

# DIALOGUE

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VOL. 16, NO. 2

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My son works in a business that uses the term "fancy." A person, place, or event is fancy if it is dressy, sophisticated or elaborate. In Ohio, the National Pro Bono Celebration is not fancy; its simplicity, practicality and sleekness have been the keys to its success. [Read more...](#)

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## News and Notes

The Commission on IOLTA welcomes new members Eileen Letts, Cynthia D. Mares, and Jonathan Ross for the 2012 – 2013 bar year. [Read more...](#)

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By John Norwine

Last month, I updated those in attendance at the LRIS Workshop in Las Vegas on what the ABA Standing Committee on Lawyer Referral and Information Services is doing for our lawyer referral services. [Read more...](#)

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**2013 National Lawyer Referral Workshop**

**LAMP**

**Preventive Law at the Battalion Level: Exploiting Successful Command Relationships**

**By Major Charles C. McLeod, Jr.**

On July 6, 2011, the Consumer Financial Protection Bureau (CFPB), the Judge Advocate Generals of the Army, Navy, Air Force, and Coast Guard, and the Staff Judge Advocate to the Commandant, U.S. Marine Corps announced an agreement on a Joint Statement of Principles designed to provide more robust protections for servicemembers and their families with regard to consumer financial products and services. [Read more...](#)

**From the Chair...**

**By David G. Ehrhart, Brig Gen, USAF (Ret.)**

As I write this column, we are now in the season when we prepare our standing committee's annual plan as mandated by the ABA Board of Governors Program Evaluation and Planning Committee. [Read more...](#)

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Pro Bono Feature

Pro Bono

## How the National Celebration of Pro Bono Caught on Statewide in Ohio

How the National Celebration of Pro Bono Caught on Statewide in Ohio

*By E. Jane Taylor, Esq.*

2013 Equal Justice Conference

*Editor's Note: The National Celebration of Pro Bono, sponsored by the ABA's Standing Committee on Pro Bono and Public Service, is held at the end of October each year. The success of the Celebration nationally results from the hard work of pro bono advocates and supporters at the statewide and local level. Here is the story of how the Celebration became a statewide commitment in one state.*

My son works in a business that uses the term "fancy." A person, place, or event is fancy if it is dressy, sophisticated or elaborate. In Ohio, the National Pro Bono Celebration is not fancy; its simplicity, practicality and sleekness have been the keys to its success.

IOLTA

The National Pro Bono Celebration arrived in Ohio after the American Bar Association's 2008 annual meeting, where it was rolled out to bar leaders attending the National Conference of Bar Presidents meetings and to ABA House of Delegates members at the annual Pro Bono Publico Awards luncheon, among other venues. The concept seemed a perfect fit and ideal opportunity for the Ohio Legal Assistance Foundation ("the Foundation") to advance its mission of acting as a statewide convenor and collaborator in pro bono.

LRIS

After a pitch by staff, the Foundation's board accepted the role of Ohio statewide leader and coordinator for the first ever National Pro Bono Celebration held in October of that year.

LAMP

At the outset there was discussion about whether the Foundation would lead through a volunteer group such as a task force or committee, or whether the effort would be staff-led. Because the stakeholder organizations already had in place robust, collegial staff networks who worked together and met regularly – the pro bono professionals of the legal aid societies; the staffs of Ohio's six metropolitan bar associations; and the statewide Foundation, state bar association, and supreme court – the Celebration planning went forward as a staff-led initiative.

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The Foundation, Ohio's IOLTA organization that also supports and enhances private attorney involvement at the legal aid societies, understood intimately that any new effort would have to be super-easy if the overworked staffs of its partner organizations were going to invest their time. In addition to being as painless as possible, the Foundation would have to help the partner organizations see benefits to participating: benefits to clients, to volunteer attorneys, and to the overall missions of their organizations.

To that end, the Foundation took prodigious advantage of the ready-made resources offered by the ABA.

Taking a cue from the roster of supreme court justices supporting the National Pro Bono Celebration, it asked Ohio's Chief Justice, and a federal judge known for dedication to encouraging pro bono, to act as honorary statewide chairs. The key to getting the Chief Justice and the federal court judge to say yes was identifying the position as "honorary," enabling the Foundation to say to each of them that accepting came with no commitments; the decision to participate in any National Pro Bono Celebration event was entirely at their discretion. When presented in this

way, both jumped in without hesitation.

Once these important figures in the Ohio legal community were announced as honorary chairs, the Celebration took on credibility and organizations across the state began to build events around their involvement.

With the ABA's concept of the Celebration as a guide, the Foundation connected with its partner organizations via email and encouraged all to become involved by finding ways to use the Celebration as a tool to advance organizational goals. The Foundation repeated in each communication the three themes the ABA identified for the Celebration – to recognize the efforts of pro bono lawyers; to recruit more pro bono volunteers; and, to mobilize community support for pro bono.

The Foundation kept up regular email contact, repeating the Celebration themes and updating partner organizations with news from ABA and from organizations in other states, to build interest and to help organizations see the possibilities for using the Celebration to the advantage of the organization. It was exciting to watch as organizations adapted Celebration themes to their model; events and activities created were natural, easy, and familiar to their constituencies. Legal aid organizations that routinely offered brief advice clinics scheduled additional clinics in different venues; pro bono programs created volunteer recognition events; and bar associations offered continuing legal education training seminars, at no cost to attorneys who agreed to accept a pro bono case.

The Foundation took the resolutions and proclamations posted on the Celebration website and re-drafted them as for use by Ohio bar associations and municipalities. The resolution was an easy sell to the bar associations because adopting it required no commitment of resources, and it expressed affirmation for the core professional value of pro bono service, something for which the bar association boards were eager to be on record. The proclamations directed at municipalities were not used widely the first year of the Celebration, but were folded in later as support and interest in the Celebration developed and coverage in the mainstream media expanded.

Finally, the Foundation used its connections with the bar associations, legal aid societies, and courts to cajole everyone to send their schedule of events to the Foundation, which Foundation staff then uploaded to the National Pro Bono Celebration website. The Foundation then kept careful track of how many events were listed, and let the Ohio folks know how they were doing in comparison to other states. The Foundation did not encourage any entity to create events simply to increase the numbers of events or activities, but it took advantage of the strong competitive streak it knows to exist among attorneys! When it came time to plan for 2010, Ohio participants remembered being listed in a national directory and took on responsibility for ensuring that events were listed completely, accurately and early. The Foundation has not had to provide this support again.

In each year since 2009, Ohio's version of the National Pro Bono Celebration has expanded, but it has never become fancy. By taking a simple approach, Ohio has each year achieved attention in greater measure to the importance and value of pro bono legal services.

*E. Jane Taylor, Esq. is the director for Pro Bono and Communications at the Ohio Legal Assistance Foundation.*

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*save the date*

**St. Louis**  
**ABA/NLADA**  
**Equal Justice Conference**  
May 9-11, 2013 (Pre-conference, May 8)  
Hyatt Regency St. Louis at the Arch



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## Facilitating Executive Director Transition: Some Lessons for the Transitioning Executive Director

By *Beth Greenland*

Executive Director transitions are everywhere these days...as baby boomers age and move on to their "encore" careers, and as talented Execs move up and move around. According to the study "Daring to Lead," published in 2006 by CompassPoint, **75%** of Executive Directors will leave their positions over the next five years.

In working with departing executive directors, boards, *and incoming executive directors over the past fifteen years, I have found that the departing ED has a crucial and often underestimated impact on the ultimate success of the transition.* For the departing executive director, making that transition work effectively for all parties — the staff, the board, the incoming ED and for you, as well— takes careful planning, candid conversations, constant communication, and a willingness to put the organization first.

Here are some basic lessons learned about what the departing executive can do to facilitate the transition to a new ED, as food for thought as you contemplate your own transition.

### 1. Make Your Nonprofit Permanently Ready for Transition

Transition should not be a devastating event for any nonprofit. One of the best things you can do for your nonprofit is to make transition a discussable topic for your board, from the day you start work. Your transition is inevitable, right?

Encourage your board to talk about and plan for your succession as well as that of key staff and board members. All nonprofits should have emergency succession plans — some good templates are available on the Internet. Equally important is for you to encourage your board to have a strong board development function so that you constantly have new members who understand the organization well. Remember, each board member is a potential transition/search committee member and they need to understand your nonprofit thoroughly. Make sure new directors are recruited from a diverse base and are not just your friends or your contacts.



At the same time, be careful not to prematurely line up your successor. Avoid promising or even implying that any staff member, including your deputy, is the eventual heir to your position, unless the board has explicitly confirmed that in their succession planning process.

Once you have announced your departure, encourage your board to identify a transition committee to manage the process. One of their first steps should be to develop a job description for the ED position based on the current and future needs of the nonprofit — not necessarily what you have always done while you were ED. Sometimes this re-look at the role brings added support, resources, or salary for the new ED that you wish the board had offered you! Expect this to happen and watch the tendency to take it personally.

## 2. Plan a "Clean Break"

For many departing EDs, particularly founders, leaving your beloved nonprofit can be wrenching. The identity of the founder can be so bound up in the work that she cannot imagine not being "queen of the office" — as one departing CEO put it. For those who are retiring, existential questions emerge... about health, quality of life, and even the meaning of life beyond the job. Sometimes, departing EDs become so wrapped up in their own emotional, financial and existential needs or worries that they miss the opportunity to leave the nonprofit the best legacy they can offer — sustainable, effective leadership beyond their tenure.

Some departing EDs want to prolong their departure and leave a long period of overlap. The new ED then may be hampered by the history and the power of the partially departed ED, leaving confusion and frustration for the new ED and staff. According to Janice Frey–Angel, incoming CEO of Melwood, one of Maryland's largest nonprofits:

I think there needs to be a definite end of one CEO's leadership prior to the start of the new CEO's work. The board and all involved need to understand and support this. I've been very cognizant of my predecessor and his incredible accomplishments — but I have also been very clear with him that there needs to be no ambiguity about who's in charge. Before I got there I discussed this with the former CEO, and we came to the obvious agreement that any work he did for Melwood after my first day would be work from home.

If the board decides to have a period of overlap for you and the incoming ED, it is best to keep that period to thirty days or less, according to the book, *Losing Your Executive Director Without Losing Your Way*, by Weisman and Goldbaum.

And, while it may be a nice idea that you can "keep a hand in," either as a part time consultant or as a member of the board — it is a potentially dangerous path. The loyalty to you can cloud the board's objectivity about the new ED's vision and ideas. In my experience, the optimal situation is for the departing ED to leave the organization completely on his/her last day and only be accessible to the new ED at his/her request.

Finally, it is important to be positive and optimistic — and consistent — about your departure. Set a last day and stick with it. You may even choose to schedule a lengthy trip or educational venture immediately following your departure to help you make that clean break.

A very useful resource for Founders considering transition is Tom Adam's booklet: *Founder Transitions: Creating Good Endings and New Beginnings*, published by the Annie E. Casey Foundation.

## 3. Leave Them Strong

Especially if you are a founder or a long term ED, it is a good idea to spend your last two to three years preparing your organization to do beautifully without you. This may be particularly difficult if you have all of the relationships in the community, with your board, or with funders, but it is essential that your nonprofit is more than you. Our egos can get in the way of this, as we may bristle to find that we are, in fact, replaceable. But, if you are strong enough and effective enough to have hired good people and trained them to do your job, kudos to you!

Some specific actions you can take to leave them strong:

- Include staff members in board meetings, and ask staff to present to the board periodically on what they do and the issues they face.
- Take board and key staff members with you to meet funders and members of the community.
- Offload some key community relationships — on advisory boards, work groups, *etc.*, to key staff members.
- Engage your whole organization in a visioning/ strategic planning conversation, so that the staff and board have a common understanding of where the nonprofit is heading and the challenges that may lie ahead.
- Delegate as many responsibilities as you can — spend time training and mentoring staff to take care of the details that you have always

been responsible for.

#### **4. Establish a Legacy**

A good strategy for the departing ED to gain closure is to identify what he/she would like his/her legacy to be, and then to work with the board or a subgroup of the board to make that happen. One CEO I worked with decided she wanted to implement a scholarship program for urban high school students to invite them into the environmental field that she had invested her career in. Or, there could be an award or a prize for a volunteer that could have your name on it.

It is also very important to say yes, even if it is a little painful for you, to a final gathering or celebration of your tenure, ideally before your successor begins. If the incoming ED has already been identified, that would be a great opportunity to introduce him/her to your stakeholders.

#### **5. Stay Out of the Search**

As tempting as it might be to be personally involved in the search for your successor, we encourage you to step aside! This includes any weighing in on the process or a desire to bless the final selection. Yes, perhaps you are "handing off your child to a stranger"— but if your board and your staff are strong, and make a thoughtful selection, the new ED could have just the qualities needed to take your non-profit to a new level.

There are varying opinions about whether staff should be involved in the search — staff members I have spoken to love to be included, certainly in the final round of interviews. In other situations, confidentiality of who is applying might trump that interest.

In any case, be aware that how your organization manages the transition — who is included, who is not, how candid and thorough the process is — all this is a microcosm of how the nonprofit handles changes and challenges. Your staff knows this, as do the candidates to replace you. Remind your board that the way they handle the search says volumes about what kind of culture the new ED is walking into.

#### **6. Notice Your Own Behavior**

In his article, "The Dark Side of CEO Succession", Manfred Kets de Vries offers this caution to CEOs who are not self-aware: "Some CEOs secretly nourish the hope that their successors will fail. Failure would be further proof of their own indispensability. They may even take steps, unconsciously or not, to set the successor up for failure."

There were signs of this in one client organization where, during the overlap period, two of Tom's (departing CEO) trusted senior staff would come to his office at the end of the day, every day to complain about the new CEO. In coaching with Tom about the barrage of negativity about the new guy, we discovered...Tom loved it! Every complaint about the new guy meant Tom was loved, treasured, important, *etc.* When Tom realized he was in fact encouraging this negativity by just listening to it — he was able to change his behavior and insist that any issues his team had with the new guy, they take up with him.

In another situation, the departing ED found himself arguing with his successor in each management team meeting prior to his final departure. The successor was frustrated and annoyed by this, of course, and staff was buzzing about what this could mean. Coaching conversations with the departing ED uncovered his deep ambivalence about his departure so he could manage those emotions appropriately.

It is natural to have very mixed feelings about the transition, especially if you are a founder or long term ED. Consider engaging a coach or a trusted friend (with no connection to your nonprofit) to help you be aware of and manage your "blind spots."

#### **7. Welcome Your Successor**

Your staff (and board, most likely) will be watching you like a hawk during this transition, worried about how you are taking it, so be prepared for that. Any public show of support for your successor can remind people that you are comfortable and confident in the changeover of leadership. David



Greenberg, who took over for Janice Frey–Angel when she left the League for People with Disabilities, said:

My hiring coincided with the annual dinner for the League. Janice was at the dinner, as was the interim ED. It was a wonderful public transition opportunity with all of us there — the board and donors could see how positive the transition was. I also was invited to an all staff meeting the week before my first day as an introduction to the employees. There was a huge welcome sign for me out in front on my first day of work. It was a very positive and gentle introduction.

#### **8. Consider an "Encore"**

If you are in your sixties and the prospect of retiring completely seems daunting or even terrifying, consider an encore career. Many powerful former EDs pursue consulting, teaching and volunteer encore careers well into their seventies. Again, I advise against doing any consulting work with the nonprofit you are leaving, as enticing as that may be. Offer your consulting services to nonprofits in other sectors, or small organizations. It goes without saying that anyone with a track record in fundraising is gold these days — so if that is something you enjoyed and were good at, consider offering that expertise to others.

You will help yourself and the nonprofit you are leaving if you see yourself as moving TOWARDS something instead of just AWAY from something. Spend quality time by yourself and/or in conversation with trusted and objective advisors to create a new path — an exciting one that you can see, hear, taste, touch and smell!

***Beth Greenland** is a leadership coach and organization development consultant based in Towson, Maryland. In her thirty years of consulting and coaching practice, she has worked with leaders and organizations in non-profits, government and corporations on strategic planning, leadership transition, culture change, and leadership and team development. She is affiliated with the Maryland Association of NonProfit Organizations, and is a member of the International Coach Federation. She holds a leadership coaching Certification from Georgetown University and a Masters Degree in Applied Behavioral Science from Johns Hopkins University. She has been trained in Executive Transition Management through CompassPoint. Beth may be reached at [bgreenland@aol.com](mailto:bgreenland@aol.com).*

*This article was originally published in the newsletter of the Maryland Association of Nonprofit Organizations.*

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## From the Chair...

By *Penina Lieber*

### Commission on Interest on Lawyers' Trust Accounts

I am pleased to begin my term as Chair to the Commission on IOLTA. Last year I was given the opportunity to serve as a member where I had the privilege of working with Immediate Past Chair Lora Livingston. Under Lora's direction, the Commission provided steady leadership in a time when the economy and IOLTA income was waning. She saw to it that the Commission played a pivotal role in obtaining unlimited FDIC insurance coverage for IOLTA accounts, provided support and resources for jurisdictions considering mandatory and comparability, and challenged Commission members to be forward thinking as IOLTA programs faced trying times. I applaud her outstanding leadership and hope to continue the work she began.

As my tenure begins, five members return to the Commission with me: Susan Erlichman, John Gunn, Justice Bernette Johnson, Diane Don and Arnie McDonald. In addition, Eileen Letts, Jon Ross and Cynthia Mares will be [joining as new members](#). I am fortunate to be working with this group of talented and committed individuals who bring a diverse and rich base of knowledge and experience to the work ahead. I would also like to take a moment to thank Darrell Jordan and Arley Harrel for their service to the Commission last year and wish them success in their future endeavors.

Before concluding his time with the Commission, Darrell served as Co-Chair to the Joint Meetings Committee, which put together a stellar program for the Summer IOLTA Workshops in Chicago. Sessions addressing hot topics affecting IOLTA and critical issues in banking provided attendees an opportunity to grapple with matters such as the scheduled December sunset for full FDIC insurance coverage for IOLTA and efforts to extend it, new IRS regulations for lawyers who accept credit card payments, and the effects of prolonged low interest rates on IOLTA. A line up of outstanding speakers provided proactive approaches to revenue enhancement, including a panel of IOLTA directors who discussed the elements of successful honor roll and leadership bank programs and bankers who presented strategies for approaching bank foundations for contributions. As always, the program provided participants opportunities to network, talk about challenges to their programs and exchange ideas.

The importance of these workshops became very clear as the Commission analyzed the results of its annual database update for the IOLTA Clearinghouse. Each year the Commission seeks to collect information regarding income, grants, and banking from IOLTA programs in all 52 U.S. jurisdictions. Upon receipt of this data, the Commission compiles and analyzes the information for the IOLTA Handbook. The most current numbers (from 2011) show that IOLTA income and grants have declined from the previous year. Add to that the Federal Open Market Committee's decision to most likely keep interest rates down through mid-2015, and IOLTA programs are confronted with unparalleled challenges. In these times, the workshops offer the IOLTA community a time to learn new ideas, discuss issues and learn from one another.

Though budgets are tight and staff is limited, the IOLTA Workshops are well worth the investment. Fully aware of their importance, the Meetings Committee is diligently working to produce the Winter [IOLTA Workshops](#), which are scheduled for February 7-8, 2013 in Dallas, Texas. I look forward to that time and hope to see you there.

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## Grantee Spotlight: IOLTA Funds Empower Arizona Farmworkers

*By Pamela Bridge*

### Community Legal Services

Community Legal Services (CLS), now celebrating its 60th anniversary, is Arizona's largest civil legal aid program and a recipient of funding from Interest on Lawyers Trust Accounts (IOLTA). Under the Arizona Supreme Court rules, the interest earned on IOLTA accounts is administered by the Arizona Foundation for Legal Services & Education (the Foundation), a non-profit organization chartered with promoting access to justice for all Arizonans and educating those most in need about the justice system.

The Foundation supports programs that help those who cannot afford a lawyer to obtain legal services and to improve the administration of justice. Without taxing the public and at no cost to lawyers or their clients, Arizona's IOLTA program currently provides more than \$2.5 million per year benefiting over 30,000 families with free legal services and reaches over 300,000 children with education about their rights and responsibilities as citizens.

IOLTA funding to Community Legal Services began in 1985 and since then has benefited individuals and families by supporting the civil practice areas of family, housing, consumer, benefits, and employment in five of Arizona's fifteen counties. Since 1986, IOLTA funding has supported CLS' Farmworker Program statewide.

### Farmworkers of Arizona

Arizona agriculture is a \$9.2 billion industry, which ranks second in the United States' production of cauliflower, lemons, broccoli and several varieties of lettuce including head, leaf, and romaine. In fact, Yuma is the winter lettuce capital of the world. The driving force behind this industry is the Arizona farmworker. They are a unique and vulnerable population with their own distinct legal challenges.

The majority of farmworkers live in towns on the Arizona/Mexico border, specifically in and around the City of San Luis, Arizona. Two types of farmworkers are recruited from this area, migrant and seasonal. Migrant workers are recruited at the border and then bused to work throughout Arizona, as well as to areas throughout the country. These workers are required to spend at least one night away from their homes. Seasonal workers are not required to spend nights away from their homes but are typically required to gather in parking lots known as *corralons* in San Luis at a scheduled time each morning during a specific harvest season. Seasonal workers are then bused by their employers to fields which can be a few minutes or several hours away.

Both migrant and seasonal farmworkers are among the most marginalized labor groups in the world. In the United States, they contend with hardships that include substandard housing, low wages, insufficient education, limited English, and societal discrimination. In Arizona, they also struggle with obtaining health care, working in extreme weather conditions, and lack of transportation.

Arizona farmworkers generally earn between \$7,000 and \$10,000 per year with the bulk of this income made during the lettuce and lemon seasons. Their wages fluctuate year-to-year depending on climate and the prevailing

economics of the state's agricultural industry. For instance, when an early freeze cuts the lemon season short, lemon harvesters are out of work without other employment opportunities. Similarly, farmworkers can lose income when temperatures soar. Extreme heat also poses grave health risks and, unlike Washington State and California, heat-safety statutes designed to protect farmworkers do not exist in Arizona. When farmworkers are unable to work due to heat-related illness or when their productivity is simply decreased due to the extreme heat, their earnings suffer.

Further, farmworkers are generally unable to afford their own vehicles and must rely on employers to bus them to and from the fields throughout the state. Arizona, unlike most other states, has a unique geography and topography which creates huge isolated distances between agricultural pockets. As a result, many of these workers spend hours on a bus each day traveling to and from the fields.

### **Community Legal Services' Farmworker Program**

Advocacy for farmworkers is deeply rooted in Arizona; it is the birthplace of Cesar Chavez who was born in Yuma on March 31, 1927. CLS provides legal assistance to farmworkers throughout the state of Arizona. However, the office in San Luis is especially dedicated to providing better and more effective service to this group due to the large concentrated population of farmworkers living along the southwestern Mexico/Arizona border.

Community Legal Services' Farmworker Unit assists farmworkers and their families with various civil legal problems, particularly those pertaining to employment issues including, but not limited to, claims involving wages, employer provided housing and transportation, field sanitation, pesticides, discrimination, unemployment, workers' compensation and income tax. The goals of the program are to help these farmworkers achieve and maintain economic stability and to eliminate abusive labor practices. Outreach, education, brief advice, and litigation are the tools which the program uses to achieve these goals.

Since its inception, the CLS Farmworker Unit has been an active and vocal part of the community working with government agencies and farmworkers' groups to educate and empower this population. Members of the unit have served on various task forces and committees throughout the state and nation. Staff members build relationships with farmworkers and develop the trust needed to overcome their reluctance to complain about substandard working conditions out of fear of employer retribution. As one returning client said, "I always know I can trust the people at CLS. I know that you will fight for me."

### **Advocacy through Litigation**

The Farmworker Unit has an extensive history of aggressive litigation to stop abusive practices against farmworkers. Lawyers base their arguments on several statutes including the Migrant and Seasonal Agricultural Workers Protection Act (AWPA), the Fair Labor Standards Act (FLSA), the Age Discrimination Act, and Section 1981. The Farmworker Unit provides representation at various levels, from individual clients in administrative hearings to crews of workers in federal law suits against large agricultural corporations.

The unit has a strong record of successfully engaging in complex federal litigation for the purpose of impacting farmworkers' lives by stopping abusive employer practices. In *Barajas v. Bermudez*, 43 F. 3d 1251 (9th Cir. 1994), the Farmworker Unit won a 9th Circuit Court of Appeals decision which held that Arizona's three-year statute of limitations for actions on oral contracts applied to the alleged AWPA violations. This litigation was significant to Arizona farmworkers who could now file claims for abusive practices going back three years.

In *Ochoa v. JB Martin and Sons Farms Inc.* 287 F. 3d 1182 (9th Cir. 2002) the Farmworker Unit won a 9th Circuit decision which held that: (1) a labor contractor was an agent of a grower, and a grower thus purposefully availed itself of the privilege of conducting activities in Arizona, for purposes of determining personal jurisdiction, and (2) assertion of personal jurisdiction over a grower was reasonable under the due process clause. With this ruling, employers from out of state could be held liable in Arizona if they used a middle man, i.e. a contractor to recruit for them in Arizona. This

decision was extremely important for Arizona farmworkers who do not have the resources to pursue claims in other states against out-of-state employers.

Currently, the Farmworker Unit is representing 171 U.S. workers in a case in the 9th Circuit Court of Appeals entitled *Murillo v. Services Agricolas Mex. Inc.* Case No. 12-16272. These plaintiffs previously worked for defendants as lemon harvesters. In 2006, Defendants applied to the Department of Labor to hire H-2A workers (temporary foreign labor) to harvest their crops. The Department of Labor requires that employers can only hire H-2A workers if there is not an adequate supply of U.S. workers and must recruit all former U.S. workers first. Defendants refused to recruit and hire any of the 171 Plaintiffs who are all U.S. workers and former employees.

Although a small group of plaintiffs were awarded modest monetary damages at trial, the Farmworker Unit is appealing the court's decision for all of the Plaintiffs. They are claiming violations of the AWPA and discrimination based upon alienage pursuant to Section 1981. A favorable ruling in this case would be vital to the farmworkers of Arizona who are legally in the United States and who should not lose their jobs because employers prefer temporary foreign labor.

### **Conclusion**

IOLTA funding in Arizona has supported CLS' Farmworker Unit's ability to succeed in outreach and litigation. These funds empower the farmworkers of Arizona and enable them to improve their working conditions and achieve economic sustainability.

*Pamela Bridge is a Senior Staff Attorney in the Farmworker Unit at Community Legal Services in Arizona. She graduated summa cum laude from Methodist University in 1992 and earned her J.D. in 1995 from the University of Southern California Law School. In 2011, she received the Sharon A. Fullmer Legal Aid Attorney of the Year Award by the State Bar of Arizona.*

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## News and Notes

The Commission on IOLTA welcomes new members **Eileen Letts**, **Cynthia D. Mares**, and **Jonathan Ross** for the 2012 – 2013 bar year.



**Eileen Letts** is co-founder and co-managing partner at the firm of Greene and Letts in Chicago, Illinois where her primary areas of practice are tort defense and commercial litigation. An active member of the bar, Ms. Letts is on the Executive Committee of the Illinois Coalition for Equal Justice and co-chairs the ABA Section of Litigation, Section Annual Conference. Ms. Letts was past president of the Lawyers Trust Fund of Chicago and the Chicago Bar Foundation. In addition, she has been a member of the

ABA's Commission on Women and liaison to the ABA's Special Committee on Solo and Small Firm Practitioners. She is currently a member of the American, National, Chicago, Cook County and Black Women's Lawyers Associations.



**Cynthia D. Mares** is Assistant Regulation Counsel for the Colorado Supreme Court, Office of Attorney Regulation Counsel. Having worked in both the Trial Division and the Central Intake Division of this office, her caseload covers a variety of ethical issues involving Colorado lawyers. Prior to joining the Office of Attorney Regulation Counsel, Ms. Mares served a Deputy State Public Defender in Denver for 15 years. She is the current President of the Colorado Hispanic Bar Association and the National Vice President of

Sections & Committees for the Hispanic National Bar Association. In addition, Ms. Mares is one of the newest members of the ABA Center for Professional Responsibility CLE Committee and a frequent presenter on Ethics issues throughout the State of Colorado.



**L. Jonathan Ross** is a Shareholder and Director of the Family Law, Domestic Relations and Litigation Divisions at the firm of Primmer, Piper, Eggleston and Cramer in Manchester, New Hampshire. Mr. Ross was past Chair of the ABA Standing Committee on Pro Bono and Public Service, as well as past Chair of the Standing Committee on Legal Aid and Indigent Defendants. In addition, he served on the ABA Board of Governors and was its liaison

to the Commission on IOLTA. Mr. Ross was a member of the Board of Directors of the New Hampshire Bar Foundation and Vice Chair and Director of the New England Bar Foundation. He received numerous awards for his work including: the ABA Grassroots Advocacy Award in 2012 and the National Legal Aid & Defender Association Arthur Von Briesen Award. Currently, Mr. Ross serves as a member of the New Hampshire Supreme Court Access to Justice Commission.

## Winter 2013 IOLTA Workshops

The winter 2013 IOLTA Workshops will be held on Thursday and Friday, February 7 – 8 in Dallas, Texas at the Hilton Anatole in conjunction with the ABA Midyear Meeting. The workshop sessions will address many timely topics and will provide opportunities for IOLTA staff and trustees to share ideas and network. For more information and registration, please visit <http://ambar.org/Midyear>.

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LRIS Feature

Pro Bono

**Everything You Wanted To Know About PAR Visits But Were Afraid To Ask**

IOLTA

*By George Wolff*

LRIS

**Everything You Wanted To Know About PAR Visits...**

*Brooklyn Bar Association LRS Director Roseann Hiebert and Lawyer Referral Service of Central Texas Executive Director Jeannie Rollo wear many hats within the LRIS community. Both are double Cindy Raisch award-winning LRIS directors, both have been repeat presenters at Nuts and Bolts and other sessions at ABA National Lawyer Referral Workshop, and both have served as ABA Program of Assistance and Review (PAR) consultants. Roseann and Jeannie were kind enough to sit down with me, via conference call, to discuss the who, what, where, when, why and how of PAR visits.*

**From the Chair**

**George Wolff:** What is a PAR visit and what does it cost?

**2013 LRIS Workshop**

**Jeannie Rollo:** The PAR visit is a review of the operations of a lawyer referral service at the request of a lawyer referral service or a bar association. It doesn't cost anything...except lunch. And we, the PAR consultants, talk to the bar association about best practices, its operations and what makes a lawyer referral service more accessible to the public.

LAMP

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**GW:** What do PAR consultants do to prepare for the PAR visit, and what do they do when they are there? What do they look for? Who do they talk to?

**Roseann Hiebert:** Questionnaires are sent to the bar association that we are going to visit ahead of time. We review their responses and see how they are doing with their program, taking into account that lawyer referral services can vary their practices greatly. We also confer with the other PAR consultants — we usually set up the teams as 2 or 3 consultants. When we visit the bar association we talk to everybody — we talk to the people answering the phones, we talk to the executive director — whoever is made available to us. We also talk to board members, which is usually our closing segment after we have reviewed the program. We want to get an overview of the program and make recommendations of how they can improve, based upon what their goals are. But, not everybody's goals are the same in having a PAR review; some want to get certification from the ABA, some just want to increase their collections, some want to increase the number of calls they are taking or referrals they are making...so it depends. It varies from bar to bar, based upon their goals and objectives, and what we observe.

**GW:** Who should be there to meet with the PAR consultants?

**RH:** Normally, the Lawyer Referral Director, the Bar Director, and the staff. Whoever they think is relevant to the conversation.

**GW:** Jeannie — What should an LRIS do in advance of a PAR visit to really get the most out of it?

**JR:** They should fill out the questionnaire as completely as possible, so that it can prepare the PAR consultants for the visit — so we know exactly what they are looking for and so we can zero in on what they need. Oftentimes, we discover other issues that they may be concerned about that they did not put on the questionnaire. Also, prior to the visit, the lead consultant will reach out to the contact person so that we can talk to them to see if there are other issues that they want to talk about...

**RH:** ...that might not be put in writing.



**RH:** Sometimes, there are sensitive issues; maybe the executive director is on board but someone else involved with the decision-making process is not on board. A lot of the time one of the attorneys that goes to the PAR consultation is one of our past or present ABA LRIS Committee members. They kind of angle towards the individual or authority figure who might be somewhat resistant because, you know, some people just want to keep the status quo.

**GW:** What are some of the reasons for having a PAR visit? And, of those, which do you think are the most common hypothetical scenarios that LRIS's need help with?

**JR:** I think many of them are concerned with how to be profitable, and collecting the fees that are due to them; beefing up their infrastructure; and doing more outreach.

**RH:** Sometimes they want to implement percentage fees, so we give them a blueprint. There is a place that I have been to twice, and will probably make a third visit to, before they get it done...

**JR:** ...and we do that in order to continually assist them in the process.

**RH:** Right. They are asking us to come back so that we can help them through the process. Some places are starting from scratch, sometimes they have to do it in baby steps — they do one part first and then we will go back and help them implement the second part.

**GW:** It sounds like it is sometimes appropriate to have multiple PAR visits. What is more common — single or multiple PAR visits?

**JR:** I think that multiple PAR visits may not be as common, but follow up is. I make myself available via phone or email and have many conversations with the folks who have received a PAR visit; either I check in with them or they call me and say: "I remember you said something about this. Can we talk about that again now that's it been three months after the PAR visit, so that you can refresh my memory on how we might go forward?" I think that kind of follow-up is more common than an actual second PAR visit.

**RH:** Yes, absolutely. We are always open to going back and discussing things with them but, like Jeannie said, most times you are not going back more than once — a lot of follow up is done on the phone. And, after the visit, we write a report which is sent back to the bar association with the overview of the whole visit, and our overall recommendation. We also debrief with the board or committee at the end of the visit, and then we formalize that in a written report.

**GW:** When is it the right time to have a PAR visit?

**JR:** I think the right time is when everyone is on board to make a change. It is often difficult for PAR consultants to visit a bar association that is resistant. When they are ready, we are ready.

**RH:** We don't know until the ABA gets the call that the bar association wants a PAR visit, and that's when the ABA decides what team they are going to send. The ABA picks consultants who are best matched for what the bar association wants to do with the program, and what type of bar association they are.

**GW:** When does it not make sense to have a PAR visit?

**RH:** I don't know that it ever does not make sense because even if you do not have everyone on board, it is always good to have your program reviewed. Even if they are not ready to make a major change, there might be small changes they can make to improve the referral service.

**JR:** There is a cost factor involved though. Since the ABA picks up the cost, there is probably an optimum time for resource management purposes. People can take advantage of the [e-mail] list serv[ice], too, and get some really great ideas that may improve [the program's] services without actually having a PAR visit — because it is expensive for the ABA to send PAR consultants.

**GW:** When would it be too late? Can you think of a hypothetical situation where a lawyer referral service requests a PAR visit, but they let something

fester far too long?

**JR:** Yes. I think there is that possibility. There are instances where it's just not going to work. This kind of goes back to where I stated that maybe they may not be ripe for a PAR visit because they are not willing or able to make changes — whether it be political within the bar association or financial.

**RH:** Well, I can think of one that was public knowledge: A lawyer referral service waited so long to request a PAR visit that they almost went belly up, and then someone had to do an emergency PAR visit.

**GW:** Who can request a PAR visit?

**JR:** The director, bar executive or committee requests a visit — it originates with the bar association.

**GW:** If things are not going quite right at an LRIS, and I'm a board member who oversees an LRIS, am I aligned with the PAR consultant or is the PAR consultant always going to protect the LRIS director? Who is the PAR consultant's client?

**RH:** I don't think that we protect anybody. I think that we are there as a neutral, third-party to make an honest evaluation and give our recommendation for best practices to achieve whatever goals they are looking to achieve.

**RH:** We are never on anybody's side. We can't go in there aligned with anyone because then we will not have any credibility.

**GW:** It sounds like there might be a lot of emotion or potential for conflict, blame, power struggles. How do you as a PAR consultant ensure that you get a clear picture of what is going on? And, how do you manage that situation?

**JR:** We manage it carefully because we are trying not to get involved in any kind of politics. And, oftentimes, we walk into politics and don't know it before we get there. We just have to be careful not to align ourselves with anybody, to stay neutral, and just stay on task at addressing the referral service's needs and not the global bar association needs.

**RH:** We do not impose any decisions on them. They decide what they are going to do and not do for their referral service. We only provide best practices — options and our honest neutral opinion.

**JR:** We are not really there to convince someone to do something. We just give them information and then we step away.

**GW:** Can you think of some hypothetical situations where strategies or proposed solutions had little financial impact but made a difference for the overall health of the organization?

**JR:** I do have an instance where it made an immediate effect: Shutting down a bar association directory. One bar association had a public directory up and their referral service was faltering. They followed the recommendation and it turned the referral service around. A year later the ABA got an email that said: "Thank you! Thank you! Thank you! It has revived." So, that was an instance where it was a quick fix.

**GW:** Are there grassroots marketing efforts that seem underutilized?

**JR:** For LRIS's that do not have large marketing budgets and do not have large staff we talk to them about what they can do immediately and at low cost: reaching out to libraries, courthouses, local organizations. And, those things can be difficult if there is not enough staff. But, we also help them with pulling in committee members, using them to help with this if the LRIS is understaffed.

**RH:** When I started at the Kansas bar, I was the only person doing the referral service, and trying to do that...I couldn't follow-up. If you don't follow-up, you don't collect money. If you want to be successful you have to dedicate at least some of the time to that, even if it means closing down early to do it, to send out billing on a Friday afternoon. It may not be so optimal when you are so limited with your resources. You can be referring

all the people in the world, but if you are not following up on those cases and then collecting the money it doesn't matter.

**GW:** What do you get out of being a PAR consultant?

**JR:** I just love lawyer referral services and I love the concept. I think it is a fabulous model and we have the opportunity to teach that model to other groups — I enjoy doing that.

**RH:** It gives you the opportunity to share the business of public service. And, you know, I came from a legal aid background, so when I first started lawyer referral the concept of money *and* helping people seemed to be contradictory. But, as I got more involved I realized that while, yes, they are paying for it if they were not coming to us who knows where they would be going. And, the more 'profitable' you can be the more you can help. Last year, I was able to give \$15,000 to pro bono projects. I like the idea of helping people and helping the public get what they need to get to a good lawyer, to get to resources.

**GW:** How many PAR visits do you estimate each of you have done?

**JR:** Maybe 7?

**RH:** I think I've done 5.

**GW:** If you could waive a magic wand, how would you like to see the PAR program evolve, if at all?

**JR:** I think multiple day visits and maybe multiple day follow-up would help.

**RH:** Sometimes, you want to get a little bit more in-depth.

**JR:** It would help a lot to be able to sit in on operations longer.

*If you would like more information about the PAR program and how it can help your LRS, please contact Jane Nosbisch or call 312/988-5754.*

*George D. Wolff is Manager of the Oregon State Bar Lawyer Referral and Information Service.*

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## From the Chair...

By *John Norwine*

### Standing Committee on Lawyer Referral and Information Service

Last month, I updated those in attendance at the LRIS Workshop in Las Vegas on what the ABA Standing Committee on Lawyer Referral and Information Services is doing for our lawyer referral services. The following is a digest of that update.

This past June, we convened a "Lawyer Referral Leadership Forum" in Chicago. For one full day, leaders from LRIS programs around the country came together to discuss issues and concerns relevant to the community. The diverse topics included discussion about the market "fit" and how effective we are in meeting the needs of our two constituent groups—the public and the legal community; what is necessary to increase access to justice and raise public awareness of lawyer referral services for persons of moderate income; and what can be done to overcome other barriers and challenges in growing our panel members, clients and community. Portland State University Marketing Professor Maureen O'Connor explored some effective ways to educate consumers about the benefits of lawyer referral. The end result of this forum was the creation of four task forces that have moved forward to work on projects of concern to the lawyer referral community. I'd like to now tell you a bit about each of these task forces and their members.

The first is the Task Force on the ABA Online Presence. The purpose of this group is twofold: 1) the group will monitor the emerging issue of a public-facing ABA member directory, develop a position relative to this issue, and assist the ABA LRIS Committee in coordinating a strategic response to this issue; and, 2) the group will facilitate development of an integrated intake system between the ABA and the public service bar association-based lawyer referral network. The process will rely on an online tool for electronic collection of relevant information from a person seeking legal help, and then route that data to a local bar-sponsored lawyer referral service for appropriate case screening and referral. This system would need to have revenue potential for the ABA in order to be feasible. The members of the ABA Online Presence Task Force are: Al Charne, Seth Chavez, Lisa Reep, Marion Smithberger and Carrie Witt.

Next is the Task Force on CLE Education for LRIS Panel Members. The purpose of this group is to develop a CLE curriculum geared towards educating primarily solo and small firm practitioners populating LRIS panels about the technological innovations that will improve their capacity to operate efficiently, as well as to provide content focused on best practices for LRIS membership. In coordination with the ABA CLE department and other relevant ABA entities, the curriculum will be marketed via LRIS public service programs across the country to LRIS panel attorneys. The members of this task force are: Brant Bittner, Carla Brown, Bill Ferreira and Rodney Low.

Third is the Task Force on LRIS Screening Practices. The purpose of this group is to develop best practices, guides and other tools to assist front-line call center specialists in providing effective "high-touch" screening services. The group will develop uniform national templates by harvesting national best practices and standards for operation of public service LRIS programs. Members of the Task Force on LRIS Screening Practices are: Brant Bittner,

Michelle Chavez, Brenda Ott, Pat Ruppert, Amy Seefeld and Susan Sowards. Finally, the Leadership Forum created the Task Force on LRIS Brand Development. The purpose of this group is to consider how to better brand the national collaborative public service LRIS network. The group will focus on what the consistent message(s) should be and how they can be delivered, and who are our best partners in delivering the message(s). Members of the Task Force on LRIS Brand Development are: Carol Conn, Roseanne Hiebert, Charles Klitsch, Jeannie Rollo, Joseph Satter, Britt Wegner, George Wolff and Maureen O'Connor (ex officio).

We have another exciting new project that we are planning to undertake that will help consumers to more effectively locate legal help through a local lawyer referral service program. For those of you who attended last year's workshop in New Orleans, you may remember the presentation from Ken Matejka of LegalPPC, who has developed a demo app for iPhone that will allow a user, through the use of GPS and a database, to quickly locate the nearest lawyer referral service. Ken has agreed to develop this app, with distribution by the ABA, at no cost to us. We have recently put forward a memo to the ABA Board of Governors seeking approval of this venture, and we expect a response after the Board's early November meeting. We are very grateful for Ken's willingness to help support the lawyer referral community by donating his time and talent for this project, and we look forward to being able to get this out widely to the public.

Since its creation, the Task Force on ABA Online Presence has been busy. One of the immediate projects being undertaken by this group is to shift the intake system for the Department of Labor Project away from a telephone-based system to an online system. As most of you know, the ABA manages the partnership with the U.S. Department of Labor (DOL), which directs potentially meritorious FLSA and FMLA claimants to their local lawyer referral programs for representation when the DOL is unable to directly pursue the claim itself. Currently, the DOL directs the claimant to call a toll-free number that walks the caller through a process that results in connecting that person to the appropriate LRS. Though we have had some success with this program, more work needs to be done. What we clearly understand, however, is that the cost of maintaining the telephone line is a financial burden, and the same function can be handled online at a fraction of the cost. So, this Task Force is exploring how to replace the telephone intake system with an online system that will accomplish the same goals. It has identified a model program, currently being used successfully by the ABA Military Pro Bono Project, to handle the intake and referral functions, and discussions are under way with that project's vendor to utilize the same model for the DOL Project. We hope to have a firm idea of the precise costs and functionality very soon.

Along the same lines as the DOL Project intake system, we are also looking at developing a parallel system, built on the same software platform that will act as a one-stop national intake point for consumers seeking referral to a lawyer. This single, national site, hosted by the ABA, will be designed to direct consumers seeking a lawyer to the appropriate local lawyer referral system. Having a national-level site with the ABA brand and marketing behind it will be a strong competitor against other national for-profit "lawyer referral services," and we trust it will be another effective way to bring new clients to your offices and raise awareness of the value of public service lawyer referral services.

This year, the Standing Committee on LRIS has also been working with the Employee Assistance Professionals Association (EAP) to place a rotating banner ad containing four messages on its website. The goal is to educate EAP providers about the availability of lawyer referral to assist their clients in resolving legal problems.

With all of this positive news, I want to also make sure you are aware of some not-so-positive news. As many of you know, the ABA leadership continues to look at allowing other ABA entities to create online, public-facing directories of their lawyers, such as the Section of Family Law. The ABA LRIS Committee has vigorously opposed this proposal, but our arguments have not yet carried the day. The ABA has long championed local public service lawyer referral services and adopted ABA policy urging that those systems verify that all participating lawyers are licensed, in good standing, and carry malpractice insurance. The Standing Committee on LRIS believes that by offering a publicly-accessible directory of ABA members

that does not include those safeguards; the ABA would act in a manner inconsistent with its own policy adopted to assure protection of consumers. Further, the ABA's proposal has potentially significant, long-term fiscal implications for state and local bar associations and their lawyer referral services. We will continue working on this issue and do all we can to reach a solution that supports public service-oriented lawyer referral services and all of their programs.

I hope this brings all of you up to date on our work, but please contact me if I can answer questions for you or if you have comments or suggestions for me.

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## SAVE THE DATE!

Please join us for the **2013 National Lawyer Referral Workshop at the Westin Peachtree Plaza in Atlanta, Georgia**  
**October 23–27, 2013**



Woodruff Park Waterfall  
Downtown Atlanta

*PHOTO CREDIT: Colin Jaccino*

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LAMP Feature

Pro Bono

**Preventive Law at the Battalion Level: Exploiting Successful Command Relationships**

IOLTA

*By Major Charles C. McLeod, Jr.*

LRIS

*An ounce of prevention is worth a pound of cure.*<sup>1</sup>

LAMP

**Introduction**

**Preventive Law at the Battalion Level**

On July 6, 2011, the Consumer Financial Protection Bureau (CFPB), the Judge Advocate Generals of the Army, Navy, Air Force, and Coast Guard, and the Staff Judge Advocate to the Commandant, U.S. Marine Corps announced an agreement on a Joint Statement of Principles designed to provide more robust protections for servicemembers and their families with

**From the Chair**

regard to consumer financial products and services.<sup>2</sup> Four significant goals developed by the CFPB and Judge Advocate Generals include: (1) protecting servicemembers from unlawful financial practices; (2) creating a system for the Offices of the Judge Advocate Generals and CFPB to relay information; (3) finding ways for the two groups to work together; and (4) improving financial literacy training within the armed forces.<sup>3</sup>

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The Joint Statement of Principles recognizes that servicemembers, veterans, and their families are attractive marks for unscrupulous business practices. The oftentimes young and inexperienced Soldier, Sailor, Airman, Marine, or Coast Guardsman receive reliable income from which they may be easily separated by smooth-talking car salesmen, investment professionals, or high interest loan officers.

This article scrutinizes recent efforts to better inform and protect servicemembers with regard to consumer-related issues. The matter is examined from the perspective of the unit commander; the individual responsible for everything the unit accomplishes or fails to accomplish. The analysis will show the service level, top-down paradigm must be supplemented to modify behavior at the unit level. After examining the current state of affairs, this article looks to the foreseeable future and develops potential courses of action for improved servicemember consumer education and protection, including liaison with the civilian bar. Ultimately, this article concludes that education—more so than legislation—is the appropriate solution to stemming the flow of consumer-related issues adversely affecting servicemember readiness.

### The Current State of Affairs

Despite legislation that may afford servicemembers distinct consumer protection benefits and service level efforts to increase servicemember awareness via training and education, progress appears to be incremental. The sheer volume of consumer protection issues raised by men and women in uniform requires a response from the highest offices in the land; however, the top-down approach to addressing what is essentially an individual servicemember issue may prove to be only a temporary solution. Conceding that consumer financial products are dangerous and, as Justice Cardozo remarked, "[d]anger invites rescue,"<sup>4</sup> the legislation over education model could cause local stakeholders to cede initiative to bureaucracy. Rather than waiting idly for a solution, the military model suggests that a solution may lie in proactive decision-making and shaping operations.

Indeed, the military model reflects a particular ethos: the primacy of the commander in ensuring good order and discipline. The seamless integration



of judge advocates at the unit level in support of current operations has successfully demonstrated the benefits of employing attorney assets to provide legal support.

### **The Road Ahead**

While services may tout the provision of quality preventive law programs that educate servicemembers with respect to personal and legal rights and responsibilities, actual practice may demonstrate an appreciably different perspective. Accordingly, the special relationship between a commander and his or her judge advocate should be leveraged to educate the commander with regard to the special financial challenges and unique risks faced by servicemembers, establish clear lines of communication with subordinate commanders, and ultimately achieve an effective preventive law campaign at the small unit level.

Although an effective preventive law program at the battalion level would address legal issues other than financial responsibility, the purpose of the program would be threefold: to educate servicemembers and their families, allowing the military member to focus on mission requirements; to prevent legal problems from occurring; and to minimize time and resource expenditures to correct legal problems when they arise. Among other things, an effective program would emphasize mobilization and deployment preparation, commander and senior enlisted advisor awareness, individual servicemember awareness, and legal assistance and consumer protection. To achieve success, the battalion or brigade commander—not the judge advocate—must establish the preventive law program. Once created, the judge advocate may implement a formalized, commander-based preventive law effort that is a wide-ranging, deliberately planned, and carefully supervised program designed to facilitate servicemember readiness.

### **Realistic Courses of Action**

Although a preventive law program may be established—and perform successfully—without significant involvement by a unit commander, command endorsement provides authority, bolsters credibility, and underscores the importance of financial protection. The following discussion presupposes the battalion or brigade commander has established a preventive law program and tasked the judge advocate with implementing it. As such, initiatives would ostensibly be received by subordinate commanders and staff sections as if directed by the commander, rather than proposed by an idealistic judge advocate. There are three major activities judge advocates may include in preventive law programs.

First, judge advocates may conduct oral presentations at commander and senior staff noncommissioned officer seminars, staff meetings, base committee meetings, and newcomers' orientations. Preferably, the commander would announce the establishment of a preventive law program at staff gatherings and during meetings with subordinate commanders. Once publicly recognized as the point of contact for program implementation, the judge advocate could make liaison with subordinate commanders and their staffs to identify the legal and consumer protection issues most important to the unit. Upon receipt of information outlining the most pressing legal and consumer issues facing the command, the judge advocate may begin specially tailoring informative presentations or other training aids for future use.

Second, judge advocates may submit articles for base newspapers, daily bulletin notices, or unit bulletin boards; prepare handouts or pamphlets for distribution at the legal office and other appropriate offices (e.g., the office of the chaplain and/or Family Readiness Officer); and prepare training materials (e.g., PowerPoint presentations, lesson plans for informal lectures, and/or resource sheets) for subordinate commanders to incorporate into their unit training plans to meet information needs. Having conducted appropriate investigation into the matters most important to each of the battalion or brigade subordinate elements, the judge advocate may begin to formulate his or her information campaign. Though reaching individual servicemembers is a welcome benefit of the information campaign, its object is not the individual, but rather, his or her chain of command.

Finally, base radio, television, or intranet assets may be utilized to address legal issues or advertise educational possibilities. Consumer-related public service announcements or periodic e-mail messages may be disseminated

throughout the installation or the battalion or brigade area of responsibility. The judge advocate may enlist the assistance of the public affairs section to modify his or her page on the command web site, incorporating a recurring block of instruction on various consumer protections or preventive law topics. The seemingly endless possibilities associated with electronic media enables the tech-savvy judge advocate to reach individual servicemembers around the clock and in highly innovative ways.

### **Liaison with the Civilian Bar**

Although judge advocates at the battalion or brigade level should aspire to administer the commander's preventive law program, they may not always be best suited to do so. As such, civilian attorneys may be better situated to help implement robust unit and command-based preventive law programs. Judge advocates and their supporting Legal Services Centers' legal assistance attorneys should establish and maintain relationships with national, state, and local bar organizations.

A dynamic civilian attorney-judge advocate relationship is important to the commander's preventive law program because many civilian attorneys possess expertise in complex or nuanced consumer law, family law, landlord-tenant, and employment law issues and may have a surplus of experience as compared to their military counterparts. In order to successfully implement the commander's preventive law program, it may be necessary for a judge advocate to consider the servicemember's goals or interests and leverage civilian attorneys' experience to solve legal problems that fall outside the scope of legal assistance. In addition to representing individual clients, civilian attorneys who can teach servicemembers at the unit level are valued assets.

Much like the instruments of national power are wielded simultaneously to achieve political objectives, an effective preventive law program must use all of the tools at its disposal to achieve its goal. The end state: a battalion or brigade commander intimately familiar with the posture of his or her preventive law program, genuinely concerned subordinate commanders and senior staff noncommissioned officers providing consumer education and preventing poor consumer decision-making to the greatest extent possible, and engaged small unit leadership capable of identifying the early stages of consumer exploitation.

### **Conclusion**

Because of their contributions to the military justice system and basic operational law training and education, judge advocates have become trusted advisors to commanders. This special trust and confidence provides instant credibility as special staff officers and well-rounded legal experts, affording judge advocates opportunities to truly and meaningfully affect organizational change. Though some may not realize it, judge advocates stand poised to enhance the effectiveness of the legal voice within the military.

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*The opinions and conclusions expressed herein are those of the individual author and do not necessarily represent the views of the Department of Defense or its components.*

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<sup>1</sup> The Electric Ben Franklin, available at <http://www.ushistory.org/franklin/quotable/quote67.htm>.

<sup>2</sup> Consumer Financial Protection Bureau and Military's Top Uniformed Lawyers Release Joint Statement of Principles, U.S. Dep't of the Treasury, July 6, 2011, available at <http://www.treasury.gov/press-center/press-releases/Pages/tg1233.aspx>.

<sup>3</sup> CFPB, Military JAGs Pen Agreement, Nat'l Ass'n of Fed. Credit Unions, July 8, 2011, available at <http://www.nafcu.org/Tertiary.aspx?id=23310>.

<sup>4</sup> See *Wagner v. Int'l R.R.*, 232 N.Y. 176 (1926).

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Fall 2012  
VOL. 16, NO. 2

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## From the Chair...

By David G. Ehrhart, Brig Gen, USAF (Ret.)

### Standing Committee on Legal Assistance for Military Personnel

As I write this column, we are now in the season when we prepare our standing committee's annual plan as mandated by the ABA Board of Governors Program Evaluation and Planning Committee. As we go through the process of having our work of the last year reviewed and our upcoming planned activities evaluated, I am reminded that a significant aspect of LAMP's charge is to engage in active policy advocacy on civil legal issues affecting military personnel and their families. I thought it appropriate, therefore, to highlight some of the LAMP Committee's recent activities, in close coordination with the ABA Governmental Affairs Office, on a few key policy matters.

#### Defense

The LAMP Committee annually monitors the development of the National Defense Authorization Act (NDAA), and, as of this writing, the U.S. House has completed its version of the NDAA for fiscal year 2013 (H.R. 4310) but not without some necessary fixes to come. Rep. Elijah Cummings (D., MD), for example, sponsored H.R. 5747, the Military Family Home Protection Act, which was amended to H.R. 4310 prior to enrollment. The bill would provide a range of new protections for military families from foreclosure. However, a subsequent House Veterans Affairs Subcommittee hearing, featuring LAMP's own alumnus Col John Odom, USAFR (ret.), shone a light on problems that could arise under the bill. The standalone bill was amended and reported to the full Committee. While the House Defense Authorization bill has been completed, there will be an opportunity to change the language through the Senate's legislation and likely conference report prior to enactment. The Senate's bill, S. 3254, has been reported out of Committee and awaits action on the Senate Floor. The LAMP Committee continues following Congressional action on the 2013 NDAA and, as with the foreclosure protection amendment, will find ways to provide guidance to ensure that problematic issues are addressed.

#### Child Custody

One additional challenge presented by the House's work on the 2013 NDAA arose with the inclusion of the language of H.R. 4201, the Service Member Family Protection Act. For the past several years, the Section of Family Law Military Law Committee, with support of the LAMP Committee, has actively opposed the objective of this legislation, which would bring child custody issues under the Servicemembers Civil Relief Act and thereby bring these traditionally state-law based matters under federal question jurisdiction. The ABA and a growing coalition of stakeholders sent letters to both House and Senate Armed Services Committees, and the Veterans Affairs Committees, explaining the problems with that standalone bill. Both *Stars and Stripes* and *Army Times* wrote articles, the former highlighting problems with the legislation and the politics around it, but the latter included an editorial calling for passage of the legislation. Similarly, every member of House Armed Services Committee was a cosponsor of the H.R. 4201, and it sailed through the full House under a consent calendar, 390–2. The Senate's version of the 2013 NDAA does not include the language and lawmakers are opposed, though LAMP remains vigilant in the event there should be a change. Giving our Committee some hope for a change in

direction on this issue, the Uniform Law Commission in July approved its Uniform Deployed Parents Custody and Visitation Act. This uniform act addresses the problems and concerns that prompted the Service Member Family Protection Act, but seeks to remedy these through uniform state family court laws rather than by federalizing child custody determinations. The Uniform Act has already been provided to state legislatures with upcoming sessions; it will be distributed to all fifty states.

### **Sexual Assault**

Another issue we have tracked under NDAA has been attention to sexual assault. Last Congress, new procedures and laws were enacted to direct the Department of Defense (DoD) in its handling of sexual assault reporting, investigation and prosecution of sexual assault cases. Still, criticism continues including through H.R.3435, the Sexual Assault Training Oversight and Prevention Act (STOP Act). This legislation proposes several substantive changes to how these cases would be administered. The nature of the changes, however, have given rise to opposition from the DoD, and the LAMP Committee joined the ABA Standing Committee on Armed Forces Law its bid for new ABA policy on this issue. To date, the ABA has attempted to educate Congress on technical issues with the STOP Act while adding to the voices that more needs to be done, even since the enactment of new protections in the 2012 NDAA.

Consistent with this, it does seem that Congress will make further strides in sexual assault prevention, training and prosecution. Both the House and Senate 2013 NDAA include a range of proposals to enhance the existing system including several new requested reports back to the Congress on progress. The Senate Armed Services Committee Report also includes language addressing the need for enhanced reporting on sexual assault training, collaboration in prosecution and related language directing the Secretary of Defense to report back on the impact of the extension of several rights to victims in military justice matters.

### **The Justice for Troops Act, S. 1106**

Missing from this year's NDAA is the Justice for Troops Act, S. 1106. This legislation would give the DoD the spending authority to divert up to \$500,000 through competitive grants to support pro bono legal assistance efforts, such as the ABA Military Pro Bono Project operated by the LAMP Committee. Early opposition to the bill came from the Obama Administration, in particular the Office of Management and Budget (OMB), which considered the bill a constructive earmark as no national entity could reasonably compete with the ABA. Further, the Department of Defense has come out in opposition to the bill since it is believed that it would require the military services to each contribute funds to it. We do not agree with that interpretation and intend to reach out to the Department to discuss before the 113th Congress. We have been working with our supporters in Congress to demonstrate how the support could be used for purposes not involving the ABA to strengthen the network of programs on which we rely. We have been open to limiting the amount that could go to any single beneficiary, and, of course, we believe the presence of the funding could seed new projects not yet in existence. Still, we understand from congressional staff the proposal is all but dead this Congress given the state of play and the possible stigma that would follow any member pushing for what looks like a new cost, no matter how noble. We continue to support the ABA Governmental Affairs Office in carrying out meetings with House leaders who like the bill, and discussions continue with OMB, the DoD, and others on language.

On the plus side, the Senate Report to NDAA, S. Rept. 112–173, expressly lauds the work of the ABA Military Pro Bono Project and directs the DoD General Counsel to consult the services and make recommendations by March 2013 of additional ways to expand support for the ABA project "in a budget-neutral" manner. It is not yet clear what this may mean, although the ABA is grateful for the DoD's Office of Legal Policy's technical support to date.

There are many other issues working through Congress affecting both active-duty servicemembers as well as veterans that we continue to follow and comment upon when appropriate, but the above matters are reflective of the range of policy work that is central to LAMP's role within the ABA to be the voice of military personnel and their families to policymakers.

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