LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

PAI RULEMAKING WORKSHOP

Tuesday, July 23, 2013

1:45 p.m.

Warwick Hotel
Millennium Ballroom
1776 Grant Street
Denver, Colorado 80203

BOARD MEMBERS PRESENT:

John G. Levi, Chairman
Martha L. Minow, Vice Chair (by telephone)
Sharon L. Browne
Charles N.W. Keckler
Harry J.F. Korrell, III
Victor B. Maddox
Laurie Mikva
Father Pius Pietrzyk, O.P.
Julie A. Reiskin
Gloria Valencia-Weber
James J. Sandman, ex officio

STAFF AND PUBLIC PRESENT:

Lynn Jennings, Vice President for Grants Management
Rebecca Fertig, Special Assistant to the Preside
Ronald S. Flagg, Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Mark Freedman, Senior Assistant General Counsel, Office of Legal Affairs
Carol A. Bergman, Director, Office of Government Relations and Public Affairs
Carl Rauscher, Director of Media Relations, Office of Government Relations and Public Affairs
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Lora M. Rath, Deputy Director, Office of Compliance and Enforcement
Janet LaBella, Director, Office of Program Performance
Eric Jones, Office of Information Technology

Silvia Argueta, National Legal Aid and Defender Association (NLADA)
Steve Gottlieb, Atlanta Legal Aid Society
Judge Mary Katherine Huffman, Greater Dayton Volunteer Lawyers Project
Joan Kleinberg, Northwest Justice Project (Washington)
Kenneth Penokie, Legal Services of Northern Michigan
Lisa Wood, ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Bev Groudine, American Bar Association Commission on IOLTA/SCLAID
Christine Stolarskyj, PAI Coordinator, Legal Aid of Nebraska
Jonathan Asher, Executive Director, Colorado Legal Services
Deborah Perluss, Northwest Justice Project (Washington)
Chuck Greenfield, National Legal Aid and Defender Association (NLADA)
Don Saunders, National Legal Aid and Defenders Association (NLADA)

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- Public comment and further panel discussion

LSC Pro Bono Task Force Recommendation 2(b) -- Grantees should be allowed to spend PAI resources to enhance their screening, advice, and referral programs that often attract pro bono volunteers while serving the needs of low income clients.

a. How are recipients currently using integrated intake and referral systems?
b. Do LSC's current PAI regulations inhibit full use of integrated intake and referral systems?
c. Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the resources used to create and staff integrated intake and referral systems?
d. How can LSC ensure against fraud, waste, or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?
e. To the extent applicable, discuss your organization's ability to execute any recommended approaches.
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d. If LSC were to allow recipients to claim PAI credit for the resources used to support volunteer attorneys staffing brief service clinics under circumstances where the users of the clinics are not screened for LSC

P R O C E E D I N G S

(1:45 p.m.)

I. OPENING AND INTRODUCTORY REMARKS

MR. KECKLER: Good afternoon. I'm Charles Keckler, on the Board of Directors of the Legal Services Corporation. And I also have the honor to serve as Chairman of the Operations and Regulations Committee, in whose jurisdiction the recommendations of the Pro Bono Task Force regarding Legal Services Corporation's regulations have now fallen.

The Committee decided in pursuing the recommendations to convene this rulemaking workshop and the one subsequent to it as part of an effort to involve multiple stakeholders, including former members of the Pro Bono Task Force and other interested parties, in developing changes to this important rule.

It's to some extent a procedural reflection of the nature of our private attorney involvement, which by its nature involves members of the profession outside of our grantees. And so we thought it was particularly appropriate to have a procedural way to incorporate that input.

This is a tool that has been available for the Corporation for some time, but it has been quite a while since anybody has used it. Has anybody here participated in a prior rulemaking for us? I see a nod back there.

Any input that you might have on how today goes I'd be very happy to receive, in part to know to what extent the Committee should use this tool in the future and for the more immediate purpose of organizing the rulemaking workshop that will be coming up in September as a follow-on to this.

A couple of other notes about the rulemaking workshop. By its nature, it involves members of the Board. In this case it's attached directly to our Board meeting.

But of course, you should realize that we're at a very early stage of our regulatory development here, and so the members of the Committee or the Board, you might find them to be circumspect with regard to whether they think, yes, that's a fantastic idea. Oh,

There are a lot of good reasons to involve private attorneys in the work of the grantees. So the three that I'm going to offer are not exclusive; they're just the ones that I thought about and really find valuable.

First, our private attorney involvement leverages the resources that the Corporation can bring to our grantees and expands the reach of what our grantees can do. It's an important multiplier of tax dollars.

Secondly, it brings in expertise that our grantees have developed, incredible expertise in many areas. But they can't have expertise in all of the cases that people can have. Private attorneys are an invaluable resource for that.

Finally and somewhat more qualitatively, I've found that the involvement of private volunteers in service organizations like our grantees is critical to building community and integrating that grantee into, in this case, the broader profession, making it a pillar and an institution within that community.

So building those networks, building those

relationships, is something that I think the rule does and that I hope it will continue to do, and that I hope that the changes that we ultimately put forward help to strengthen.

So with that, I will simply say thank you for coming, and thank you for everybody else who's participating in this webinar. The webinar itself is something that is -- to some extent, there's components of it that are technologically unprecedented for LSC.

So thank you very much to the technical staff that is doing this not only with a new system, but doing it at a remote location far from LSC. And so welcome to you in the room and welcome to everybody on the web to the first of our two rulemaking workshops.

I will now turn over for introductions to the distinguished President of the Legal Services Corporation, Mr. James Sandman.

PRESIDENT SANDMAN: Thank you, Charles. I'm Jim Sandman. I'm President of the Legal Services Corporation. I'll be serving as moderator for the workshop this afternoon.

For those who are participating by phone or on

the webinar, I'd like to recognize those members of LSC's Board who are currently present in the room. We have our Board chair, John Levi, and Board members Vic Maddox, Julie Reiskin, Laurie Mikva, Harry Korrell, Sharon Browne, Gloria Valencia-Weber, in addition to Charles Keckler. And Father Pius Pietrzyk is in the back of the room waiving. Thank you, Father.

The topics and related items for discussion today were published in the Federal Register on May 10, 2013. They're also available on a special page on LSC's website. The workshop this afternoon will be divided into four sessions.

We will have 45 minutes for each to address the three topics that have been identified in the published notice, and in addition, we will reserve 30 minutes at the end for discussion about what the agenda should be for our second workshop on September 17, 2013.

Each session will begin with 30 minutes for panelist presentations. We have six panelists, whom I'll introduce in a moment. On any one of the three topics, only five of the six panelists have asked to

as well.

If you would like to make oral comments as a webinar participant, please click "Raise My Hand" on your computer screen and wait for me to recognize you. If you'd like to submit typed comments, put them in the "Questions" box on the webinar page and I will read them, time permitting.

We will be keeping a record of all comments that are submitted; we may receive typed comments that are made through the webinar format that we don't have an opportunity to address or acknowledge today, but they will be part of the record and will be considered.

We do not expect LSC Board members or staff to be making presentations or to be participating, except that Board members may ask questions of the panelists.

I'd remind the panelists and those in the live audience and participating by webinar that this workshop isn't intended to develop specific regulatory language, although the discussions may involve identifying areas for clarification of or changes to the PAI regulation.

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II. INTRODUCTION OF PANELISTS

PRESIDENT SANDMAN: I'd now like to recognize our six panelists and than them for participating.

Silvia Argueta is here in her capacity as Chair of the Regulations and Policies Committee of the National Legal Aid and Defender Association. She is also Executive Director of the Legal Aid Foundation of Los Angeles.

Steve Gottlieb is Executive Director of the Atlanta Legal Aid Society.

Judge Mary Katherine Huffman is a General Division Judge in the Court of Common Pleas in Dayton, Ohio. She is also Immediate past President of the Greater Dayton Volunteer Lawyers Project, and continues to serve on its Board of Trustees.

Kenneth Penokie is Executive Director of Legal Services of Northern Michigan.

Joan Kleinberg is the Director of Strategic Initiatives and Private Bar Involvement at the Northwest Justice Project in the state of Washington.

And Lisa Wood is Chair of the American Bar Association's Standing Committee on Legal Aid and

Indigent Defendants. She's also a partner and chair of the litigation department at Foley Hoag in Boston.

With that, we'll begin with our first topic. And I would ask Silvia if she would like to lead off. Six minutes, please.

III. TOPIC 1

MS. ARGUETA: Good afternoon, everyone. To all the members of the Board, thank you for the invitation to be here and provide comments on behalf of the National Legal Aid and Defender Association.

As the Pro Bono Task Force report accurately states, pro bono plays a vital role in providing legal services to those who cannot afford attorneys. They work in conjunction with legal aid organizations in order to maximize our resources.

As you well know, the legal aid community has been hard-hit with funding reductions from many entities. These funding reductions necessitate for us to be creative, innovative, and to find new resources for clients to have the adequate representation that they need in order to live the lives that they are meant to have.

As such, the NLADA has reviewed the proposed recommendations and we are very happy to see that these recommendations would open doors and new avenues for legal aid programs to continue the vital work that they do with private attorneys.

And it would have the effect of ensuring that private attorneys continue to be the vital resource

come to work with us.

A specific example that I give you are the new and creative ways that law schools are using fellows. They create three- to four-month fellowships for young people to come and work in legal aid programs and to provide legal services that are needed in very creative programs.

They sometimes create new, innovative work that the young person will do for four months. And we are not allowed at this time to count that time. We're not allowed to show what a creative way for the law school to work in conjunction with the legal aid program.

We also have many new soon-to-be-admitted attorneys who want to work with us, who want to gain some experience, whose heart is in the right place in terms of ensuring that there's equal access for folks that are low income.

But we don't have the ability to report the terrific work that they do, so that not only we can show that we are helping more clients but so that LSC can actually show that we are maximizing resources at

so many different levels.

It's not just about having the pro bono attorneys, whom I will speak about in a second, but also maximizing the resources and the assistance that other members of the community are providing and happily willing to work with us in providing legal services.

Attorneys are vital to our work, but so are the students who we train, the volunteers that we train. We currently do this work. It is not work that would be new to us, but we would be able to report on it. We would be able to show you how we maximize what we get from individuals who volunteer their services to us. It would be a win/win for the LSC. It would be a win/win for the programs.

This would encourage us to also have creative solutions to some problems. Right now veterans issues are huge throughout the nation, and many of the students that come to work for us want to work in our veterans programs.

They want to expand what veterans work means by including domestic vitb5aTj ( )Tj EMC /P <</MC7 166.447.44

being affected by. They want to expand some of the employment issues that they have. They have great ideas.

We should be able to report on these and maximize the fact that they are coming to us with incredibly innovative programs to help us work with new populations that continue to arrive at our doorsteps.

As to topic No. 2 , very important in terms of --

PRESIDENT SANDMAN: Silvia, I'm sorry. We're going to proceed topic by topic, one at a time --

MS. ARGUETA: Topic by topic? I'm sorry.

PRESIDENT SANDMAN: -- so that we can have a thorough discussion of each topic separately.

MS. ARGUETA: Got it.

PRESIDENT SANDMAN: So if you're finished with your comments on topic 1 --

MS. ARGUETA: Yes.

PRESIDENT SANDMAN: -- we'll then move to Steve. I just would like, for those who are not in the room and are participating by webinar, to remind people of what issue No. 1 is. It is the Pro Bono Task Force

Saturday lawyers, private lawyers, come into our offices every Saturday and have been doing that for 45 years in a row; associate fellowship programs -- we've had over 50 associate fellows from various law firms, and we're the only program in the country to have one from a corporate legal department.

We have law school fellows, the kind of thing that Silvia mentioned, where law firms -- excuse me, law schools -- pay a stipend to lawyers to work with us, or graduates; they're not lawyers. Also, we have lots of volunteers of folks who are not lawyers yet when they're volunteering.

We have retired attorneys who work on our senior hotline. We have non-attorney programs, where we have Emory law students to do intake, where we have a paralegal from Coke that does intake on our Spanish-speaking clients. We have administrators in a large law firm that help the hotline schedule calls.

We have firm signature projects for work with cancer, for people who are representing grandchildren, grandparents to adopt grandchildren, eviction defense, unemployment cases. And then we have more traditional

kinds of panel programs.

Now, I mention these not just to brag, although I'm bragging a little bit, but I'm mentioning them because many of these programs would not be eligible for credit under 1614 as it is now written and now interpreted.

Let me say that again. These innovative programs that LSC commended us on are not eligible under 164 under the current reading of that regulation.

Now, I'm not going to get into an argument with my friends in the General Counsel's office about why -- although I would if they want me to -- but more, I want to talk about it as going forward to make sure that we can figure out a way to give these kinds of innovative programs credit.

The first one, the first comment, is about representing or recognizing the work that programs like ours do for law students and other non-lawyer people. As I noted, we have an ongoing program of associates from law firms. Now, what we do is we use them for things like eviction defense, temporary protective orders, administrative hearings, things you can get

them up to speed on pretty quickly and that are a short turnaround.

We'd like to try to get third-year associates. But in fact, we can't always do that. And sometimes law firms send us people who have just gotten out of law school, haven't taken the bar, have not practiced. Or we may get deferred associates. We had five deferred associates two years ago. Again, these are people who are not -- they're out of law school but they haven't practiced. The point of the matter is, of course, the reading of 1614 does not allow us to get credit for the work we do with these people.

Now, it's absurd in a couple of different ways. First of all, folks like that can be almost as valuable as regular lawyers in our program. They can do the kind of cases that I've talked about. In administrative hearings, you don't even have to be a lawyer. So you can get value out of people like that regardless of whether they're attorneys or not.

But more importantly, it's an investment in the future. As Mr. Keckler just talked about, the third thing he was talking about was integrating legal

aid and legal aid programs into the larger community.

Well, when we have young lawyers who have just graduated school, and they go back to their firms after they've worked with us, that's the integration that we

time that we spend with them.

I frankly think we've gotten caught up in our own language, and we've called it "private attorney involvement." We really shouldn't be calling it "private attorney involvement" because we've gotten caught up in our own rhetoric. And I can talk about that more when I have more time.

PRESIDENT SANDMAN: Judge Huffman?

JUDGE HUFFMAN: Thank you, and I appreciate the opportunity on behalf of the Greater Dayton Volunteer Lawyers Project to be here.

Before we started today, I was talking with Mr. Gottlieb, and I said I was rather intimidated and I

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Our focus, however, is on the structure of the programs. I want to give you just a slight amount of background on VLP. VLP is in its 25th year, started by four attorneys in Dayton who saw a need for volunteer legal services to serve as a complement to legal aid.

We are a subgrantee of Legal Aid of Western Ohio, but the funds we receive from LSC make up less than 50 percent of our budget. Instead, the balance of our budget, which is a total huge sum of $240,000 a year, is provided by private donations.

We have 850 attorneys who are registered to provide services through the Greater Dayton Volunteer Lawyers Project in a seven-county area. However, despite our commitment to Legal Aid of Western Ohio that we provide service in seven counties, we typically will provide service in any one of 23 different counties.

That is because of our executive director, Helenka Marculewicz. I have only, after knowing her for about 25 years, finally learned to say her last name. Helenka is retiring this year after 25 years; she's been the sole executive director of VLP.

And in our efforts to find a new executive director, it's been very clear to us that having a full-time, dedicated professional who is there to serve as the coordinator of volunteer services is extremely important.

While we may be very fortunate at VLP to have a full-time volunteer coordinator in our executive director, we're well aware of the fact that many other programs are forced, because of budget issues, to rely on -- whether it's a staff person, a secretary, an attorney with a full caseload, who is also at the same time trying to manage volunteers.

We've been able to provide over $14 million in donated service in the last 25 years because of having a very structured program. That structured program is, as I said, as a result of having that full-time professional pro bono coordinator.

If it weren't for that, I don't believe that we would have the culture in Dayton, Ohio that we do have, and that culture is, there is an expectation that pro bono service be provided. It's not the exception; it is the norm. It is the expectation.

Attorneys who are involved with VLP know that if they have a question, it's going to be answered by Helenka. She will provide whatever service is necessary for them to be able to provide service.

Our concern with the proposed changes is that there may be some dilution in the service actually provided. While I agree with Mr. Gottlieb that it's very important that the services of paralegals, law students, et cetera, be counted, we want to make/tidmnt P s of

talk about one of them in particular.

There's a firm in Dayton, Freund, Freeze & Arnold, that is a defense civil litigation firm. Their female attorneys go into the jail every week, and they, along with their paralegals and law students, provide service to women in the jails. It's obviously a short-term arrangement, hopefully, for the people in jail. But it provides very valuable service.

We cannot count the service of the paralegals, who are vital to that program, as well as the law students. But the importance of programs like that is to provide practicing attorneys with an opportunity to mentor law students, to give paralegals an opportunity to provide service, as well as to provide service -- or, excuse me, opportunities -- for those who have not yet passed the bar. That program would not be possible if it were not able to be managed by our full-time pro bono professional.

I do want to add one other thing about law schools and law school involvement. At the University of Dayton School of Law, they have a very vibrant and active student volunteer lawyers project. What is

important about that program is that they have a full-time staff member, faculty member, who works with students, who provides the opportunities for service.

So with a law school partner, it is very important that they be invested, with a faculty member who coordinates the pro bono service for the students. Thank you.

PRESIDENT SANDMAN: Thank you, Judge Huffman.

We'll hear next from Ken Penokie.

MR. PENOKIE: Threw me a loop taking me out of order here. I want to thank the task force for their hard work so far, and I do embrace their recommendations. And I also want to thank the 123Ti015e.2 -0

The normal firm is two to three people, with a lot of single practitioners.

For us to get pro bono, we have to be very careful of their needs and we have to design programs around their needs. And some of the things that weren't considered in the report is, we have to avoid having conflicts of interest for these people because in small communities, in marginal firms, they need all the cases they can get, and if they take a case where it's going to conflict them from a personal injury case or a workers comp case or whatever, that hurts their business, and they're disinclined to do pro bono.

They want us to limit their exposure, and normally we think of limiting exposure based on how much time it's going to be on a case. But in rural areas, limiting exposure means limiting the amount that the public knows that they're the free attorney.

If they get known as the free attorney, they will not be able to go out to eat. Their office will be inundated by calls. There's no end to the exposure that they have.

They also have very little tolerance for

grateful to see flexibility being somewhat of the tone of the Task Force, and I'd appreciate it if you consider the obstacles of the rural bar when you consider revising the rules. Thank you.

PRESIDENT SANDMAN: Thank you, Ken.

We'll hear next from Joan Kleinberg. I'm sorry. Joan had not asked to speak on this subject. Thank you for that, Joan.

We'll hear next from Lisa Wood.

MS. WOOD: Thank you. And thank you very much for allowing me and SCLAID to have the opportunity to participate. And we also commend you on this exercise, and look forward to participating in future such exercises.

The ABA Standing Committee on Legal Aid and Indigent Defendants has spoken forcefully and passionately about the need to expand the PAI rule for some time now, and we're encouraged to see that the Pro Bono Task Force was making the same recommendation.

So, having read the guidelines, I'm not now in my comments going to repeat what the ABA has said in its comment letters over the last several years and in

its written comments for this workshop.

Instead, what I thought I would do in response to topic 1 is start by going back to the subject that

The PAI rule also gives grantees a great opportunity at development and developing resources from other than the federal government. And I speak to that with experience.

I've been on the board of the LSC grantee, the Volunteer Lawyers Project of Boston, for over 26 years now, and some of our most passionate and generous contributors, financial contributors, are our volunteers.

And they also are most effective at convincing others to give. So the more people you have handling cases for the local LSC grantee, the more likely they're going to be able to raise money from private funds.

The last objective that I think the PAI program helps is helping with the building community integration point that you made also. This is a way to collaborate with the other stakeholders in the system effectively and be a part of the larger legal community, which I think feeds into all the other goals that we talked about.

The other thing I wanted to raise, and being

the only big law partner on the panel today, is just two points about the context in which we're looking at this. And we heard a little bit about this from the judges who spoke yesterday.

We are really at an extraordinary time of change in the legal profession. All of us who provide legal services, whether to paying clients or to those who aren't able to pay, are having to figure out how to do what we do more efficiently, and do it differently, and whatever it is we do, do it with less. We heard the judges talk about that. No one can afford the current legal system.

We are also at a point when the legal education system is under traumatic pressure and criticism and has to change, and we're only beginning to look at that.

With that in mind, I think flexibility, which is something that was very much a part of the ABA's comments, is very important because none of us can really predict where we're going to be in the legal world. So I would encourage you to come up with a rule that allows for continuing creativity and innovation

because all of us are trying to solve these problems in a very dynamic environment.

So with all of that introduction in mind, when looking at topic 1, to me it's critical for LSC grantees to be able to engage law students and incubator programs in the work that they do. This is clearly available tale ( )Tj 12 -0 0 12 94.2 ts 13Tm (1)1Tj21

Services Corporation to be part of the solution of the problem that the legal community and law schools are facing of not doing the job they need to do, and I would love to see LSC seen as a creative problem-solver to those national debates rather than off to the side.

PRESIDENT SANDMAN: Thank you, Lisa.

The floor is now open for public comment. If there is anyone in the audience here who would like to comment, I would ask him or her to raise him or her hand and come up to a microphone.

I don't see anyone volunteering. If anyone on the webinar would like to participate, you may either raise your hand electronically and we will recognize you, or you may type a question in the question box.

We have a question from Pat Rizer at CRLA. You may go ahead and speak, Pat.

(No response.)

PRESIDENT SANDMAN: Pat, we're not able to hear you. Your phone may be on mute.

computer microphone, it may not be working. There is a telephone number provided that you can phone in on to give us your comments that way.

There are no other questions. While Pat is trying to connect, I saw a couple of Board members with their hands up. First, Julie Reiskin.

MS. REISKIN: Yes, Judge. Your commentssaw 15.08 43c

PRESIDENT SANDMAN: Would any of the panel members like to respond to that?

MR. GOTTLIEB: Sure. Atlanta Legal Aid more than meets its --

PRESIDENT SANDMAN: Excuse me, Steve. Could you identify yourself for the people participating by phone?

MR. GOTTLIEB: Okay. Sure. I'm Steve Gottlieb from Atlanta Legal Aid. Atlanta Legal Aid more than meets its 12-1/2 percent. So in some sense, whether the LSC says that certain kinds of activities are covered or not isn't all that amazingly relevant to us.

However, we also have to recognize that any time LSC says that some activity is something that they want to urge people to do and they want to give people credit for it, people follow that lead. So when you start saying that certain things are countable and certain things are not countable, you have a way of pushing people toward things that are countable, which may not be kind of initiatives that you really want people to take.

By the way, the second reason to do this -- I actually think you ought to talk about, and we maybe talk about -- the numbers as well, not only counting the dollars, but actually counting the numbers of cases because I think that actually pushes people in certain directions, too.

PRESIDENT SANDMAN: Board member Laurie Mikva has a comment.

MS. MIKVA: Thank you. I just wonder whether anyone wants to address -- there was stuff in the comments, but I'm not sure anyone here addressed counting the time of paraprofessionals, non-legal people.

JUDGE HUFFMAN: I'll address that in one sense, and that is, again I agree with Mr. Gottlieb. We more than meet our commitment pursuant to our LSC subgrant. Without paralegals, I think any practicing attorney would admit without a paralegal they can't accomplish what they do. And they are so vital to providing services to our clients.

Again, if we can't count those hours, it's not going to make any difference in the amount of service

that we provide. VLP, as I'm sure Atlanta Legal Aid,

Even when they cannot provide you five or ten associates to do that work, they staff it with paraprofessionals who are very motivated, very eager to become involved. And then that cements that relationship with the law firm. They become more vested in you as you bring in not just their associates, but other members of their firm into the mix.

FATHER PIUS: This is Father Pius. Thank you, Jim. This is Father Pius Pietrzyk, on the Board. There's an ancient scholastic maxim that the order of intention is opposite to the order of execution, for those of you who don't study scholastic philosophy, and I have great pity for you all.

(Laughter.)

FATHER PIUS: What that means is that you come up with your goals first and then -- in the order of intention, that is, you think of your goal, your end, first, and then all the steps that you need to get there. But when you actually do it, you actually have to take the first step first, and then you get to the end last.

I just wanted to thank Lisa for her thoughts as to what is the goal, what is the end, of the PAI rule. The PAI rule is not a creation of Congress; it's a creation of the Board, and it's about 30 years old now. And I think that kind of thing is helpful.

So I would encourage Lisa, if you could, to take what you said, perhaps, and submit it in writing to us as well; and if there are others who have thoughts on what the goal of the PAI rule is and should be, to also consider submitting that.

It's not quite on topic, but I think it's relevant to the overall -- to this particular topic, but I think it's overall relevant to what we're doing. And so I would again thank you, Lisa, and encourage others to do the same.

PRESIDENT SANDMAN: I believe Pat Rizer may now be on the phone. Pat, if you're there, could you try to speak?

MS. RIZER: Well, I can speak. Can you hear me?

PRESIDENT SANDMAN: We can hear you.

MS. RIZER: Okay. Good, well, in the

meantime, several people made the point that I was going to ask about, and that is using paraprofessionals, because we find that our lawyers are regularly -- particularly firm lawyers -- are regularly reporting their paralegal hours when we ask them how many hours they have invested in our cases. And sometimes they're up to 50 percent of the total hours invested.

PRESIDENT SANDMAN: Thank you.

MS. RIZER: So it's something that should be captured and capitalized on.

PRESIDENT SANDMAN: Thank you, Pat, and thank you for your persistence in trying to be heard.

We'll take a final comment from Gloria Valencia-Weber, and then we'll to move on to topic 2.

PROFESSOR VALENCIA-WEBER: First, thank you for all your insightful comments. I'd like to address or ask you about the use of law students.

As a law professor and one wdauo Thank you. going it

that makes it more a relationship that you want to pursue? And anything that you can add about what might be obstacles to using law students.

And I'd like to leave you with a third item. Have you looked at the ABA rules that are used for accrediting clinical law programs? There are some rules that might help work with you, and that many of the key clinical programs in the very devoted law schools that have full-time clinics to provide pro bono services, the state court rules have allowed those supervised students to be the attorney in the case, assuming the student meets certain requirements.

And in those states, you might find it easier to count that, not just as a non-lawyer, and might make it easier for you. But I would like to know what enables or makes it more inviting for you to use law students, and what are the barriers.

JUDGE HUFFMAN: I appreciate the opportunity to respond to that question because I wear a couple of different hats. I also am an adjunct professor at the University of Dayton School of Law.

We utilize law students in a variety of

different ways. We do not count clinic hours at the law school towards our hours; instead, we use law students by pairing them up with practicing attorneys, giving them an opportunity to do research.

But also on some of the projects, the large firm projects that we do, law students are involved in those projects. They then have an opportunity to meet practicing attorneys, have mentoring opportunities, and get to know what the practice of law is like.

So we use this very viable and vibrant program at the University of Dayton, which is, as I said, the Student Volunteer Lawyers Project, in conjunction with our program to really help the people that we perceive as our clients.

And at VLP, we consider our clients to be the volunteer attorneys. Their clients are those in need of legal services. So the assist our clients in providing service. I hope that was --

PRESIDENT SANDMAN: Thank you, Judge Huffman.

IV. TOPIC 2

PRESIDENT SANDMAN: We'll now move on to topic 2. Topic 2 is the Task Force recommendation that

grantees should be allowed to spend PAI resources to enhance their screening, advice, and referral programs that often attract pro bono volunteers while serving the needs of low income clients.

And I'll ask Silvia if she will please lead off to address that issue. Six minutes, please.

MS. ARGUETA: Sure. Thank you very much.

So this topic to me is about the last item that Mr. Keckler mentioned, building community and building relationships, because it's in this topic truly where programs, if they are able to work with their local pro bono programs, their local bars, they are then able to creeaM9.sdem (are thensdehensdm)Ttionships,

LAFLA. The future is now for us. We've been able to expand our reach with the local bar associations so that they are able to come to us as experts in various other areas of law because a relationship was created. The community-building took place.

One area that's been vital for us to see is the development of relationships with minority bar associations. Those associations have traditionally not been looked at in terms of developing relationships with legal aid programs, but they're vital in various urban areas where there are many organizations that exist to provide specific legal services, for example to Korean-speakers.

So I'll give you an example of LAFLA. We have a very strong relationship built with the Korean-American Bar Association, where they handle many of the domestic violence cases that we have and many of the consumer debt cases that we have.

We refer many cases that we can't handle to them, and they are now very glad to take those because they have a relationship and they have an expertise that they can come back to, say, if they have a

question or a concern.

It's not simply passing on a case and forgetting about it. It's knowing that you have a leadership of advocates of pro bono leaders in the community that come back to you and say, this is an important relationship that we now want to take to a different level. And it's opening the doors to ensuring that you have long and stable programs.

In Los Angeles, we are very fortunate that the local bar association, the L.A. County Bar, is very invested in the domestic violence issues that happen to our client community. They, through that program, have established a courthouse present.

And with their courthouse presence, we share a courtroom where all of the TROs are heard, and literally refer those people who come to us and say, I need an immediate TRO, to LACBA so that their barristers can handle that case.

It is not just a simple referral. It continues a relationship with them to ensure that they know that they can trust us, that they can work with us. We do some of the screening for them, and off the

case goes to them for handling in the broader sense.

Those are vital relationships that this recommendation addresses. But one obstacle to that recommendation, frankly, is LSC Office of Legal Affairs' Advisory Opinion 2011-001. That opinion essentially says that the dollar amount of time spent on advice and referral of LSC-eligible applicants cannot be counted toward the PAI obligation.

I think that doesn't make sense. If the goal here is to build that community, to enhance resources, this opinion goes exactly contrary to that goal. And it should be reviewed, and it should be pulled. It does not do anything to enhance what the Pro Bono Task Force worked for so long to come up with in the various recommendations that it provides.

I think that would go a long way in helping

continue, I want to note that I received a message from Board member Martha Minow, who is also Dean of Harvard Law School. She is listening by telephone, but said it's not easy to hear. So I'd ask everyone to try to speak directly into his or her microphone.

But she did submit this comment: "I am strongly in favor of adjusting the rule to support collaborations with law schools, law students, and pro bono attorneys, and you may quote me." Done.

Steve Gottlieb?

MR. GOTTLIEB: I'll try to remember my microphone, especially in light of that comment.

It seems like you put the judge and I together, and we're going to echo one another on this comment, too, I have a feeling. Let me illustrate exactly what Silvia was talking about about why it is kind of absurd that we're not allowed to count the time we use to support independent pro bono programs.

We have a program called the Atlanta Volunteer Lawyers Foundation, which was started in -- well, the idea of it was started in 1968, where lawyers from Atlanta Legal Aid would be in the offices on Saturday

and volunteer lawyers would be in the offices with them, and the volunteer lawyers would handle the cases. That has been going on for 45 years.

In 1977, because we were creative, we created an organization called the Atlanta Volunteer Lawyers Foundation to actually run that Saturday attorney program. Since that time, the program has been separate and run by the Atlanta Volunteer Lawyers Foundation, and they have gotten separate funds, leveraging funds, to add to the ability of them to handle volunteer programs.

The point being, and I don't know if I made it very articulately, is that a program that we had started to get volunteers is now being handled by an independent nonprofit organization which is focused on getting volunteers.

There's a collaboration that we continue to have. We screen the cases. We select appropriate cases to go to volunteers. We decide. We write memos of law for the volunteers so that they know what they're doing sometimes.

(Laughter.)

MR. GOTTLIEB: I shouldn't have said it that way. Excuse me. I should have said that they know what they're doing, and sometimes they need our help.

The lawyers come in every Saturday, and we make our offices accessible, and our lawyers are in the every Saturday to talk to them. AVLF, on the other hand, gets the volunteers, does screening, provides the logistics, has training, has mentors, and tracks the results. They keep up with what happens to the cases.

But because we don't manage that program, we can't get PAI credit, for a program that's been going on in collaboration with them since 1977, and which we even had earlier than that. It doesn't make a lot of sense, especially given the fact that they probably manage their volunteers better than we would manage them if we were doing it, given the fact that they focus completely on doing that.

This is just the kind of joint effort that you would think that the LSC would want to push. In fact, as I mentioned, this was one of the programs that the LSC, when they visited us, congratulated us on doing.

It's ironic because it's such a disservice to

the Legal Services Corporation. It means that those cases which we were so involved with, hundreds of those cases every year, are not cases that end up LSC getting any credit for, either in terms of time or in terms of numbers. And it's exactly the kind of project that LSC would want to support.

I actually, frankly, would go further than what was recommended by the Task Force. I would recommend that it not just be a situation where we are allowed to use the 12-1/2 percent, but rather, we should be allowed to actually count those cases as cases which are PAI cases as a way of illustrating that LSC grantees have been involved in promoting PAI cases with the private bar.

So I guess my point is that the idea of having an independent program which we support and which we're integrated with, to have LSC not say that we can use LSC dollars or LSC requirements to meet it, doesn't seem to make much sense to me.

PRESIDENT SANDMAN: Thank you, Steve.

Judge Huffman?

JUDGE HUFFMAN: Thank you. I do think you sat

us next to each other for a reason because I think VLP would be that complement to legal aid that Mr. Gottlieb is talking about.

We're a little bit different in that we are a subgrantee of Legal Aid of Western Ohio, so our hours are counted towards their 12-

perceive as being the goal, and that is, providing legal services to those in need.

We do have two programs that we have developed that obviously are not counted towards PAI hours, and that is, we have attorneys from LexisNexis, which has its home office in Dayton, and attorneys from Wilmer Hale, who office have their back office functions in Dayton. They do additional intake and referral as well as short advice for us. That is not counted because it is not -- it is an intake process; it's not necessarily part of the provision of services.

But that is a method by which we can engage the attorneys from those two areas of practice where they otherwise would not be in a position to volunteer or provide services. And so in an effort to give them

identifying these important issues.

I've been involved in private attorney involvement in a legal aid program since 1982, and I will say that the landscape has changed. One key thing is that the Corporation needs to remain flexible and allow programs to change with the times, and allow programs to design PAI programs that fit into their state's delivery system or their service area delivery system.

By way of example, I'm just going to tell you a story about how we function in Washington, which is a little bit different from many other states.

Washington has a highly integrated delivery system, and we have a history of independent, local bar-affiliated volunteer lawyer programs that have been carrying out the primary pro bono activity in the state for many years.

In 1995, when our access to justice board created our state plan for the delivery of legal services to low income people, it assigned a specific role to the Northwest Justice Project. And that role was to serve as the primary entry point for all

components of the delivery system, meaning the primary entry point for both staffed and pro bono programs.

To carry out that role, we created our statewide centralized intake hotline, which we call

whether that client actually met with a private attorney through the pro bono program.

This kind of integrated system enhances the ability of the pro bono programs to recruit and retain volunteer attorneys. And we're not just making that up; we know that through feedback that we've gotten from a number of sources.

In a conversation I had with one of the volunteers from one of those programs, he said, "I love CLEAR, and here's why. When I go in to volunteer, I know it's a legal problem. I'm not just seeing somebody cold who maybe was screened for eligibility by a non-lawyer coordinator, but this case has been vetted by CLEAR.

"I know it's a legal problem. I know it's a meritorious legal problem. And I have some notes from CLEAR that tell me what I need to do. And so I feel like it makes a very good use of my time." So that's the volunteer attorney perspective.

The coordinators, who were recently surveyed about how CLEAR is working for them, had a variety of comments. One mentioned that it's very client-centered

MS. WOOD: I'm going to make two comments on this topic. First is the point about efficiency, and just to reflect an anecdote in my years as being on the board of VLP, during my three years as chair we had a visit from LSC as part of the statewide planning exercise, in which all of the providers in the state were encouraged to work more effectively together and to integrate our operations, including our screening and intake system.

So when I look at this rule and its interpretation, I see a disincentive to be efficient about how you integrate the delivery system in the state, and that does not make sense to me. That to me is LSC not operating in a consistent manner because it certainly expects its grantees to be efficient in everything that they do.

The other thing about this issue is that screening advice and referral programs offer an opportunity for pro bono time from lawyers that you might not otherwise convince to do pro bono work.

In-house lawyers really like these kinds of programs because it's harder for them to managing their

time. Corporate lawyers, who are intimidated by litigation, are willing to take on these types of matters.

And busy lawyers, who might have earlier in their career taken legal services cases, may feel now as though they can't make that commitment -- not that younger lawyers aren't busy, but senior lawyers may just be juggling more and may not want to make that commitment, but they bring a lot of wisdom and they can really provide a valuable service in this context.

So I would encourage you to count this to demonstrate that you believe that this work is important so that your grantees will encourage other lawyers to do pro bono work.

PRESIDENT SANDMAN: Thank you, Lisa.

We'll now receive public comments. Is there anyone here in the room who would like to speak to topic No. 2. Charles Keckler?

MR. KECKLER: Thank you, Jim.

Prompted by the discussion, I again went back to looking at the Advisory Opinion. One of the factors that was in that Advisory Opinion, and I'm looking at

it here if you did bring it or have a copy of it, was the concern that the grantee, I guess in this particular context, wasn't able to track whether the client had been served or what the outcome of the case was. That was in the opinion.

I think that's a fair point to make, and particularly in light of our concern at the Corporation in terms of, overall, the Corporation is trying to look more at outcomes for clients as a way to understand our success and the success of the grantees.

So I was wondering how easy it would be or how difficult it would be for grantees, for recipients, to get some kind of information on that back. They're at the front end with intake and referral, which is what this recommendation is about, but this opinion ties that, counting that work at the front end, to some kind of report at the back end. Was the client served? What happened in the case?

How easy would it be to get that information for the private attorney or the person it's referred to, to get that back to the recipients to at least allay that element of the concern in the opinion?

MS. KLEINBERG: Maybe we're unique because we are on the same case management system as the pro bono programs that we refer to. We were able to come up with a technological solution to that and can get a report back that confirms that a particular client did see a private attorney. We don't know necessarily what happened at the end of that engagement, but we know that private attorney activity was involved.

I do want to point out, though, that the CSR Handbook permits counting of time where a staff pro bono coordinator spends trying to refer a case to a private attorney, whether he or she is successful in making that referral or not. And this seems to be a sort of corollary to that except that those referral efforts may be made by an independent pro bono program.

PRESIDENT SANDMAN: Judge Huffman, did you --

JUDGE HUFFMAN: Go ahead.

MR. PENOKIE: I just want to say when you have a very small PAI staff, the first part is not difficult, tracking that it went to the attorney. Beyond that it gets very difficult, especially again dealing with attorneys who don't necessarily want to be

bothered, but also with clinical programs, where they will track results, but if they refer beyond to a second level of clinical, then it becomes difficult.

So if you have the resources, it's not. If you do, it's very time-consuming and flies, at least for my program, in the face of the parts of the PAI that talk about an economical program. And it becomes not very cost-efficient then.

PRESIDENT SANDMAN: Judge Huffman?

JUDGE HUFFMAN: Thank you. I do want to make one comment. I don't think, at least in our program, it would be difficult to track whether those services were actually provided. But we have to remember also that some of those intake conversations end the service.

The client realizes that they don't have a legal issue. It is not a legal issue that belongs to them -- it might be a family member, something like

important because I do think it alleviates concerns by the public, who obviously are calling that legal aid line or that referral system for a reason; it allays their concerns, that this is not a legal issue or this is not an issue that I can resolve.

So I think those hours or that time, even though it doesn't result in a referral, is still extremely important to access to justice and to understanding the legal system.

PRESIDENT SANDMAN: Steve Gottlieb?

MR. GOTTLIEB: Let me add also another note of reality. Even when we do it ourselves in situations where we try to monitor outcomes that come from the private attorney's work, even in situations where we've done it for long time, the results are about 50 percent about whether you can actually get people to respond.

In fact, we end up having to go to the court to find out whether the divorce was done because volunteer attorneys, as was pointed out, just want to do the volunteer work. They don't want to be bothered with reporting to you about the outcomes.

So even in the best of circumstances, it's not

really likely you're going to get as much information on the back end as you think you will.

PRESIDENT SANDMAN: Is there other comment here in the room?

(No response.)

PRESIDENT SANDMAN: We do have a question from Helenka Marculewicz, if I'm pronouncing her question correctly. Her question is, "How does expanding what you can spend the 12-1/2 percent on grow pro bono?"

Does any panelist want to respond to that?

MS. WOOD: I'll give it a try. This is Lisa Wood. In a sense, I'm circling back to a question that Harry had asked as well. We have in this workshop and in the programs that have submitted comments some of

I wouldn't want to have a restrictive definition of PAI that would discourage them from doing whatever maybe in their region made the most sense for how to do pro bono and what would be most efficient, given the limited dollars that they have.

So while every program here represented exceeds the 12-1/2 percent, and certainly that's the experience I have in Boston, too, with VLP of Boston, that isn't the case for all programs.

My sense is there are some grantees who really struggle to make this work, and I would think we want to encourage them. Certainly I would hope the goal is that everyone exceeds the 12-1/2 percent, but that may not be realistic.

PRESIDENT SANDMAN: Judge Huffman?

JUDGE HUFFMAN: I want to echo a comment, though, I think that Helenka is making through her question, and that is, even though there is a concern about relaxing the restrictions, we still have to make certain that there are rules in place so that we have the adequate provision of services, that we are not so diluting this 12-1/2 percent to the point where we are

not providing services, to the point where it's all going to administrative costs and it's not going to the actual provision of services. That is our overriding concern.

PRESIDENT SANDMAN: If there's anyone participating by webinar who would like to submit a comment, now is the time.

(No response.)

PRESIDENT SANDMAN: Silvia, did you have a comment here in the room?

MS. ARGUETA: Oh, just one last thing related to that. I think that the expansiveness of programs that even exceed is the innovation and the creativity that you allow your partners that work with you to bring to the table.

order to do that.

They can come up with innovative ways to work with their bar associations and with others. And that, I think, is part of the goal of enhancing PAI in general, is to have more creativity so that more people are served.

PRESIDENT SANDMAN: Joan?

MS. KLEINBERG: I just want to make one more comment in response to the question, why expand the definition of what can be counted as PAI. And I think a really important reason is to allow LSC to tell the full story of what kind of private attorney involvement activity is happening.

Right now a lot is happening that can't be recorded as part of the 12-1/2 percent PAI requirement because it's not permissible, either under the rule as written or as interpreted. And a very important aspect of expanding that definition is to allow that full story to be told.

V. TOPIC 3

PRESIDENT SANDMAN: We'll move now to topic No. 3, which is the Task Force recommendation that LSC

should reexamine the rule, as currently interpreted, that mandates adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.

We'll hear first from Silvia.

MS. ARGUETA: Thank you. So this final recommendation, I think, is very important because I think it has the ability to expand, especially for programs that are challenged in terms of their support internally to do pro bono PAI work, to not be hamstrung by having to count every case as an LSC case.

When you do the actual work with pro bono programs in clinics, you come quickly to realize that those programs who have the ownership of the clinic,

the materials that are needed to enhance that clinic, that set of lawyers, that local bar association that very much wants to call that project their own.

But they're restricted because if you don't treat it as your case as the LSC provider and it meets all of the CSR requirements, then you really are limiting what that program can do. And frankly, what happens, they'll go elsewhere. They'll go to those non-LSC programs.

In Los Angeles we have the very viable issue that we have many providers. We're very lucky that there are so many providers in Los Angeles, and so there's a lot of competition for pro bono involvement. Sometimes, though, it is through the relationship that the clinic comes up.

Very few providers, for example, want to be on Skid Row. LAFLA is on Skid Row. We provide homeless vets, homeless families, homeless seniors, a myriad of services. And we've created, in partnership with local bar associations, the training materials and the tools that they need to take it on and own the clinic that we have on Skid Row with them.

It's their clinic. We come and train them. We serve as a group that they can come to for expertise. They bring their own expertise, and they don't really want somebody breathing down their neck saying, oh, but it doesn't qualify and we have to make sure that it meets all of the check boxes of a case that LAFLA, for example, would have and carry.

And I think that only serves to hamper the delivery of services for the clients rather than moving to an expansive view that we are maximizing resources, that we are using the expertise of a set of lawyers that we may not have in-house.

Because, for example, if you have a domestic violence case and you have a divorce, but there are issues related to bankruptcy that come up, well, that private lawyer is going to have that expertise. They want that case and they want to take it with them.

They don't want, frankly, me to be saying, well, you have to meet these guidelines, and this is what the CSR requires. They don't want that, they don't need that, and they will gladly go to someone else and seek their support than they would to LAFLA.

all the three things --

an extended case, where they wouldn't have to go to court, where they might be able to do things at their desk, all of the things for all of those lawyers that we haven't been able to tap as much as we wanted to.

And the two areas that we focused on the most were -- one was something where we have a self-help clinic in our local courthouse to talk about landlord-tenant cases, and two, to help out on our senior hotline, both of which allow private attorneys to make limited commitments without a lot of expertise and a lot of training, and help adding to pro bono.

Both of them are limited by the LSC rule, for the same reason, and that is because neither -- we would not get credit in either instance for our involvement with either the clinic or the seniors hotline because of the fact that we don't use LSC case-handling requirements.

Not only don't we, but we can't. We have a court clinic. The court clinic isn't going to say, okay, we'll have lawyers come down here, but they have to decide whether the people fit the LSC eligibility guidelines, and we have to check assets. That's not

going to happen. They're going to open it up to everybody who wants to come in. And the senior hotline similarly -- it's a Title 3 program. You can't check eligibility because it's not allowed.

So in both instances, both innovative ways to use private lawyers in ways that we really want to to tap into a segment of the private bar which has not been as responsive -- and I add corporate counsel is another place where we could draw people -- that these were things that LSC wouldn't give us credit for, new and innovative ways of doing things.

I think what -- I will just conclude on this, that I think one of the themes on this whole panel on 1614 is that 1614, I think, was born out of this paradigm where what would happen would be you'd get a

there are all of these innovative ways of doing business which are not according to the original model when the rule was adopted in 1980.

So I would suggest, again, that we talk about expanding -- as the recommendations are -- to expanding the rule to allow us to consider the time of other non-lawyers, to allow us to consider time we spend for other lawyers, other time we spend with independent pro bono, and other kinds of mechanisms like brief services. Thank you.

PRESIDENT SANDMAN: Thank you, Steve.

Kenneth Penokie?

MR. PENOKIE: To use the theme, why does changing the 12-1/2 percent mean anything -- and I'm like everybody else; I way exceed my 12-1/2 percent -- but four out of our five private attorney initiatives cannot be reported to LSC.

So we're all evaluated. LSC evaluates us. Congress evaluates us. The public evaluates us. We can't tell our story. We have an internet delivery system that was the first in the country and was unique, and I'm proud to say that now has several

clones out there. We can't count it.

When we developed it, it was developed with the idea of reporting the activity as a matters activity and not as a case activity. Some time that changed, and we were told -- by the way, this started out as a model project, an LSC site. We were told that we could no longer report it as a matters.

We have a clinical program that we cannot report because if we did a full LSC intake, we would run the risk of conflicting ourselves from our core value cases -- domestic violence, landlord-tenant lockouts. It is very easy for people on the other side of cases to understand how to prevent you from becoming the antitrust on the case, so we designed systems that, while fully screening, do not gather information that would conflict us.

I got an email yesterday from somebody that's trying to clone our internet project, and they are not doing it anonymously, and their question to me is, we have a person we ran a conflict check on. There is a conflict. We can't tell that person there's a conflict because we can't go into the database to respond to

them because if we do, we violate our rules of ethics. How do we get around that?

If the rules aren't flexible enough to get around that, then our hands are tied. And if we don't have the incentives of both reporting and/or being able to use it for our 12-1/2 percent, then when money is scarce, our choices have to be not to do it. We have continued to do our projects in light of that, and despite that. But it is very, very frustrating not to be able to tell our story.

Our online service handles, and I'll put the case in quotes, at $4 a case. And it's a comparable service to a hotline. And when we were doing -- and it's not perfectly equal to a hotline, I'll admit, but it's pretty close. But we were paying $55 a case for very similar to a hotline.

These are what I think are innovations that technology can help. They solve issues clients are having with cell phones, and there are other technology ways to solve those, too. Joan has come up with a very good one. Hopefully she'll get her TIG.

Anyway, that's why

that we can both design our programs, report our programs to both LSC and to Congress. I don't really care how they're labeled. I don't care if they're labeled as cases, as matters, or as some other category that the wisdom comes up with.

But I think it's important that we be allowed to show and tell what we do, and that gives us our incentive to continue to do it. That's all. Thank you.

PRESIDENT SANDMAN: Thank you, Ken.

Joan Kleinberg?

MS. KLEINBERG: I think I have more along the same theme here. The current difficulty that we've all been discussing arises from the conflation of CSR case requirements with PAI reportable time.

And that's a fairly recent phenomenon, and I think that's really what is keeping not just the programs from giving us credit, but keeping LSC from taking credit for leveraging huge amounts of pro bono activity through the investment of its local programs.

By way of example, we have a number of different ways in which we provide support to pro bono

programs where we do not have CSR-reportable cases. We are looked at as subject matter experts in a number of areas. The housing justice projects across the state and many of the local volunteer lawyer programs across the state look to our staff attorneys for training. And it's that training that makes many of the volunteer lawyers willing to go in and volunteer and take on these cases.

We have a debt clinic, another courthouse-based model. We have the CLEAR model, where we're providing a lot of support to local programs. And we have a clinic for refugee and immigrant survivors of domestic violence. So a lot of different models in ways in which NJP is seen as a key partner in the pro bono effort in the state. And yet because in many of these circumstances we do not have a CSR-eligible case, those now come off the table as reportable PAI activity.

So I don't want to say again what everyone else has been saying, but it is the same idea that -- and I just want to characterize it as a conflation of CSR with PAI activity that's driving this difficulty

for so many programs.

But while I have the microphone, I want to raise one additional issue that I just want to put out on the radar. We do a fair amount of compensated model, where we pay lawyers less than 50 percent of the going rate in their community.

We are subject under Rule 1627, which is the subgrant rule; if we're going to pay a particular attorney or firm more than $25,000 in a year, we're required to go to a subgrant. That number was set when this rule was created in 1980, and it's a very low number right now.

Sometimes you really can't predict, if you have a good lawyer involved and they get involved in a contested custody matter -- which they will do in compensated models -- sometimes it's very hard to predict where the fees will end up. And that $25,000 limit is very low right now.

PRESIDENT SANDMAN: Lisa Wood?

MS. WOOD: Thank you. Two points. You'll see from SCLAID's written comments that to the extent we're talking about a program that does not do eligibility

screening, we are reserving the opportunity to comment until after we've had a chance to hear the discussion at both of the workshops. So I'd anticipate we'd comment on that subject after the second workshop has been completed but before the deadline.

But speaking about brief service clinics that involve eligibility screening, we think the time supervising those should be counted, for the following two reasons.

Brief service work is an important part of the delivery system in legal services, and frankly now, for paying clients as well. We have toTm (11)Tj nticr/eat of vice

service work or limited representation work -- different states call it different things.

So I think that's why there's been a movement across the country to change the ethics rules to allow lawyers to handle these cases and not be conflicted out, not have conflicts create problems with the caseload.

Those are really my two points.

PRESIDENT SANDMAN: Thank you, Lisa.

The floor is now open for public comment. Is there anyone here in the room who would like to comment on topic No. 3? Jon Asher. Could you come up and find yourself a microphone, please? And could you identify yourself for the record, please?

MR. ASHER: I'm Jon Asher, and I am director of Colorado Legal Services, and I honestly tried very hard not to comment this afternoon. I know that'll surprise all of you, but I really had not expected to speak.

I waited till after the third issue, but I really have three brief comments to make. First is on referrals. We did ask that the OLA opinion be reviewed

and reversed. We have for years run both our own internal PAI programs and collaborated with a number of independent pro bono programs that predated even my time as director.

We refer. We screen and refer all of the cases for the big Denver area pro bono program, a number of more rural, smaller bar programs. That amount we always counted as a PAI expense.

More recently, the Colorado bar has developed a Colorado Lawyers for Colorado Veterans program. We don't own it. We help train. We provide support. But we also make a number of referrals to that program. We can't count those referrals because once we've handed the case off, we don't track exactly what they do.

Now, unlike my colleagues who are on the panel, we exceed the PAI requirement. I don't think we exceed it by a great deal all the time, and it was fortuitous in a perverse way that as the opinion came out, our LSC grant went down significantly. So our 12-1/2 percent requirement was lowered exactly at the same time we wanted it to be lower. That's not the world you want to create.

And whether we will meet the requirement, God willing and Congress willing, if the census adjustment and a robust LSC appropriation comes in next year, we're going to have to wisely spend but really increase our PAI involvement next year in a way that we will try increase

They don't want to do all of it pro bono where they have to pay babysitters and take time to do that. We pay them a reduced fee.

We may have, we thought, a lawyer for whom, if she did one case of about ten hours, her annual income from us would be $650 and she would be a staff attorney. That's even less than we pay our staff attorneys.

(Laughter.)

MR. ASHER: Not by

counsel for NLADA.

It seems to me as I hear this discussion -- I thought about these issues ahead of time and I read the Pro Bono Task Force report -- that we should step back and look at what the purpose, the overall goal or goals, as Lisa Wood said earlier, of the private attorney involvement or pro bono program is.

And as Joan Kleinberg talked about, the difficulty of grafting the case service reporting system onto a pro bono encouragement concept is indeed problematic. And I think it really comes to a head when you look at the purpose of the program.

The purpose of the program really is to leverage additional resources for clients. Right? To increase client services. And it has other benefits, as Lisa was talking about, of connecting the private bar and potential fundraising, and partnership possibilities, as Silvia pointed out.

But if the purpose is to increase services to clients, then it seems to me that we want to -- LSC wants to be as flexible as possible or allow grantees to be as flexible as possible so that it can be as

innovative as possible. And adherence to the technical case service reporting requirements, in fact, runs counter to that flexibility and that innovation.

You look at the successes that LSC programs have had and LSC itself has had, for example, in the TIG technology program, where grants have been provided for some innovative, cutting-edge technological approaches to delivery of legal services.

If the CSR requirements were applied to the TIG program, I dare to say that many of those innovations would have been prevented because you would have grafted on some foreign concept onto an idea of R&D, essentially. So that with this concept the Board and LSC not restrict the R&D capacity of the organization or of the grantees in coming up with useful and innovative practices.

It's also true with websites, which was a TIG project as well, statewide websites. Also true, as mentioned earlier, with -- I think Steve Gottlieb mentioned the court clinics, where you have self-help clinics, et cetera.

So in all those situations, TIG, technology

grants and court clinics and -- well, the self-help forms, if we looked at the requirement that every user of that innovation, those approaches, had to meet CSR requirements, then I suspect those would not be successful programs.

It would also inhibit the kind of partnerships that Silvia mentioned with other bar associations, with other courts, et cetera. So that I think -- I would urge the Board to continue -- to make sure that they build in the concept of allowing flexibility.

Of course you want these services to go to eligible clients, and that completely makes sense, and it completely makes sense for Congress to ask for reporting of activity for eligible clients. We totally understand.

But if the LSC-funded program provides the architecture, the brick and mortar, for fundamentally a new and creative approach to technology, to court-based services, to PAI, and that approach results in substantial benefits primarily to the LSC-eligible community, then we should not allow the overly technical CSR approach to prohibit that, or to inhibit

that, I should say.

PRESIDENT SANDMAN: Thank you.

Charles Keckler.

MR. KECKLER: Thank you. This is in a way following up from Mr. Greenfield's comments on eligibility. I was reading the ABA's letter from Ms. Wood, and here's what it says, the thing that struck me immediately.

It says, "The ABA believes that to the extent that eligible clients are being assisted at these clinics, LSC grantees should receive PAI credit." And the key phrase that I was thinking about in your comments was "to the extent."

So the question, then, is in order to determine the extent, it seems like some level of

MR. GOTTLIEB: I think you're absolutel y8.4aBtiRe 3w

attestation. More than anything else, I see this as limiting what LSC sees in reporting."

Her other comment is, "If you really want to leverage resources, then you must make sure that ownership of pro bono belongs to the private bar. Then they can truly complement the public bar."

Are there any further comments here in the room?

(No response.)

PRESIDENT SANDMAN: If anyone participating on the webinar would like to make a comment, please raise your hand or type it into the question box.

(No response.)

VI. AGENDA FOR SEPTEMBER 17 WORKSHOP

PRESIDENT SANDMAN: We'll now move to our final topic, which is what the agenda should be for the second workshop session on September 17th.

And all panel members are invited to make suggestions about that if you have any. Let's start with Silvia.

MS. ARGUETA: Not what it should be in September, but one item that I think does need to be

addressed, and that is the issue that ran through all three topics and all three recommendations, was fraud, waste, and abuse.

And I think that as you move forward with the recommendations, it would be very important not to create more burdens on the programs that are administering their PAI requirements, and that we already have certain requirements in place.

Our auditors, the independent auditors, have to review. They have to do compliance reviews for us. So I think that that, in all three areas, is something that already exists, and we don't really see a need for further regulations, further compliance measures from the programs because our independent auditors as well as the compliance reviews that we all go through check for those.

That would be our very strong recommendation, that this not become another burdensome task for programs that are already very limited in staff and in funds.

PRESIDENT SANDMAN: Thank you.

Steve Gottlieb?

MR. GOTTLIEB: I'd like the next session to focus on not just the 12-1/2 percent but actually what are counted as PAI cases. I alluded to this earlier.

While there is no requirement under the reg that you have a certain number of PAI cases, there is no doubt that having the reg which says what is a PAI case and what is not a PAI case affects the way people do business. Let me give you an example.

When we -- Jon Asher was talking about this -- when we were not able to count the work that we did to support the independent pro bono program and were not able to count the cases, our numbers went down.

So I called -- we have a program which always has a reputation for doing PAI work. But I felt seriously worried enough about this that I called John Meyer in Washington and I said, "Look, John. I want you to know that because of the change of the rule, we're going to have less cases to report. And I want you to understand that that doesn't mean that we're doing less PAI work. It only means that the regulation has been interpreted in a way that we can't count these cases any more."

So my point is that I think we ought to focus on not just what the 12-1/2 percent be used for, but also liberalizing what we call a PAI case because that affects people and programs as well, even though it's not a mandate.

PRESIDENT SANDMAN: Thank you, Steve.

Judge Huffman?

JUDGE HUFFMAN: While I appreciate certainly the concern about credit for cases, credit for hours towards the 12-1/2 percent, the issue that I feel strongly that needs to be addressed is how to expand services.

While we are very concerned about counting hours towards that 12-1/2 percent, we have not

PRESIDENT SANDMAN: Kenneth Penokie.

MR. PENOKIE: I'd like to just echo Steve's sentiments and the judge's. I think, though, that giving us incentive to expand is a good thing.

Very much like Steve, I didn't call anybody but I made comments in my CSR reports indicating that our numbers were substantially different because we could no longer report four of the five programs that we run.

And I think on the fraud issue, we need to step back a little bit, look at the big picture. What's at risk in most of these programs? Legal services programs puts out a tiny amount of money, and the risk is that a private attorney will give advice to somebody who might not be eligible.

We're not giving the advice. The private attorney is giving the advice. We're acting, in most of these programs, more or less as a dating service. I would suggest that we're probably, per person, putting out less money than some of the funds that are put out for the fancy ATJ form sites, which are not subjected to the same regulations. Anybody can get in those and

do those.

So the amount of money involved and the amount of fraud involved, it's not on our part. We're not the ones delivering the services. The private attorney is. So the fraud is that somebody will get free advice from a private attorney. It seems like a very small risk factor. Thank you.

PRESIDENT SANDMAN: Joan Kleinberg?

MS. KLEINBERG: I wasn't sure if I was breaking the rules or not to raise 1627, and then Jon Asher rode my coattails to bring in 1600. So I guess that I would suggest that perhaps you invite comment on any of the regulations that affect 1614 and the activity carried out under 1614 just to make sure that if there's going to be change, that it's comprehensive.

PRESIDENT SANDMAN: Thank you.

Lisa?

MS. WOOD: Yes. And this was anticipated in the comments that we did submit, if we could devote some time at the next workshop to talk about, practically, how we would handle a program that doesn't screen for eligibility but we can use sampling method

or some other method for determining percentage of eligible clients served.

I think the ABA would welcome a conversation about that, and then we would submit comments thereafter. But we just needed some more discussion from people who are dealing with this issue in the field in order to inform our comments.

Then there were a few questions raised during the workshop today -- I think you, sir, raised a question that I wasn't in a position to answer. I can't now remember the question, so I apologize.

But to the extent questions were raised today by Board members and others that we haven't addressed and that weren't listed in the topics, I think the next session would be a good time to discuss those or address those so that whoever it is that'll be presenting next workshop can be responsive.

PRESIDENT SANDMAN: Thank you.

Are there comments or suggestions from people here in the room? The topic is the agenda for our next workshop on September 17th. Father Pius?

FATHER PIUS: This is Father Pius on the LSC

Board. I'll just reiterate the comment I made before, as I think one of the items may be -- one of the first items should be if we could talk about what the goals of the PAI rule are. What values do we intend to get out of that?

And perhaps even another one on how has the model of legal services or how has the legal services community changed over the 30 years, the past 30 years, that would necessitate a change in the way we think about the PAI rule? Think about that a little bit more.

But the first one, I think, is much more important, and that is the goals to be served by the PAI rule.

Helenka, Steve agrees with you.

(Laughter.)

MR. GOTTLIEB: I agree with anybody from that program, it seems like.

PRESIDENT SANDMAN: If others on the webinar have comments or suggestions, would you please raise your hand or type a question or comment in the box?

(No response.)

PRESIDENT SANDMAN: There don't appear to be any other comments. Charles, back thank you.

VII. CLOSING OF THE WORKSHOP

MR. KECKLER: Thank you, Jim, and thank you, panelists, for a very thoughtful and enlightening beginning to our consideration of this rule.

Thank you very much to our technical staff for just very brief bugs. Thank you so much. That's fantastic.

(Applause)

MR. KECKLER: You know, these things are always good in theory but not always in practice. And I'm glad to see that we're doing this, and I'm very encouraged by it.

I hope that people out there in the world will participate further and to an even greater extent in the upcoming webinar, and that anybody here who can't make it to the next workshop in Washington will sign up for the webinar and participate fully at that time.

The next workshop addresses generally the same topics that were defined by the Pro Bono Task Force. The Committee, of course, is interested generally in the PAI rule and thinking through it. We've made a decision generally to try to make progress, particularly on those recommendations, but aware of the other, broader issues that relate to them.

In light of that, in addition to the other thoughts and suggestions that have been made, my own hope is that participants in the next workshop will bring their good ideas, but also bring some textual suggestions. We opened that up.

We're not going to make the rule right here and put it out for comment, and that won't be true at the workshop, either. But certainly people on the web and certainly panelists are welcome to just name the rule and name the phrases that are constraining your