



Dialogue

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DIVISION FOR LEGAL SERVICES

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Pro Bono Publico: For the Public Good, and the Good of the Profession

by James Wilber

The following article appeared in the November 1998 issue of *In-House Practice and Management*, Altman Weil Publications, Inc. It is reprinted with permission. It describes the Pro Bono Partnership Forum held during the 1998 ABA Pro Bono Conference. Mr. Wilber moderated the program, and this article summarizes his conclusions of the event.

As lawyers, sometimes we need to be reminded what the term, *pro bono publico*, means. It means, of course, for the public good. In the legal profession, it has come to connote legal services provided free of charge to clients of limited means without any other access to our system of justice, which also thus inures to the good of the public in general. The term does not stand for free legal services provided to clients of means, nor does it connote reduced priced services.

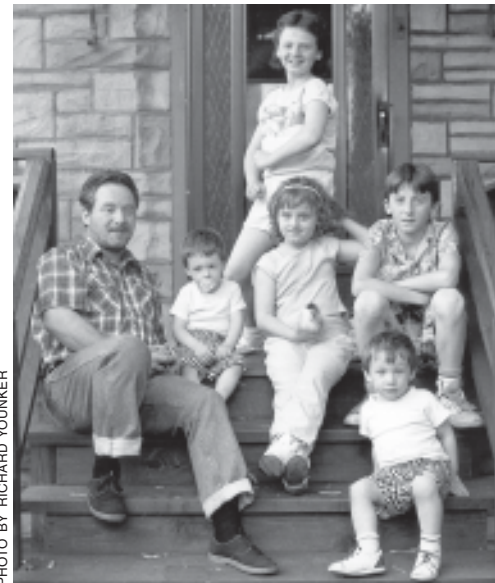


PHOTO BY RICHARD YOUNKER

On March 27, 1998, I had the privilege of serving as the moderator of two panel discussions for the inaugural ABA Pro Bono Partnership Forum. Chaired by B. Riney Green, a partner in the Nashville-based firm of Farris, Warfield & Kanaday, the Forum was a one-day conference within the 1998 ABA Pro Bono Conference. The Forum was composed of approximately 120 pro bono leaders representing five major segments of the legal profession: the judiciary, law firms, corporate law departments, law schools and bar associations.

The Forum opened with introductory remarks from Hon. Judith Billings of the Utah Court of Appeals, Chair of the ABA Standing Committee on Pro Bono and Public Service. Doreen Dodson, Chair of the ABA Standing Committee on Legal Aid and Indigent Defendants, and partner in The Stolar Partnership in St. Louis, followed Judge Billings. Ms. Dodson reported on the response of bar leaders to decreased federal funding for the Legal Services Corporation.

[Former] ABA President Jerome J. Shestack gave the Forum's keynote address. He

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Public Good

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provided a history of the legal profession as it related to public service work and pro bono legal services. Surprising to some, he pointed out that the profession's commitment to ensuring access to justice for all and for providing legal services to people of limited means, were relatively recent phenomena. Essentially they began with the formulation of the nation's first bar association (the Association of the Bar of the City of New York) and the emergence of the first Legal Aid Society there, at approximately the turn of this century.

The Forum's first panel discussion was on the topic of overcoming obstacles to pro bono and maximizing pro bono opportunities. The panelists, each representing a different segment of the profession, talked about how their organizations had been able to overcome some of the traditional obstacles to pro bono. The panelists were:

- Marion A. Cowell, Jr., Executive Vice President and General Counsel, First Union Corporation, Charlotte, North Carolina. The law department at First Union has set a goal that each of its lawyers devote at least 40 hours per year to pro bono work. One of the criteria upon which performance appraisals of in-house counsel at First Union are based is the demonstrated commitment to pro bono. In addition, a law firm's commitment to pro bono is considered in the company's decision on the outsourcing of legal services.
- Elizabeth Quick, President of the North Carolina Bar Association (NCBA), partner in the Winston-Salem office of Womble Carlyle Sandridge & Rice. Ms. Quick talked about how the NCBA has been able to overcome some of the

obstacles it has faced with regard to pro bono. The NCBA, for example, has integrated a pro bono component into every standing committee of the association.

- Hon. Denise Sweet Owens, Judge of the Chancery Court, Jackson, Mississippi. Judge Owens talked about how to get judges to overcome any reluctance to be active in pro bono because others may view it as conflicting with the judicial canons. She talked about the importance of judges, with the considerable influence they have in encouraging the practicing bar in delivering pro bono services; in making courts more accessible to pro bono lawyers and their clients; and in taking part in recognizing lawyers who are active participants in the delivery of pro bono services.
- George Cauthen, partner, Nelson, Mullins, Riley & Scarborough, Columbia, South Carolina. Mr. Cauthen talked about obstacles to pro bono services within law firms and how to overcome them. His remarks focused on how a firm can make pro bono an integral part of its culture.
- David Hall, Dean, Northeastern University School of Law, Boston, Massachusetts. Dean Hall kicked off a lively debate among the academics in the audience regarding mandatory versus voluntary pro bono requirements for law students. He talked about inculcating pro bono into a law school's curriculum, and about the importance of clinical programs in setting the stage for a lifelong commitment to pro bono once a student graduates and becomes a member of the bar.

The keynote speaker at lunch was Stephen Hanlon, partner at Holland & Knight, Tampa, Florida, and head of the firm's Community Service Team. Holland & Knight has been recognized several times as one of the most pro bono-committed law firms in the U.S.

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From the Chair...



by Hon. Judith Billings
Chair of the ABA Standing
Committee on Pro Bono
and Public Service

On February 5, 1996, the ABA House of Delegates, without dissent, adopted the *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means* (the Pro Bono Standards). The Pro Bono Standards were the product of four years of work by the Standing Committee on Pro Bono and Public Service (the Pro Bono Committee), with significant help from a wide range of others familiar with the delivery of pro bono legal services to the poor. As a new year dawns it is time to focus on this critical tool to build your pro bono program for the new century.

Organized pro bono programs have existed in this country for over a century and have played a vital role in providing access to justice by assisting members of the private bar in their efforts to furnish free civil legal services directly to persons of limited means. In the past 20 years the growth in the number of programs has been remarkable. In 1980, the ABA identified 80 pro bono programs. Today, there are more than 900 programs. The variety, sophistication and complexity of programs and program structures similarly have grown, and we expect that growth to

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A Rule to Show Cause on the Courts: How the Judiciary Can Help Pro Bono—Part II

by Carl "Tobey" Oxholm

Successful pro bono programs, especially those that are well funded, always keep two objectives in mind: minimize costs and maximize benefits. Typically, these programs do not have the funding necessary to reimburse their attorney volunteers for the expenses that they incur. Although this may not be a problem for the largest law firms, it is a significant impediment for smaller firms and solo practitioners. As a result, pro bono programs must be creative in finding ways to eliminate or minimize the costs of volunteer services. That is especially true for poorly funded programs.

There are two different types of costs that a pro bono program can help its volunteers avoid or reduce: costs related to the specific representation, and costs that the volunteer will otherwise face in his or her practice. Courts are well suited to help with both. This two-part article highlights several strategies that the judiciary can use to support the bar's pro bono service. Part I (Dialogue Winter 1999) suggested ways in which the court can help reduce the costs associated with the specific matter for which counsel is providing pro bono services. Part II considers other costs that the court could waive in return for the attorney's pro bono service.

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Judiciary

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Other Costs

Admission Fees. Some courts have a one-time admission fee. Others have annual or bi-annual admission fees. Those fees could be waived for attorneys agreeing to enroll in a volunteer panel or to take a pro bono case within the 12-month period following admission.

Mandatory Continuing Legal Education (MCLE). Costs to lawyers in jurisdictions that have mandatory MCLE are high. Pro bono programs can help lawyers and law firms offset those costs.

- **MCLE for Credit.** Training programs that the court offers can be free to volunteers and MCLE-approved. The court could offer a full day of training by recognized experts in the field. The training programs can be for reduced cost or free for pro bono program volunteer panel members. In addition, the fees that non-members pay may be used to raise money for the pro bono program or be put in a fund to reimburse pro bono counsel for expenses.
- **Pro Bono for Credit.** The Pennsylvania Supreme Court is considering a proposal that would award attorneys one MCLE credit hour for every twenty hours of pro bono service rendered through a recognized pro bono program. The Court, however, has not yet adopted this proposal. There is no doubt that attorneys taking pro bono cases learn much more performing pro bono service (often in an area of law that they do not generally practice) than they do in one mandated classroom hour. Doing legal

work pro bono, itself an ethical obligation of the bar under Rule 6.1 of the Rules of Professional Conduct, is every bit as important as studying it. Courts should join the bar associations in urging the state supreme courts to permit MCLE credit for pro bono service.

Intrafirm Pressure. While some have perceived an increase in pro bono activity in recent years, the challenge inside the private law firms remains trying to find a balance between meeting the increasing demand of fee paying clients and meeting each lawyer's

Courts are well suited to help defer costs related to the specific representation, and costs that the volunteer will otherwise face in his or her practice.

professional responsibility to do pro bono work.

Lawyers who want to do pro bono need help from the outside. In most jurisdictions that have successful pro bono programs, the judiciary plays a key role by establishing the expectation (if not the rule) that lawyers will volunteer to help in the delivery of legal services to the poor.

This article does not recommend that courts make volunteer service mandatory. It suggests that each state and federal district review its rules and amend them to reflect that "the court expects [all bar members] to engage in pro bono, if not in a panel maintained by the court, then through the

local bar association's pro bono program."

Offsetting Costs with Benefits

Recognition. Courts must recognize that the pro bono program cannot cover all costs related to pro bono representation. At its core, pro bono service represents a cost on attorneys for which there is no monetary reimbursement. Instead, courts should actively seek ways to reward volunteers—i.e., lawyers, shorthand reporters, experts, etc. In general terms, courts should offer praise, plaques and publicity.

Despite their protests, those who serve sincerely appreciate expressions of thanks from the judiciary. Words spoken in open court, a letter of thanks sent upon enlisting with a panel or at the conclusion of a case, a comment made to a senior partner, these all go a long way in making the volunteer feel that her service was important and worth repeating. Regular (annual) appreciation ceremonies, like receptions limited to those who are on the court's pro bono panel, make pro bono service special. The court can remind the bar of the importance it places on volunteer service by the court's Chief Judge or even a visiting judge speaking a few words about pro bono.

Awards (like certificates and plaques) are very important. Few lawyers who receive them hide them away. On the contrary; most lawyers display them in offices with pride. Awards are relatively inexpensive, but they have lasting value.

The message also needs to go beyond the one lawyer's room or the gathering of "the choir;" it needs to get out to those who are

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From the Chair...

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continue. The Pro Bono Committee responded to this growth, deeming it appropriate to develop a set of standards that will aid existing and new programs become more efficient and effective in marshaling volunteers, meeting clients' needs and facilitating the provision of high quality legal services.

The Pro Bono Standards were not drafted to create any mandatory requirements or minimum standards for performance. Rather, they were designed to set forth the aspirational goals for which a pro bono program should strive. The Pro Bono Standards cover a broad range of topics:

- program governance—roles, responsibilities and membership of pro bono program governing entities;
- program effectiveness—delivery design, program priorities, quality assurance, relations with other organizations, program evaluation;
- relations with clients—ethics, eligibility, grievance procedures, client satisfaction;

If you have a copy of the Standards, pick it up, review it, and identify just one item as a way to improve or expand your program.

- relations with volunteers—recruitment, utilization, training and support, costs policies, retention and recognition; and
- effective delivery of services—case acceptance, client intake, case placement, tracking and oversight, record keeping, and program personnel.

Since the adoption of the Pro Bono Standards, pro bono programs, bar associations, legal services programs and other entities have used the Standards to improve their program operations. The Center for Pro Bono, through its Peer Consulting Project, uses the Pro Bono Standards as a "bible" on technical assistance visits to programs, referring to individual standards

throughout the on-site consultation and in the final report submitted to the programs. In addition, individual Pro Bono Standards have been incorporated into appropriate workshops at the ABA Pro Bono Conference (renamed the Equal Justice Conference beginning in 1999).

A manual like the Pro Bono Standards can only be helpful if it is not collecting dust on the book-shelf. If you have a copy of the Standards, pick it up, review it, and identify just one item as a way to improve or expand your program in 1999. With that as a start, you will find yourself coming back to the Standards time and time again. If you do not have a copy, contact CerSandra Oliver, ABA Center for Pro Bono, at 312/988-5759 (e-mail: oliverc@staff.abanet.org), for a copy of the order form. The initial investment you make to purchase this invaluable resource will pay for itself many times over as your program becomes more efficient and effective in working to meet its goal of providing high quality legal services to the poor.

Judiciary

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not yet "in." Publicity is critical. Not only does it give the lawyers greater praise, but it also reaches their colleagues whom the court wishes to involve in the effort.

Participation. Judges cannot do fundraising, that much is clear. It is equally certain, however, that they can participate directly in pro bono programs. The programs that are strongest often have judges on their boards of directors. When lawyers know that members of the judiciary are going to be at pro

bono program meetings, lawyer attendance is much higher. In addition, a judge's participation brings prestige to the program and to all who work for it, heightened visibility within the legal community, and credibility to the broader community (including funders).

Conclusion

There is much a court can do to reduce the costs to lawyers when they provide pro bono legal services. Each court should develop a list of the assets that it has to offer its volunteers with an eye to more than reimbursing out-

of-pocket costs. Then it should consider whether it could devote a portion of the fees it receives from attorney admissions to help volunteer attorneys cover the costs they must necessarily incur. Offering those assets will require administrative time, but local bar associations should be ready to help with that. The benefits to the cause of justice, resulting from such judicial activism, will be immediate and long lasting.

Carl "Tobey" Oxholm is an attorney at the Law Firm of Connolly Epstein Chicco Foxman Oxholm & Ewing, Philadelphia, PA.

Public Good

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Last year alone, its lawyers contributed on average 70 hours each in pro bono services (the ABA standard is only 50 hours). The value of the services amounted to well over \$4 million.

The afternoon panel consisted of the following speakers:

- William Reece Smith, Jr., Past President of the ABA, from the Carlton Fields law firm in Tampa, Florida. Mr. Smith brought a national, and longstanding, perspective to pro bono efforts in the U.S., and the ABA's leadership role in pro bono. He has been one of the ABA's great leaders in this area.
- Robert Precht, Director of the Office of Public Service at The University of Michigan Law School, Ann Arbor, Michigan. Mr. Precht's remarks stimulated discussion on the goal of a law school program as being more to instill a commitment to pro bono and public service in burgeoning lawyers than actually providing services to clients of limited means. Although the provision of services in clinical programs is very important and can be of significant assistance to clients, Mr. Precht thought the more important contribution of a law school would be in how its graduates honored their pro bono requirements when they joined the practicing profession.
- Scott J. Atlas, partner in Vinson & Elkins, Houston, Texas. Mr. Atlas talked about the ABA Pro Bono Challenge—a program by and for lawyers in the largest U.S. firms. Members of the ABA Challenge have made significant contributions to pro bono, and lawyers in private practice have long been at the forefront of leadership in pro bono for the profession as a whole.
- Robert E. Healing, Corporate Counsel, General Electric Com-

pany, Fairfield, Connecticut. Mr. Healing told the audience about the very successful corporate (in-house) program being conducted in Westchester (New York) and Fairfield Counties, where more than 4,000 corporate counsel practice. The program is focused on the "other type of pro bono," that is, on providing free legal services to not-for-profit organizations that in turn provide direct social services to disadvantaged members of society. (ABA Rule 6.1 of the Model Rules of Professional Conduct, defines pro bono services as those provided directly to clients of limited means, or those provided to not-for-profit organizations that assist poor people).

If I were to summarize the main themes that came out of the conference, they would be encouragement, opportunity and leadership. By encouragement, I mean the countless examples given by Forum participants of the need for those with influence in the profession to encourage others to do better and more by way of pro bono services.

When it comes to encouragement, it is clear from the conference that when the Chief Justice in a state talks, other judges listen. When judges talk, practicing lawyers listen. When the General Counsel of a corporation talks, in-house lawyers listen. When corporate counsel talk, law firm lawyers listen. When law firm partners talk, associates listen. When Deans of law schools talk, the faculty listens. When law school professors talk, law students listen. Finally, when employers of all types talk, law school graduates listen.

By opportunity I mean the many remarks made about providing willing lawyers with opportunities for meaningful pro bono matters and engagements. Several times people said there are lawyers

looking for ways in which to get involved with pro bono work. Many times, however, they do not know where to find eligible clients with such needs. I can think of nothing more unfortunate than to have needy clients and willing lawyers without easy ways to find each other.

By leadership I mean that it takes leadership to provide the first two things, encouragement and opportunity. The leaders in pro bono service delivery are the ones doing everything possible to find lawyers and judges of influence to encourage their colleagues to participate. The leaders are the ones who are discovering the opportunities for pro bono work for others, and making it as easy as possible for willing lawyers to be teamed up with clients in need. If the leaders of an organization do not support pro bono services, others also will discount its importance; if the leaders set an example of commitment to pro bono, it is much more likely that others in the organization will be committed to it as well.

To me, the conference appeared to be well received and to have achieved the goals set for it. We should congratulate the Forum participants for being in the forefront of the fight to increase the amount of pro bono legal services delivered throughout the country. Without aspiring to public service, without offering services in the public good, our profession would be no more than a trade. Those of us who are proud to be lawyers are well served by those who are doing so much to help our profession meet the lofty goals it has set for itself. *Pro bono publico* is not only for the public good, it is also very much for the good of our profession.

James Wilber, is a consultant at Altman Weil Consultants.

From the Chair . . .



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

Perhaps the most rewarding aspect of my tenure as Chair of the ABA Commission on IOLTA has been my participation in the relationship between the Commission and the National Association of IOLTA Programs (NAIP). In my opinion, this relationship is unique in the ABA. Unified in the belief that IOLTA is a constitutional and fair means to help preserve and adequately fund indigent civil legal services in order to attain equal justice, the two organizations have worked remarkably well together to ensure and to enhance IOLTA's vitality. We have done so while avoiding the personal and turf wars that often plague inter-organizational relations.

Much of our association is institutionalized. The two organizations participate in four joint committees and several joint projects and task forces. Twice a year, we co-sponsor two days of high quality workshops on current issues confronting IOLTA programs. In addition, the two organizations develop workshops for various other conferences and meetings.

Although these institutionalized mechanisms are critical to our success, the heart of the relationship is the trust that comes out of our mutual respect for each other

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IOLTA Income and Grants on the Rise

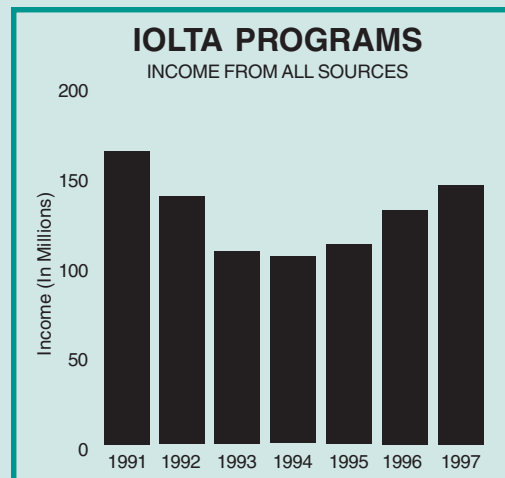
Nationally, IOLTA income rose from \$109,965,735 in 1996 (50 states responding) to \$122,529,232 in 1997 (48 states responding), according to the most recently completed IOLTA Database update. Total income administered by IOLTA programs nationally was \$144,831,859 in 1997. That number includes interest from IOLTA accounts in addition to income from investments, filing fee surcharges and all other sources. The 1997 numbers continue a three-year trend of increasing IOLTA revenues, although levels have not yet matched the 1991 high of \$152,723,103 in IOLTA account interest and \$163,781,418 in total IOLTA income.

As might be expected in light of the national income numbers, IOLTA program grants in 1997 increased for the third year in a row. During that year, IOLTA programs awarded \$124,676,057 in grants: \$111,433,757 to legal services programs, \$6,103,591 to administration of justice programs, \$2,883,152 to public education programs, \$1,230,988 to law student programs and \$3,024,569 to other organizations. Approximately 90 percent of IOLTA grants went to legal services programs, which is in line with historical percentages. Mirroring the income numbers, although grant figures continue to increase, they have not reached the 1992 level of \$149,153,151.

The IOLTA Database is housed at the ABA IOLTA Clearinghouse in Chicago. It is a joint project of the ABA Commission on IOLTA and the National Association of IOLTA Programs (NAIP) and is the only centralized source of comprehensive information on

IOLTA program income, grants, administration and banking practices. The IOLTA Database has become an invaluable resource during the course of recent litigation as a tool to provide IOLTA programs with requested technical assistance.

In mid-April, each U.S. IOLTA program should have received forms for updating its IOLTA Database information. While the Commission and NAIP realize that completing these forms can be time consuming, our ability to provide comprehensive national IOLTA data and information will suffer greatly if we do not get close to a 100 percent response rate. If you have not returned your update, please send it to Janice Jones, Program Manager, ABA Commission on IOLTA, 541 N. Fairbanks Court, Chicago, IL 60611. If you need a new copy of the forms or if you have any questions about them, contact Ken Elkins, Assistant Counsel, ABA Commission on IOLTA at 312/988-5774 (e-mail: kelkins@staff.abanet.org).



Grantee Spotlight Washington State's Housing Justice Project

by Caitlin Davis Carlson

Puget Sound's hot real estate market, while a boon to landlords, has left some tenants out in the cold.

An influx of out-of-state residents moving to the Seattle area for employment opportunities has resulted in a steep increase in housing prices and record low vacancy rates in the rental market. Rental rates for two bedroom apartments have increased by an average of 33 percent in King County during the last six years, and the Seattle-King County Association of Realtors estimates that the average household rent increased by 10 percent in 1997 alone. Within the Seattle city limits, there are 16,220 households currently on the waiting list for low-income housing.

Because demand is so high for rental properties, landlords have less incentive to negotiate with tenants who are experiencing either financial difficulties or other obstacles to meeting the terms of their tenancy.

Enter the Housing Justice Project, a one year-old venture administered by the King County Bar Association and supported by three other IOLTA-funded projects: the Legal Action Center, Columbia Legal Services and Northwest Justice Project. Originally inspired by the Erie (NY) County Bar Association's highly successful Attorney of the Morning project, the Housing Justice Project



PHOTO BY RICHARD YOUNKER

represents low-income people in unlawful detainer actions. Using a cadre of well-trained volunteer attorneys, the Housing Justice Project provides a much-needed service for low-income people who invariably went unrepresented prior to the Project's inception in King County.

"The clients we see are generally employed, but in very low wage jobs. They are just barely getting by," says Robin Lester, Director of Community Legal Services at the King County Bar Association. "By preserving their housing, we are preventing joblessness and family separation as well as homelessness."

Prior to opening the full-scale version of the Housing Justice Project in July 1998, a four-week pilot project was held to determine an average caseload and the number of volunteer attorneys, law students and administrative

staff that would be necessary to effectively operate the Project.

Research conducted before the opening of the Housing Justice Project's pilot project showed that over 90 percent of the unlawful detainer show cause hearings resulted in a writ of restitution being issued (an eviction). During the pilot phase, a writ was issued at the show cause hearing in only 11 percent of the cases where the client was represented by a Project volunteer. A writ was not issued in the other cases for a variety of reasons including a negotiated payment plan, a negotiated move out date, or the case being set for trial. Over half of the clients arriving for their hearing gained more time to move out, preserved tenancy until the outcome of the trial, or preserved their tenancy completely. Based on statistics from the second half of 1998,

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Housing

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nearly 600 clients will be served in the first year of the Housing Project's operation.

One of the unexpected outcomes of the pilot project was the realization that a licensed attorney needed to manage it. Several lawyer-mentors were available to consult with volunteer attorneys on an as-needed basis. A staff attorney, however, needed to be on-site to support volunteers, to advise clients if they arrived in greater numbers than the volunteers could handle, and to provide representation in the event that a volunteer did not show up.

H.B., a single parent who lived in a public housing unit, contacted the Housing Justice Project after hearing about the program from a community service organization. H.B. got off public assistance and began a full time job. She was trying hard to get back on her feet.

The Public Housing Authority filed an eviction action against H.B. even though she had submitted a timely application for emergency assistance. If the Housing Authority had processed the application, the emergency assistance would have covered H.B.'s rent between the time she received her last public assistance check and her first paycheck. The Housing Authority, however, did not process the documents in a timely fashion, and H.B. no longer was eligible for emergency assistance.

At the time of her show cause hearing, H.B. had already started her job, and, as a result, she had all the money that she owed. Noting defects in the notice that the Housing Authority served and the Housing Authority's failure to appropriately process H.B.'s emergency assistance application, H.B.'s volunteer attorney pursued a voluntary dismissal of the

Housing Authority's case. The parties signed a stipulation and order of dismissal after H.B. paid the rent in full.

Housing Justice Project volunteers come from a variety of sources. The Project, which is part of the King County Bar Association's ABA award-winning Volunteer Legal Services, taps into Seattle's active pool of volunteers from large law firms, in addition to practitioners, law students and other bar members. The program also hopes to engage the services of retired attorneys who recently have become eligible to provide volunteer legal services under Washington State's new Emeritus Rule.

Training is an important factor in the Project's success. Unlike lawyers for the landlords and public housing entities that pursue eviction actions against low-income clients, Housing Justice Project volunteers do not have much experience in housing law. The emergent nature of unlawful detainer actions makes training for volunteers imperative.

"Frequently, attorneys will only have fifteen or twenty minutes to speak with a client before the hearing starts. The volunteers really have to be able to think on their feet," says Cheryl Markham, Managing Attorney of the Housing Justice Project. "Our training helps attorneys who don't normally practice landlord/tenant law to be able to quickly identify issues and appropriate defenses."

Joseph D. Puckett, a Seattle attorney who often represents landlords and property management firms, concurs, "I regularly encounter attorneys who represent, on a pro bono basis, tenants in landlord/tenant issues. More than the others, volunteers with the Housing Justice Project know the terminology and understand the timeline these cases are on.

They are very well trained."

Once volunteers agree to take a case, they attend a training session taught by attorney mentors culled from housing experts in the legal services community. The training covers state and local laws about tenant and landlord rights and responsibilities, substantive defenses, sample forms, and information about non-legal resources for clients with housing problems. Participants receive Continuing Law Education credit and agree to become part of the program's volunteer rotation, which involves spending a morning at the courthouse every six weeks.

Facing eviction from her south King County home because she could not work after an on-the-job injury, J.S. saw only two choices: send her two sons to live with an aunt in Nebraska until she regained her health, or keep the entire family together—but homeless.

J.S. had all but decided to send her sons to Nebraska when she came to her show cause hearing. She met with a Housing Justice Project volunteer attorney who helped her negotiate a payment plan with the landlord. J.S. and her sons were able to stay together in their home.

The presence of the Housing Justice Project in the King County courthouse is evident when you step off the elevators on the 3rd floor. A large sign informs clients who are responding to eviction notices that they may be eligible for advice, information or representation by Housing Justice Project volunteers. The King County Superior Court provides the Project with use of an empty courtroom next door to the Ex Parte courtroom where show cause hearings usually are held. A law firm involved with the project donated a fax machine to facilitate

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From the Chair...

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and our dedication to the IOLTA concept. Whether it is a brainstorming session or an opportunity to comment on the other's work, both organizations are confident that any response will be motivated by a sincere concern for the good of IOLTA, not by any hidden agendas.

I am grateful for the opportunity to participate in this uncommon relationship. A warm thank you to the NAIP leadership, the NAIP membership, Commission members present and past and Commission staff for making this relationship a resounding success.

An invaluable outgrowth of our commitment to IOLTA has been our ability to gain the support of the legal profession. Several lawyers and law firms have dedicated a tremendous amount of hours defending IOLTA and providing valuable counsel and strategic advice. I would like to take this opportunity to thank them for their services, which in the vast majority of instances come at no or significantly reduced fees.

First is Darrell Jordan, Britt Buchanan, David Schenck and

Beth Bivans of Hughes and Luce, which has been representing the Texas IOLTA program on a pro bono basis in the *Phillips* case since 1994. It is overwhelming to think of the amount of billable hours the firm has spent on litigating this suit in the federal district and appellate court levels and before the U.S. Supreme Court.

The Legal Foundation of Washington (LFW), the entity that administers IOLTA in Washington State, has retained the pro bono services of Perkins Coie in the constitutional challenge against it. David Burman and Todd Pettys of Perkins Coie have represented the LFW in the U.S. District Court and continues to do so before the Ninth Circuit Court of Appeals.

The ABA, as amicus curiae, also has secured pro bono legal services. Norry Miller of Jenner & Block authored an exceptional brief on the merits of the Texas case before the U.S. Supreme Court and continues to provide expertise on the issues in the case. In addition, Davis Wright Tremaine wrote an excellent ABA amicus brief on a pro bono basis that was filed in the Ninth Circuit Court of Appeals in the Washington State IOLTA litigation.

NAIP has retained, at a signifi-

cantly reduced fee, Covington & Burling. The firm's Robert Long and Caroline Brown have provided the IOLTA community with cogent memoranda of law on the implications of the U.S. Supreme Court's *Phillips* decision and continue to provide counsel as the litigation progresses. In addition, Randall Berg and Peter Siegel of the Florida Justice Institute have represented NAIP on a pro bono basis throughout the Texas and Washington State lawsuits. They have authored top-quality briefs before the Fifth Circuit Court of Appeals and the U.S. Supreme Court and the Ninth Circuit Court of Appeals.

As of the *Phillips* remand, Rich Johnston and Francine Rosenweig of Hale and Dorr have become of counsel for the Texas IOLTA program. They have provided expertise in drafting pleadings and participated significantly during the discovery phase of the remand. They have done so on a pro bono basis.

Finally, Henry Zaprunder of Baker & Hostetler, LLP has worked with IOLTA since its inception. He continues to provide pro bono tax counsel to NAIP.

The IOLTA community is indebted to these lawyers and law firms for their dedication, expertise and generosity.

Housing

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communication between Project staff and volunteers.

The Housing Justice Project mentors and staff have struggled to think of a way to identify prospective clients prior to their arrival for their show cause hearing. To make this possible, however, coordination with the landlords' attorneys is necessary.

So far, the two groups have not been able to come to an agreement.

The Housing Justice Project's primary expense is the staff time of the Managing Attorney and the administrative assistant. Both of these staff positions also work on other projects for Volunteer Legal Services. Other expenses include materials development for training volunteers and educational materials for clients. Robin Lester estimates the overall cost of running the Housing Justice Project to be

approximately \$20,000 per year. In addition to IOLTA funding, the Project receives support from the King County Bar Foundation.

"The Housing Justice Project utilizes the expertise of legal services lawyers while leveraging valuable attorney time through the private bar. Clients' needs are met quickly and effectively, and families are able to preserve their housing," according to Barbara Clark, Executive Director of the

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News & Notes

Litigation Updates

The *Phillips* remand is before the U.S. District Court for the Western District of Texas, Austin Division, under the caption *Washington Legal Foundation, et al. v. Texas Equal Access to Justice Foundation, et al.*

On March 5, 1999 both sides completed briefing in the federal district court on cross motions for summary judgment and on a motion for judgment on the pleadings. In addition, both have requested a brief evidentiary hearing on several contested factual issues that emerged from discovery that was completed in January.

The most significant fact revealed in discovery is that the \$1,000 retainer check at issue came not from the client's personal funds, but from a corporate account. Throughout the litigation, the plaintiffs have maintained that the client check, which the attorney subsequently deposited into his IOLTA account, was the client's personal funds. This revelation is significant for two reasons. First, an argument can be made that the owner of the funds, in this case the corporation, had no property interest in the IOLTA account

interest, because corporations are precluded by law from earning interest on NOW accounts. Second, and possibly more significant, is the fact that because the funds at issue are not the client's personal funds, a question of standing has been raised.

As of this writing, Judge Nowlin has not ruled on any of the pending matters. He has, however, scheduled a May 19 status hearing.

The Ninth Circuit Court of Appeals also has remained silent regarding the setting of oral argument in *Washington Legal Foundation v. Legal Foundation of Washington*, the case challenging the application of the IOLTA concept of limited practice officers in Washington State. That case has been fully briefed since late 1998.

Kelly Carmody Joins the Arizona Bar Foundation

The Arizona Bar Foundation (ABF) announced the hiring of Kelly Carmody as its new Legal Services Director, effective May 17, 1999. Carmody replaces Ron Johnson who took a position as Government Relations Director at the State Bar of Arizona. As part of her responsibilities, Carmody will oversee many ABF programs including, legal services to the poor, the Affordable Housing Law Program, Arizona Community Legal Assistance, law school scholarships, and the Law School Loan Forgiveness Program.

With nearly 20 years experience working for legal services programs, including several projects in Arizona, Carmody brings a wealth of experience to the Arizona Bar Foundation. Much of her work has centered on obtaining federal and state funding for legal services for the poor and disadvantaged. Most recently, Carmody worked as a Senior Policy Analyst

for the Center on Budget and Policy Priorities in Washington, D.C. Five years ago, she worked for the Arizona Statewide Legal Services Project where she was an advocate for low-income clients in the areas of health, cash assistance, housing, and family law issues.

Please join *Dialogue* in welcoming Kelly to the IOLTA community. She can be reached at 602/252-4804.

COLTAF Hires Judy Slason

On April 12, 1999 Judy Slason became the new Executive Director of the Colorado Lawyer Trust Account Foundation (COLTAF), the entity that administers IOLTA revenues in the state. She replaces Lynn Cannon, who left the program to move home to Minnesota.

Judy joins COLTAF after her tenure as Director of Alumni and Community Relations at the University of Colorado at Colorado Springs. In that capacity she was responsible for designing and implementing extensive outreach programs, planning and promoting special events, preparing newsletters and other publications for the alumni and friends of the university, and staffing and directing university boards and committees. During her time at the university, Judy helped to increase membership in the Alumni and Friends Association by over 500 percent, establish an ongoing Paving Stone project to raise funds for student scholarships, and develop an alumni/student career mentoring and networking program. Prior to working at the University of Colorado, she served as the District Director of the Southern Colorado Muscular Dystrophy Association.

You can welcome Judy to the IOLTA community by calling 303/863-7221, or by sending her an e-mail to coltaf@earthlink.net

Housing

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Legal Foundation of Washington, which is the entity that administers IOLTA revenues in the state. "It is a great illustration of what IOLTA funds can accomplish in a community."

Caitlin Davis Carlson is the Grants Administrator for the Legal Foundation of Washington.

Toledo Bar Association Receives 1999 ABA Cindy A. Raisch Award

The ABA Standing Committee on Lawyer Referral and Information Service presented the **Toledo Bar Association** with the 1999 Cindy A. Raisch Award. Sheldon Warren, a member of the Committee, commended the Toledo Bar for its exemplary program. He congratulated Director Joyce Marciniak for restructuring the program into a high quality, financially successful service and for developing new public service-oriented components such as "Ask the Attorney" and a modest means panel.

1999 Cindy A. Raisch Award

Honorable Mentions included:

Desmond R. Abazia who developed and successfully implemented a targeted reduced fee program; and

Adam G. Adams, III who developed and implemented a major public service awareness campaign that improved the bar's image and increased the public's access to appropriate legal and non-legal services.

Established in 1996, the award is named for Cindy A. Raisch, an innovator and national leader in the quest to improve the quality

of service provided by LRISs.

The award recognizes the enhancement of public service oriented lawyer referral and information programs that provide access for moderate income consumers across the country. Public service oriented programs provide an invaluable service to the consumer seeking an avenue of entry to the legal system that is based on the consumer's actual legal needs and information on non-legal sources to help when those services are more appropriate to the problem.

1999 Louis M. Brown Award

The **Senior Citizen Judicare Project** of Philadelphia is the 1999 recipient of the Louis M. Brown Award for Legal Access. The Project has provided legal representation and counsel, community education, outreach and advocacy for Philadelphia's senior citizens for over 20 years. More than 100,000 seniors have been served by the Project's staff and panel of practitioners since its inception in 1978.

The Project employs a model that combines fixed fee and pro bono legal services provided by local lawyers serving the elderly, including those who are homebound or disabled. Through its multi-faceted approach, including direct services and advocacy, Judicare and its panel attorneys work to safeguard and defend the legal rights and interests of the elderly. The Project focuses on the most severe recurring legal needs, including housing, elder abuse,



(R to L) John S. Skilton, Chair of the ABA Standing Committee on the Delivery of Legal Services with Hermione Brown, widow of Louis M. Brown, present the 1999 Louis M. Brown Award for Legal Access to Karen C. Buck, Executive Director, Senior Citizen Judicare Project, with Kenneth Shear, Executive Director, Philadelphia Bar Association.

financial exploitation, consumer protection, grandparent custody and visitation and end-of-life issues. In addition to direct representation, Judicare promotes self-advocacy by holding workshops for elders and other professionals working with the aging population. This educational

component bolsters efforts to prevent, recognize and terminate exploitation, abuse, victimization and fraud.

The ABA Standing Committee on the Delivery of Legal Services presents the Louis M. Brown Award for Legal Access annually.

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From the Chair...



by John Busch

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

It is a long way from those halcyon days before lawyer advertising and pre-paid legal services, when the local lawyer referral service was the only resource available to a middle-income consumer who was looking for an attorney. Now there are both individual attorney advertising and non bar-related referral services, in the yellow pages and on the Internet. So what is a poor, beleaguered LRIS director or committee to do?

Run right out and get the ABA's latest publication for lawyer referral and information services, *PR Tools, Tips & Timesavers*. This is the second volume that the ABA has produced on LRIS public relations. The ABA published the first volume, *PR & Marketing Guide*, in 1995. It provides general guidance on how to make an LRIS a public presence. The latest volume includes easy to find, step-by-step directions on everything that you need to know to tell your community about your service.

In some ways, the advent of attorney advertising caused LRISs to focus more on public service, and it gave impetus to the development of the ABA's model rules that many LRIS programs now follow. Several marketing techniques

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LRIS Screening

by Sheree Swetin

Screening is an important function of a lawyer referral and information service for both the public and panel attorneys. When clients are screened effectively and appropriately referred, the attorney gets better referrals and the callers are more satisfied and better served. When panel attorneys are satisfied with the quality of the referrals that they receive, they help the LRIS market itself to other potential panel members. While the staff does not give legal advice, enhanced screening helps to determine the nature of the client's case and whether another agency or government organization would be more appropriate than a referral to a lawyer.

Lawyer referral programs identify many categories of law for referral, and they often break these areas down further into subcategories. At times, staff must decide in which area of law to make the referral. Bar association section members in the different areas of law can help the referral staff develop easy-to-use definitions of each category, and they can serve as guest speakers at staff "lunch-and-learn" programs. These simple steps improve the quality of information that is available to the referral staff, and they provide a source of expertise when staff runs into a problem call.

Screening is important not only to determine the nature of the client's need, but also to find out if a resource other than an attorney may be able to meet it. Through an enhanced screening process, callers who do not need legal services may be referred to an appropriate resource (e.g., small claims court, the attorney general's office, dispute resolution centers, and other governmental and social service organizations that exist to help with a variety of problems). In many instances, it is wise to suggest that the caller try one of these other options before being referred to an attorney, while leaving the door open for the client to return to the LRIS for a referral should the agency not be able to assist.

Many LRISs maintain a list of other resources to which consumers may be referred. Development of a resource database is an ongoing process at most lawyer referral and information services, and as the lawyer referral program grows, the staff will learn of more resources to add to this list. Callers often are pleased to receive information about alternatives to legal services, such as providing the telephone numbers for court offices and sending brochures on various legal topics to callers. This is the "information" component of the service, and it is the reason why many lawyer referral services nationwide have renamed themselves "Lawyer Referral and Information Service."

Some general suggestions regarding the screening process:

Courtesy is a must. Remember that your telephone staff represents the LRIS and the bar. A professional telephone demeanor is essential.

Listen carefully to the caller. What specifically is the problem? Are there other aspects of this case that would involve more than one field of law that would make a referral to another agency more appropriate? Take control of the conversation and ask the questions in a polite, assertive manner. Remember that many people who call the LRIS have problems and are under stress. Patience is important.

Try not to talk too long. Periodically, the service should measure the

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PR Tools, Tips & Timesavers

PR Tools, Tips & Timesavers is on our bestseller list...and it's been developed especially for you. Read how your peers are handling their marketing needs, whether they're time-held techniques like placing an ad in the Yellow Pages or trying the latest in web technology. Plus, learn from marketing and PR experts as to which methods have proven most effective.

Hear what your colleagues are saying about the publication. *PR Tools, Tips & Timesavers* is:

Realistic. TT&T takes into consideration the multiple demands of the majority of LRIS directors and the constraints of limited marketing budgets.

User friendly. The bullet points, charts, and tabbed dividers make TT&T an easy-to-use and quick resource.

Reassuring. The clear presentation style, coordinated with "real-life" quotes from Lawyer Referral and Information Services is

encouraging to those LRIS Directors working with small referral services with limited budgets.

Comprehensive. TT&T covers all types of marketing initiatives, from the smallest time and financial commitment, to the largest and most complex.

Consumer-oriented. TT&T places the emphasis on the true purpose of an LRIS: to provide a service to the consumer public...TT&T promotes the idea that the LRIS is accessible, friendly, and active in the community.

—Melodie Tolmie, Director, San Joaquin County Bar Association and LRIS

Whether you run a small or large program, an infant or an elder, the new lawyer referral *PR Tools, Tips & Timesavers* is rich with marketing examples, capturing the breadth of the many LRIS programs across the country. Tips on everything from Yellow Page ads and brochures to web pages, billboards, community outreach, advice columns, radio and TV.



Certain to save you hours of research. Lots of ideas, lots to be proud of.

—Marion Smithberger, Director, Columbus Bar Association LRS

PR Tools, Tips & Timesavers is a 125-page guide jam-packed with ideas and samples. In addition, it includes a detailed 22-page index to all of the ABA produced LRIS marketing materials.

Order your copy today at a charge of \$45 + handling. Call the ABA at 1-800-285-2221 and mention PC Code 4090026.

Screening

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time spent on each call. Ideally, calls can be handled in under five minutes. As the staff gains experience with the administration of the service and handling the phones, this process will become streamlined. If too much time is spent with one client and two others on hold hang up, the service is losing two-thirds of the potential client base. Although it is not wise to rush through calls and risk misunderstanding the caller's needs or to give the impression that the caller is not important, the staff should always be aware and considerate of callers on hold or those who may

be waiting to get through. As the LRIS grows, ask your telephone provider for busy checks to determine how many callers you are losing. Similarly, should your budget permit, a separate number dedicated to LRIS calls only would be useful.

Before determining that a referral is necessary, investigate alternatives with the caller. Do not overlook the obvious solution (e.g., has the caller gone to the police?) If a caller asks a question that you are unable to answer, it is better to tell the caller candidly. If no referral is appropriate, call the person back when you have the answer. A good policy is to ask the caller questions rather than to

make suggestions; that is, put your suggestion in the form of a question. Often, by asking if the caller has contacted certain agencies or authorities, you may find that he or she will act on that implicit suggestion and solve the problem.

Do not give legal advice. If you have concerns about whether you are giving the proper information, do not hesitate to put the caller on hold and consult with another staff member. Try to get all the facts surrounding the caller's situation. If the facts clearly do not indicate a legal problem, tell the client that you do not have an attorney listed who can help with this particular matter. If that caller still insists on

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Lawsuit Update

Two lawsuits recently filed against LRISs are winding their way through the court system. While both cases potentially could have tremendous impact on the way we do business, we are encouraged with how the cases have been progressing.

In the first lawsuit, a panel attorney filed a petition against the West Suburban Bar Association (WSBA) in Illinois. The controversy involves a referral fee due in a medical malpractice case that the WSBA Lawyer Referral Service referred. The petition asked the court to find the fee splitting agreement between the panel attorney and the LRS, an agreement similar to those that LRISs around the country use, to be "unenforceable." The plaintiff relied on a 1993 Illinois case (*Holstein*) that dealt with fee splitting between attorneys based on an oral agreement. In addition, the petition cited Rule 1.5(g)(2) of the Rules of Professional conduct, which provides that:

"A division of fees shall be made in proportion to the services performed and responsibility assumed by each attorney, except where the primary service performed by one lawyer is the referral of

the client to another lawyer and the referring lawyer agrees to assume the same legal responsibility for the performance of the services in question as would a partner of the receiving lawyer."

According to the plaintiff, the West Suburban Bar Association is not entitled to any referral fee, and certainly not the 25 percent it sought pursuant to its agreement with panel attorneys. He argued that WSBA did not assume the same legal responsibility for the performance of services that plaintiff's partner would have assumed. On April 6, 1998 Judge Duncan-Brice, in the Circuit Court of Cook County, granted the petition, thereby denying the West Suburban Bar Association any right to the fee. The WSBA LRIS filed a motion to reconsider and vacate the order, and requested amicus curie support from the Chicago Bar Association (CBA).

The CBA and the WSBA responded that Rule 1.5 was not applicable to this case because the referral service was not a lawyer and the Rule was intended to govern only lawyer-to-lawyer referrals. The bars also argued that the lawyer referral service was governed by Rule 7.2(b), recogniz-

ing that lawyers can "pay the usual charges of a not-for-profit lawyer referral service..." The plaintiffs answered by claiming that the 25 percent fee was not "usual" and contrary to public policy. They also argued that the client did not consent to the fee.


The CBA/WSBA response also argued that the court's reliance on *Holstein* was misplaced because *Holstein* dealt with fee splitting between lawyers, not with a bar association's lien based on a voluntary agreement between it and all panel attorneys. This voluntary agreement that WSBA enters into with all panel attorneys has been operating successfully for nearly twenty years.

The ABA supported the CBA amicus with a memorandum discussing the history and value of percentage fee funding as a mechanism to support public service lawyer referral and stating that the continued existence of many lawyer referral programs depended on the continuation of this type of funding.

Judge Duncan-Brice granted the motion for reconsideration and enforced the referral fee that the WSBA LRIS charged. The plaintiff

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Just the Facts



Participation in the 1998 National Survey of Lawyer Referral and Information Service Programs was overwhelming. More than 200 programs, or 66 percent of all public service lawyer referral programs, completed the extensive questionnaire. Preliminary results were released at the

October 1998 National LRIS Workshop and final results are expected out by early summer.

A few factoids for your information in the meantime:

- 39 percent of the participating programs have subject matter or experience panels
- 93 percent of the participating programs charge annual

participation or registration fees from an attorney

- 78 percent of the participating programs charge an initial consultation or administrative fee to a client
- 58 percent of the participating programs charge a percentage fee.

Thank you for your participation.

From the Chair...

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covered in the new publication combine good marketing with additional public service—e.g., lunch and learn programs, legal advice columns or Tel-Law services.

Among the materials in *PR Tools, Tips & Timesavers* is a compilation of the marketing tools that the ABA has developed over the last few years. They include a brochure, a diskette with artwork, Public Service Announcements (PSAs), and the logo for those services meeting the standards set forth in the model rules. There is a

wealth of specific help on major marketing tools such as web sites, yellow pages and radio and TV. The section on the web covers definitions, how to get started, and a tour through several different bar sites. The book also includes information on “smaller”—i.e., less expensive—methods of reaching your public, including PSAs and community fairs.

Finally, *PR Tools, Tips & Timesavers* provides a “snapshot” of four LRIS programs of different sizes and marketing budgets. In addition, it contains suggestions for chopping away at the old “writer’s block” that descends just

when you are trying to create something catchy to inform people about your LRIS and the services it offers.

So when you are tearing out your hair trying to determine how to make your service available to all the middle-income consumers in your community, think about consulting these publications. Most of the ideas are adaptable to diverse communities and programs, and there are several low-cost ideas for small programs. With the aid of these resources, we can advance new LRIS PR campaigns throughout the country and ultimately expand our services to those in need of legal counsel.

Screening

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a referral, direct him or her to the Yellow Pages. Remember that unless panel members have agreed to provide free or reduced fee services and if the client with a non-contingency case cannot afford the lawyer’s hourly rate, neither the client nor the lawyer will be served by making a referral. Similarly, if many attorneys have already reviewed and rejected the caller’s legal problem, it would be a

disservice to the panel member to refer that client.

Know which calls are beyond the scope of the LRIS. Remember the limitations of the LRIS and, if necessary, inform the caller of these limitations. The referral service is not legal aid or a crisis hotline. Abusive or mentally ill callers must be handled carefully. Some callers can be manipulative or angry. If one staff person is having trouble with the caller, it may be advisable to have another staff person take over the call. If the caller

is abusive, or uses inappropriate language, you may terminate the call. You should inform the caller that you intend to terminate the call, and you should indicate the reason for your action, before hanging up.

Training your staff in appropriate screening techniques takes some time, but the payoff in terms of better service to your clients and your panel attorneys makes the investment well worth while.

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

Lawsuit

(continued from page 15)

has appealed. At the time of this writing, the appeal is pending.

The second case is a suit filed against the Erie County Bar Association and several of its staff and officers. After a series of client complaints and a pattern of late status and fee reports, the plaintiff, a panel attorney, was informed that he was removed from the rolls of qualified attorneys. The program’s rules state that both non-compliance with reporting requirements and client com-

plaints are grounds for removal from the panel. They also give the executive director the authority to remove a panel attorney.

The plaintiff alleged that the bar had deprived him of his constitutionally guaranteed right to earn a livelihood and that the bar’s actions were arbitrary and capricious. The court dismissed the plaintiff’s complaint in all respects. In doing so, it gave two reasons. First, the court believed that the plaintiff filed the complaint after the statute of limitations had expired. Second, and more importantly for lawyer referral programs, the court

affirmed the bar’s right to remove attorneys from the panel for cause, saying that the bar had not acted in a capricious or arbitrary manner and that no judicial hearing was required prior to removal. The plaintiff appealed, and the court has set a May hearing date.

We are cautiously optimistic that neither of these cases will be reversed on appeal. If you would like a copy of any of the original documents, please contact Sheree Swetin at sswetin@staff.abanet.org. We will keep you informed of any significant changes in these cases in upcoming issues of *Dialogue*.

From the Chair...



by Leonard L. Loeb
Chair of the ABA Standing
Committee on Legal Assistance
for Military Personnel

One of my favorite tasks as a member of the ABA Standing Committee on Legal Assistance for Military Personnel is reviewing the outstanding nominations that the committee receives annually for the Distinguished Service Awards. The ABA LAMP Committee presents up to six awards annually either to individuals or to groups.

The award winners for the 1999 Distinguished Service Awards are profiled on page 18. They merit our highest praise, and I encourage you to read each profile. Although it is the unfortunate that we cannot recognize all nominations, every Distinguished Service Award nomination testifies to the high quality and excellence of the services that legal assistance attorneys provide to military personnel and their dependents.

These awards serve as one way in which the American Bar Association can recognize the exemplary contributions of the attorneys who provide first-rate legal services, often under extraordinary constraints. As an example, see the profile for the award to the Task Force Eagle Legal Assistance Office, Office of the Staff Judge Advocate, Tuzia, Bosnia-Herzegovina.

Sometimes the constraints

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Office in the Spotlight U.S. Air Force, Pacific, at Hickam Field, and the U.S. Navy at Pearl Harbor

by Bryan S. Spencer

Upon Brigadier General Thomas Fiscus' kind invitation, the ABA Standing Committee on Legal Assistance for Military Personnel recently held a meeting at Hickam Air Force Base, Hawaii. At the time of the invitation, the Brigadier General was a Colonel and the Staff Judge Advocate, U.S. Air Force, Pacific (PACAF). On January 14-15, the committee visited his headquarters and the Legal Assistance Office at Hickam in addition to the Navy Legal Assistance Office at Pearl Harbor. Committee members also had the privilege to accompany Brigadier General Fiscus as he left for his new assignment as Staff Judge Advocate, U.S. Air Force Air Combat Command, Langley Air Force Base, Virginia. BG Fiscus is a former Chief of Legal Assistance for the U.S. Air Force and liaison to the ABA LAMP Committee.

Hickam Air Force Base and the adjacent Pearl Harbor Naval Base were the sites of the Japanese sneak attack on December 7, 1941. That event launched the United States into World War II. In fact, some old bullet holes are still evident in the PACAF headquarters building.

Legal Assistance for the Air Force in Hawaii

The Commander, U.S. Air Force, Pacific, controls all U.S. Air Force assets in the Western Pacific, which spans to India. Each Air Force Base has an Air Force Wing that operates the base, and of course, provides legal assistance to base personnel, dependents and other authorized personnel.

Colonel Conrad M. Von Wald is the 15th Air Base Wing Staff Judge Advocate, Hickam AFB. All Judge Advocate officers there provide legal assistance. Chief, Civil Law, Captain Brett Burton supervises the rendering of the legal services, which are available on a walk-in basis four days a week. On Thursday, Judge Advocate officers furnish same day will service by appointment. Of course, personnel deployed on an emergency basis are seen for wills, powers of attorney, and other legal assistance problems as warranted.

Services in the areas of domestic relations, estate, tax, and landlord/tenant law make up approximately 85 percent of the legal assistance provided at Hickam. The office furnished over 500 wills and 2,400 powers of attorney in 1998. At the time of our visit, the office was gearing up for the tax season. It filed over 1,000 electronic returns in 1998. A civilian, one paralegal and 40 unit tax representatives provide the tax service. Building on prior success, this year's tax office will have five full time civilians and six to ten military preparers.

A legal assistance officer speaks at each Newcomer's Briefing, covering consumer credit, landlord/tenant law, car purchases, and other consumer issues. The office web page received over 6,500 hits in 1998. It provides access to estate planning documents, family law links, Soldiers

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From the Chair...

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under which legal assistance attorneys work are the obvious ones, e.g., massive readiness sessions in crowded quarters, and tax filings on the frontlines. More often, however, we see the type of exemplary service that at times can be taken for granted, such as:

- career-long dedication to the delivery of legal services in the military;
- innovative practice methods that increase the scope of service delivery for years to come;

- consistent efforts to meet the service goals of the entire constituency, active, reserve and dependents alike.

We believe that the Distinguished Service Awards provide an excellent opportunity for the American Bar Association and the respective services to recognize the valuable contribution that legal assistance makes to the morale and quality of life in the military.

To enhance the visibility of the legal assistance effort, the ABA LAMP Committee recently established the Outstanding Legal Assistance Student Award in each

Basic Legal Assistance Class held at all of the Judge Advocate Generals Schools. This award acknowledges the scholarship expected of students, with special recognition for one student's exemplary participation. The ABA LAMP Committee believes that it is particularly important to foster this commitment to legal assistance in the training environment, and it looks forward to showcasing the names of these award winners in *Dialogue* and on our web site at <http://www.abanet.org/legalservices/lamp.html>

LAMP Distinguished Service Awards

One of the most important agenda items for the January ABA Standing Committee on Legal Aid for Military Personnel meeting at Hickam AFB was to vote on the six LAMP Distinguished Service Awards.

The award guidelines permit six awards annually, either to an individual or to a group, and the competition becomes more difficult each year. For the 1999 awards, the committee reviewed 36 nominations. This was after each service chief had screened all of the nomination packages!

The 1999 awards went to three individuals and three groups.

Lieutenant Brandon S. Keith, JAGC, USNR. Lieutenant Keith is a Navy legal assistance attorney stationed at Naval Legal Service Office Southeast Detachment, Mayport, FL. On February 9, 1998, he reported onboard as a legal assistance attorney, precisely at the time when the command's two Florida offices had instituted a vigorous expanded legal assistance program and pro se pleading

preparation. Licensed in Washington State, Lieutenant Keith received a Florida law license under a special legal assistance provision of the Florida Rules. As one attorney in a two-attorney office, Lieutenant Keith played an integral role in successfully implementing this new NLSO pro se program.

As a new arrival, and with no prior legal assistance experience, Lieutenant Keith committed countless hours to researching and preparing: various types of pleadings and agreements, including divorce answers and counter-petitions; marital settlement agreements; paternity disputes; permanent custody modifications; temporary custody, child support and arrears; small claims (landlord/tenant, personal injury/auto negligence, contract disputes); summary probate, and various settlement agreements.

In the largest areas of practice, wills and powers of attorneys, Lieutenant Keith practiced estate planning and prepared tax saving

credit shelter trusts. He saw 1,857 clients and participated in 33 pre-deployment assist visits. This approach to legal assistance provided real service to the client, enhancing readiness and saving thousands of dollars in costs and attorneys fees.

Jim Brennan. Mr. Brennan is a retired warrant officer who is a civilian volunteer at the Fort Eustis, VA Legal Assistance Tax Assistance Program (TAP). During the 1997 tax season, Mr. Brennan volunteered more than 240 hours at the tax center, mentoring and supervising tax preparers, and enabling the office to assist 9,925 taxpayers; answering 6,780 tax questions; preparing 3,136 tax returns; and filing 1,882 electronic returns, which saved the military community more than \$200,000. Throughout the year, he participated in the office, assisting with advice and in the yearly training program setup. This was Mr. Brennan's eleventh year as a volunteer with the program.

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Spotlight

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and Sailors Civil Relief Act information, and small claims court information. The page also has all of the consumer articles written by office personnel for office distribution or publication in the Base newspaper.

Legal Assistance for the Navy in Hawaii

Pearl Harbor is the home of several major U.S. Navy Commands including the U.S. Navy Hawaii Region: Submarine Command, Pacific, Surface Group, Mid-Pacific; and Destroyer Squadron 31. There are approximately 20,000 naval personnel in the region eligible for legal assistance.

The Legal Assistance Office is part of the Hawaii Detachment of the Navy Legal Service Office, Yokosuka, Japan. LCDR Kimberlie Young is the Officer in Charge. Lisa Jacobs is the Civil Law Department Head. She supervises three judge advocate officers who provide full time legal assistance: LT J.P. Cox, the Legal Assistance Division Officer; LT A. Itoh; and LT. Cox. Petty Officer C.A. West is the office's administrative supervisor.

The office provides legal assistance by appointment four days a week and on a walk-in basis each Wednesday. Emergencies are handled at any time. Family law comprises about 60 percent of the workload at the office. Jacobs provides in court representation for sailors who have uncontested child adoption cases. The office also prepares litigants for pro se representation and uncontested guardianship documents.

Estate planning comprises another 20 percent of the office workload. In addition to wills, living wills, and durable powers of attorney, the legal assistance officers prepare credit shelter qualified domestic relation trusts.

The other 20 percent of the workload involves consumer law problems such as auto purchases or leases and landlord/tenant issues.

With the tax season upon it, the tax office was in full swing. Petty Officer M. West is the Tax Coordinator. In 1998, the office prepared over 5,700 returns and filed all but 204 electronically. This amounted to tax refunds of over \$4,713,000. The office expects to do even better this year because it also will file

state tax returns.

Each Monday, the office presents an estate-planning lecture for those interested in wills and powers of attorney. On Thursday, a similar talk is given on divorce and separation. In addition, preventive law talks are routinely conducted covering legal problems that may arise when sailors deploy, such as consumer law issues. Upon request, the office also presents these preventive law lectures to units or dependent groups.

The legal assistance office has a web page at www.pearlharbvor.navy.mil/nlso. Interested parties can find current preventive law articles, office hours, phone numbers, and frequently asked questions and answers. In addition, the page reminds clients of issues and answers that they must present to the legal assistance officer to aid in the resolution of their problems.

In all, it was a very satisfying visit to the legal assistance operations in Hawaii. Service personnel there are being provided quality legal assistance.

Bryan S. Spencer is a Member of the ABA Standing Committee on Legal Assistance for Military Personnel.

Service Awards

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Captain Theresa Bruno, USAF. Captain Bruno is the Chief of Preventive Law and Legal Assistance, 21st Space Wing, Peterson AFB, CO. The major innovation that Captain Bruno initiated is in one of the high volume areas of legal assistance: family law. She developed a bi-weekly Divorce Procedures Seminar, which provides comprehensive advice

on pro se divorces. It also frees attorney time that otherwise would be devoted to seeing individual clients. Captain Bruno also established a Legal Assistance program at Buckley Air National Guard Base, which is over an hour away. That active duty population now receives the same services that are available at Peterson. To assure the greatest availability of legal assistance to clients, Captain Bruno worked with the technical staff and put

preventive law articles and common forms on the base web site, giving the military clients 24-hour access to help.

Legal Assistance Section, Client Services Division, Office of the Staff Judge Advocate, Fort Sam Houston, TX. Four judge advocates, two civilian attorneys and four support staff provide legal assistance for the Client Services Division. The office has walk-in hours four days a week for

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Service Awards

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active duty members or emergencies, averaging 10 clients a day. In addition, it has an appointment schedule that averages 90 appointment visits per week. The office also executes approximately 30 wills each week.

These numbers do not include the clients seen away from the office as part of the Soldier Readiness Program. Under this program, attorneys go to the units to prepare wills, powers of attorney and to give advice about the Serviceman's Group Life Insurance (SGLI) beneficiary designations. The office prepares a myriad of documents in addition to wills and powers of attorney. These include pro se pleadings for divorce, step parent adoptions, name changes, guardianships, and small claims court.

A unique aspect of this legal assistance office is that it has one civilian paralegal dedicated to preparing pro se probate petitions. The ease of probate under the Texas Probate Code makes this possible. Last year the office processed 376 pro se probates, and as of this writing, the number stands at over 350 so far this year.

On top of this, the office has an active electronic tax filing program and a pro-active preventive law program, which published 25 articles last year. In addition to traditional legal assistance services, the legal assistance attorneys provide typical Army administrative law services—i.e., Reports of Survey, letters of reprimand, evaluation appeals, Army Board for Correction of Military Records matters, entry level issues, benefits, TRCARE issues, and service school dismissals.

Since Fort Sam Houston has one of the regional Army hospitals, a judge advocate from the Client Services Division, with the assistance of a dedicated paralegal, represents clients before physical evaluation boards convened to determine the extent of a service member's disability.

Task Force Eagle Legal Assistance Office, Office of The Staff Judge Advocate, Tuzia, Bosnia-Herzegovina.

Six Judge Advocates staff this office. In the span of a six-month tour, they must provide every aspect of military justice, claims, administrative law, and legal assistance. The Task Force serves seven remote base camps, five of which have legal offices. In addition, the attorneys must travel to other more remote sites, and legal services are available to soldiers 24 hours a day. Due to limited resources, the attorneys work with offices in the states to do legal research.

From January 1 to October 31, 1998 over 3,300 clients received legal assistance, over 700 of those received attorney advice. The Task Force prepared approximately 1,600 powers of attorney and over 100 wills for walk-in clients. The attorneys opened the first stand alone Tax Assistance Center in Bosnia, and within 60 days of operation, they prepared over 400 tax returns.

Naval Legal Service Office Northwest, Legal Assistance Department. This Navy legal assistance office is located in Bremerton, WA, with offices at Bangor, Everett and Whidbey Island. It has an outstanding legal assistance outreach program, taking basic services to the fleet. A judge advocate goes to the ship and provides preventive law briefings on topics where potential legal problems are known to exist.



The Task Force Eagle Legal Assistance Office, Office of The Staff Judge Advocate, Tuzia, Bosnia-Herzegovina receives its award on a video conference call.

The attorneys also take pre-deployment services, will and powers of attorney, to the ships.

It is a full time job to provide services to three nuclear aircraft carriers (each with a full complement in excess of 4,500 service members) and to serve the other ships that make up the carrier Battle Group. There are 59 units in the area, requiring detailed coordination. The NLSO operates an active tax program in four sites, returning over \$9 million in refunds last year.

The department, under civilian attorney Diane Karr's leadership, has expanded the marital dissolution practice, the area of client problems that most affect readiness. Working in conjunction with the superior court, the attorneys prepare pro se pleadings in dissolution and child support matters, drawing high praise from the local judiciary.

The Committee gives its sincere congratulations to the LAMP Distinguished Service Award winners. As life becomes more complicated so do the steps that a legal assistance provider must take. Our hats are off to those who take that extra step in providing true hands-on service to the men and women serving our armed forces.

From the Chair...



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

The Standing Committee on Legal Aid and Indigent Defendants works closely with the Legal Services Corporation (LSC) on a number of important issues, including obtaining adequate funding for LSC and keeping providers informed about developments. For this issue of *Dialogue*, I have invited LSC President John McKay to share with you information about the Corporation's endeavors.

From John McKay President

Legal Services Corporation
As the Legal Services Corporation prepares to celebrate its 25th anniversary, I am happy to report that the state of the Corporation is sound. Owing in part to the contributions of the private bar and the thousands of volunteer attorneys who work with LSC, bipartisan support in Congress continues to grow. This was clearly in evidence in our most recent hearing before the House Appropriations Subcommittee on Commerce, Justice and State, the Judiciary and Related Agencies. When I went to Capitol Hill on March 3rd, along with LSC's

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Legal Services Corporation Requests \$340 Million for FY 2000

On February 1, 1999, the annual congressional budget/appropriations cycle formally commenced when President Clinton sent his FY 2000 budget to Capitol Hill. For FY 2000, the President again asked Congress to fund LSC at \$340 million, the same overall amount requested for FY 1999.

On March 3rd, LSC's Board Chair Douglas Eakeley, Vice Chair John Erlenborn, and President John McKay testified in support of LSC's FY 2000 budget request before the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies of the House Appropriations Committee. The request includes \$297,650,000 for regular grants to programs (an increase of approximately 3 percent from the FY 1999 level), as well as funding for two special initiatives (which are more fully described in LSC President John McKay's guest column on page 21).

The Senate and House Budget Committees have started working on their respective budget resolutions. Throughout April and early May, the Budget Committees continued their respective hearings and, at the same time, each standing committee of the House and Senate will recommend budget levels and report legislative plans concerning matters within the committee's jurisdiction. From this information, the Budget Committees initiate a concurrent resolution on the budget. Under the Budget Act, action is to be completed on the congressional budget resolution by April 15. Last year, the House and Senate Republicans could not agree on priorities and, for the first time, Congress did not pass a budget resolution. Following passage of the budget resolution or May 15, whichever comes first, the House may begin to consider appropriations bills.

The 106th Congress brings many significant changes in House leadership and committee structure. Related to LSC, the most significant change is that CJS Appropriations Subcommittee Ranking Democrat Alan Mollohan (D-WV) has assumed that position on the VA/HUD appropriations subcommittee. While Congressman Mollohan will continue to serve on the CJS subcommittee, Jose Serrano (D-NY) is now the ranking member.

It remains too early in the legislative process to predict whether funding for LSC will be controversial this year. During the testimony of the LSC officials before the CJS, pointed questions were raised about some aspects of the Corporation's budget request and operations, but the hearing was on the whole far more cordial than such hearings have been in recent past years. To keep abreast of developments regarding LSC funding, check the ABA's Legislative Advocacy web site at <http://www.abanet.org/legadv>

From the Chair...

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Board Chairman and Vice Chairman, to present LSC's FY 2000 budget request, we were greeted with a most welcome statement from Chairman Harold Rogers: "You are making some substantial progress... real, positive progress." It was gratifying to hear the Chairman recognize the valuable services that LSC and pro bono attorneys and staff have long provided to indigent clients with emergency civil legal needs.

The give-and-take at the hearing was warmer, and perhaps more cordial, than it has been in past years. We were pleased to present our justifications for LSC's request of \$340 million for FY 2000. They included a modest increase (3 percent), for cost-of-living adjustments to help local programs maintain their current levels of services; \$17,250,000 to address domestic violence and children's issues; and \$12,750,000 for client self-help and information technology initiatives that will signifi-

cantly increase access to legal information and assistance.

Of course, LSC cannot accomplish these goals without the help and support of the ABA, state and local bar associations, and volunteer private attorneys. The financial donations so generously provided by bar associations and the investment of time and professional expertise contributed by volunteer attorneys are essential to LSC's success as a public-private partnership. We are deeply grateful to the ABA and SCLAID for their support of LSC and its mission.

And we can never forget that our mission is to serve those in need: the mother seeking safe haven from domestic violence for herself and her children; the disabled veteran who needs help getting the government benefits he deserves; the elderly couple who have been defrauded by contractors and are in danger of losing their home. For so many vulnerable individuals, LSC represents their last chance to seek justice.

In the near future, we will be counting on you, our partners, to

join us as we move forward in the state planning process. LSC's ultimate objectives with state planning are to ensure that client needs are being met in the most effective manner possible and to continue to work toward full access to justice for low-income persons. We are making every effort to ensure that LSC's state planning processes incorporate the recommendations of state and local bar associations, as well as those of the programs. With your support and involvement, we can reach these objectives quickly and painlessly.

For 25 years, LSC and members of the private bar have successfully cooperated in an extraordinary effort to assist the most vulnerable individuals among us. Our partnership has flourished through changes in administrations, budget cuts, and congressional mandates. As we head into the new millennium, I am confident that our partnership will continue to grow and that together we will respond effectively to the increasing demands for equal justice.

Attorney General Reno Urges Indigent Defense Improvements

At a ground-breaking National Symposium on Indigent Defense sponsored by the Department of Justice in late February, 1999, U.S. Attorney General Janet Reno emphasized the need for improvements in the systems for assuring that all persons charged with serious crimes are granted their right to be represented by a lawyer. She noted that the Department of

Justice has initiated wide-ranging discussions of indigent defense issues, made a commitment to educating the public and the criminal justice community about the importance of a strong system of indigent defense, and supported efforts to increase funding for indigent criminal defense. She called for prosecutors and defenders to continue to work together to

improve the criminal justice system. In addition, the Attorney General called for increased use of technology to manage the system, and for dissemination of minimum standards and best practices. The full text of the Attorney General's remarks at the Symposium is available at <http://www.abanet.org/legalservices/BIP.html>

LSC Celebrates 25th Anniversary

1999 marks the 25th anniversary of the Legal Services Corporation's creation. In 1974, President Ford signed the Act that created LSC. The ABA was an early supporter, and it has remained a stalwart advocate for the preservation of, and

adequate funding for, the Corporation. The LSC is a unique, quasi-governmental entity that makes grants to hundreds of local programs providing legal services to the poor. Through its local grantees, the LSC has handled over 30 million cases

since its inception.

A ceremony marking the anniversary will take place in Washington, DC in July. Further recognition of this important milestone will occur during the ABA's Annual Meeting in Atlanta from August 5-10th.

LSC Studies "Presence" Requirement for Aliens

The Legal Services Corporation has formed a Commission to accept comments, hold public hearings and study the meaning of a statutory requirement in the Corporation's appropriations act that an alien be present in the United States in order to be eligible for legal assistance from LSC-funded programs.

The Corporation's appropriations act prohibits LSC-funded recipients from providing legal assistance to an alien unless the alien is present in the United States and falls into certain delineated categories. Although there is general agreement that present in the United States means to be physically in the United States, it is not clear when an alien must be present. One interpretation of the language would require an alien to be physically present

in the United States any time an LSC recipient is providing legal services to the alien. Another would require the alien to be physically present only when legal representation commences. A third would require that the alien be physically present only when the cause of action for which the recipient provides legal assistance occurs.

The Commission requested public comments on the proper interpretation of the appropriations act language, and on the facts and circumstances surrounding the representation of aliens. It posed a number of specific questions about alien representation, and it inquired whether private counsel are likely to be available to represent aliens in the U.S. under temporary visas or under provisions that allow them to leave the U.S. temporarily.

The Commission accepted public comments from February through March 22nd. The Commission also scheduled hearings on March 27th and on April 10th, inviting some commentators to elaborate on their views.

The ABA Standing Committee on Legal Aid and Indigent Defendants submitted comments to the Commission, noting that legislative history suggested the most reasonable interpretation would be to require "presence" only when events giving rise to a cause of action occur. The Committee's comments further noted, in response to the question about the availability of private counsel, that the specialized skills required make it very difficult for private counsel to represent members of the client group in question.

You can visit the ABA's Division for Legal Services web site at <http://www.abanet.org/legal services>

Brown Award

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It does so as part of its mission to improve the delivery of legal services to those of moderate income, who may not qualify for subsidized legal assistance, yet are unable to afford full traditional legal representation. Each year, the Award highlights programs and projects that demonstrate exceptional dedication and creativity as they provide legal services.

In addition to the recognition of the Judicare Project, the Committee honored three programs with meritorious recognition.

- Centro Legal por Derechos Humanos translates to Human Rights Legal Center, serving the low and moderate income populations through two neighborhood offices in Milwaukee. It accepts clients with annual incomes less than \$25,000, and charges according to a sliding fee scale.
- The Legal Assistance Office at Fort

Knox serves low income military personnel in divorces, consumer problems and tax filings, among other matters. The Office employs outreach services, such as its bedside legal assistance program for terminally ill veterans or those under hospice care, and noncriminal legal services to inmates of the correctional facility.

- The New York Courts & Law Guide provides on-line information to those in need of legal information in New York. The web site, at <http://www.nylj.com/guide> provides people with instant access to more than 100 documents describing the operations of the courts and the substantive legal areas of interest to consumers. The project is a joint effort with the New York State Unified Court System and the New York Law Journal.

The Brown Award was presented at the joint luncheon of the National Conference of Bar Presidents, National Association of Bar Executives and National Conference of Bar Foundations,

at the ABA Midyear Meeting in Los Angeles in February. Among the guests were Louis Brown's widow, Hermione, and son, Harold, both of whom are lawyers practicing at Gang, Tyre, Ramer & Brown in Los Angeles.

Calendar

ABA

August 5-11—Annual Meeting in Atlanta, GA.

IOLTA

August 5-6, 1999—Summer IOLTA Workshops in Atlanta, GA. Contact Mickey Glascott 312/988-5750 (e-mail: mglascott@abanet.org).

LRIS

October 13-16, 1999—ABA LRIS Workshop in Alexandria, VA. Lourdes Rodriguez: 312/988-5786 (e-mail: rodrigul@staff.abanet.org).

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