

Dialogue

Issue Highlights

LRIS

Regional Meetings

Localized networks and conferences help LRIS programs share information, pursue goals 3

DELIVERY

From the Chair...

Lessons from public hearing on access issues examined 7

LAMP

Coast Guard

Re-energized legal assistance effort brings help to Coast Guard members far and wide 11

PRO BONO

An Advocate since Kindergarten

Ten years later, 1992 Pro Bono Publico Award recipient Bob Juceam's dedication to pro bono remains steadfast 14

IOLTA

Grantee Spotlight

California program uses community economic development to augment traditional legal aid practice 25

SCLAID

Challenging the Death Penalty

Former First Lady Rosalynn Carter questioned the United States system of capital punishment in addressing the 2002 Pro Bono Publico Award luncheon 31

Cultivating Quality: Training for Your Panel Members

by Janet Diaz



For many years, lawyer referral programs operated by state or local bar associations were the only game in town. Now, there is an array of other available resources that a consumer may choose from when seeking an attorney referral. There are hundreds of Internet sites that offer lawyer referrals, lawyer directories and case bidding. Whether your lawyer referral and information service (LRIS) provides assistance to individuals in big cities, small towns, rural areas or statewide, computer technology has removed barriers to accessing legal help.

With that in mind, how can non-profit, bar-sponsored lawyer referral programs keep pace with the competition? What sets LRIS apart from any other referral source? Placing an emphasis on public service and the quality of panel members can greatly enhance the reputation of an LRIS program as the place to go for referrals.

Going beyond the Model Rules

For programs that already meet the standards set by the American Bar Association (the ABA Model Supreme Court Rules Governing LRIS), and for those attempting to refine their policies and procedures to meet the standards, it is important to create new mechanisms to increase the quality of service to the public. The Model Rules set the tone by requiring that programs establish a comprehensive set of guidelines to address consumer protection issues, attorney compliance and attorney obligations. Policies addressing suspension and/or termination of panel members and subject matter panels are also an integral part of meeting these standards.

Many sources, including *Dialogue* and the ABA LRIS Workshops, have provided information regarding the implementation of subject matter panels and establishing and enforcing suspension policies. To carry the push toward quality a step further, LRIS programs can be proactive and provide necessary training for panel members.

Orientation for new panel members

Training panel members can take many forms and involves working with attorneys from the beginning to cultivate professional and successful relationships. Many LRIS programs require new panel members to attend a personal interview in the bar association office or send LRIS staff members to meet with the attorneys in their offices.

This introductory meeting is an opportunity to present an overview of the details of participating in the lawyer referral program. Discussions typically include the history of the LRIS program, board/committee oversight, panel member obligations and commitment to LRIS, the rules of membership, and LRIS intake procedures. The interview should also include a comprehensive review of the forms that will be forwarded to the panel member, the attorney's reporting obligations, and LRIS fees. This may also be the appropriate time to discuss an attorney's background and experience

(continued on page 2)

DIALOGUE

Published by the American Bar Association
DIVISION FOR LEGAL SERVICES

Dialogue is a quarterly magazine serving as an exchange of information on the funding and delivery of legal services, offering timely, relevant and proactive articles, developments and emerging issues from the ABA Standing Committee on Pro Bono and Public Service, Standing Committee on Lawyer Referral and Information Service, Standing Committee on Legal Aid and Indigent Defendants, Standing Committee on Legal Assistance for Military Personnel, and the Commission on IOLTA.

Debbie Segal
Chair, ABA Standing Committee on Pro Bono and Public Service

James B. McLindon
Chair, ABA Standing Committee on Lawyer Referral and Information Service

L. Jonathan Ross
Chair, ABA Standing Committee on Legal Aid and Indigent Defendants

David C. Hague
Chair, ABA Standing Committee on Legal Assistance for Military Personnel

Darrell E. Jordan
Chair, ABA Commission on IOLTA

Mary K. Ryan
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/Webmaster
ABA Division for Legal Services

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

David Holtermann
ABA Division for Legal Services
321 N. Clark St.
Chicago, IL 60610
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 St.
Chicago, IL 60610
312/988-5749
fax: 312/988-5483
email: mbruynseels@staff.abanet.org

The ABA Division for Legal Services encourages reprints of the articles in *Dialogue*. However, all rights are reserved and no material may be reproduced without the express permission of the ABA. For reprint permission, please contact:

Richard J. Vittenson, Director
ABA Copyrights and Contracts Department
321 N. Clark St.
Chicago, IL 60610
312/988-6101
fax: 312/988-6030
email: copyright@abanet.org

The views expressed in Dialogue are those of the authors and do not necessarily represent the policies of the American Bar Association. The contents of this magazine have not been approved by the ABA House of Delegates and do not constitute ABA policy.

Dialogue's Web Address is <http://www.abalegalservices.org/dialogue/>

©2002 American Bar Association ISSN 1092-2164

Quality

(continued from page 1)

and determine whether they would qualify him or her for subject matter panel membership.

Conducting personal interviews is time consuming for staff and attorneys, and may not be practical for every program. As an alternative, orientation training can be conducted in a workshop setting during the lunch hour or after work. The orientation should be mandatory for new members, although all members may be encouraged to attend. In addition to the more routine procedural and historical information, topics may include responding to client calls, using fee agreements, and dealing with clients when the case will not be retained. Other orientation topics may become obvious from complaints received about panel member conduct.

A solid orientation will help panel members respond more positively to referred clients and therefore enhance the LRIS program's service and reputation. It will also make the program's life easier.

CLE seminars

By offering accredited continuing legal education (CLE) seminars, LRIS programs can create some perks for panel members while at the same time increasing panel quality. Seminars can focus on particular subject matter areas or on general practice concerns.

Subject matter seminars can contribute to the ability of newer

members to meet a panel's experience standards. Highly experienced panel members often like to speak at such seminars, and can usually obtain their own CLE credit for preparation. Family law topics, such as temporary motion practice or domestic violence, may be of interest to many panel members, since so many referral calls are in this area. Other topics might be DUI or bankruptcy practice.

General topics to consider include ethics and avoiding malpractice. New attorneys (and sometimes more experienced ones) often have ethical puzzles or questions about how their malpractice insurance works for claims, and what their insurer looks for. Some LRIS programs

A solid orientation will help panel members respond more positively to referred clients.

have presented CLE seminars area with titles such as "The Ethics and Practicalities of Setting Fees," "Ethical Tools to Avoid Disciplinary and Malpractice Claims," and "Keeping Your Malpractice

Carrier Happy." The licensing bar in your state may have disciplinary counsel who would be happy to participate, and malpractice insurance brokers also can provide important information.

Poor communication by attorneys is a common complaint to both LRIS programs and bar disciplinary committees, and a seminar focused on communicating with clients could address an important need.

New attorneys and solo practitioners might be particularly interested in sessions addressing

(continued on page 5)

From the Chair...



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

Fall is the time when many bar associations witness a change in leadership. Presidents-elect finally lose that annoying suffix and at last can begin implementing their plans for a year that is usually all too short. I would ask that these new leaders—along with those currently in the middle of their terms and those who won't take the helm for a few more months—take a moment to consider the attention that they will give lawyer referral and information service in their allotted 12 months.

The importance of lawyer referral to state and local bar associations should not be underestimated. Lawyer referral has been called the public face of the bar, and indeed it is. It is a rare bar association that has another program with which members of the public interact more frequently. So keep this in mind: the **only** contact members of the public are likely to have with your bar association will probably be through your lawyer referral program.

This fact alone should inspire you to consider whether your LRIS program is all that it can and should be. But, of course, a more important reason should spur you

(continued on page 4)

Building LRIS Resource Networks Closer to Home

by Jane Nosbisch

More states are finding ways to leverage the talents and energy of local LRIS program managers, staff and volunteers through periodic meetings and conferences. New York recently conducted its first all-day program, joining the ranks of those—the Mid-Atlantic states, Florida, Ohio and California—that have already sponsored regional or statewide LRIS conferences. Although they share common characteristics, each effort has adopted distinct goals that arise from the needs of the local programs.

The Mid-Atlantic Lawyer Referral Service staged its eighth annual meeting in May 2002, under the coordination of the Maryland State Bar Association Delivery of Legal Services Section Lawyer Referral Committee. John H. Price, Jr., long-time chairman of the committee, notes that the idea for the annual meetings “came from the awareness that we were all working on the same goals and it would further our efforts to exchange information about effective methods that we had each developed.” Each year’s agenda is based on input from the attendees, which includes staff representatives from Maryland, Virginia and Philadelphia. The 2002 agenda mirrored those found in other states, and included such topics as advertising, mediation programs, and reduced fee programs.

Florida’s approach to developing its network began with a Florida Bar Lawyer Referral Committee meeting that included a brief visit from ABA Program of Assistance and Review (PAR) consultant Sheldon Warren. Within several months, a consortium of three local bar associations had joined together to organize Florida’s first statewide LRIS workshop. They again called upon ABA PAR consultants, this time Lish Whitson and Janet Diaz, to facilitate the daylong meeting in June 2001. Connie Pruitt, executive director of the Hillsborough County Bar Association, in Tampa, said, “it was a real eye-opener for the attendees.” This meeting included executive directors of the bars and the front-line staff responsible for intake. “We don’t usually have a lot of time to convey the message of the value of LRIS—this meeting gave us that opportunity. Front-line staff does not always get the opportunity to get to the national workshop. This meeting provided an outside perspective from the PAR consultants and it has helped in building relationships within the state.” Plans are now in the works for a follow-up workshop.

New York is the most recent state to stage a homegrown gathering. Michelle Benjamin, lawyer referral coordinator for the Onondaga County Bar Association, organized the state’s 2002 inaugural event for executive directors and LRIS managers and committee members. The survey-developed agenda included sessions on revenue sources,



(continued on page 4)

LRIS Networks

(continued from page 3)

technology applications, followup as a quality control and fee collection measure, the how-tos of developing subject matter panels, and marketing. Audrey Osterlitz, director of the New York State Bar Association LRIS program, noted that it was "very productive for all of us to get together. The Dutch-treat dinner the night before the meeting also allowed us to talk shop and get to know each other's issues." Discussions at the meeting also included strategizing about perennial issues such as how to increase staffing and innovations in fund-raising, and a bar association dues surcharge devoted to supporting LRIS marketing.

Ohio has taken its meeting initiative a step further. In addition to meeting annually, the coordinating group is now developing a joint intake manual

"We don't usually have a lot of time to convey the message of the value of LRIS—this meeting gave us that opportunity."

containing substantive case screening questions with an initial version scheduled for release this fall. Additionally, the group has met with the Ohio Supreme Court Lawyer Referral and Information Services Committee (which is responsible for implementing the Ohio Supreme Court rules regarding lawyer referral and information services) to discuss regulatory and trend issues. According to Chris Albrekton, director of the Dayton LRIS program, "it is great to be able to bounce around

ideas with program managers from similar programs. The Ohio Metro Bar is a great resource for questions and problem solving. Down the road I see the Ohio Metro Bar doing great things in the advancement of the lawyer referral service."

All of these efforts share a kinship with the California lawyer referral programs, which for years have organized an annual workshop devoted to LRIS. The more formally structured California workshops have frequently served as a discussion forum for the standards that regulate lawyer referral services in that state, along with multiday programming devoted to the wide range of LRIS topics.

Jane Nosbisch is staff counsel to the Standing Committee on Lawyer Referral and Information Service. The committee is interested in providing support to your local or regional group that is developing a local program. Please call 312-988-5754 to discuss your ideas.

From the Chair...

(continued from page 3)

on. Your LRIS program provides a vital service, one that many people desperately need.

When faced with a legal issue, many individuals are unable to determine even whether their problem requires the attention of an attorney. The next step—finding a lawyer competent in the relevant area of law—is no easy task for lay persons. Your friend's cousin's divorce lawyer may have done a good job for her, but isn't necessarily equipped to handle to your complex product

liability suit or bankruptcy.

Of course, much of the benefit the public derives from a lawyer referral and information service is information. Often a lawyer is neither required nor even appropriate; rather, a referral to a government or community agency is sufficient to resolve the matter.

Programs that are understandably and appropriately concerned with making ends meet and providing good cases for their panel members may be inclined to devalue such information-oriented cases and their role in resolving them. That's a shame because, while such calls admit-

tedly do not produce clients for the service and its attorneys, the service is solving callers' problems. And that's what lawyer referral is all about. (These calls may eventually produce clients, of course, as word of mouth about good service is a prime source of referral callers.)

Sadly, these important programs are often taken for granted by bar presidents and other bar leaders. Worse, sometimes they become viewed as drains on the bar association, to which resources are grudgingly provided. In such cases, that grudging attitude sometimes percolates through

(continued on page 6)

Quality

(continued from page 2)

the use of legal technology or managing law practice economically. With more attorneys taking advantage of technology to maintain a home office, a seminar addressing professionalism and working from home might also help your panel attorneys.

Presenting seminars does take administrative time, as it requires scheduling meeting space, securing speakers, and producing materials provided by the speakers. An LRIS program's capabilities will depend on its staffing and whatever CLE resources might be at hand. Committee members may want to chair a presentation. If the bar association has a CLE department, perhaps its staff would cooperate with the LRIS program to create seminars that do not conflict with the bar association's revenue-generating seminars. Also, keep in mind that each state has its own requirements for granting CLE credit, so researching the specific state rules is a prerequisite to setting up a CLE.

Presenting a completely free seminar may seem like a great LRIS member benefit, but free sessions tend to have large registration numbers and small actual attendance numbers. This can be frustrating after all the work a program does to put one together. A small fee, lower than

that of a normal CLE session, will still give panel members a reward but remain a spur to attend. The fee could also help the LRIS program cover its materials cost.

Mentor programs

Many LRIS programs offer mentor programs, pairing newly licensed lawyers with more experienced lawyers to form a mentor/protégé relationship to discuss matters involving professional development and career decisions. Some LRIS programs pair lawyers with the specific goal of assisting the protégé in gaining the experience necessary to qualify for participation on LRIS subject matter panels. Mentoring is a wonderful member benefit, so be prepared to assign mentors at an LRIS orientation program.

If your bar has a pro bono program, it may be possible to create a cooperative arrangement whereby the pro bono program provides a mentor and training materials for the newer panel member, and the attorney agrees to accept a pro bono case. An extensive program may qualify attorneys for one or more experience

panel. Family law and bankruptcy matters work well in this format.

Conclusion

The program guidelines codified in the Model Rules should continue to be the primary reference point for LRIS programs. However, training for panel members is yet another way bar-sponsored lawyer referral and information programs

can rise above other referral sources. The extra effort can help ensure that panel members possess the basic knowledge of the referral process and the skills necessary to handle cases in the particular areas of law in which they seek referrals. Having experience standards and training for

panel members enhances the quality of the services offered by the LRIS program. Do not underestimate the power that word-of-mouth comments resulting from a successful referral to a quality attorney can have in improving the image of the service with both consumers and the local legal and judicial community.

Janet Diaz, a certified association executive, is the executive director of the Houston Lawyer Referral Service.

Do not underestimate the power that word-of-mouth comments can have in improving the image of the service.

It's Never Too Early to Plan...

Plan now for the 2003 LRIS Workshop, which will be held October 22 through 25, 2003 at the Adams Mark Hotel in Denver. A block of rooms at the hotel has been reserved at a nightly rate of \$149. Early registration for the conference will still be at the low rate of \$245. We hope to see you there!

iLawyer Express: A New Way to Join the Internet with iLawyer

iLawyer Express brings referrals from the ABA Web site (www.abanet.org) and Internet search engines directly to participating bar association lawyer referral programs that meet ABA standards.

iLawyer developed its Express service for lawyer referral programs that want to process referrals using their own technology. Here's how it works:

1. iLawyer pays for keywords at major search engines targeted to geographic regions and areas of law. Clients find iLawyer links and click.
 2. iLawyer dynamically generates a Web page specially tailored to the client's search terms. For example, if a client searches for family law in New York, the client will arrive at an iLawyer home page focused on family law in New York.
 3. Each bar association has a customized intake questionnaire for the client to describe his or her legal matter.
 4. iLawyer Express displays referral information so that LRIS staff can cut and paste into any referral software.
- For more information, contact Adam Slote of iLawyer at 415-292-0660 or adam@ilawyer.com.

From the Chair...

(continued from page 5)

to the public when it attempts to utilize the service. Except in fairy tales, it is unduly optimistic to expect the poor stepchild to rise above his or her circumstances.

I would hope, then, that bar presidents and other leaders will consider the strengths, weaknesses and needs of their lawyer referral programs, and consider how their LRIS programs can be improved and, where necessary, brought up to date. For example, is your program in compliance with the ABA Model Supreme Court Rules Governing LRIS? If not, are you content to let your LRIS program remain a second tier service, rather than directing it to join the many programs (already one-third nationwide and steadily growing) that do comply?

If you're concerned that your bar lacks the resources to improve your program, consider that your LRIS program doesn't have to be a financial drain on your bar.

Nationally, well-managed programs routinely hold their own financially and often even turn a "profit" which can (and for tax reasons generally must) be used to support the bar's other public service activities. If your service has not yet implemented percentage fees, it probably should. If you have, and after an initial start-up period you still feel your LRIS is not pulling its own weight, your program probably could use some fine-tuning.

The LRIS Committee can offer ample help in efforts to improve programs. Committee Staff Director Jane Nosbisch and the rest of our staff in Chicago have a wealth of experience and material to share with you on virtually any LRIS issue you may need to address. If you want a check up, or help with specific issues, our PAR (Program of Assistance and Review) consultants travel all over the country every year reviewing and advising programs in the latest proven techniques. (And did I mention the PAR service is free to state and local bars?)

The Lawyer Referral Workshop each October brings together the LRIS community—veterans and neophytes alike—to participate in workshops and plenary sessions on the hot, as well as the everyday, issues in the field. Participants typically discover that the opportunity to meet and discuss matters with peers is often as valuable as the programming itself. The LRIS Committee also maintains a Listserv that ensures peer insight and support is available year round. Finally, *Dialogue* brings the latest in lawyer referral news to your mailbox four times a year.

As you bar leaders begin your all-too-fleeting year, I wish you good luck, and ask that you keep your LRIS program—and the ABA's resources—in mind.

The LRIS Committee program of Assistance and Review can be accessed by any local or state bar LRIS. To inquire about a PAR visit for your program, please contact Staff Counsel Jane Nosbisch at 312-988-5754 or jnosbisch@abanet.org

From the Chair...



by *Mary K. Ryan*
Chair of the Standing Committee
on the Delivery of Legal Services

In August, the Standing Committee on the Delivery of Legal Services held a hearing on access to lawyers and justice. We took advantage of the ABA Annual Meeting in Washington, D.C. to secure testimony from those in the D.C. area, as well as those attending the meeting. The 15 people who testified were from as far away as Spain to the east and California to the west.

The committee received input from those representing public interest and consumer groups, court management, legal aid, state bars, ABA entities, technology initiatives and academia. Their perspectives were varied, insightful and well thought out.

At least three themes were common, if not pervasive, throughout the testimony.

- First, technology has and continues to change the way people obtain legal information, advice and representation. It is as if we are in the midst of a laboratory experiment that is using the Internet to change the interactions and relationships between lawyers and their clients and between the courts and their customers.
- Second, some of these changes

will result in better access and a greater sense of fairness, while others will not. Evaluation of new methods must be undertaken to assess the value of these models and advance the successful experiments.

- Finally, we heard over and over that those who need legal services should be viewed on a continuum. At one end, people can probably meet their legal needs with little or no help from a lawyer. At the other end, people must have the assistance of a lawyer to accomplish any semblance of justice. Consider the analogy we were given—if you have a headache, you take an aspirin rather than see a brain surgeon. The challenge to the profession and society as a whole is to advance a common notion of that continuum, rather than advance needless trade barriers that serve neither the public nor lawyers.

Lawyers will never be replaced, but the hearing testimony showed us that not only will “business as usual” have to change, it already has. There was testimony recognizing the legitimate concerns of the bar about the risks of pro se litigation and the fear of loss of market share. But this testimony also suggested that for lawyers who represent individuals, not corporations, the answers lie on the continuum. Some states—Maine for example—have already amended court rules to authorize not just limited representation but limited court appearances as well. The ABA Litigation Section’s Modest Means Access Task Force will

be focusing on how to make discrete task representation a practical alternative for solo and small firm practitioners. Public education—whether community based or even through advertising—was described as essential in teaching consumers why and how a lawyer can help them. And any solutions to new demands for access and service from lawyers and courts must always help the middle class as well as the poor.

The committee will now take information from the testimony, along with the written material that was submitted, and prepare a report as part of a larger project on policies that have an impact on the ability of people to obtain access to lawyers and the courts.

Brown Award Nominations

Another way that the committee advances legal access is through the *Louis M. Brown Award*. We are now seeking nominations for the 2003 Brown Award, which will be given at the ABA Midyear Meeting in Seattle next February. The Brown Award is given each year to an innovative program or project that encourages better delivery of legal services to those of moderate income while advancing opportunities for lawyers. Recipients of the Brown Award have included the AARP Legal Hotlines for the Elderly, the Baltimore-based Civil Justice Network and the Houston Bar Association’s Modest Means Program. **Entries are due by November 25, 2002.** For more details about the Brown Award, go to the committee’s web site, at <http://www.abalegalservices.org/delivery>

Distinguished Service Award Nominees

by Traci Jones

Dialogue concludes its look at the nominees for the 2001 LAMP Distinguished Service Award. The award winners were profiled in the Spring 2002 issue of Dialogue, and other nominees were featured in the Summer 2002 issue.

Coast Guard nominees

Members of the **Commander (dl), Thirteenth Coast Guard District Legal Office** in Seattle maximized their limited resources to assist forces mobilized after September 11. Legal assistance attorney Elizabeth Fugelstad, legal technician YN3 Andresen Hambright and reservist attorney Ed Simmers worked as a team to schedule remote legal assistance visits within days of the attacks.

The **Coast Guard Legal Assistance Program Web Portal Management Team** was nominated for its management and enhancement of the Coast Guard's legal assistance Web site at www.uscg.mil/legal/la/index.htm

Comprised of LCDR Benes Aldana and computer specialist John Brown from Washington, D.C. and Web master and attorney Ben McCarty from Boston, the team has enhanced the portal's capacity to provide legal information to legal assistance beneficiaries anywhere, anytime.

Marine nominees

The **Marine Corps Air Station Miramar, Joint Law Center Legal Assistance Office** in San Diego, which provides legal assistance to over 20,000 service members, developed an expanded civil litigation representation program for qualified legal assistance

clients. This enabled the center to provide full representation to its clients, including in-court representation for junior Marines and their families.

Renowned for its tax program, the **Legal Services Support Section, 3d FGGS** in Okinawa provides electronic tax filing assistance for more than 50 percent of its client base, and has exceeded its goal of expanding the number served by 10 percent annually. It is the largest tax program in the Marine Corps and the fifth largest VITA program in the world.

Navy nominees

The **Naval Legal Service Office Northwest** in Bremerton, Washington co-sponsored a successful proposal to augment the Armed Forces Expanded Legal Assistance Program. The result is an amendment to Washington State Admission to Practice Rule 8 that will permit in-court representation by military lawyers not admitted to practice in Washington State. In addition, the office saved approximately 1,460 attorney hours in 2001 by utilizing legalmen to draft 4,380 dissolution pleadings and 1,050 adoption documents.

The **Naval Legal Service Office Central** in Pensacola, Florida implemented a "File of Life" (FOL) program in a joint effort with the local sheriff's department and council on aging. The FOL program is intended to provide vital medical and personal information to emergency medical personnel in the event of an illness or injury. Distributed to the office's estate planning clients, the FOL packet contains red

plastic folders that hold full-sized and wallet-sized medical information cards and a weatherproof decal to alert emergency workers to look for the medical information folder.

With an aggressive preventive law program, the **Naval Legal Service Office Pacific** (with attorneys in Japan, Guam and Hawaii) made weekly legal assistance visits to ships and shore commands. The office also distributed a monthly legal assistance newsletter published by the Pearl Harbor Detachment, and weekly newspaper articles from the Guam office.

The **Naval Reserve Legal Service Office Southwest 119** in San Diego exemplified the "One Navy" concept by providing valuable ongoing contributory support to its active duty gaining command while also handling legal matters and providing mobilization support for reserve commands. Reserve JAGC officers and legalmen met each Saturday from February through April to assist active duty personnel with tax preparation and on-site electronic filing of federal income tax returns.

Breaking new ground in the area of case management software, the **Naval Legal Service Office Southeast** in Jacksonville spearheaded the effort to bring "Time Matters" (a popular case management program) to the Navy legal assistance community. After demonstrating the improvements and the model for using the program, the NLSO SE version was adopted by OJAG as the standard.

(continued on page 10)

From the Chair...



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

"Recent studies reveal that almost half of Marine infantrymen are unqualified with their M-16A2 service rifle, 35 percent of sailors cannot swim, and most soldiers fail occupational skill tests."

If a headline like the one above appeared in the *Washington Post*, our military and civilian leadership would, in naval parlance, go to general quarters. Immediate action would be taken to get Marines to the rifle range, sailors into water survival training and soldiers back to the classroom. Up and down the chain of command individuals would be taken to task for dereliction of duty. Money and manpower would flow into training and education programs. Now consider the consequences of headlines like these:

"The Armed Services, with thousands of lawyers, fail to provide wills, advance medical directives and other basic legal support to their members."

"Relatives fight over estate and minor children of soldier killed in combat."

"Navy ship sinks—all hands lost—only officers had adequate estate plans."

(continued on page 10)

LAMP Spotlight...
**Marine Corps Base
Quantico, Virginia**

by Christo Lassiter

The ABA Standing Committee on Legal Assistance for Military Personnel customarily meets at military bases to see, and to be seen by, military legal assistance practitioners first hand. Our host commands appreciate this approach, and LAMP Committee members and liaisons are energized by these contacts. For the LAMP Committee's quarterly meeting and CLE conference on August 14-15, 2002, Committee Chair Brigadier General David C. Hague, USMC (retired) made certain that the Marine Corps' turn in the rotation at Marine Corps Base Quantico was worthwhile. Well attended by military and civilian lawyers from every branch of service including the Coast Guard, the location made this a special event for all, especially the many Marines in attendance.

Every Marine officer matriculates through officer candidate school as well as the basic school at Quantico, making it the spiritual home of the Marine Corps officer grades. Marine Corps Base Quantico hosts five commands in addition to the base command. These consist of the Training and Education Command, Marine Corps Recruiting Command, Marine Corps Systems Command, Marine Corps Combat Development Command, and the War Fighting Laboratory. Only the Marine Corps headquarters in Arlington, Virginia hosts more general officer commands.

The CLE program began with opening remarks consisting of fond recollections by Hague, who served as Staff Judge Advocate to the Quantico Command before retiring in 1998. Colonel Kevin Winters, USMC, the current Staff Judge Advocate, added his remarks. The lead CLE presenter was Gerald Robbins from the North Carolina Office of the Attorney General, who spoke on child support. He was followed by a series of highly regarded private practitioners from Virginia, including Dale W. Pittman who spoke on fair debt collection; Emory Hackman, who spoke on wills and probate; and Stephen Swann, who spoke on lemon law. The Honorable Judge James E. Baker of United States Court of Appeals for the Armed Forces spoke during lunch.

LAMP Committee member Lori Kroll again organized the CLE program, a role that she has filled exceptionally well in the past and will fill again for the committee's November 14-15 meeting in Raleigh, North Carolina.

The LAMP Committee met in full and subcommittee format to go through 21 agenda items. Meeting highlights included discussions on Operation Enduring LAMP, the expanded legal assistance program, and analysis of previous ABA efforts to support federal legislation that would establish legal assistance as a military entitlement. The committee also discussed tracking current legislation on extending Soldiers and Sailors Civil Relief Act protection to the National Guard and amendments to the Internal Revenue Code to ensure fairness to military

(continued on page 13)

From the Chair...

(continued from page 9)

What is the likely response to such headlines? Would there be official embarrassment and recrimination, public outrage and congressional hearings? Who would be held accountable for the thousands of service members who die each year unprepared, without wills, testamentary trusts, advance medical directives, and other basic legal documents:

- a) Congress, which has authorized estate planning and other legal support of military personnel but failed to demand and fund it?
- b) The leadership of the Armed Services, who by recent count have available almost 10,000 active duty, selected reserve and civilian lawyers?
- c) Military commanders, who are directly responsible for the well being and readiness of their troops?

The answer is "all of the above." Congress, the leadership of the Armed Services, and commanders are all accountable for the increased suffering and legal and emotional turmoil caused by the lack of an advance medical directive and appropriate

estate plan upon the death of a service member.

Ironically, it is not these accountable parties, but the American Bar Association, that appears to understand the importance of individual legal preparedness to overall readiness, morale and quality of life. It is the ABA alone that is urging action, including amendment of 10 U.S.C. § 1044, to make mandatory the provision of basic legal assistance for junior enlisted military personnel.

All active duty and selected reserve personnel (and their spouses) should be entitled to readiness-related legal assistance, specifically a will with a testamentary trust, durable power of attorney, advance medical directive, and an annual consultation with an attorney in a confidential setting. Furthermore, junior enlisted personnel should be entitled to additional legal services currently being provided on an ad hoc, discretionary basis such as assistance relating to domestic relations, consumer affairs, probate, and adoptions.

Congress must take the lead and make legal assistance an entitlement. It should do so by passing legislation similar to the

Veterans Education and Benefits Expansion Act of 2001, which guarantees retiring and separating service members pre-separation counseling and job search assistance. The Armed Services must respond with a can-do approach. The vast and talented military legal community of lawyers, paralegals and legal support staff must be energized to meet the challenge with fresh thinking and strong leadership.

Commanders and judge advocates must first be made to understand the importance of the undertaking. Beginning with officer and recruit training, service members must be indoctrinated on the importance of personal legal readiness. The message must be delivered continuously just as it is in other areas of personal readiness by means of annual dental and medical screening, physical fitness tests, and weapons re-qualification.

We must act now to take care of our men and women in uniform and their families, or be compelled to action by dispiriting headlines like those above. The challenge is to lead, follow, or get out of the way.

Service Awards

(continued from page 8)

Lieutenant C. Tyler Mulligan, NLSO Southeast was nominated for an individual award for writing the command's DL Wills Handbook, which is used to train new attorneys and reservists at five legal assistance offices throughout the Southeast.

Another individual, LN1

John Carrasco of the Naval Dental Center, Camp Pendleton, California, coordinated, on short notice, a successful power of attorney and will workshop for 85 personnel. Carrasco's efforts as the sole legal officer for the command resulted in the 100 percent personnel readiness for deployable members of the command.

Trudy V. Murphy of the NLSO, Mid-Atlantic provided over 25

training sessions to junior legal assistance attorneys on estate planning, consumer law, and guardianship. She also revised form worksheets and court pleadings for adoptions and name changes.

Traci Jones is a member of the ABA LAMP Committee. She is an attorney for the U.S. Navy Office of General Counsel, and also serves as a reservist attached to the Navy Reserve Legal Service Office Southwest 119.

Coast Guard Charts Course toward Legal Readiness

by Peter Seidler

"You have to go out, you don't have to come back."

—Old Coast Guard saying

"Before anything else, legal assistance is a readiness issue... The Coast Guard's commitment to providing legal assistance is critical to achieving our mission."

—Rear Admiral Jay Carmichael, former USCG chief counsel

Coast Guard men and women go in harm's way every day. Rear Admiral Jay Carmichael, quoted above, perfectly captures the spirit and sense of purpose of the United States Coast Guard's legal assistance program: to provide its people with the best personal legal services so they can go about the business of the Coast Guard confidently, knowing that they and their families are watched over.

As one of the Uniformed Services, the Coast Guard participates fully in the military legal assistance program authorized under 10 U.S.C. § 1044. Along with their colleagues in the Army, Navy, Air Force and Marine Corps, Coast Guard attorneys throughout the country provide a full range of services to Coast Guard military members, their families and others as permitted by the law.

Full time legal assistance attorneys

The Coast Guard's 37,000 military members are spread throughout the United States in one of nine operational Coast Guard districts. Each Coast Guard district has a legal office (Staff Judge Advocate) as part of its headquarters staff. Today, every one of these district



Coast Guard members are often assigned to extremely small commands far from any legal offices.

offices has a full time civilian attorney responsible for providing legal assistance services throughout the district. These nine attorneys form the core of the Coast Guard's legal assistance program, bringing a focused expertise, commitment and professionalism to Coast Guard legal assistance.

The Coast Guard provides legal assistance support beyond the civilian attorneys. Coast Guard law specialists (Coast Guard military attorneys, who are equivalent to JAG officers of the other services, but who act as line officers as well) are assigned to provide legal assistance support in addition to their other duties. Supporting these attorneys is a small but dedicated group of paralegals and legal assistants. The Coast Guard recently revamped its training for enlisted

administrative personnel assigned to legal staff offices. Known as legal technicians, these specialists are a critical part of legal assistance. Their responsibilities include managing legal assistance offices and handling tasks such as scheduling and interviewing clients. Several have obtained paralegal degrees and certification.

Legal assistance renaissance

It was not always this way. Prior to 1994, the Coast Guard had scaled back its legal assistance program to a point where it was strictly a collateral duty of military attorneys and reserve officers. Some Coast Guard legal offices provided a fairly broad range of legal assistance services while others, facing critical staffing shortages, could not. In 1994,

(continued on page 12)

Coast Guard

(continued from page 11)

with a renewed Coast Guard emphasis on its “Work Life” (family support) programs, the chief counsel of the Coast Guard embarked on a concerted effort to enhance legal assistance throughout the service. In 1996, six full-time legal assistance attorneys were hired and assigned to legal offices in Boston, Miami, New Orleans, Norfolk, Seattle, and Alameda, California.

These attorneys quickly became the focal point for legal assistance in the Coast Guard, completely re-energizing the program. In conjunction with Coast Guard military attorneys at major Coast Guard commands (such as the Coast Guard Academy, the Coast Guard Yard and

other training centers), they established a new standard for legal assistance. In 2001, the service hired three additional full-time legal assistance attorneys to serve Coast Guard commands and their personnel in the Great Lakes (Cleveland), Hawaii (Honolulu) and Alaska (Kodiak). Today, Coast Guard legal assistance provides a full range of legal services to Coast Guard personnel, their families and members of the other branches of service.

Challenges to delivering service

Though the Coast Guard is small in comparison to the other Uniformed Services, the challenge of delivering legal assistance to Coast Guard men and women remains a daunting one. Coast Guard members are scattered

throughout the United States, often assigned to extremely small commands far from any legal offices. Coast Guard stations can be found on Indian reservations and in other small, isolated communities. Ice breakers sail to the Arctic and Antarctica for up to nine months, and Coast Guard port security units deploy overseas in support of Department of Defense missions.

None of these units have their own legal staff members. In fact, with the Coast Guard’s centralized legal structure, few members are actually assigned to commands with legal assistance staff geographically collocated with them. This requires legal assistance attorneys to engage in an active schedule of unit visits and other creative means to provide assistance. One example is a comprehensive Internet site (www.uscg.mil/legal/la/index.htm) designed as a first stop for Coast Guard members needing legal assistance information and services.

September 11

On September 11, 2001 the Coast Guard’s investment in legal assistance paid off. Immediately after the terrorist attack on the Pentagon, a Coast Guard legal assistance support team was deployed at the behest of the Department of Defense to provide casualty assistance and estate and family law advice at the Family Assistance Center established to help victims’ families. The team, led by Coast Guard legal assistance attorney Nick Grasselli, was on the scene within 24 hours. It combined to provide the extensive array of critical legal services required to meet the needs of the families and friends

(continued on page 13)



Coast Guard port security units were deployed immediately after the September 11 attacks to protect U.S. ports and to support overseas military missions.

Coast Guard

(continued from page 12)

of the victims of the Pentagon attack, and the many military casualty assistance officers and benefits advisors. The Coast Guard team was a key member of the Joint Service Family Assistance Center Legal Team, which received the LAMP Committee's 2001 Distinguished Service Award for its efforts following September 11.

As Coast Guard port security units were deployed to ports around the country, the extensive

prior preparation by legal assistance attorneys ensured they were ready to go. In fact, little additional pre-deployment work was required because of the efforts of Coast Guard legal assistance staffs in their home districts. Coast Guard legal assistance attorneys also provided critical support to the thousands of Coast Guard reservists called to active duty to take on homeland security missions. With the largest call-up of Coast Guard reservists since World War II, Coast Guard legal assistance attorneys ensured that important deployment information was provided.

The work of Coast Guard attorneys continues to be colored by the aftermath of September 11, as they help reservists with important issues such as the Soldiers & Sailors Civil Relief Act and reemployment rights.

Legal assistance is a robust, vital part of Coast Guard legal practice. It is valued every day by the men and women who are called upon to protect the United States, its shores, and its environment.

Captain Peter Seidler is chief of the Coast Guard Office of Legal Policy and Program Development and special assistant to the chief counsel of the Coast Guard.

Quantico

(continued from page 9)

personnel concerning the capital gains exemption for the sale of residential property.

Legal assistance at Quantico

As always, the highlight of the meeting was the opportunity to visit the base legal assistance office and meet the legal assistance staff. The officer in charge at Quantico is Lieutenant Colonel Clinton Janes, whose officer/lawyer staff includes Captain Tamia Gordon and Lieutenants Shannon Drake and Ryan Bolling. The non-commissioned officer in charge is Staff Sergeant Gary Tank, whose staff includes Corporal Cristina Ortega, Lance Corporal Benjamin Main, and a civilian paralegal, Marsha Raubenolt. The office is supported by four reserve lawyers organized as the Marine Corps Base Legal Individual Military Augment Detachment (DET). The DET commander



Quantico's legal assistance staff includes (left to right) LtCol Clinton Janes, Cpl Cristina Ortega, LCpl Benjamin Main, Capt Tamia Gordon, and Col Tom Moore.

is Colonel Tom Moore, who is assisted by Lieutenant Colonel Eric Pfisterer, Commander Reginald Henderson and Major William Reyes.

This is a busy, full-service legal assistance office. To aid in pre-deployment readiness, the office drafts 40 to 50 wills and 100 advance directives each month, and is on track to open files on 5500 new clients for fiscal year

2002. Using a collaborative law approach, the office does a fair amount of consumer law, fair debt collection, landlord/tenant, and domestic relations work. The office provides legal assistance to military personnel from all branches of service including the Coast Guard, and to military retirees.

Christo Lassiter is a member of the LAMP Committee.

An Advocate since Kindergarten: 1992 Pro Bono Publico Award Winner Bob Juceam

by Jenny McMahon Webb

For many recipients of the ABA Pro Bono Publico Award, *pro bono* is a way of life that has continued long after the limelight of public recognition has faded. Dialogue takes a look at what one past recipient is doing today.

The 2000-plus hours that 1992 ABA Pro Bono Publico Award recipient Bob Juceam bills each year may sound like a heavy load, but it doesn't bother him. "I love what I do," he'll tell you emphatically. A professed "big firm guy," Juceam is a litigation partner in the New York office of Fried, Frank, Harris, Shriver & Jacobson. Last year, he spent 900 of his 2000 billable hours on pro bono-related endeavors. He devoted 400 of the 900 pro bono hours to groups that he believes help promote pro bono (such as the National Appleseed

Foundation, the D.C. Bar Foundation, the ABA Pro Bono Immigration Project, the American Immigration Law Foundation and the Pro Bono Institute), 200 hours to direct representation (largely in immigration matters), and 300 hours to law and regulatory change aimed at relieving burdens on the poor and promoting fairness and equal opportunity.

Juceam knew that law was his calling when he was six or seven years old. He got into an argument with his kindergarten teacher when he assumed the defense of another child who was, as he saw it then, unfairly accused of wrongdoing. The teacher was puzzled as to how Juceam got involved in the dispute and noted his tenacity; she dubbed him "the class lawyer" on parents' night.



Juceam

Indeed, Juceam was first exposed to the law at an early age. His father, a solo practitioner trial lawyer, often brought his lawyer and judge friends home for card games and other social events. Thus, Juceam has always felt comfortable in a legal environment. The oldest of his three adult children has chosen the law as his profession as well. Daniel Juceam is a fourth year associate at Paul Weiss in New York City, who, like his father, participates in pro bono through his firm.

Juceam believes pro bono is at the core of a lawyer's calling. It ultimately serves not only client goals, but social goals as well. For the overwhelming populace with no access to lawyers, it is important to get as much fair and even-handed access as allowed. The hallmark of law practice is not making money or headlines, but the ability to confront and defend governmental positions. If a lawyer is only engaging in for-pay private practice, then he or she is not fulfilling the calling.

Juceam's involvement in pro bono has not waned since he received the ABA Pro Bono Publico Award in 1992. From 1992 to 1997, he served on the ABA Standing Committee on Lawyers' Professional Service Responsibility (now the Standing Committee on Pro Bono and Public Service).

(continued on page 16)

2002 Pro Bono Publico Award Luncheon



Recipients of the 2002 Pro Bono Publico Award were honored on August 12 at a luncheon during the ABA Annual Meeting in Washington, D.C. Former First Lady Rosalynn Carter was the featured speaker at the luncheon, which was sponsored by the ABA Standing Committee on Pro Bono and Public Service. Pictured above are (left to right) recipients Luis Ochoa and Michael Miller, Hon. Pamela Brown of the Pro Bono Committee, Carter, Robert N. Weiner, past-chair of the Pro Bono Committee, and recipients Anthony Press representing Morrison Foerster, Attorney General Betty Montgomery representing the Ohio Office of Attorney General, and Rebecca Rundgren. Turn to page 31 to read Carter's speech.

From the Chair...



by Debbie Segal

Chair of the ABA Standing Committee on Pro Bono and Public Service

In an attempt to become inspired to write this column, my first as chair of the ABA's Pro Bono Committee, I read about the many people who have been recognized over the years for their enormous accomplishments on behalf of pro bono clients. They have spoken about how lawyers are professionals, how lawyers hold the key to the courthouse, and how lawyers have an obligation to give back. They have spoken about the ABA's Model Rule of Professional Conduct 6.1 and the versions of this rule adopted by their respective states. And they related how they became motivated to do pro bono work by these high ideals.

I am a former legal aid lawyer, the former director of a pro bono program and now the pro bono partner at a large law firm, and I understand that professional obligation is a motivation for doing pro bono work. But I think there is a different common denominator that brings lawyers to pro bono. The hidden secret for pro bono lawyers is that helping someone or some group in need is a rush. I expect it's like the runner's high (which I've never experienced). You are flush with satisfaction, you feel good about your accomplishment, you feel

(continued on page 16)

YLD Program Brings Volunteers to Frontlines of Disaster Relief

by Laura V. Farber

The Disaster Legal Services Program (DLS) is one of the oldest and most important of the public service and pro bono projects undertaken by the ABA Young Lawyers Division (YLD). The DLS program operates pursuant to an agreement with the Federal Emergency Management Agency (FEMA), that calls upon the YLD to organize and provide disaster legal services to victims of federally declared disasters.

Since 1978, the YLD has helped provide legal guidance and assistance in the wake of hundreds of disasters, including fires, floods, hurricanes, earthquakes, and even the Oklahoma City bombing in 1995. Despite this history, the YLD faced tremendous challenges in organizing the DLS following the terrorist attacks on September 11, 2001. Thousands of victims, geographic diversity, and multiple and overlapping federal and state agency jurisdictions combined to present new and unique obstacles. But with characteristic energy and resolve, hundreds of volunteer attorneys came forth to provide pro bono legal guidance and assistance to more than a thousand people affected by the attacks.

History

The DLS program grew out of the devastating visit by Hurricane Camille to the Mississippi Gulf Coast in 1969. Disaster legal assistance was not available on any organized basis, and most of the attorneys in the area were unable to help because the damage rendered them largely out of business. These realities prompted the Mississippi Young Lawyers Section to mobilize volunteer attorneys in an effort to assist the victims. That effort earned recognition from the YLD through its annual Award of Achievement, and it served as the precursor to the present-day Disaster Legal Services program.

In 1972, then-YLD Chair Harry L. Hathaway appointed a disaster relief committee to develop a national disaster legal assistance program with the White House Office of Emergency Preparedness, the forerunner to FEMA. As a result of those efforts, the White House office began funding nationwide training sessions sponsored by the YLD. A formal agreement delineating specifics of the program, including an annual grant to fund training sessions, was executed between the YLD and FEMA in 1978.

Legal assistance mandated

It is important to note that FEMA is required by federal law¹ to provide adequate legal services for low-income victims of federally declared disasters. FEMA has discretion, however, to determine whether a given disaster warrants the provision of legal services. If it determines in the affirmative, FEMA "activates" the agreement with the YLD by engaging the DLS program. As a general rule, the availability of free legal services to qualifying disaster victims is publicized through television,

(continued on page 17)

Bob Juceam

(continued from page 14)

He continues to serve on boards of pro bono organizations (including the American Immigration Law Foundation, Pro Bono, Inc. and the Washington Lawyers Committee on Civil Rights and Urban Affairs). Not a day goes by where he's not involved in a pro bono case. These days, he focuses

mainly on mentoring. Last year he mentored on many of the 95 asylum cases in his office, while actually serving on 14 and seeing five asylum clients.

As chair of his firm's litigation department in Washington, D.C. from 1995 to 2001, Juceam oversaw the individualization of the firm's pro bono requirement (versus a measurement based on total number of pro bono

hours divided by the number of lawyers) and the creation of a pro bono council. The council's primary role, along with training and intake, is to make sure that every lawyer in the firm who wants a pro bono case gets matched with one. The council tries to identify opportunities and bring them into the firm.

Juceam's firm has been a

(continued on page 17)

From the Chair...

(continued from page 15)

good about using your lawyering skills and, (if you are lucky enough to have obtained what your client wanted), you feel celebratory that the system really works, and you played a part in it. It's addictive.

And, speaking for myself and the many private lawyers who have done pro bono work over the years, the best part is knowing that you were really needed. Sure, if you hadn't taken on that pro bono matter, maybe there would have been another lawyer somehow, somewhere who would say yes to the case, hopefully. Most likely, without you, the client and her children would have been homeless, scammed out of home equity, or beaten one more time.

For decades, pro bono programs have focused their efforts, quite appropriately, on the individual legal problems of clients. Millions of individuals and their families have been saved from eviction, domestic abuse and predatory consumer practices through the tireless efforts of pro bono lawyers. This is extremely beneficial for the clients and immensely satisfying for the lawyers.

Still, with all these efforts,

all the legal needs of low-income people and communities are not being met. Quite honestly, one of the challenges has been that for various and valid reasons, pro bono programs—mine included—have had to focus their limited resources on taking cases that very often require litigation. They have sought (not always successfully) to fit every lawyer they can into this particular mold. The result has been, unfortunately, that vast numbers of lawyers with terrific skills and desires to impact lives have been left out. These lawyers want to help, they want to make a difference, but they have few places to turn. Elsewhere in this issue you will find an article about how business lawyers have joined the pro bono ranks in great numbers and in creative ways. It's a perfect example of how legal services to the poor can be expanded by developing programs that tap into the deep vein of currently unused volunteer attorney resources.

It should come as no surprise that business lawyers (here defined as the vast range of lawyers who do not litigate) are energized by pro bono and find it just as personally and professionally satisfying as their litigation-oriented colleagues. The business

lawyers in my firm regularly tell me that that the pro bono project they just completed was the best thing they've done in their legal careers. They are proud of their clients and thrilled to be using their talents to accomplish great things. Whether it is acting as "general counsel" to an organization that houses medically fragile foster care-eligible children or which provides day care to Alzheimer seniors, these lawyers feel the same excitement. Whether they are representing low-income tenants who are negotiating to buy and renovate their apartment building, or negotiating a complex tax credit deal to build affordable housing in a poverty-level neighborhood, the same exhilaration is experienced.

Clients have a broad range of needs, and there are plenty of lawyers with the commitment and interest to help. When the match is made, these lawyers feel the rush—the high of making a difference for those in need in our communities. It's this that makes us feel great to be lawyers and why we keep coming back for more.

Turn to page 18 to read about how a Texas transactional pro bono project brings business attorneys into pro bono representation.

Bob Juceam

(continued from page 16)

tremendous platform for him. He believes that the stature of Fried Frank rubs off on his activities and that people show an interest in him partly due to his ability to engage his firm. And his relationship with his firm has always been one of mutual commitment—once he has com-

mitted himself to a matter, the firm has always stepped up to the task. He is amazed that legal services groups work successfully every day with minimal support.

Juceam believes that his receipt of the 1992 ABA Pro Bono Publico Award helped him institutionalize pro bono within his firm. "It gave me messages I was happy to deliver," he says. Judging by the long list of services he has pro-

vided to pro bono clients and legal services organizations over the past 36 years, and his ever-flowing enthusiasm about his endeavors, he has succeeded in delivering those messages.

Jenny McMahon Webb served as assistant counsel to the ABA Standing Committee on Pro Bono and Public Service from 1997 to 2002.

YLD Program

(continued from page 15)

radio or newspaper outlets. Once the program is activated, the YLD district representative within whose district the disaster has occurred assumes responsibility to work with appropriate FEMA officials, bar association officials and young lawyer volunteers to organize and implement a training program and make arrangements to staff the Disaster Application Center (DAC). (The YLD divides the U.S. into 34 districts, each of which is represented by a district representative. All 34 district representatives hold voting positions on the YLD's governing council).

Training sessions inform volunteer lawyers about the DLS program, the specifics of their role, and the types of services they are expected to render. If a disaster victim has a non-fee-generating case, one of the volunteer lawyers at the DAC will proceed to answer basic questions and provide preliminary legal advice and consultation. If the issue is more complex, or concerns an area of law with which the volunteer is unfamiliar, he or she may refer the victim to another volunteer lawyer

for further help. In the event of a fee-generating case, the matter is typically referred through the FEMA regional director or federal coordinating officer to an appropriate state or local lawyer referral service. The FEMA regional director resolves any dispute as to whether a particular case is fee generating or not.

All volunteers are requested to maintain careful records of the intake, their recommendations and the disposition of each matter handled, so that updates on the number and types of cases handled and/or referred may be provided to the federal coordinating officer or regional director on a regular basis. The types of legal services that pro bono attorneys provide include assistance with insurance claims (such as life, medical and property); counseling on landlord-tenant and other housing matters; drafting of powers of attorney; replacement of wills and other important documents; estate administration (insolvent estates); preparation of guardianships and conservatorships; counseling on mortgage foreclosure; and employment-related matters.

DLS in action

In the aftermath of September 11, DLS volunteers immediately

contacted YLD district representatives from each of the state jurisdictions involved, set up electronic mailing lists and communications protocols, distributed training materials by email, and began soliciting lawyer volunteers to agree to help. Overwhelmingly, hundreds upon hundreds of lawyers volunteered from the states directly impacted, and many others from as far away as Nebraska and California. What is most important, perhaps, is that more than a thousand individuals were assisted through the DLS program during the six months that it operated. The magnitude of this disaster presented obstacles and circumstances not experienced before. But the YLD's Disaster Legal Services program met these challenges, and with help from volunteers too numerous to mention by name, was able to provide important service at a difficult time in our nation's history.

Endnote

¹ Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5121 et seq.)

Laura V. Farber is immediate past chair of the ABA Young Lawyers Division, and is in private practice in Pasadena, California.

Building Neighborhoods: Pro Bono Works in Texas

by D'Ann Johnson

As a first-year associate at Vinson & Elkins, Xavier Pena didn't expect to handle many cases on his own. Yet, just two months after he received his law license, he was heading from Houston to the South Texas border to meet with Robert Calvillo, the executive director of his new client, the Community Development Corporation of South Texas (CDCST), a nonprofit organization that builds affordable housing in poor South Texas neighborhoods.

The program that put Pena and CDCST together is Texas Community Building with Lawyer Resources (Texas C-BAR), a statewide transactional pro bono project that provides opportunities for lawyers to work with community-based nonprofits building housing for low income families and pursuing other community development activities.

Texas C-BAR staff make the initial contact with the clients, screen the applications for assistance, then match the clients with volunteer lawyers. Texas C-BAR then provides backup support to the volunteer lawyers to make sure the match is successful. In the case of CDCST, Texas C-BAR referred the nonprofit to Pena, who helped the nonprofit work with local governments to examine a tax increment financing plan that will encourage development in low income neighborhoods.

CDCST is a nonprofit with a small staff and little money to spare for legal advice. Through Texas C-BAR, the nonprofit receives the legal help it needs

in a way that allows it to use its resources more effectively. "Our needs on the border are great, but our wallets are small," Calvillo said. "Thanks to the free legal work, we are able to put our limited money directly into projects in the community."

And CDCST is not the only one who benefits from the relationship. As a Texas C-BAR volunteer, Pena not only had the opportunity to develop a professional relationship with a CEO, but also the opportunity to use his legal skills on an issue that really made a difference in people's lives: "In addition to gaining invaluable work experience, working with CDCST has been extremely rewarding. Since I am originally from South Texas, it is especially gratifying to be able to work with an organization that helps a community that I grew up in."

Xavier Pena is one of many lawyers who have donated their time to groups like CDCST. In just two years after kicking off, Texas C-BAR has referred 150 different pro bono matters to more than 32 of the state's largest law firms and corporate legal departments. Vinson & Elkins (V&E) lawyers alone have handled more than 30 pro bono matters, providing more than 750 pro bono hours at an estimated value of \$150,000.

V&E managers view pro bono work as a key to associate training and retention. The pro bono work helps the firm recruit new lawyers as well. According to Debbie Ramirez, the Texas C-BAR pro bono coordinator at V&E, "Work-

ing with clients referred to us by Texas C-BAR provides many opportunities for our transactional lawyers; young lawyers have the opportunity to handle their own clients at an early stage in their careers and more experienced lawyers are able to provide pro bono legal services in their areas of expertise."

Volunteering through Texas C-BAR, lawyers have provided assistance on a broad range of transactional matters, ranging from simple matters such as reviewing contracts to complex matters such as structuring loan transactions. For instance, Frank Oliver, a sole practitioner who practices title law, has used his expertise to deal with one of the thorniest issues confronting nonprofits developing affordable housing: clouded title. Since so many people in low-income neighborhoods die without wills, it takes only two generations for a piece of property to be caught in a stalemate with missing and unknown heirs.

Oliver worked with the Blackland Community Development Corporation in Austin to help the nonprofit clear title to a vacant lot. Bo McArver, a board member with Blackland, knows that this type of help is crucial to his nonprofit. "Without this assistance, we could never have untangled this mess to build homes on these lots. But now, the lots will finally have homes, and three low-income families will have the opportunity to own their first home."

(continued on page 19)

Texas Pro Bono

(continued from page 18)

"Texas C-BAR is the best thing since sliced bread" said John Morgan of the Center for Housing Resources. On the evaluation form that he returned to Texas C-BAR, he joked that he would not recommend his lawyer from V & E, Eric Winandy, to other community groups because he wanted to save him exclusively for his organization. The Center has used C-BAR three different times and recognizes that the savings in legal fees has allowed his organization to avoid using its own capital or go into debt. That makes the costs of their projects feasible.

Heather Way is the chief matchmaker behind Texas C-BAR. As a Skadden Fellow at Legal Aid of Central Texas, she served as general counsel to several Austin-based nonprofits building and renovating affordable housing. Aware of the new initiatives on transactional pro bono being advanced by the ABA and others, Way pursued the idea of giving the concept a shot in Texas, with the help of a grant from the Texas Bar Foundation.

"I knew that transactional lawyers wanted to help the poor, but there were limited opportunities in existing pro bono programs for real estate, tax and corporate lawyers to volunteer their specialized legal skills," Way said. For many transactional lawyers, volunteering outside their exper-

tise proves emotionally unsatisfactory. But working with nonprofits results in a completely different reaction. Pro bono has moved out of the courtroom and into the neighborhoods.

"The lawyers love it and the nonprofit clients love it," Way says. "We send evaluation forms to both our lawyers and the clients at the close of the matter. The evaluations are overwhelmingly positive." The lawyers are rewarded with the knowledge that their work made a difference—a long-term difference

"I knew that transactional lawyers wanted to help the poor, but there were limited opportunities in existing pro bono programs for real estate, tax and corporate lawyers to volunteer their specialized legal skills."

in the lives of the poor.

And they can literally see the lasting effect of their work. A lawyer who drafts the legal documents for the development of a home can later drive by that same new house and see children playing in the yard. Over several years, a lawyer can see an entire neighborhood transformed by the work of the nonprofit. "It makes you feel good knowing that because of your legal training, you could make such an important contribution in the lives of so many families," Way says.

In-house corporate counsel are also lining up to work with nonprofits. Conoco Corp., for example, is a participant in Texas C-BAR's community counsel

partnership initiative. As a community counsel partner, lawyers with an in-house law department serve as general counsel for a nonprofit. Law firm lawyers are also expressing an interest in partnering with in-house law departments to jointly represent a pro bono client. This teamwork gives an extra boost to the fee-paying relationship and makes good business sense for the law firms.

Even with the economic downturn, there has been no shortage of volunteers for C-BAR. "Pro bono

time has not been a casualty of the downturn," Way says. "In fact, so many lawyers have signed up to volunteer that our staff works hard to develop relationships with new clients to meet the lawyers' demand."

Lawyers have donated hundreds of hours of time through Texas C-BAR with visible results in low-income communities:

- Rudy Mata, a lawyer with an El Paso law firm, Delgado, Acosta, Braden & Jones, P.C., prepared real estate documents so that a small nonprofit in a rural community outside El Paso could close on a USDA loan. The loan allowed the nonprofit to sell an adobe solar passive house to a low-income family.
- Roger Bartlett, an Austin sole practitioner, helped a nonprofit by drafting a ground lease and neighborhood association rules for a new subdivision in a rural community outside Austin.

(continued on page 20)

Texas Pro Bono

(continued from page 19)

- Shari Heino drafted liability waivers for volunteers and applicants for a nonprofit organization's home repair program, the "Helping Hearts and Hands Project." Heino reported back to C-BAR that "it was great to find pro bono work in the areas in which I have expertise—nonprofit and transactional law." The nonprofit was also positive about the experience. "Our volunteer lawyer was prompt, courteous and spent a lot of time making sure we understood why things had to be done a certain way," the executive director said.

- Morgan Ryder, with Hughes & Luce, LLP, represented a nonprofit client during negotiations with the city of Dallas for a loan to build affordable housing. With the help of Ryder, the nonprofit has now been able to move forward with the construction of six homes for sale to low-income families. "It is great to have the opportunity to do pro bono work in your particular field of law. The clients are doing very interesting things and it's a great feeling to be able to get involved in that," Ryder says about her experience.

- Philip Svahn of Brobeck Phleger & Harrison, LLP, drafted articles of incorporation and bylaws for a startup community development financial institution. Svahn and a coworker at his firm

efficiently met the client's legal needs, enabling the client to provide low-interest loans to hundreds of low-income families.

- Katherine Parsons, a lawyer with Bracewell & Patterson, LLP, helped the Crossroads Housing Development Corporation, a young organization in rural West Texas that did not have funds to hire a lawyer. Parsons put together a comprehensive owner-

"Young lawyers have the opportunity to handle their own clients at an early stage in their careers and more experienced lawyers are able to provide pro bono legal services in their areas of expertise."

financing package with forms and instructions for the nonprofit "Fresh Start Program."

Says Paul Pryor, the executive director of Crossroads, "This package will be a benefit to our extremely low-income clients on fixed incomes by offering them an opportunity to experience home ownership and the opportunity to gain equity. From the removal of abandoned housing units, to training of at-risk youth in the construction field, and the ability of persons on fixed incomes to move from the rental market into home ownership opportunities, 'Fresh Start' will be a real benefit to all participants and beneficiaries in the program. Crossroads would never have been able to offer this without C-BAR's pro bono program."

- Anne Underwood of Baker

& Botts helped her nonprofit client in West Texas travel through a title maze on two properties the nonprofit owns. Her activities benefited two groups: the at-risk youth who will rehabilitate the houses on the properties through a construction trades program and the future buyers of the houses who are low-income persons with disabilities. The nonprofit was ever so grateful. A letter sent to Underwood following the representation ends with the following comment: "As we continue to serve the citizens of Howard County with affordable housing opportunities, we will never forget that Baker Botts played an important part in our infancy."

This type of response from lawyers and clients is what makes transactional pro bono work so attractive.

Seasoned lawyers can use their expertise to help deserving clients and young lawyers, like Xavier Pena, can move from legal memorandums and cite checks to a meeting with the CEO of a corporation with big plans and a small budget—where he, too, is a part of the group that builds neighborhoods.

D'Ann Johnson is legal services coordinator for Texas C-BAR in Austin.

This article is reprinted with the permission of the ABA Section of Business Law. It originally appeared in Business Law Today, Volume 12, No. 1, September/October 2002.

From the Chair...



by Darrell E. Jordan
Chair of the ABA
Commission on IOLTA

In August, I was welcomed by the Commission on IOLTA and others in the IOLTA community as the new chair of the commission. I am honored by the opportunity to lead the commission, particularly during such a crucial time for IOLTA. I am also privileged to follow L. David Shear, who provided such outstanding leadership during the past two years.

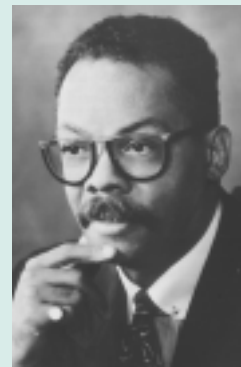
As many know, my involvement with the Texas IOLTA program is longstanding, and my support of IOLTA is unequivocal. I believe very deeply IOLTA is a well-conceived, constitutional means of helping fund legal services for the poor. I am gratified the legal profession and the bar—led by the ABA—have embraced IOLTA and continue to advocate for it.

In August I had the opportunity to meet the commission members, as well as many IOLTA program directors and trustees during the Summer IOLTA Workshops in Washington, D.C. The commission is comprised of members who come from all facets of the profession and from all over the country, but I am deeply impressed with their singular determination to maintain IOLTA as a healthy, vibrant source of legal services funding. I look forward to working with them all. *(continued on page 22)*

Summer IOLTA Workshops Keynote Address: IOLTA Essential to System of Equal Justice

by Hon. Robert M. Bell

Hon. Robert M. Bell, chief judge of the Maryland Court of Appeals (the state's high court) delivered the keynote address during the Summer 2002 IOLTA Workshops in Washington, D.C. on August 8, 2002. The following is a transcript of his speech.



Thank you for inviting me to address you today. It is no exaggeration to say that the work you do is essential to a fair and equitable system of justice in this nation, and I am honored to be with you.

This is a very fragile thing, this system of justice that has served Americans for over two centuries. In the *Federalist Papers*, Alexander Hamilton wrote, "The judicial branch of government is the weakest and least dangerous branch of government because it has neither the power of the purse, nor the power of the sword; it has merely its own good judgment." Thurgood Marshall reminded us of that fact when he declared, "We must never forget that the only real source of power that we, as judges, can tap is the respect of the people."

We don't control the purse strings. They're in the hands of the legislature. We don't have the power to enforce anything. That belongs to the executive. Our power, our strength, our authority, derive from the respect that we command—that we earn—from the people.

The converse is unfortunately also true. Beneath the surface is the more insidious danger that come from a lack of confidence in our legal system. The Reverend Martin Luther King said that if a system intended to benefit all people is closed to some of those people, then they will—consciously or unconsciously—begin to try to destroy it.

Lack of access undermines confidence

Unfortunately, you don't have to look very far to find people whose access to justice is limited or non-existent, and, therefore, whose confidence in the system is not particularly strong. You and I know full well that many persons in our country do not have adequate access to our system of justice and we know as well the impact that that has on our system and the perception of justice that they have. Because we have no other choice, we must work together in our respective arenas as members of the judiciary, IOLTA programs, legal services providers with the private bar, law school communities and other interested persons to address this deficiency.

Our system of justice is built on a very simple foundation: the rule of law. As a co-equal third branch of government, the judiciary exists to establish and manage a system to resolve disputes justly for all of the

(continued on page 22)

IOLTA Keynote

(continued from page 21)

citizens. We are the guardians of the rule of law. Indeed, that is our central mission. When lawyers are admitted to the bar, they become also officers of the court with responsibilities to the court, one of which is the obligation to support the discharge of that central mission.

But for the rule of law to work, which is necessary if the **entire** system is to work, everyone—**everyone**—must have access to the courts and access to justice. As important, everyone must have faith that they will be treated equally and without discrimination in any form, whether because of race, religion, ethnicity, gender, wealth, or any other reason.

We must acknowledge that too many Americans are denied access and suffer from discrimina-

tion. Consider the cost of this failure. Conflicts involving children, shelter, employment, property, commerce, communities and safety go unresolved. Perceived wrongs are not settled. Resentments grow. Social interaction declines. Stress and violence increase. Civil society suffers. When people cannot

Those whom the system fails become its enemies.

get justice, they lose respect for law, lawyers, courts and government. And then Dr. King's observation becomes reality: those whom the system fails become its enemies.

Public perception

Even if we could, in one fell swoop, eliminate these shortcomings in the justice system, we would still

have to confront the larger and, for me, more perplexing problem of public perception. Criticism of judges (and potential judges) is rampant, too often because one side or the other wants the judiciary to reflect their social and political values and will go to great lengths to influence the selection of judges. We're seeing that in Washington today. Lawyers are seen as cynical and avaricious. And law and the justice system are perceived as having too much to do with winning and losing and too little to do with justice.

Fortunately, there are a lot of good and capable people who are unwilling to allow these problems to persist and undermine the foundation of democracy. Fortunately, too, we are tackling these issues in a number of different ways and at various levels of the justice system.

- The Conference of Chief

(continued on page 23)

From the Chair...

(continued from page 21)

The wealth of talent and energy among the IOLTA program directors and trustees I met was impressive. I was able to attend many sessions during the two-day workshops, and I was inspired by what I heard and saw. Even under the difficult circumstances of the litigation and declining revenues, the workshops were upbeat, well organized and unfailingly focused on helping programs improve and maximize their impact. I want to thank the Joint Meetings Committee, which planned the workshops, and the many presenters and speakers who led individual sessions.

As we heard in Washington,

these are challenging times for IOLTA. Many programs face significant revenue shortfalls and must reduce grant awards due to the low interest rates. We are all mindful both IOLTA cases have moved to the Supreme Court. Briefing in the Washington State case should be completed by mid-November and the Court will hear oral arguments on December 9. The Court also is considering a certiorari petition from the Texas IOLTA program, which is seeking review of the adverse decision by the Fifth Circuit Court of Appeals in 2001.

I am happy to report that the ABA filed an amicus brief on behalf of the Washington State program, which is the eighth such brief from the ABA during the course of the litigation against IOLTA during the

past decade. My thanks go to the ABA's pro bono attorneys, Paul Smith and Marc Goldman of Jenner & Block and Steve Rummage and Jeffrey Fisher of Davis Wright Tremaine, who have worked tirelessly on our behalf.

I am also gratified that many other organizations filed amicus briefs in support of IOLTA.

Along with many others, I remain confident in the merits of each case and in the legal arguments supporting the constitutionality of both the Texas and Washington State programs. While no one can predict how the Supreme Court will rule, I am convinced that IOLTA will survive these challenges and continue to be a principal source of funding for legal services for the poor.

IOLTA Keynote

(continued from page 22)

Judges, for example, has made the restoration of public trust and confidence its top priority and has co-sponsored a conference on the subject. Indeed, that issue remains the focus of the conference.

There are no quick fixes. High profile trials, high profile lawyers, and the occasional aberrant decision dominate the news; the fact that justice is administered fairly and well in thousands of courtrooms every day goes unreported. But this matter is so vitally important that my fellow chief judges and I will continue to keep it at the top of the priority list.

- There is the national effort to bring legal services to low-income Americans, many of the leaders of which are in this room today.

- Finally, there is the growing effort at the state level to increase access, by making alternative resolution of disputes available, by supporting increased pro bono efforts, by offering assistance to men and women who choose to tackle legal issues by representing themselves, and by “unbundling” legal assistance.

IOLTA

I understand the frustrations that go with the job. You reach only a fraction of those who need assistance. There is never enough money. And, compounding the problem, there is even less money—because lower interest rates on IOLTA accounts have affected revenues. This is of particular significance since IOLTA is the second largest funding source in this country after the Legal Services Corporation funding. Moreover, the economic condi-

tions of our states and the state and federal deficits in public revenues present additional and even greater challenges, impacting, it must be said, our momentum at this time.

Nevertheless it is important you not lose sight of the importance of what you are doing and

I believe in establishing formal and informal partnerships that cross real and imagined lines.

I know you will not. At a time when people have doubts about our justice system and everyone who is a part of the system is suspect, you and the programs you run are shining examples of how we can, and, indeed, must bring justice and hope to people, one person at a time. By helping people understand their legal rights, responsibilities, and remedies; helping them anticipate and prevent legal problems; helping them to resolve legal problems without litigation; assisting them in using the courts and other tribunals effectively without attorneys; screening to determine when legal representation is required to help people effectively present and resolve meritorious claims and defenses in substantial civil matters involving family, safety, housing, employment, property, health, and other fundamental needs; and sometimes providing legal counsel in such instances on an affordable (free or sliding-fee) basis to income-eligible persons, you are making an extraordinarily important

contribution to both the justice system and society.

Need for partnerships

One thing I really believe in is establishing formal and informal partnerships that cross real and imagined lines, and to do so in the most inclusive way possible. Too often, people are reluctant to pick up the phone and call—say, the chief judge of the state—and say, “Judge, we need your help.” I think that too often the phone on the chief judge’s desk **doesn’t** ring when it should be ringing and when the man or woman who occupies that position is both inclined and able to help, to lead, to use the authority of his or her office in the interest of justice.

I also think that we allow conflicts, disagreements and misunderstandings to occur between the judicial branch of government and the two other branches. Some of those conflicts are unavoidable, because we have a duty to protect the integrity and independence of the judiciary and of judges in particular. We have all seen judges criticized by people in political life. We have watched for years as people on the right and people on the left battle over the federal judiciary.

But I am not convinced that judicial independence necessarily means that we do not talk to the other two branches, or that our partnerships cannot include the people who hold the purse strings and who are responsible for enforcing the laws. All three branches receive their marching orders, so to speak, from the same constitution. We serve the same constituents. Certainly we have to enlist our political leaders in the effort to maintain the level

(continued on page 29)

Commission on IOLTA Welcomes New Members



Darrell E. Jordan

Darrell E. Jordan of Dallas, Kent Gernander of Winona, Minnesota and Joe Roszkowski of Woonsocket, Rhode Island

joined the ABA Commission on IOLTA earlier this fall. All three were appointed by ABA President Alfred P. Carlton, Jr.

Darrell Jordan, a litigation attorney with Hughes & Luce LLP, joins the commission as its new chair. He is a former member of the ABA Board of Governors and House of Delegates, and is past president of both the State Bar of Texas and the Dallas Bar Association. He is certified as a specialist in civil trial law by the Texas Board of Legal Specialization.

Jordan is the original counsel of record for the Texas Equal Access to Justice Foundation (TEAJF) in the lawsuit filed against it by the Washington Legal Foundation. His commitment to IOLTA is evidenced by the hundreds of hours of pro bono representation he has devoted to TEAJF over the course of the case. In 1997, he made oral arguments to the Supreme Court in *Phillips, et al. v. Washington Legal Foundation, et al.*, 524 U.S. 156, 118 S.Ct 1925 (1998). On remand to district court, Jordan served as trial counsel to TEAJF, which obtained a favorable decision from the court following trial. He continues to participate in the case, which is now before the Supreme Court on TEAJF's certiorari petition.

Kent Gernander is a general practitioner with the Winona law firm Streater & Murphy. He has a

record of extensive involvement with the Minnesota State Bar Association (MSBA), including a term as its president in 2000 to 2001. Gernander has also served on the MSBA's executive committee, board of governors, and CLE board.



Kent Gernander

He has also been a member of the Minnesota Commission on Judicial Selection and the Minnesota Lawyers Professional Responsibility Board. Gernander currently sits on the Minnesota Lawyers Trust Account Board, which administers the state's IOLTA program.

Gernander will join the Joint Resource Development/Banking Committee and the Joint Technical Assistance Committee.

Joe Roszkowski returns to the Commission on IOLTA, of which he was previously a member between 1987 and 1990. Roszkowski has an extensive

record of service with the ABA, including just-completed term on



Joe Roszkowski

the Board of Governors, during which he was a member of the board's finance and nominating committees. He also served as the board's liaison to the Commission on IOLTA. He has also been a member of the ABA House of Delegates. Roszkowski is a past president of the Rhode Island Bar Association and the Rhode Island Bar Foundation, the state's IOLTA program.

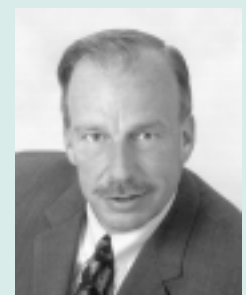
He will serve on the Joint Meetings and Training Committee and the Joint Technical Assistance Committee.

Jordan replaces L. David Shear as chair of the commission, and Gernander and Roszkowski replace Matt Feeney and Lynn Nagasako. They join continuing commission members John Dooley, Judy Garlow, Toby Graff, Zona Hostetler, Karen Neeley and Dwight Williams.

New IOLTA Director

Dialogue continues to introduce IOLTA program directors who have joined the community during the past year.

Jim Rooney joined the Colorado Lawyers Trust Account Foundation and the Legal Aid Foundation of Colorado as executive director in April 2002. Rooney previously held executive positions at several banks in Colorado for over 25 years. He is also a former member of the COLTAF board of directors. Rooney holds a degree in real estate financing and accounting from the University of Colorado. He is a member of the Independent Bankers Association of Colorado, America's Community Bankers and the Heartland Community Bankers Association.



Jim Rooney

IOLTA Grantee Spotlight: Legal Services of Northern California Pursues Economic Development Work to Serve Client Needs

by William Kennedy and Gary Smith

Since the mid-1990's, Legal Services of Northern California (LSNC) has seen its work evolve from a mixture of direct representation and impact litigation to incorporate a robust community economic development (CED) practice. A mixture of transactional business law practice and partnership with community-based organizations, LSNC's CED work aims to help communities address the root causes of the problems they are facing, such as lack of capital investment, unaffordable and substandard housing, and insufficient employment.

A grantee of the California Legal Services Trust Fund Program, the state's IOLTA program, LSNC was founded in 1956 as a storefront legal aid clinic in Sacramento. Since then it has grown into a large, legal services organization with nine branch offices in communities across the northern 23 counties of California. In addition to IOLTA grants, LSNC receives funding from a variety of sources, including the Legal Services Corporation. LSNC historically provided direct client service representation to low-income clients, and also engaged in impact litigation and multi-forum advocacy aimed at reforming laws, institutions and practices harmful to low-income people.

Why CED?

Community economic development work aims to foster economic development and asset

building in a community. CED works to leverage economic development to benefit community residents, to build residents'

law professor Stephen Wexler questioned how enduring the work of legal aid attorneys is for legal aid clients.¹ For LSNC, the

Traditional poverty law practice tended to focus exclusively on income maintenance issues, and ignored the importance of asset wealth for families.

asset wealth, and to enable residents to own or have control over economic development activities. LSNC advocates participate in activities such as:

- real estate development focused on individual homeownership and tenant control of multi-family housing units
- business development that will bring jobs to a neighborhood or launch client-owned businesses
- work force development that helps clients participate in control of the process, such as by designing welfare-to-work centers
- fostering capital formation through individual development accounts, micro lending and resident ownership of neighborhood institutions

The debate over CED has deep philosophical underpinnings. For years, legal services advocates have debated the fundamental mission of their work. Is it to ensure equal access to the justice system, or to combat poverty? In 1970,

question raised by Wexler (what can legal services organizations leave with their clients that cannot be taken away?) has shaped its perception of how its legal work ultimately benefits its clients. For these advocates, several realities about their communities shaped LSNC's commitment to CED work. First, traditional poverty law practice tended to focus exclusively on income maintenance issues, and ignored the importance of asset wealth for families. The absence of income wealth **and** asset wealth can limit a person's future options. A lack of funds means inability to pay last month's rent or a security deposit, constricting housing options. Clients without assets often cannot afford school tuition, reliable transportation, medical or dental care—all tools they need to start a business or maintain employment.

CED addresses this problem by taking a systemic approach

(continued on page 26)

Grantee Spotlight

(continued from page 25)

to creating wealth in low-income communities. In turn, assets create a cushion that can sustain a family through hard times, a job loss, an automobile repair or an unanticipated medical emergency. They provide the ticket to housing options in better neighborhoods, or the means to improve conditions in the current neighborhood through generation of jobs, housing and capital.

Also underlying LSNC's move toward CED were the shortcomings of "place-based" economic development strategies employed by government bodies and private developers to address blighted areas (often gentrifying them in the process), and of "people-based" strategies by non-profit organizations seeking to deliver income support and social services without regard to the larger community. In both instances, the strategies are "top-down," expert-driven approaches created without involving community residents in their formulation or control. Legal service programs are in a unique position to help link place and people-based strategies and help place community residents in a position to provide input and have control.

Transition to CED

Despite these underlying currents, LSNC did not explicitly move to incorporate CED into its day-to-day practice until the mid-1990s, when several practical considerations came to the fore. First was the reduction of its LSC appropriation by Congress. The resulting budget cuts for LSNC caused it to re-examine its priorities, and also to study new sources of

Significant LSNC Successes

Housing

- Assisted in the development of over 300 units of single family three and four-bedroom homes affordable to clients earning as little as \$17,000 per year.
- Set up a client-based community organization that provides home loan counseling to low-income families, predominantly immigrants.
- Assisted with the acquisition, rehabilitation and development of 144 multi-family homes in low-income communities providing decent housing with on-site childcare.
- Assisted client leaders to attract over \$30 million in federal, state and private funding to build affordable housing in impoverished neighborhoods.
- Assisted with the acquisition, finance and development of two transitional housing projects for homeless families at the former McClellan Air Force Base providing over 120 units of housing for homeless families.

Employment

- Assisted client leaders to negotiate hiring agreements with major regional employers.
- Set up driver's license reinstatement and criminal records expungement clinics to remove impediments to re-entry into the job market.
- Assisted welfare recipients to start 10 job cooperatives (housecleaning, landscaping, home health care, handicrafts, childcare, bakery and strawberry farm) employing over one hundred people.
- Assisted in the creation, siting and funding of eight community childcare centers, each designed to meet a particular community need.

Access to capital and wealth formation

- Beginning a micro-loan program with monies from cities and public agencies to enable low-income people to start their own businesses
- Beginning a micro-loan program for auto purchase and repair.
- Beginning client-based peer lending pools providing loans of \$1000 to \$5,000 for micro-enterprise development.
- Instituting individual development accounts (IDAs) for welfare recipients and renters in affordable housing which allow participants to create capital for education, small business start ups, or down payments on a home.

financial support, including the fee-for-service market. This led LSNC to conclude that it could generate a modest income by offering legal advice to local

non-profit organizations at below-market rates.

The funding crisis also prompted LSNC to engage

(continued on page 27)

Grantee Spotlight

(continued from page 26)

in joint fund raising with other compatible non-profit organizations. These organizations sought grant and foundation funding for their primary activities, with a portion of each funding award allocated for legal and policy work to be done by LSNC.

The final push into CED came when LSNC agreed to represent the Sacramento Valley Organizing Community (SVOC), a large faith-based organization active in the southern portion of LSNC's service area. SVOC operates in a decentralized structure of local religious congregations that seek to promote economic develop-

for rural farm workers.

Living Wage Centers

The 1996 welfare reform bill reversed 60 years of welfare policy in the United States when it limited cash aid to five years and required all parents to move from welfare to work. While federal and state legislators, policy experts and labor analysts proposed top-down strategies, SVOC and LSNC facilitated recipient-designed one-stop centers that became a model for the state and region. Over the course of eight months of meetings at SVOC member churches, welfare recipients designed a welfare-to-work program that would lead to jobs that paid a living entry-level wage with

their needs and the needs of the employers committed to hire them. LSNC attorneys negotiated and wrote the contracts that insured that the program participants would remain in control of the one stop programs. As a result, the SVOC one-stop programs have graduated hundreds of recipients into jobs paying an average entry-level wage of \$9.50 per hour with benefits.

La Esperanza

When SVOC organized farm workers in the rural city of Dixon, improved housing was at the top of their wish list. Many workers had large families and were tired of living in poorly designed and maintained housing. Their dream was to become homeowners and live in town. Local affordable housing developers said it was impossible to create a product that was affordable to families earning as little as \$20,000 per year. SVOC and the farm workers participating in the La Esperanza project persisted. Six years later, 72 families moved into three- and four-bedroom, single-family homes immediately adjacent to a new elementary school in the center of the Dixon community.

The farm workers reached this goal because they were willing to become developers and contract with engineers, architects and builders to construct their homes. SVOC hired two full-time staff to supervise the day-to-day operations, but it was always understood that SVOC would not commit to maintain the staff beyond the project. Because the development project had no infrastructure (such as permanent employees, office space and equipment) to maintain, the savings on overhead expenses

(continued on page 28)

Most significantly, advocates have been forced to come to terms with a different kind of relationship with their clients.

ment and create housing, jobs and access to health care in low-income neighborhoods. LSNC found itself collaborating with an influential and very capable community organization focused on fostering self-reliance and economic self-sufficiency in poor communities.

Since embracing CED in the mid-1990s, LSNC advocates have collaborated with their community partners in a number of successes, particularly in the areas of housing and job creation. Two exemplary accomplishments are the development of one-stop welfare-to-work centers, called Living Wage Centers; and La Esperanza, a successful affordable housing initiative

benefits and a chance for upward mobility. The recipients determined that the health care sector provided the best opportunity to meet their employment goals, so the centers were designed to educate them to work in that labor sector. The design also made provisions for necessities such as childcare and transportation.

LSNC attorneys identified state and federal funding streams available for the one-stop centers and ultimately secured \$1.8 million from more than a dozen sources to run the centers. Virtually all of the money was used by the recipients to contract for job training services, childcare and transportation specifically designed to meet

IOLTA Litigation Update

Oral Arguments Set in Washington State Case

The Supreme Court has scheduled oral arguments in *Washington Legal Foundation v. Legal Foundation of Washington*, (No. 01-1325) for Monday, December 9, 2002. The case is the second to be heard by the Court that day.

The Washington IOLTA program and the Justices of the Supreme Court of Washington filed their response briefs in the case on October 18. These briefs were joined by amicus briefs on behalf of the IOLTA program, including those filed by:

- the American Bar Association
- the National Association of IOLTA Programs (along with 49 co-sponsoring bar organizations)
- AARP, Legal Counsel for the Elderly, Inc., National Legal Aid and Defender Association, and The Brennan Center for Justice
- attorneys general of 36 states
- the City and County of San Francisco
- the Conference of Chief Judges
- the National League of Cities, the International Municipal Lawyers Association, and Trial Lawyers for Public Justice
- the Texas Equal Access to Justice Foundation and the Justices of the Supreme Court of Texas

The Washington Legal Foundation is to file its reply brief by November 18.

Texas Certiorari Petition Still Pending

The Texas IOLTA program filed a certiorari petition with the Supreme Court regarding the Fifth Circuit Court of Appeals decision in *Washington Legal Foundation v. Texas Equal Access to Justice Foundation*, 271 F.3d 835 (5th Cir. 2001). As *Dialogue* went to press, the petition was still pending with the Court.

For updates regarding developments in both cases please visit the Commission on IOLTA Web page at www.abalegalservices.org/iolta

Grantee Spotlight

(continued from page 25)

made the units more affordable. The developer's fee, usually the profit on a development, was also turned back into the project, further reducing the price. LSNC attorneys helped SVOC with completing land acquisition agreements, securing entitlements to build, drafting development agreements, accessing redevelopment funds, securing silent second agreements, and developing the first use of the Section 8 home

ownership program in California. At each step the attorneys were able to broker deals or relationships to bring the farm workers dreams to fruition.

Challenges of shift to CED

LSNC has continued its traditional practice of individual client representation by advocates in its nine offices. It made the conscious decision to involve all of its advocates in CED work rather than establishing a separate unit. This was spurred by the immediate budget constraints in 1995, as well as by the risk posed by training

advocates to specialize in a particular area, only to see them leave an office (or the organization as a whole) without an advocate with similar expertise to replace them.

The transition was not easy, however. Transactional practice was unfamiliar to most advocates, and many considered it to be boring, and irrelevant to representing low-income clients. LSNC attorneys were forced to come to grips with a different rhythm of legal work not dictated by court or administrative agency deadlines. Even time management systems

(continued on page 29)

IOLTA Keynote

(continued from page 23)

of funding for the work all of you are doing, and perhaps even expand it. It is, after all, their constituents who are at risk of being cut off from justice and who benefit from legal aid, from pro bono, and from all the other things that we are doing to re-connect the courts and citizens.

No, I do not live in a cave, unaware of what's going on in the world. I know that there is another challenge, an important one facing our justice system. The Supreme Court has held that clients have a property interest in the interest granted on IOLTA accounts. We know that the United States Supreme Court has granted certiorari in the case of *Washington Legal Foundation v. Legal*

Foundation of Washington, and will rule on the constitutionality of IOLTA in this coming term.

This audience needs to remember that we are on the right side

IOLTA should and will continue to be an essential funding source for access to justice.

of this issue. All of the shining knights types are with us, the Conference of Chief Judges has joined with the American Bar Association, the National Association of IOLTA Programs, the National Conference of State Attorneys General and others in support of the constitutionality

of IOLTA. State supreme courts in 45 states and the District of Columbia have created IOLTA programs in their states, as have five state legislatures. IOLTA

has been an essential part of the system of funding legal services in the United States since 1981, as well as in Australia and Canada since the early 1970s. I believe, as I know you do, that IOLTA should and will continue to be an essential funding source for access to justice. But I know even better that the people in this room and the people you work with in your states and provinces will continue your outstanding work to fulfill our commitment of equal justice to all and that, with that commitment we will continue to provide more and more access and thus more and more justice for more and more of our citizens.

Grantee Spotlight

(continued from page 28)

and strategies were influenced by the change in practice.

Most significantly, advocates have been forced to come to terms with a different kind of relationship with their clients. Representing community groups has meant adapting to demanding and powerful organizational clients with long term strategic visions, rather than individual clients seeking to resolve immediate crises.

Despite these challenges, LSNC advocates have recognized the inherent value of assisting initiatives directed toward creating housing, jobs and other opportunities for the community. CED

practice has become integrated in advocate's daily work, to the point where they continue to refine case acceptance criteria specifically geared toward CED cases.

Conclusion

LSNC continues to provide its clients with the traditional courtroom and administrative agency advocacy that has defined its practice for decades. But CED practice has expanded its mission and is fundamentally rooted in the belief that low-income clients can define and seize control of their own economic futures. If we are effective, we will create a partnership and not a relationship of dependence.

William Kennedy is managing

attorney of LSNC's Sacramento office. **Gary F. Smith** is executive director of LSNC. This article draws on their previous writing about CED, including an article they contributed to in the November-December 1999 issue of the *Clearinghouse Review*.

Endnote

¹ In a law review article, *Practicing Law for Poor People*, Wexler wrote "the legal aid lawyer will eventually go or be taken away; he does not have to stay, and the government which gave him can take him back just as it does welfare. He can be another hook on which poor people depend, or he can help the poor build something which rests upon themselves—something which cannot be taken away and which will not leave until all of them can leave. Stephen Wexler, 79 YALE LAW JOURNAL 1049, 1053 (1970)

2002 Harrison Tweed Award Winners Honored

Recipients of the 2002 Harrison Tweed Award were recognized during the 2002 ABA Annual Meeting at a joint luncheon of the National Conference of Bar Presidents, National Association of Bar Executives and National Conference of Bar Foundations. The Atlanta Bar Association, the Association of the Bar of the City

*The **State Bar of Texas** was recognized for playing a critical role in the sweeping reform of the state's indigent defense procedures in 2001, and for its presence at the forefront of efforts to increase funding for civil legal services. The bar was represented by (left to right) Dick Tate, John Jones, Guy Harrison, Charles Schwartz, Allan Butcher, and Michael Moore.*

of New York and the State Bar of Texas were presented with the 2002 award for their achievements in preserving and increasing access to legal services for the poor.

The Harrison Tweed Award is sponsored by the ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender

Association.

The Award was created in 1956 to recognize the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services for poor persons or criminal defense services for indigents.



*The **Association of the Bar of the City of New York** was honored for its work in mobilizing a comprehensive emergency pro bono legal assistance project following the September 11, 2001 attack on the World Trade Center. Carol Bockner, Evan Davis, Barbara Opatowsky, and Maria Imperial (left to right) accepted the award on behalf of ABCNY.*



*The **Atlanta Bar Association** was honored for developing its Truancy Intervention Project, which works to keep indigent children in school and out of juvenile court. The association was represented by (left to right) Robert Wellon, Terry Walsh, Steve Krishenbaum, Diane Osteen, Bill de Golian, Wade Malone, Jackie Saylor and Murray Saylor.*



From the Chair...



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

Revised ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases to be offered to ABA House of Delegates

In April 2001, SCLAID and the ABA Special Committee on Death Penalty Representation embarked on a project to develop revisions to the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. The project has been completed and the revised guidelines will be presented to the House of Delegates at the Midyear meeting in February 2003 in Seattle, Washington. We urge your support for this very important updating of ABA policy.

The *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* were originally approved as ABA policy by the House of Delegates in 1989. Since that time, they have been adopted by numerous death penalty jurisdictions and are widely relied upon by the bench and bar for setting forth the minimal requirements for defense counsel in capital cases. The guidelines are the preeminent nationally recognized standards

(continued on page 32)

Rosalynn Carter Speaks on Death Penalty

Former First Lady Rosalynn Carter spoke during the ABA Pro Bono Publico Awards Luncheon in Washington, D.C. on August 12, 2002. Carter is vice chair of the Carter Center, a non-profit institution dedicated to protecting human rights, building democracy and expanding access to health care. She co-founded the Carter Center with her husband, former President Jimmy Carter, in 1982. The following is a transcript of her speech.

I am pleased to be with you today, and I want to add my congratulations to those who received the Pro Bono Publico Awards. I have great admiration for them and for all those who volunteer to provide legal services for the poor and safeguard our rights and liberties.

The death penalty is an issue about which I feel strongly, and one that has bothered me for a very long time. At the Carter Center we see it as an obvious violation of human rights. We have many meetings about the issue. I have talked with our governor; called on the chief justice of the Georgia Supreme Court and spoken to the speaker of the Georgia House of Representatives. I write to governors all the time about people in their states on death row and before many executions. I worry about the issue. And I have just become an advisor to the Georgia Indigent Defense Council.

Capital punishment in the spotlight

I'm pleased that the death penalty is getting so much attention these days, with stories in the media about high profile cases, the way the death penalty is carried out, racial discrimination and poor legal representation, and the killing of mentally ill people. (We're thankful about the recent Supreme Court ruling against killing mentally retarded people).¹

And we even hear stories of the execution of juveniles. There were two scheduled this summer—both this month and both in Texas: one last week (August 8) and another on August 28.

Hopefully, this attention is having some impact on people so that they can see how unfair and discriminatory our system of capital punishment is. Since 1973, 101 people have been released from death row after their wrongful convictions were overturned. Twelve were found innocent through DNA tests.

A recent study done by law professors at Columbia University in New York found that nationally, 68 percent of all capital cases resulting in a death sentence contained serious, reversible errors.² This is appalling. The study found the system is "riddled with unfairness and

(continued on page 32)



Carter Speech

(continued from page 31)

incompetence, with serious errors erupting with alarming frequency at every stage of the process.”

Today, I want to talk about some of this unfairness and incompetence that concerns me, and about children, mental illness, race and the lack of competent counsel. They are all interconnected, because these issues affect some of the most vulnerable populations among us—the ones most in need of competent legal assistance and who often don't get it.

Execution of juveniles

It should be an embarrassment to every American that we execute

children. The United States is the only country in the industrialized world that still executes **anyone**. We have refused to ratify the International Convention on the

Executing mentally ill people does not make sense as a deterrent and undermines the integrity and fairness of our system of justice.

Rights of the Child. Why? One reason is because we want to continue to execute juveniles.

Many children who commit serious crimes come from severely abusive homes, and those of us in the mental health field know that children who are

victims of child abuse or neglect consistently show a high incidence of mental disorders, serious brain injuries, substance abuse and learning disabilities, and this can predispose them to aggressive or violent behavior. The sad thing is that these juveniles rarely receive the help they need that could lead them to mental health treatment facilities instead of death row. We don't take care of children in our country as we should and then when they get in trouble, we punish them severely.

Today, about 80 offenders who were under 18 at the time of their crimes are on death row—the highest figure since the reinstatement of capital punishment. Yet, our policy makers are abandoning

(continued on page 33)

From the Chair...

(continued from page 31)

on this important subject.

Unfortunately, the 1989 guidelines are now outdated. For example, in 1996, Congress enacted the Anti-Terrorism and Effective Death Penalty Act, which dramatically limited the scope of death penalty appeals. The case law that followed proved confusing and contradictory, highlighting the complicated provisions of the Act. The 1989 version of the guidelines does not reflect the numerous judicial and legislative developments that have occurred in the intervening years. Many jurisdictions are re-examining their death penalty

systems, and are seeking to establish current standards for the appointment and performance of defense counsel. A bill currently pending in the U.S. Congress would require that such standards be set and adhered to in federal cases.

Our committee (together with the ABA Special Committee on Death Penalty Representation) convened an advisory committee of experts to review and identify necessary revisions, and consultants were retained to incorporate the decisions of the advisory committee into a revised set of guidelines. Their hard and detailed work resulted in the proposal that will be brought to the ABA House of Delegates for adoption in February 2003.

Establishing minimum standards for defense counsel in all death penalty jurisdictions is essential to ensure effective assistance of counsel for all those charged with or convicted of capital crimes. Our committees hope that the updated guidelines will provide capital litigators and other professionals who work in the high stakes field of capital litigation with comprehensive, up-to-date guidance that is consistent with the demands of this specialized field of litigation.

For further information about the project to revise the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, contact SCLAID Staff Counsel Terry Brooks at tjbrooks@staff.abanet.org

Carter Speech

(continued from page 32)

any notion of rehabilitation for juveniles and pushing for harsher punishments. Since 1992, almost every state has made it easier to try juveniles as adults, which means many are serving long-term sentences in adult facilities, or are being sentenced to death. Just in the last day or two, we've been reading about Florida trying to decide whether or not to prosecute an 11- or 12-year-old as a child or adult.

Currently, about 20 percent of youth in the juvenile justice system have a diagnosable mental health disorder. I have seen this first hand over the last couple of years, as our mental health program at the Carter Center has been working with the juvenile justice system in Georgia.

Tragic fate for mentally ill

The execution of people suffering from mental illness is tragic. There are examples of prisoners who, because of their mental disorder, cannot comprehend the meaning or finality of the death sentence being imposed upon them. Often evidence of a defendant's psychiatric history, family issues and mental capacity is not presented at the time of the trial or sentencing. As a result, individuals with mental illness are executed without the criminal justice system being aware of the illness.

Some states even force mentally ill prisoners to take medicine and receive psychological treatment so they are mentally healthy enough to be able to stand trial and be executed. Executing mentally ill people does not make sense as a deterrent and undermines the integrity and fairness



Rosalynn Carter addressed the ABA Pro Bono Publico Awards Luncheon on August 12, 2002.

of our system of justice.

We recently had a victory in Georgia when a death sentence was overturned. The defendant was 17 when he committed his crime, a juvenile; he was seriously mentally ill; he was African American; his original lawyer was incompetent; and he still came close to being executed.

Mental illness should be taken into account during all phases of a potential death penalty case. Qualified professionals should perform the assessment of competency to stand trial as well as competency to be executed.

The 1986 Supreme Court case, *Ford v. Wainwright*,³ prohibits execution of the mentally incompetent—but not the mentally ill. Because of outdated legal definitions, a person might be medically insane (a terrible way to describe them) but still “legally competent” to stand trial and receive the death penalty. As a result, seriously mentally ill people have been executed and many more remain on death row.

The same rationale recently cited by the Supreme Court in

Atkins when it found the execution of people who are mentally retarded unconstitutional applies equally to mentally ill people and to juveniles. Like those who are mentally retarded, children and mentally ill individuals cannot fully participate in their defense or understand the nature and consequences of the legal proceedings. They also make poor witnesses at trials, leading the jury to sometimes misunderstand and punish the behavior they observe during trial.

The question of fairness is one that is particularly acute when it comes to the racial disparity in those that are sentenced to death and executed. Blacks who kill whites are sentenced to death at nearly 22 times the rate of blacks who kill blacks and more than seven times the rate of whites who kill blacks.⁴

We know an African American woman who is our family's helper and close companion, Mary Prince. When she was a teenager, she was falsely accused of murder. A court-appointed

(continued on page 34)

Carter Speech

(continued from page 33)

attorney, whom she saw once, advised her to plead guilty, and promised that he would get her off light. She pled guilty and got life imprisonment. She worked for us at the governor's mansion as a trusty from the prison. She served her term until eligible for parole, and then she came to the White House and helped us there. She has been with us ever since. After we were home, her trial proceedings were reexamined, and she received a full pardon.

Mary was fortunate. She just as easily could have been sentenced to death and executed. If the person killed in the incident had been white, we would never have known Mary. As you well know, minority defendants, who are often indigent, do not have access to the same quality of representation as wealthier defendants.

Inadequate defense at heart of unfairness

It should be obvious from my remarks that at the heart of all of these problems are serious deficiencies in our public defender systems. Those who most need help are often least likely to afford it and all too often are provided with less-than-competent counsel.

One remedy is the public defenders' offices, which, if adequately funded, could provide competent counsel. Many or most public defenders often have unmanageable caseloads and are denied the resources necessary to conduct a thorough investigation or to retain necessary expert witnesses. And they are paid far less than they could earn doing any other legal work—sometimes

less than minimum wage.

I have been appalled to learn how many cases are tried by attorneys who are incompetent or uninterested, even who were drunk in the courtroom, or slept through the whole proceeding, or where (as with Mary) there was no trial at all. As Steve Bright of the Southern Center for Human Rights says, "it is not the worst who get the death penalty, it is those with the worst lawyers."

No one knows how many mentally ill and mentally retarded people, minorities, and penniless citizens are executed in our country because of inadequate defense, ignorance of the law, or racial discrimination.

Moratorium needed

All these problems and disparities point to the need for a moratorium on executions, so we can step back and look at the issues and make changes necessary so that innocent people are no longer put to death. I commend Illinois Governor George Ryan and Maryland Governor Parris Glendening for having the courage to declare a moratorium in their states and appoint a commission to review the use of capital punishment. And I commend and support The American Bar Association in calling for a moratorium.

Meanwhile, on Capital Hill, there is promising legislation pending in both chambers that could reduce the risk of executing innocent people: Senator Russell Feingold (D-Wisconsin) has introduced a bill (SB 233), which would place a moratorium on all federal executions while a national commission studies fairness issues.

And the Innocence Protection Act (HB 912) would provide funding for DNA testing and to states to provide effective legal

services to indigent defendants and those on death row. We have our job cut out for us in working to help get these bills passed.

I'm very pleased to be with you today and to have had this chance to talk about these things that are so disturbing to me. Again I want to commend those of you who volunteer to represent a condemned person. I understand that over 80 law firms have volunteered, which is great. We need more.

I will do all I can to spread the message about this important need. One thing Jimmy and I have learned when we do things that might be helpful, but that sometimes we really don't want to do: it never turns out to be a burden. It always turns out to be a blessing.

Those who have volunteered to help have discovered the same thing. They often remark that representing someone on death row has been the most important and rewarding experience they have ever had as a lawyer.

Maybe all of us working together can have some impact on public defender programs around the country—maybe we can make a difference.

Endnotes

- ¹ *Atkins v. Virginia*, ___ U.S. ___, 122 S.Ct. 2242 (2002)
- ² *A Broken System, Part II: Why There is So Much Error in Capital Cases, and What Can be Done About It*, James S. Liebman, Columbia Law School, February 11, 2002. The study found that state and federal courts reversed 68 percent of all capital verdicts imposed and fully reviewed between 1973 and 1995. The article is online at www.law.columbia.edu/brokensystem2
- ³ 477 U.S. 399, 106 S.Ct. 2595
- ⁴ *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities*, U.S. General Accounting Office, 1990.

Loan Repayment Update

Many states continue to work to create loan repayment assistance programs ("LRAPs") for legal aid and other public service attorneys. The ABA Commission on Loan Repayment and Forgiveness provides technical assistance and resource materials to states interested in their own LRAP. The commission is completing work on a state LRAP handbook, which will include sample state LRAP legislation, information about existing statewide LRAPs and other tools to help bar leaders and other stakeholders create statewide programs. For additional information about LRAPs or the commission's work, please visit www.abalegalservices.org/lrap or contact Dina Merrell, commission counsel, at merrelld@staff.abanet.org

Texas Access to Justice Commission Creates LRAP

In 2001, Texas Governor Perry signed two bills establishing state-administered LRAPs for attorneys employed by the Texas Attorney General's Office (HB 2766) and legal aid attorneys and prosecutors working in rural areas of Texas (HB 2323). The Texas legislature did not appropriate any funding for the program benefitting legal aid attorneys and rural prosecutors.

When state funding for the LRAP was not appropriated the Texas Access to Justice Commission embarked on a private

funding campaign to support loan repayment assistance for legal aid attorneys. The Texas Access to Justice Commission recently announced that it received its first major contribution of \$25,000, which it will use to create a temporary LRAP until state funding becomes available and the program created by HB 2323 becomes operational.

Until resources are available to meet the needs of all qualified applicants, the commission will make grants of \$100 per month to 25 legal aid lawyers. Only lawyers working for programs funded by the Texas Equal Access to Justice Foundation (Texas' IOLTA program) are eligible to apply.

The Texas Access to Justice Commission continues to seek state funding for a LRAP. The State Bar of Texas recently voted to pursue a \$450,000 appropriation during the upcoming legislative session to support the LRAP.

For more information, contact Cynthia Riley at criley@texasbar.com or 800-204-2222, ext. 2155.

Florida Bar Foundation Adopts Statewide LRAPs for IOTA Grantees

The board of the Florida Bar Foundation, Florida's IOLTA program, recently adopted two LRAPs for its legal assistance for the poor grantees. The objective of the LRAPs is to aid in the recruitment and retention of the most qualified legal assistance advocates by providing assistance to staff attorneys with law school

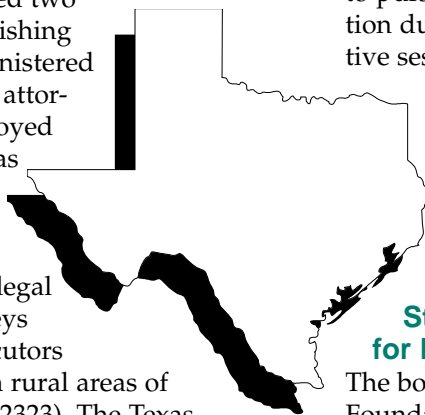
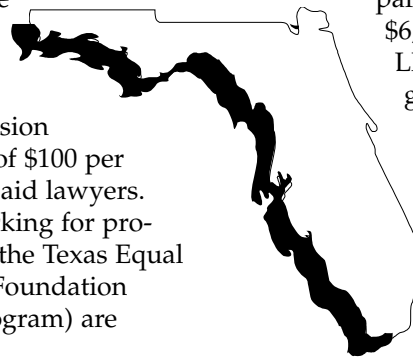
educational debt. Program applicants must be employed on a full-time basis by one of the bar foundation's legal assistance grantees.

The primary forgiveness program will be supported chiefly with IOLTA funds. In addition, participating grantees will pay for 20 percent of the loan repayment benefits (i.e. \$1,200 for a participant receiving \$6,000 in loans) for each LRAP participant. The grantees' 20 percent share of LRAP program costs will be deducted from their general support grants from the foundation. The start-up funds for 2003 total \$90,000. Under the LRAP

program, the foundation will make one-year loans to participants, which would be forgiven annually provided the LRAP participant remains employed on a full-time basis by the participating legal assistance grantee. Selection of participants will occur in December of each year, with distribution of funds in January and July.

The second program, or supplemental LRAP, will be funded solely by reductions in Foundation grants to participating legal assistance programs.

The foundation anticipates distributing the first round of benefits in January 2003. For more information, please contact Paul Doyle, director of Legal Assistance/Law Student Assistance Grant Programs for the Florida Bar Foundation, pdoyle@flabarfdn.org



Dates Set for 2003 Equal Justice Conference

Plan ahead for the 2003 Equal Justice Conference, which will be held April 10 to 12 in Portland, Oregon. The theme of the 2003 Equal Justice Conference is "The Power of Partnerships." The conference will focus on how the effective delivery of quality legal services depends on the different components of the legal system working together toward a common vision of service.

Featured speakers will include ABA President Alfred P. Carlton Jr. and David Hall, former provost of Northeastern University and former dean of the Northeastern University School of Law.

A day of pre-conference sessions is slated April 9, and for the fifth year, the Partners for Justice forum will take place during the conference.

Online registration for the event will begin soon. For more information about the conference, visit www.equaljusticeconference.org or call Dorothy Jackson at 312-988-5766.

The conference is sponsored by the ABA Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Association.

The Newly Updated Directory of Legal Aid & Defender Offices

Order Your Copy Today

The *Directory of Legal Aid & Defender Offices*, published by the National Legal Aid & Defender Association, will be available this fall. It's the best way to ensure that you have the most up-to-date information on civil legal aid and indigent defense programs in the U.S. and territories. With this newly updated resource, access to the national network of legal aid & public defense offices—including special needs programs, legal support services and state support centers—will be at your fingertips. Order now to get your copy right off the press.

Buy multiple copies and save!

To order, visit www.nlada.org or call NLADA at 202-452-0620.

American Bar Association
Division for Legal Services
321 North Clark St.
Chicago, IL 60610

Non-Profit
US Postage
PAID
St. Joseph, MI
Permit 468