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Appendix: Report of the Wisconsin Commission on the Delivery of Legal Services

Wisconsin Commission on the Delivery of Legal Services

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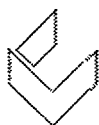
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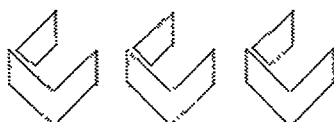
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Commission on the Delivery of Legal Services



*To improve access to and the availability of
legal services to the citizens of Wisconsin*



Final Report and Recommendations



STATE BAR
OF WISCONSIN
June 1996

Introduction

“Equal and exact justice to all persons of whatever state or persuasion, religious or political . . . freedom of person under the protection of the law; and trial by juries impartially selected. These principles form the bright constellation which has gone before us, and guided our steps They should be the creed of our political faith—the text of civil instruction—the touchstone by which to try the services of those we trust.”

— Thomas Jefferson

In September 1994, State Bar of Wisconsin President-Elect John S. Skilton, under authority of then-President Gary E. Sherman, appointed a thirty-person Commission on the Delivery of Legal Services (Commission).¹ As first conceived, the mission of the commission was to explore and make recommendations concerning ways to increase the availability and accessibility of legal services to low and moderate income persons, including the so-called “working poor,” i.e. those persons who did not qualify for publicly financed legal services but yet could not afford to pay for legal services.

The initial impetus for the commission came from three separate but related ABA initiatives:

- 1) The *ABA Blueprint for Improving the Civil Justice System*, February 1992 (App. B-1)²

¹ The calendar of the commission’s work is included in Appendix A, attached to this report as A-1. Because of their length, Appendices B and C will not be separately published, but will be stored at the State Bar Center in the office of the Pro Bono Coordinator. Documents contained in the appendices will be cited in this report as follows: Appendix volume, document number, and page number (e.g., A-1, p. 5.)

² This report contains a broad array of both substantive and procedural recommendations designed to improve access to the civil justice system.

- 2) The *ABA Comprehensive Legal Needs Study and Findings*, January 18, 1994 (App. B-2);³ and
- 3) The ABA report issuing from the Just Solutions conference, May 1-3, 1994 (App. B-3).⁴

These initiatives posited a nationwide crisis in the civil justice system and called for the states to take action. Wisconsin has long been concerned with the delivery of legal services to the poor and has in place a relatively well-developed delivery system. But because many of these proposals were new and because there was little doubt that many of the problems identified also existed in Wisconsin, the critical need for a study focusing on Wisconsin's civil justice delivery system was evident.

A. The Formation of the Commission

Because of the complexity of the subject and the overwhelming volume of information available, it was determined that the commission would not attempt to write a definitive report on the state of the civil justice delivery system in Wisconsin, nor would it attempt to identify and discuss all current proposals for change. Attempts to do so would quickly consume available resources and time. Rather, the concept was to appoint a diverse but knowledgeable commission

³ This study surveyed and attempted to quantify the unmet legal needs among low-income and moderate income households. It confirmed what many state studies had already established, that is, that there does exist a significant unmet need for legal services. In the January, 1996 ABA Leadership Handbook entitled "Making Pro Bono A Priority" the authors state: "Recent studies indicate that the legal needs of only an average of twenty percent of low and moderate income persons in this country are met" (Appendix B-2, at p. iii).

⁴ The Just Solutions conference sought to identify, focus on, and address the public's perceptions and concerns about the civil justice system. The report develops the concepts of "opening doors of justice" and "consumer-friendly justice." (App. B-3, Chapter Two) The report proposes numerous solutions, such as neighborhood resolution centers, service bureaus in a courthouse, ADR, the "multidoor" courthouse, and other programs designed to re-engineer the process. It also advocates the resurrection of legal services and the increase of pro bono legal services.

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whose members—familiar with the current dialogue and issues—were able to efficiently direct their attention to possible solutions.⁵

The commission established five substantive committees: Lawyer Delivery (Hildebrand, Chair; Andringa; Blumenfield; Feingold; and Charne); Lawyer Assisted Delivery (Decker, Chair; Dyke; Gonzales; Tuchscherer; and Trubek); Nonlawyer Delivery (Barker, Chair; Goepel, Remington; Roethe; and Shellow); Pro Bono Delivery (Ware, Chair; Beck; Dugan; Ebbott; Fox; Goepel; Triggiano-Hunt; Skilton; and Tobin); and Pro Se Delivery (Balisle, Chair; Clevert; Geske; Koslov; and Rodgers). These committees were designed to emphasize lawyer involvement across the spectrum of delivery alternatives. A sixth committee, the Planning and Resources Committee (McGinnity, Chair; Abrahamson; Skilton; Barker; Decker; Braden; and Tobin) was responsible for planning the work of the commission and, ultimately, for drafting this report.⁶

Beginning in September 1994, the commission began its work and has adhered to the following schedule:

- (1) **June 1995 (State Bar Annual Meeting):** Formal introduction of commission and its work to lawyers; commencement speech by former ABA President William Ide; and substantive break-out sessions to elicit information, concerns, and reactions of attending lawyers. (*See* part I.C. *infra*.) Meeting notes and related documents concerning this meeting and breakout sessions are included in App. C-1.
- (2) **August 1995:** Hearings held around the state: Madison (August 14); Milwaukee (August 15); Wausau (August 17); Eau Claire (August 18); and

⁵ The material prefatory to this report provides summary background information as to each member. As is apparent, the commission is composed of lawyers with varied practices from all parts of the State.

⁶ Justices Abrahamson and Geske served as active members of the commission but abstained from discussing and voting upon matters that might come before the Supreme Court of Wisconsin.

Green Bay (August 22) to elicit views and concerns of public. (*See* part I.D. *infra.*) Notes of hearings, submitted at or relating to the hearings, and transcripts of hearings, are included in App. C-2.

- (3) **December 31, 1995:** Completion of subcommittee draft recommendations. Subcommittee draft reports and all minutes of commission meetings are included in chronological order in App. C-3.
- (4) **January 23, 1996 (Midwinter Meeting of State Bar):** Full commission discussion of all recommendations; work on commentary. The minutes of the January and February meetings of the commission are included in App. C-4.
- (5) **February 20, 1996:** Draft Report issued. The minutes of the February 21 meeting together with the initial February 1996 draft report are included in App. C-5.
- (6) **March 1-3, 1996:** Joint meeting of the Legal Services Commission and the Legal Education Commission⁷ to discuss and critique each report. Minutes of combined meeting along with Legal Education report are included in App. C-6.
- (7) **April 1996:** Board of Governors discussion and approval of the reports of both commissions.
- (8) **June 1996:** Publication of final reports of both commissions.

This process was designed to (1) obtain as much input from the public as feasible; (2) ensure coordination and joint reporting with the Legal Education Commission; and (3) complete the work of both commissions prior to the expiration of the term of President Skilton.

⁷ The Legal Education Commission was appointed simultaneously with the Legal Services Commission. The Legal Education Commission was formed to study the ABA "Report on the Task Force on Law Schools and the Profession: Narrowing the Gap," now known as the MacCrate Report, and to make recommendations concerning same.

B. Developments Since The Commission Was Appointed

1. Federal and State Reductions In Funding to Legal Services Providers

As a consequence of the November 1994 elections, federal and state political support for poverty programs, including legal services programs, has eroded. 1995 was marked by the aggressive efforts of the ABA and state bars—including the State Bar of Wisconsin—to fight proposed budget cuts to the Legal Services Corporation (“LSC”).⁸ These efforts, although successful in the sense of defeating “zero funding” proposals, were not entirely successful. As of the writing of this report (March 1996), it appears likely that the total LSC budget will be reduced from the 1995 funded level of \$432 million to a level of \$278 million for 1996. *See ABA LSC Update*, memorandum from Mauricio Vivero, dated January 31, 1996.

When the LSC was first created, its modest goal was to provide one lawyer for every 5,000 poor people. Because of continuous underfunding since 1974, the ratio has slipped to one lawyer for every 10,000 poor persons. The proposed budget cuts will reduce this ratio even further.

The effects on Wisconsin’s four legal service law firms⁹ have been profound, and the projected long-term effects likely will be even more damaging. As stated in the “State Plan for Wisconsin” App. B-4, issued in November 1995 by the four LSC-supported Wisconsin law firms:

⁸ The Legal Services Corporation was formed in 1974 to receive and distribute federal funds for legal services for the poor.

⁹ The four LSC grantees in Wisconsin are Legal Action of Wisconsin, Legal Services of Northeastern Wisconsin, Wisconsin Judicare and Western Wisconsin Legal Services. These four grantees provide geographic coverage to all 72 counties in the State.

“The stark reality is that the reduction in funds to LSC grantees by 25-30%, a reduction from an already grossly inadequate funding level, cannot be fully compensated by planning or by fine tuning, and certainly not by reorganizing, the existing statewide legal services delivery system. None of the other components of that system are adequately funded, and all organizations are straining to continue their levels of effort on behalf of their clients. Many of them are funded by IOLTA, whose revenues have dropped by 50% over the past four years. Those organizations are not in a position to absorb the 7,000 cases which the LSC funding reductions will prevent the grantees from handling.” (App. B-4, p. 8)

As indicated in the above quote, Wisconsin poverty law firms have also been supported with IOLTA (interest on lawyers’ trust accounts) funds, administered by WiSTAF (Wisconsin Trust Account Foundation). Because of depressed interest rates and increased bank service charges, however, IOLTA funds have shrunk from a peak of \$1,717,000 in FY 1989-90 to about \$812,000 for the current year.

Neither the bar nor the affected legal services providers could simply sit back and accept the budgetary cuts. Thus, the ABA’s Annual Leadership Forum, held in January 1995, was substantially devoted to these problems.¹⁰ As past ABA President Bill Ide pointedly stated, “The greatest contract is between the lawyers of America, the judges of America, and the American people.” (App. B-5, p. 3) Likewise, the ABA’s Fourth Annual Leadership Forum, held in

¹⁰ The *Draft Summary Proceedings of the Third Annual ABA Leadership Forum for State and Local Bar Officials*, held in Dallas, Texas January 13-14, 1995, is included as App. B-5 in the Appendix. Chairman Skilton attended this conference.

Phoenix on October 20-22, 1995 was substantially devoted to these problems (App. B-6).¹¹ The State Bar of Wisconsin aggressively joined the fight to preserve funding, both through one-on-one contacts with Wisconsin's state and federal legislators, (*see*, e.g. January 3, 1996 letter from Senator Herb Kohl to the Chair (App. A-2), and by the use of its "bully pulpit," e.g., four 1995 "President's Perspective" columns in *Wisconsin Lawyer*, (App. A-3) and in published editorials (A-4).

Likewise, it was necessary for the Legal Services Corporation to become proactive. In a letter dated July 10, 1995, Alex Forger, President of the Legal Service Corporation, called on LSC grantees to join with others to prepare a plan for the "design, configuration, and operation of LSC programs in 1996 and future years." As noted above, pursuant to this directive, the four Wisconsin LSC grantees issued a "State Plan for Wisconsin." (App. B-4) In addition to addressing specific inquiries made by the LSC, this report accurately describes the current state of legal services delivery to Wisconsin's poor.

The scope of the commission's work was necessarily broadened to include the consequences of defunding of poverty law firms. As a corollary, it became apparent that the legal profession would be called upon to step up its pro bono efforts. Thus, in addition to its original mission of *improving* access to justice, the commission—indeed the private bar—has

¹¹Commission members Justice Abrahamson and Vice Chair Barker attended this forum. Justice Abrahamson took time to describe the work of our commission at the Forum (App. B-6, at 19-20). She also commented on how hard the commission was being worked (App. B-6, at 19):

[The Chairman] has scheduled relentlessly and pushes us to the wall. Every month we have a meeting, and in between the commission meetings, the subcommittees meet. They all have to report back. No one leaves the meeting without an assignment

Editor's note: The Chairman pushes himself just as hard.

been potentially cast in the role of *replacing* or *funding* the provision of legal services to low-income people.

2. Other Significant 1995 Developments

Other 1995 developments influenced the work of the commission. For example,

- (1) In March 1995 Maricopa County (Arizona) began to operate "Quick Court" and a "Self Service Center" at the courthouse in Phoenix, providing alternative service vehicles to ameliorate an enormous backlog of *pro se* litigants in the family courts. This ambitious experiment includes a user friendly computer "kiosk", a telephone "hotline" lawyer referral system, on-site access to "unbundled" legal services, and other creative experiments. (See App. B-7, collected materials on the Maricopa County Self Service Center. In October 1995, commission members Barker, Koslov, and Abrahamson visited the Maricopa Self Service Center.)
- (2) In August 1995 the ABA Commission on Nonlawyer Practice issued the final draft of its *Report With Recommendations on Nonlawyer Activity in Law-Related Situations* (App. B-8). The recommendations contained in this report are specifically focused on the need to properly deploy "nonlawyers" to help the legal profession deliver services to all citizens.
- (3) Other reports on state initiatives concerning the provision of legal services to the poor became available in 1995, e.g. *Just Solutions, The Ohio Experience*, (App. B-9); *And Justice for All* (State Bar of California, Office of Legal Services, Access to Justice Working Group, June 1995) (App. B-10); *Access to Justice, Recommendations* (Interim Report to the Lord Chancellor on the civil justice system in England and Wales, June 1995) (App. B-11); and *Moving to a Preferred Future: A Reinventing Justice Action Plan* (Report of the Franklin County, Mass. Futures Lab Task Force to the Chief Justice of the Supreme Judicial Court and the Chief Justice for Administration and Management, September 14, 1995) (App. B-12).
- (4) Suggestions for fundraising by the private bar have also come to the fore, e.g., *Innovative Fundraising Ideas for Legal Services* (Consortium on Legal Services and the Public Project to Expand Resources for Legal Services (PERLS)) (App. B-13); and *Striving for Solutions. An Overview of Crisis Points in America's System of Justice* (ABA Special Committee on Funding the Justice System, September 1994) (App. B-14).

3. The ABA Report on Nonlawyer Activity In Law-Related Situations

As noted, in August 1995, the ABA's Commission on Nonlawyer Practice issued its report with recommendations (ABA Report). This report was a result of a three-year effort which included a nationwide series of public hearings during which some 400 persons testified, and more than 100 others submitted written comments. The ABA commission also studied more than 2,000 documents. The ABA Report (including minority reports) is 173 pages long¹² and contains, *inter alia*, (1) a comprehensive review of the United States history of the delivery of services by nonlawyers; (2) a scholarly discussion of the law and legal principles relating to the delivery of "legal-type" information and/or services by nonlawyers, including discussion of the attempts to regulate or prohibit such activities through unauthorized practice regulations; and (3) a compendium of current nonlawyer activity throughout the United States.

The ABA Report made the following crucial finding:

Based upon the findings from numerous legal needs surveys, state bar reports, and the weight of its witnesses' testimony, the commission finds that when the nation is viewed as a whole, there are currently insufficient sources of affordable legal help for all low- and moderate-income persons, and that the needs of a large number of such persons are currently unmet. This conclusion raises a deep concern about the gap between our commitment to equal justice and the reality that so many citizens cannot obtain legal assistance. As an associate presiding judge of Arizona's Maricopa County Superior Court has noted, "we have a crisis of representation." This crisis, says a UCLA law professor, "[puts] the whole legitimacy of the justice system in question." (ABA Report, at 79-80, footnotes omitted)

The evidence assembled and reported by the ABA commission is comparable in many respects to the evidence gathered by the Wisconsin commission. And although the "crisis of representation" found by the ABA commission may not exist in all counties of Wisconsin, or

¹² The full report is App. B-8.

with respect to all issues, it does appear there is a quantifiable unmet need for the delivery of legal services in many regions of our state.

The ABA commission ultimately formulated six recommendations (ABA Report, pp. 161-162):

Whereas, increasing the public's access to the justice system and to affordable assistance with its legal and law-related needs is an urgent goal of the legal profession and the states; and

Whereas, the protection of the public from harm arising from incompetent and unethical conduct by persons providing legal or law-related services is an urgent goal of both the legal profession and the states; and

Whereas, when adequate protection for the public are in place, nonlawyers have important roles to perform in providing the public with access to justice;

Therefore the American Bar Association Commission on Non-Lawyer Practice recommends:

1. The American Bar Association, state, local and specialty bar associations, the practicing bar, courts, law schools, and the federal and state governments should continue to develop and finance new and improved ways to provide access to justice to help the public meet its legal and law-related needs.
2. The range of activities of traditional paralegals should be expanded, with lawyers remaining accountable for the paralegals' activities.
3. States should consider allowing nonlawyer representation of individuals in state administrative agency proceedings. Nonlawyer representatives should be subject to the agencies' standards of practice and discipline.
4. The American Bar Association should examine its ethics rules, policies and standards to ensure that they promote the delivery of affordable competent services and access to justice.

5. The activities of nonlawyers who provide assistance, advice and representation authorized by statute, court rule or agency regulation should be continued, subject to review by the entity under whose authority the services are performed.

6. With regard to the activities of all other nonlawyers, states should adopt an analytical approach in assessing whether and how to regulate varied forms of nonlawyer activity that exist or are emerging in their respective jurisdictions. Criteria for this analysis should include the risk or harm these activities present, whether consumers can evaluate providers' qualifications, and whether the net effect of regulating the activities will be a benefit to the public. The highest court in a jurisdiction should take the lead in examining specific nonlawyer activities within the jurisdiction, with the active support and participation of the bar and the public.

Recommendation 6 is the heart of the ABA Report. As stated in the ABA Report, at 126:

The commission believes that the expanded delivery of law-related services by legal technicians¹³ carries with it a risk of incompetent and fraudulent behavior. This risk will necessarily have to be taken into account by states as they consider the roles now performed, or to be performed in the future, by non-lawyers who provide law-related assistance to consumers. Concern about increasing the public's access to the justice system and to affordable assistance with legal and law-related needs should be weighed against the need to protect the public from unreasonable or excessive risks of harm by those who offer help. The risk of creating a tiered competency system looms large if procedures or recommendations for change are made without consideration of the complexities existing in our legal system and the legal profession's duty to protect client interests. The commission reaffirms the continuing validity of both of these concerns.

Nevertheless, the ABA commission concluded:

While the commission recognizes that public protection against incompetent and unscrupulous providers of legal or law-

¹³ "Legal technicians," a defined term in the ABA Report, does not include "paralegals" supervised by a lawyer. ABA Report, at XVIII.

related services can never be perfect, the Commission believes that it is well worth the effort to assure as much as practicable, under all circumstances, that all types of assistance in legal and law-related situations, whether rendered by a lawyer or a *nonlawyer*, are provided with competence and the highest level of quality. At the same time, serious problems in access to the justice system create both consumer and professional pressures to modify rules of public protection in the interests of greater access . . . (emphasis added). (App. B-8, at 127)

In sum, the ABA Report advocates states' efforts to find ways for lawyers and nonlawyers to improve access to justice, so long as there is adequate quality control and consumer protection. It should be noted, however, that two minority reports were filed (ABA Report, at 163-173) which essentially take the position that unmet legal needs are the responsibilities of and can best be met by, lawyers who are subject to ethical codes and competency standards, and that protection of the public is the paramount concern. The first minority reports concludes:

There must be clear rules and restraints established at the outset to cultivate a responsible and competent profession of nonlawyer providers. There must, as well, be assurances that the public is protected in the process and able to seek redress should harm occur. While encouraging access, the American Bar Association should not countenance a vague process of trial and error involvement. Safeguards must be put in place to light the way and protect the public before the ABA adopts the salutary recommendations included in the Commission's Report. (Sevier, Werner Minority Report, at 165.)

And as the second minority report (by Messrs. Russell and Kopp) pointedly states, at 171:

The impact of nonlawyer practice does not fall evenly across the bar. Solo and small firm practitioners are bound to be more heavily impacted. The result of solo or small firm practitioners being forced out of providing legal services means that the public will have less affordable legal services, rather than more. The testimony before the Commission clearly indicated that the nonlawyer practitioner, in such areas as divorce, are pricing their services just below what lawyers charge, not necessarily on the value of the services. In short, the public will have been done a disservice and will not have received improved legal services.

This minority report also emphasizes that prepaid legal services plans are one of the keys to access, even though not extensively discussed by the ABA commission. *Id.*

4. Summary

Based on the number of reports available on the subject of the delivery of legal services, it is apparent that the commission was not wanting for reference material, ideas, or proposed solutions. Rather, there was great potential for information overload. Nevertheless, the message came through: It was imperative that the commission examine existing legal services delivery systems from a fresh perspective and revisit existing paradigms for the delivery of legal services to the poor. A good summary of current thinking appears in “Rebuilding Pro Bono Legal Services,” *ABA Center for Pro Bono Exchange* (Vol. 13, No. 5, Nov. 1995, at 15):

- Pro bono should not be considered as separate and distinct from the legal services staff attorney model, but rather as another effective strategy for meeting the legal needs of the poor.
- All of the players in the legal system—the organized bar individual lawyers, judges, court personnel, etc.—must take a leadership role in developing new, integrated delivery systems.
- A single port of entry (for those needing services) provides the opportunity to help clients focus on their range of needs, to access a range of services, and to choose the level of intervention and services that they want.
- The range of services available should include not only legal services, but services designed to improve other critical aspects of a poor person’s life—housing, employment, job skills training, health care, etc.
- The legal community must work in partnership with a range of service providers—social workers, health care providers, protection and advocacy organizations, community economic development groups, and community action programs to name just a few—to facilitate the most efficient “one stop shopping” system possible for low-income individuals.

- Clients deserve to have and will benefit from access to litigation, legislative lobbying, rulemaking, and other activities.
- The vision of legal needs must extend beyond one lawyer/one client/one case representation to include a range of services including the following: alternative dispute resolution, self-help, unbundling of cases, community education, corporate advocacy, and financial advocacy.
- A range of providers—including staff attorneys, volunteer attorneys, paralegals and others—need to be involved in meeting those legal needs.
- Boundaries between urban and rural delivery systems need to be eliminated.
- Technology must be expanded as a tool for helping clients access services, for conducting intake and assessing client needs, for referring clients to the appropriate service providers, for helping clients help themselves, and for educating clients.

Many of these points were emphasized in both the public comments to the commission (parts I.C. and I.D. *infra*), and in the commission's recommendations (part II *infra*).

Despite consensus on many points, however, there exist real concerns both nationally and among some members of our commission, as to proper limits for non-lawyer involvement in legal matters and with respect to certain pro se (or self-help) solutions. For example, the February 1996 Information Report to the House of Delegates by the ABA Standing Committee on the Delivery of Legal Services stated, in part, as follows:

The Committee believes that it is inappropriate to consider pro se a method of proceeding in legal matters without a role for lawyers. The Committee has identified many systems of delivering legal services that are alternatives to traditional full-service law practices and that provide information and services to clients to the extent the clients want them and can afford to pay for them. These services include form preparation centers, advice-only clinics, and telephone-based hotlines. Although many programs designed to meet the legal needs of people with moderate incomes are government assisted or subsidized and others are volunteer-driven, these for-profit models allow practitioners to provide necessary legal services at a reasonable compensation.

See also, October 12, 1995 letter from John W. Roeth to John S. Skilton (App. A-5).

C. The Forum at the State Bar's Annual Convention (June 1995)

As indicated above, the commission's committees were established with a view toward examining legal service delivery alternatives across the continuum from lawyer delivery to pro se delivery. To help focus the work of each committee and to permit a meaningful evaluation of the spectrum of delivery alternatives, the commission determined that it was necessary to identify the particular unmet legal needs to be addressed in the study. Time and resource limitations prevented the commission from thoroughly examining all areas of legal services. The committees separately reviewed the ABA's *Comprehensive Legal Needs Study* (App. B-2) and identified those areas of unmet need of most critical importance in Wisconsin. The commission as a whole then met to discuss and prioritize the needs on which the commission would focus its attention. Through this process, the commission reached consensus on six areas of legal needs as priorities for study and recommendations:

Financial/Consumer: Problems with creditors and insurance companies; inability to obtain credit; tax difficulties (including earned income credit matters); lemon law issues; bankruptcy and insolvency; entrepreneurial and small business counseling; income maintenance, including social security SSI, general assistance and other public benefits.

Housing and Real Property: Unsafe conditions; disputes about utility service; landlord-tenant disputes; real estate transactions; public housing issues.

Community/Regional: Levels of police and other municipal services; environmental hazards and opposition to siting of facilities; issues concerning child care services and facilities; zoning and land use restrictions; education and school issues (including special education).

Family and Domestic: Divorce; child custody and visitation; support for children, including AFDC; domestic violence and abuse.

Wills, Estates and Financial Planning: Wills; estate planning; power of attorney; financing/health insurance/availability of medical and long-term care (including Medicaid); coping with catastrophic illness; estate administration.

Employment and Labor: Working conditions; discrimination.

At the Annual Bar Convention held in Lake Geneva in June 1995, the commission sponsored a forum to elicit input from lawyers and judges on the above areas of legal need. Break-out sessions were held on each of the above topics, with commission members serving as facilitators and reporters. The sessions were publicized in convention promotional materials, with all convention attendees invited to participate. Additionally, the commission identified target groups of lawyers as well as individual experts who were specially invited to share their views. The commission developed a list of discussion topics to be addressed in the break-out sessions, such as the following:

1. Identify legal needs not being met under the current delivery system.
2. Which of these legal needs can be met by non-lawyers?
3. What task can non-lawyers perform?
4. Of the areas of legal needs that can be met by non-lawyers, should the non-lawyers be supervised? If so, by whom?
5. What education/licensing/training should be required of non-lawyers engaging in this limited practice?
6. Recognizing the pressures on the practicing bar to achieve "billable hours," how do we encourage/require and recognize pro bono professional services.
7. If the legal service law firms are eliminated, to whom will their current case loads be transferred, and how will current services to 20,000 people each year be continued?
8. How do we encourage/educate persons of ordinary means to consult lawyers? Have lawyers priced themselves out of the market for ordinary citizens of modest means?

9. How can alternative dispute resolution techniques be used to facilitate efficient, humane settlements?
10. What should be the role of trial judges in resolving problems regarding the delivery of legal services?
11. Discuss systems of lawyer-assisted delivery programs with which you are familiar. Why do they work? Are there other areas of legal need that could utilize such models?
12. Do present rules of professional responsibility preclude or inhibit non-traditional delivery of services?
13. What has been the experience of professional liability insurance carriers (including those providing coverage to Legal Service Corporation affiliates) with respect to claims arising from non-traditional delivery of services, e.g. in cases in which a lawyer advises a client on handling his or her own case?
14. What is the availability and appropriateness of standardized forms? Are the forms suitable for their intended purposes?

The break-out sessions generated lively debate and proved to be a source of valuable input to the commission, as reflected in the recommendations and commentary which follow. The minutes of these break-out sessions are included in App. C-1.

D. The Public Hearings (August 1995)

In an effort to assess the current state of legal services delivery to low and moderate income citizens, the commission also sought input from members of the community the legal profession serves.

Public hearings were held in five locations (Madison, Milwaukee, Wausau, Eau Claire and Green Bay) during August 1995. Invitations to appear and/or give written comments regarding community legal needs and the current state of delivery of legal services were sent to over 2,000 organizations and/or community leaders. In addition, news media in each area in which a public hearing was to be held received pre-hearing notice in the form of press releases, which encouraged all interested citizens to appear. Each public hearing was a day-long event, lasting

from 9 a.m. until at least 5 p.m. In Milwaukee, response was so positive that two concurrent sessions were held during the morning hours.

Approximately 200 persons gave testimony to the commission. At each location, four speakers per hour were scheduled, but those who walked in the day of the hearing indicating a wish to address the commission were accommodated. Commission members at each hearing engaged the attendees in a dialogue, inviting them to offer suggestions for improvement in delivery areas they reported as having shortcomings. Many appearing before the commission provided written outlines or other supporting documentation, which the commission has archived at the State Bar Center, along with a full transcript from each hearing.¹⁴ Citizens from all walks of life appeared at the public hearings. The greatest participation came from the following groups: judges and court personnel; paralegals; staff of legal services offices; representatives from the Department of Health and Social Services and other governmental entities; advocates representing the elderly, victims of domestic abuse, those with disabilities and other health-related issues; law school personnel; public librarians and law librarians; tribal employees; community child care workers; and state bar leaders.

The overriding message received from the public hearings was that legal needs of low and moderate income Wisconsin citizens are far from being met under existing delivery systems. Several likely reasons for the shortcomings were elicited.¹⁵

¹⁴ The commission wishes to thank the following court reporters who provided their services to the commission on a volunteer basis: Lucy Hantzsch, Margo Lucas, and Colleen Reed, Colleen Reed Reporting; Tammy R. Herrmann O'Neal, Gramann Reporting; and Linda Kuhlman, Professional Reporters Ltd.

¹⁵ Documentation supporting the statements that follow is available in App. C-2 at the State Bar Center. The documentation consists of notes taken during each public hearing identifying the speaker, the organization represented by the speaker (if applicable), and the main points made during the speaker's presentation. In addition a full transcript was made of each of the hearings.

(1) The legal profession is becoming increasingly specialized, and there are simply not enough lawyers with expertise in poverty law issues to meet current needs. Not only are there fewer lawyers trained in poverty law issues, but poverty law issues are becoming more complex. Moreover, with current trends toward reducing state and federal funding for civil and criminal legal services specialists, the problem of unmet legal needs is getting worse.

(2) It is increasingly difficult to persuade many lawyers—particularly young or newly admitted lawyers—to provide volunteer legal services. This is due largely to the high cost of obtaining a legal education and the level of debt with which today's law students are beginning their careers. Add to that the economic downturn of the past decade, and young lawyers are under greater pressure from their employers to increase the number of billable hours provided. There is simply not enough time for many lawyers to strike a realistic balance between earning a living and voluntarily contributing time and expertise toward the betterment of their communities.

(3) Nonlawyer advocates who provide services to the public sometimes encounter opposition from the legal community. Commission members were asked to consider whether some currently unmet legal needs could be met by advocates if the threat of unauthorized practice of law were not such a barrier. Suggestions were made to license paralegals to perform specific types of services, to allow nonlawyer advocates such as benefits specialists to appear in judicial and administrative hearings with clients, and to permit nonlawyer advocates to assist in the completion of paperwork that accompanies litigation and other advocacy-based matters. One speaker indicated that lay advocates are being used with great success in some tribal matters.

(4) "Unbundling" of legal services should be explored to make delivery systems more cost-effective. "Unbundling" refers to the process of specifying which tasks related to a legal

matter are to be completed by the lawyer and which tasks could be completed by the client or lay advocate.

(5) Greater coordination between the legal services community and other community providers is necessary. Information about legal services should be made more available in public venues, such as community centers, public libraries, medical offices, courthouses and other public buildings, and perhaps even shopping malls and centers. The state's legal community, perhaps the State Bar Association, should increase its efforts to coordinate information about legal and community services available to low and moderate income citizens.

(6) Although there are some innovative legal service delivery systems in place in the state, such innovative projects are limited, and should be expanded. Cited were the Milwaukee Young Lawyers association (MYLA) hotline, which provides legal advice by telephone in specific areas during specific hours, and the Triad Council, a community based program that integrates legal matters into education for the elderly. Triad also sponsors a Citizens Law Enforcement Academy that educates people over 21 about law enforcement, the court system, cultural diversity, etc.

The commission was encouraged to consider the recommendation and implementation of a technology based legal information system. Currently, such a system is being used in Maricopa County (the greater Phoenix, Arizona area) with great success.

(7) Legal services need to be more accessible to those who face language barriers, i.e. those for whom English is not their primary language, those with physical disabilities such as deafness or blindness, and those who are illiterate or semi-literate.

(8) Many people seek legal advice at public libraries. The State Bar and Wisconsin's legal community in general should establish a working relationship with the state's public librarians. The bar could assist by helping librarians develop viable legal information centers

by determining what basic law-related materials should be available in their libraries and what materials are outdated. Further, volunteer lawyers could be present to assist members of the public with law-related questions during specific hours of operation at the library.

In summary, the public hearings were a most valuable resource used by the commission in obtaining information with which to make informed and feasible recommendations. The commission is grateful for the contributions made by all who attended.

E. The Commission's Recommendations

Part II of this report contains the recommendations of the commission. A form of each recommendation was first proposed by a subcommittee and, after further drafting, was discussed and approved by the commission as a whole. The accompanying commentary provides background to the respective recommendation and, when necessary, explains the need for implementation of the recommendation.

F. Funding and Implementation: Pilot Projects

No set of recommendations, no matter how carefully drawn or well-intentioned, is likely to provide real solutions without accompanying strategies for implementation and appropriate resource allocation. Accordingly, Part III (Pilot Projects) makes five concrete implementation proposals that are designed for immediate action.

Three of the pilot projects, the State Bar Pro Bono Resource Center (No. 1), the Project on Accessible Law (No. 4), and the Legal Services Funding Campaign (No. 5) directly grew out of the work of the commission. The South Madison Legal Resource Center (No. 2) developed from an opportunity presented to the State Bar by the establishment of South Madison Community Health and Family Resources Center. To explore that opportunity, the Chairman appointed a South Madison Task Force (App. A-6), the input of which resulted in Pilot Project No. 2. The Brown County Legal Resource Center (Pilot Project No. 3) is the product of the

joint interest of members of the judiciary, particularly Justice Abrahamson and Brown County Circuit Judge Vivi Dilweg, and the commission to attempt to implement some form of a computer-assisted, courthouse-based, legal information delivery system similar to the Maricopa County project. Again, a Task Force was appointed by the Chairman (App. A-7) to explore and make recommendations to the commission as a whole. The Brown County Task Force was chaired by commission member Gilda Shellow.

In her remarks to the ABA Fourth Annual Leadership Forum, Justice Shirley Abrahamson aptly described the purpose of these pilot projects (App. B-6, at 20):

And the goal is to have concrete proposals that we can do, pilot studies and pilot projects around the state. And those that work we will continue with; those that don't work, we will stop.

And that is the point. But first, we must try.

The commission believes that Part III offers the State Bar and its lawyers the opportunity to make a deliberate start, to devise and/or customize specific solutions for specific projects. The goal is to create models which, if successful, can be replicated in other areas, communities, or courthouses throughout the state. If they are unsuccessful, the Pilot Projects can be modified or abandoned.

Without taking some risks—without experimenting prudently, deliberately, and cautiously—the legal profession simply will not know whether in fact there are complementary, perhaps better, ways for it to fulfill its charge at providing equal justice to all citizens in the State of Wisconsin.

Recommendation No. 14 recognizes the need for continued monitoring of and responsibility for the implementation of these recommendations and pilot projects. Accordingly it recommends that the State Bar appoint an implementation committee comprised of a

combination of commission members and additional lawyer and nonlawyer members. This recommendation also includes an annual reporting obligation.

**G. Final Approval of Recommendations by the State Bar of Wisconsin
Board of Governors**

On April 12 and 13, 1996, the State Bar of Wisconsin's Board of Governors considered and debated the recommendations presented by the Commission. All fourteen recommendations were approved (subject to several friendly amendments) by a majority vote of the Board on Saturday, April 13. Further discussion of the funding and implementation of the pilot projects set forth in Part III will take place at the June 11 and 12, 1996 meeting of the Board of Governors.

On May 4, 1996, the Commission held its final meeting, approving the friendly amendments to the recommendations as proposed by the Board. The final recommendations as approved by the Board are presented in Part II.

RECOMMENDATIONS

1. The State Bar of Wisconsin and local bar associations should sponsor and promote a campaign for private practitioners to (a) provide free half-hour consultations to prospective clients and (b) offer alternative legal fee arrangements.

2. The State Bar should sponsor a symposium on the subject of "unbundling" of legal services and lawyer assistance in self-representation.

3. Wisconsin courthouses should house Information Resource Centers to provide the following assistance to courthouse users and visitors:

- a. Helping people find where they need to go;
- b. Providing rudimentary "how to" information to persons who need access to the court system;
- c. Answering simple legal questions and assisting in the preparation of forms that are available in these Centers;
- d. Acting as a resource and directing persons to appropriate state, local and federal or other nonprofit groups for additional service.

4. The Wisconsin Supreme Court should establish a statewide standing Pro Se Forms Committee responsible for collating existing pro se materials, creating new forms as needed in the different substantive areas and establishing procedures to routinely and reliably update and disseminate pro se materials.

5. The Supreme Court should create a Task Force on Family Law in the Courts to review and make recommendations on administration, processing and proceedings in cases presenting CHIPS, custody, child support and domestic violence issues.

6. As an interim measure, the State Bar should support the use of lay advocates in domestic abuse cases and other limited proceedings where there is an established need for assistance and where the public interest can be protected.

7. The State Bar should develop guidelines for expanding the range of activities traditionally performed by paralegals, with lawyers confining

to supervise and remaining accountable for paralegals' activities.

8. All lawyers should make a personal commitment to perform or provide financial support for voluntary pro bono representation of individuals of limited means.

9. The State Bar annual membership dues statement should include a solicitation for voluntary contributions to support pro bono programs.

10. Law firms should assume institutional responsibility for the delivery of pro bono legal services. This can be accomplished by various means, or combinations of means, including the following:

- a. Committing to the Law Firm Pro Bono Pledge;
- b. Establishing internship programs or partnerships with legal services programs;
- c. Setting up and adequately funding a firm pro bono department;
- d. Making direct financial contributions to WisTAF for the delivery of legal services to the poor; and
- e. Directly staffing and/or financially supporting community law offices.

11. The State Bar should systematically coordinate, support and promote pro bono activities.

12. The State Bar should provide leadership in exploring alternative funding sources for legal service agencies.

13. The State Bar should actively encourage federal, state and local governments and the public at large to expand their commitment to ensure that all persons have access to legal services, and the message should be sent that this is a public obligation.

14. The President of the State Bar should appoint a committee to monitor and assist the Bar in implementing the Commission's Recommendations and Pilot Projects and report back to the Bar on an annual basis.

Recommendations and Commentary

Recommendation No. 1

The State Bar of Wisconsin and local bar associations should sponsor and promote a campaign for private practitioners to (a) provide free half-hour consultations to prospective clients and (b) offer alternative legal fee arrangements.

Commentary

At the risk of stating the obvious, lawyers are the most important source of information and resources to low and moderate income individuals in need of legal services. *First*, lawyers are able to assess a client's situation and help the client identify and prioritize legal needs, similar to the process of "triage" in the medical field. *Second*, many lawyers routinely offer legal services at reduced rates or on a pro bono basis to individuals who cannot afford to pay standard rates, and there is a good chance that the lawyer will handle the client's legal matter irrespective of the client's ability to pay. *Third*, even if the lawyer is not in a position personally to handle a particular legal matter, the lawyer probably is familiar with other resources available in the community and can make an appropriate referral. For all of these reasons, lawyers ideally should be the point of entry to the legal services delivery system for low and moderate income individuals.

Unfortunately, persons of limited means frequently are reluctant to contact lawyers because they believe legal services are too expensive and that the economics of the particular situation do not justify the anticipated legal fees. As a result, many

individuals who need a lawyer either ignore their legal matters, thereby exacerbating the problem, or seek help from individuals who may not be qualified or competent to render the necessary assistance.

To address this problem, the commission recommends that the State Bar, in conjunction with local bar associations, develop a campaign to encourage private practitioners to provide free half-hour consultations to prospective clients. The program should be widely publicized and promoted. The commission anticipates that many lawyers will participate in the program in the interest of the public good, and others will participate with the hope and expectation of attracting new business. Regardless of the motivation, the availability of the free consultation will encourage individuals to confer with lawyers to identify their legal needs and develop a plan to address those needs. In many cases, the client's question or concern may be completely resolved during the free consultation.

In conjunction with the free consultation campaign, the State Bar should develop a brochure or videotape which provides clients with basic information about

what to expect and how they can maximize the use of the lawyer's time through advance preparation, such as compiling and organizing relevant documents.

Additionally, the State Bar should develop continuing legal education (CLE) programs on how to provide affordable legal services and how to communicate with clients and prospective clients about legal fees, subjects which unfortunately are not typically included in law school curricula.

Many lawyers routinely charge for their services on a straight hourly rate basis. This traditional approach has the benefit of being simple for the lawyer to administer, but it also has many drawbacks. Clients have come to view the hourly rate standard as creating an incentive for lawyers to be inefficient. Moreover, because it is difficult to predict at the outset of an engagement how much time will be required to complete the matter, initial fee estimates are frequently exceeded. Resulting mis-understandings and disputes about fees undermine the attorney-client relationship and contribute to the public's perception that legal fees are excessive.

The Model Rules of Professional Conduct, SCR 20:1.5(a), require that lawyers' fees be "reasonable." The number of hours expended on the matter is merely one of the factors to be considered in determining reasonableness. Other factors include the novelty and difficulty of the legal issues involved, the skill required to perform the service, the amount involved and the results obtained, and the time limitations imposed by the client or by the circumstances. The rules do not provide guidance on how to balance these factors to arrive at an appropriate fee, however.

The determination of what constitutes a reasonable fee under the circumstances requires an understanding of the economics of the practice of law as well as the lawyer's professional obligations. Contrary to popular perception, most Wisconsin lawyers do not earn high salaries. As of 1993, 58.3% of Wisconsin attorneys in private practice were

either sole practitioners or practiced in firms with fewer than five attorneys. *State Bar of Wisconsin Sole Practitioner and Small Firm Focus Group Report*, March-May, 1993 (Appendix B-21). Almost half of the sole practitioners surveyed at that time earned less than \$40,000, and a significant minority of lawyers earned less than \$30,000 per year. *State Bar of Wisconsin Economics of Practice Survey*, October 1993 (Appendix B-22). Lawyers already struggling to make ends meet—particularly new lawyers who face substantial law school debt—are not in a position to offer reduced fees or pro bono services to the extent necessary to meet the demands of low and moderate income clients. Efforts to expand access to legal services therefore must include educating lawyers about how to provide legal services to clients on an affordable basis which makes economic sense. For example, lawyers should be encouraged to offer clients creative fee arrangements as an alternative to hourly rates. Value billing, flat fees, blended rates, and combinations of contingent fees with reduced hourly rates are among the billing alternatives which, appropriately structured, can produce a reasonable fee to the lawyer without creating incentives for inefficiency. The strategies for containing legal fees should also include increased reliance upon alternative methods of dispute resolution and the recognition of a lawyer's role not only as advocate, but as problem solver. That is, lawyers should recognize their professional obligation to resolve problems without litigation where appropriate and to avoid discovery abuses which unnecessarily prolong litigation.

The commission believes that CLE programs designed to educate lawyers on how to balance ethical and economic considerations in establishing legal fees and rendering legal services will help achieve actual fee reductions and thereby expand access to legal services. The commission recommends that the Board of Bar Examiners approve CLE credit for such programs.

Recommendation No. 2

The State Bar should sponsor a symposium on the subject of “unbundling” of legal services and lawyer assistance in self-representation.

Commentary

Within the last several years, the practice of “unbundling” of legal services has been implemented by some attorneys as a means of reducing legal fees to clients. Unbundling refers to the practice of limiting a lawyer’s role to the furnishing of only a portion of the work required to conclude a client’s legal matter. For example, the lawyer and client might agree that the lawyer will assist the client in preparation of forms or pleadings, but that the client will sign and file the documents and make any personal appearances in court pro se. As another example, the lawyer might make court appearances, but the client will conduct his or her own negotiations or investigation of the facts.

The concept of unbundling presents ethical questions and liability risks. A lawyer’s role is not limited to the performance of discrete tasks which readily can be allocated between the lawyer and client. Rather, lawyers serve in an advisory or counseling capacity, providing clients with an understanding of their legal rights and responsibilities and explaining the practical implications of those rights and responsibilities. *See generally*, Preamble to SCR Ch. 20, Rules of Professional Conduct for Attorneys. If a lawyer merely accepts the client’s identification of his or her legal needs without conducting an independent evaluation, there is a substantial risk that important considerations will be overlooked, thereby jeopardizing the client’s interests and exposing the lawyer to a malpractice claim. Moreover, while the Rules of Professional

Conduct permit lawyers to “limit the objectives of the representation if the client consents after consultation,” SCR 20:1.2(c), lawyers retain the ethical obligation to provide competent representation. SCR 20:1.1. Given these ethical constraints, the boundaries of permissible “job sharing” with clients are unclear.

Literature on the subject of unbundling is not extensive, although ethics problems and probable violations of the Federal Rules of Civil Procedure were the subject of thoughtful exposition by the court in *Johnson v. Board of County Commissioners*, 868 F. Supp. 1226 (D. Colo. 1994). In addition, a series of articles on the subject appears in the December 18, 1995 edition of *Lawyers Weekly U.S.A.* Opinion appears divided on the ethics of various aspects of unbundling.

The commission recommends State Bar sponsorship of a symposium—possibly as part of a convention—on the subject of unbundling. Judges, court administrators, lawyers who have offered unbundled or “client coaching” services, and experts on legal ethics and risk management would be appropriate presenters or panelists. The purpose of the symposium should be to explore inherent issues of economics, client satisfaction, quality assurance, judicial administration, ethics and lawyer malpractice, and to share information on the subject with the bench and bar. The comments from the symposium should be published to encourage lawyers to evaluate the feasibility of unbundling legal services.

Recommendation No. 3

Wisconsin courthouses should house Information Resource Centers to provide the following assistance to courthouse users and visitors:

- a. **Helping people find where they need to go;**
- b. **Providing rudimentary "how to" information to persons who need access to the court system;**
- c. **Answering simple legal questions and assisting in the preparation of forms that are available in these Centers;**
- d. **Acting as a resource and directing persons to appropriate state, local and federal or other nonprofit groups for additional service.**

Commentary

The commission heard a consistent message that people who use the courthouse and who are not represented by a lawyer need assistance. Visitors to the courthouse find courtrooms difficult to find; witnesses get lost in the hallways of our larger courthouses. Persons interested in presenting claims to the court, or persons compelled to appear before a judge as a witness, plaintiff, or defendant often appear pro se, i.e. without the assistance of a lawyer. These persons often do not know where to begin or to whom to turn for information relating to existing resources.

A number of witnesses described existing services available to people unable to afford the assistance of a lawyer. Some pre-printed forms are available for those who know where to look. A few overworked and underfunded semi-private and public legal services agencies exist to help those who are aware of their existence. Students, retired lawyers, practicing attorneys in the private and public sectors, and concerned citizens may be willing to lend assistance, but often they do not know how, or they are not

presented options well suited to their time and talents. Often there are dedicated employees working in the courthouses who are willing to help, but find themselves overwhelmed by the demand for assistance. In particular, clerks of court expressed great frustration that they are prohibited from rendering legal advice but as a practical matter are the only resource available to pro se litigants.

The commission spent considerable time hearing about and studying existing systems and services presently being used in Wisconsin to assist individuals who do not have lawyers. These services range from simple pre-printed forms, videotapes, and telephone information services to comprehensive legal information provided by law librarians and legal service organizations.

The commission also received and closely examined materials describing other states' experiments with offering services to assist unrepresented litigants. Of particular interest was the Maricopa County, Arizona "Self Service Center," which combines a

user friendly computer "kiosk"; a telephone hotline lawyer referral system; on-site access to unbundled legal services; and other creative experiments (see Appendix B-6).

The commission concluded that the ideal Courthouse Information Resource Center should combine the features of the Maricopa project with on-site volunteers to serve as courthouse advisors. There are many benefits to having a person in the courthouse to assist people. A person can provide *personal* assistance. The illiterate or computer-illiterate individual cannot follow the directions on pre-printed forms, and a computer terminal would prove to be an insurmountable barrier. Further, it is important that pro se litigants be informed that in most circumstances, they will be better served by retaining a lawyer, if they can afford to do so. It should be made clear that lawyers, because of their education and experience, recognize issues and problems that a pro se litigant will not be able to identify. Accordingly, the best solution is to equip a person in the courthouse with all the resources the county, the county bar association, the State of Wisconsin, and State Bar of Wisconsin can provide.

The concept of recruiting volunteers to serve as courthouse advisors is not new. At a recent workshop convened by Justice Shirley Abrahamson to study volunteers in the courts, participants identified a number of highly successful volunteer programs already in operation in Wisconsin courthouses. The workshop report concludes that such volunteer programs have produced direct and indirect benefits:

Through volunteer service programs, communities and courts can come together in partnership to improve how courts respond to the needs and interests of the public. Volunteers enable the courts to provide services not currently available. Volunteers assist paid staff, they do not displace

or substitute for them. Thus, when members of the community work side-by-side with the judges and court staff, we increase the range and scope of programs the courts are able to offer and we give the community a tangible stake in its court system. In the process we begin to demystify the least-understood branch of government.

A Coalition for Justice: Volunteers in the Courts, A Report on Workshops February 13-15, 1996 (Appendix A-11).

The commission recommends that the State Bar support the creation and operation of Courthouse Information Resource Centers in Wisconsin courthouses by (a) disseminating information about the Maricopa and other similar projects, (b) providing leadership in the planning and development of such centers, and (c) contributing technology resources, such as access to the State Bar's bulletin board and other computer services and use of informational videotapes.

To test the viability of the Courthouse Information Resource Center concept, the Commission recommends that the State Bar provide financial and other support for the establishment of a Brown County Courthouse Legal Information Center. See Part III, Pilot Project No. 2. The commission selected Brown County as the site for this pilot project because it is a mid-sized county with both urban and rural characteristics and because the project has the enthusiastic support of the Brown County judges and county government. If the Brown County pilot project is successful, the State Bar should assist other counties in replicating the Courthouse Information Resource Center concept.

Local bar associations should support the Information Resource Centers by, for example, recruiting lawyers to serve as courthouse advisors; operating volunteer

lawyer hotlines to provide access to legal information; and assisting with the dissemination of pro se forms, leaflets, manuals, information packets and videotapes relating to simple procedural or substantive legal matters. See Recommendation No. 4. Local service groups and community organizations should be encouraged to help recruit, educate and coordinate courthouse volunteers and provide resources for equipment and furnishings for the information centers.

The commission also recommends that the State Bar continue to work with the University of Wisconsin Law School and the Marquette University Law School to develop a clinical program for law students to develop nearby courthouses as "courthouse advisors," to provide telephone and online information relating to simple procedural and substantive legal questions, and to provide direct telephone consultation similar to the community law office model at the University of Wisconsin Law School and the Marquette University undergraduate student legal service. See Part III, Pilot Project No. 4 ("Project on Accessible Law").

Recommendation No. 4

The Wisconsin Supreme Court should establish a statewide standing Pro Se Forms Committee responsible for collating existing pro se materials, creating new forms as needed in the different substantive areas and establishing procedures to routinely and reliably update and disseminate pro se materials.

Commentary

The commission's Recommendation No. 3 with respect to the establishment of Courthouse Information Resource Centers and other recommendations and projects described in this report are premised in part on the availability of standardized forms and self-help instructional materials to assist pro se litigants. The Commission views reliance upon such materials as a last resort. The Commission is concerned that pro se litigants will overlook important legal issues which lawyers, because of their education and experience, would readily identify. Further, there are some legal matters, such as child custody proceedings, which are so complex and as to which the stakes are so high that pro se representation simply should not be tolerated. Thus, in the Commission's

view the ultimate objective should be to ensure that all persons, regardless of their ability to pay, have the opportunity to obtain legal services from lawyers (or, in limited circumstances, from other qualified providers).

In the meantime, there is a critical need for uniform, reliable, user-friendly forms and instructional materials to assist pro se litigants. Currently, pro se forms are available on a sporadic basis for limited types of proceedings, and frequently are quite expensive. For the most part, the forms are developed outside the auspices of bar associations, raising concerns about quality control. To the extent bench and bar groups have made forms available, their efforts have not been coordinated to ensure

consistency and completeness. Further, there is no mechanism in place to ensure that pro se forms are periodically updated to reflect changes in the law and that only current forms are disseminated.

To address these concerns, the commission recommends that the Supreme Court establish a standing committee to compile and maintain a comprehensive library of pro se forms and instructional materials. Creation of this committee by the Supreme Court will emphasize the importance of the project and ensure visibility throughout the State. The Supreme Court's imprimatur will also facilitate recruitment of highly qualified committee members.

The commission envisions that the Pro Se Forms Committee will have a diverse membership, including judges, private and public practitioners, court staff, lay advocates, paralegals, librarians, consumers of legal services and other concerned persons.

Together the committee members should identify legal proceedings in which pro se appearances are common and develop sample forms and instructions to facilitate such pro se representation. Because of the significant percentage of pro se litigants in the following areas, the Commission recommends that the Pro Se Forms Committee focus its initial attention on domestic violence, temporary orders in divorce cases, CHIPS proceedings, landlord/tenant issues, family court modifications and enforcement of support and placement orders, contempt proceedings, mental commitment proceedings, guardianships, durable powers of attorney for health care and financial matters, small claims actions, and certain appeals of administrative matters.

The commission recognizes that the Judicial Conference Forms Committee currently reviews and approves certain forms. The Commission recommends that one or more members of the Judicial

Conference Forms Committee serve on the Pro Se Forms Committee and arrange similar review, comment upon and approval of proposed pro se forms.

Once approved, pro se forms should be widely disseminated throughout the state at low or no cost. At the same time, controls should be established to facilitate updating of forms and retrieval of outdated forms. The Pro Se Forms Committee, in conjunction with the State Bar's Technology Resource Committee, should explore opportunities for technological distribution of forms to public libraries, malls, courthouse and community legal resource centers, and other recommended locations. The Pro Se Forms Committee should also arrange for training teams to educate interested providers on how to distribute pro se materials. For example, public librarians may need education to enable them to provide accurate, understandable and helpful guidance to persons seeking inexpensive or free legal information.

The commission recognizes that the process of creating, updating and disseminating pro se forms on a statewide basis will be very time consuming and require considerable resources. Further, the pro se forms project necessarily requires coordination of efforts of lawyers, judges, and a broad range of community participants to a degree likely to exceed the capacity of the volunteer members of the Pro Se Forms Committee. It will therefore be critical to designate an individual or entity with overall responsibility for coordinating and implementing the pro se forms project.

The commission recommends that the State Bar collaborate with the law schools, local bar associations, and other groups to establish an appropriate implementation plan. See Part III, Pilot Project No. 4 ("Project on Accessible Law"). The commission also recommends that the Judicial Education Office develop educational programs to sensitize judges to special considerations in handling pro se cases.

Recommendation No. 5

The Supreme Court should create a Task Force on Family Law in the Courts to review and make recommendations on administration, processing and proceedings in cases presenting CHIPS, custody, child support and domestic violence issues.

Commentary

Perhaps no other topic generated as much comment and tragic tales of the consequences of the lack of available and affordable representation as did the subject of family law and domestic violence. For many citizens, it is in the context of family matters that they have their first and only experience with the courts and the legal profession. Speakers on this topic included advocates from domestic violence programs from throughout Wisconsin, judges, court personnel, lawyers and litigants. Numerous individuals spoke of the need for increased representation, increased assistance to pro se litigants, and an expanded role for lay advocates. Significant concern was expressed as to the elimination of parental representation in CHIPS proceedings and the need for increased education for guardians ad litem.

Many of those testifying before the commission stressed the need for continued education of the bar and court personnel as to the dynamics of domestic violence and the needs of its victims. All too often the legal process is seen as revictimizing survivors of domestic violence. Unrepresented victims of domestic violence find that the power and control which marks violent relationships is continued into the legal proceedings deciding such issues as child custody and support. Increased emphasis in law school curricula and continuing legal education was suggested. Numerous witnesses—both litigants and lay

advocates—addressed the impossibility of securing representation from attorneys knowledgeable in the field of domestic violence.

While a number of the commission's recommendations would benefit litigants in family law and domestic violence cases, the prevalence and seriousness of the concerns raised in these areas mandates the need for far more dramatic improvements than the modest measures addressed in this report. A Task Force on Family Law appointed by the Supreme Court would provide a forum for all interested parties to examine more closely those court proceedings affecting the family and children. The Task Force should include judges, family court commissioners, lawyers, advocates, legislators and representatives of the general public. Special emphasis should be given to the obstacles encountered by the unrepresented litigant and to continuing legal education requirements and minimum standards of practice for guardians ad litem.

The commission notes that the Commission on Violence in the Justice System convened by State Bar of Wisconsin President-Elect David Saichuk is examining issues relating to domestic violence, among others. The commission supports the work of the Commission on Violence and will share information to assist the Commission on Violence with further study of these issues.

Recommendation No. 6

As an interim measure, the State Bar should support the use of lay advocates in domestic abuse cases and other limited proceedings where there is an established need for assistance and where the public interest can be protected.

Commentary

Throughout the public hearings, numerous representatives of domestic violence groups testified about the lack of adequate legal services for abuse victims. Being unrepresented deprives victims of the knowledge of their rights and remedies available in the criminal justice system and exacerbates an already emotional time in their lives. In response to the shortage of lawyers, many domestic violence groups employ "lay advocates," i.e. nonlawyers who are neither employed nor supervised by lawyers, to assist victims both within and outside of the judicial system.

Witnesses universally encouraged expanding the role of lay advocates in the context of obtaining restraining orders as a cost-effective way to increase services to victims of domestic abuse. Current practice varies widely by court. Some lay advocates play little role in the legal process beyond accompanying victims to court, while others have developed relationships with court personnel and assumed a more expansive role in the process. Statutorily a lay advocate's role is very limited. Wis. Stat. § 895.73 permits domestic abuse victims to select "service representatives" to attend hearings and other court proceedings. The definition of service representatives is limited to those who provide counseling or support services without charging a fee. Service representatives are permitted to sit adjacent to the victim and confer orally and in writing with her, but may not sit at counsel table during a jury trial and may

address the court only if permitted by the court.

The commission debated the interplay between the role of lay advocates and the prohibition against the unauthorized practice of law. Hesitant to endorse lay advocates seeking to "represent" victims in judicial proceedings, the commission nevertheless recognized the lack of viable alternatives to victims in these desperate circumstances.

The commission also received testimony about the role of lay advocates in areas other than domestic abuse. Other areas in which lay advocates are presently successfully employed include welfare benefits, social security and other public entitlement issues. It was suggested that advocates also could be used to handle powers of attorney, uncontested guardianships, small claims, and pro se divorces. Another witness testified that advocates are being used extensively and successfully in tribal court and that Judicare provides such advocates with malpractice insurance. The author of a study on the effectiveness of lay advocates concludes that lawyers who are experienced with the rules and procedures in a particular forum provide the most effective representation at administrative hearings, but that experienced lay advocates do a better job than inexperienced lawyers. *See, The First Thing We Do, Let's Replace all the Lawyers. Lawyers and Nonlawyers as Advocates*, by Herbert Kritzer, U.W. Madison, Dept. of Political Science (Appendix B-20).

In evaluating the role of lay advocates, the commission considered the ABA's classification of nonlawyer legal "workers" into four categories: (1) traditional paralegals (discussed in Recommendation No. 7 below), (2) nonlawyers practicing in administrative agency proceedings, (3) nonlawyers doing work pursuant to statute, rule or regulation, and (4) "all other nonlawyers." *Nonlawyer Activity in Law-Related Situations* ("ABA Report") (Appendix B-8). The ABA Report includes the following as examples of "all other nonlawyers":

- the document preparer with court approved forms;
- the document preparer without court approved forms;
- the legal technician assisting a self-represented person with the legal forms needed to obtain an uncontested divorce;
- the legal technician assisting in the execution of a real estate purchase and sale contract for a single-family home; and
- the battered women's advocate, a legal technician advising and assisting the client in filing a complaint, seeking police action based on the complaint, preparing papers with which to seek a protective order, preparing testimony, filing papers, demanding an immediate hearing, and presenting the case in court.

While recognizing the importance and value of lay advocates in many types of proceedings, the commission believes the ultimate goal should be for all clients to have the assistance of counsel. This is the only way to ensure a "level playing field." While this expectation may not be realistic in the short-term, it should not be abandoned as a long-range objective.

In the meantime, the commission recommends the following approaches with respect to the second, third and fourth categories of non-lawyers identified above:

(a) *Administrative agency proceedings*: Where it is determined that legal needs are not being met by lawyers, Wisconsin should consider allowing nonlawyer representation of individuals in state administrative agency proceedings. Nonlawyer representatives should be subject to the agencies' standards of practice and discipline.

(b) *Statutory authorization*: While at this time there should not be enacted a broad, general statute authorizing nonlawyer practice, the activities of nonlawyers who provide assistance, advice and representation authorized by specific statutes, court rules or agency regulations should be continued, subject to review by the entities under whose authority the services are performed.

(c) *Other nonlawyers*: With regard to the activities of all other nonlawyers, Wisconsin should adopt an analytical approach in assessing whether and how to regulate varied forms of nonlawyer activity that exist or are emerging in Wisconsin. Criteria for this analysis should include the risk of harm these activities present, whether consumers can evaluate providers' qualifications, and whether the net effect of regulating the activities will be a benefit to the public.

The State Bar's Unauthorized Practice of Law Subcommittee of the Consumer Protection Committee or other appropriate State Bar committee should continue to monitor the activities of lay advocates. The State Bar periodically should petition the Wisconsin Supreme Court to examine specific nonlawyer activities which appear to be detrimental to the public.

Recommendation No. 7

The State Bar should develop guidelines for expanding the range of activities traditionally performed by paralegals, with lawyers continuing to supervise and remaining accountable for paralegals' activities.

Commentary

The commission received considerable oral and written testimony from paralegals regarding the role they should play in expanding access to legal services by low and moderate income individuals. As used in this report, the term "paralegal" refers to a nonlawyer who assists a lawyer in providing legal services. Many witnesses pointed out that increased delegation of tasks by lawyers to paralegals would help control legal fees, making legal services more affordable. Others suggested that trained paralegals could fill unmet needs by representing individuals in administrative and other proceedings for which lawyers cannot economically provide legal services.

The continuing debate regarding the appropriate scope of paralegal activities is inextricably intertwined with the issue of the "unauthorized practice of law," a term which has eluded clear definition. Neither the Unauthorized Practice of Law Subcommittee of the State Bar of Wisconsin's Consumer Protection Committee (Appendix A-10) nor, more recently, the ABA in its 1995 report on *Nonlawyer Activity in Law-related Situations* (Appendix B-8) was able to articulate the boundary between legal activities reserved to the exclusive purview of lawyers and activities properly undertaken by nonlawyers.

While promoting an expanded role in the legal service delivery system, for the most part the paralegals who addressed the commission favored continued supervision by and accountability to lawyers. The

commission concurs with this approach. The commission recommends that either its Task Force on Paralegals or an appropriate committee of the State Bar work with representatives of paralegal associations to identify opportunities to increase paralegals' responsibilities.

A related issue considered by the commission is the question of licensure of paralegals. The commission heard testimony from various witnesses on this subject. Given the commission's recommendation that paralegals continue to work under the supervision of lawyers, and in light of the existing ethical strictures governing attorneys' use of paralegals, the commission does not believe paralegal licensing is necessary. Further, the commission notes the comments in the ABA Report to the effect that licensure is the most complex and restrictive form of regulation, and typically the most expensive type of regulation to implement, since it requires competency testing, standard setting and policing of unauthorized service provision by those not licensed. ABA Report, Appendix B-19, at 147.

Recommendation No. 8

All lawyers should make a personal commitment to perform or provide financial support for voluntary pro bono representation of individuals of limited means.

Commentary

Pro bono publico representation is a longstanding tradition, ethic, and privilege of the legal profession. The commission recognizes pro bono representation as an integral component of the delivery of legal services.

In considering the role of pro bono representation in the legal services delivery system, the commission was faced with the preliminary question of what constitutes "pro bono" work. Two competing definitions were acknowledged and examined. SCR 20:6.1, which includes pro bono publico service as a required element of an attorney's professional responsibilities, reflects a broad interpretation of the term "pro bono." That rule provides:

SC20:6.1: Pro bono publico service. A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

In contrast, the Resolution adopted by the Board of Governors on April 15, 1989 recommending, *inter alia*, that every lawyer contribute at least 25 hours of pro bono work annually (or make an equivalent financial contribution), adopts a narrower

definition of pro bono which emphasizes direct representation of low-income clients. Thus, the State Bar Resolution identifies four specific categories of pro bono representation: (1) participation in an organized pro bono panel or project; (2) appointment by a state or federal court in civil cases; (3) serving "of counsel" or otherwise providing legal services directly to or for an organization whose primary purpose is to serve the needs of low income persons; and (4) accepting as clients low income persons whose legal needs would otherwise be unmet. (See Appendix A-9 for complete text of Board of Governors Resolution.)

The commission acknowledges that performance of the types of public service activities which would satisfy an attorney's professional responsibilities under SCR 20:6.1 are important and laudable. In the context of identifying the role of pro bono representation in addressing the unmet legal needs of persons of limited financial means, however, the commission found the definition of pro bono embodied in the State Bar Resolution to be more instructive. Therefore, the commission adopted the State Bar definition to provide a framework for discussion, to provide a context within which to propose other commission recommendations, and to refocus discussions away from the meaning of pro bono to strategies for encouraging and facilitating more pro bono activity. The commission has not attempted to set income guidelines to define the terms "limited means" or "low" or "moderate" income. Rather, the commission

anticipates that participating lawyers will make a subjective determination of the clients to be provided free legal services, consistent with the commission's goal of expanding access to legal services to those who cannot afford to hire legal counsel.

At the public hearings, numerous speakers reaffirmed the tremendous need for lawyers to represent low income persons. Legal service staff attorneys alone cannot possibly provide representation to the tens of thousands of clients who seek their assistance each year. Many lawyers accept assignments of pro bono cases through volunteer lawyer panels, but recruitment of volunteer lawyers has not kept pace with the increasing demand for legal services. Indeed, several legal service providers reported that at best their panels of volunteer lawyers have remained stagnant over the past 10-15 years, and in some agencies the numbers have actually diminished over the years. Aggressive recruitment of additional pro bono lawyers is a pressing need.

Soon after the commission was convened, the Dane County Pro Bono Trust Fund Committee petitioned the Wisconsin Supreme Court to adopt a rule requiring all State Bar members to file an annual report regarding their pro bono efforts. At its public hearings, the commission elicited comments about mandatory pro bono reporting as well as the general concept of mandating a minimum contribution of time or money to pro bono representation. Testimony from a few attorneys and from several non-attorneys supported mandatory pro bono representation. However, the clear preponderance of the testimony reflected support for voluntary pro bono and opposition to mandatory pro bono representation. Statements included opinions that mandatory pro bono is a contradiction in terms, and that public service cannot and should not be mandated. Also noted was the disparity in professional ability, expertise, and financial costs and means (especially

with respect to student loan debt load carried by recent law school graduates). Additional concerns about potential conflicts, including existing prohibitions by government attorneys and the judiciary to provide pro bono representation, were expressed.

The commission also received comments that even with mandatory pro bono representation, the legal needs of low-income persons could not be met. Further, a mandatory pro bono representation system would necessarily require low-income legal services providers to serve as a backup system to relieve practitioners of those pro bono cases that are beyond their expertise and to help poverty related cases and issues. Finally, resources spent on administering a mandatory pro bono report system are better spent on actual pro bono services and litigation costs.

At the request of the Supreme Court of Wisconsin, the commission, together with the Dane County Pro Bono Trust Fund Committee, developed a pro bono representation survey which was distributed to all State Bar members. The survey sought anonymous information from each member about the number of hours, substantive areas, and type of representation and/or activities they were providing pro bono or at reduced fee, and whether members provide financial support for low-income representation. Unfortunately, the survey response rate was not sufficient to draw statistically reliable conclusions about the overall level of pro bono representation by Wisconsin attorneys. The survey results do provide valuable insight into the level of commitment of attorneys who do provide services on a pro bono basis: when members engage in pro bono services, they commit a substantial amount of time and other professional resources to such representation. Such attorneys, as a rule, substantially exceed the minimum commitments suggested in bar association resolutions. *See, e.g.,* the

April 15, 1989 Board of Governors' Resolution (Appendix A-8).

Simultaneous with the commission's study of the delivery of legal services, a task force of the Government Lawyers Division of the State Bar examined special considerations affecting the involvement of public practitioners in rendering pro bono legal services. The Government Lawyers study revealed that public practitioners recognize their professional obligation to participate in pro bono activities but often feel constrained by the Rules of Professional Conduct governing conflicts of interest. Attorneys employed by government frequently have unique and complex

attorney-client relationships with government agencies, public officials and public employees. Difficulties identifying their own "clients" complicates efforts to ascertain whether representation or assistance of prospective pro bono clients would pose a conflict of interest. The Government Lawyers Division Pro Bono Task Force Report, April 1996 (Appendix B-23) carefully examines the real and perceived barriers to government lawyers' participation in pro bono activities and proposes solutions to overcome these barriers. The commission supports the recommendations of the Government Lawyers Division Pro Bono Task Force and urges the State Bar to continue its efforts to facilitate government lawyers' full participation in pro bono and other professional activities.

Recommendation No. 9

The State Bar annual membership dues statement should include a solicitation for voluntary contributions to support pro bono programs.

Commentary

In recent years and in pending governmental and private foundation budgetary proposals, traditional sources of funding for providing legal representation to low-income persons have been reduced. While the bench and the bar concentrate, necessarily, on providing for the unmet legal needs of the poor, institutional attention on the legal needs of persons of moderate income becomes further delayed. Indeed, a parallel problem exists in that there is an alarming increase in the number of persons (some formerly being of moderate income) joining the ranks of "no income" or "low-income" persons.

The commission recommends that the annual State Bar membership dues statement include a solicitation of voluntary contributions to pro bono programs as one mechanism for providing financial support for legal representation of the poor while also satisfying the contributing lawyer's pro bono ethical obligation. This contribution mechanism is proposed as a cost-effective and institutionalized appeal that annually reaches each State Bar member. The commission anticipates that the appeal, if included on the dues statement, will prove a convenient means for members to make financial contributions, and will facilitate exercising the pro bono financial contribution option. Additionally, this funding mechanism should alleviate ethical concerns and potential conflicts arising for judicial and government-employed members, especially when faced with donation requests from individual non-profit law firms

representing litigants in court or against governmental offices.

The commission also urges that the funds collected through this appeal be distributed by an entity such as WisTAF with the expertise and experience to distribute the funds statewide to legal services providers and legal programs, and which is qualified as tax exempt and has the authority to receive funds as charitable donations.

Recommendation No. 10

Law firms should assume institutional responsibility for the delivery of pro bono legal services. This can be accomplished by various means, or combinations of means, including the following:

- a. Committing to the Law Firm Pro Bono Pledge;**
- b. Establishing internship programs or partnerships with legal services programs;**
- c. Setting up and adequately funding a firm pro bono department;**
- d. Making direct financial contributions to WisTAF for the delivery of legal service to the poor; and**
- e. Directly staffing and/or financially supporting community law offices.**

As "legal entities," law firms have a distinct role to play in the delivery of pro bono legal services. See generally, Katzmann, *The Law Firm And the Public Good*, particularly Chapter Two, "Public Service Implications of Evolving Law Firm Size and Structure," authored by Marc Galanter and Thomas Palay. (Marc Galanter is a consultant to the commission.) In sum, Galanter and Palay conclude that a commitment to pro bono is "not incompatible with the flourishing of the large law firm."

The commission recommends that law firms—including legal departments in corporations and government agencies—assume institutional responsibility for delivery of pro bono representation. To that end, the commission recommends the above (though not exhaustive) list of suggestions for law firms, *of any size*, to consider when institutionalizing pro bono policies. While the nature and scope of a law firm's pro bono program undoubtedly will vary according to the size of the firm, the commission suggests that all firms are in a position to provide some level of institutional support for pro bono legal services. The specific suggestions included in the recommendation build upon the earlier

work of the State Bar's Legal Assistance Committee, most notably the law firm pro bono pledge (Appendix A-10) and the establishment of pro bono departments.

The commission emphasizes that the increased commitment to pro bono by law firms (as defined above) is crucial to the goal of increasing pro bono services by individual attorneys. By undertaking an institutional commitment to pro bono legal services, a firm or legal department sends a positive message to its attorneys about the privilege of being a member of the legal profession and about the ethical responsibilities attendant to such membership. Such a message supports the current and future efforts of individual lawyers to meet the obligations referenced in the commentary to Recommendations 8 and 9 above.

Further, law firms, regardless of size, have cumulative economic and human resources which may exceed the resources of their individual lawyers. For example, a law firm may choose to make a financial contribution as an institution to support pro bono activities, particularly where some of its members feel unqualified personally to render pro bono services. Additionally, law firms can set standards for their members

which include an expectation of pro bono service and/or subsidize members who expend a disproportionate amount of time on pro bono work in a particular year.

The commission encourages law firms and legal departments to develop partnerships with legal service agencies and community law offices. Through "loaned attorney" or financial support programs, employers of lawyers can ensure the continued viability of public interest law firms staffed by specialists in poverty law issues. At the same time, employers can benefit by creating opportunities for lawyers which complement the lawyers' areas of expertise, substantive areas of practice, or other interest.

Finally, the commission notes that the broad array of available pro bono programs ensures that all lawyers, including judges and other government attorneys, have the opportunity to make a meaningful contribution to the provision of legal services to low income individuals consistent with ethical and political constraints.

In circumstances where the direct provision of legal services is prohibited, judges and government lawyers may be able to help organize and/or recruit lawyers for pro bono programs. Similarly, to the extent direct financial contributions to particular legal service agencies pose a conflict of interest, judges and government lawyers can contribute to WisTAF or another entity that distributes funds to agencies. It is important that government agencies, like other employers of lawyers, institutionally encourage such pro bono activities. The State Bar of Wisconsin Government Lawyers Division Pro Bono Task Force Report specifically discusses the importance of securing management's support for public practitioners' pro bono activities. See Appendix B-23. Similarly, a White House Executive order dated February 5, 1996, Sec. 2, encourages federal agencies to "develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time." See Appendix B-19.

Recommendation No. 11

The State Bar should systematically coordinate, support and promote pro bono activities.

Commentary

The commission received testimony at the public hearings about numerous pro bono services and projects which exist throughout the State of Wisconsin and heard that attorneys who perform pro bono services provide their services willingly and generously. However, the commission also received testimony that only a percentage of cases that need pro bono representation are or can be assumed by attorneys, that the

amount of time dedicated to pro bono representation is limited, and that projects connected to legal services providers operate with greater efficiency and with proper legal support. The need for more pro bono programs also was expressed, especially with respect to elder law, domestic violence issues, family law, children's legal issues and health law.

The commission recognizes that existing pro bono projects for volunteer attorneys are themselves coordinated very well. Every county in Wisconsin is served by at least one volunteer attorney project. The State Bar can serve an important role by complementing such existing projects, including coordinating and disseminating information about existing programs. The State Bar's creation of a pro bono coordinator staff position was an important first step in demonstrating the State Bar's institutional support for pro bono activities. The commission recommends that the State Bar undertake a larger institutional commitment to pro bono. The State Bar should: (1) serve as a clearinghouse of information about existing pro bono projects, both for potential pro bono clients and for attorneys seeking pro bono opportunities; (2) identify and develop "model" pro bono projects in one geographic area to "test" (and modify if necessary) and then make available for adaptation or adoption elsewhere in the state; (3) encourage and support law firm and legal department pro bono initiatives; (4) encourage and facilitate government lawyers' pro bono initiatives; (5) explore ways to accommodate pro bono practice needs, such as sponsoring education in specialized poverty-related legal issues, facilitating pro bono malpractice insurance coverage, furthering access through fee and costs waivers or pro bono litigation funds, and expanding use of technology to enhance pro bono services and resources; and (6) explore ways to meet the legal needs of persons where the pool of attorneys—pro bono or otherwise—is small, such as in rural counties and in tribal courts.

During the course of its work, the commission became aware of an opportunity for the State Bar to help develop a community-based legal resource center in conjunction with the South Madison Health and Family Center. The goal of this project is to streamline the delivery of pro bono

legal services by using new technologies to make pro bono representation more efficient. If successful, this project could be replicated in other neighborhoods and communities throughout Wisconsin, thereby stretching scarce existing pro bono resources and removing barriers to the recruitment of additional pro bono volunteers. The commission recommends that the State Bar provide financial and other support to the South Madison project. *See* Part III, Pilot Project No. 3.

Probably most importantly, the State Bar of Wisconsin should continue to communicate that every pro bono contribution matters. No pro bono work is insignificant. A single pro bono attorney can make a big difference in the life of an individual client. Cumulatively, pro bono representation significantly improves the quality of the justice system and thereby the lives of all Wisconsin residents. The State Bar should continue to reinforce these messages through public recognition of law firms', legal departments' and individual lawyers' outstanding pro bono achievements.

The commission's vision of the State Bar assuming expanded responsibilities with respect to pro bono activities necessarily requires increased staffing and other resources. The commission recommends that the State Bar establish and fund a Pro Bono Resource Center to carry out these responsibilities. *See* Part III *infra*, Pilot Project No. 1.

Recommendation No. 12

The State Bar should provide leadership in exploring alternative funding sources for legal service agencies.

Commentary

As indicated throughout this report, the reduced funding and threatened defunding of the Legal Services Corporation has critically important implications for the availability of legal services to low-income individuals in Wisconsin. The four Wisconsin LSC affiliates anticipate a 30% reduction in federal funding from \$5,489,000 in 1995 to \$3,787,000 in 1996, and future federal funding for legal services remains uncertain. Staff reductions necessitated by such funding cuts have a direct impact on access to legal services by low-income clients. While pro bono activities are a necessary element of an effective legal service delivery system, reliance on pro bono attorneys is not an adequate substitute for legal services law firms staffed by lawyers who are specialists in poverty law issues. Moreover, lawyers alone cannot be expected to bear the burden of funding legal services. The conclusion is mandated that alternative funding services must be developed to broaden public support and ensure the continued viability of legal services agencies.

In recognition of the impending crisis caused by reduced federal funding, the ABA adopted the following resolution as a "call to action" to bar associations:

RESOLVED, That the American Bar Association opposes attempts to diminish justice for poor people by reducing federal, state and local funding for legal services programs.

FURTHER RESOLVED, That the American Bar Association calls upon bar associations and lawyers to exert strong leadership and advocacy to preserve existing funding for legal services, prevent the diversion of funds for other purposes and preclude limits on the purposes for which funds may be used.

FURTHER RESOLVED, That the American Bar Association urges bar associations and lawyers to undertake vigorous leadership and aggressive advocacy to identify, pursue and implement creative initiatives that will result in new funding mechanisms for legal services providers.

FURTHER RESOLVED, That the American Bar Association supports the enactment of legislation, policies or procedures that result in greater access to justice and provide new or expanded funding resources for legal services, such as general legislative appropriations, reasonable filing fee surcharges with revenue to be provided to civil legal services to the poor, and creative means to expand the income base of state Interest on Lawyers' Trust Accounts (IOLTA) programs.

FURTHER RESOLVED, That the American Bar Association urges bar associations and bar-related entities, providers of legal services and legal services funding sources to work together to diversify both the number and types of revenue sources for legal services providers, including increasing lawyers' personal financial support of legal services programs in their communities through individual donations and law firm contributions, in addition to funds provided by the Legal Services Corporation, in order to stabilize the funding base and help to meet the legal needs of families and individuals in poverty.

Consistent with the ABA's resolution, the commission recommends that the State Bar work closely with LSC-funded and other legal services organizations in Wisconsin to diversify their funding sources and thereby reduce their dependence on federal funding. At a minimum, the State Bar should encourage its members to provide direct support to legal service agencies through personal financial contributions. Additionally, the State Bar as an institution should provide leadership and financial support to legal services organizations in their efforts to develop and implement an integrated plan for permanent and reliable funding for civil legal services to low income persons. *See* Part III, Pilot Project V.

Recommendation No. 13

The State Bar should actively encourage federal, state and local governments and the public at large to expand their commitment to ensure that all persons have access to legal services, and the message should be sent that this is a public obligation.

Commentary

Lawyers alone cannot ensure that all the citizens of Wisconsin have access to legal services. If we are to achieve some measure of success in promoting this laudable goal, federal, state and local governments must help; equal access to the justice is the public's responsibility.

Toward this end, the commission recommends that the State Bar continue aggressively to campaign to preserve existing and restore former public programs designed to improve access to and the availability of legal services in Wisconsin.

First, the message should be loud and clear that contributions of time and money by members of the legal profession alone will never replace state and federal funding of existing legal services programs. Even if the generosity of the lawyers in this state could match existing public resources, which it cannot, such a system would be a poor substitute for the lawyers toiling in legal service organizations. The legal profession as a whole depends upon the expertise of these individuals. The reduction in public monies does more than reduce the number of legal service lawyers, it robs the profession of the efficiencies realized through the cooperation of volunteer lawyers and experienced legal service specialists. Public funding of legal service organizations is essential.

Second, the State of Wisconsin should continue to fund and support the use of clinical programs for law students. These

clinical programs provide direct access to legal services for persons who would otherwise be ignored, and they teach a valuable lesson to the law student that every lawyer has an obligation to serve the public. The reduction or elimination of funding for these clinical programs not only deprives the poor and disenfranchised of this simple kind of representation, but it also denies the law student a valuable lesson and sends the subtle message that serving the public is not every lawyer's most important obligation.

Third, the State of Wisconsin should restore full funding for the Judicial Council. Few other entities have done more to make the court system user-friendly, cost-effective and efficient. The Council's long track record of suggesting legislative improvements designed to improve accessibility to justice is seriously jeopardized by the reduction in its funding. If Wisconsin is to continue in its leadership role of ensuring all persons have equal access to justice, it must restore full funding to the Judicial Council.

Finally, the State of Wisconsin Legislature must continue to examine old laws and scrutinize new ones to ensure that the legal system is operating to ensure everyone has equal access. If nothing else was learned from the testimony given to this Commission, we now know that our laws relating to domestic abuse need to be reexamined and the need for representation in CHIPS cases needs to be revisited. The

State Bar should work closely with the Legislature to ensure that when laws are introduced or enacted which affect the legal system, the impact of those laws on the availability of legal services to poor and moderate income individuals has been thoroughly considered

Lawyers can endeavor to ameliorate some of the harsher effects of our legal

system by increasing our volunteerism and financial contributions, but the underlying societal problems cannot be solved by lawyers alone. Merely volunteering to provide legal services for so many hours a year does nothing to make the underlying problems go away, it only provides symptomatic relief. These greater problems must be tackled by all of us working together and through our elected representatives.

Recommendation No. 14

The President of the State Bar should appoint a committee to monitor and assist the Bar in implementing the Commission's Recommendations and Pilot Projects and report back to the Bar on an annual basis.

Commentary

The commission was created in August, 1994 and is scheduled to sunset June 30, 1996. Consistent with its charge, the commission has worked tirelessly for almost two years in studying the problems of legal services delivery and in formulating its recommendations. By their terms, most of the recommendations and Pilot Projects will require continued monitoring, further action, and new support in order to survive and be effective.

Many members of the commission have expressed a willingness to continue to serve as an ongoing committee to see the recommendations and projects through to

successful implementation. It is also believed that it would be helpful to broaden the implementation committee to include nonlawyers. The commission believes that such additional members could bring new ideas and new resources to its work.

The commission believes that the State Bar would benefit from an annual report by the implementation committee, analyzing the progress and status of the commission's recommendations and projects, suggesting changes or modifications, and assessing the fiscal impact of completed and ongoing initiatives.

PILOT PROJECTS

1. The State Bar should create and fund a Pro Bono Resource Center to systematically coordinate, support and promote pro bono activities by Wisconsin lawyers.

2. The State Bar should support and partially fund the establishment of a Brown County Courthouse Legal Information Center.

3. The State Bar should fund the establishment of the South Madison Community Legal Resource Center.

4. The State Bar should assume a leadership role in establishing a Project on Accessible Law in conjunction with Marquette and U.W.-Madison law schools, public interest law firms, libraries and other bar associations.

5. The State Bar should provide leadership in convening a task force to work in conjunction with legal services organizations to develop and implement a plan for permanent and reliable funding for civil legal services to low income people.

Pilot Projects

Pilot Project No. 1

The State Bar should create and fund a Pro Bono Resource Center to systematically coordinate, support and promote pro bono activities by Wisconsin lawyers.

Commentary

The State Bar cannot accomplish vigorous support of pro bono service without a substantial commitment of resources. See generally, *Making Pro Bono A Priority, A Bar Leader's Handbook* (ABA, January 1996) ("ABA Pro Bono Handbook") (Appendix B-15).

The State Bar of Wisconsin has consistently promoted and supported pro bono publico. The pro bono coordinator staff position is but one very evident example. However, the creation of the coordinator position was just an initial step. The commission recommends a larger institutional commitment of will and financial resources to pro bono. On February 5, 1996 in Baltimore, the ABA House of Delegates passed *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means* ("ABA Pro Bono Standards") (Appendix B-16). These are in the nature of quality assurance standards to not only increase the amount of legal services but to improve their quality. The standards support the State Bar's increased role in the delivery of pro bono services.

The commission hearings repeatedly demonstrated the need for a centralized Pro Bono Resource Center. There are many

effective pro bono programs in operation around the State. Most are unknown to persons in different areas. The Center would provide information about these different programs and serve as a resource to existing programs and to new programs.

Historically, the annual budget for the State Bar's pro bono program has been in the \$15,000 - \$23,000 range, excluding the salary and benefits of the coordinator. Using the same formula, budget requests for FY97 totaled \$26,593, allowing for inflationary factors and slight additions to the outreach component of the program. However, at the commission's direction, the pro bono coordinator has prepared an expanded budget for FY97, adding components to the program that will create a Pro Bono Resource Center. The Pro Bono Resource Center will require the commitment of an additional **\$100,000** by the Bar for FY97.

Components are as follows:

1. Additional pro bono assistant
(salary & benefits) \$50,000
2. Educational programs on poverty
law issues 15,000
3. Modest means panel and tele-
phonic hot line system, staffed
by volunteers 25,000
4. Pro bono newsletter 5,500

5. Increased recognition and awards for outstanding/innovative service	3,500
6. Basic program expenses (as noted above)	26,593
Total (with above-noted FY97 request)	\$125,593

A pro bono assistant is needed to provide in-house assistance and assistance in the field recruiting volunteers, talking with community service leaders, addressing local and specialty bar associations, etc. The main component in any successful program is recruitment. The most effective way to achieve improved results in recruitment efforts is to be highly visible, making one-on-one contact with those you seek to recruit. Nevertheless, it is also critical to provide service at the home office for those members of the association and the community who rely on being able to obtain information by picking up the phone and dialing. In addition, several of the newly added components—most notably education and newsletter publication—absorb extraordinary amounts of time, particularly in the start-up phase. One staff person is simply not capable of successfully juggling all of these responsibilities single-handedly.

Educational programs are needed to bolster pro bono participation by State Bar members. Many attorneys who would otherwise be willing to provide pro bono service do not do so, simply because they do not feel competent in poverty law issues. Educational programs, if done well and at a reasonable cost (or at no fee to the participant), are a powerful motivator and recruitment tool. See *ABA Pro Bono Handbook*, Section 3 (Appendix B-15). Education for volunteer lawyers has been offered by Legal Action of Wisconsin (LAW), one of the four LSC-funded agencies in Wisconsin; however, in light of severe budget cuts being faced by LAW and its other counterparts in the state, the fate of these programs is unknown. It is likely that

educational programs sponsored by LAW will be reduced or perhaps eliminated.

If the State Bar's pro bono program is called upon to expand its role as a clearinghouse for statewide information about pro bono service and opportunities, that information should be made available to the members of the association and public. See *ABA Pro Bono Handbook*, Section 4. One of the most efficient means of disseminating this information is via a newsletter, published twice yearly at the start. The newsletter would contain information about new opportunities, success stories in the provision of pro bono service, and recognition for outstanding efforts and would serve as a continuing vehicle through which solicitation for in-kind donations can be made.

Currently, several providers of pro bono service are honored each year at the State Bar's Midwinter Convention during the Volunteer Lawyers Recognition Reception. Recipients of pro bono awards, bestowed by the State Bar's Legal Assistance Committee, receive a recognition plaque from the State Bar. For the first time this past year, recipients were also offered a waiver of midwinter meeting registration fees. Recognition should be expanded to include more providers of pro bono service and other types of rewards. No program that seeks to recruit volunteers can maintain a steady or growing level of participation without adequate recognition for the efforts of those volunteers. Increased recognition is crucial to the improved participation in pro bono service by members of the State Bar.

FY97 Request: \$125,593

Pilot Project No. 2

The State Bar should support and partially fund the establishment of a Brown County Courthouse Legal Information Center.

Commentary

As financial support for legal service programs designed to aide the low-income community diminishes, and the number of poor people with legal problems continues to grow, more people are resorting to pro se litigation. Public hearings confirmed that courthouses are bewildering and intimidating to the uninitiated.

Other states, most notably Arizona and Florida, have begun projects to respond to the flood of pro se litigants, particularly in domestic relations cases. Thus, for example, Maricopa County developed a "Self-Service Center" on the fourth floor of its courthouse. See Sharp, *Creating Win-Win For the Public And the Profession* (Arizona Attorney, December, 1994) (Appendix B-17). Similarly the Hillsborough County Bar Association Young/Lawyers Section in Tampa, Florida has developed and implemented a "Project to Assist the Working Poor," a courthouse walk-in project which heavily depends on recruitment of volunteer lawyers. See *Project Pamphlet, Filling the Gap: Access to Justice For Persons of Modest Means* (ABA Young Lawyers Division) (Appendix B-18).

The Brown County Courthouse project will be designed to help unrepresented persons obtain equal access to justice. It is believed that many of its components could be directly transferred to other communities; others may require some tailoring for different demographics. The project can be described as follows:

PURPOSES

Help courthouse users to:

- know where to go and when to go there;
- prepare the forms necessary for divorce, harassment, and domestic violence orders, small claims, evictions and name changes;
- prepare for their court experiences including what to do after the court's decision; and
- provide them with a video introduction of what to expect in the courtroom.

SUBSTANTIVE AREAS

The substantive areas selected by the Commission were necessarily limited by the pilot nature of this program. If this program is a success it is anticipated that it might be expanded. Currently the areas to be addressed will be limited to the following civil actions:

- Small Claims including evictions
- Divorce including revisions of support orders, stipulated visitation orders and referral to mediation where appropriate on custody and visitation questions
- Name Changes
- Domestic Violence
- Harassment Orders

PERSONNEL/STAFFING

An Implementor

This project will need a person to launch it, i.e. someone to assign experts to review the Maricopa County computer program, set deadlines and coordinate

changes with the computer programmer. That person will have to educate the Clerk of Courts coordinator and the initial team of volunteers. The person will have to work with Brown County on its part of the project and set up the volunteer program with the universities, the technical college and others. It is expected that the position will have to be full-time for six months and then on consultation status for six more months. It is recommended that we explore lawyers who have worked for legal services organizations. There is availability because of government cut backs.

It is anticipated that the implementor will compile a manual on how to replicate this project in other courthouses throughout the state. The implementor should also be available to provide assistance in establishing subsequent resource centers.

A Computer Programmer

It is anticipated that the project will use the Maricopa County computer program which is free on the Internet. That program will have to be tailored to Wisconsin law and perhaps enhanced for the subjects we intend to cover. We need the technical skill of a programmer to make those changes.

This may be a serendipitous use for the expanding technology resources being developed by the State Bar. Because the Bar has already approved the addition of two new employees in this area, we have arbitrarily assigned \$10,000 to cover the cost of this aspect of the project.

Experts

The State Bar is asked to provide experts in each substantive area to review and revise the Maricopa County program to comport with Wisconsin law. The implementor will work with these volunteers to ensure that the program is ready for use in Wisconsin.

Volunteers

Volunteers are expected to be the primary staff of this program. Two volunteers will staff the office when it is open. One volunteer will respond to primary inquiries and refer to other agencies as appropriate; the second volunteer will operate the computer to answer questions and produce completed forms where needed. We expect to use St. Norbert College and UWGB pre-law students, Northeastern Wisconsin Technical College paralegal students, senior citizens center volunteers and retired clerk of courts personnel. We intend to work with the Brown County Bar to explore the possibility of lawyers joining the volunteers.

Lawyer Hot Line

It is recommended that lawyers be available to the volunteers to answer questions that require legal expertise. This program could be an extension of the State Bar Lawyer Hot Line or it could be set up by the Brown County Bar with assistance from the State Bar.

SPACE REQUIREMENTS

There is a small office available immediately adjacent to the Clerk of Courts office. It appears adequate to house a computer and two volunteers. A video monitor for viewing tapes on what to expect in court could be located in an area adjacent to the "break room."

EVALUATION

A mechanism for evaluating the program must be established. It is suggested that representatives of the Brown County Courts, the state and local bar associations and consumers be involved.

TIME LINE

This project could be launched within 30 days of approval by the hiring of an implementor. It is estimated that it would take another six months thereafter to achieve

operational status. The implementor should be available on a part-time consulting status for another six months thereafter.

It is also anticipated that videos will be produced but that their production will be privately financed.

BUDGET
(Out of Pocket Expenses Only)

<u>Item</u>	<u>Funding Source</u>	<u>Amount</u>
Furniture, etc.	Brown County	3,310
Computer & Printer	Brown County	4,500
Set Up and Wiring	Brown County	788
Implementor	State Bar	30,000
Programmer	State Bar	10,000
VCR Monitor	Brown County	500
Telephone	Brown County	350
Volunteer Coordinator	Brown County Clerk of Court	8,824
Office Space	Brown County	1
<u>485</u>		
		Total: \$59,757

FY97 Request: \$40,000

Pilot Project No. 3

The State Bar should fund the establishment of the South Madison Community Legal Resource Center.

Commentary

Many of the commission's recommendations are addressed to ways to provide appropriate "legal information" to persons who cannot afford a lawyer and/or to find ways for lawyers to assist, if not fully represent, pro se litigants, e.g., by providing task-based "unbundled" services. Pilot Project No. 2, the Brown County Courthouse project, is one kind of model. A community resource center is another model. See generally, *ABA Pro Bono Handbook* (Appendix B-15), Section 4, at 4, 3-6.

The South Madison Health and Family Center, Inc. first opened its doors in early December, 1995. It is a community-based partnership between public and private agencies designed to meet the needs of a diverse base of residents in and around the South Madison area. Although most of the "customers" of the Center are low income

persons, others also use the Center. It serves a racially-mixed clientele and its programs are designed to assist such persons with a broad range of needs.

In September 1995, the State Bar was asked to consider involvement in the Center. In response, the chairman appointed a South Madison Task Force of the Commission to consider ways to appropriately bring legal information and/or legal services to the Center. Sue Bauman, a member of the South Madison Health and Family Center Board, was made a member of the Task Force. Members of the judiciary, legal services agencies, the Dane County Bar's Pro Bono Committee, and other interested persons were also appointed to this Task Force.

After several meetings and contacts with the South Madison Board, the Task Force recommended the following course of

action: (1) In conjunction with the Madison Public Librarian and the U.W. Law School Librarian, the State Bar was asked to set up an information resource center in the public library portion of the Center. A budget was prepared which estimated that \$4,700 would be required to set up this resource center. This amount was approved by the Executive and Finance Committees of the State Bar and has now been provided for this purpose. (2) L.A.W. agreed to develop a model for using new technologies with volunteer attorneys to expand the direct representation of low and moderate income clients at the Center. It will start by developing and testing the user-friendliness of a simple, menu-driven computer-assisted information system, and, after six months, through the use of technology expand the direct representation by attorneys of low and moderate income clients by making the attorneys' work more efficient. (3) The cost of this project to the Bar (in addition to the \$4,700 already invested) will be \$10,800.

It should be noted that the long term goal of this project is to promote *lawyer-assisted delivery* of legal information and/or legal services. As stated in L.A.W.'s proposal:

The project would build on existing systems, but use new technologies to make pro bono representation more efficient. It would build on the strength of the "traditional" model for delivering legal services—the attorney client relationship, the attorney's education to "think like a lawyer," the attorney's powers of factual analysis and credibility assessment through direct contact with the client, and the attorney's familiarity with the legal forum.

The project would build on that base by making available to attorneys providing direct pro bono representation on-line guides written for professionals, forms and briefs that could be down-loaded and adapted by professionals to the specifics of the individual case, and on-line advice and consultation from substantive law experts.

Obviously, computer-educated volunteers will be ultimately required to implement this project. However, recruitment and actual education will be deferred until the South Madison Board determines the needs of its clientele and requests the Bar to respond.

FY97 Request: **\$10,800**

Pilot Project No. 4

The State Bar should assume a leadership role in establishing a Project on Accessible Law in conjunction with Marquette and U.W. - Madison law schools, public interest law firms, libraries and other bar associations.

Commentary

Testimony at the public hearings indicated a need for information and education to enable access to law and the legal system for low and moderate income people. Available, usable information and appropriate use of nonlawyers were two methods suggested by the public and members of the commission to increase low-cost and effective access.

MISSION

The mission of the Project would be to encourage and provide low-cost and accessible legal services to Wisconsin citizens. This mission would be achieved through:

- Developing and promulgating legal forms which could be used by lawyers and nonlawyers. See Recommendation No. 4.
- Assisting in the provision of legal information through courthouses, libraries, computer services, and non-profit community organizations.
- Providing information on the use of technology and the instruction of lay persons which will allow more legal services to be delivered at reasonable cost.
- Educating law students and lawyers to develop practice skills to educate and supervise nonlawyer assistants, and to assist clients, where appropriate, in the clients' own handling of law-related tasks.

LEGAL INFORMATION

Members of the public commented on the fragmentary information and forms that are available but not easily obtained, or not available at a reasonable cost. A centralized system could assist in the compilation and dissemination of legal information and forms. The Supreme Court's Pro Se Forms Committee described in Recommendation No. 4 could develop the forms and guides. The dissemination of usable information could be achieved by use of new technologies and effective use of existing systems such as public libraries, courthouses and community organizations.

USE OF NONLAWYERS

Educating lawyers to use nonlawyers to assist in the provision of legal service is another method to enable low-cost access to the law and legal system. Recent reports by the American Bar Association (Appendix B-8) and Prof. Herbert Kritzer, University of Wisconsin (Appendix B-20), support *appropriate* use of nonlawyers. The Commission proposes that *proper* use of nonlawyer assistants and clients' own handling of *some* transactions *with proper supervision* can be helpful in providing low-cost services. Adequate education and supervision should ensure competent service.

IMPLEMENTATION

The Project on Accessible Law is an implementing mechanism to produce the forms, information and education. The

Commission favors a collaborating format, utilizing the law schools, Bar, community law firms, bar association and the libraries and computer services. A steering committee would direct the project and select a chief operating officer who would assume the position on a part-time basis. A part-time law student would assist in the preparation of the materials and education. The U.W. Law School has offered to donate space in its new building and the Law Schools and the bar would donate expertise in both technology and substantive law. The project would coordinate with the recommendation for a Supreme Court forms committee to certify and develop forms. The project mission of law students and lawyer education could implement the Commission on Legal Education's recommendations for expansion of law student clinical and internship programs and for initiation of practice training for new lawyers. It would link with the proposed

Brown County Courthouse Information Resource Center and the South Madison Community Legal Resource Center.

The project will be a collaborative project of the groups listed above and initially will be housed at the University of Wisconsin Law School. The Project will be headed by a Chair who will also serve as the Chief Operating Officer.

- (1) Salary of Chief Operating official 20% of \$70,000 plus fringe benefits \$19,000
- (2) Space and phone will be contributed by U.W. Law School In-kind
- (3) Technological expertise contributed by State Bar, Law Libraries at U.W. and Marquette In-kind
- (4) Technical expert - U.W. law student, 1/3 time appointment project assistant \$9,000

FY97 Request \$28,000

Pilot Project No. 5

The State Bar should provide leadership in convening a task force to work in conjunction with legal services organizations to develop and implement a plan for permanent and reliable funding for civil legal services to low income people.

Commentary

Congressional defunding of the Legal Services Corporation has already been commented on in this Report. The fact is that, like it or not, private and public practitioners, as well as legal services lawyers, must address the consequences of such defunding to persons who simply cannot afford to pay for a lawyer. Legal service organizations faced with sudden and dramatic budget cuts inevitably will compete with one another as they explore alternative funding sources. Lawyers, as an obvious

target group, will be inundated with direct appeals, notwithstanding that lawyers alone cannot realistically bear the burden of legal services. It is critical that legal service organizations broaden their appeal to reach the general public, coordinate their efforts to avoid competition, and develop a long-range plan to obtain reliable funding from diverse sources.

The commission determined that the State Bar should not itself undertake to manage fund development for legal service

organizations, because the State Bar lacks the necessary resources and expertise to do so effectively. Rather, the commission recommends that the State Bar provide assistance in two discrete ways: (1) providing one-time, short-term funding for a fund development professional to work with the legal service organizations to develop a coordinated plan to increase resources for legal services, and (2) provide leadership in developing a task force to explore alternative funding sources for legal services.

Thus, on Friday, January 26, 1996 the Commission passed the following:

**RESOLUTION CONCERNING FUNDING
FOR LEGAL SERVICES**

1. WHEREAS:

Federal funding for Legal Services Corporation funded programs in Wisconsin will be reduced by \$1,500,000 to \$2,000,000 for 1996, and future federal funding for legal services remains uncertain.

2. AND WHEREAS:

The American Bar Association urges bar associations and bar-related entities, providers of legal services and legal services funding sources to work together to diversify both the number and types of revenue sources for legal services providers, including increasing lawyers' personal financial support of legal services programs in their communities through individual donations and law firm contributions, in addition to funds provided by the Legal Services Corporation, in order to stabilize the funding base and help to meet the legal needs of families and individuals in poverty.

3. AND WHEREAS:

Other states have demonstrated that significant funding for legal services can be raised from nonfederal sources. For example, in Minnesota, Legal Services Corporation funded programs receive thirty percent of their funds from federal sources and seventy percent from nonfederal sources. In 1994 approximately \$15 million was

spent on civil legal services in Minnesota compared to approximately \$7 million in Wisconsin.

4. AND WHEREAS:

The Commission on the Delivery of Legal Services Pro Bono Subcommittee has recommended that voluntary pro bono financial contributions be solicited through State Bar annual dues statements.

5. AND WHEREAS:

It is essential to develop an integrated plan to increase resources for civil legal services in order to avoid duplication and competition with existing development campaigns.

**NOW THEREFORE BE IT RESOLVED
THAT THE STATE BAR SHALL:**

1. Provide leadership in convening a task force to work in conjunction with the legal services organizations to develop and implement a plan for permanent and reliable funding for civil legal services to low income people.

2. Authorize the expenditure of \$50,000.00 from the State Bar's 1996 budget surplus for a fundraising professional and related expenses necessary to develop that plan.

FY96 Request:

\$50,000

Total FY96 Requests:

Legal Services Funding Campaign \$ 50,000

Total FY97 Requests:

1.	State Bar Pro Bono Resource Center	\$125,593
2.	Brown County Courthouse Legal Information Center	40,000
3.	South Madison Community Legal Resource Center	10,800
4.	Project on Accessible Law	28,000

Total: \$204,393