

Dialogue

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LAMP

Amidst 120 degree temperatures, warnings of incoming mortar rounds, sleeping with an M-16, working long days, and missing the comforts of family and home, I have one of the best jobs in the world.

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Quality Time: Opportunities for IOLTA Programs and Others to Use Recent Initiatives to Improve Legal Services

by Linda Rexer

"Quality is never an accident; it is always the result of high intention, sincere effort, intelligent direction and skillful execution; it represents the wise choice of many alternatives."—William A. Foster

Now is a unique moment in time when the equal justice community is energetically focused on quality. Many efforts are underway at the national, state and local levels to make operational the important quality-related initiatives of the past few years. These initiatives include the revised ABA Standards for the Provision of Civil Legal Aid, the ABA Principles of a State System for the Delivery of Civil Legal Aid, and the Legal Services Corporation's Performance Criteria.¹

These documents offer aspirational guidelines for providing high quality civil legal aid services. IOLTA programs contributed to their development and now have the opportunity to join with other national partners, grantees, and additional stakeholders in generating concrete ways to use them to benefit advocates, programs and the overall delivery system.

The value of the American Bar Association's leadership in adopting the Civil Standards and the Principles cannot be overstated, not only for the important content of these products but also in the status conferred by the imprimatur of the ABA.² The Legal Services Corporation also deserves our appreciation for promoting quality by producing the Performance Criteria, cross-referencing and coordinating the criteria with the Civil Standards, and taking care to design the criteria so that other funders such as IOLTA can also use them in assessing and assisting grantees. The ongoing commitment underlying the support of ABA and LSC leadership has lent energy to activities now underway to institutionalize these documents and incorporate their lessons into the way civil justice work is done every day.

Among those activities are several sessions during the IOLTA Workshops that not only began a discussion within the IOLTA community but also included national partners who then helped bring IOLTA input to their own work. Sessions that took place during the Summer 2006 and Winter 2007 IOLTA Workshops resulted in numerous ideas about how IOLTA funders can use the standards, how legal aid grantees might use the standards (and ways funders can help them do so), and how the standards might be used in the broader justice community. Some IOLTA programs already are putting a number of these ideas into practice, and their experience will no doubt be the subject of future workshops which will continue the quality discussion in the IOLTA community. Below

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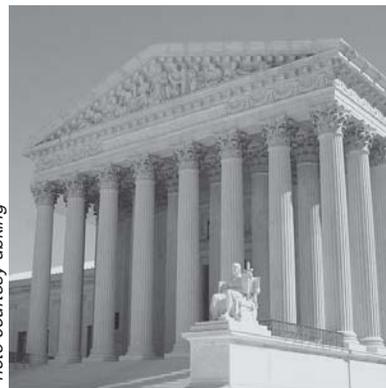


Photo courtesy dbking

Initiatives such as the ABA Standards for the Provision of Civil Legal Aid provide aspirational guidelines that will help legal aid providers—and their funders—pursue the goal of ensuring equal access to justice.

DIALOGUE

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Quality Time

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are some of the ideas that emerged from these workshops.

Using the Civil Standards and Principles

IOLTA Workshops participants suggested a number of ways IOLTA programs might use both the Civil Standards and the Principles. Here is a sample of the most compelling ideas for using the Civil Standards:

- Build into peer reviews and other evaluation processes
- Generate a checklist for grant application systems or employ as the underlying principles for grant policies
- Incorporate into the criteria for grant reports
- Design technical assistance efforts (including support for grantees' efforts to use the standards)
- Guide resource allocation
- Use in strategic planning or training for the IOLTA board
- Identify gaps in the delivery system or help assess statewide capacity
- Promote as a basis for statewide priorities
- Create a clearinghouse of best practices
- Link each of these uses with national partners

IOLTA programs thought legal aid providers might use the Civil Standards to:

- Guide self-evaluation or other performance evaluation
- Develop internal practice standards
- Develop training tools for staff and board
- Re-evaluate advocacy and strategic focus

- Assist in strategic planning and resource allocation decisions
- Help in statewide delivery planning and use as a rationale to support change

Next steps

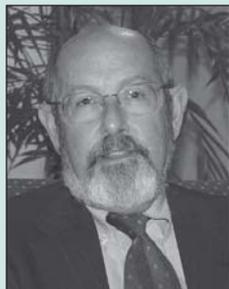
Members of the IOLTA community shared these ideas in a process led by one of community's national partners, the National Legal Aid and Defender Association (NLADA). NLADA also merits thanks for assembling a wide range of stakeholders—including representatives from the IOLTA community—to identify next steps for using these documents in specific ways that meaningfully advance quality. The continuing collaboration of this effort is also significant; it will help avoid duplication and create synergies through collective wisdom and cooperative projects.

The NLADA process has assembled three broad-based work groups to address the following priority areas:

- 1) Gathering and developing model policies and procedures that reflect the Civil Standards. Available materials for advocates, managers, boards and others will be collected and specific "tool kits" will be created regarding some topics.
- 2) Promoting a culture of quality throughout the community. The documents will be a basis for engaging advocates, managers, board members, clients, funders and others in a discussion of quality, including how the Civil Standards can assist with key issues that programs are facing. Gaps in the national legal aid infrastructure will be explored.
- 3) Distilling and communicating a concise set of core values inherent in the instruments. A piece will be written to highlight

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From the Chair...



by Jonathan D. Asher
Co-Chair of the ABA Commission
on IOLTA

I believe that among the greatest benefits of serving as a member of an ABA entity such as the Commission on IOLTA is the wonderful opportunity to work with a group of dedicated volunteers in a collective effort to achieve common goals. My year as co-chair of the Commission has confirmed that belief. I have been privileged to work with a most impressive group of Commission members. The nature of ABA appointments means the pleasure of working with any one group of colleagues ends all too quickly. As the 2006-07 bar year ends, it is an appropriate time to acknowledge the contribution of an exceptional group of volunteers who end their service on the Commission.

These able members of the Commission whose terms end include Co-Chair Joanne Garvey, who I have been privileged to work alongside of for the past year. Joanne joined the Commission in 2003, shortly after the Supreme Court's decision in *Brown v. Legal Foundation of Washington*. She then became chair in 2005. As she has written in these columns, her tenure has spanned significant transitions for IOLTA programs. During Joanne's time on the Commission she has witnessed the collective effort to better under-

stand the implications of *Brown*, the sharp revenue downturns of a few years ago, and the more recent advances in revenue enhancement strategies and commensurate gains in IOLTA income. Joanne steered the Commission on a steady course through these changes, lending her experience of many years in leadership in the ABA while keeping the needs and priorities of IOLTA squarely in sight. Joanne's leadership enabled the Commission to participate in and help shape the critical work by other ABA entities that also foster access to justice. In particular, her leadership of the Commission in its involvement in the development and support for the ABA Standards for the Provision of Civil Legal Aid helped ensure that the views of IOLTA programs were heard in the House of Delegates when it approved that landmark document in August 2006. Joanne's leadership will be missed by all of us, but I am delighted that she will remain an important friend of IOLTA.

We also bid farewell to Commission members Dennis Burnette, Justice Susan Calkins, and Scott Partridge. As a banker and ardent supporter of IOLTA, Dennis has shared his considerable knowledge of banking and his expertise, both in formal roles such as co-chair of the Joint Resource Development/Banking Committee, and informally during our meetings and in conversation. He has made himself available to IOLTA staff and volunteers across the country, providing valuable advice and insights on banking practices and working with financial institutions.

Justice Susan Calkins of the Maine Supreme Court brought an impressive level of knowledge and perspective to a succession of

demanding assignments during her tenure on the Commission. She served as co-chair of the Joint Meetings Committee and the Communications Committee. In 2005 and 2006, she devoted countless hours as the Commission's liaison to the task force revising the Civil Standards. She played no small part in ensuring that the final product reflected the collective input of IOLTA programs.

Scott Partridge joined the Commission in 2004 as a relative newcomer to the IOLTA community, but quickly understood and embraced IOLTA's central tenets and core mission, and has served as an active and exceptionally thoughtful member throughout his tenure. He has provided helpful insights into the workings of the ABA and their impact on the Commission on IOLTA and on the IOLTA community.

* * * * *

As we thank and bid farewell to Joanne, Dennis, Susan and Scott, we also acknowledge an enormous loss to IOLTA and legal services. Early this summer Judy Garlow, former director of the State Bar of California Legal Services Trust Fund Program, died after a lengthy battle with cancer. Others have written and spoken eloquently about Judy and her impact in California and her importance to the IOLTA community. She was a true leader in the IOLTA world, but I also want to acknowledge Judy's impact on the work of legal services.

I remember Judy as a tough but very caring advocate for expanding and improving access to justice. She consistently pushed legal services and other legal aid

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From the Chair...

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organizations to be the best they could be. She used her involvement in IOLTA and grant-making authority to move legal services toward improving services and increasing access to the courts for pro se litigants. Judy believed that programs were not effective if they were operating in isolation, and that pro se litigants and other marginalized people were best served when legal aid worked in partnership with others. Through her persuasion and IOLTA funding, she encouraged partnerships between courts and legal services programs, partnerships between restricted and unrestricted programs, and partnerships between legal aid offices and local agencies. Judy saw these collaborations as essential to maximizing the effectiveness of legal aid.

Judy didn't apologize for pursuing uncomfortable change, but even those who disagreed with her always respected her views. Her ability and enthusiasm were unquestioned and her drive was selfless. They grew from a clear vision, a strong set of shared values, and the highest principles that underlie the work we do. She pushed us to be creative, and always to do things better. She encouraged and helped us assess our own performance and how we in legal services could always improve our work with and for clients. Both the IOLTA and the legal services communities are much stronger for Judy's involvement. She certainly left her mark on me and on us all. Her dedication, principled leadership, wise counsel, sense of perspective, and wonderful humor are already greatly missed.

IOLTA News and Notes



Stephanie Choy

Stephanie Choy became the managing director of the State Bar of California Legal Services Trust Fund Program in late June. Previously she

served for eight years as the executive director of the Public Interest Clearinghouse, a statewide support center in California. Choy staffed a variety of statewide collaborations and facilitated two large-scale statewide planning efforts. Choy is past vice chair of the State Bar of California Standing Committee on the Delivery of Legal Services, and served for many years as a liaison to the Access to Justice Commission and the Legal Services Trust Fund. Choy was in private practice for 16 years before joining the PIC. She is a graduate of the University of California, Berkeley and the UCLA School of Law.

In July, **Carey Shoufler** assumed responsibility of Idaho's IOLTA program as the Development and Law Related Education Director of the Idaho Law Foundation.

In addition to her IOLTA duties,



Carey Shoufler

Shoufler is responsible for fund-raising and marketing efforts for the foundation. Previously she ran her own communication consulting

firm, helping clients develop marketing and funding strategies, and earlier was a teacher and school administrator for 10 years. Shoufler obtained degrees in English Literature and Spanish from Mills College and will complete her master's degree in instructional and performance technology from Boise State University this fall.

Quality Time

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the principles and ideals in the documents; it will be used for both internal and external audiences.

State efforts

State access to justice commissions and similar entities also are discussing these documents, as are individual programs. In Michigan, for example, the state planning body has formed a quality committee to suggest how that group can

use the documents to advance the quality agenda. Legal aid programs around the country already are using the Civil Standards; one developed a board training based on the governance section of the Civil Standards. Hopefully, these and many other protocols or techniques will be broadly shared through the NLADA process which will use technology, including a Wiki, to keep the work dynamic and accessible. IOLTA directors can share experiences with each other

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From the Chair...



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

For many years, individual lawyers and firms operated under severe advertising restrictions. Bar association-sponsored lawyer referral services were exempted from these restrictions and thus held a monopoly on lawyer advertising. The only banner ad to be found in the Yellow Pages was that of the lawyer referral service. Those times have passed, and referral services now find themselves competing with individual lawyers and law firms, many with substantial advertising budgets. To further complicate matters, many telephone directories have relegated referral services to the back of the attorney listings. Advertising has also moved into cyberspace—new and a bit frightening for some, but full of opportunities for the savvy referral service.

The target market for lawyer referral programs has been, and remains, the moderate-income legal consumer; the person who has the means to pay for legal services and needs a lawyer. The competition among individual lawyers and firms for this demographic is fierce. Relying on advertising in telephone directories as the exclusive source of clients is a recipe for disaster in

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ADA Requirements for LRIS Programs and Panel Attorneys: Accommodations for the Deaf and Hard of Hearing

by Jennifer Pesek

Question: “Hi. When I meet with Ms. Lawyer for my consultation, I will need to have an interpreter for that appointment. Will you get one for me?”

Answer: “No, I’m sorry, we don’t provide interpreters here. You will need to bring your own. You could bring a member of your family perhaps.”

Is there something wrong with this exchange? I’ll give you a hint: it might be written on a piece of paper (or in an email message) rather than spoken. Why? Because the questioner is deaf and he is asking for a sign language interpreter for his appointment with an attorney. Your LRIS intake interviewer or a panel member’s law firm staff person may be answering this question. And if you’re not careful, the answer may be a violation of the law.

The federal Americans with Disabilities Act (ADA), which became law in 1991, protects people with disabilities from discrimination and requires equal access to services from private businesses and non-profit organizations (through ADA Title III); state, city and county government agencies (ADA Title II); and employers (ADA Title I). The law’s prohibitions on discrimination seem clear and easy to follow, since few of us intentionally discriminate. However, the specific requirements for equal access may surprise you.

The ADA requires that all businesses and non-profit organizations provide communications assistance upon request. This includes all sizes and types of legal services providers and private businesses, including large and small law firms, partnerships, LLCs, state, locally or federally funded legal services organizations, bar associations, lawyer referral services, private non-profit organizations, and solo practitioners.

Responsibility for accommodation

Once the request for assistance is made, your responsibility is proactive. The business must arrange for and pay for the requested accommodation. This is the part of the ADA that surprises most business owners, including lawyers. We think of discrimination laws as those forbidding certain acts, and we assume it forbids us to turn disabled people away from our offices on the basis of their disability. The ADA does forbid such acts. But it also adds a burden on businesses to act. The ADA recognizes that disabilities create barriers to equal access in our society, and the ADA tasks businesses and government agencies with bridging that inequality gap.

Let’s look at the specific requirements for an LRIS program. An LRIS is a private for-profit or non-profit organization, providing a specific service. Its services are related to those of its panel attorneys, who also have ADA

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From the Chair...

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the current, much more transparent, legal world.

To prosper as a referral service, new client acquisition strategies are a must. A content-driven presence on the Internet is the best starting point. Most of the lawyer referral target market has Internet access. Clients check out what a service has to offer on the net in ever increasing numbers. At the same time, new competition has arrived. Based on their self-generated descriptions, some of the new competitors look much like bar-sponsored referral services, at least to prospective clients without a legal background.

The apparent similarity to lawyer referral isn't mere happenstance or coincidence. Legal consumers still have more confidence in a bar association than almost any other legal institution. These companies, and others, are banking on the proposition that many potential legal consumers, intimidated by the prospect of finding the right lawyer, will turn to them for assistance. Why? Because they look very much like a referral service.

While the competition struggles to portray what they offer as a referral service, we can do better. We are bar-sponsored lawyer

referral services, a claim the competitors just can't make. Try as they might, they will never have the words "A public service of your local bar association" in their advertising material.

Lawyer referral services have long struggled with the problem of how best to connect with the public and let people know that a call to a lawyer referral service is "The Right Call for the Right Lawyer." Without question, the Internet holds tremendous potential for doing just that.

Looking for a lawyer on the Web is fundamentally different than looking for a lawyer in a telephone directory primarily because of the availability of expanded content. There is a limit to what can be said in a Yellow Pages ad but content on the Web is limited only by your creativity. Clients who visit our Web sites are actually looking for us, trying to find the right lawyer. It's our job to make sure that when they find us we give them some reason to stop and decide that lawyer referral is the place to find the right lawyer.

We need to stress that we are bar sponsored. We need to stress that we screen our lawyers and make them meet experience requirements before we let them participate. We need to stress that all our lawyers carry malpractice insurance. We need to stress that many bar leaders participate in the

service. We need to consider placing biographical information about our panel members on the site. The more we can put a human face on lawyer referral, the more successful we will be.

It is essential that every lawyer referral director pay particular attention to the competition and Web sites in general. What search terms are clients using? What makes them click on one of those links on a search engine results page? When they get to your site, what will they find? Is the site confusing? Is it too busy? How many clicks does it take to arrive at the information the clients want?

Look at your program's Web site and ask yourself some questions. Does this Web page make a client want to look further? What information would a client want to know before making the call to an LRIS panel attorney? Is all of this information available on the site? How can we make the referral experience easier for the client? Are we making full use of our bar association affiliation?

Anyone who worries whether the referral service model will survive need not do so. The competitors wouldn't be trying so hard to look like a referral service if it was a flawed model. To keep your service competitive in the changing world, keep focused on cyberspace, talk with each other, and make your presence felt.

ADA Requirements

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obligations. Whether you are a legal services organization, law firm, or private practitioner, you can follow the LRIS model for meeting ADA requirements.

Let's look at the requirements

for LRIS panel attorneys. As businesses, lawyers must provide equal access to disabled members of the public, whether or not a formal attorney-client relationship has been created. Prospective clients are the heart of the LRIS and panel attorney relationship. So it is important to remember that ADA

requirements for both LRIS and the panel attorney begin the moment a member of the public walks in your door or calls you on the phone.

What must the attorney do under the ADA? Nothing, until an accommodation is requested. Every ADA request should be handled

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ADA Requirements

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on a case-by-case basis. This is partly because the structure of the ADA is request-driven. Also, particularly in the deaf community, communication needs vary widely, and you will not know in advance what kind of communication is effective for any particular person.

Complex communication

The basics of an ADA accommodation for legal services are at the heart of the question-and-answer

exchange at the beginning of this article. The lawyer must make sure that she provides “effective communication” for any services to the public that involve “complex communication.” While we lawyers might consider some legal services simple or straightforward, the U.S. Department of Justice has given clear guidelines on the differences between simple and complex communication. Discussions of medical, legal, or complicated financial matters, such as buying a car, are considered to be “complex” by nature. As with doctors,

lawyers are ethically bound to do conscientious and accurate fact-gathering with clients, so over-broad assumptions about the simplicity of the communication can lead not only to ADA violations, but also to problems with quality of representation.

What is “effective communication”? It means whatever form of communication is effective for the deaf or hard of hearing person to fully understand and to be understood. For example, reading lips by itself is ineffective for most people

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Effective Communication: Communication styles and technology used by the deaf and hard of hearing

The deaf and hard-of-hearing community is diverse, particularly in the areas of language and communication. Most deaf communication or language choices fall into one of two important groups: American Sign Language (ASL)-based and English-based.

ASL: ASL is not gesturing, nor is it English language mimed or gestured. ASL is a complete language, separate from English. English can be as foreign a language to ASL users as Russian is to English users. Many deaf ASL users feel fully comfortable and fluent only in their native ASL, while English remains a secondary, non-native language. ASL-based accommodations most often involve live interpreters, but can also include remote interpreting (through the Internet, using a Web cam and phone) called VRI, as well as ASL-based phone communication using a relay service called VRS or IP-relay.

English-based: English-based communication falls along a spectrum for the deaf and hard of hearing. People with some hearing left may focus on amplifying sound. Individuals with little hearing left may focus on getting the English to be displayed—either previously written down or displayed in real time. Here are some kinds of English-based communications:

- **Real-Time captioning:** Similar to a court reporter, but projected onto a screen for instant reading, or provided remotely over the Internet with a phone connection. This provides full engagement in communication, and does not rely on audible sound.
- **Assistive Listening Devices (ALD):** These are technologies that direct or transmit sounds directly to the person’s ear. ALDs are appropriate only for people who are still using their residual hearing.

Tips for communicating with deaf and hard of hearing people

Do not to turn your back or look down or away when speaking.

Even if people are not reading lips to communicate, they are relying on visual cues to help them communicate with you.

Do not shout or over-enunciate to communicate. Speak clearly and follow the deaf or hard-of-hearing person’s lead in the tempo of the conversation.

When using an interpreter or relay service, pause occasionally to make sure the interpreter has caught up to you. Interpreters are working in batches of information. Be aware that the deaf or hard of hearing person may interrupt you to clear up a point or ask a question.

Remember—communication is a two-way street!

ADA Requirements

(continued from page 7)

because the majority of lip readers only understand about 30 to 40 percent of the information. This is not enough to be effective. If the deaf person is a native ASL signer, writing notes or typing on a computer may also be ineffective. Since deaf people have many different communication strategies, what is effective for one person may be ineffective for another. Or, as with people who are hard of hearing, what is effective in one situation, such as a sit-down meeting with a single person, may be ineffective in a different situation, such as giving testimony in a large courtroom. (See the sidebar on page 7 for more on effective communications.)

LRIS responsibility

What about the LRIS itself? If private panel attorneys are responsible for services they provide, what is the LRIS responsible for? When a service is provided jointly by two entities, they share that ADA responsibility. Additionally, an LRIS program is responsible for its own services. If an LRIS program is structured to take a fee for referrals, it may be considered to be providing a service. Furthermore, under the ADA it is forbidden for an entity to subcontract services to

a third party that discriminates. To be careful, an LRIS should ensure that its referral services are accessible, and that it does not refer out to attorneys who discriminate. It behooves every LRIS program to provide accommodations for LRIS-related services, and to help panel attorneys follow the ADA.

What will you actually spend on ADA accommodations? Although there is a waiver on providing ADA accommodations if they are too expensive, that waiver is very difficult to obtain. For example, if you provide a low-cost or no-cost service, such as a free consultation, the fact that the cost of the accommodations exceeds the payment for the service—therefore incurring a loss—will not *de facto* be considered too expensive. The “undue burden” threshold can be reached only if the individual request presents a heavy burden compared to the entire budget or assets of the business.

The ADA was crafted with the knowledge that instances of such requests are very low, and over the lifetime of a business such expenses will represent a negligible amount. For example, the San Francisco County Bar Association LRIS budgets and spends just under \$500 per year on ASL interpreters out of a program budget of just over \$1 million per year. This \$500 represents the percentage of clients requesting

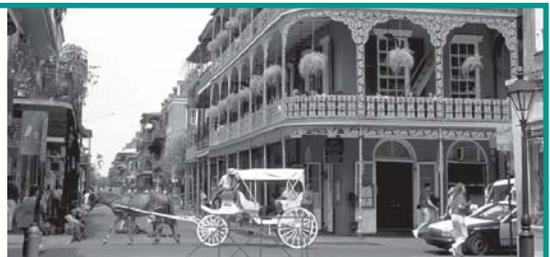
interpreters from a total number of 60,000 clients served.

The key to an effective policy is to remember that your business does not need to incur any expenses until requested to do so. However, when a request is made, your LRIS program may be required to spend money to fulfill ADA requirements. Plan ahead by budgeting some funds for ADA accommodations. Codify your intention to follow the interactive process of the ADA by designating a staff member to respond to ADA requests. Educate your front-line staff to recognize an ADA request, as a refusal to provide accommodations even in ignorance of the ADA is still considered a violation. Find service providers, interpreters and captioners of your choice, so that a system is in place when the request comes. Finally, make sure that your policy reflects the interactive process required by the ADA, which will allow for the individual to receive effective communication.

Jennifer Pesek is staff attorney for the California Center for Law and the Deaf. She spoke at the 2006 National Lawyer Referral Workshop.

The views in this article are those of the author and are not necessarily those of the American Bar Association. This article is presented for general informational purposes, and should not be used as a substitute for legal advice regarding any specific situation.

Register today for the **2007 National Lawyer Referral Workshop**, which will take place October 17-20 at the Astor Crowne Plaza in the New Orleans' French Quarter. Go to www.abalegalservices.org/lris for more information.



From the Chair...



by M. Catherine Richardson
Chair of the ABA Standing Committee
on the Delivery of Legal Services

In 1999, during the height of the “dot com” era, then-ABA President Bill Paul launched an initiative to examine the ways in which technology, and particularly the Internet, could be used to advance the delivery of legal services. Paul recognized the usefulness of the Internet in financial services and other personal matters and challenged the organized bar to explore ways in which the then-new technology could be harnessed to provide legal services more efficiently and affordably. As part of this initiative, he created a task force on e-lawyering. When the focus of the Internet was on law firm marketing, Paul encouraged the task force and the Delivery Committee to consider the ways in which technology could be used to not only seek out clients, but to actually deliver legal services.

Although the “dot com” boom—and the private sources to fund online legal services—experienced a substantial contraction soon after Paul’s initiative, dramatic changes have unfolded in the use of technology to deliver legal services since 1999. Connectivity to the Internet and use of email are ubiquitous throughout the legal profession. The Legal Services

Corporation has poured tens of millions of dollars into grants for the development of technology-based models, much of which has been dedicated to the delivery of legal services. State courts have created systems that enable court users to access forms online. In some states, most notably California, the systems allow users to complete forms online and download them to file in legal proceedings. The Legal Aid Society of Orange County has created “I-CAN!,” a system using document assembly to ask questions and then assemble the responses into the appropriate forms for services ranging from divorces to tax filings with earned income credits. Former committee member Prof. Ron Staudt has fostered an Internet-based interface known as “A2J” that walks users down a graphically depicted virtual path to the courthouse, asking questions and then using the answers to create the appropriate forms.

In a sense, many of these new initiatives allow legal service providers, including lawyers and the courts, to outsource some aspects of the services needed by those seeking access to the courts. Sometimes services, such as document preparation, are provided as a part of a lawyer’s services and sometimes, such as the case with the courts, the services are provided to those proceeding pro se. This latter point brings us to a fundamental policy question. At what point is the use of technology to provide legal services the practice of law, or the unauthorized practice of law if done outside of the client-lawyer relationship?

The use of self-help tools has

a history that pre-dates the broad-based use of the Internet. In the 1970s, the author of the book “How to Avoid Probate” was prosecuted for the unauthorized practice of law. Norman Dacey successfully advanced the defense that he had no clients, simply book-buyers with whom he had no relationship. He, therefore, could not be practicing law. However, when this situation arose with software, a Texas court concluded that the software developer was indeed practicing law even though the company was in the same position as the author of a book and had no clients as such.

When looking at Internet-based delivery models we are faced with the question of whether the model is more like a book, which may provide forms and general instructions, or more like a lawyer who interacts with the client, probes the specific facts, and addresses issues involving judgment and provides representation. Some of the most recent cases conclude that the technology is more like a lawyer than a book, with the producers of the software in violation of UPL laws.

The Delivery Committee is interested in learning more about the use of technology to provide legal services. Prior to considering policy implications, the committee plans to hold a series of hearings to gain input from as many perspectives as possible. Details about the hearings will be posted on the committee’s Web site (www.abalegalservices.org/delivery) as they become available. I invite those with insights to share them with the committee. As our work progresses, I will report back in a future edition of this column.

First Do No Harm: How to Be an Effective Post-Disaster Volunteer Lawyer

by Debbie Segal and Rachel Piercey

Along with the rest of the country, the national legal community watched in horror two years ago as Hurricane Katrina and then Hurricane Rita destroyed homes, businesses and lives along the Gulf Coast. Even before the rains stopped and the floodwaters receded, lawyers sought out friends and colleagues on the Gulf Coast hoping to do something, anything to help. With the best of intentions, the legal community called, sent emails, and visited the sites of the disasters, understandably needing to be useful and assist those who had lost so much.

Today, the urgent need for legal assistance to vulnerable clients in those areas impacted by the hurricanes continues to grow, compounding the need for volunteer lawyers even as the local private bar and legal services providers continue their own recovery from the disaster.

The immediate aftermath

This article, however, examines that remarkable time immediately following a major disaster—those first few hours, days, weeks, and months when communities are shocked by the enormity of what has just hit them. It offers lessons based on the authors' experiences in New Orleans in the aftermath of Hurricane Katrina.

Even with the best disaster preparedness plans, the legal services infrastructure—represented by bar associations and pro bono and legal aid programs—struggles to recover its basic operational resources after a major

disaster. In the case of Hurricanes Katrina and Rita, offices were destroyed, staff members were displaced and dealing with their own immediate issues, communication was inconsistent at best, and there were a myriad of other challenges.

In truth, the local bar and the judicial system were traumatized and paralyzed. So, our colleagues from around the country reached out to us. We, in turn, tried as best as we could to figure out how they could help us and our clients, even as we struggled ourselves to cope personally and professionally with this unprecedented crisis.

Our experience will, we trust, inform our colleagues in the national legal services and pro bono communities as they archive lessons learned from the response to the Gulf Coast storms and develop continuity and contingency plans to meet the needs of our clients when the next major disaster strikes. Here are some of the key lessons we can share from the aftermath of the 2005 hurricanes.

Place the oxygen mask on your face before assisting others

Have you ever listened to a flight attendant's instructions about use of the oxygen masks, should they drop during loss of pressure in the cabin? We are told to first care for ourselves before assisting others—something that goes against the grain for many of us. The truth is, however, that if we pass out from lack of oxygen, we will be of no help to those who need it.

So it is for those who are victims of a disaster. And make no mistake about it, the members of the Gulf Coast legal community are every bit as much victims of the storms as their neighbors. Even after the initial shock wears off, they are in survival mode. The basics of life—food, water, shelter, safety of loved ones—become central in a way that only they can understand. They become necessarily self-focused, unable to see beyond their own immediate needs. They cannot contemplate a future beyond the next hour or day, and certainly cannot assist others with their own planning. And it will be a long time, much longer than we might think, before they can think beyond their own four walls, if they even have walls.

For those of us who watch the disaster from afar, it is difficult to comprehend that our legal skills just are not needed right now. We are accustomed to being problem solvers, the guardians of laws, the creators of solutions. It is hard for us to imagine that unless we can operate that forklift to load tons of cases of water onto an 18-wheeler and drive it to the affected areas, we are probably of little value to the victims and to the organizations accustomed to caring for the less fortunate. We want to be helpful but, for most disaster victims, the law is just not high on their list of immediate priorities. That will come later. And, for those who manage the infrastructure in place to ensure access to justice for those in need, the infrastructure has to be

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Pro Bono Policy News

Legal Services Corporation Adopts Pro Bono Resolution

On April 28, 2007, the Legal Services Corporation (LSC) board of directors adopted a resolution calling upon its grantees to collaborate with other organizations in their service area, including state and local bar associations, to develop effective strategies for engaging lawyers in pro bono representation and other services that benefit low income persons. In addition, grantees are urged to collaborate with bar associations and others to develop and facilitate educational efforts that demonstrate the extent of the unmet need for civil legal services. To obtain a copy of the resolution or for more information, contact Stephanie Edelstein, program counsel in LSC's Office of Program Performance, at 202-295-1557 or edelsteins@lsc.gov.

Iowa: On May 14, 2007, the Supreme Court of Iowa entered an order adopting a "Katrina Court Rule," becoming the first state to adopt a rule based on the ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster. The Iowa rule addresses circumstances in which the Supreme Court of Iowa, or the highest court in another

jurisdiction to which displaced persons temporarily relocate, determines that an emergency exists that affects the state's justice system and the provision of legal services. Following such a determination, the court will allow out-of-state lawyers to provide pro bono legal services to the citizens of the affected state within certain constraints described in the rule. In addition, lawyers from an affected state can provide legal services in Iowa on a temporary basis if the services are reasonably related to the lawyer's practice in the affected jurisdiction.

Alaska: On June 26, 2007, the Supreme Court of Alaska adopted Rule 43.2, regarding emeritus attorneys who wish to practice pro bono. The rule, which takes effect October 15, 2007, is intended to encourage attorneys who would not otherwise engage in the practice of law to provide pro bono legal services to those who qualify. The rule states that an emeritus attorney who provides pro bono legal services may have bar dues for the following year waived. The pro bono legal services must be provided under the supervision of a qualified legal services provider. For more information, see www.state.ak.us/courts/sco/sco1641leg.pdf.

North Carolina: On June 28, 2007, the North Carolina General Assembly enacted HB 1487, which allows attorneys to claim inactive status, (permitting them not to pay bar dues or take annual CLE credits) while remaining able to practice pro bono. The law took effect July 8, 2007. Under the new law, inactive members are able to continue to represent indigent clients on a pro bono basis under the supervision of nonprofit corporations. For more information, see www.ncga.state.nc.us/Sessions/2007/Bills/House/HTML/H1487v6.html

Colorado: The Supreme Court of Colorado adopted Rule 223, which became effective July 1, 2007 and allows retiring or inactive lawyers to provide pro bono legal services to the indigent through a Colorado nonprofit agency that serves the poor. These attorneys will not have to pay annual registration fees. Attorneys included under this rule are those who are licensed in Colorado as well as those who are licensed in another state, as long as their practice is restricted to taking pro bono cases. For more information, see [www.courts.state.co.us/supct/rules/2007/2007\(08\)%20\(New\).doc](http://www.courts.state.co.us/supct/rules/2007/2007(08)%20(New).doc)

First Do No Harm

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fixed before justice can be served.

Keep your expectations realistic

Of course, at some point, our

friends, families and colleagues affected by the disaster will reach out to let us know that they are okay. The most well-intentioned of us are ready with pent-up advice, offers of things we think we would need if we were in that situation, insistent that the victims

tell us what we can do.

Mostly, they don't know what they need, and they don't know what we can do for them. Even the lucky ones will be paralyzed by the experience and unable to cope outside their borders for quite

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some time. The last thing they need is to be made to feel guilty by not allowing us to help.

So, don't just show up. If you do, you will become, unintentionally, another "thing" on their plates and another person for whom they feel responsible. Continue to offer food, clothing, money, a place to stay and moral support. Just because the disaster is no longer front page news doesn't mean that they do not need you. And eventually, one of your offers will be accepted.

And don't be discouraged if your calls and emails are not returned. Remember, your colleagues in the disaster zone are struggling to cope with survival issues. Give them the benefit of the doubt. Keep in touch, and sooner or later, they'll be able to respond, acknowledge your efforts, and give you some sense of what you can do, immediately, in the short-run, and later.

Don't be high maintenance

When the right time comes to travel to the disaster site to offer your professional help, your first instinct will be to ask where you should stay and how you should get there. Don't. Just do it yourself. Get on a plane, get a hotel, get a car, plan your own meals, take care of yourself. Do not rely on the organization to make plans beyond knowing the date and time of your arrival, which should be adjusted to accommodate their working hours.

Show up ready to do anything; don't expect that you'll be ready, able or needed necessarily to assist clients. Be flexible. You may think you're coming to do one thing, and

If you're not authorized to practice in the jurisdiction, find out what you need to do to enable you to assist clients, and do it. Don't expect your host organization to have the time or resources to do it for you.

it can turn out to be something entirely different. Three months after a disaster may not be the best time for the organization to begin long-range planning for the future, even if it is what **you** think it needs. Choosing, ordering and purchasing a new copier might be the insurmountable task that you can undertake to make a difference. Or, in our case, figuring out how the organization can make the best use of the hordes of volunteers on their way to help might be the best early contribution.

Do your homework. If you're not authorized to practice in the jurisdiction, find out what you need to do to enable you to assist clients, and do it. Don't expect your host organization to have the time or resources to do it for you.

Create resources

Law firms that want to make a professional contribution after a disaster have many options available. Lawyers can volunteer to supervise law students. They can create training materials with standardized forms. They can take on individual cases for the organization.

Other law firm resources might prove even more valuable. Paralegals can provide organizational skills, enter data, and organize files

and systems. Those who are bilingual can interpret over the telephone so that non-English speaking clients can be served. Larger law firms can contribute IT talent to restore or create new avenues of communication. Public relations professionals can work with the entity to advertise successes and create a wish-list of needs.

And, most importantly, law firms themselves can make donations of money and equipment, as well as collect contributions from their members. If lawyers don't give immediate and sustained financial support to legal services and pro bono organizations hit by a major disaster, who will?

Students: Come prepared

Law students around the country, not surprisingly, are an amazing, valuable resource for organizations that provide representation to low-income people. After Katrina, their enthusiasm for helping could not be contained. Students gathered in groups and announced their intentions to give up their winter (and subsequent) school holidays to come to New Orleans. Some chose to do clean-up and construction work. Others offered themselves to The Pro Bono Project, wanting to make use of their legal education.

The energy that law students bring to an organization is a great asset, but it is a challenge as well. The sponsoring organization wants to make the best use of their talent to help its clients, but also feels compelled to provide these eager volunteers with a "good" experience. What may be needed, however, is tedious grunt work. Achieving a balance takes time, effort and a good deal of preparation. If the students will be draft-

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ing legal documents or providing any form of legal advice, they must be supervised by lawyers.

Students will make the best contribution if they come prepared. This means that they bring their own computers, cell phones and other communication devices so that they don't tax limited electronic resources. It also means that they should bring their own supervising attorneys. In so doing, they become a self-contained unit, capable of making progress for clients but without encumbering

staff lawyers with the responsibility of ensuring that they are providing a value to the clients.

Be patient

Patience is usually not a lawyer's virtue. However, the aftereffects of a disaster go on for many, many years. As time passes, new crises emerge and new legal problems surface. You need to be there for the long haul. And one day, the sun will come out, and the organization will be ready to plan for the future.

In New Orleans, the pro bono caseload has quadrupled in the past year and is projected to remain at that new and higher

level until well into the next decade. The legal services and pro bono infrastructure continues to struggle, but nevertheless doggedly strives to meet the legal needs of the poor and vulnerable in one of America's most treasured cities.

Debbie Segal is the pro bono partner at the law firm of Kilpatrick Stockton in Atlanta. She was one of the early volunteers for The Pro Bono Project in New Orleans, and learned many of these tips the hard way before getting it right.

Rachel Piercey is the executive director of the Pro Bono Project in New Orleans, and is the grateful beneficiary of the legal community's generosity.

IOLTA

Quality Time

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through the IOLTA.ORG Web site. The availability of information and ease of sharing it will be an important component in the success of these efforts.

ABA Principles

The ABA Principles of a State System for the Delivery of Civil Legal Aid also present significant opportunities to promote quality. The Principles focus on state delivery systems and are thus a helpful resource for state-level entities such as access to justice commissions. A self-assessment document produced with the Principles can be used by these entities to assess statewide capabilities under each of the 10 principles. The Principles may also be useful to IOLTA programs, which often have a key role in state planning entities or which work with various others to address gaps

or duplication and facilitate innovation in the statewide delivery system. Some IOLTA programs also are broadening their evaluations from individual programs to regional or state assessments; the Principles may be helpful for such efforts.

Writing about these current efforts made me recall that ABA Commission on IOLTA Co-Chair Jon Asher is fond of quoting the great philosopher Pogo's remark: "We are surrounded by insurmountable opportunities." The opportunities described here clearly are not insurmountable if IOLTA programs and others continue to collaborate and capitalize on this unique time to make quality an integral part of our work. The opportunities surrounds us—let's work together to seize them.

Linda Rexer is the executive director of the Michigan State Bar Foundation, co-chair of the Commission on IOLTA/National Association of IOLTA Programs Technical Assistance Committee, and past president of

NAIP. She was a member of the ABA Standards Revision Task Force and the LSC committee to revise the LSC Performance Criteria. Currently she is a member of the NLADA Program Enhancement Committee, which is leading NLADA's effort regarding the quality initiative.

Endnotes

- ¹ The ABA Standards for the Provision of Civil Legal Aid and the Principles of a State System for the Delivery of Civil Legal Aid are online at www.abalegalservices.org/sclaid. The LSC Performance Criteria are online at www.lsc.gov/pdfs/LSCPerformanceCriteriaReferencingABASStandards.pdf.
- ² The ABA adopted another initiative in 2006 affecting civil legal aid; it promotes a defined right to counsel in civil matters where basic needs are at stake. Space limitations do not permit addressing this "Civil Gideon" resolution in this article, but it has also spurred activities around the nation which have the potential to affect quality civil legal aid services. The report and resolution adopted by the ABA are online at www.abalegalservices.org/sclaid/downloads/06A112A.pdf.

Legal Assistance in Theater

by CPT Madeline Yanford

Iraq is a place fraught with challenges for our soldiers. Day to day, they risk their lives for the cause of lending support and stability to a country in transition. While in theater, American soldiers often struggle with personal issues from the lives they have left behind. Many enter Iraq armed not only with “battle rattle” and M16s, but with worries over family issues, child support payments, powers of attorney, consumer credit problems or landlord-tenant disputes. The legal services JAs deliver during combat operations help answer those questions and ease soldiers’ minds. Helping them focus on their job is a critical element of mission success.

The day has dawned as I make my way to division headquarters, keeping the mission in mind. Temperatures are in the low 90s, under a cloudless, pale blue sky, and will climb to 115 degrees by lunchtime. Sand and gravel crunch under my boots, as my patrol cap shields my eyes from the bright sun’s glare. My M-16 bounces lightly against my back, keeping time to my footsteps. Cement walls and barriers dot the landscape, interspersed with mustard yellow port-a-potties that provide sparse pockets of color. I cross a narrow foot bridge, struck by the tall green grass sprouting up on either side of the stream that runs underneath. Soldiers lean over the sides of the bridge, laughing as they feed Corn Pops to the fish greedily congregated below.

Once at headquarters, I climb the stairs to the second floor, remove my M-16 and place it in the weapons rack. I head for my work station in a quiet corner, shared with a colleague. After all those years of school, taking seven years off

between undergrad and law school, and working my way through law school at night, I had been so excited to have a “real” office in Korea, my first duty station—complete with four walls, a door, and a helipad out the back window. Now, here I was in the middle of the desert, sharing open floor space with a dozen other judge advocates. Is this what I had really signed up for?

Making a difference

My first legal assistance client had the same question. A specialist on his second tour of duty in Iraq, he had re-enlisted for another four years only to discover that finance was garnishing his wages for overpaying his bonus! I quickly realized I had to help this soldier take action. I worked with him and his command to file a request to cancel the debt due to injustice. Additionally, re-enlistment worked through their channels to discuss the terms of the contract with his career counselor, who had overstated his proper bonus entitlement. It was the first of many cases that would persuade me that legal assistance can make a real difference for our forces in Iraq.

Like many soldiers, when I arrived in Iraq I called my parents to let them know all was well. “Are you okay?” they asked me. “What is the weather like? What are your work hours? Where are you living? Are you getting enough sleep? Do you need anything?”

They needed to hear that everything was all right—a family trait evident in my own legal practice style. Friends say, not unkindly, that I have “trust” issues. I will ask someone to research something for me, and double check the source. I need to see things in writing. These

traits, sub-consciously or otherwise, must work their way into my power of attorney briefings. Soldiers will decide that they need to assign someone legal authority to pay their bills, or have access to an account. I gently ask them the pertinent questions: Do you know this person well? Do you trust them? Do you realize what they can do with this document? Satisfied I have done my lawyerly duty, and that things are “squared away,” I send them away with a good luck wish and bid them farewell.

Rendering legal assistance in Iraq sometimes entails carefully and sympathetically explaining to your clients the practical impediments of deployment. In two separate cases, a sergeant and a private came to me with concerns about the health and welfare of loved ones. The sergeant’s nephew was being cared for by his grandmother, with the child’s parents nowhere to be found. The private’s sister had agreed to allow her to assume temporary custody of the sister’s nine-year-old son. Both soldiers wanted custody to help their families, but being deployed meant they could not be present to petition for custody, or be available to assume physical custody of the nephews. Soldiers in theater often come to legal assistance with well-intentioned plans, but need someone to navigate them through the process.

“I miss...” Most deployed soldiers can give you a laundry list of people, places and things to complete that sentence. Some can’t even wait until they return home to tie the knot with their significant other. A non-commissioned officer wanders in to ask me, “Can my soldier get married by video teleconference? He read an article in the newspaper about it.” Soldiers can and do get married by proxy. While Texas, California and Colorado require at least one party to be

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From the Chair...



by Gen Earl E. Anderson, USMC (Ret.)
 Chair of the ABA Standing
 Committee on Legal Assistance
 for Military Personnel

The political winds that drive our nation's military and foreign-policy choices are forces beyond our control as individuals. For public-minded citizens, it can be frustrating when legislators or policy makers overlook or reject the positions we see as right and compelling. As individual lawyers, however, we do have autonomy over one very vital enterprise—the effort we make every day to get better at this great profession, and to do our best with available resources for those who come to us for legal help.

For the military legal assistance lawyer, dedication to best efforts for the client should be as constant as true north. The legal ethics code demands best efforts; the military readiness mission makes them essential. And there is yet a third factor, the X factor, that will push the JAG delivering legal assistance the extra mile. That X factor is what we can only view as a moral imperative to see that those who have stepped up to defend this nation of laws are not denied the benefits of our civil justice system.

In the real world, the vast majority of our servicemembers simply have no access to civilian

lawyers, financial or otherwise. They would not be in a position to hire a lawyer even if they knew how to find one—and they don't. Yet as the lessons learned from the current conflicts vividly bear out, the types of legal problems most commonly faced by today's service members, particularly those in deployed environments, often are a direct or substantial byproduct of the fact they are serving their country. Families are under strain after multiple deployments. Custody issues become more problematic from a remove of 8,000 miles. Creditors hover when Guard members and reservists must leave home for years at a time, having taken up arms to protect the American way of life the rest of us so enjoy. This moral imperative tells us that assuring our military members access to justice is a very high calling indeed, and those judge advocates who take up that calling are performing a great service for our country, one in which they should take great pride.

Certainly, we who have taken a more than passing interest in military legal assistance policy and programs are ever mindful of the great work of the thousands of individual JAG officers delivering legal assistance, from Beaufort to Baghdad. We know they are rolling up their sleeves to go get their LA clients some justice and legal protection. For those of us on the Standing Committee on Legal Assistance for Military Personnel, it is the work of those lawyers in uniform that drives our mission. LAMP is a tiny star in the great ABA firmament of giant sections and vast divisions, but its light burns bright because its cause is great. It will strive to illuminate that cause as long as there are servicemembers who require legal

help as they go about defending this nation of laws.

* * * * *

If you haven't yet, I urge you to take a few minutes to read the story in this issue by Army CAPT Madeline Yanford, who describes her current experience delivering legal assistance to soldiers in Baghdad. She is a JAG officer serving a 15-month rotation in Iraq. I find her description of her work and environs in Iraq interesting, informative and well presented. Her attitude about her mission, I find no less than inspiring. There are hundreds of JAG officers like CAPT Yanford serving in Iraq and Afghanistan, doing the job for their clients in a tough and challenging environment. In the dust and heat of their war zones practices, they do great credit to our profession. We at the ABA salute them.

* * * * *

I was pleased to preside at the LAMP Committee's business meeting, CLE and paralegal education program in July at the Air Force Judge Advocate General's School at Maxwell AFB, Alabama. Col Dave Wesley, the commandant, along with LtCol Brad Mitchell and Maj Lance Mathews made arrangements that maximized the work environment for our Committee and the learning environment for our CLE and paralegal students. LAMP is grateful for their good efforts.

The next LAMP program will be co-sponsored by the Washington State Bar LAMP Committee and will take place November 15 and 16 in Seattle. Our host will be the Thirteenth Coast Guard District. We hope to see you there.

Legal Services

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present, Montana allows both parties to hire proxies, who exchange vows on their behalf. Wedded bliss is right at a soldier's fingertips... even from the middle of Baghdad. I am just an Army lawyer; I offer no judgment on whether a long-distance wedding is the way to go.

Advice and counsel

Every day we in legal assistance are witness to the fact that good things in life often come to an end. My practice also involves a great deal of counseling to soldiers on family law matters, particularly divorce, separation, and financial support. Counseling soldiers on marital issues always reminds me of an important lesson I took away from a legal mediation class: usually, the mediation has little or nothing to do with what is being discussed. Often, it has to do with what is unspoken—hurt feelings, wounded pride, loss of respect.

Taking these words to heart, the first thing I do is work my way through a soldier's anger, confusion, and frustration. These factors are often exacerbated in a deployed environment, as the soldier is far from home, might have difficulty maintaining regular communication with a spouse, and might have a spouse making idle or real threats to contact his or her chain of command. Marital problems while deployed can take a toll on a soldier's well being and adversely affect his or her ability to focus on the mission. I let soldiers vent first before launching into their legal alternatives. Sometimes, lending a sympathetic ear can be the most effective form of communication.

Legal protections for service members

During this 15 month deployment,



Photo courtesy CPT Sheila Barnes

CPT Yanford counsels SGT John Wright in Baghdad.

I will miss a few parties back in the States, including a wedding or two. Most of my friends understand why I won't make the festivities, but what if I received a more formal "invitation"? Say, one from a civil court directing me to appear in 30 days' time for a hearing? Would the court be as understanding? Many soldiers come to me with this dilemma, and are relieved when I advise them of their protections under the Servicemembers' Civil Relief Act (SCRA). The SCRA allows service members to petition civil courts for a stay of proceedings until the end of deployment.

The SCRA also protects soldiers from disgruntled landlords. When I informed my own landlord after one month on a lease that I was leaving for Iraq, she was not thrilled but understood my right as an active duty soldier to break my lease. As it turns out, other Georgia landlords were not nearly as understanding. "My landlord refused to give me back my security deposit," one private complained to me. "Never fear," I told him. "SCRA is here!" (Or words to that effect).

During the first few months in theater, soldiers take time to adjust to their new surroundings. At this early stage of deployment, in a typical week, we may see anywhere from six to 10 clients. Some clients are housed right in the same division headquarters; others travel to our location. Clients arrange appointments in person or by telephone. Soldiers are also referred to us from the brigades when the brigade legal office has

been working an action for the command that conflicts them out of assisting the soldier. Face to face meetings are preferred, to ensure that there is nothing lost in translation. Legal assistance duties normally do not take us into the field, but in this deployed environment, flexibility is key!

Soldiers find out about our services through word of mouth, and we also periodically publish in the division newsletter. As soldiers settle in, and the deployment time moves forward, it's expected that the amount of legal assistance clients will increase.

Mission readiness

Having legal services available during combat operations only strengthens mission readiness. Legal assistance provides an outlet for soldiers to work through their legal issues, helping to lower their stress and distraction. In turn, soldiers are equipped to squarely face their most important mission: the fight for a stable and independent Iraq.

I ponder my not-so-luxurious office here in Baghdad—where I work less than 10 feet away from at least five co-workers for 15 hours a day—and wonder, "Is this what I signed up for?" I realize that it is, and I am proud to do it. Amidst 120 degree temperatures, warnings of incoming mortar rounds, sleeping with an M-16, working long days, and missing the comforts of family and home, I have one of the best jobs in the world. My mission is to "square away" those who keep America safe. If asked to do it again, I would—in a heartbeat.

CPT Madeline Yanford, a member of the Massachusetts Bar, joined the U.S. Army JAG Corps in 2005. She currently is serving a 15-month tour in Baghdad, Iraq as a legal assistance and administrative law attorney with the 3rd Infantry Division, based out of Ft. Stewart, Georgia.

From the Chair...



by *Deborah G. Hankinson*
Chair of the ABA Standing
Committee on Legal Aid and
Indigent Defendants

In August 2006, the ABA adopted an important new policy urging recognition of a right to counsel in certain civil legal matters:

“RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.”

There were 25 cosponsors of the ABA resolution, including a number of ABA committees and sections. Cosponsors also included state or local bar associations in California (the Los Angeles County Bar), Colorado, Connecticut, the District of Columbia, Maine, Massachusetts (the Boston Bar), Minnesota, Pennsylvania (the Philadelphia Bar), New York (the New York State Bar Association, the Association of the Bar of the City of New York and the New York County Lawyers Association), and Washington (State Bar Association, King County Bar Association).

We have also been very heartened to learn of several efforts

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Review of National Indigent Defense Developments

by *Georgia N. Vagenas*

During the first half of 2007, there were a number of significant developments for indigent defense systems across the country. This article reviews both the victories and the setbacks in efforts to reform indigent defense systems.

In an effort to improve its broken indigent defense system, which has been struggling to recover from the effects of Katrina and pre-existing systemic deficiencies, the **Louisiana** state legislature passed the Public Defender Act of 2007. The measure centralizes control of defender offices under a single statewide public defender board. This board will replace 41 localized boards around the state. In addition to mandating accountability and performance guidelines, the law allocates vital additional resources from the state. Notwithstanding an increase in funding, the new measure maintains Louisiana’s controversial method of financing indigent defense through court fines, funded primarily through traffic tickets. In addition, all existing programs are grandfathered into the new commission.

In **South Carolina**, the state legislature passed the Indigent Defense Act of 2007, creating a true statewide indigent defense system. The bill, which passed by a sweeping bipartisan vote, creates a new state indigent defense commission. Also, 16 circuit defender offices will replace the existing 39 nonprofit county-based corporations. While these 39 corporations previously had been receiving state and county funds, they were not required to follow uniform standards for the delivery of services. Under the new law, the circuit defender offices will be required to maintain standards approved by the new commission. In addition to establishing the new statewide system, the legislature voted to increase funding for indigent defense to \$22 million, more than double the state’s FY2005 expenditure of \$9.4 million. The legislature also appropriated \$375,000 for a loan forgiveness program for prosecutors and public defenders. According to the new program, public defenders in South Carolina are eligible for \$1,000 per year after serving as a public defender for three years.

In **Virginia**, the General Assembly took steps toward much-needed reforms by passing legislation that allows judges to lift the cap on the fees the state pays court-appointed defense attorneys. Previously, Virginia was the only state in the country with hard caps that could not be waived. As a result, the state’s court-appointed attorneys were the lowest paid in the nation. The legislation helped avert a threatened court challenge regarding the constitutionality of the fee caps. To cover the additional cost of the waivers, the legislature appropriated \$8.2 million, which critics say will fund only one out of four waiver requests. The measure does not include juvenile court cases in the new waiver scheme.

The **Florida** legislature passed a bill creating five regional offices—

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From the Chair...

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since August 2006 by bar and other groups around the nation to use the foundation provided by the ABA policy. In California, the Conference of Delegates of California Bar Associations adopted a resolution calling for a civil right to counsel: "All people shall have a right to the assistance of counsel in cases before forums in which lawyers are permitted. Those who cannot afford such representation shall be provided counsel when needed to protect their rights to basic human needs, including sustenance, shelter, safety, health, child custody, and other categories the Legislature may identify in subsequent legislation."

During the 2007 Georgia State Bar Convention, law professors argued the civil right to counsel in a moot court before Justices of the Supreme Court of Georgia.

In Maine, the Justice Action Group—the state's legal services state planning entity—issued a draft state legal services planning report recommending the creation of a commission to study the

adoption "of a civil right to counsel in adversarial proceedings in which basic human needs are at stake."

A committee of the Minnesota State Bar Association will be creating a civil right to counsel task force to begin work in 2008.

In May 2007, the Massachusetts Bar Association unanimously passed a resolution endorsing the principles behind the ABA civil right to counsel resolution. It states: "RESOLVED, That the Massachusetts Bar Association urges the Commonwealth of Massachusetts to provide legal counsel as a matter of right at public expense to low-income persons in those categories of judicial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody, as defined in Resolution 112A of the American Bar Association."

The Boston Bar Association, under the leadership of Bar President Anthony Doniger, is in the process of forming a task force on the civil right to counsel.

In New York, the New York State Bar Association—under the leadership of Bar President Kate

Madigan—has established a subcommittee on the civil right to counsel.

A significant case implicating the civil right to counsel (*King v. King*) is pending in the Washington State Supreme Court. In that matter, a woman seeking custody of her children asserts a right to counsel under the state constitution. The ABA policy was carefully articulated in an amicus brief filed in this matter by the National Coalition for the Civil Right to Counsel. The Washington State Bar Association has submitted an amicus brief in support of recognizing a civil right to counsel in cases of this type.

Only one year has passed since adoption of the ABA policy. We are encouraged that the policy has already been used as an important foundation for additional advocacy by state and local bar associations, and in litigation seeking recognition of a civil right to counsel.

I want to express my gratitude to Laura Abel of the Brennan Center for Justice at New York University School of Law, who compiled the information on recent bar activities relating to the civil right to counsel.

Indigent Defense

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staffed by salaried employees—that will handle indigent defense cases in which the public defenders office has a conflict of interest. The state expects that the new program will save a substantial amount compared to the current system of appointing counsel from a list, which came under intense scrutiny after the administering state agency ran out of money

before the end of the fiscal year. While the state has indicated an expected savings of \$29 million in the next two years, the Florida Association of Criminal Defense Lawyers is concerned that the new agency will be overloaded with cases and will fail to attract attorneys with the qualifications and experience necessary to handle complex cases.

The Texas legislature passed a number of bills involving indigent defense issues. Most significant was a measure to increase state

indigent defense funding by 50 percent. With the new funding, state indigent defense funding is projected to exceed \$23 million. In addition, the state has established several new public defender programs, including a Travis County office exclusively dedicated to mental health defendants and a joint public defender office in Bowie and Red River Counties that will begin operating by 2008. Meanwhile, the Bexar County Appellate Defender Office, estab-

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lished in 2005, recently added 11 counties to its program.

The **Oregon** legislature significantly increased the funding of its Public Defense Services Committee (PDSC) for the FY 2007-2009 biennium. The increase of nearly \$31 million includes "policy package" funding in addition to its PDSC's base budget. This will enable PDSC to create a juvenile appellate unit, increase the hourly rate paid to court-appointed attorneys, and increase the salaries of non-profit public defenders.

The **New Mexico** Coalition for Justice introduced a bill to create an independent statewide commission. The measure proposed that the commission be charged with enforcing standards and hiring the state's chief public defender, currently appointed by the governor. Although the bill ultimately stalled in committee, supporters hope the strong support it received in the House means it will pass during next year's legislative session.

A bill to create a statewide indigent defense commission will be introduced during **New York's** next legislative session. This results from recommendations in a 2006 report commissioned by Chief Justice Judith Kaye's Commission on the Future of Indigent Defense Services and conducted by The Spangenberg Group. The New York State Bar Association recently endorsed all of the recommendations made by the commission.

A bill to create a statewide indigent defense oversight board failed to move out of **Mississippi's** legislature. However, the term of the Mississippi Public Defender Task Force was extended for four

more years, and membership of the task force was expanded to include representatives from the state's two bar associations. The legislature also passed a bill creating a public defender training program responsible for providing technical assistance, education and training to the state's public defenders.

An advisory commission formed by the **Nevada** Supreme Court to examine how to improve indigent defense in the state recently endorsed capping the number of cases assigned to overburdened county public defenders. Attorneys in Clark County reportedly handle approximately 400 cases per year. The commission recommended that the limit be set at 192 felonies per year. The commission was established in April 2007 following public criticism about the lack of standards and oversight in the system of assigning private lawyers to defendants. In addition to caseload standards, the commission will recommend performance standards for indigent defense attorneys, rules to ensure their independence, and reforms to improve the delivery of services in rural parts of the state.

The **Georgia** Public Defender Standards Council, which oversees the public defender system, continues to grapple with a budget crisis. The council will run out of funds largely due to the much-publicized cost of representation for Brian Nichols (who is charged with 54 felony counts in a string of four murders that began in an Atlanta courthouse in 2005), which already has reached \$1.8 million in pretrial court-appointed counsel fees. The council also faces a budget shortfall of \$10 million due to the collection of insufficient funds from fees and fines. These problems led state legislators to

pass bills to create a committee to study the council and transfer its administration from the judiciary to the executive branch. Furthermore, the legislature appropriated only \$35.4 million of the \$37.4 million requested for FY2007-08. Facing these budgetary setbacks, the council cut the hourly rate paid to appointed counsel in death penalty cases from \$125 to \$95; laid off 41 employees across the state; and dismantled its conflict attorney offices.

Court-appointed attorneys in **Alabama** once again are being reimbursed for overhead expenses following an Alabama Supreme Court decision that they are entitled by statute to office overhead reimbursement. An opinion issued by the Alabama Attorney General in 2005 prompted the state comptroller to withhold overhead payments. On behalf of private court-appointed attorneys in Alabama, Daniel Wright, a private defense attorney, contested the nonpayment. While the hourly rate of compensation for private court-appointed attorneys is \$40 for out-of-court work and \$60 for in-court work, the \$30 presumptive hourly overhead rate substantially increases the compensation rates for court-appointed attorneys.

In **Tennessee**, the Knox County Public Defender, Mark Stephens, faced with crushing caseloads, notified the County General Sessions Court that his office would suspend accepting any new misdemeanor cases as of July 1, 2007. In 2006, the office was appointed nearly 21,000 cases, which were handled by 23 attorneys. Citing the American Bar Association's Standards for Criminal Justice along with other national standards, Stephens declared in his letter to the Session

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Court judges, “[w]e can no longer meet our professional, ethical and moral obligations to the clients of this office as contemplated by the laws and performance standards currently in place.” It is likely that before the end of August the court will hold a hearing to address these problems.

In **Michigan**, a circuit court judge in Ingham County denied a motion to dismiss a lawsuit against the State of Michigan and Governor Jennifer Granholm regarding the state’s constitutional obligation to provide appropriate defense services to indigent defendants. The suit claims that the public defense services provided in three Michigan counties do not meet the constitutional minimum requirements for effective assistance due to a severe lack of funding, no administrative oversight, insufficient attorney training, and the lack of performance standards and review process. In its motion to dismiss, the state argued that it did not

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have the responsibility to provide counsel because the responsibility was delegated to the counties and it had no duty to ensure that the counties complied. The lawsuit was filed by the ACLU of Michigan, the national ACLU, Cravath, Swaine & Moore LLP, and Frank D. Eaman PLLC.

Recently Released Reports

The **ABA Standing Committee on Legal Aid & Indigent Defendants (SCLAID)** recently released two reports detailing the hourly rates of compensation paid to court-appointed attorneys in felony and capital cases at trial across the country, prepared by The Spangenberg Group (TSG), national experts on indigent defense issues, on behalf of ABA SCLAID. Both reports, *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview (June 2007)* and *Rates of Compensation Paid to*

Court-Appointed Counsel in Capital Cases at Trial: A State-by-State Overview (June 2007) can be downloaded at www.indigentdefense.org.

Also recently released is a report detailing the disparity of resources between prosecution and indigent defense entitled, *Resources of the Prosecution and Indigent Defense Functions in Tennessee (May 2007)*. The report uncovers a wide disparity between the two functions, reporting that the funds for prosecuting cases in Tennessee totaled up to \$139 million while only \$56.4 million was allocated to indigent defense. This report was completed by TSG for the Tennessee Justice Project with additional assistance provided by SCLAID and is available online at www.indigentdefense.org.

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