

Dialogue

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Pro Bono North of the Border: The Canadian Experience

by Lynn Burns

It is a given that pro bono work is valued as a professional obligation among lawyers everywhere. That said, providing a system that maximizes lawyers’ time and facilitates participation is critical to building routine involvement by the bar.

As American providers well know, this is at the heart of what are known as “organized” pro bono delivery systems. It’s a formula that has worked remarkably well in Ontario, Canada.

The ways in which organized pro bono legal services are developed and delivered vary widely. Local institutions, resources and leadership play a significant role in defining how pro bono is integrated into the legal services delivery system of any particular community. It is important for those who develop pro bono opportunities to both learn from other successful programs and adapt to changing circumstances.

Nowhere has this been more evident than in Canada, where organized pro bono is a relatively new phenomenon. This examination of Pro Bono Law Ontario (PBLO), and its success demonstrates one example of how Canadian pro bono has benefited in great measure from the trailblazing of our colleagues to the south.

A blank slate

When PBLO opened its doors in 2002, there was no organized pro bono in the province. The majority of lawyers believed that providing occasional pro bono legal services was

a professional obligation, which they met on an ad hoc basis. But there were no significant programs or facilitating mechanisms to assist willing lawyers. Not surprisingly, large law firm involvement was incidental: Pro bono was not encouraged as a matter of policy and pro bono participation was neither tracked nor measured. The random nature of ad hoc pro bono service minimized the number of lawyers prepared to do it, the interest of the legal aid programs in supporting it and, naturally, the number of

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2007 Equal Justice Conference



Colorado Governor Bill Ritter and former Clinton administration official Maria Echaveste were among the speakers who greeted the 972 attendees of the 2007 Equal Justice Conference in Denver. Turn to page 10 for more conference coverage.

Photos courtesy Jane Ribadeneyra/NLADA

DIALOGUE

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Mark Schickman
Chair, ABA Standing Committee on
Pro Bono and Public Service

Ron Abernethy
Chair, ABA Standing Committee on
Lawyer Referral and Information Service

Deborah G. Hankinson
Chair, ABA Standing Committee on
Legal Aid and Indigent Defendants

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

Joanne M. Garvey, Jonathan D. Asher
Co-Chairs, ABA Commission on IOLTA

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

.....
Terry Brooks
Director, ABA Division for Legal Services

David Holtermann
Editor, ABA Division for Legal Services

Gail Thompson
Division Designer
ABA Division for Legal Services

.....
Comments, suggestions and proposed articles
should be directed to:

David Holtermann
ABA Division for Legal Services
321 N. Clark Street
Chicago, IL 60610-4714
312/988-5744
fax: 312/988-5483
email: holtermd@staff.abanet.org

Address changes and subscription inquiries
should be directed to:

Margie Bruynseels
ABA Division for Legal Services
321 N. Clark Street
Chicago, IL 60610-4714
312/988-5749
fax: 312/988-5483
email: mbruynseels@staff.abanet.org

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Chicago, IL 60610-4714
fax: 312/988-6030
email: copyright@abanet.org

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Canadian Pro Bono

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clients who sought it.

With a significant, publicly funded legal aid program in Ontario, there were some cries of concern when PBLO was first developed. Would private lawyer involvement give the government the excuse to slash the legal aid budget?¹ Others felt the arrival of PBLO was a threat to Ontario's cherished *judicare* system.

PBLO responded by announcing its guiding principle: Pro bono projects will complement, not duplicate, the services offered by Legal Aid Ontario. Because Legal Aid Ontario only covered limited areas of family, criminal, refugee, and general poverty law, this left plenty of service gaps for PBLO to address. Furthermore, the income eligibility tests for Legal Aid had been stalled at a very low level for several years, which supported PBLO's desire to reach out to a broader segment of the low-income population.

As the first organization of its kind in Canada, PBLO has risen to the creative challenges of defining the scope and structure of organized pro bono, developing the capacity of the private bar to engage in pro bono, and creating programs that are attractive, effective and sustainable. PBLO acts as a full-service consulting organization, taking on roles that in the United States are the separate domains of IOLTA programs and state bar associations.

One of PBLO's ongoing tasks is enhancing pro bono involvement by addressing barriers to participation. In 2003, the organization worked with LawPRO—the legal malpractice insurer in Ontario—to develop insurance coverage for lawyers participating in PBLO pro

bono programs. In 2006, PBLO worked with the Law Society of Upper Canada—the profession's regulatory body—to introduce emeritus rules for retired pro bono lawyers. In 2007, the organization plans to take on the challenge of revising rules for unbundling legal services and amending conflict of interest rules to support court-based pro bono programs.

Interestingly, the obvious lack of any organized pro bono in Ontario, and the desire for it (reflected in the willingness of lawyers and the growing numbers of potential clients) paved the way for a strong pro bono culture and marketplace in Ontario.

Best practices and projects

At the start, PBLO published a Best Practices Manual for Pro Bono Programs. All PBLO "registered" projects must follow the best practices identified in the manual. To be considered "registered," these projects must incorporate various quality assurance mechanisms to support clients and volunteers, and they must make ongoing reports to PBLO about program activities and outcomes.

In exchange for this affiliation with PBLO, the projects receive various capacity building supports as in-kind services. These include, but are not limited to, referral to LawPRO for malpractice coverage, fundraising support, strategic guidance and management consulting, communications and outreach support, dedicated space on the PBLO Web site, and legal education curriculum to support volunteer recruitment and retention.

Very quickly, regulators and the organized bar were relieved to have a coordinating body to ensure that organized pro bono services were being delivered

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From the Chair...



by Mark I. Schickman
Chair of the ABA Standing Committee
on Pro Bono and Public Service

My career has developed in a legal community in which the connection between pro bono volunteers and legal services staff is nearly seamless. San Francisco's legal aid programs have expert staff on a wide variety of substantive legal issues affecting the poor. But, every year those efforts are buttressed by more than 25,000 hours of pro bono volunteer help from the Volunteer Legal Services Project of the San Francisco Bar Association (VLSP), which serves more than 20,000 low-income clients a year.

The VLSP is often described as "the jewel in the crown" of the San Francisco Bar Association. It has been at the center of BASF's fundraising efforts and a programming focus for every BASF president for the past 30 years. Therefore, it has always been a given that the local bar—with over 1,000 pro bono lawyers in its midst—will be a strong and active supporter of legal services for low-income people.

While I am dismayed when I occasionally hear of friction between the staff attorney and pro bono models, I am well aware that in other communities these conflicts have bogged down legal services delivery systems. In recent years, the ABA Standing Committee on Pro Bono and Public Service has

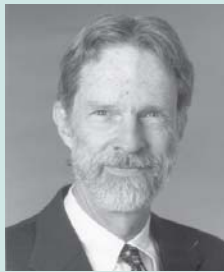
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2007 ABA Pro Bono Publico Award Recipients

The ABA Standing Committee on Pro Bono and Public Service has recognized five individual lawyers and law firms that have demonstrated outstanding commitment to volunteer legal services for the poor and disadvantaged. The recipients of the 2007 ABA Pro Bono Publico Award will be honored on August 13 at the Pro Bono Publico Awards Assembly Luncheon during the ABA Annual Meeting in San Francisco.

The award honors individual lawyers, law firms, government attorney offices, corporate law departments and other institutions in the legal profession that have enhanced the human dignity of others by improving or delivering volunteer legal services to the poor.

The Pro Bono Committee received 26 nominations for the 2007 Award. After a very thorough review the committee selected the following lawyers and law firms as recipients of the 2007 Award:



Robert Borton, based in the San Francisco office of Heller Ehrman LLP, has been a leader in the development of pro bono services to the poor for the past three decades, both through his management of his firm's pro bono practice and his individual representation of low-income clients. Working with a number of legal services organizations, Borton has paired many teams of pro bono attorneys from his firm with public interest attorneys in order to pursue civil rights cases and class actions on behalf of immigrants, children and families, women prisoners, and other groups. He has assisted in setting up pro bono legal clinics and has contributed hundreds of hours of his own time to representing indigent people in class action lawsuits and individual cases.

Borton has also tapped Heller Ehrman's resources to increase access to justice. He has invited young attorneys from legal services agencies to attend his firm's in-house litigation training program, providing them with comprehensive training free of charge. He has marshaled attorney involvement in activities ranging from research support for policy impact cases to organizing of a team of 13 attorneys to teach 120 Oakland high school students about civil rights.

Borton also has made taking pro bono cases an integral part of Heller Ehrman's training and culture. He is particularly committed to encouraging pro bono involvement among newer associates and engaging his and other law firms to staff clinics and provide resources to legal services agencies. Because of his many years of pro bono service, Borton has won a number of pro bono awards, including the State Bar of California's President's Pro Bono Service Award, the Lawyers' Committee for Civil Rights Robert Sproul Pro Bono Award, the Bar Association of San Francisco Award of Merit and the San Francisco Legal Aid Society's Roll Call for Justice Award.

Derfner, Altman & Wilborn

Derfner, Altman & Wilborn is a small firm with a big heart. This Charleston, South Carolina law firm is exemplary in its dedication to pro bono,

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From the Chair...

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made significant headway on this issue through outreach, training, articles and more. In this context we are excited to welcome and participate in a reinvigorated effort by the Legal Services Corporation (LSC) to promote and support the private attorney involvement (PAI) activities of its grantees.

LSC has long supported pro bono as part of its broader PAI commitment. The LSC board's adoption in January of the "LSC Action Plan for Private Attorney Involvement" as well as a PAI-related resolution passed by the board in April, seek to give a higher profile to pro bono efforts—presumably in support of LSC's long-term mandate that grantees devote 12.5 percent of their resources to private attorney involvement efforts. As the LSC found and reported in 2006, more than 50 percent of qualified clients who seek free legal help from LSC grantees are turned away for lack of resources. Pro bono assistance surely can help to close that gap.

The LSC Action Plan for PAI advocates a closer working relationship between the LSC and the ABA, with a joint exploratory committee to consider a national "Pro Bono Day" and an accompanying national pro bono award. While LSC leadership and staff are frequent speakers at the Equal Justice Conference, this action plan formalizes and memorializes that practice while expanding LSC's PAI outreach to NLADA, the Conference of Chief Justices, law schools, and bar associations.

If you think this Action Plan sounds like it is stating the obvious, take a look at LSC's April 28, 2007 "Resolution in Support of

Enhanced Private Attorney Involvement with LSC-Funded Programs." Referring to the PAI action plan, and the ABA's Model Rule 6.1, LSC resolved to "collaborate with other organizations and entities" to demonstrate that pro bono help can help address the unmet civil legal needs of the poor, and develop strategies to increase pro bono representation. The LSC Board resolution urges governing boards of LSC-funded programs to:

- Collaborate with other organizations in their service area to develop educational efforts that demonstrate the extent of the unmet civil legal need and encourage collective responsibility by both public and private entities to help meet the need
- Collaborate with other organizations to develop effective strategies for engaging lawyers in pro bono representation
- Include in collaborations organizations and entities such as state and local bar associations, access to justice entities, law firms and corporate law departments, law schools and clinics, government and military law offices, and state and federal courts
- Develop strategies that encourage pro bono, including creative recruitment methods and delivery models, attorney practice and continuing legal education rules, and training, mentoring, support, and recognition of volunteers

The LSC board also resolved that, in its national leadership position, LSC will "promote, support and encourage private attorney involvement initiatives by publicizing and recognizing private attorney involvement in the work of LSC-funded programs and by collaborating with national, state and

local organizations to create opportunities for such publicity and recognition."

The Pro Bono Committee is excited to have LSC as a partner as we continue our work as the ABA's principal pro bono proponent. LSC's commitment to strengthen the pro bono efforts of LSC grantees creates outstanding opportunities to build pro bono at a local level. In addition, the LSC board resolution echoes a recent series of ABA House of Delegate resolutions, calling on law firms, law schools, corporate law departments, courts and government lawyers to encourage greater pro bono service. The Pro Bono Committee welcomes LSC's support in reaching out to these critical components of the legal profession.

We also think that eliminating the persistent gap in legal services delivery for the poor requires outreach beyond the legal community. Until the broad public understands that legal assistance is sometimes as necessary to quality of life as housing or medical help, the necessary resources and support will not be available to solve the problem. We hope the LSC uses its national platform to broaden its outreach beyond the legal community.

This newest effort by LSC to increase pro bono involvement is worth broad support from all of us. We have been grappling for decades over how to narrow the gap in meeting the legal needs of the poor. A boost in pro bono assistance must be one of our strategies for doing so.

Robert Frost once wrote that a person's "reach must exceed their grasp." As unattainable as full legal services for the poor seems to be, we are happy that LSC is focusing on this important component of the delivery system, in partnership with all of us, to strive for that elusive goal.

Canadian Pro Bono

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responsibly and in a sustainable manner. The relative blank slate in Ontario made it simple to promulgate the best practices as normative standards across the province.

Beyond achieving critical regulatory changes, PBLO has established a pro bono culture among practitioners. Central to this movement has been working with large law firms to develop pro bono policies that encourage pro bono activities and recognize pro bono time as billable time. In a few short years, 15 of the 25 largest firms in the province have adopted these policies—with a number of firms adopting them nationally.

PBLO takes its work with law firms one step further by engaging in project development activities on their behalf. Unlike the approach in the United States where it is incumbent on firms to identify pro bono opportunities for themselves, PBLO spends a significant amount of time acting as a broker for individual law firms. Unmet legal needs are identified, and community groups that serve a deserving client base are vetted for their ability to administer a potential pro bono project. PBLO then approaches a firm with a project proposal that matches the community needs with the firm's particular expertise and interests.

Once a partnership has been established, PBLO drafts a memorandum of understanding between the parties, manages any volunteer training, develops project implementation plans, supplies forms and templates to administer the project, and acts as a facilitator for the duration. This formula fosters the project, ensures its success, and helps PBLO measure the impact of each project on the community.

Government tries out pro bono

PBLO's project development is not limited to the large firms. The organization also works with major bar associations and government agencies. In 2005, PBLO developed a partnership between the Ontario Ministry of the Attorney General and Nishnawbe Aski Legal Services Corporation, a legal aid clinic that serves low-income aboriginal residents in remote parts of northwestern Ontario.

This project is an urban-to-rural model that employs a secure ask-a-lawyer Web site accessed by frontline community legal workers—the point of contact for legal services in communities that can only be reached by air or ice routes. The legal workers bring their questions to the online system, and volunteer attorneys provide legal and procedural information through an anonymous response system. Because these frontline workers are not lawyers, the pro bono project provides an important capacity-building resource to the clinic and wider community.

In addition to brokering the partnership and developing the project model, PBLO supervised the development of the Web site, obtained seed funding for the project, trained the project coordinator, and continues to provide ongoing consulting services on the project.

A second government department program launching this summer involves community mediation using Federal Department of Justice volunteer lawyers in partnership with the City of Ottawa's YMCA/YWCA.

This kind of intensive project development is typical of the more than 25 projects PBLO launched in its first five years of operations. The emphasis is consistently on

the dual goals of supplementing legal aid delivery and capacity building for communities and organizations.

The challenge for PBLO is to find ways to be relevant to the poor in spite of being barred from addressing certain legal needs. In most cases, PBLO takes on projects that address systemic issues of poverty and marginalization. For example, these include child advocacy projects that protect the special education needs of children and legal help for students expelled pursuant to zero tolerance policies. The community economic development projects help low-income Ontarians generate income and safeguard their assets.

Going national

PBLO considers itself a social entrepreneur and has evolved with that in mind. The organization has generated great excitement in the marketplace it serves and has created real and measurable value for its clients.

Not surprisingly, the pro bono movement has been spreading across Canada, and PBLO, along with Pro Bono Law of British Columbia (which was developed shortly after PBLO) has been instrumental in pro bono's growth nationwide. Pro Bono Law Alberta and Quebec are expected to launch later this year.

In late 2006, PBLO and Pro Bono Law of British Columbia co-hosted the first-ever national pro bono conference in Canada. This event provided an opportunity to begin sharing programming ideas, technology innovations, failures and successes, across the entire country. More than 200 delegates from across Canada attended the conference.

Since Ontario has greater

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Pro Bono Award

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especially in the area of civil rights.

The firm's lawyers annually spend more than a quarter of their time on pro bono cases. They specialize in representing community groups in controversies that often end in litigation. Some of their recent projects have involved a successful suit to redraw county council election districts to end discrimination, a successful suit that saved an historic African-American cem-



Derfner, Altman & Wilborn, L.L.C.

etry, and a series of suits that saved the land and homes of a group of African-Americans who were the targets—and almost the victims—of highly sophisticated real estate scams.

The firm's lawyers work together on all of these issues and they have been recognized for their work by the South Carolina Bar Association, the Lawyers' Committee for Civil Rights under Law, the NAACP, and other community and civil rights groups.

Armand Derfner, the founding member of the firm, has always had a passion for defending the underdog. In particular he has focused his efforts on civil rights matters. Derfner has won numerous cases before the U.S. Supreme Court. He has worked on issues related to the Voting Rights Act—litigation and legislation—from its passage in 1965 through the most recent re-authorization by Congress in 2006. In Charleston, he challenged the county council's at-large system of elections, arguing that the system discriminates against black voters. Among other recognitions, Derfner has received the Trial Lawyer of the Year award by Trial Lawyers for Public Justice for his work in the desegregation of Mississippi's university system.

Jonathan Altman focuses on consumer law and personal injury. He leads the firm's efforts representing victims—primarily African American—of real estate scams. He worked locally in a case involving Remley's Point, an African-American community in Charleston County, against the sale and development of the community's historic cemetery. After five years of litigation, the case resulted in a verdict permanently protecting the cemetery and dedicating it to the public. He is also involved with housing issues,

serving as chairman of a commission that promotes home ownership and works to develop policies to achieve more affordable housing in the Charleston area.

D. Peters Wilborn, Jr. successfully addresses legal needs in both the microcosm of local issues and the macrocosm of global human rights. In his practice, he focuses on representation of community groups, labor law and election law. He devotes his time to local legal aid groups, informing low-income consumers of their rights and training other lawyers to be consumer advocates. Two cases that received local and national coverage include his representation of a rural African-American community known as Red Top in its fight against suburban sprawl and his assistance in eliminating blatant racial discrimination by a city and some of its businesses towards African American riders during "Black Biker Week". Wilborn is also a dedicated cycling and pedestrian advocate, serving on the board of the East Coast Greenway Alliance.

The collective talents and dedication of this small firm are exemplary.

Stephen H.

Oleskey is a partner in the Boston office of WilmerHale. He has been an integral part of the firm's Pro Bono and Community Service Committee since 1969. Oleskey is deeply concerned with the efficacy of the delivery system of legal services to the poor and committed to fostering the spirit of pro bono in future generations of attorneys.

Oleskey's pro bono clients and their needs vary widely and illustrate the breadth of his skill.

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Canadian Pro Bono

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resources and funding to support pro bono initiatives than other Canadian provinces, PBLO is poised to be the model province for service delivery. The organization has made the best of American expertise and adapted it to Canada's unique circumstances. It is rewarding to be in a position to share resources and assist other provinces as they embark on increasing access to justice for all Canadians. Likewise it is rewarding to see the American pro bono movement become a North American pro bono movement.

Lynn Burns is executive director of Pro Bono Law Ontario.

Endnote

¹ Funded at more than \$300 million, Ontario's legal aid system is one of the best-funded in North America.

Pro Bono Award

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For example, he has been involved in an ongoing New York child custody dispute, and has served as lead counsel in the firm's largest and most significant pro bono matter, *Boumediene v. Bush*, representing six detainees at the United States Naval Base Guantanamo Bay.

Oleskey's decades of service include significant leadership in various local, national and international legal and social organizations. Whether holding a director or chair position at Boston's most prominent legal service centers or serving as director of Food Corp International, a program that provides research, training and low-cost technology to low-income international rural communities, Oleskey is deeply involved in ensuring access to justice for all.

Oleskey's dedication to access to justice has been recognized on many occasions. He has been honored with the 1992 Thurgood Marshall Award from the Boston Bar Association, recognized by the International Senior Lawyers Project for his outstanding pro bono services to the Socio-Legal Information Centre in New Delhi, India, received the Massachusetts Correctional Legal Services "Distinguished Service Award" in 2005, and was presented with WilmerHale's own John H. Pickering Award for Pro Bono Activities in 2005.

For four decades, Oleskey not only has made pro bono representation a priority in his own career, but he also has been an inspirational leader. He strives to make a lasting impact on the delivery and quality of services available to indigent clients, undertakes high-impact, precedent-setting matters and gives a voice

to the least powerful in our society.

Sidley Austin LLP, an international firm, has had a long tradition of pro bono service. The firm's pro bono policy strongly encourages all of its attorneys to devote time to pro bono legal matters. Sidley places no limit on the number of pro bono hours an attorney can work and strives to ensure that the number of hours of pro bono service equals three percent of the firm's total billable hours.

Over the past decade, Sidley attorneys have provided more than 300,000 hours of pro bono legal service and in 2006 alone, provided 75,000 hours on pro bono matters—an increase of almost 50 percent from 2005. The pro bono legal matters that Sidley has undertaken have varied in scope—from individual cases in areas of child custody and landlord/tenant to U.S. Supreme Court cases potentially affecting millions of people.

In 2005 Sidley initiated a firm-wide death penalty litigation project. In response to the overwhelming need for legal assistance for poor prisoners on death row in Alabama, Sidley attorneys have stepped in to represent an unprecedented 18 death row inmates. More than 112 Sidley attorneys from around the country are participating in this effort and donated more than 18,000 hours of their time in 2006. In recognition of this tremendous contribution, the ABA presented Sidley with its first ever Death Penalty Representation Volunteer Award in 2006.

Furthermore, in 2006, Sidley launched a firm-wide Political Asylum Project to centralize and coordinate the firm's management of asylum cases. Sidley now has a

centralized database of materials and attorneys interested in providing representation and provides

training and mentoring to its attorneys in this area.



Patricia Yoedicke is this year's Ann Liechty Child Custody and

Adoption Pro Bono Project Award recipient. Yoedicke is an attorney with Robins, Kaplan, Miller & Ciresi in Minneapolis, Minnesota. Since 2000, she has provided close to 800 pro bono hours representing children through the Children's Law Center of Minnesota. These children are state wards whose parents' rights have been terminated. Under Minnesota law, these children are not entitled to representation after the point at which their parents' rights are terminated. Yoedicke's volunteer representation fills the void for the children she represents. She has often been the most consistent person in their lives, and she treats them with respect and professionalism equal to her adult clients.

For each of her child clients, Yoedicke spends time ascertaining their wishes, explaining available options, consulting with social service providers, and making sure their voices are heard in court. For example, she worked diligently to keep three siblings together in a permanent placement after the proposed adoptive parent decided she only wanted to adopt one of the children. She also represented a child who had contacted the Children's Law Center requesting an attorney to help him get adopted. Yoedicke was able to successfully assist the child with an adoption placement, helping

A Strategic Plan to Combat Identity Theft: The Federal Response

On his return home from deployment in Afghanistan, a soldier tried to access his credit card account online. When he was denied access, he contacted the issuing company and discovered that while he was overseas, someone had changed the account name and billing address. This happened through a simple phone call. Fortunately, he was able to get the account closed and the fraudulent charges reversed, but the delinquent account and the suspect's address were already on his credit report. Surely, this soldier deserved a different kind of welcome home.

Accompanied by his mother, a young man tried to open his first checking account before heading off to college. At the bank, he learned that a woman using his Social Security number had already opened a checking account, which the bank subsequently closed for default. Some introduction into adulthood.

It is no surprise that identity theft is a great concern for American consumers. It erodes consumer confidence in online commerce and in the trustworthiness of entities that collect and maintain personal data. Its costs exceed billions of

dollars and millions of hours of recovery time for consumers, businesses, and the government.

In light of the harms that continue to result from identity theft, President Bush issued an Executive Order in May 2006, which charged 17 federal agencies with developing a coordinated plan to address the problem. In less than a year, the task force, led by Attorney General Gonzales and Federal Trade Commission Chair Deborah Platt Majoras, released a report and plan in two volumes, listing 31 major recommendations for federal departments and agencies. (See the report at www.idtheft.gov.)

The task force's recommendations track the life cycle of identity theft, from the theft of consumer data and its subsequent misuse to commit fraud through the victim experience and investigation and prosecution. For each of these stages, the plan recommends multiple measures aimed at reducing both the incidence of ID theft and its consequences. The plan details a number of actions to limit the collection of sensitive consumer information and improve the ways the

public and private sectors safeguard the information they hold, including civil enforcement against entities that do not follow reasonable data security practices. The plan also calls for additional efforts to educate consumers about the importance of protecting their own information.

Other key recommendations deal with improved authentication processes to frustrate a thief's attempts to use another person's credentials or identifying information; beefed up criminal prosecution of the identity thieves; increased training for local law enforcement; better sharing of intelligence among law enforcers; and specific changes to certain federal laws to close loopholes.

The strategic plan recommends more—and more effective—training of victim assistance counselors on the processes of ID theft recovery. Law enforcement officers, who often are the first responders, should be trained to direct victims to the appropriate resources. Many resources are in place to help victims: for example, the FTC has a toll-free hotline and a library of resources at www.ftc.gov/idtheft to walk consumers through the recovery process. The FTC's materials, in English and Spanish, can help consumers deter identity theft, detect the early warning signs that someone may be using their good name to commit fraud, and defend against the theft should it take place. Advocacy organizations like the Privacy Rights Clearinghouse and the Identity Theft Resource Center offer free counseling and assis-

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Resources on Identity Theft

- The task force agencies will make training and assistance materials available through the government's ID theft portal, www.idtheft.gov.
- The Federal Trade Commission provides substantial consumer education and assistance material on its Web site at www.ftc.gov/idtheft.
- The FTC also offers brochures, consumer outreach material, including its Avoid ID Theft: Deter Detect Defend multimedia packages through <http://bulkorder.ftc.gov:10937/>. These materials, available in both English and Spanish, help consumers learn how best to defend against ID theft by safeguarding their sensitive information, detect the early signs of possible identity theft, and take the steps to defend against its impact.

Pro Bono Policy News

ABA House of Delegates adopts pro bono resolutions

The ABA House of Delegates approved three resolutions of interest to the pro bono community at the 2007 ABA Midyear Meeting in February. They include:

- Approval of the Model Court Rule on Provision of Legal Services Following Determination of Major Disaster. The model rule would allow out-of-state lawyers to provide pro bono legal services in an affected jurisdiction, and lawyers in an affected jurisdiction whose legal practices had been disrupted by a major disaster to practice law on a temporary basis in an unaffected jurisdiction. The Recommendation and Report can be found at www.abaprobono.org/news/court_rule_major_disaster_legal_services_1_29_07.pdf. For further information, contact John Holtaway, Client Protection Counsel, ABA Standing Committee on Client Protection, jholtaway@staff.abanet.org, or Tony Barash, Director, ABA Center for Pro Bono, barasha@staff.abanet.org.
- A recommendation affirming the ABA's commitment to the

independence of lawyers, commending those lawyers and law firms that provide pro bono services to unpopular clients and causes, condemning governmental attacks on the independence of the legal profession, and urging bar associations to educate the public about the vital role of lawyers who provide pro bono legal services to disfavored clients. See www.abanet.org/leadership/2007/midyear/docs/journal/tenc.doc.

- Revisions to the Model Code of Judicial Conduct including new language making it clear that judges can engage in certain activities to support pro bono. ((Rule 3.7 (B) "A judge may encourage lawyers to provide pro bono publico legal services.") See www.abanet.org/leadership/2007/midyear/docs/journal/twohundred.doc at page 115-116.

Maryland releases report on mandatory pro bono reporting

The Administrative Office of the Courts of Maryland recently released its report on the mandatory reporting of attorney pro bono activity for 2005. The findings note

that among full-time attorneys practicing in Maryland, 62.3 percent reported doing some pro bono activity in 2005. With over 99 percent of active Maryland attorneys responding, the total number of pro bono hours was over 1.5 million. Among attorneys who provided pro bono service, 54.6 percent offered their services to people of limited means and 15.8 percent provided services to organizations serving the poor. Also, the results demonstrated that a larger percentage of solo and small firm practitioners engaged in pro bono work—close to 80 percent of practitioners reported some pro bono service hours while almost 73 percent of small firm members donated their time. Finally, the total financial contribution to organizations that provide legal services to people of limited means was \$2,759,360. The report is available at: www.courts.state.md.us/probono/probonoreport_2005.pdf.

Tennessee reports on voluntary pro bono reporting

The Tennessee Bar Association (TBA) introduced voluntary reporting of pro bono and other public service work on its 2004-2005 annual dues statement. It has reported that in the first year of voluntary reporting, roughly 4 percent of TBA members completed any portion of the reporting section. In the second and third years of reporting, however, reporting increased due to improved placement on the form. As of October 2006, the lawyer reporting rate was up to 20 percent. For those who responded, the findings indicate that the average number of pro bono hours contributed per attorney was 37 hours—for a total of 58,437 hours provided. For more information, see: www.tba.org/Journal_TBArchives/200701/TBJ-200701-proBono.html.

Program News from the Field

Michigan: In January, Community Legal Resources (Detroit) said goodbye to Angie Gaabo and welcomed Heidi Mucherie as its new executive director.

North Carolina: Milan Pham is the director of the North Carolina Lawyers Entrepreneurs Assistance Program (LEAP), a newly established program that enables business lawyers to provide legal advice and assistance to low-wealth entrepreneurs through pro bono projects.

Pennsylvania: The Philadelphia Volunteers for the Indigent Program (VIP) has named Sara Woods as its executive director. Woods comes to Philly VIP from Villanova University School of Law, where she was the director of its Public Service Careers and Pro Bono Program.

Washington: Ann Merryfield recently joined the Washington Attorneys Assisting Community Organizations (WAACO) as a program manager.

2007 Equal Justice Conference

The 2007 ABA/NLADA Equal Justice Conference attracted nearly 1,000 attendees to Denver in March. With a timely theme, "Justice in a Changing, Diverse World," the conference included a range of dynamic and thoughtful programming. Through networking sessions and more than 100 different programs, the conference provided a forum for members of the legal services and pro bono communities, private bar, law school leaders, corporate counsel, judges, and other stakeholders in the civil legal services delivery system to share ideas and learn about new and innovative ideas for serving the legal needs of the poor.

Jointly sponsored by the ABA Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Association, the Equal Justice Conference is the largest conference in the country focused on the civil legal needs of the poor. The 2007 conference featured keynote speakers Maria Echaveste, author Paul Loeb, and ABA Past President Robert E. Hirshon.

Planning is already underway for a 2008 conference that will match the 2007 event. Mark your calendars now for the 2008 Equal Justice Conference, to be held May 6 through 9, 2008 in Minneapolis.



*Closing keynote speaker Paul Loeb told the Equal Justice audience that humble activities build history. Loeb, author of *Soul of a Citizen* and *The Impossible Will Take a Little While*, is a frequent speaker on college campuses.*



Steve Scudder (left) was congratulated by National Association of Pro Bono Professionals President Judy Whitelock and Past ABA President William Reece Smith, Jr. Scudder, staff counsel to the ABA Standing Committee on Pro Bono and Public Service, was honored with the 2007 William Reece Smith, Jr. Special Service to Pro Bono Award.



Shelia A. Gaddis, executive director, Volunteer Legal Services Project of Monroe (N.Y.) County (left), and Lillian O. Johnson, executive director, Community Legal Services, Phoenix, presented suggestions on ways to facilitate delivery of pro bono services.

Identity Theft

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tance to people who are unable to restore their good name and credit on their own.

Mindful both of the resources already in place and the growing demands for assistance, the Task Force has recommended that national organizations such as the ABA create programs to help victims of identity theft. Some victims have issues stemming from fraudulent information in their credit reports. Others are contacted by debt collectors, seeking to recover the fraudulent debt. Still others find that the thief has filed for bankruptcy in their name. Victims even may have outstanding arrest

warrants from crimes committed in their name. Unraveling these problems can tax consumers who lack the resources to hire an attorney, or who are not used to dealing with sophisticated financial transactions.

A recent survey showed that more than 70 percent of state and local pro bono and lawyer referral programs would like to have more information, resources, and educational material about identity theft. The FTC and the U.S. Department of Justice are assembling materials to help them work with identity theft victims. With these materials at hand, pro bono and lawyer referral programs and the practitioners they support will be better equipped to help identity theft victims recover their good name

and get on with their lives. Lawyers can help prevent the hardships that weigh on many identity theft victims who lack the resources to tackle these challenges themselves.

The Task Force concluded that a coordinated effort involving consumers, business, government agencies, and criminal law enforcement is the cornerstone of a meaningful approach to mitigating identity theft. State and local pro bono and lawyer referral programs can play a critical role in making that happen.

This article was contributed to Dialogue by the Federal Trade Commission, Division of Privacy and Identity Protection, and the U.S. Department of Justice, Office of Legal Policy

From the Chair...



by Joanne M. Garvey
Co-Chair of the ABA Commission
on IOLTA

This issue of *Dialogue* marks the last time I will write my "From the Chair" column, a duty I have shared with my co-chair Jon Asher for the past year. I joined the Commission as a member in 2003, became chair in 2005, and will leave at the end of the 2007 ABA Annual Meeting in August. It has been a pleasure to serve on the Commission with my ABA colleagues during this time of significant developments.

In 2003, the IOLTA community was breathing a deep sigh of relief following the Supreme Court decision vindicating IOLTA in *Brown v. Legal Foundation of Washington*. But many programs found themselves in straitened circumstances after a protracted period of low interest rates that forced them to tap their reserve funds to minimize cuts in grants. Revenue has rebounded for many programs since 2004, and continues to increase today due to the adoption of a variety of revenue enhancement strategies including mandatory IOLTA, interest rate comparability requirements, and effective rate negotiations with banks.

Against this background I have developed a deep appreciation for

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Ohio IOLTA: Investing in Legal Aid Staff

by Chuck Cook and Jeffrey Fortkamp

I have to live at home with my family. I drive a 12-year-old car. I don't travel, have a cell phone, or cable TV. All my money goes to the debt. I can't save much and dropped my dental coverage to have extra money. If I didn't have so much debt, I could be saving for a future. At times my focus would be better if I didn't have to worry about meeting my school loan debt.

I left legal services after two years because of my debt burden. I went for better money at a small/medium firm, hated it, and came crawling back to legal services. I simply couldn't make ends meet the first couple of years out of law school. I absolutely would not have left if we had had law school loan assistance.

It has impacted my life as a supervisor of younger attorneys who could not afford to stay in legal services—or start in legal services after clerking here and expressing a desire to do so—lost great people.

These are just a few of the stories of the daily struggles faced by legal aid staff in Ohio. They exemplify the challenge Ohio's legal services delivery system faces in attracting and retaining highly qualified new lawyers. As in other parts of the country, non-competitive salaries and hefty law school loan obligations have taken a significant toll on the system's human capital.

Consistent with its commitment to equal access to justice and its mission to assure that resources, programs and services exist statewide to serve the unmet civil legal needs of Ohio's poor, Ohio's IOLTA program—the Ohio Legal Assistance Foundation (OLAF)—has invested in several statewide initiatives to recruit and retain a high-quality legal aid professionals. In addition to significant increases in base funding for legal services, the foundation has taken a holistic and realistic approach to helping its grantees recruit and retain attorney staff members. OLAF's specific initiatives include the recruitment and sponsorship of Denis Murphy Fellows; a Loan Repayment Assistance Program (LRAP); and, a statewide leadership development project.

Denis Murphy Fellows

The opportunity to sponsor new attorneys as fellows in a legal aid program has proven to be an effective tool to recruit talented recent law school graduates interested in public interest law. Two-year, competitive fellowships bring some of the most talented law school graduates into legal aid to focus on specific and urgent issues facing low-income individuals and families.

OLAF recently established the endowed Denis J. Murphy Fellowship in honor of Denis J. Murphy, who died in 2005. Murphy was a founder of OLAF and served as the foundation's first board president. Institutionally, OLAF owes much to Murphy's vision and commitment to the concept of equal access to justice in Ohio, and views this fellowship as a

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From the Chair...

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the work of the Commission and the state IOLTA programs.

The Commission's role in all of this is more complicated than it might seem. It must serve as a national voice for IOLTA and be an advocate for things that will benefit IOLTA as a whole. At the same time, it must respect the diversity of state IOLTA programs, and resist promoting or supporting the idea that there must be a uniform approach to many of the issues IOLTA programs face. Thanks to the thoughtfulness and sensitivity of its members, I believe that the Commission has achieved the proper balance between these two requirements: the Commission has provided critical leadership and technical support regarding IOLTA revenue enhancement, and it has served as a necessary voice for IOLTA in access to justice-related developments and approval of the ABA Standards for the Provision of Civil Legal Aid in 2006.

The state IOLTA programs have their own impressive stories. I have learned about dozens of IOLTA programs over the past four years and in particular have enjoyed the Commission's visits with local programs. One or two times a year, the Commission holds its business meetings in a location where it has the opportunity to meet with representatives of that state's IOLTA program. Since 2003 I have had the privilege of taking part in visits to Colorado, New Mexico, Arizona, North Carolina, Louisiana, and Oregon. In each case, the IOLTA program representatives have attended

the Commission's meeting and provided a thorough presentation about the program's income and grants, operations, achievements, and goals. These programs have been more than generous in sharing their time to talk about IOLTA with us. They have spoken frankly about their hopes and the challenges confronting them. They have also shown great creativity in finding ways to make IOLTA grow and become more effective.

These visits help strengthen the partnership between the programs and the ABA to share the best nationally while maintaining the uniqueness of the individual programs. "Think globally, act locally" is an over-used phrase, but it accurately describes how effective IOLTA programs take information distributed and discussed at the national level (through the IOLTA Workshops and other forums) and use it to tailor their approach to issues at home.

Revenue enhancement strategies provide a good example of this. A number of programs have advocated for the adoption of IOLTA interest rate comparability requirements. Many of these have supported the central concepts of comparability while adjusting other features to meet the particular characteristics of their state's lawyer population and banking industry. Other programs such as the Oregon Law Foundation, which the Commission met with at its most recent meeting in May, have determined that negotiation with banks is the most suitable approach for increasing revenue, and have devoted considerable resources to making this a successful strategy.

In virtually every case, IOLTA

programs exercise leadership on a regular basis through identifying, promoting and implementing change in their states. The state programs, by their everyday decisions and strategic vision, are the ones that make IOLTA such an important institution for access to justice in the United States.

The column cannot conclude without kudos to the Commission's wonderful staff, Commission Counsel Beverly Groudine, Assistant Counsel David Holtermann, Program Manager Janice Jones, and Administrative Assistant Michaeline Glascott. They make things look easy even when things are not. Thanks to everyone for a wonderful four years.

* * * * *

Please don't forget to register for the Summer 2007 IOLTA Workshops on August 9 and 10 in San Francisco. The Workshops provide an opportunity for IOLTA trustees, executive directors and staff to learn about and discuss current trends and developments in IOLTA. The Summer Workshops feature an intensive half-day session focused on the process and considerations involved in making decisions about allocating revenue increases. Other workshop topics will include banking and interest rate comparability, issues surrounding the recruitment and retention of attorneys by grantees, and initiatives regarding the civil right to counsel. Advance registration for the workshops runs through July 6. You can register for the Workshops online at www.abanet.org/annual/2007.

Ohio IOLTA

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fitting legacy.

Starting in 2008, OLAF's board of trustees has approved the use of approximately \$250,000 annually to help support the Denis Murphy fellowships, each of which will last for a two-year cycle. Six fellows will work in Ohio's legal services delivery system at any one time; half in their first year, the other half in their second year. Currently, the foundation has a partnership with Equal Justice Works, which provides recruiting, training and matching funds to support these fellows. Profiles of current and future fellows can be found on the OLAF's Web site.¹

OLAF currently funds two Denis Murphy Fellows, and helps support three other Equal Justice Works Fellows. OLAF requested that the 2007 Denis Murphy Fellowship class focus its projects on predatory lending, an area determined to be of high priority in the state. Four of the 2007 fellowship class will start such projects in the fall and OLAF will provide additional training and support. A new focus is being contemplated for the 2008 fellowship class.

Loan repayment assistance

The comments at the beginning of this article are just a sample of the responses to a 2006 survey² of legal aid attorneys in Ohio. They describe attorneys who are considering leaving legal services, struggling with current financial hardships, facing the prospect of being unable to afford to buy a home or a car, lacking the ability to save for retirement or their children's education, being unable to start a family, and having to put student loans in deferment and risking default. One of the most interesting

Ohio Legal Aid Attorney Student Debt Burdens		
Total Debt		
Average Debt	Minimum Debt	Maximum Debt
\$73,947	\$1,452	\$232,961
Monthly Payments		
Average	Minimum	Maximum
\$503	\$40	\$2,063

Data in chart based on information provided by 133 attorneys who applied for the loan repayment assistance from OLAF in 2007. The aggregate debt held by the applicants is \$9.8 million.

empirical findings from the survey was that of the 67 respondents who owe educational debt, 57 percent owe more than \$45,000. Of those, 41 percent have debt that exceeds \$90,000. (See Figure 1.)

Respondents to the survey also gave rich, thoughtful answers, such as the following:

"As one of the more experienced attorneys, I have seen the loan amounts become staggering and increasingly, we seem unable to keep young, talented people. I applaud any effort to encourage people to consider a career in legal services (and not just a year or two—to pay off the investment in training we make) and also to provide a pool of experience for the future, when we current 'gray heads' have left the game."

"My main concern is that the current levels of law school loan debt loads will limit long-term legal services careers to those who have an affluent spouse/partner or other independent source of financial assets, or those who are able and willing to lead spartan lifestyles on a long-term basis."

Clearly, the most significant trend revealed by the survey was the steep rise in the amount of educational debt carried by newer civil legal aid attorneys in Ohio. The survey results suggest that this increasing debt burden will

place only more pressure on legal aid lawyers, shortening their tenure at considerable cost to their legal aid employers.

In response to this crisis, OLAF's board approved the establishment of a loan repayment assistance program beginning in 2007. It has allocated up to \$750,000 annually to support the program. OLAF will provide up to \$6,000 a year in tax-free educational debt repayment in exchange for a promise from a participating legal aid attorney to complete a year of service. LRAP applicants must agree to cooperate with OLAF surveys and other data collection efforts that will seek to measure the impact of this major initiative.

As one can imagine, the announcement of the OLAF LRAP literally brought tears of joy to some legal aid attorneys. It was met by an overwhelming response: 133 legal aid lawyers applied for participation in OLAF's LRAP in 2007. OLAF staff anticipates that the LRAP will be a significant recruitment tool and even more importantly, a powerful aid in retaining experienced legal aid lawyers.

Leadership OHIO Initiative

Even with the new financial support from OLAF and the personal satisfaction in helping others that is intrinsic to legal aid

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IOLTA Grantee Spotlight: Innovations Keep the Courthouse Doors Open

by Kim Paulding and Kai Wilson

The Utah Bar Foundation was created in 1963 and has provided funds for legal services for the poor and disabled, law-related education, and other law-related projects since that time.

During the foundation's 2000-2001 fiscal year, when the stock markets were roaring and interest rates were soaring, its annual revenue totaled \$600,000 from private donations, investments and its IOLTA program. In addition, a new lawyer fund-raising campaign, "and Justice for All," had been created and was receiving close to \$400,000 from the legal community. Together, these two funding sources were able to provide nearly \$1 million in annual support for legal services for the poor and disabled and law-related education.

Just one short year later, things took a drastic turn. The stock market came crashing down and instead of IOLTA interest rates in excess of five percent, the foundation was confronted with rates that dipped below one percent on most IOLTA accounts. The foundation's annual revenue dropped from \$600,000 to a low of \$230,000.

Faced with this funding shortage, the legal services community knew it would have to come up with innovative and inexpensive ways to continue to provide access to the legal system.

Among those organizations affected by falling revenues was the Legal Aid Society of Salt Lake, whose primary mission is to provide free legal services in domestic and family law in the Salt Lake County area. With more

than 80 years providing services to the poor, the Legal Aid Society has been a long-time grantee of the Utah Bar Foundation.

The Legal Aid Society runs three major programs. The first is the Domestic Relations Program, which represents clients in family law cases that do not include a component of domestic violence. Clients served through this program face issues including divorce, child custody and support, visitation, modifications of orders, and the establishment of paternity. For this program, clients normally must wait up to six months for their case to be filed.

The second is the Legal Aid Society's Domestic Violence Program. This assists victims of domestic violence in obtaining a protective order. The third program is the Bridge the Gap Program, which provides expedited service for victims of domestic violence seeking permanent orders of child support, custody and other issues. Through Bridge the Gap, documents are prepared so that the abuser can be served at the protective order hearing.

Due to the significant decrease in funding, Legal Aid Society of Salt Lake found itself turning away more people than it was actually serving. Stewart Ralphs, the organization's executive director, says "We were turning away five to 10 people per day who didn't have the resources to hire an attorney and we felt terrible not being able to offer any help or guidance. We had to find a way to help these people."

The Legal Aid Society wrestled

with the economic reality and its commitment to and pride in providing full-scale, free representation for low-income households. "Ultimately, we decided that our clients and community were better off if we changed our way of doing business," explains Ralphs.

A solution

Through creative problem solving and public-private partnerships, The Family Law Clinic, housed directly in the Third District Matheson Court House, was born. The Family Law Clinic is a self-help clinic staffed by a Legal Aid Society paralegal that provides family law-related legal forms, general information, and computer access to litigants navigating the court system on their own, either due to lack of resources or because they want to represent themselves.

The program is housed in courthouse space donated by the Administrative Office of the Courts. Funding for the program comes in part from the Utah Bar Foundation as well as private donors. Not only has the new Family Law Clinic provided a viable solution to providing access to the legal system, it also created a solution for the Third District Court clerks. The clerks were overwhelmed with self-represented litigants who had numerous questions and often had come to file but had completed the wrong forms.

In its first year the clinic served over 4,000 patrons and last year helped 5,346 individuals.

The Legal Aid Society worked closely with the Utah State Bar's

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Grantee Spotlight

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ethics department to ensure the program did not run afoul of conflict of interest rules. The Legal Aid Society only tracks limited demographic data regarding individuals using the clinic, and the paralegal does not offer any legal advice. For those needing brief advice from an attorney, a joint project between the University of Utah S.J. Quinney College of Law, Utah Legal Services, and the Family Law Section of the Utah State Bar provides assistance through students and pro bono attorneys two evenings each month. For those needing additional services, a referral is made

to a pro bono attorney.

The Utah Bar Foundation has been a proud funding partner of Legal Aid Society of Salt Lake and the Family Law Clinic. Steve Sullivan, president of the Utah Bar Foundation says, "As president of the foundation, I was pleased to see that one of our partner organizations could come up with a creative solution to solving a problem amid a funding crisis. As an attorney in this community, I was thrilled that the Legal Aid Society of Salt Lake once again showed that it can wring every available penny out of each donated dollar it receives."

Now that financial times are better in Utah, the legal services providers of Utah, the Utah State

Bar, "and Justice for all" (the private attorney fund raising campaign), and the Utah Bar Foundation have once again come together to form an Access to Justice Foundation. Working together, these organizations expect to find additional ways to creatively solve gaps in the delivery of legal services, find more efficient ways to provide services to those in need and to continue to jointly raise much needed funds and resources to provide legal services to the poor and disabled throughout the State of Utah.

Kim Paulding is the executive director of the Utah Bar Foundation.

Kai Wilson is the executive director of Utah's private bar campaign, "and Justice for all."

Bereavement Notice

With great sadness the IOLTA community learned about the death of



Judy Garlow on June 2. Judy passed away at age 63 after a 20-month battle with cancer.

Judy retired in 2006 after a long career with the State Bar of California, the last 13 years of which she served as the director of the State Bar of California Legal Services Trust Fund Program, the state's IOLTA program. In that role, she helped the California IOLTA program grow into one of the largest in the United States. She also oversaw the Trust Fund's administration of a multi-million dollar state

appropriation for improving access to the courts, and was instrumental in developing various methods for evaluating the programs receiving those funds.

Judy was a significant leader nationwide as well. She served as a member of the ABA Commission on IOLTA from 2000 to 2003, and was president of the National Association of IOLTA Programs (NAIP) from 1996 to 1997. From 2003 and 2005, Judy served on a Commission/NAIP task force that studied the implications of the U.S. Supreme Court's decision in *Brown v. Legal Foundation of Washington* for IOLTA programs, and recommended several promising IOLTA revenue enhancement strategies.

Judy's formal positions underscore her national role as an advocate and resource regarding access to justice and IOLTA issues. She was intensely involved in efforts by the Commission and NAIP to assist in

the defense of the Texas and Washington State IOLTA programs that were the subject of constitutional challenges during the 1990s and earlier this decade. Judy was a frequent presenter during the IOLTA Workshops, and was a repeat member of the joint committees sponsored by the Commission on IOLTA and NAIP.

Judy was a dear friend to many in the IOLTA and legal services communities. Her wisdom, good judgment, keen sense of humor, kindness, and warmth will be greatly missed.

Memorial donations in Judy's name may be made to the National Brain Tumor Foundation, 22 Battery Street, Suite 612, San Francisco, CA 94111; or Hospice by the Bay, c/o Donation Department, 1540 Market Street, Suite 350, San Francisco, CA 94102.

Ohio IOLTA

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practice, there remains a risk that good legal aid staff may leave the delivery system if they are not empowered or equipped to be effective advocates. Accordingly, as a third strategy to recruit and retain legal aid staff—attorneys and non-lawyers—OLAF has led an initiative to promote skills and strategies that develop and encourage leadership among staff members. The initiative is run in partnership with the Ohio State Legal Services Association (OSLSA), Ohio's state support program for legal aid. The initiative recognizes the importance of leadership in the effective delivery of legal services and in the quality of work life for legal aid professionals. Central to it is the belief that leadership in Ohio means each staff member should accept personal responsibility to improve services to legal aid clients.

The leadership initiative was formed in late 2005 and christened LeadershipOHIO. It built on a State Plan for Ohio developed in 2003. That plan included the goal of developing leadership at all staff levels throughout the state, and incorporated previously articulated points of consensus among program directors on key characteristics of an Ohio leadership development initiative. Eugene King of OSLSA and Jeffrey Fortkamp of OLAF convened a group of Ohio legal aid program staff members to develop the framework for a meaningful leadership development initiative. The participating staff members were diverse in program, position, experience, age, gender, and race. The group was assisted by Patricia Pap of Management Information Exchange (MIE). This planning



2006-2007 Denis Murphy Fellows: *Maureen Foley (left) works with Community Legal Aid based in Akron. Foley's project concentrates on Summit Lake, a small, low-income community south of Akron. Foley provides holistic legal education and representation to community residents, with a focus on improving the affordability of housing in the area by concentrating on housing conditions and foreclosure prevention. Melissa Will (right) focuses on homelessness prevention in her position at Ohio State Legal Services Association, the state support center for legal aid attorneys in Ohio. Will creates workshops for legal aid attorneys to conduct for employees of social service organizations and provides technical guidance and other support to foster legal aid staff involvement in community efforts to prevent and end homelessness in Ohio.*

group recommended that Ohio's leadership initiative encourage and enable the development of leadership skills and opportunities for all staff in order to maximize legal services to low-income Ohioans. This group also recommended that leadership development occur locally, within each program.

With this focus in mind, OLAF and OSLSA facilitated a two-day advanced training in leadership in January 2007. Participants included two or three individuals from each program who serve as their program's leadership representatives. The training focused on skill development and the preparation of a "working" plan to develop/expand leadership development within their program. OLAF and OSLSA, working with MIE, will continue to support local leadership development through technical assistance to each program. The organizations will conduct regular statewide meetings of the local leadership representatives to facilitate the

exchange of ideas, provide moral support, problem solve, report progress, and discuss next steps within program and statewide. The initiative will also promote leadership skills development and opportunities in the course of various trainings and substantive task force meetings. It may be months or even years before the fruits of this effort can be seen, but a solid foundation has been established for a culture of leadership in Ohio.

Conclusion

The Ohio Legal Assistance Foundation is especially proud of the work provided by hundreds of legal aid professionals (attorneys, paralegals, and administrative staff) who serve poor Ohioans. As OLAF experiences a peak in revenues

from IOLTA and filing fee surcharges, it has committed to and invested in the most important asset in the legal aid delivery system: legal aid staff. Legal aid draws upon some of the best legal and administrative minds in Ohio, and OLAF wants to keep and increase this extraordinary team of professionals. OLAF will advance its fellows, LRAP, and leadership initiatives and look forward to a productive and satisfied team of legal professionals for many years to come.

Chuck Cook is associate director for operations of the Ohio Legal Assistance Foundation.

Jeffrey Fortkamp is associate director of the Ohio Legal Assistance Foundation.

End Notes

- ¹ www.olaf.org
- ² The survey results can be viewed online at OLAF's "What's New" Web page (www.olaf.org/Whatsnew/index.shtml).

IOLTA News and Notes

Comparability update

Arkansas joined the growing list of states with IOLTA interest rate comparability when a court rule change took effect on February 1. A total of 12 states now have comparability provisions, which require lawyers to hold IOLTA deposits in financial institutions that pay no less on IOLTA deposits than the highest interest rate or dividend paid to that institution's own non-IOLTA customers when the IOLTA account meets the same balance or other eligibility qualifications.

Assistance in exploring, drafting and implementing an IOLTA interest rate comparability requirement is available through the Commission on IOLTA and the National Association of IOLTA Programs. Contact Commission Counsel Bev Groudine at 312-988-5771 or bgroudine@staff.abanet.org for more information.



New IOLTA director in Montana

Amy Sing In The Timber joined the Montana Justice Foundation earlier this year as its director of IOLTA Operations. Sing In the Timber previously worked as a dropout prevention specialist for the Indian Education Department of the Montana Office of Public Instruction and as an attorney for the University of Montana School of Law's Indian Law Clinic.

She is a graduate of the University of Montana School of Law, where she served as president of the Native American Law Students Association. She also has an undergraduate degree from the University of Wisconsin – Milwaukee.

Legal Aid

Access Update

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expand pro bono efforts, improve assistance for self-represented litigants and expand court interpreter services for those facing language barriers in civil cases.

The New Mexico Access to Justice Commission has approved a report and recommendations from the Commission's Self-Represented Working Group. The recommendations include a wide range of proposals for reducing barriers to self-represented litigants.

State Legislative Funding Successes

The 2007 state legislative session

yielded some major successes. In New Mexico, the legislature approved a new appropriation of \$2.5 million for civil legal aid. With this funding, New Mexico will join the ranks of states in which total state funding exceeds LSC funding. The New Mexico Supreme Court, led by Chief Justice Edward Chavez, supported the funding request.

New York State's recently adopted budget more than doubles state funding for civil legal services, adding an additional \$8 million to the \$7 million allocated in past years. Of the new funding, \$5 million will be provided through the Judiciary budget. Plans and processes for distribution of the new funding will be developed

by the executive, judicial, and legislative branches. State leaders applauded the roles of Chief Justice Judith Kaye, Governor Eliot Spitzer, and legislative leaders in working for the increase.

In Washington State, a unified and coordinated judicial branch effort, the Justice in Jeopardy campaign, resulted in an annual increase for civil legal services of \$2,635,000. The Justice in Jeopardy campaign also encompasses court funding and indigent defense.

Submitted by Bob Echols and Meredith McBurney, consultants to the ABA Resource Center for Access to Justice Initiatives

Pro Bono

Pro Bono Award

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negotiate a visitation agreement with the child's biological brother,

and worked diligently to maintain this placement for the child after the county refused to allow the child to remain in the home. As Yoedicke says about her pro bono

work with children, "The most important message I hope to convey to my clients is that their hopes and dreams can make a difference."

Naturalization Ceremonies: A Natural Fit For LRIS

by Howard Shalowitz

Every week, thousands of men, women, and children across the country come to their local United States District Court for what petitioners and judges say is the most joyous moment in court—a naturalization ceremony. These ceremonies—usually held in a federal courthouse and presided over by a federal judge—are filled with pomp and circumstance. Typically, as the judge walks out, the clerk bangs the gavel saying “OYEZ, OYEZ, OYEZ, this Honorable Court is now in session; all those with business before this Court shall draw near and be heard; G-d save this Honorable Court.” The color guard presents the colors and marches the flag to the front of the courtroom. This is followed by the singing of a song pertinent to the occasion, such as *The New Colossus*, *America the Beautiful* or *G-d Bless America*.

In St. Louis, before the United States attorney introduces the applicants and their petitions for citizenship are granted, a leader of the Bar Association of Metropolitan St. Louis (BAMSL) is called on to deliver a short speech welcoming the soon-to-be naturalized citizens along with their families and friends. For many years, I have had the privilege of speaking at these ceremonies. In my message, I stress the importance of the privileges and the responsibilities of citizenship. The responsibilities include serving on a jury when called and voting in each election. I found that after many years of telling citizens about the importance of voting, there was no mechanism immediately available for them to register to vote. I suggested that the League

of Women Voters set up a table outside of the courtroom for the citizens to register to vote, minutes after being sworn in as new citizens. Virtually every new citizen registered after the ceremony.

I also realized that many of these new citizens have had no exposure to our legal system except for the immigration and naturalization process. Before becoming a United States citizen, one must speak English, learn American history, and have a job. Many people who become naturalized citizens are hard-working professionals, teachers or business owners, and make a very good living. Hence, when a need for a lawyer arises in the area of family law, negligence law, business law, criminal law, and many other areas unrelated to the naturalization process, these middle to high-income citizens do not have anywhere to go.

BAMSL’s Lawyer Referral and Information Service approached the clerk of the district court with the idea of having space at a table outside of the naturalization ceremony for the LRIS to hand out free brochures to the new citizens. Just as the League of Women Voters provides a mechanism to register to vote, the LRIS now provides a mechanism for these new citizens to make “The Right Call for the Right Lawyer.” By displaying a brochure with the word “congratulations” in multiple languages on the cover, it catches the eye of the new citizens. The brochure also gives a plethora of information about the LRIS.

BAMSL LRIS Chair Richard Magee, LRIS Director Lael Richter Simon, and LRIS Assistant Director Shannan Deemie have found that

the new program provides multiple benefits. It benefits citizens by providing needed referrals and information regarding every area law. It benefits the bar association by providing a public service and generating referral fees. It benefits panel attorneys by expanding the client base, helping new citizens, and in some cases, receiving a fee for services rendered.

Once a month, you may see expressions of joy, elation, excitement, and rapture on the faces of the newly naturalized citizens as they take their oath of allegiance to the United States and become citizens. All too often we take for granted the guarantees that our government provides and the ease with which we access the legal process. Seeing the faces of these newly naturalized citizens reminds us that they chose to be Americans to build better lives for themselves, contribute to the community and fully participate in our society. Their patriotism and appreciation for the United States sometimes far exceeds that of many of us who were privileged to be born here.

I would encourage all members of the bar to observe or speak at a ceremony that will make you proud to be an American all over again. I would further encourage you to print similar brochures and implement this LRIS program at naturalization ceremonies in your community.

Howard Shalowitz is past president of the Bar Association of Metropolitan St. Louis (BAMSL), past chair of BAMSL’s LRIS, a member of the ABA Standing Committee on Lawyer Referral and Information Service, and a member of the Missouri Bar Board of Governors.

From the Chair...



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

The question of how a moderate-income legal consumer can find an appropriate attorney—in other words, how to make “The Right Call for the Right Lawyer”—is easily answered once that consumer has access to intelligent information. We in the lawyer referral world know that calling an ABA-certified lawyer referral service is always the right call for the right lawyer.

The questions of how your LRIS can get the “Right Call for the Right Lawyer” message across, develop a better client base and grow in the business of public service can be answered easily as well. The ABA Standing Committee on Lawyer Referral and Information Service’s annual National Lawyer Referral Workshop, set for October 17 to 20, 2007, will provide answers to each of these questions and more. Significantly, this year’s annual workshop will have a humanitarian impact that in many respects is as important as the content of the material to be presented. This year’s workshop will be in the Crescent City: New Orleans, Louisiana.

Those of you who have watched the nightly newscasts and occasional documentaries about Hurricanes Katrina and Rita know, or think you know, the

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The ABA PAR Program: Is Your Program Due for a Check-up?

by James McLindon

For more than 20 years, the ABA Standing Committee on Lawyer Referral and Information Service’s Program of Assistance and Review (PAR) has visited lawyer referral programs throughout the United States: large, medium and small; urban, suburban and rural; metropolitan, statewide, and statewide minus certain areas covered by other bars; and profitable, breaking even, or about to close due to red ink. In short, the only characteristic that all of these programs have had in common is their desire to improve, the one essential ingredient to a successful visit.

What a PAR visit is not

A PAR visit is not a judgment by the ABA or the LRIS Committee on the quality of your program. Rather, the PAR consultants’ goal at the site visit is to determine what is working well and what can work better. We understand that programs come in all shapes, sizes and stages of development. We visit lawyer referral programs that are so profitable that they provide funding to other bar programs and we visit lawyer referral programs facing extinction because they are a drain on bar resources. Both kinds of programs can benefit from a visit, although in obviously different ways. Our job is to help any program at whatever stage of development it has attained.

As this implies, another thing that a PAR visit is not is standardized. Whether your program wants a general review of its operations or something as particular as an assessment of its telephone and computer systems, your visit is tailored to your exact needs, as will be described below.

A final thing that a PAR visit is not is anybody else’s business. What the consultants see, hear and recommend is confidential.

Why have a PAR visit?

Occasionally, a program director expresses some embarrassment at requesting such a visit, but that is misplaced. These visits are as vital to any programs’ health as an annual physical is to your personal health (although you do not need a PAR visit nearly as often). Like the rest of the world, LRIS is constantly evolving; procedures and approaches which may have been state-of-the-art five years ago may be outdated today. A PAR visit provides the opportunity for a program to get or stay up to date.

Some visits, then, are simply a wellness check: the program has no particular complaint, just a desire for a once-over. Other requests are more specific. For example, a program may want to computerize some of its activities. Another program may want to review its options for intake and follow-up procedures. A third may want to enhance its revenues.

Visits are triggered by these sorts of specific concerns, which are often multiple in number. Just as one might see a specialist for a particular health concern, PAR consultants with specialized expertise in the issues

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From the Chair...

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extent of the devastation inflicted on one of America's great cultural cities. Those of you who have been to New Orleans since the flooding understand, in ways those who have not can never fully appreciate, the extent of the devastation Katrina and Rita left in their respective wakes. The French Quarter and the Garden District, the oldest parts of the city and built on the highest ground, are much as you remember them. The tourism centers are still there, but many neighborhoods remain uninhabitable and the economy is in poor shape. The tourism that will allow New Orleans to rebuild has not yet fully returned. At least in part, then, the survival of New Orleans depends on people like us, the LRIS community, returning with our business.

This is not the first time New Orleans has experienced flooding. Most of you know about the 1927 floods that came close to destroying the Crescent City, along with much of the Mississippi Valley. In succeeding years, the New Orleans we have come to know and love took shape at the foot of the Mississippi.

The members of the LRIS Committee were appalled by the aftermath of the storms and immediately began looking for a realistic way to contribute to city's recovery. It became clear to us that taking our LRIS business to New Orleans as soon as we could was the one way we could contribute.

Workshops involve much planning and the site is chosen over a year in advance. Last year's workshop in Albuquerque had been set for some time, so New Orleans was not an option. 2007 presents our first opportunity to return to New Orleans and to New Orleans we will go.

I'll write briefly about the program in following paragraphs but I want to encourage all of you to join us in New Orleans. I realize that budgets are tight in many referral programs, but all of us owe what we can to the people of New Orleans. If you find that your LRIS governing committee or your bar organization's board of directors balking at the expense of sending staff to attend the Lawyer Referral Workshop, I urge you to remind them about the economic catastrophe in New Orleans and the public responsibility we have for helping to rebuild the city and the lives of those who live there.

Besides, attending the Workshop makes good business sense for your LRIS. I promise you will learn something that is beneficial to your local program. In many cases what you learn will either increase revenue or decrease expenses to the extent that your participation will not make your program's bottom line suffer. More importantly, your attendance will contribute directly to the city and its citizens, who depend on visitors for their economic subsistence. Going to New Orleans is simply the right thing to do.

The Workshop will include sessions on the Internet, marketing, removal and discipline of recalcitrant panel members, disaster preparedness, ethics, new developments in telephony and more. Those of you who have attended past workshops realize the networking opportunity our workshop provides and this year will be no different.

Please join us October 17 to 20, 2007, in the Crescent City. Your LRIS program will benefit from your attendance as will the citizens of New Orleans.

For more information about the Workshop please visit www.abalegalservices.org/lris/workshop.html.

PAR Visits

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raised by the visit are assigned to each visit. In short, almost any reason for a PAR visit is a good one.

How can your program receive a PAR visit?

PAR visits result strictly from requests from programs. If you want a visit, or if you simply want to talk with ABA staff to determine whether a visit makes sense, contact Jane

Nosbisch at 312-988-5754 or jnosbisch@staff.abanet.org.

Who will my consultants be?

Generally, two consultants will conduct your PAR visit. Who they will be depends upon your needs. The ABA has approximately two dozen consultants, each with an individual area of expertise, from whom consultants are selected. Some are attorneys, some run programs in other parts of the country, and all are experts.

What will the visit cost my program?

Nothing. Well, okay, strictly speaking, you have to provide lunch for the PAR consultants. PAR consultants generously donate their preparation and travel time, as well as the time entailed by the visit itself, their report, and any follow-up necessary.

What will the visit tell me?

Pretty much whatever you ask.

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PAR Visits

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The focus of the visit will be primarily on whatever aspects of your program that you ask us to consider. Thus, the clearer an idea that you have of what you want the PAR consultants to review, the clearer their focus will be. At the same time, there is nothing wrong, and many things right, about simply requesting a general review of how your program functions. The PAR consultants conduct their visit with an eye to the concerns that you have raised.

What should I expect from a PAR visit and what do I need to do?

The answer to this question falls into the following categories.

- **Before the visit:** To most effectively staff and plan our visit, we need to know a lot of information about your program. For that reason, you will receive a lengthy questionnaire from us a few months before your visit. Most, if not all, of the information that we will request should be at your fingertips. The questionnaire elicits key basic facts about your operations, financing, marketing and so on. In addition, it gives you the opportunity to tell us exactly why you want the visit and what we should focus on to best serve you. This information is critical, both to assigning consultants and to their pre-visit preparation.
- **During the visit:** Typically, the PAR consultants arrive shortly after the program has opened for the day to allow it time to get up and running. They then generally meet with the program director and sometimes the executive director for a time to discuss the latter's concerns, then observe the telephone intake personnel and

other operations. (In a small program, all of these people may be one and the same.) Shortly before lunch, the consultants meet briefly in private to finalize their recommendations and then have lunch with the program director and often the intake staff, together with the executive director, the LRIS committee, and the officers and board of governors of the bar. (Note that, for the visit to have maximum effect, it is essential that these key decision-makers be present for the luncheon presentation.) At this luncheon, the PAR consultants make their recommendations, which they will finalize in their written report.

- **After the visit:** The PAR consultants return home and prepare their report. All of their recommendations will have been voiced at the luncheon, although the written report permits some expansion upon them.

- **One year out/follow-up:** The written report does not conclude the PAR visit. Rather, the consultants remain available to you for consultation after the report. Moreover, approximately one year after the visit, ABA staff will contact you to see if a follow-up visit would be helpful. Often, programs find that a second visit can help assess their progress and offer any necessary mid-course corrections.

The PAR program is one of the best benefits the ABA provides to state and local bars, and it is available at no cost. However, it remains one that cannot be conferred unless you request it. Please consider whether your program could benefit from a visit in 2007.

James McLindon is chair of the PAR Program and former chair of the ABA Standing Committee on Lawyer Referral and Information Service.

Bereavement Notice

Sheree L. Swetin, the executive director of the San Diego County Bar Association, died on June 3 after a long and courageous battle with lung cancer. Sheree previously worked at the American Bar Association, where she served as staff director of the Standing Committee on Lawyer Referral and Information Service and of the Standing Committee on Legal Assistance for Military Personnel. Sheree also was the staff director of the Standing Committee on Lawyers' Professional Liability.

In her years at the ABA, Sheree counted a large number of accomplishments. To name just two of her initiatives, she was the driving force behind the ABA's adoption of the Model Supreme Court Rules Governing Lawyer Referral and Information Services, a set of national model rules that guide the operations of lawyer referral programs serving thousands of Americans each year. These model rules have improved the professionalism and quality of lawyer referral programs nationwide. Sheree also guided ABA efforts to inform lawyers about their options for malpractice insurance, providing information that helps lawyers to reduce malpractice risks, improve their practices and better serve their clients.

Memorial donations may be made to the ACLU Foundation at www.aclusandiego.org and the National Lung Cancer Partnership at www.NationalLungCancerPartnership.org. Please state that the donation is being made in memory of Sheree Swetin.

From the Chair...



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

The Delivery Committee presented the first Louis M. Brown Award for Legal Access at the ABA Midyear Meeting in 1995, in Miami. This year, the Committee returned to Miami to present the Award, as it has done the past decade at an awards luncheon hosted by the National Conference of Bar Presidents, the National Association of Bar Executives and the National Association of Bar Foundations. These groups assemble over 350 leaders of the bar from around the country and we greatly appreciate being granted a place on their agenda. It is particularly satisfying because this year, for only the second time, a bar association was the recipient of the Brown Award.

The Committee's Brown Award Subcommittee, consisting of Judge Allen Webster, Victor Geminiani, Keith McLennan and Michele Cofield, combed through the details provided by 14 nominees



Ms. Richardson presented the Delivery Committee's meritorious recognition to Maryland Legal Assistance Network Executive Director Ayn Crawley.

and recommended one project for meritorious recognition in addition to the Brown Award recipient.

The Maryland Legal Assistance Network (MLAN) received meritorious recognition for the development and maintenance of the Peoples Law Library (PLL). PLL is an online resource that provides directions and materials to low and moderate-income individuals who lack the means for full representation. While many states have outstanding sites providing similar resources, PLL includes two aspects the Committee found exceptional. First, it includes diagnostic tools that help people understand when the services of a lawyer are imperative. Second, MLAN provides outreach to local public librarians, who frequently are the first line of contact with those trying to work through legal issues. This orientation and training enables librarians to draw upon the resources of PLL to enhance the assistance they can offer. PLL is at www.peoples-law.info.

The 2007 Louis M. Brown Award for Legal Access was presented to the New Hampshire Bar Association and its Pro Bono Program for their work in crafting and advancing rules of procedure and professional conduct that enable lawyers to better assist those who are otherwise self-represented. We frequently view people as being represented or unrepresented, but fail to consider the possibilities of being partially represented, or represented on an unbundled basis. However, the New Hampshire Bar Association combined the recognition of needs from those involved in its pro bono and delivery programs with the



Delivery Committee Chair M. Catherine Richardson (right) presented the 2007 Louis M. Brown Award to John Norton, Chair of the New Hampshire Bar Association Pro Bono Governing Policy Board and Virginia Martin, NHBA Associate Executive Director for Legal Affairs.

insights into professional conduct from those involved in lawyers' ethics. It then crafted rules that clearly define the parameters when lawyers unbundle their services. The bar examined work done by other states and created rules that best met the needs of those seeking legal services in New Hampshire. Since the rules were adopted by the New Hampshire Supreme Court, the bar has pursued training programs to help both practitioners and members of the public better understand unbundled services or limited scope of representation. The Committee encourages other states to follow the lead of the New Hampshire Bar Association and pursue comprehensive changes designed to advance and maximize access to justice for those who do not qualify for legal aid or pro bono assistance.

Once again, let me offer my congratulations for both of these initiatives. We were proud to have recognized them at the awards luncheon and look forward to further opportunities to advance their work among those who are dedicated to access to justice for all. More information about these initiatives, along with information about past Brown Award recipients is available online at www.abalegalservices.org/delivery/brown.html.

From the Chair...



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

This issue of *Dialogue* carries an insightful article by a former LAMP Committee Chair, Kevin P. Flood, CAPT (ret.), JAGC, USNR, on the uneven progress toward adoption of Expanded Legal Assistance Programs (ELAP) in states across the nation. ELAP is a noble initiative to unbar the doors of local courthouses for military lawyers representing service members. Like Captain Flood, I find it concerning that the ELAP movement has appeared to lose some of its momentum since the adoption in 2003 of the ABA Model ELAP Rule, a blueprint for the states to follow.

Surely all would agree in principle that service members summoned to civilian state courts on civil-law matters should have access to a lawyer in worthy cases. In reality, service members so situated typically have stood alone in court. As a practical matter, service members bound for court could neither afford nor find civilian lawyers to represent them there. To remedy that decades-old inequity, ELAP rules quite simply allow military attorneys to go to court in the service of their military clients. Yet not enough states have adopted ELAP, and even where

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Expanded Legal Assistance Revisited

by Kevin Patrick Flood

Justice can be an elusive commodity for service members who find themselves in local courts on civil matters without legal representation. Unfortunately, years after the adoption of the Expanded Legal Assistance Program (ELAP) model designed to remove the barriers that kept military lawyers out of civilian courts, a service member standing before the bench on a significant legal matter without a lawyer remains a far-too-common occurrence.

Only a renewed campaign to implement ELAP programs in every state in the nation, and certainly in all states with significant military populations, will begin to rectify the fundamental unfairness inherent in that scene, particularly at a time when state court judges around the country are largely unaware of the important procedural protections afforded all service members under the Servicemembers Civil Relief Act.

Popular press coverage of the legal needs of service members can give the impression that their legal problems most often rise to federal magnitude, warranting the services of the Department of Justice or some other high-powered agency. In fact, a majority of civil law issues involving service members—like those facing civilians—are decided in the courthouse down the street, or in legal parlance, a “court of original jurisdiction.”

In local courts across the country, the quality of law and judicial process delivered can vary widely. Many local courts, including small claims courts, lower-level civilian courts and probate courts, do not even require or maintain transcripts of proceedings. The judges and clerks in state courts often have little if any cognizance of the pre-emptive federal laws protecting service members. As a consequence they may fail to enforce those vital protections. Without a legal assistance lawyer standing up for him or her in court, a service member may face a stacked deck.

Removing barriers to representation

Historically, rules against the “unauthorized practice of law” constrained military legal assistance lawyers from appearing in state courts for their service member clients in most cases. Because military lawyers typically were not licensed in the state, they could not be admitted to practice in the local court.

Two relatively recent developments held out the promise that those long-standing and largely indefensible barriers to court representation of service members by military legal assistance lawyers would finally fall in most jurisdictions. The first was the 2003 approval by the ABA House of Delegates of the Model Rule on Expanded Legal Assistance Programs (ELAP). The model rule created a roadmap for state authorities to adopt state ELAP programs that expressly waive the requirement of state bar admission before a military attorney could practice in that state’s courts. Its importance was reaffirmed by the ABA Working Group on Protecting the Rights of Service Members in 2004¹. The second development was the

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From the Chair...

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adopted the rules can be unnecessarily restrictive, in terms of the permissible subject matters of in-court representation.

I commend to your attention Captain Flood's treatment of the differences in the various states' approach to ELAP, why some have it and most don't, and the distinguishing differences in existing state ELAP programs. It is assumed that some state civilian bars resist ELAP for fear that letting military lawyers go to court will take legal business away from lawyers in private practice. That is a small concern, and I daresay, if the assumption is even accurate, small-minded as well. Even under the most permissive ELAP regimen, SJAs would not and could not send a JAG to the courthouse every time a service member had a court date. As Captain Flood aptly notes, a military lawyer would appear in state court when his or her superior determined the case held broader significance—such as sending a message to local scam artists—or where justice demanded that the lawyer be present in court.

Even assuming that such economic concerns were otherwise justified, civilian bars would be well served to stake out higher moral ground on this issue. In the real world of military life, service members have either a JAG lawyer or no lawyer. Retaining a civilian lawyer is simply not in the cards for the great majority of service members. States should adopt workable ELAP rules because it is simply the right thing to do for our service members, especially in these times. If the case is signifi-

cant enough, there is no just basis for denying the military lawyer access to the courtroom. I would also encourage the services to actively support the expansion of ELAP. It is a tool that they could use or not use in any given case, but a tool that should be available to military legal managers when they want it and need it.

The recent enactment of the federal multi-jurisdictional practice statute removed any lingering doctrinal doubts about whether military lawyers should be allowed to practice in states (as distinct from practice in state courts) where they are not licensed, as Captain Flood points out. With the MJP piece in place, the ELAP movement should be gaining momentum, not stalling.

I believe the current circumstances call for a better effort among the states in adopting effective ELAP rules. Further, I am asking the Committee to look into ways it and the ABA may be of help in reaching that objective.

* * * * *

The LAMP Committee is the lead co-sponsor of a new book published by the ABA, the *Judge Advocate General's School Guide to the Servicemembers Civil Relief Act*. Prepared by the Army



JAG School and Learning Center, the *Guide* is simply the best reference resource written on navigating, understand-

ing and applying the SCRA. I again thank the Army JAG School for its cooperation in making this seminal ABA publication a reality. ABA Publishing envisions it as the first of several publications focused on military law and lawyers.

We are advised that early data indicate that sales of the *Guide* are unusually strong for a book of this type. I am confident that this trend will persist as more military and civilian attorneys with practices requiring knowledge of the SCRA discover the high utility of this volume, co-sponsored by the General Practice, Solo and Small Firm Division. LAMP was able to negotiate a deeply discounted book price of \$9.50 for members of the military, with a further bulk discount purchase available. You can learn more and purchase the *Guide* online at: www.abanet.org/abastore/productpage/5150308

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The LAMP Committee is very much looking forward to its next free CLE, paralegal education program, and committee meeting at the Air Force Judge Advocate General's School at Maxwell AFB in Alabama on July 26-27. It is always a special event for the Committee to visit those service schools where our JAG officers consistently receive the best military legal training in the world. The July program should be outstanding, combining the usual LAMP coterie of renowned instructors on SCRA, USERRA and Family Law with excellent senior Air Force instructors. For registration and program information, please go to www.abalegalservices.org/lamp/cle.html.

Focus on ELAP

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enactment, as part of the 2006 National Defense Authorization Act, of an amendment to 10 U.S.C. §1044 clarifying that a JAG attorney could practice law in any state, without further admission requirements, provided that the attorney held a law license from at least one state. The new statutory language states:

(e)(1) Notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide that assistance in any jurisdiction subject to such regulations as may be prescribed by the Secretary concerned.

One might argue that this new provision in and of itself permits in-court representation in every state, provided that each branch of service has a regulation authorizing ELAP. But that view could invite complications related to states' rights. Certainly, however, the so-called MJP law (multi-jurisdictional practice) removes any conceptual doubts that legal assistance practice generally—setting aside courtroom work—is not the unauthorized practice of law, even if the JAG attorney does not hold a license in the state where he or she is stationed and practicing law.

Unfulfilled promise

The promise of the Model ELAP Rule and the MJP law has not, unfortunately, been fully realized. A number of states commendably have adopted ELAP programs enabling military lawyers to get into court, among them California², Florida³, Hawaii⁴, Illinois⁵, Mississippi⁶, Rhode Island⁷, South

Carolina⁸, Virginia⁹, Utah¹⁰ and Washington¹¹. Even in those states, however, the ELAP programs place unnecessary restrictions on courtroom practice by military legal assistance attorneys.

For example, South Carolina limits ELAP to specific counties, and California limits it to an appointment by a judge to represent a service member under the SCRA. Virginia requires a full background check along with payment of a fee. Utah's rule requires the filing of an application, but is unclear about whether a full background check is necessary. Other states, including Hawaii, want full bar dues to be paid. Pennsylvania imposes a 15-hour CLE requirement on reserve and National Guard attorneys. In Florida and Washington State, ELAP is confined to certain areas of practice, clients must meet income guidelines, and attorneys must attend a CLE program.

Some states are less restrictive. Rhode Island permits military lawyers and Rhode Island National Guard attorneys on extended active duty to practice under a very simple rule, as does Illinois (active duty only). But with the exception of Mississippi, the rules in each of these states also limit the applicability of ELAP to military clients who have financial hardship, are ranked E-1 to E-4, or are enlisted.

Other obstacles have hindered the establishment of ELAP elsewhere. Resistance from the civilian bars and perhaps the absence in a given state of advocates who can effectively push for the approval of ELAP have combined to keep the program off the books entirely in some important military-intensive states, including North Carolina and Texas. (Both states otherwise have done outstanding work

through their state bar military sections and other volunteer efforts to support the legal interests and needs of service members and their families). In some states where ELAP was under consideration, the state bar or supreme court vetted the issue with local legal assistance commanders, and some Staff Judge Advocates actually opposed ELAP implementation.

The importance of ELAP

What difference can ELAP make for a service member with a court case? I can speak to that question from my personal experience as regional director of legal assistance for the Navy in the Southeast. I campaigned for an ELAP rule that was approved by the Florida Bar (Rule 18), prior to the ABA's adoption of the Model ELAP Rule in 2003. To satisfy the various groups within the bar, we conditioned service through the program on falling within the Legal Services Corporation income guidelines, and restricted it to certain areas of practice. I managed this program from 1997-2004, and it received accolades from judges and court personnel. To help promote it within the Navy's legal assistance program in the Southeast, the commanding officer qualified, and then took on ELAP cases. The program provided representation to many clients in matters that included bringing a replevin action to retrieve a car from a scam mechanic, stopping a car storage lien sale, litigating a water softener sales scam, and entering a consent change of child custody order to permit a military member to deploy courses offered during the year.

Perhaps most revealing were 12 cases handled through the program where there were default

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Focus on ELAP

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adjudications of paternity in violation of the SSCRA (the Soldiers and Sailors Civil Relief Act, precursor of the current SCRA). Military attorneys appeared on motions to vacate, which were all granted, and DNA tests ordered. Nine of the 12 putative fathers were excluded by DNA testing.

As another example, units in the Jacksonville area lost eight aviators in the line of duty in one year, 1997. The Navy Judge Advocate General amended the regulations to enable the legal assistance office to provide assistance in settling the aviator's estates. Under the Florida ELAP rule legal assistance attorneys were able to proceed with summary probate to close out any Florida issues and handle military life insurance and other survivor benefits. Not only can military lawyers handle these estate matters, in our case we did handle them, begging the question: Why should the bereaved family of an active duty military member have to seek outside assistance, when the military legal assistance program should be in position to respond to the needs of "our" families.

The benefits of ELAP

In advocating an overdue expansion of ELAP, it is important to recognize that not every case does or should warrant ELAP intervention. No legal assistance manager wants to open the door to operating a divorce "mill," nor does a military lawyer want to become involved in a complex custody case, except as co-counsel on the SCRA or military issues. In my seven years managing an active ELAP program, taking a case for

ELAP representation was always a difficult decision, and every case that I as a field manager thought warranted ELAP had to go up the chain to the Deputy Assistant Judge Advocate General of the Navy for approval.

Yet for a legal assistance manager, having the option of taking the right cases to court can benefit not only the individual client but also a far broader constituency. Many times a federal or state statutory right or benefit afforded to service members or military families is at issue, or the case impacts the general military community within the jurisdiction of the court (such as consumer scams affecting military members), or it is a benefit that should be available, such as in the probate cases mentioned earlier. Many times the military lawyer's "show of force" in the courtroom will not only secure justice for the client but have a chilling effect on future bad acts by an offending party.

ELAP expansion

ELAP is a good and necessary idea because our judge advocates and civilian legal assistance attorneys should be advocating in court for the rights of our active duty service members and their families. Once in the military, members are subject to orders and have no choice as to where they live. They have left their family contacts and support groups, and are out on their own, many times in unfamiliar surroundings, far from home. When they do become involved with the civilian legal system, the means of affording them legal representation before the courts should be greatly simplified.

How can we get ELAP off the dime in more states? The ABA Model ELAP Rule can be greatly simplified. There is no reason that every

state cannot adopt a rule similar to the straightforward Mississippi program, or the Illinois rule, except that meeting an income guideline should not be a requirement.

Competency of representation is not an issue. Legal assistance attorneys are all graduates of ABA-accredited law schools, they have passed the bar and are licensed in at least one state, and not only have they passed the background check of the National Board of Bar Examiners and state bar examiners, they have also been vetted by the government and granted a security clearance.

Moreover, in these times of extended deployments, quick response, and in many instances complex federal statutes or benefit plans, military attorneys need to be in the forefront in defending service members' rights.

Kevin Patrick Flood, CAPT (ret.), JAGC, USNR is a past chair of the LAMP Committee. He was a member of the ABA Working Group on Protecting the Rights of Service Members.

End Notes

- ¹ The Working Group's report is available online at www.abalegalservices.org/downloads/lamp/wgprsmreport.pdf
- ² California Rule of Court 9.1
- ³ Rules Regulating the Florida Bar, Rule 18-1
- ⁴ Hawaii Court Rule 1.7
- ⁵ Supreme Court order, MR 1799
- ⁶ Mississippi Appellate Rule 46(e)
- ⁷ Rhode Island court Rule (2)f
- ⁸ Supreme Court rule
- ⁹ Virginia Code 54.1-3900, Virginia Supreme Court Rule 1A.g
- ¹⁰ Utah Rules of Court 14-804
- ¹¹ Washington Admission to Practice Rule 8(g)

From the Chair...



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

I would like to use this column to discuss the views of SCLAID on limitations that affect the use of state, local, and private funding by recipients of grants from the federal Legal Services Corporation.

To summarize, SCLAID continues to support longstanding ABA policy that opposes limitations on the purposes for which LSC funds can be used. SCLAID also believes that the federal Legal Services Corporation must be preserved as the principal national source of funding and leadership for the nation's network of legal aid programs. As a result, the principal focus of the ABA, and of SCLAID, has and will continue to be on preserving funding and on building a broad and enduring coalition of supporters for LSC.

A number of new limitations on LSC funds were imposed in 1996. We now have more than 10 years of experience with those limitations, and are well positioned to understand their full impact. Some of those limitations have harmed clients and have unnecessarily impaired the efficiency and effectiveness of local legal aid programs.

Among the 1996 changes was a measure that prevents LSC-recipient programs from using any non-LSC

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State Access to Justice Update

National Meeting of State Access to Justice Chairs

The 2007 National Meeting of State Access to Justice Chairs, held in Denver on March 24, brought together over 130 leaders from 42 states and the District of Columbia. Several states participated in the meeting for the first time, including Hawaii, Kansas and North Dakota.

Colorado Chief Justice Mary Mullarkey opened the event. Other plenary speakers were Montana Chief Justice Karla Gray, Mississippi Supreme Court Justice Jess Dickinson, and Deborah Hankinson, chair of the ABA Standing Committee on Legal Aid and Indigent Defendants and a member of the Texas Access to Justice Commission.

Much of the meeting took place in small breakout groups. In addition to a session of seven "peer state" groups, there were two sessions with a choice of subject area groups. Topics addressed included resource development, public awareness and communications, using the ABA Ten Principles of a State Civil Justice System as a tool for strategic planning and advocacy, developing a new generation of equal justice leaders, civil right to counsel, pro bono, support for self-represented litigants, and legal needs studies and assessments. In addition, there were special roundtables for judges and chairs of state access to justice entities.

Additional information and materials from the meeting are available online at www.ATJsupport.org. The 2008 meeting will be held on Friday, May 9, in Minneapolis, in conjunction with the 2008 Equal Justice Conference.

New Access to Justice Commissions

The increased participation in the chairs' meeting reflects the growing number of access to justice commissions in the country. Since the 2006 meeting, new commissions have been created in Alabama, Georgia, Mississippi, Nevada, New Hampshire, South Carolina, and Utah.

Recent Access to Justice Commission Initiatives

A number of commissions recently have undertaken public hearings and other events to increase public awareness of the need for civil legal assistance. In Massachusetts, Chief Justice Margaret Marshall and other members of the Massachusetts Supreme Judicial Court participated in a hearing convened on April 6 by the Massachusetts Access to Justice Commission on barriers to civil justice and strategies for addressing them. The hearing was the final in a series held around the state. The commission, chaired by former Chief Justice Herbert Wilkins, will make a report and recommendations based upon information obtained from the hearings.

The Mississippi Access to Justice Commission plans to launch a round of hearings in the fall.

The Arkansas Access to Justice Commission has prepared a new video, *Forging the Road to Civil Justice*, introduced by Supreme Court Justice Annabelle Clinton Imber. The video, which can be viewed online, tells the stories of several individual clients and how their lives were changed by legal aid representation.

The California Commission on Access to Justice has completed the final version of its "Action Plan for Justice." It documents the continuing justice gap in the state and makes recommendations on ways to increase funding,

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From the Chair...

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dollars, including individual donations, foundation grants, and state and local government funds, for any service or activity that the program is barred from doing with LSC dollars. Under this rule, if a legal services program wishes to spend private funds on these restricted services or activities, it must set up a separate office and duplicate overhead, personnel, and administrative costs.

SCLAID believes that this limitation on the use of state, local, and private money wastes public funds. Instead of merely requiring careful accounting for the expenditure of federal resources versus other resources, the rules now require entirely separate offices—wasting both federal dollars and other funds on needless duplication. Money spent on this duplication

could better be used to serve clients.

Moreover, the restriction interferes with the choices of state, local, and private charitable donors about how to spend their money. Other public and private funders cannot provide resources to LSC recipients to undertake work and serve clients that the funders have determined to be priorities. Those funders must instead direct such funding to other programs that are oftentimes less experienced and sophisticated. Again, poor clients bear the brunt of the resulting inefficiencies.

A simple change to the current rule could solve these problems while leaving the restrictions on LSC funds intact. The appropriation that funds LSC can be modified for future years by leaving the restrictions on LSC funds intact, but removing the application of those restrictions to other funds. LSC funds will continue to be strictly accounted for, and the

restrictions will continue to be fully applicable to those funds.

SCLAID urges *Dialogue* readers, first and foremost, to continue their strong support for increased funding for LSC under the current rules. We know that LSC-funded programs have to turn away more than half of eligible applicants for services. A larger federal appropriation is needed to address that situation.

But at the same time we believe that bar, legal aid, and other community leaders should consider whether the limitations on the use of non-LSC dollars can be revisited without eroding broad support for LSC. This particular set of limitations seems to the Committee to be causing harm to clients, and to be limiting the discretion of other funding sources. We would be happy to provide additional information to readers who would like to learn more about this topic.

American Bar Association
Division for Legal Services
321 North Clark Street
Chicago, IL 60610-4714

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