

# Opening Statement

## Making a Difference: Access to Justice

by **Judith A. Miller**  
**Chair, Section of Litigation**

Throughout the 34 years of its existence, the Section of Litigation has devoted extraordinary effort to preserving and promoting the American justice system. We spearheaded the Vanishing Jury Project, which led to the ABA's American Jury Project. We created the Task Force on the Independence of the Judiciary, which has focused on practical ways to assure that our judges are the fair and impartial decision-makers that are so central to public confidence in our system of justice. We have crystallized our commitment to these bedrock values in the Section's newly adopted strategic plan, the Section at 40. And in the daily work of our committees—on children's rights, trial evidence, and class actions, for example—we are taking a variety of actions to reinforce meaningful access to the courts and reasoned decision-making once inside the courthouse doors.

I'd like to highlight just some of the work underway in some of these areas and to again invite your ideas and help. Let me start with the Children's Rights Litigation Committee (CRLC), which had its genesis during Chair Louise LaMothe's year, 1993-1994. One targeted example of its work is the 2004 Report on the Legal Needs of Harris County (Texas) Children. That report has been credited with the development of the Children at Risk Public Policy and Law Center (PPLC)—funded in part because of the report's appeal to the private bar “to get involved and use its legal expertise on behalf of Houston's children.”

We have been told that the PPLC has taken the recommendations of our report to heart. It established an advisory board, made up of more than 40 attorneys from Houston law firms and corporations, which seeks to raise public awareness and increase local expertise in legal issues that affect children. The center has started a CLE series, the first conference of which,

the Nexus between the Education and Juvenile Justice Systems and the Impact of Mental Health Issues, is being held this fall and is cosponsored by the South Texas College of Law, the University of Houston School of Social Work, and the Texas Southern University Thurgood Marshall School of Law.

The PPLC has also completed its first legislative session. Although its public policy analysts advocated and testified on behalf of many bills related to children, staff and volunteer attorneys were directly involved in the drafting of legislation regarding human trafficking, increased transparency in the high school graduation rate, and Texas Youth Commission (TYC) reform (including establishing the Office of Independent Ombudsman and training requirements for correctional officers).

Since the end of the session, the center's policy analysts, staff attorneys, and legal interns have continued efforts to study children's legal issues, including the issues covered in our report, and they are in the process of formulating strategies to advocate for change on statewide and local levels. As part of that process, the center's staff have made numerous site visits around the Houston area, including the Harris County Juvenile Detention Center and the TYC facility located in Beaumont. They have observed firsthand the conditions of confinement and have spoken with staff members about rehabilitative efforts, funding issues, and facility needs.

I have focused on the ongoing efforts in Harris County to underline the fact that imaginative Section of Litigation Committee work can provide the basis for effective and ongoing action that ranges far beyond what the Section might be able to do by itself to improve access to justice. This year, the CRLC is similarly pursuing several large initiatives in areas

of policy and in starting new children's law programs and training programs.

In the area of policy, and due to a Supreme Court decision 40 years ago, children have a constitutional right to counsel in delinquency cases that put them at risk for incarceration. In abuse and neglect cases where children can permanently lose their parents, extended families, homes, geographic neighborhoods and communities, and all ties to what they have known in their young lives, no right to counsel has been secured. In 2005, the first federal court judge found that children have the right to counsel in abuse and neglect cases under the Georgia Constitution. The committee recruited law firms and law students to research whether a similar right to counsel might be found under other state constitutions, and this year compiled research papers for all 50 states, which will be used as the basis of a plan to work toward a right to counsel. The committee is also working with Section leaders and council members to oppose model legislation proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) that undercuts a child's right to counsel in abuse and neglect cases. NCCUSL will be bringing their model legislation to the ABA House of Delegates at the Midyear Meeting in February 2008. It will be a top priority of the CRLC to work with ABA children's law entities to determine whether ABA policy is necessary on this right-to-counsel issue.

The committee will also continue with one of its primary missions, assisting with the start-up of new children's law programs across the country. As a result of its program during the Section's leadership meeting in Charleston, South Carolina, the committee has had discussions with numerous law firms that are considering expanding their firms' pro bono efforts to focus on children, and the CRLC continues to respond to requests from throughout the country to assist lawyers who are putting together new programs (or expand existing ones).

The CRLC is also in the final year of its three-year project to put together a video on interviewing children. The first year focused on the script; last year found funding and

hired a production company, which began filming this past summer. This year will include the completion and distribution of the video and accompanying materials. The final video will be completed by January 1, 2008. The video is introduced by Amy Brenneman of *Judging Amy* and *Private Practice*. The committee will begin distribution of the 3,000 videos and materials in January to all children's law centers, legal clinics, and resource centers. It also plans to send the materials to courts, public defender agencies, and additional facilities. Once initial distribution is complete, the video will be available for order.

Finally, the CRLC plans to offer another national teleconference during early 2008. It has offered free teleconferences to public interest lawyers for the past three years and has had at least 300 callers for each training. Past teleconferences continue to be offered on the ABA's CLE Now! website.

Of course, no amount of aid in providing access to justice will matter if we don't have courthouses and judges that are open and fair—and perceived as such. One of the Section's continuing task forces, the Task Force on the Independence of the Judiciary, has focused on how to effectively support the judicial branch as this institution faces increasing challenges in delivering on that goal.

Attacks on the independence of the judiciary have been increasingly documented in the press and legal publications. Unfair attacks may occur as a result of a decision rendered by a judge. When an unfair attack occurs, it is crucial that the response be accurate, timely, and professional. Although he or she may be permitted to do so, the attacked judge will likely feel reticent to respond to the criticism, particularly when it involves a pending matter or a matter that may come before the court. Moreover, response from a neutral body will often be more effective in helping the public to understand the reality of the situation. The task force is working to establish response teams that are well positioned to act in a timely manner that informs and educates the public.

Unfair attacks on judges or candi-

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dates for judicial office may also occur during judicial elections. These attacks have become more plentiful in the aftermath of court decisions that remove restrictions on political speech and activity by judges and candidates for judicial offices and that prohibit limitations on so-called “issue” advertising. Because groups may now readily identify those candidates who share their political views, they are better able to expend their resources subjecting other candidates to public criticism in issue advertisements. Unless these attacks are addressed promptly and professionally, the public may be misled in how to cast its vote. The resources that the groups are able to expend often make it impossible or unfeasible for a judge or candidate to respond on his or her own. Although a few states have established conduct commissions to deal with unfair attacks during campaigns, many have not. Our task force intends to become informed as to the work of the conduct commissions in existence and, based on that information, to determine whether ABA policy should be developed to address unfair attacks leveled against judges or judicial candidates during campaigns.

The Section created the Litigation Assistance Partnership Project (LAPP) in 1989, which works to link pro bono resources of private firms with legal services and public interest programs across the country. LAPP’s core function is to identify and place significant pro bono litigation with private law firms nationwide. These are complex, often time-consuming cases that require resources unavailable to public interest programs. LAPP works with programs and issues involving subject areas not handled by other national public interest programs and clearinghouses. LAPP also serves rural programs without local pro bono resources for major litigation and finds out-of-state attorneys when necessary because of local conflict or other limitations. LAPP is meant to complement, not replace, other pro bono resources.

As a national clearinghouse for major pro bono litigation, LAPP fills a critical void facing legal services and public interest programs. Since its inception, LAPP has placed over 200 cases on behalf of welfare recipients,

abused and neglected children, migrant farm workers, patients with mental illness, and public housing residents, among many other clients. Through their participation in LAPP, law firms have donated thousands of hours of attorney time and other resources, representing underserved populations in all regions of the United States.

I also want to highlight the Section’s Judicial Intern Opportunity Program (JIOP)—a key component of the Section’s initiatives to expand opportunities in the legal profession to lawyers of color. One of the goals of both the ABA and the Section is to build a strong and diverse legal profession. JIOP, established in February 2000, addresses that goal and places minority and financially disadvantaged law students in summer internships with federal and state judges for a minimum of six weeks. Due to the generosity of sponsoring new firms, the program awards each selected student \$1,500.

The mission of JIOP is to enhance opportunities for minorities and financially disadvantaged law students in the profession. JIOP achieves this goal by providing opportunities for these students to serve as judicial interns. In addition, the judges, interviewers, and contributing law firms have often served as both mentors and future references. Taken together, these efforts also will pay off in another fundamental way: providing those of diverse backgrounds with the potentially increased choice of seeking access to the justice system through attorneys with similar backgrounds.

The Section has run the program for five years, taking over the original program from the Section of Antitrust Law. During that time, the program has grown tremendously. We added three program sites during summer 2007—Washington, D.C.; San Francisco; and Dallas—to our previous list of Illinois, Texas, Miami, Phoenix, and Los Angeles. The summer 2007 program placed 167 students with 139 participating judges; since its inception, the program has placed nearly 700 students with judges for internships. Students participating in the program take part in a screening interview with a member of the Section prior to selection. Once selected, JIOP interns

participate in a welcome reception and orientation that expose them to the many paths and choices associated with a career in the legal profession. Speakers for the orientations come from our many supporters, including members of the Section, other ABA sections, law firms, bar associations, bar foundations, and judge associations.

The program is marketed to all law schools, deans of law schools, and ABA entities and is linked to a variety of websites. Summer 2007 applicants represented 107 law schools, with 69 different law schools placing students in the program.

I have called on the Section’s leadership this year to commit to a “bias for action”: to serve our profession and our fellow citizens in areas like access to justice, where we can in fact make a difference. As the discussed examples attest, that has been fundamental to the work of the Section for many years. To carry that tradition forward, this year we are planning to help connect volunteer trial lawyers to the representation of returning active duty military personnel in civil litigation—a role that the Judge Advocate General Corps typically fills for these service members but with which it now temporarily needs additional help. And we are also considering participation in a pilot immigration project in San Diego, where, again, we hope to be able both to provide in-court experience for volunteer lawyers and to make a real contribution to the administration of currently beleaguered federal courthouses. With any luck, this pilot may also be a model for continuing work in other jurisdictions around the country—just as the CRLC has taken and run with pilot projects.

I am interested in whether you think we are on the right track; whether you’d like to help in any of the initiatives I’ve described; and whether you’ve got a better idea to suggest to us. If you do, please e-mail me in care of [pengelhard@staff.abanet.org](mailto:pengelhard@staff.abanet.org). □