Operation Enduring LAMP: The ABA’s Answer to the Call of Patriotism

by Christo Lassiter and David Holtermann

On November 13, 2001, ABA President Robert Hirshon joined top military lawyers and ABA LAMP Committee Chair David Hague to unveil Operation Enduring LAMP. As Hirshon explained at the presentation in Washington, DC, Operation Enduring LAMP seeks to mobilize civilian bar associations and attorneys interested in providing free legal assistance to military reserve members called up as part of Operation Enduring Freedom, the United State’s military response to the terrorist attacks of September 11, 2001. Hirshon and Hague were joined at the presentation by Rear Adm. Donald J. Guter, The Judge Advocate General, U.S. Navy; Maj. Gen. William A. Moorman, The Judge Advocate General, U.S. Air Force; Daniel Dell’Orto, Principal Deputy General Counsel, U.S. Department of Defense; and Col. Steven Strong, the Department of Defense liaison to the LAMP Committee.

General Moorman spoke of the financial hardships reservists encounter when they are recalled unexpectedly to active duty: “They face a gamut of legal problems when (continued on page 2)
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they accept lower wages to serve the nation.” “As [reservists] leave their jobs, their homes and their families, it is critical that they leave with their legal affairs in order,” Hirshon added. Regular military personnel are routinely offered legal assistance before shipping out to foreign shores. The objective of Operation Enduring LAMP is to ensure that the legal needs of reservists are also met. Because of the limits on the military legal system staffed by the JAG Corps, the assistance of civilian lawyers with expertise in local practice and procedure can be necessary during a broad deployment, which could be possible in the current action.

Since the beginning of Operation Enduring Freedom, approximately 58,000 military reservists have been called to active duty. While this number is smaller than the mobilization of 250,000 reservists during the Gulf War, assistance from civilian attorneys has been needed in some cases, and the military wants to ensure that help remains in case of a larger mobilization. According to Admiral Guter, “The legal services we provide to the men and women of the Armed Forces go on every day in war and peace. But sometimes we do need augmentation [from civilian attorneys] and this may be one of those times.” Hirshon echoed this, saying, “If the number of military personnel mobilized grows substantially, volunteer assistance from the civilian bar will be critically needed. To be in a position to offer meaningful assistance, the civilian bar must get to the task of preparing immediately.”

Multifaceted effort

The ABA has focused on helping coordinate and educate the civilian bar to assist in case of a large-scale mobilization of forces. In early October the ABA established a Web site dedicated to the effort, www.abalegalservices.org/ helpreservists The Web site serves as a central registry for available pro bono resources. It contains information for civilian

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From the Chair . . .

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

America’s lawyers have been called upon to do their part in the nation’s struggle against those who would harm us. ABA President Robert E. Hirshon, is urging the civilian bar to prepare itself and stand ready to assist Americans who are mobilized for military service and their families who will be left behind. He has committed the ABA and its many resources to a sustained effort in support of the Armed Forces, Operation Enduring LAMP.

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LAMP Spotlight... San Antonio

by Christo Lassiter

The LAMP Committee visited San Antonio for its fall CLE program and committee meeting on November 8 and 9, 2001. Security issues in the aftermath the September 11 attacks required the committee to shift both events away from Lackland Air Force Base to the campus of St. Mary’s University School of Law in San Antonio.

Associate Dean David A. Schluter, the author of casebooks on military justice and the military rules of evidence, welcomed the assembled gathering of nearly 100 military legal assistance and civilian attorneys in attendance on behalf of the St. Mary’s University School of Law. LAMP Committee Chair David Hague opened the CLE program with remarks connecting the large military presence in San Antonio, which dates back to the Alamo, with the LAMP Committee’s continuing efforts to meet the emerging needs of servicemen and women during a time of alert and active engagement on the terrorism front.

Bryan Spencer, the LAMP Committee’s liaison with the Texas State Bar and former member of the LAMP committee, organized the CLE program. His assembly of outstanding and talented speakers provided new and interesting insights on core subjects to the legal assistance area. Speakers and their subjects included Glen Yale and Elizabeth Copeland of the San Antonio law firm of Oppenheimer, Blend, Harrison & Tate, Inc. who spoke on estate planning, tax implications of dissolution, and post dissolution estate planning. Captain James Higdon, U.S.N. (Ret.), lectured on military marriage dissolution, separation pension division and DFAS QDROs. Colonel John Odom, U.S.A.F. made a presentation on The Soldiers and Sailors Civil Relief Act, and the Cathey case. Lieutenant Colonel Dan Culver, U.S. Army JAG School, updated those present on the Uniform Services Employment & Re-Employment Rights Act (USERRA), as did Paul Davis of Federal Trade Commission concerning the consumer protection for service members. Finally, Alicia Key, general counsel of the Child Support Division of the Office of the Attorney General addressed paternity and child support issues in Texas.

Lackland Air Force Base

Lackland Air Force Base is the only basic training base in the Air Force. It is also home to several technical training schools and two large language schools, the English Language Center Defense Language Institute and the Inter-American Air Forces Academy. Legal assistance in the Air Force is not provided by specifically designated legal assistance attorneys on a full time basis. Rather, except for general staff and certain other command support legal billets, every Air Force attorney performs legal assistance services. This approach allows Lackland’s 23 attorneys (including nine civilian attorneys) to provide assistance for over 11,000 military personnel at the base along with several thousand more dependents and retirees. Legal assistance is most commonly provided in the areas of wills and basic estate planning, domestic relations, consumer affairs, and personal finance and debt relief. That these needs are foremost among legal concerns is a poignant reminder (continued on page 6)
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bar associations handling inquiries from their members about how to volunteer, contact information and links to training information for individual attorneys, and a directory of volunteer lawyer programs available for reservists who are seeking help.

In December the LAMP Committee released a three-hour CLE package with written and audio/visual materials focused on issues related to the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), Servicemen’s Group Life Insurance (SGLI), and survivors’ benefits. The CLE package is free of charge. Details about obtaining the package on videotape, an audio feed of the program, and downloadable written materials are available online at www.abalegalservices.org/helpreservists. The release of these CLE materials was followed by a one-hour ABA Connection CLE teleconference on December 19, which covered the highlights of legal protections for reservists.

The ABA has produced “Spotlight on Your Legal Rights while on Active Duty,” a 12-page question-and-answer pamphlet designed for military reservists, focusing on SSCRA and USERRA. Through a partnership with the Reserve Officers Association, 100,000 copies of the pamphlet will be distributed to reservists across the country.

In addition to establishing a World Wide Web presence for the effort, the LAMP Committee also established a new Listserv mailing list dedicated to the pro bono efforts. More than 105 participants currently subscribe to the Listserv.

Coordination began early
The November 13 unveiling of Enduring LAMP was the culmination of weeks of planning that began shortly after the September 11 attacks. Within days of the attacks, Hague was appointed by Hirshon to participate in efforts to

Enduring LAMP Case Study:
Greater Dayton Volunteer Lawyers Project

Although the focus of Operation Enduring LAMP is on preparing for prospective mobilizations, some reserve units have encountered the need for immediate assistance. One such unit was the Ohio Military Reserve 12th MP Battalion, based in New Lebanon, Ohio. The battalion had been put on alert that it might be mobilized as part of Operation Enduring Freedom. Many of its members needed to complete or update their wills and power of attorney documents before departing on a mission.

After the unit called the Greater Dayton Volunteer Lawyers Project for help, a plan to assist battalion members began to take shape, according to VLP director Helenka Marculewicz. As a participant in the September 28 conference call, Marculewicz knew to confirm with military authorities that supplemental help from civilian volunteers was necessary and appropriate. Then the VLP contacted its volunteer attorneys and the Greater Dayton Paralegal Association for help. On October 13, four attorneys and 14 paralegals provided assistance to nearly 40 reservists at an armory in Kettering, Ohio. Two of the attorneys came from a local law firm, Sebaly, Shillito & Dyer, which also provided laptop computers and portable printers for the clinic.

The volunteers established stations in a large classroom, using another, larger room in the armory as a waiting area for reservists. At the initial intake station, reservists met with a paralegal who conducted an initial interview, entered information on a computer and saved it on a disc. Reservists then took the disc and proceeded to a station where they printed the information entered by the paralegal. Finally, the reservists met with one of the volunteer lawyers, who provided legal information and finalized each reservist’s documents.

The effort provided wills and power of attorney documents (for property and health care) to a total of 38 reservists over a five-hour span. The clinic also provided each with a packet with information to address common questions, such as how to revoke a durable power of attorney.

For others planning such a clinic, Marculewicz recommends using a common document preparation software program such as HotDocs. She also suggests assigning a paralegal to each client for continuity in the process and to ensure that all of the client’s questions are answered thoroughly.
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marshal pro bono assistance to supplement the military attorneys working in the aftermath of the attack on the Pentagon.

The LAMP Committee responded to a request from the Armed Forces to devise a plan to coordinate bar association pro bono efforts targeted at assisting mobilized reservists. The committee resolved to identify and organize volunteer civilian attorneys to facilitate pro bono legal assistance, organize civilian practitioners as a pool of expertise for military attorneys, and educate civilian attorneys and paralegals about military specific legal issues, all in coordination with the service branches.

The LAMP Committee was able to use existing electronic communication systems to contact state and local bar associations considering pro bono efforts related to military members. On September 28 the committee hosted a teleconference with representatives from 28 bar associations, several chiefs of legal assistance, and others experienced in the pro bono efforts launched during the Gulf War. That call focused on communicating that the existing military legal assistance network was equipped to handle the current level of mobilization. It also laid the groundwork for focusing the bar association effort on a new message: get organized, get educated, and stand ready in the event of a large-scale mobilization.

As this edition of Dialogue went to press, 37 states are represented in the consortium of state and local bar associations participating in the ABA effort.

Enduring LAMP CLE focuses on issues and legal protections unique to military members

Both the CLE package available from the ABA and the December 19 ABA Connection program focus on training lawyers to assist mobilized reservists. These reservists face a variety of legal issues beyond the need for wills and advance directives, including pending court cases, concern about protecting their reemployment rights, and the need for their family members to make important legal decisions while they are away on active duty. Much of the legal training addresses financial arrangements and changes in the law enacted by Congress to ease the burden of reserve duty, which typically results in a decrease in salary for reservists due to the military pay structure. For example, mobilized reservists qualify for an interest cap of six percent for debt on mortgages, car payments and credit cards.

The CLE materials also explain other legal protections for mobilized reservists. For example, lawsuits can be delayed where military service prevents reservists from litigating their rights. Federal law requires private employers to hold open the employment position of a reservist for extended periods in times of a reserve deployment.

Please visit www.abalegalservices.org/helpreservists for more information about obtaining the CLE packet.

The LAMP Committee is now focusing on broadening the focus of the pro bono effort to include the idea of military attorneys consulting with civilian attorneys on issues requiring local or substantive expertise. It is hoped this model of cooperation will promote “enduring” relationships between the military and civilian legal communities.

Hopes for future of collaboration

The leaders of the military legal community and the LAMP Committee both expressed optimism that collaboration between the military and civilian bar will indeed be enduring. This was voiced by those attending the November 13 presentation, including the chiefs of legal assistance: Army Col. George Hancock; Capt. Pete Seidler of the Coast Guard; Cdr. Ann DeLaney of the Navy; Air Force Lt.Col. Larry D. Youngener; and representing Chris Rydelek of the Marines, Major J. Ed Christensen. Admiral Guter put this sentiment succinctly: “I hope the moniker that has been chosen, Operation Enduring LAMP, will add a new chapter to our history of cooperation and I ask that we keep this lamp burning for a long time.”

Christo Lassiter is a member of the LAMP Committee and professor of law at the University of Cincinnati.

David Holtermann is the editor of Dialogue.
Focus on Legal Assistance Practice ... Aiding Service Members Seeking Citizenship

by Ann DeLaney

United States citizenship is the goal of almost every noncitizen who joins the United States military. Citizenship provides certain rights and privileges not available to noncitizens, including the right to vote, the right to a U.S. passport, and the right to hold public office. Citizens are also able to confer immigration benefits upon their family members more easily and quickly than noncitizens.

The Department of Defense (DoD) cannot grant citizenship or lawful permanent resident (LPR) status to noncitizen service members or their family members. Instead, this must be done through the Immigration and Naturalization Service (INS). A noncitizen who has served in the U.S. military does not automatically become a citizen of the United States. However, he or she may take advantage of certain exceptions, which waive or relax the requirements for becoming a United States citizen through naturalization.

Eligibility for citizenship
There are two categories of eligibility for service members seeking citizenship: 1) those who are in the United States Armed Forces and have at least three years of honorable service (8 U.S.C. §1439), and 2) those who have been in the United States Armed Forces and have served during periods of designated military hostilities. (8 U.S.C. §1440). The first category permits naturalization for persons who have served honorably in the U.S. military for three years. Such applicants may be naturalized without having to fulfill the continuous residency requirements that apply to other application categories, provided that such applications are filed while the noncitizen is still in the military service or within six months after termination of such service. The applicant must also be a lawful permanent resident of the United States at the time of the examination, be of good moral character, and be loyal to the principles of the Constitution of the United States.

The second category authorizes naturalization for persons who have honorably served while in active duty during periods of military hostilities (including any period designated as such by the President in an executive order).

Reforms aim to relieve frustration
In 1999 the DoD and the INS examined ways to streamline the

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of the stress of military service, the sacrifice of military families, and the importance of a strong, compassionate legal assistance program.

The strength of the legal assistance program at Lackland Air Force Base is found in its personnel. The staff judge advocate is Colonel Kenneth Belonia and the deputy staff judge advocate is Lieutenant Colonel Steven Meador. The Staff Judge Advocates Office is organized into four divisions: Civil Law, headed by Arlene Christilles; Military Justice, led by Major Dave Conroy; General Claims headed by Major Thomas Eshman; and Medical Malpractice Claims, led by Holly Mackey. Instrumental to the success of the legal assistance program is the expertise and willing attitude of the front desk personnel: Frank Crisotomo, Estela Engle, SSgt Michael McGeever, Mary Deleon, and Charlotte Parker.

Assistant Judge Advocate Captain Marshall Wilde reported that Lackland Air Force Base legal assistance attorneys had received nearly 10,500 legal assistance visits and prepared approximately 5000 wills and 2500 powers of attorney in year 2001 alone. Perhaps the highest compliment to the dedicated legal assistance work done by this office comes from its clients. The Air Force Village Foundation, which owns and operates a continuing care retirement community in the San Antonio area, awarded its 2001 Distinguished Service Award to the Lackland Air Force Base Staff Judge Advocate’s Office in recognition of its sustained efforts in promoting and improving the quality of life at the community.

Christo Lassiter is a member of the LAMP Committee and professor of law at the University of Cincinnati College of Law.
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processing of certain naturalization applications for military service members in response to frustrations caused by the system. Even with the waiver of some requirements, service members often faced obstacles and delays in their attempts to become U.S. citizens. For example, an individual filed a naturalization package with the INS service center with jurisdiction over the area where he or she resided. If that service member subsequently received permanent change-of-station orders, the application would be moved to a new INS Service Center, causing delays. If the service member was deployed or temporarily out of the United States, INS notices were lost or unanswered, also causing delay. In fact, it took an average of 18 to 24 months for the INS to process applications for naturalization. These delays created problems for both the individual service members and for the military. For example, because noncitizens cannot hold secret clearances, alien service members are not eligible for certain types of jobs. Extended delays in the INS process limited their ability to advance or undertake certain assignments, causing retention problems.

Under the new system that started on December 1, 1999, several changes were implemented to substantially reduce the time needed for processing applications. Now much of the application processing is done at the local level at the service member’s command, and all naturalization applications based upon qualifying military service are sent to a unified processing center in Nebraska regardless of the applicant’s residence. The INS has dedicated a point of contact for discussing issues regarding specific applications with representatives from each service branch. Under this new system the individual service member gets local command help in ensuring that the naturalization package is as complete and accurate as possible before it is sent in. Certifications, background checks, and fingerprints can be done immediately or shortly after the package is filed. As a result, the average INS processing time is six to nine months, with an ultimate goal of three to four months.

Points of contact in the individual services are as follows:

- Army: Soldiers can receive assistance with their application from the local Personnel Services Battalion or Military Personnel Division. The program manager is Leslie Lord, 703-325-4052.
- Air Force: Airmen can receive assistance with their applications from their local Military Personnel Flight Office. The program manager is Major Cathy Chin, 703-614-8272. Additional points of contact are TSgt Ben Jefferson or TSgt Dwayne Pitman, 210-565-2591/2359.
- Marine Corps: Marines can receive help with their application from a Marine legal assistance attorney. The program manager is Chris Rydelek, 703-614-1266.
- Navy: Sailors can receive help from their command representative. The program manager is CDR A. DeLaney, JAGC, USN and the immigration paralegal specialist is Michael Cole, 202-685-4643.

CDR Ann DeLaney, JAGC, USN is chief of legal assistance for the Navy.

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to for legal counsel. When the reservists return to civilian life, many of them will confront reemployment and other legal issues.

As stewards of the American legal system, the civilian bar has a special responsibility to prepare and sustain the Armed Forces during times of conflict. The ABA took the lead in 1940, establishing its Committee on National Defense, publishing a “Manual of Law,” and providing legal assistance to Americans who were drafted under the newly enacted Selective Service Law. In 1941, the ABA worked closely with the Department of War in creating robust legal assistance programs in the Armed Services. The ABA’s support of the war effort continued throughout World War II.

During Operations Desert Shield and Desert Storm, the ABA provided legal assistance to the 250,000 reservists who were mobilized. The undertaking was similar to Enduring LAMP, but not as comprehensive or far-reaching. A variety of new and enhanced technologies, including email, conference calls, videoconferencing and Web-based audio and video streaming have vastly expanded the ABA’s capability to reach lawyers directly, and through their state and local bar organizations.

The members, advisors, and liaisons of the LAMP Committee are honored to be at the forefront of this noblest of endeavors. We are also proud to be part of an organization—the American Bar Association—which unites in this time of crisis with the men and women in uniform dedicated to preserving our freedom.
2002 Equal Justice Conference: Securing Better Futures

Early Registration Ends February 15

The ABA and the National Legal Aid and Defender Association will present the 2002 Equal Justice Conference at the Renaissance Cleveland Hotel from April 18 to 20, 2002. This year’s conference will focus on securing better futures for low income clients, pro bono and legal services programs and staff, the courts, the legal profession, and society. The conference will explore the partnerships that must be created, the resources that must be tapped, and the new issues that must be faced. These discussions will take place in the context of a changing society—one seeking to respond effectively and appropriately to threats to the personal and economic security of low-income people while working to expand opportunities for all to prosper.

A wide range of topics will be covered in more than 80 workshops during the conference, including sessions on pro bono delivery, ethics, trends in client communities, holistic delivery, diversity, information management and technology, and resource development.

For the fourth year, a special feature for pro bono and legal services program supporters, advocates, partners and friends will be offered. The Partners for Justice Forum will be held on the morning of Friday, April 19, offering a unique opportunity for leaders to share ideas and strategies about what each segment of the profession can do to expand their own access to justice initiatives using the full resources of the private bar.

Discounts for early registrants and state teams
Conference registration fees for registrations received by February 15 are $350. After February 15 fees will increase to $375.

Registration fee discounts are available to “teams” and to programs registering more than three people. To qualify for the discount, a team must be composed of one legal services staff person; one pro bono manager; one bar association president, president-elect, pro bono committee chair or legal services chair; and one judge. Each person in a team must be from the same state. Each team member’s registration fee will be discounted 20 percent.

If any one program sends three or more people, the registration fee for each person will be discounted 20 percent. Registrations for either discount category must be submitted together when registering by mail or by fax.

Although other groups of participants are encouraged to register together, only the groups defined above will qualify for discounts.

Registration information
Look for a registration brochure to arrive by March 1. Hotel reservations at the Renaissance Cleveland Hotel and the Cleveland Marriott Downtown at Key Center must be made by going to either www.nlada.org or www.abaprobono.org and clicking on the button that says “Equal Justice Conference Hotel Registration.” As more detailed information becomes available, it will be posted on www.nlada.org or www.abaprobono.org. Please call Dorothy Jackson at 312-988-5766 to obtain a paper copy of the registration brochure.

Go to www.abaprobono.org or www.nlada.org for a detailed conference brochure, to register online, and to make online hotel reservations.
From the Chairs …

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

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

What is the value of pro bono as a component of the legal services delivery system?

How effective is the pro bono/legal services partnership in your community?

How can pro bono be used to broaden the range of services provided to clients?

How are pro bono and staff legal services initiatives coordinated in terms of case priorities and allocation of responsibilities between pro bono attorneys and legal services program staff?

How are state planning initiatives in your state incorporating pro bono as a delivery model?

We have joined our “From the Chair” columns together in this issue of Dialogue to address the partnership between pro bono and legal services and to discuss ways of enhancing what is already a fruitful relationship. We believe that strengthening the partnership between pro bono and legal services programs yields more and better services for clients in need.

Our two committees have been discussing this relationship for some time, considering ways to (continued on page 10)

Ten Pro Bono Support Activities for Bar Leaders

by Steven Scudder

Imagine this: Your term as president of the bar starts in just a few months, and you are still sorting through the many ideas you have—that have been suggested for you—about what your main theme should be for your year as president. Whatever you decide, you know that your leadership on behalf of and support for pro bono is important, and should be a thread running throughout your term.

The suggestions that follow identify opportunities to stress the importance of pro bono to our profession and our society. These suggestions are easily accomplished, not very time consuming, and most are “one-time only.”

1. Take on some pro bono work from your local pro bono program. This is one of the best ways to lead by example. Imagine the photo of you on the courthouse steps with your pro bono client and the message it sends: “Yes, even the president of the bar association has time to do a pro bono case.” It sends a message to the public about the good work of lawyers and a message to your members, reminding them of their responsibility. Working with your local pro bono program (if your bar does not already sponsor a program, that would be something else for you to pursue), you will be able to find a case that will not require a significant amount of your time—such as an adoption or a landlord/tenant case.

2. Encourage members of your board to sign up for a pro bono program and to take a case. You do not have to make this idea a “hard sell”, but you can make it clear that you think it is an important responsibility all lawyers have, even those who are contributing significant volunteer hours through bar leadership activities. Send each of them a letter and follow up with a discussion at a board meeting about the importance of pro bono. Imagine the photograph referred to in the first suggestion, repeated for each board member.

3. Invite local legal services staff, pro bono program representatives and staff from local social services programs to make brief and focused presentations at one or more board meetings during your year. Finding out more about what is happening for low and moderate-income citizens in your community will enhance the bar association’s role as a public service leader. How is the bar viewed in the community? How can it better target its public education activities? What role can the bar play to help build links between legal services providers and other service providers?

4. Declare access to justice (including pro bono and legal services delivery) as the Law Day theme for your presidential year. (continued on page 11)
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bring pro bono and legal services programs—which, after all, share the common objective of securing access to justice for the poor—even closer together. We have sought to identify answers to these questions:

• What works, what doesn’t, and why?
• What facilitates quality programs and effective legal services/pro bono relationships?
• How can we improve the relationship between these two legal services delivery communities and, most importantly, get more services to clients?

Together our committees are striving to answer these questions and strengthen the bonds between staff working in and lawyers volunteering for pro bono programs and those employed by legal service providers. To do this we need to ascertain the range of those relationships; identify the common elements in relationships that seem to work effectively together; and pinpoint the issues, organizational arrangements, and perceptions that impede the full potential for delivering legal services to the poor.

Given the enormous gap between the legal needs of the poor and the resources available to meet them, there are compelling reasons to enhance the contributions of private lawyers and the effectiveness of legal services programs, and to join their forces for a common purpose. Part of our effort is to remind each group of the dedication, professionalism and skill of the advocates in the other group, thereby increasing the respect that each has for the other.

The two committees pursued this inquiry at the 2001 Equal Justice Conference and at the recent NLADA Annual Conference. At both events, our efforts focused on gathering representatives of the pro bono and legal services communities, either alone or jointly, for frank discussions about this important relationship.

We set out some challenging and probing questions at the start of this column. As we have asked these questions and others like them, we have heard from both pro bono and legal services community representatives that pro bono is a valuable resource because:

• It helps connect the legal services community with the rest of the legal community.
• Legal services programs alone cannot provide services to all low-income clients who are in need.
• Visible efforts by attorneys on behalf of the poor promote the positive image of the profession.
• Pro bono lawyers provide good, important legal work in traditional legal services areas (such as eviction defense and SSI benefits).
• Pro bono expands the range of services available to clients beyond areas traditionally covered by legal services programs (such as through bankruptcy, consumer, family, and civil rights law).
• Pro bono broadens the universe of community and opinion leaders who support legal services (such as through fundraising, court and public policy changes, and legislative changes).
• Having private lawyers and legal services lawyers working on the same cause improves the private bar’s perception of legal services advocates.

• Pro bono institutionalizes support from the private bar for legal services and client issues.
• Pro bono improves the administration of justice for everyone. We have also heard about what has been successful in communities where the private bar and legal services programs work closely in partnership:

• The leadership of the local bar makes a big difference in bringing the two communities together.
• Learning about and participating in each other’s culture helps to break down misperceptions, leading to better collaboration.
• Viewing pro bono as a core component of the legal services delivery system (such as in state planning and program configuration) improves the overall system and expands services to clients.
• Improved partnerships bring to bear a broad range of private attorney resources — pro bono, financial support, influence, skills, knowledge and more. All of this feedback has been illuminating, but it has only increased our interest in finding out more. The response to our efforts indicates that there is interest in, and need for, continuing these discussions. Our committees will continue to seek to enhance this critical relationship. In coming months we will try to hear more from all the relevant players—at regional project directors meetings, at bar meetings, at pro bono program manager events and at the 2002 Equal Justice Conference in April.

We would like to develop more strategies to teach the private bar...
Ten Activities
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Your bar’s Law Day activities always provide a great opportunity for the association to have a positive public presence. Identifying specific projects and activities that relate to access to justice will reinforce for the public the giving nature of the profession and enhance the bar’s profile as an organization with a meaningful role to play in improving justice for all.

5. Include comments about the pro bono responsibility of lawyers in all of your public remarks—to both bar association and public groups. Pro bono is a great topic to include in any of your speeches. You can tell a story about the pro bono work of one of the lawyers in the room, highlight a new project that you’ve instituted, or regale your audience with a compelling message about the responsibility of lawyers to respond to the needs in your community. You can also show highlights of a videotape prepared by the ABA’s Pro Bono Committee highlighting some of the inspirational and moving recipients of the ABA Pro Bono Publico Award. (For more information, contact Dorothy Jackson at 312-988-5766).

6. Devote one or more of your president columns in your bar’s publication to pro bono. Through your bar association’s regular journal or newsletter you have a perfect forum to use to send whatever messages you want during your year. In addition to the columns addressing your principal theme, one can be used to address the important value to the profession of pro bono work. You could also use part of each column (such as in a box on the page) for a monthly report on your pro bono case (for example, the “President’s Pro Bono Diary”).

7. Encourage your bar’s president-elect and other bar leaders to attend the annual Equal Justice Conference (sponsored by the ABA and the National Legal Aid and Defender Association), held each spring. As a bar leader you have many choices of national programs to attend each year, all of which offer excellent ways to enhance your effectiveness. You should add the ABA/NLADA Equal Justice Conference to the list for the president-elect and other leaders of your bar association interested in pro bono and access to justice. In addition to those involved in the day-to-day delivery of legal services to the poor, bar leaders, corporate counsel, law firm leaders, law school representatives and government attorneys attend this event to learn how to be leaders, supporters and advocates for legal services programs, systems and initiatives. A special program is offered for bar leaders and others, designed to give them an opportunity to network with colleagues from around the country and to meet stakeholders from other parts of the legal profession who share a commitment and interest in making a difference.

8. Encourage each section of your bar association to devote time and resources to at least one pro bono initiative during the coming year. This is another opportunity to use your leadership position in an encouraging and supportive manner. There are many things your bar association’s sections can do to promote pro bono. They can develop projects, generate articles about their pro bono commitment,

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about what legal services lawyers do and what the system offers. We also want to share with the legal services community strategies, methods and programs that successfully incorporate pro bono as a full partner in the legal services delivery system.

We encourage you to start a dialogue in your own community—locally or statewide. We are convinced new energy, commitment, and creativity will emerge through that dialogue. Ultimately, we hope to generate more services for clients in need. These are conversations worth having.

Finally, it is important that you talk not only to each other, but to us, about this partnership. Let us know your experience with developing, maintaining, supporting and enhancing the legal services/pro bono partnership. Please send your comments, responses, ideas and stories to: Steven Scudder, Committee Counsel, ABA Standing Committee on Pro Bono and Public Service, 541 North Fairbanks Ct., Chicago IL 60611. He can also be reached at scudders@staff.abanet.org or at 312-988-5768. We will report back to you in future issues of Dialogue as we work together, and with you, to expand legal services for all.
Nominations Sought for 2002 ABA Pro Bono Publico Awards

Nominations are now being sought for the 2002 ABA Pro Bono Publico Awards, the pre-eminent pro bono awards within the American Bar Association. The Pro Bono Publico Awards were established in 1984 and are designed to recognize individual lawyers and institutions within the legal profession for extraordinary contributions to extending pro bono legal services to poor and disadvantaged people. The award program is administered by the ABA Standing Committee on Pro Bono and Public Service.

The Pro Bono Committee is seeking nominations of individual attorneys who do not earn their income delivering legal services to the poor. Large and small law firms, corporate law departments, government attorneys offices and other institutions in the legal profession whose members have collectively made an outstanding contribution toward one of the award’s criteria are also eligible. Not more than five awards will be presented.

Nominations must be received by March 11, 2002. Award recipients will be notified no later than April 29, 2002. The awards will be presented at the Pro Bono Publico Awards Assembly Luncheon on August 12, 2002, at the ABA Annual Meeting in Washington, D.C.

For more information about the awards, the nomination criteria and instructions on submitting a nomination, please visit the Pro Bono Committee’s Web site at http://www.abaprobono.org/ or call Dorothy Jackson at 312-988-5766 to obtain a copy of the Pro Bono Publico Awards brochure.

Ten Activities
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eourage their members to participate in pro bono work, include programming during their meetings, and look to develop pro bono partnerships with other bar groups.

9. Evaluate how the bar can devote in-kind resources to supporting pro bono activities. Most pro bono programs—whether based at a bar association, legal services program or independently—need all the help they can get reaching out to and providing support for your members. Can your bar devote at least one CLE each year to a pro bono topic, with free or reduced fee tuition for those who agree to take a pro bono case? Is there space in your bar publication for regular updates on the pro bono work taking place in your area? Are there bar events at which pro bono recruitment can take place? Is pro bono a topic that should be included on the agenda of any bar committees (such as the Committee on Cooperation with the Courts)? A meeting with the local pro bono providers will help you to appreciate their needs and what resources the bar might be able to offer to help out.

10. Initiate and present annual pro bono awards. If your bar association does not do this already, this is a great opportunity to institutionalize the value of pro bono within your legal community. Pro bono awards programs have multiple benefits. They serve to recruit new volunteers and retain those who are longstanding supporters, they enhance the profession’s standing the community and, most importantly, they provide an opportunity to recognize lawyers who have demonstrated an outstanding pro bono commitment. There are many categories of possible pro bono awards, different criteria that can be used, and varying strategies for where awards should be presented. What is most important is ensuring that those bar members who have shown a particularly strong commitment to pro bono are recognized for their efforts.

So, there you have it—a basic plan for building pro bono into your plans as president, without interfering with any other focus you might have for your term. Using any or all of these strategies, you will let your members and the public know that pro bono is a key responsibility of every lawyer.

The ABA’s Center for Pro Bono, a project of the Standing Committee on Pro Bono and Public Service, is available to provide you with any support and assistance you need to help keep pro bono an important part of your presidential term. Check out the center’s web site at www.abaprobono.org for more ideas and information on pro bono.

Steven Scudder is counsel to the ABA Standing Committee on Pro Bono and Public Service.
Rural Pro Bono Mini-grants Announced

In November 2001, the ABA Center for Pro Bono awarded six mini-grants to rural legal services groups as part of its Rural Pro Bono Project. The project, with funding from the Open Society Institute, addresses the unmet legal needs of the poor living in rural areas by developing, improving and advocating delivery of legal services to that population. It aims to promote a restructuring of rural pro bono delivery systems by capitalizing on innovative technology, improving collaboration with urban pro bono programs, and developing community partnerships.

The grants, which range in size from $4,000 to $13,500, were awarded to the following programs:

- **Legal Services of Eastern Michigan** – The program will partner with local libraries, pro bono lawyers and human services agencies to expand legal services to poor people in rural areas. At local public libraries, clients will access materials on the legal services Web site with instruction from librarians trained by pro bono lawyers. The effort will include free use of fax machines and document review.

- **Nebraska Appleseed** – The mini-grant will help support Nebraska Appleseed’s Equal Justice Clearinghouse, online at www.NeEqualJustice.org, by providing for targeted, intensive outreach and training among rural practitioners and rural residents. Staff will work with lawyers living in Sidney, Wayne, and McCook counties. Partners include the Nebraska State Bar Association, the Nebraska Association of Trial Attorneys, Nebraska Legal Services, law school clinics, and community-based organizations across the state.

- **Equal Justice Center, Texas** – The mini-grant will help improve rural poultry workers’ access to the system of justice in northwest Arkansas and northern Alabama. The grant will be used to help educate immigrant poultry workers about their employment rights and how they can use the legal system to protect those rights, and to recruit pro bono lawyers and provide them with training and backup resources.

- **Oregon Law Center** – The mini-grant will be used for rural community summits to enhance current pro bono programs, strategize about new pro bono delivery models, and build a cooperative network of community and legal services providers within the rural areas. The summits will involve multiple counties and multiple service providers including solo practitioners, law firms, judges, judicial representatives, bar representatives, and other community providers such as shelters and domestic violence programs. Also involved will be the Oregon State Bar and other legal service providers.

- **Neighborhood Legal Services, Pennsylvania** – The mini-grant supports the development of a broad-based private bar volunteer program to serve the rural population in 10 counties. Pro bono facilitators will work with local judges and bar leaders to formulate and implement plans for creating or expanding pro bono programs. Plans will include strategies for recruitment, training, mentoring, recognition, court accommodation, screening and referral procedures, and follow-up/evaluation procedures.

- **Central California Legal Services and San Francisco Bar Association/Volunteer Legal Services Program** – The mini-grant will help develop an urban-to-rural partnership to expand the capacity of Central California Legal Services by tapping into the volunteer lawyer base of the San Francisco Bar Association. Rural residents will gain greater access to legal services in a number of areas including economic development, immigration and consumer matters. Volunteer lawyer referral, standardized intake forms, lawyer support, and case acceptance protocols will be established between the urban and rural partners.

“Historically, because of the critical shortage of lawyers practicing in rural areas, pro bono legal services providers have not adequately served the nation’s rural poor,” said Robert N. Weiner, chair of the ABA Standing Committee on Pro Bono and Public Service. “Through these mini-grants, the Rural Pro Bono Project is building new model programs. These programs use community partnerships and innovative technology to link urban and rural pro bono lawyers with impoverished residents in rural areas. We hope that this approach will increase access to justice in these traditionally overlooked areas.”
Child Custody Pro Bono Project Announces Two Resources

The ABA Child Custody Pro Bono Project, launched in 2000, is now well underway. The project is addressing the critical needs of children in proceedings involving adoption, divorce, parentage and private guardianship. The project’s director and advisory committee have developed a project statement, which states the project’s vision and goals for the next five years. The statement can be viewed at the project’s Web site, www.abachildcustodyproject.org.

The project has established ten primary activities for 2002. Two of those—the Child Custody Resource Library and the Child Custody Pro Bono Mini-grants—are highlighted here.

Child Custody Resource Library: The library is a compilation of documents covering custody issues in general, as well as specifically in adoption, divorce, parentage and private guardianship. The library is catalogued into 34 topics, including:
- Best Interests Standards
- Funding/Resource Development
- Program Descriptions, Child Representation
- Scholarly Research
- Standards for Representation

There are currently 170 documents in the library. Each is summarized and catalogued into an electronic database, which will be searchable online. Currently, interested persons should contact Linda Rio, the project’s director, who can search for documents and send relevant documents. Documents can be used for producing training programs, working with local court systems, establishing standards, or educating advocates to better represent children in custody cases.

The project is seeking more documents for the library, and requests that you send any relevant documents to the project director.

Mini-grants: The project also is interested providing financial support for efforts to add or expand pro bono representation of children in adoption, divorce, parentage, or private guardianship cases. The project will make its first round of mini-grants shortly. The goal of the grants is to increase the number of children receiving pro bono representation in these cases in 2002 and in coming years. The project is interested in supporting programs with proven expertise that lends itself to this work. Thus, the project will give preference to programs that (1) currently provide pro bono child custody representation to children; (2) currently provide pro bono representation to children in other areas and are committed to expanding to custody cases; or (3) currently provide staff-only representation to children in custody cases and are committed to adding a pro bono component. Requests for proposals are currently available.

For more information about the Child Custody Resource Library or the project’s mini-grants, contact Linda Rio, the project director, at 312-988-5805 or lrio@staff.abanet.org.

ABA Section of Business Law Seeks Public Service Award Nominations

The American Bar Association Section of Business Law is accepting nominations for its National Public Service Award, which recognizes significant pro bono services rendered to the poor in a business context, and the achievements resulting from the public service work for the clients and the client groups represented. The deadline for submitting nominations is February 1, 2002.

The National Public Service award is an outgrowth of the section program “A Business Commitment,” designed to match business lawyers and their areas of expertise with those unable to afford a lawyer. Separate awards will be given in both individual and firm/corporate legal department categories.

The Section’s Pro Bono Committee will consider all nominations, and the winner and nominator will be notified by March 1, 2002. The award will be presented at the Annual Section Luncheon held in Boston on April 5, 2002. For a full list of the criteria nominees must meet, contact Joanne Travis, ABA Section of Business Law, ABC National Public Service Award, 750 North Lake Shore Drive, Chicago, Ill. 60611, 312-988-5680, travisj@staff.abanet.org.
From the Chair...

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

As 2002 begins, both a sense of hope and an awareness of ongoing challenge greet IOLTA programs, thanks to the circuit court decisions last fall in the cases involving the Texas and Washington State IOLTA programs.

As is described in more detail elsewhere in this issue (see article on page 17), on October 15, 2001 a three-judge panel of the Fifth Circuit Court of Appeals in New Orleans ruled against the Texas Equal Access to Justice Foundation (TEAJF), finding that its operation is a “taking” without just compensation under the Fifth Amendment. Less than a month later, the Ninth Circuit Court of Appeals ruled against another Fifth Amendment challenge, thereby favoring the IOLTA concept in Washington State.

The Fifth Circuit decision was both disappointing and puzzling for the IOLTA community. It went against established Takings Clause precedent in its application of a per se takings analysis (generally limited to cases involving real property) and in its conclusion that a finding that just compensation is due flows directly from a finding that there has been a taking of property. TEAJF has filed for en banc rehearing of the

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with mediation and are fearful of one another. The “pre-meetings” reduce anxieties and set the stage for a mediated dialogue in which the participants can exchange their personal accounts of the crime, its impact, and possible resolutions.

**Actions and consequences become personalized**
At the mediation, telling and hearing personal stories produces a watershed of honesty between the victim and the offender. The crime now has a face—actually two faces. The victim’s story of the crime includes an account of the impact of the harm caused by the offender. The loss is presented in terms of personal loss as well as the monetary value of damaged or stolen property. Examples of this kind of personal testimony include: “I had to pay for the windshield with the money I had saved for this quarter’s tuition at the community college” and “Because you broke into my house, I’m afraid to stay there alone.”

Inevitably, victims ask how and why crimes were committed. These questions have the power to evoke equally personal responses by offenders. The offender’s recounting of how the crime occurred becomes a statement of accountability to the victim. The offender also describes the impact of the crime and consequences such as loss of trust, loss of privileges, and court sanctions. The offender’s answer to the “why” question often opens the door to resolution. A young offender’s story of living in a car with siblings and a parent does not excuse the theft of an expensive coat, but it is important for the victim to hear. Since the offender has already accepted responsibility for the offense, flimsy excuses simply fall flat and have no meaning.

Through a mutually agreeable restitution plan, the offender becomes accountable for restoring the victim’s losses. Repayment or restitution to the victim helps the offender become restored, too. Offenders often say, “I did something stupid, but I did what I could to make things right.”

**VORP a successful process**
Research on victim-offender mediation programs concludes that a high percentage (greater than 90 percent) of mediations result both in agreements, and in their successful completion. Two successive research studies by Dr. William Nugent at the University of Tennessee in 1994 and again in

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case. I am hopeful that the full circuit will see cause to review the decision of the three-judge panel. Moreover, I remain confident that IOLTA is constitutional, and I believe the courts will ultimately uphold its validity.

Confidence in IOLTA was affirmed by the Ninth Circuit’s decision, which employed the ad hoc takings analysis and found that the operation of Washington’s IOLTA program does not represent a taking under the Fifth Amendment, nor are the plaintiffs entitled to just compensation. This decision came following an en banc rehearing of the case by an 11-judge panel of the Ninth Circuit. I am pleased by the Ninth Circuit decision, and I am gratified that the Ninth Circuit recognized the importance and validity of IOLTA in its decision.

Both the Texas and Washington State IOLTA programs, as well as the ABA, the National Association of IOLTA Programs (NAIP), and the other entities that contributed amicus briefs continue to benefit from the efforts of some of the best legal talent available, all of it provided on a pro bono basis. I am profoundly grateful for the efforts of all of those who have contributed to the litigation effort in support of IOLTA. I am also encouraged that this team of devoted advocates will continue to fight for the future of IOLTA however these two cases may unfold. We are in good hands.

* * * * *

I look forward to the Winter 2002 IOLTA Workshops, which are scheduled for January 31 to February 1, 2002 in Philadelphia. The Joint Commission/NAIP Meetings Committee has once again assembled an engaging program, which will include sessions on supporting pro bono services, negotiation skills, and managing IOLTA grants, as well as a breakout forum for program directors and trustees to discuss their successes and challenges. There will also be a litigation update session, a session on hot topics, two banking workshops, and breakfast meetings for newer IOLTA directors and for IOLTA trustees. These promise to make the two days of workshops an invaluable opportunity to meet, to learn, and to look toward improving IOLTA. Please join us in Philadelphia.
IOLTA Litigation Update: Fifth and Ninth Circuit Courts Issue Decisions
by Bev Groudine

On October 15, 2001, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit held that the Texas IOLTA program violates the Fifth Amendment of the United States Constitution and that the plaintiffs-appellants were entitled to declaratory and injunctive relief. Thirty days later, on November 14, 2001, the U.S. Court of Appeals for the Ninth Circuit issued an en banc decision, holding that the Washington State IOLTA program does not violate the Fifth Amendment. While the facts of the two cases differed, the underlying legal issues were the same. The two courts reached these conflicting decisions based upon very different views regarding the proper analysis of a Fifth Amendment takings claim as applied to IOLTA programs.

The Fifth Circuit decision
In a 2-1 decision, the Fifth Circuit panel reversed the district court’s ruling, following a bench trial, that no taking of property had occurred and that the plaintiffs had suffered no monetary loss as a result of the Texas IOLTA program. The Fifth Circuit held that, as administered in Texas, the IOLTA program amounted to a taking of client property and entitled the plaintiffs to declaratory and injunctive relief.

In reaching the decision that a taking had occurred, the court applied a per se takings analysis rather than a “regulatory” or ad hoc takings analysis. The court reasoned that because the state had permanently appropriated the plaintiff’s interest income against his will, instead of merely regulating its use, there was a per se taking.

To find a per se taking, the court need only determine that a physical invasion of property has occurred or a regulation has denied a property owner all economically beneficial or productive use of land. Courts, however, have generally not extended the per se analysis beyond the permanent physical invasion of real property, especially when dealing with the “taking” of money. By contrast, the “regulatory” or ad hoc takings analysis requires the court to weigh three factors: the degree of interference with complainant’s investment-backed expectations; the severity of the economic impact on the complainant; and the nature of the government’s action.

After finding that the Texas IOLTA program had engaged in a per se taking of client property, the court declared that “…once a taking is found, the question

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1997 also concluded that juvenile offenders in Anderson County who participated in CMS’s VORP program were 50 percent less likely to re-offend than juvenile offenders who did not participate in the program. Throughout CMS’s 15-year history, 97 percent of its victim-offender agreements have been successfully completed.

CMS has been so successful with VORP that it has added two additional programs. In 1998, trained staff and volunteers started a teen and parent mediation program to help at-risk teens and their parents address family problems with respectful communication and conflict resolution skills. In 2000, a VORP pre-mediation class, Re-Thinkers, was added for young offenders, ages 14 and under.

Conclusion
CMS’s VORP program restores a sense of justice, accountability and well being to crime victims, offenders and the community. For a victim, a restitution agreement is often far less important than the opportunity to participate in determining the restitution. Meeting the offender in mediation often reduces a victim’s fear of re-victimization. For an offender, meeting with the victim makes it much more likely that the offender will successfully complete restitution and commit fewer and less severe crimes thereafter. VORP is a win for the victim, the offender, and the community.

Ann Sides is executive director of Community Mediation Services.
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becomes what amount of, not whether, just compensation is due.\textsuperscript{59} The court made no attempt to quantify the amount of “just compensation” due. Instead, it noted that because the defendants have Eleventh Amendment immunity, only prospective declaratory and injunctive relief was being sought.

The court held that declaratory and injunctive relief was appropriate on two alternative grounds. First, the court found that defendants had conceded that they were “subject to prospective injunctive claims.” Alternatively, the court found that the plaintiffs were not required to seek compensation from the State of Texas because, in the court’s view, “[I]f the interest earned on client funds were available as just compensation for the client, the very purpose of the program would be thwarted; therefore, it would defy logic, to say the least, to presume the availability of a just compensation remedy.”\textsuperscript{56}

Judge Jacques Wiener dissented, focusing on the majority’s failure to address whether any just compensation was due. He pointed out that the just compensation test was “the crux of the case” and that the majority ignored the district court’s factual findings, following a bench trial, that the plaintiffs had suffered no monetary loss as a result of the Texas IOLTA program.

On October 29, 2001, the Texas IOLTA program and the Texas Supreme Court filed a petition for rehearing \textit{en banc}, which stayed the decision. The Texas IOLTA program remains fully operational as it awaits a decision on the petition for rehearing \textit{en banc}.

The Ninth Circuit decision
In a 7-4 decision, an \textit{en banc} panel of the Ninth Circuit Court affirmed the district court’s decision upholding the constitutionality of the Washington State IOLTA program under the Fifth Amendment.\textsuperscript{7} The \textit{en banc} decision effectively reversed the January 10, 2001 decision of a three-judge panel of the Ninth Circuit, which had held that the Washington IOLTA program engaged in a \textit{per se} taking of client property and remanded the case to the district court for consideration of the First Amendment claims.

In reaching its decision, the Ninth Circuit provided a comprehensive analysis of all three prongs of the Fifth Amendment test: 1) Is there a property interest? 2) Was the property “taken” by the state? and 3) Is just compensation due? The court found that the \textit{Phillips} decision was controlling as to whether a property interest existed and held that the client had a property interest in the funds generated from the IOLTA account.

Regarding the takings question, the court found that no taking had occurred. In reaching this conclusion, the Ninth Circuit determined that the proper analysis to apply was the regulatory or \textit{ad hoc} takings test, rather than the \textit{per se} takings test. This decision was based, among other factors, upon the fact that prior cases in which the \textit{per se} test was applied involved real property. Given the monetary nature of the property involved, the public nature of the IOLTA program and the highly regulated nature of the banking industry, the court concluded that the \textit{ad hoc} analysis was the better approach.

In applying the \textit{ad hoc} test to the Washington IOLTA program, the court found that there was no direct economic impact on the plaintiffs because no interest would have been earned on their principal, absent the IOLTA program. Similar reasoning was applied to find that there was no loss of any reasonable investment-backed expectation of the plaintiffs. Regarding the character of the government’s action, the Ninth Circuit determined that the government did not act unfairly. Rather, as participants in the legal system, the client-plaintiffs were simply required to place their money in IOLTA accounts that generate funds at no cost to them and that expanded access to the legal system from which they benefit.

The court next determined that even if property had been taken, there would be no just compensation due. This finding was based upon a long line of cases holding that just compensation requires placing the property owner in the same position pecuniarily as if the property had not been taken. The issue is not affected by what the state might gain from its use of the property. While recognizing that at most the property owners would have had the right to keep their property from earning interest, the court found the loss of that right had no economic value.

The dissent argued that the \textit{per se} takings analysis should be applied because in its view, the regulatory takings test applies only where the government does not take the property outright, but rather regulates its use. It stated that the three-judge panel deci-

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New York Grantees Quickly Rebuild and Continue Serving New York City’s Poor

by Sabena Leake

The emotional and economic effects of September 11 have been felt nationwide. However, the attacks on the World Trade Center have exacted an additional toll on the low-income residents of New York City. For many of the city’s residents, personal physical injuries and/or the loss of a loved one have been accompanied by loss or decrease in wages, inability to meet debt and rent obligations, and increased need for public benefits, to name a few examples.

To cope with these problems, many residents have turned to the city’s legal services programs for help. In a climate where funding for legal services is diminishing, September 11 and its aftermath have presented a new challenge to legal services providers: to re-deploy existing resources to serve the rising tide of low-income city residents who have fallen victim to the tragedy and its aftermath. This task has been even more complicated for the six New York IOLA grantees whose offices are located in “Ground Zero” and its immediate vicinity: the Civil Division of the Legal Aid Society of New York City; Lawyers for Children; Legal Services for New York City; Sanctuary for Families Center for Battered Women’s Legal Services; and the New York County Lawyers’ Association Pro Bono Plan. For these grantees, the challenge of addressing new and urgent client needs had to be tackled along with the tasks of treating the emotional wounds suffered by staff and coping with destroyed or inaccessible offices and other logistical problems created by the attack.

Personal loss and emotional aftershocks

Processing the sudden and tragic loss of life and the severity of physical injuries continues to be an ongoing task faced by staff members of the IOLA grantees. Lost loved ones include an MFY board member, friends of Sanctuary for Families staff, and the mother of a Sanctuary for Families client. And because the

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sion of January 10, 2001 set forth the proper analysis. As a result, that decision, which held that per se taking had occurred but remanded the case to the district court on the issue of what amount, if any, just compensation was due, was adopted in full as part of the dissent.

What’s next?

In the Fifth Circuit litigation, the parties are awaiting a decision on the petition for rehearing en banc. If that is denied, the Texas IOLTA program has indicated that it will file a petition for a writ of certiorari with the U.S. Supreme Court. In the Ninth Circuit litigation, if the plaintiffs decide to seek certiorari, that petition must be filed within 90 days of November 14, 2001. As Dialogue went to press, there had been no further action in either case.

Endnotes

1 In both cases, First Amendment claims were also raised against the IOLTA programs. Because it found a Fifth Amendment violation, the three-judge panel in the Fifth Circuit did not reach the issue. The Ninth Circuit remanded the issue to the district court.
5 Washington Legal Foundation vs. Texas Equal Access to Justice Foundation, 270 F.3d at 189.
6 Id. at 193.
7 Washington Legal Foundation vs. Legal Foundation of Washington, 271 F.3d 835 (9th Cir. 2001) (en banc). In this case, the plaintiffs challenged the application of IOLTA to limited practice officers (LPOs) - non-lawyer legal professionals licensed to complete documents associated with real estate closings in the State of Washington.

Bev Groudine is staff counsel to the ABA Commission on IOLTA.
emotional impact of the attacks is likely to linger at least as long as the visible reminders, each grantee’s director has ensured that a comprehensive set of resources including crisis counseling, information about post-traumatic stress disorder, and critical incident debriefing has been available to help staff members recover from the trauma.

Poor air quality remains a concern in the area surrounding the site of the World Trade Center. Dust and smoke are still in the air, and grantees have had to purchase air filtration devices for staff. Although air quality tests have shown no significant problems, fears and symptoms of air contamination persist.

While staff members have suffered tremendously, there is a universal sentiment that their clients have suffered more. As such, with the leadership and support of their directors, staff members were able to quickly focus their energies on addressing the physical damage to their offices to ensure that client services continued with minimal interruption. The week of the attack left the entire city paralyzed as residents scrambled to secure themselves from further harm. However, the following week found most legal services staff poised at alternative sites around the city, ready to assist those in need.

Redeployment of staff
Staff members were unable to gain access to their buildings until September 17, but senior management staff began meeting as early as the afternoon of the attack to devise plans to rebuild. Staff members were re-deployed. For example, many Legal Aid Society staff members were assigned to the Federal Disaster Recovery Center in Lower Manhattan and the City Family Assistance Center in Midtown; and almost all programs immediately dedicated staff to handling cases arising from the tragedy.

Displaced programs quickly secured alternative space. The Legal Aid Society moved its civil staff and operations into a neighborhood office in Brooklyn, and other members of its staff into temporary office space provided by Lawyers for Children. MFY was able to remain in its offices, but had to set up a satellite switchboard and workspace at Legal Services for New York City. Many of Sanctuary for Families staff members operated from satellite offices throughout the city and in the outer boroughs. The New York County Lawyers’ Association and its Pro Bono Project worked from a satellite office set up in the office of NYCLA’s president, a small firm practitioner.

The affected grantees also had to make plans to retrieve electronic and paper files. While most programs were able to gain at least minimal access to their offices to retrieve files on September 17, many advocates had to resort to piecing together parts of files. For example, Lawyers for Children helped Legal Aid Society attorneys reconstruct case files for a class action suit in which the two organizations are co-counsel. Many administrative files cannot be retrieved at all.

Rebuilding technology
For many staff—particularly those at MFY—frustrations over the loss of technology ran high, despite the swiftness with which alternatives were set up. For example, MFY was without phone service until October 15, and even then it was patched together, resulting in service interruptions. Staff members used personal cell phones in the days following the attacks, then MFY purchased 50 cell phones for staff use. Interruptions in DSL and cable service left MFY without Internet and email access. NpowerNY, a local non-profit agency, and the Fund for the City of New York donated technical support, rolled out six laptops for MFY staff, and successfully secured donations of network cards, software, installation and staff training. Email was restored for interoffice communications and outside email trickled in only after MFY assembled an improvised solution.

Conclusion
During the next months and years, more stories of the Herculean efforts of these grantees to rebuild themselves emotionally and physically will continue to emerge. The underlying theme of each story is the dedication and focus of each grantee and its staff to maintaining and expanding their capacity to meet the emergent needs of New York City’s low-income population, even in the shadow of terror and tragedy.

Sabena Leake is program associate of the IOLA Fund of the State of New York.
From the Chair...  

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

All of us were shocked and saddened by the horrific events of September 11, 2001. Amid the tragedy, many stepped forward to lend assistance. In New York, the legal community was well represented in this effort by, among others, lawyers, bar associations, pro bono programs and lawyer referral programs.

As mind numbing as the dimensions of the tragedy were, the task of assisting the families of the victims in New York was itself nearly overwhelming. Any death presents legal issues for the survivors. The destruction of any business similarly raises such issues for the owner. The multiple legal, financial and social needs of both families and the owners of businesses destroyed or closed following the World Trade Center attacks were indeed immense.

To address these problems, the Association of the Bar the City of New York (ABCNY) recruited an army of over 1000 volunteer attorneys to meet the pressing legal needs of those still stunned by what had befallen them. Almost overnight, ABCNY, together with relevant agencies and charitable organizations, appointed key people in the most

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Criminal Court Panels:  
The Role of Lawyer Referral

by Linda Katz

Competent representation in criminal court proceedings is essential to the functioning of the criminal justice system, and lawyer referral services can play an important role in ensuring the quality of representation provided. LRIS programs that administer criminal court panels find that there are many benefits to doing so. These benefits are realized by courts, criminal defendants, LRIS panel members, and bar associations (or other LRIS sponsors).

Why establish a criminal court panel?  

A primary motivation for establishing criminal court programs is the assistance provided to the courts. In some jurisdictions, courts have approached local bar associations for assistance in establishing such a program. For example, in the early 1970s, the San Francisco courts came under scrutiny for perceived favoritism in appointing attorneys in criminal cases. The courts asked the Bar Association of San Francisco (BASF) to help establish a system whereby screened, qualified attorneys could be made available for appointment, and such appointments could be distributed in an equitable fashion. BASF readily agreed, and the mechanisms already in place in the BASF Lawyer Referral Service for screening attorneys and making referrals on a rotational basis were employed in the service of the criminal courts.

In response to concerns that defendants were being solicited by unqualified attorneys at the courthouse, the Cook County Court contacted the Chicago Bar Association in 1969 to establish a program whereby screened attorneys were made available for hire by defendants, initially in traffic court. This program proved highly successful, and was soon expanded to include the misdemeanor and felony courts. By relying on the LRIS program to provide attorneys for criminal representation, the court avoided the administrative burden, along with the potential for perceived favoritism among the criminal defense bar. In the case of a program like the Chicago Bar Association’s Criminal In-Court Lawyer Referral Program, the court can rely on referrals to the “bar attorney,” knowing that the attorney has met the standards established by the LRIS program.

An effective criminal court panel is an asset to criminal defendants and, by extension, to the community as a whole. By ensuring high-quality representation and the broad participation of the criminal defense bar, a criminal court program ensures the independence and vitality of criminal defense. The requirement that its members carry malpractice insurance is another important benefit a criminal court program can provide to defendants. By identifying qualified attorneys, the program helps defendants avoid the risk of being represented by inexperienced, unqualified attorneys.

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important areas of expertise to create legal education materials and train volunteer lawyers to act as facilitators or guides. Each World Trade Center victim who wanted a lawyer’s guidance through the maze of legal problems would have a pro bono lawyer available.

Provided, that is, that an inevitable bottleneck in the system could be remedied—the yet-to-be-designed process by which the thousands of victims could be matched with the hundreds of attorneys willing to help. Nothing on this scale—in terms of immediate, overwhelming need and an equally immediate, overwhelming response from lawyers—had ever confronted a bar association. When it did, ABCNY turned to Al Charne, director of its Lawyer Referral and Information Service.

Al realized that, although the phone number of his program was being widely distributed to victims by relief agencies, his service, like any, was not equipped to handle the deluge of calls about to descend on it. The software that ran the service’s regular referrals simply could not incorporate and provide sufficient conflicts information and factual summaries to the volunteer lawyers. Not designed for this sort of catastrophe, the software lacked the interactivity and automated processing capability required.

As a last desperate attempt, Al called iLawyer, the San Francisco firm that has developed an interactive, Web-based referral mechanism on the Internet for ABCNY’s LRIS program and other programs that meet the ABA Model Rules Governing LRIS. Even though many of the victims did not have email, even though iLawyer was not designed as a pro bono matching system, and even though iLawyer was not designed to do multiple conflicts checks, there were no other options. All Al asked of iLawyer was that it put together a system that, in spite of these problems, would permit the lawyer referral service to connect the volunteer attorneys to the victims’ families.

The very next day, iLawyer called back to report that it had accomplished the near impossible—by cramming what would normally have been a month-long project into one single overnight marathon work session.

iLawyer’s system worked, without the benefit of any debugging or beta testing. Volunteer typists from New York firms entered information regarding hundreds of lawyers into the iLawyer system in a just a few days. The Essex County Bar in New Jersey and the State Bar of New York were given encryption keys so that they could enter WTC victims into the system, specifically, the client information that was being gathered at different triage sites around the city. The iLawyer system was able to meet all of the LRIS program’s needs because it is Internet-based, and therefore doesn’t require any special software on a particular computer, allows for inputting of data from remote sites, provides for encryption to support client confidentiality, and allows for all referral functions (such as matching with the volunteer attorneys and doing conflicts checks) to be performed from any remote site.

The work goes on. Two months after the event, ABCNY’s LRIS program was still matching 100 family members of victims a day with volunteer attorneys. Al reports that the work is compelling—made so by the event, by the stories of the family members, and by all of those who are contributing to this effort.

To ensure that the model that they were required to create literally overnight is available to any other program in need of it in the future, the ABA will preserve this work in the form of a template that may be readily adapted to future situations.

Unfortunately, space does not permit me to mention many others who played large roles in the response of the legal profession in the New York area. (Understandably, given the LRIS Committee’s focus, I have highlighted the contributions of the ABCNY’s LRIS program.) We should all salute Al Charne, his lawyer referral staff, iLawyer, the ABCNY, its pro bono program, and the lawyers and secretaries in New York who have worked, and continue to work, long hours without pay. Their tireless efforts are alleviating one aspect of the burden that the victims’ families must carry. And they have made us all proud.

Press Releases Available on the Web

As part of the LRIS Committee’s 2001 Marketing Plan, five press releases were distributed last summer to national media outlets, syndicated writers, and top newspapers and magazines. They are now available on the LRIS Committee’s Web site at www.abanet.org/legalservices/lrismarketing.html LRIS programs are encouraged to customize the releases with information about local program phone numbers, Web site addresses and contact persons.
Court Panels
(continued from page 21)

Criminal defense attorneys who participate in LRIS-administered criminal court programs also benefit. An equitable distribution of cases ensures that panel members each get their fair share of cases, and also helps to provide a sense of community, especially if regular panel meetings and/or training programs are hosted by the bar association.

LRIS programs that carefully develop criminal court panels find their relationship with the courts strengthened by providing much-needed services. By establishing a track record for providing high quality services, a bar association can establish itself as a partner with the courts, with the criminal defense bar, and with the community.

Models for court panels
There are several models an LRIS program can look to when establishing a criminal court panel. In San Joaquin County, California, the LRIS program provides attorneys to be available to the courts to be appointed to represent indigent defendants whom the public defender is unavailable to represent, generally due to a conflict of interest. The San Joaquin County LRIS program has a flat-fee contract with the court to provide these services. In this model, the program negotiates with the county for the total cost of indigent defense for the fiscal year, including both administrative costs and attorneys’ fees. The LRIS programs schedules attorneys to be available in court, and the attorneys submit their bills to the program for review and payment. The program negotiates the rate of pay with the attorneys, and is responsible for ensuring that the amount budgeted for the year covers the costs of the program. In addition to the fees paid by the court, the appointed attorneys remit four percent of their fees to help pay the LRIS program’s administrative costs.

San Francisco’s program is similar to the one in San Joaquin County, in that attorneys are made available to the court for appointment to represent indigent defendants. However, in the San Francisco model, attorneys submit their bills directly to the court. The court reviews and pays the attorneys’ bills, and two percent of the total is deducted from their bills by the county and remitted directly to the LRIS program to help defray its administrative costs. The court does not pay the LRIS program an administrative fee for its services.

The Chicago Bar Association Lawyer Referral Service has established a third type of criminal court panel, called the Criminal In-Court Lawyer Referral Program. In this program, attorneys are scheduled by the LRIS program to be available in court for hire by defendants. In this model, the attorneys are clearly identified to the public as “bar attorneys,” who agree to provide a brief consultation for free, and are available to be retained for further representation, generally at a reduced fee. Panel members pay an annual membership fee to the LRIS, the amount of which is based on the types of cases for which they qualify, and the number of courtrooms in which they wish to be scheduled. This annual registration fee goes toward the operating costs of the program, including staffing to handle attorney assignments.

Recruitment
A criminal court panel is only as good as its attorney members. Screening mechanisms must be in place to ensure that attorneys meet minimum qualifications for participation. LRIS programs that run effective programs require, at a minimum, their members to have substantial prior experience in handling the types of cases that they wish to receive through the program. Additional qualifications may include peer review, educational requirements, and an interview by a screening committee or LRIS staff. Lawyer referral services that establish criminal court programs should consider developing mechanisms for ongoing review of panel members. Providing satisfaction surveys to distribute to defendants and soliciting feedback from members of the bench can be effective means of gathering information about panel members’ performance.

Political Issues
There are some political issues to be considered when establishing a criminal court panel. Primary among these issues, especially for programs that provide attorneys to be appointed at public expense, is accountability for how that money is spent. However, even programs such as the Chicago Bar Association’s Criminal In-Court Lawyer Referral Program, which provides attorneys for hire by defendants, must be able to justify the use of their attorneys instead of attorneys that could be provided by a different agency.

Establishing a mechanism for reviewing attorneys’ bills is one way to address these concerns. BASF has established a fee audit program, whereby attorneys’ bills (continued on page 24)
2001 Lawyer Referral Workshop in Review

by Adam Gruen

The ABA 2001 National Lawyer Referral Workshop was held in San Francisco from October 31 through November 3, 2001. Well over 100 lawyer referral service staff members and bar executives from over 25 states attended the Workshop. During the opening plenary session, Al Charne, executive director of the Legal Referral Service Program of the Association of the Bar of the City of New York, spoke poignantly of the attack on the World Trade Center and the challenges it posed for his program. It coordinated a massive outreach program to the victims of the September 11 tragedy and facilitated the referral of thousands of people, who desperately needed legal help, to volunteer attorneys from many New York law firms.

Charne made special mention of the pro bono efforts of iLawyer, which developed special new telephone referral software on 24-hour notice to handle the expected volume of telephone callers seeking referrals. The Legal Referral Service also prepared a Helping Handbook to provide an overview of some of the legal issues that people faced as a result of the attack. It is a valuable model to those referral services whose communities suffer a significant disaster.

The keynote luncheon featured two panel members from the Lawyer Referral Service of the Bar Association of San Francisco, Sanford Cipinko and Michael Lieberman, who spoke of recent successes they had achieved for clients referred by the Lawyer Referral Service. Several other attorneys had rejected Cipinko’s case, but he ended up obtaining a six-figure settlement for his client. Lieberman admitted that he had to meet with his client several times before he agreed to accept the case, which resulted in a $1.2 million verdict for the plaintiff. Both emphasized the importance of being both courteous and compassionate to everyone who is referred to them, including those without a viable legal case.

The many sessions offered at the workshop included basic program management topics and more esoteric subjects. Mary Ann Falzone was the featured speaker in a session on Call Analysis for Improvement and Coaching, which focused on improving telephone interview and communication skills through the analysis of actual taped calls. Falzone offered practical advice on communicating with staff in an effective and encouraging manner in order to improve telephone performance. She also distributed a call quality monitoring form, which aids in the evaluation of interviewers’ telephone techniques using objective criteria. She also presented a session titled Effectiveness Elements for Successful Calls, which outlined a step-by-step process for evaluating the common components of every successful client call.

A session titled How To Establish a Percentage Fee Program was presented by Michael Davis, director of the Cincinnati Bar Association Lawyer Referral Service, and Carolyn Stachura, administrator of the Erie County

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Court Panels

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in court-appointed cases are subject to review. This program has been well received by the Court, and is respected by panel members. The San Joaquin County Bar Association’s program reviews all bills, and has a computer system that automatically selects bills that are outside the norm for in-depth scrutiny. The Chicago Bar Association requires its panel members to submit any client fee disputes to binding arbitration by its professional fees committee.

Another political issue may arise when a criminal court panel proves successful. Another agency, upon seeing the success of the LRIS-run program, may try to position itself to compete with the LRIS, and offer to provide similar services at a lower cost. The Chicago Bar Association resolved such a situation by sharing the courts with another bar associa-

Linda Katz is assistant director of the Bar Association of San Francisco Lawyer Referral Service.
Get ready for radio! The ABA Standing Committee on Lawyer Referral and Information Service is pleased to announce that professionally produced radio public service announcements (PSAs) will be available to local LRIS programs in early 2002.

Three 30-second spots will be recorded and distributed on CDs to 1000 radio stations in top markets throughout the United States. In addition, state and local LRIS programs will have the opportunity to order customized cassette or reel-to-reel copies for their own local radio stations. Custom options include recording the local LRIS program name, phone number or Web site address as part of the PSA.

“The last set of lawyer referral PSAs, produced in 1997, was a great success,” says Jim McLindon, LRIS Committee Chair. “Every year since, we’ve been getting requests from programs around the country for more.” The 1997 national distribution resulted in over 5,000 radio broadcasts, reaching 14 million listeners.

How Much Will This Cost?
The short answer: not much. The long answer: production costs for this project will be largely supported by the ABA LRIS Committee, so costs to local programs likely only will be for dub orders and limited studio time for tag line recording. It should fall between $200 and $400 for each participant, Jane Nosbisch, LRIS Committee counsel, estimates.

“At the time of this publication, we are in the preliminary stages of development, such as research and scriptwriting. In fact, we are even approaching a few celebrities to see if they might be willing to record a spot, due to the public service nature of lawyer referral,” explains Nosbisch. Because of all these variables, it is too early to tell what the end costs will be, except to say that each program’s share will be minimal. The added-value of PSAs is that, unlike paid radio advertising, airtime for PSAs is free.

What Do I Do Now?
Here are a few tips to get started:

• **Mark it on the calendar.** Put the PSAs in your 2002 marketing plan with some budget earmarked for it.
• **Develop a target list.** Prepare a list of the radio stations that have listeners in your LRIS market area. You can find these in local media directories, *Bacon’s Radio Directory*, or on the Internet. For example, your local library should have a copy of the 2001 *Bacon’s Radio Directory*. This great resource lists all radio stations in each state and includes station profiles as well as phone numbers for all staff, including public service directors.

• **Research your stations.**
Research your area radio stations to determine which ones have the demographics that most closely match your typical target LRIS customer. These are likely to be adult-oriented radio stations—the formats tend to be talk radio, easy listening, classical, jazz, light or classic rock, country; but unlikely to be contemporary Top 40, hard rock, and so on. You can call the radio stations and ask for an advertising press kit.

• **Develop media/contact list.**
Include name of station, name of public service director, address, phone number, fax number and email address.

• **Call public service directors.**
Call either the public service director or the public affairs director at each of your stations to ask which format they prefer for PSAs—script-only, CD, reel-to-reel, or cassette. You will need to do this to determine your dub order.

**What’s Next?**
Once the scripts are written and the talent is determined LRIS programs will receive a dub order packet. Copies of the scripts will be included. They can then order the dubs they need for distribution and decide on the appropriate tag line to be recorded for their Lawyer Referral Service.

Dubs will be sent to programs **(continued on page 26)**
Radio PSAs
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in March for distribution at any time. There are no limitations on how often PSAs can be used or for how long. In fact, some programs are still getting airtime from the 1997 PSAs.

“We are pleased to be able to offer these to LRIS programs because PSAs could be cost-prohibitive for many programs if they were to undertake production on their own,” says Jim McLindon. “And if everybody does their share in getting the PSAs aired, we can look forward to all-around increased publicity—and increased calls—to lawyer referral.”

Lisa Coe is the principal of Vista Communications and is consultant to the LRIS Committee on public relations and marketing.

Workshop
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Bar Association Lawyer Referral and Information Service. Both emphasized the importance of percentage fee programs as a revenue source over and above membership dues and consultation fees. They pointed out that virtually all self-supporting lawyer referral services utilize some form of percentage fee system. The speakers provided practical advice on establishing percentage fee programs from the nuts and bolts of the program to seeking approval from the LRIS director, governing committee and executive director of the sponsoring bar.

The session on Developing Subject Matter Panels featured Melody Tolmie, Executive Director of the San Joaquin County Bar Association and Director of its Lawyer Referral Service, and Lish Whitson, former chair of the ABA Standing Committee on LRIS. This basic session was especially important because of its focus on helping programs promote consumer confidence and protection. Tolmie and Whitson emphasized the benefit to marketing efforts as such panels may enable a service to meet the ABA Model Rules Governing Lawyer Referral and Information Service and gain permission to use the ABA logo. They also pointed out that although creating subject matter panels excludes some less experienced attorneys, many lawyer referral services have established mentoring and modest means programs through which new attorneys can gain the required experience.

There was lively discussion concerning the method by which attorneys would be deemed to have satisfied the subject matter or experience requirements. While there was agreement that some form of objective experience in the subject had to be demonstrated by way of written application, some participants suggested that more subjective criteria such as ability, reputation and effectiveness should be considered as well. The discussion then shifted to how to ensure an appropriate level of fairness and due process in making a subjective determination.

A session on Panel Member Removal and Appeal Procedures was offered by Marion Smithberger, director of the Columbus Bar Association Lawyer Referral Program, and Carol Woods, director of the Lawyer Referral Service of the Bar Association of San Francisco. This topic is an issue that confronts every program from time to time, according to the speakers. They noted that “problems” with panel attorneys usually arise from complaints from clients and/or the court or as a result of a failure to comply with the administrative requirements of the program. Smithberger and Woods advocated careful evaluation of client and court complaints. They recommended that specific procedures be put in place to ensure due process for the panel attorney facing removal, as is required under the ABA Model Rules.

The closing session offered an opportunity for participants to share ideas that they intended to implement immediately. These included sending summaries of earnings to members on a cumulative basis (such as annually), and placing an article on the earnings of the lawyer referral program in the bar journal every year.

Adam Gruen is a member of the ABA Standing Committee on Lawyer Referral and Information Service.

Mark your calendars now for the 2002 LRIS National Workshop, which will be held on October 23-26 in Philadelphia.
Ask Dr. Ethics: Fees, Fees, Fees

This installment begins with two related fee issues, based on inquiries posted on the LRIS Listserv. Dr. Ethics has taken the liberty of turning them into letters for his column.

Dear Dr. Ethics:
How would you handle the following scenario? Panel member has just settled a federal case that has a statutory limitation on attorney fees of 20 percent of recovery. Attorney states he normally charges 25 to 33 percent of any recovery. Since he is limited to only 20 percent for this case, he is asking the LRIS program to reduce the 10 percent fee. Any comments?

Sherry L. King
Assistant Executive Director
The Bar Association of Metropolitan St. Louis

Dear Dr. Ethics:
A LRIS member has received settlement for a referral case in the amount of $260,000. This person first wanted to settle for a $10,000 fee instead of our usual 10 percent. The committee said no, so the $26,000 will be paid to the association. This member wants to accept a structured fee and wants the association to receive the percentage funds over a 10-year time frame. Has anyone been asked to accept a structured percentage fee?

Pat
Northern Kentucky Bar Association

Dear Sherry and Pat:
First, if these lawyers signed an application or other agreement to pay LRIS fees, it seems to me that it would be unethical if they didn’t pay them. First, in St. Louis, not only is the lawyer getting less but you are getting less too, since you only get a percentage of the lawyer’s reduced amount. Why on earth would you reduce your amount even more? What is this lawyer thinking (and who is he thinking about, really?)

In Kentucky, it’s one thing if the lawyer tells you the client is getting a structured settlement, which would mean in many states including California (we have an ethics opinion right on point) the lawyer can only receive proportional fees as the client receives money. But your panel lawyer sounds suspicious to me, Pat. After all, his or her first try was to cut the fee by over 60 percent. Sounds like the “structuring” idea came about only when you said “no sale” to the gross reduction. I’d make the lawyer provide proof that the client actually got a structured settlement. Otherwise, the panelist should be required to pay the whole fee right now.

As a former panel member—one who once had to pay a $36,000 fee to my local program—I am frankly astounded at the chutzpah of these panel attorneys. Some believe that if the fee is too low they should pay you less because they’re getting so little, but it the fee is really large then they should pay you less because you’re getting so much anyway. C’mom! How about paying what they owe?

Dr. Ethics

Dear Melody:
This is a tough one. LRIS programs exist to serve clients’ needs and hook ‘em up with lawyers. The last thing we want is to cost this client competent representation. Still, as with the lawyer Pat encountered in Kentucky, I’m suspicious here. First the lawyer asks for a reduction, and then says the case isn’t worth taking? The lawyer knew darn well about the statutory cap when he called the first time. I’ll bet that either he took the case anyway, or you’ll have little problem finding another panelist to do it.

Sure, we want to serve the needs of clients, but this lawyer sounds like he’s trying to blackmail the LRIS program with the threat of the client not being able to get representation. I stand with those who want to ensure our clients get represented. But I don’t like extortion, and I’ll bet you can find another lawyer to take what the first lawyer was a good enough case to take at first.

Let me add these cautionary words from my old friend Al Charne of New York:

“If this was a real solid panel member, who has paid full fees on similar cases in the past, and no one

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Dr. Ethics
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e else of similar experience would take the case, I think there could be reasons for the committee to consider reducing the fee. One reason might be that there are other attorneys who already have liens on any recovery.” Al says you could consider making this a “very rare” exception. But only where there is a real and bona fide reason.

Dr. Ethics

By the way, while we’re talking fees, what are LRIS programs doing about hybrid fees? They are becoming more and more common in California. Let’s say, for instance, that I agree to charge a client half my hourly rate plus half my contingency. No problem in those jurisdictions that collect the same percentage for both kinds of fees, but it could be a big difference in places like my town of San Francisco, where the fee structures are different (and higher) on contingencies. Those with these kinds of fee structures should pay attention to these increasingly common fees.

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

The analysis and opinions in this article are those of the author, and do not necessarily represent the views, policy or opinions of the American Bar Association or the ABA Standing Committee on Lawyer Referral and Information Service.

Paving the Way to Public Service: The ABA Commission on Loan Repayment and Forgiveness

by Curtis M. Caton and Judge Frank M. Coffin

Many of today’s law graduates are faced with law school debt of $80,000 or more upon graduation. For graduates following the standard 10-year repayment schedule, this results in monthly payments of more than $900 for 10 years following graduation. With the average starting public interest salary at $34,000, these mortgage-size debts bar most graduates from pursuing public interest legal jobs. Among those graduates who do take such positions, many—when faced with major life decisions such as starting a family—are forced to leave after two to three years of employment.

In response to this problem, ABA President Robert E. Hirshon created the Commission on Loan Repayment and Forgiveness in August 2001. The commission’s job is to examine and report on the effect upon the legal profession of the increasing educational debt burdening law school graduates. In creating the commission, Hirshon noted that many observers believe that fewer lawyers are drawn to pursue public interest law positions such as in civil legal services or indigent defense immediately following graduation, and that those who do take these jobs cannot afford to remain in them very long. He believes this phenomenon has immediate and long term consequences that will harm the profession and the public it serves.

Loan repayment assistance programs (“LRAPs”) have emerged as a solution for relieving the debt burden of some law graduates. LRAPs provide loan forgiveness, lower interest rates on loans, or postponed payment of law school loans to graduates entering specific types of employment, usually law-related public interest jobs. Most LRAPs contain limits on the amount of income a recipient can earn while participating in such a program. There are various types of LRAPs, administered by law schools, state bar foundations and federal and state governments, providing debt relief to some law graduates. However, the number of these programs has not increased appreciably during the past five years, while the average debt burden on law graduates has more than doubled during the same period of time.

The commission will study the impact of the debt burden problem on the ability of law graduates to pursue and remain in public interest law jobs, and recommend solutions to the ABA and the profession. During the current bar year (ending in August 2002), the commission will focus on promoting LRAPs and guiding ABA efforts to

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From the Chair...
Looking for the latest commentary on legal aid and indigent defense issues from SCLAID Chair L. Jonathan Ross? You will find it on page 9 of this issue, where Ross has joined with Robert N. Weiner, chair of the ABA Standing Committee on Pro Bono and Public Service, for a column addressing the interaction between legal services programs and pro bono programs.

Loan Repayment
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stimulate more LRAPS and scholarships/fellowships provided by law schools, the federal government, state governments, and other private sources.

The commission is chaired by Curtis M. Caton, a member of the firm of Heller Ehrman White & McAuliffe LLP in San Francisco, and Judge Frank M. Coffin of Portland, Maine, a senior judge on the U.S. Court of Appeals for the First Circuit. The ten commission members include leaders in the profession, drawn from the ranks of law school deans and faculty, law students, experienced public service lawyers, legislative experts and others. The liaisons include representatives from many ABA entities as well as external organizations representing various constituencies, including law schools, labor, public interest attorneys, and corporate counsel.

The commission held its first meeting on October 22-23, 2001 in Washington, DC. The meeting

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SPAN Reports on Status of State Access to Justice Partnerships
by Robert Echols

During the past five years, “access to justice” partnerships involving the bar, the courts and legal aid providers have had a profound impact on the civil legal assistance delivery system in the United States. In many states, these efforts have played a major role in securing or increasing state funding for legal assistance, either through direct appropriations or through court fee surcharges or fines. They have promoted the creation of new providers to ensure that the range of civil legal needs in the state is addressed. They have launched major improvements to state court systems, rendering them more “user-friendly” and receptive to self-represented litigants. They have worked toward expanding the level and scope of involvement of private attorneys in providing pro bono services to low-income people.

SPAN, a joint project of the ABA’s Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and the National Legal Aid and Defender Association (NLADA), has been providing support for state-level access to justice initiatives since 1996. SPAN serves as an information clearinghouse and works with state leaders to promote the development of new partnerships to expand access to justice.

According to SPAN’s most recent report on the status of access to justice structures and initiatives in the 50 states and the District of Columbia, the number of states with formal, institutionalized partnerships is continuing to grow, while virtually every state has some kind of active joint initiative to expand access to justice under way. Key findings of the survey include the following:

• Fourteen states have an access to justice commission or a similar entity—a formal body composed of appointed representatives of the bar, the judiciary, and providers. Some include other stakeholders as well, such as clients, business and labor leaders, and representatives of community agencies and churches. This group includes well-established entities in California, Louisiana, Maine, Maryland, Washington and West Virginia, more recent ones in Arizona, Illinois and Pennsylvania, and brand new ones in Idaho, Missouri, Montana, Texas and Vermont.

• At least four other states have begun to plan for or consider the creation of an access to justice commission—Arkansas, Colorado, Mississippi and Nebraska.

• Seven states have a committee of a state bar or bar association that is charged with a broad access to justice function and that includes representatives of the judiciary, providers and other stakeholders, in addition to bar leaders. This group—Delaware, Georgia, Michigan, Minnesota, Nevada, New Mexico and Oregon—includes some of the most effectively institutionalized access to justice structures in the country.

• Four states—Alaska, Florida, Massachusetts and Utah—have a structure of active committees or other entities dedicated to implement-

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SPAN Reports
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menting recommendations from a formal access to justice commission or similar body that ceased to exist with the issuance of its report. In Florida and Massachusetts, funding entities with broadly representative boards play a leading role in access to justice efforts.

- Three states have some other type of access to justice entity: Kentucky’s Access to Justice Foundation and the Tennessee Alliance for Legal Services both carry out access to justice functions and are guided by boards with broad stakeholder representation. In New York, a new office of the court system with an access to justice mission has convened working groups that include other stakeholders.

- At least 12 states have a formal, active, state-level entity consisting primarily of providers that is either coordinated with the activities of an access to justice commission or similar entity or includes representatives of the state bar or bar association and other stakeholders. This group includes North Carolina, Ohio, South Carolina, and Wisconsin, as well as a number of the states listed above.

- At least six states—Arkansas, Indiana, Maryland, New York, Oregon, and Washington—held a statewide access to justice conference or similar event in 2001. A number of other states have recently convened special meetings of equal justice leaders or statewide provider meetings that included representatives from the bar and the judiciary as well.

- At least 13 states have staff members who either work directly for an access to justice entity or have responsibility for supporting broad-based partnerships to expand and improve civil legal assistance in the state.

- Only 12 states and the District of Columbia do not have a formal access to justice structure. This group includes some states with an effective informal structure that has succeeded in developing a high level of resources for civil legal assistance (including New Jersey, Connecticut, Hawaii and Virginia, as well as states with lower resource levels).

- Missouri and New Jersey currently have legal needs studies under way, and planning for a study has begun in Connecticut. Vermont and Oregon recently completed legal needs studies. Many other states conducted such studies in the early and mid-1990s.

Descriptions of these structures and the wide range of initiatives they have launched are available in the SPAN Report: Access to Justice Partnerships, State by State, available on the SPAN: Access to Justice Partnerships pages of the NLADA web site at www.nlada.org/Civil The complete report can be printed from the site, or called up by individual state. Also on the site are a library of access to justice documents, state resource and contact information, the quarterly SPAN Update, links to other sites, and other access to justice resources. For additional information about SPAN or state access to justice efforts, contact SPAN at span@nlada.org

Robert Echols is the coordinator of SPAN.

Nominations Sought for 2002 Harrison Tweed Award

The ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association invite nominations for the 2002 Harrison Tweed Award.

Named for an outstanding leader in the development of free legal services to the poor, the Harrison Tweed Award was created in 1956 to recognize the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services to poor persons or criminal defense services to indigents.

The award will be presented in August at the 2002 ABA Annual Meeting in Washington, DC, in recognition of work done during the year beginning April 1, 2001. Projects which began prior to that date will be considered if substantial services have been provided between April 1, 2001 and March 31, 2002. Nominations must be postmarked by April 1, 2002.

A full description of the award, past recipients and nominating procedures is available at http://www.abalegalservices.org or by calling 312-988-5767.
Loan Repayment

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featured a day-long educational forum during which commission members, liaisons and invited guests heard presentations from many experts about the substantive areas impacting the commission’s work, such as the Higher Education Act. ABA President Hirshon began the forum by welcoming the attendees with his opening remarks. During the presentations that followed, recent law graduates testified about the difficulty of pursuing and remaining in a public interest law job without the benefit of LRAP assistance. Then academics, policy makers, law school faculty, recent law graduates and LRAP administrators provided information about existing programs, policies and laws and suggested possible projects for the commission to consider.

Building on the information and insights received during the first meeting, the commission established its objectives for the year. Recognizing the need to involve the private and public sectors, the commission will pursue a multifaceted approach to the problem. Proposed projects include developing model LRAPs for law schools, drafting a model state LRAP act, and undertaking a cohesive legislative and administrative advocacy plan on the federal level. To structure its work, the commission formed three working groups that will meet on a regular basis.

The commission faces a challenging and exciting year. It will work together with the leaders within the ABA and many other national organizations involved in this issue, including the National Legal Aid and Defender Association, National Association for Public Interest Law and National Association of Law Placement, with the hope of facilitating the cultivation of a new generation of public interest attorneys.

Recent LRAP Developments

Texas

Texas Governor Rick Perry signed two bills establishing state-administered LRAPs for attorneys employed by the Texas Attorney General’s Office (HB 2766) and legal aid attorneys and prosecutors working in rural areas of Texas (HB 2323). Under the first LRAP bill, one percent of law school tuition revenues (from resident student tuition only) will be diverted into a trust account for the loan repayment program for lawyers employed by the Texas Attorney General’s Office. Implementation of HB 2766 will require a period of time for set-aside funds to accumulate.

The Texas legislature did not appropriate any funding for the program benefiting legal aid attorneys and rural prosecutors. The Texas State Bar has formed a committee to work on the funding issue. To access copies of both bills, visit http://www.capitol.state.tx.us/ (sear h for HB 2323 and HB 2766).

California

California Governor Gray Davis recently signed AB 935, a bill creating a loan repayment program for legal aid attorneys, prosecutors, public defenders and county attorneys who handle child support cases. There is no funding for this bill. If and when the program is funded, it will be administered by a state agency.

To access a copy of the bill, visit http://www.assembly.ca.gov/acs/defaulttext.asp (search for AB 935).

University of Virginia School of Law

John C. Jeffries, Jr., dean of the University of Virginia School of Law, recently approved an expanded LRAP that will go into effect with the class of 2002. Highlights of the program include an increased participant salary cap of $60,000 and expanded coverage to include all public service positions, as well as all legal jobs in the Commonwealth of Virginia that pay under $60,000. UVA School of Law also just launched the Powell Fellowship to honor the commitment of the late Justice Lewis F. Powell, Jr. to providing legal services for the poor. The first recipient will be selected in the spring of 2002. The fellowship pays $35,000 plus benefits for two years.

For more information about these or other LRAP developments, contact Dina Merrell at 312-988-5773 or merrelld@staff.abanet.org

Curtis M. Caton and Judge Frank M. Coffin serve as the co-chairs of the ABA Commission on Loan Repayment and Forgiveness.

For more information about the ABA Commission on Loan Repayment and Forgiveness, please contact Dina Merrell, staff counsel, at 312-988-5773 or merrelld@staff.abanet.org
On November 28, 2001, President Bush signed into law the FY2002 appropriations bill for the Departments of Commerce, Justice, State, the Judiciary and Related Agencies (“CJS”). This bill, H.R. 2500 (P.L. 107-77) includes $329.3 million for the Legal Services Corporation, the full amount requested by President Bush and the same amount LSC received in FY01.

LSC’s FY2002 appropriation provides $310 million for basic field programs, $2.5 million for the Office of the Inspector General, $12.4 million for management and administration, and $4.4 million for client self-help and information technology.

While LSC did not receive a funding increase for FY2002, this year’s appropriation process provided a significant victory: for the first time in six years, LSC’s budget was approved without opposition. In previous years, the House Appropriations Committee slashed LSC’s funding to $141 million with the funding later restored through a House floor amendment and during House/Senate conference committee negotiations. This year, with President Bush’s support, the House Appropriations Committee provided full funding of $329.3 million.

The FY2003 budget process will be underway in early February. For more information on what you can do to help increase LSC’s funding for next year, visit the ABA Governmental Affairs Office website at http://www.abanet.org/poladv.

—Julie Strandlie, ABA Governmental Affairs Office director of grassroots operations and legislative counsel

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