makes a real difference in the lives of the clients we serve.

*Jill Rottmann is the executive director of Covenant House New Jersey.*

# Loans Available for Small Businesses Confronting Loss of Reservist-Employees

by Steven Chucala

Reservists serving on active federal duty enjoy several federal and state statutory protections, such as those found in the Servicemembers' Civil Relief Act and the Uniformed Services Employment and Re-employment Rights Act. A recent, important addition to those protections is the Military Reservist Economic Injury Disaster Loan Program (13 CFR 123.500 et seq.), administered by the U.S. Small Business Administration (SBA). The program is designed to assist a small business where an essential employee's call-up to active duty has placed the business in jeopardy.

## Overview of the New Loan Program

Attorneys representing military personnel and businesses that employ military personnel would do well to take notice of the new SBA loan program, applicable to military conflicts occurring or ending after March 24, 1999. The program provides for taxpayer-supported loans to small businesses at interest rates of 4 percent and for terms of up to 30 years. Its purpose is to permit the business to meet ordinary and necessary operating expenses that are not being met because an essential employee was "called up" to active duty. Lack of awareness of this very helpful federal resource likely accounts for the fact that relatively few have taken advantage of it to date.

The main thrust of the disaster loans is a preventive effort to preclude an economic disaster for military reservists and National Guard members called to active duty as opposed to the traditional disaster loans after a natural disaster occurs. This SBA loan program is aimed at helping small

businesses rather than major corporations.

There are no standards or yardsticks for determining when a small business is facing an economic disaster. The SBA looks at the submitted financials, the business profits for the last three years or so, economic impact caused by the missing employee or employer and what funds will be needed to continue the business. Each case is determined on its own merits.

For the small business losing a key employee to military service, loan eligibility begins on the date the employee-soldier is ordered to active duty and ends 90 days after the date the soldier is discharged or released from active duty.

An "essential employee" is someone whose expertise is critical to the day to day operations of the business. An essential employee can be either the business owner or an employee. Even if a substitute employee can be hired, there may still be an economic loss for the business that the SBA will consider in granting the loan.

Prior to awarding a loan under this program, the SBA must determine whether credit is available from non government sources without creating an undue financial hardship on the business and whether applicants do not have sufficient financial assets of their own to recover without government assistance.

Loans awarded under this program are not intended to pay off debts or lost profits or to expand a business.

Elements of the disaster loan program include:

- The loan must be issued to keep the business going before or after the employee returns from active duty.
- The borrower must provide

assurance that the loan will be repaid.

- The loan limit is \$1,500,000 for up to 30 years at 4%.
- Loans of \$5,000 or less do not require pledging of collateral.
- The loan period will be set by the SBA based upon the businesses' ability to repay.
- The SBA requires appropriate business insurance coverage for loans over \$5,000.
- Loan money cannot be used to pay off debts, refinance long term debt or expand the business.
- The loan is not to cover lost income or profits.

## Applying for a Loan

As with any loan application, SBA Form 5R package requires basic borrower information, including a statement by the business owner that the reservist is an essential employee, and a copy of the activation orders or order or discharge, with a written concurrence by the essential employee. The business owner also must provide a written explanation of how the essential employee's activation resulted in the small business experiencing substantial economic injury, with an estimate of that injury. The business owner must also provide a description of the steps the business is taking to alleviate the substantial economic injury and a certification that the essential employee will be offered the same or similar job upon the employee's return from active duty.

The SBA determines the dollar amount of the loan based upon the actual economic loss. The SBA also establishes an installment payment plan and the term of the loan. To protect both the borrower

*(continued on page 22)*



## From the Chair...

by *General Earl E. Anderson, USMC (Ret.)*

### Chair of the ABA Standing Committee on Legal Assistance for Military Personnel

Each year the Standing Committee on Legal Assistance for Military Personnel has the honor of selecting recipients of the LAMP Distinguished Service Awards. Those chosen for the Award are individuals and units judged to have set the bar for military legal assistance, by pushing themselves and their practices in extraordinary ways.

Many Americans seem to assume the Judge Advocates only practice in the areas of military justice and operational law—an impression long reinforced in film, television and the media. But the average servicemember knows and appreciates that most military legal services performed by JAG officers and their civilian-lawyer counterparts fall under the legal assistance banner. These civil-law legal services address the same everyday consumer law, family law, landlord-tenant and other legal problems that entangle civilians, with the added complication that deployed servicemembers are entitled to extra legal protection when deployed thousands of miles from their home jurisdictions, and the understanding that unresolved legal issues imperil military morale and readiness.

To the average servicemember, then, the most important military lawyer is the one who works to get him or her out of a jam with a creditor, a landlord, a former spouse or a civilian court, or who makes sure his or her estate is in order before deployment.

The LAMP Distinguished Service Award program shines a light on those blazing paths in military legal assistance, that others might follow. This year as in years past, all of the nominees of the four uniformed services and the Coast Guard for the LAMP Distinguished Service Award deserve credit for outstanding performance. The Committee has selected the following five as recipients the 2007 LAMP Distinguished Service Awards.

#### **Navy:**

#### **Lieutenant Graham C. Winegeart, JAGC, USN, Legal Assistance Division Officer, NLSO Pacific, Detachment Guam**

LT Winegeart has been a legal assistance dynamo for the sprawling Western Pacific, pioneering a number of new practice initiatives while providing consistently excellent service. Reacting to the national mortgage crisis, he personally trained the NLSO Pacific command on real estate foreclosure matters and emerged as subject-matter expert available to other area Judge Advocates and clients. He provided comprehensive on-site legal services at the Guam VA Center, an innovation recognized in discussions at VA conferences in Pearl Harbor and San Diego. In his litigation practice, he challenged aspects of the Guam use tax on the grounds that it violated the Servicemembers Civil Relief Act. He thereby gained relief for many sailors stationed at Guam. LT Winegeart made preventive law a top priority, as evidenced by his training of command financial specialists through a Fleet and Family services program. LT Winegeart's forward-thinking approach, as point person for development of disaster-claims procedures, ensured that a sound disaster plan was in place in the event a typhoon strikes Guam, which sits at the center of the Western Pacific typhoon zone. The

client evaluations submitted by LT Winegeart's clients were uniformly glowing, and his legal services are regularly requested by sailors throughout the Pacific.

#### **Lieutenant Michelle V. Rosen, JAGC, USN. U.S. Region Legal Service Office, Europe and Southwest Asia, Naples, Italy Office**

LT Rosen expertly directed Legal Assistance Division services covering seven offices in three continents, at a time when the demands of the Global War on Terror significantly shrank available officer and paralegal resources. LT Rosen reorganized the Civil Law Department intake and tracking procedures, implemented innovative ways to protect client confidences; developed metrics to track case progress and results; developed a new legal assistance training program for all attorneys and paralegals in the region; implemented a system of using video teleconferencing capability to make possible face-to-face attorney meetings with sailors in places where there was a shortfall of attorneys; and implemented the first Immigration Law Workshop in Naples, recruiting USCIS officials from Rome to educate sailors on critical immigration issues. LT Rosen revitalized the immigration support program, resulting in citizenship for a number of active-duty and dependent personnel. LT Rosen also enhanced front desk services by providing detailed reference materials and overhauled the command's webpage on Navy Knowledge Online to better serve client needs.

#### **Air Force:**

#### **48th Fighter Wing, Office of the Staff Judge Advocate, USAF Europe, RAF Lakenheath, United Kingdom**

The legal staff of the 48th Fighter Wing has adroitly adapted its

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## From the Chair...

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professional services to the needs of its fighter-wing constituents and the special challenges presented by its location in the United Kingdom. Among the commendable initiatives of this office, it has: (i) instituted a wills-to-your-door program, in which fully equipped legal office teams, including lawyers and paralegals, take mobile offices to squadron locations in order to provide comprehensive legal readiness services, saving manpower and time for squadron commanders; (ii) employed a British Liaison, a British national non-lawyer who gives invaluable assistance to airmen on local legal issues such as traffic and parking tickets, landlord-tenant disputes, and foreign criminal jurisdictional matters; (iii) trained First Sergeants on British police procedures, including through visits to British police and custody facilities; (iv) adopted an aggressive approach to preventive law, through widely distributed "Legal Brief" publications on legal topics of interest to base personnel and implemented quick action toward solutions when systematic issues emerge, such as concerns raised by British custom authorities about non-compliance with power-of-attorney requirements for tax-free United Kingdom vehicles; and (v) created a new 48th Fighter Wing Judge Advocate web page on the Air Force portal page, featuring sections on Tax, Claims, Military Justice, Victim Witness Assistance, Legal Assistance, and "Unique to Us" Assistance. The site also contains a separate Deployment Related Legal Assistance page, designed to help members and dependents through deployment challenges. The website has been recognized as an example for the Air Force. The office also has taken the initiative to assist servicemembers in exercising their

constitutional right to vote in U.S. elections from foreign stations. Attorneys have gone into the units to provide guidance on voting rights.

### Marines:

#### Legal Assistance Office, Marine Corps Air Station Cherry Point

A very small legal office serving a very large population, MCAS Cherry Point Legal Assistance distinguished itself in advancing its clients' legal rights across a broad range of substantive legal areas. The office: (i) forced a large national lender with a significant military customer base to correct undisclosed auto loan terms that had proved to be problematic for a number of Marine borrowers; (ii) adopted the latest family-law best practices and standards to assist the growing number of Marines whose overseas deployments to certain Asian countries created foreign-law complications in their divorce proceedings; (iii) produced 45 preventive law articles that ran in the local military newspaper; and (iv) aggressively provided advice on immigration issues, resulting in the submission of 18 packages for citizenship to the INS.

### Coast Guard:

#### General Law Branch, Legal Division, Coast Guard Maintenance and Logistics Command Atlantic

Largely through the dynamic and innovative efforts of four individuals, this office creatively expanded and enhanced legal

assistance services, despite diminishing resources. Among other accomplishments during the year, the office: (i) successfully recruited and partnered with local attorneys to represent servicemembers in contested court cases, under an Expanded Legal Assistance Program; (ii) successfully "exported" legal assistance by making a number of visits to hospitalized clients; (iii) conducted site visits for junior enlisted personnel who otherwise might not have had access to legal assistance; (iv) planned and stood up a free-standing legal assistance center with a separate entrance to protect client privacy; and (v) reconfigured office space to double the capacity to serve VITA (Volunteer Income Tax Assistance) clients. These quantitative and qualitative improvements were realized despite the fact that the office lost its civilian attorney in April 2007, due to resignation. In granting this group award, the Committee has specially recognized the contributions of Lieutenant Commander Casey Chmielewski, Lieutenant Adam Olson, Yeoman Third Class Sarah Pusey and Yeoman Third Class Katie Long.

This summary is not intended to do justice to all the accomplishments of the 2007 DSA Recipients, but should provide a flavor of the accomplishments of these truly exemplary legal assistance officers in 2007. Collectively they set a standard for all to emulate.

## Loans available

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and the SBA, loans over \$5,000.00 require the borrower to maintain full hazard insurance throughout the period of the loan.

Specific information on this loan program can be obtained from the Small Business Administration at: 800-659-2955 or via [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov).

Completed loan applications may be mailed to: U.S. Small Business Administration Processing and Disbursement Center, 14925 Kingsport Road, Ft. Worth, Texas 76155-2243.

*Steven Chucala is a former chief of legal assistance at Fort Belvoir, Virginia. He is both a retired JAGC Army LTC and Army civilian attorney admitted to practice in Virginia, New York and the District of Columbia.*

# National Equal Justice Library Finds Permanent Home at the Georgetown University Law Center

This article appeared in the March 31, 2008 issue of the National Legal Aid & Defender Association Update, Volume 10, Number 5. Reprinted with permission.

March 25, 2008, marked an important day in the equal justice community, celebrating the National Equal Justice Library's (NEJL) arrival at Georgetown Law Center and the library's acceptance of the papers of Gary Bellow. This celebration, dedicated to the memory of Georgetown Law's longtime library director and professor of law Robert Oakley, who is credited for bringing the NEJL to Georgetown, opened with the symposium titled, *Gideon and Katrina: Legal Aid and Defender Programs at a Crossroads*.

Alan Houseman, executive director of the Center for Law and Social Policy, organized and led this symposium, which included the following panelists: Helaine Barnett, president, Legal Services Corporation (LSC); Norman Lefstein, professor, Indiana University of Law - Indianapolis; Ab Currie, Principal Researcher, Legal Aid Access to Justice, Department of Justice in Canada; Jo-Ann Wallace, president and CEO, National Legal Aid & Defender Association (NLADA); Jonathan Smith, director, Legal Aid Society for the District of Columbia; Esther Lardent, president, Pro Bono Institute; Cait Clarke, director of public interest law opportunities, Equal Justice Works; Nancy Forster, public defender, State of Maryland; Darryl Hunt, founder, Darryl Hunt Project for Freedom and Justice; Martha Bergmark, director, Mississippi Center for Justice; Janell Smith, organizer, Student Hurricane Network; Chris Flood, deputy chief of trails, Orleans Public Defenders; and Peter Edelman, professor, Georgetown University Law Center.

During this symposium, Barnett provided an overview of civil legal aid in the United States with emphasis on LSC and the challenges faced by legal aid, particularly addressing inadequate funding levels and the LSC initiatives to improve quality. Lefstein described the history of indigent criminal defense after *Gideon v. Wainwright*, the current status of public defender programs and the challenges ahead. Currie gave an international perspective of both civil and criminal legal aid in Canada.

Wallace led a question and answer session on "*Gideon v. Wainwright: Expanding Counsel in Civil and Criminal Cases*" where panelists Smith, Lardent, Clarke, Forster and Hunt addressed and debated difficult questions around the future of the right to counsel in both the civil and defender contexts. This interactive panel addressed inadequate funding, how to improve quality, and the issues raised by the movement for a right to counsel in civil cases. The panel included the unique perspective of Darryl Hunt, who had been wrongly imprisoned for many years for a crime he did not commit.

Panelists Bergmark, Flood and Smith focused on the response to Hurricane Katrina, the developments during the last two years, the challenges today for those concerned about low-income persons, the struggle to create an effective public defender program in New Orleans, the huge effort to activate law students and the lessons learned for the future. Edelman ended this symposium by reflecting on poverty law and advocacy and access to justice.

Edelman emphasized that the progress to equal justice is not guaranteed and that it is up to future generations to study and to live the movement for equal justice.

The second half of the program commemorated the history preserved at the NEJL. Jack Londen, president of the Consortium for the National Equal Justice Library served as master of ceremonies. He welcomed T. Alexander Aleinikoff, dean of Georgetown University Law Center and the law library staff, Peggy Fry, acting library director, Kumar Jayasuriya, associate law librarian for Patron Services, and NEJL archivist Anne Mar. Aleinikoff stated Georgetown's long term commitment to NEJL and remarked that NEJL has to be a living archive that is not just preserved but made to inspire.

Earl Johnson, Jr., a pioneer in legal services and currently a Scholar in Residence at Western Center on Law and Poverty, spoke very fondly of his friend Gary Bellow and the creation of the NEJL Library. The planning for NEJL began in 1988 and implementation followed in 1990 with the creation of the Consortium for National Equal Justice Library. The Consortium includes the American Bar Association, NLADA, the American Association of Law Schools and the American Association of Law Libraries. American University's Washington College of Law housed NEJL from 1997 to 2006. The library then moved to its permanent location at Georgetown University Law Center in 2007.

Giving the official presentation

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## NEJL Library

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of Gary Bellow's papers to NEJL, Jeanne Charn, Bellow's widow, shared memories of her late husband's nationally renowned service to legal aid and the legacy he leaves behind. Bellow served as chief deputy of the D.C. Public Defender's Office and worked with Edgar and Jean Cahn in the effort to persuade the Office of Economic Opportunity (OEO) to include the legal services program in the

"War on Poverty." He served on the National Advisory Committee to the OEO Legal Services Program and later was the first deputy director of California Rural Legal Assistance. Bellow founded clinical programs at the University of Southern California and then at Harvard Law School where he taught from 1971 until his death in 2000.

Charn, a lecturer and former clinical director at Harvard Law School, spoke about her late husband's "unboundedly optimistic" attitude, even during the hardest of times. In her hand, Charn held a vinyl record of oral

histories along with black and white photographs of California migrant farm workers and other scenes reminiscent of the equal justice movement passed down by Bellow that will become part of an incredible archive of history preserved. The program ended with the presentation of Edgar and Jean Cahn Article Awards to Jon C. Dubin, professor of law, Rutgers-Camden School of Law and to Susan D. Carle, professor of law, Washington College of Law, American University.

For more information about NEJL please visit, <http://www.equaljusticelibrary.org>

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