LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

PAI RULEMAKING WORKSHOP

Tuesday, September 17, 2013

1:30 p.m.

Legal Services Corporation
3333 K Street, N.W., Third Floor
Washington, D.C.

BOARD MEMBERS PRESENT:

John G. Levi, Chairman (by telephone)
Robert J. Grey, Jr.
Charles N.W. Keckler
Laurie Mikva
Julie A. Reiskin (by telephone)
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
Atitaya Rok, Staff Attorney, Office of Legal Affairs
Stefanie Davis, Office of Legal Affairs
Flor Gardea, Office of Legal Affairs
Carol A. Bergman, Director, Office of Government Relations and Public Affairs
Elizabeth Arledge, Communications Manager, Office of Government Relations and Public Affairs
Marcos Navarro, Office of Government Relations and Public Affairs
Laurie Tarantowicz, Assistant Inspector General and Legal Counsel, Office of the Inspector General
Matthew Glover, Associate Counsel, Office of the Inspector General
Lora M. Rath, Deputy Director, Office of Compliance and Enforcement
Janet LaBella, Director, Office of Program Performance
Jane Ribadeneyra, Program Analyst, Office of Program Performance
Eric Jones, Office of Information Technology
Mark O'Brien, Executive Director, Pro Bono Net
Patricia Z. Risser, Attorney Coordinator, Volunteer Lawyers Project, Legal Action of Wisconsin
Melissa Skilliter, Pro Bono Coordinator, Ohio State Legal Services Association
David Udell, Executive Director, National Center for Access to Justice
Jennifer van Dulmen, President, National Association of Pro Bono Professionals

STAFF AND PUBLIC PRESENT (Cont'd):

John Whitfield, Executive Director, Blue Ridge Legal Services, on behalf of National Legal Aid and Defender Association (NLADA)
Virginia Martin, Director of Legal Services, New Hampshire Bar Association
Samantha Howell, Pro Bono Coordinator, Prisoners' Legal Services of New York
Jennifer Cunha, Pro Bono Partnership Project Staff Attorney, Prisoners' Legal Services of New York
Kenneth Penokie, Executive Director, Legal Services of Northern Michigan
Mara Block, Pro Bono Project Staff Attorney, Legal Assistance Foundation of Chicago
Helenka Marculewicz, Executive Director, Greater Dayton Volunteer Lawyers Project
Cheryl Zalenski, American Bar Association Center for Pro Bono
Jeff Ponting, Pro Bono Coordinator, California Rural Legal Assistance
Rosemary Elbert, Executive Director, Wisconsin Judicare
Chuck Greenfield, National Legal Aid and Defender Association (NLADA)
Don Saunders, NLADA
Mary Ryan, Chair, American Bar Association Standing Committee on Pro Bono and Public Service
Steven Scudder, Counsel, American Bar Association Standing Committee on Pro Bono and Public Service
Lisa Wood, Partner, Foley Hoag LLP; Chair, American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Steve Grumm, American Bar Association SCLAID
Bev Groudine, American Bar Association SCLAID

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Melissa Skilliter, Ohio State Legal Services Association
Jennifer van Dulmen, National Association of Pro Bono Professionals
John Whitfield of Blue Ridge Legal Services, on behalf of the National Legal Aid & Defender Association

P R O C E E D I N G S

(1:30 p.m.)

I. OPENING AND INTRODUCTORY REMARKS

MR. KECKLER: Welcome, everyone. My name is Charles Keckler, and I'm the chair of the Legal Services Corporation's Board of Directors' Operations and Regulations Committee. There are two other members here from the committee, Laurie Mikva and Robert Grey.

As a formal matter, this second of two rulemaking workshops regarding LSC'S private attorney involvement rule is part of, and really the beginning of, a process that the committee is involved in in considering changes to 45 CFR Part 1614, the Corporation's private attorney involvement rule.

In response to a series of recommendations that were made last year by LSC's Pro Bono Task Force, this workshop and the prior one in July was noticed to the public in the Federal Register on May 10, 2013. And since we are building on the good work of the Pro Bono Task Force, we are focusing on the suggestions that they have made, but we are also considering related matters as they come up regarding the PAI rule.

I want to thank our participants who are here live to offer their views on these matters. And I also want to thank those that are participating via the web or just listening in to our workshop today.

LSC's President, Jim Sandman, will be moderating this panel, as he did with the last one.

After today, we'll be gathering up comments. When is the comment period going to end?

MR. FREEDMAN: This is Mark Freedman from the Office of Legal Affairs. The comment period ends a month from now on October 17th. That will be the end of the comment period associated with this initial stage in the workshops.

Once we have, say, proposed regulatory language, of course, there will be comment periods on those. So it won't be the last time to say anything on this topic, but it will be the closing of this initial period for providing suggestions and comments before we start working more on the rule.

MR. KECKLER: Thank you, Mr. Freedman.

So those listening in in response to today or those here today will have another month to offer our

initial comments. And after that point, the committee will begin taking up all the things that we've learned and the analysis of staff and our own thoughts and putting together possible changes to the rule, which will then appear, if the committee so decides, as a notice to the public, a notice of proposed rulemaking or something of that nature is what is intended.

If the board members and staff are circumspect today and don't necessarily respond and endorse everything that you might have to say, it is because we are, again, at early stage and keeping an open perspective on everything. We are very glad to hear from you, and if we don't say, "Yes, absolutely," there's a reason for it. We are not at that stage to say yes or no yet.

One thing that I thought of, though, when I was reviewing the rule in preparation for today that didn't come up precisely last time but which we talked a little bit at the last workshop about the overall goals of the PAI rule and how changes can fit into those, along those lines, one thing that I noticed, which is an element of the rule that maybe hasn't

always received that much emphasis, is when it looks at the purpose of the rule in there, one of the things it talks about is the desire to show that market value of the contributions that are being brought in by PAI efforts substantially exceed the essential investments that the grantees are making in those.

So to the extent that grantees, I feel, can build a business case for some of the changes that are being contemplated here in terms of showing a substantial increased market value for investment, I think that presents an interesting and useful argument for us as we go forward and think about changes.

Because as we consider particular regulatory changes, there are still going to be these broad principles in the background about the PAI rule, and one of those is that our PAI efforts are producing client services out there at a substantial leveraged ratio vis-a-vis what we are investing in them.

So with that thought going forward, the topics for the workshop today are, number one -- and these are from the Pro Bono Task Force -- that resources spent supervising and training law students, law graduates,

deferred associates, and others -- it's come up; paralegals, other professionals, have come up in comments -- should be counted towards grantees' PAI obligations, especially in incubator initiatives.

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

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

So those are the three focus topics, and related topics that have come up at the prior workshop or that involve private attorney involvement are certainly open to consideration.

Finally, it would be remiss if I did not note that today is Constitution Day. As lawyers, we spend a lot of time arguing about what the constitution means. However, I am confident that it at least means

something like this, what we are engaged in today -- self-government with citizen participation in the service of volunteerism and the rule of law.

With that, I open the workshop and turn it over to President Sandman.

PRESIDENT SANDMAN: Thank you, Charles. I'm Jim Sandman. I'm President of the Legal Services Corporation. I'll be moderating the workshop this afternoon. In addition to the board members who are physically present in the room today, Charles, Laurie Mikva, and Robert Grey, we have participating on the webinar by telephone our board chair, John Levi, and board member Julie Reiskin in Denver.

I'd also like to acknowledge the work of my colleague in the Office of Legal Affairs, Mark Freedman, who has done much work in preparation for this workshop. Mark may be participating in the workshop by asking questions at various points during the afternoon.

For those of you who are participating in the webinar and on the phone, you may access all of the workshop materials that we'll be referring to this

afternoon in one of two ways.

First, you can go to the LSC website, lsc.gov. When you get there, click on "About," the "About" tab, and then click on the regulations link. Select "Open Rulemaking," and then click on the link for "Part 1614."

Alternatively, there is a direct link at this website address: bit.ly/pairulemakingdetails, all one word. I'll say that again: bit.ly/pairulemakingdetails.

For those of you who are on the phone participating in the webinar, let me review the procedure for participating. This also applies to the board members who are participating in the webinar.

All webinar lines are on mute. We can unmute you when you wish to speak. To speak, you must have registered and logged into the webinar to get an audio personal identification number. On the webinar page, you will either use your microphone and speakers on your computer or use the telephone.

If you use the telephone, then once you've called in, enter your access code and your audio PIN.

Click on the "Raise My Hand" button to indicate that you want to speak. I will announce when we're ready for you to speak and your line is unmuted.

Our format today is to address each of the three topics that Charles identified in order. We have different numbers of speakers for each subject. We have all six panelists who've indicated that they wish to speak on topic number 1, four panelists who've indicated that they wish to speak on topic number 2, and five panelists who've indicated that they wish to speak on topic number 3.

Each panelist will have six minutes to present. We will be timing you. I will give you a signal when you're getting close to the end of your six minutes, and indicate that you should wrap up if you go over.

After each panelist has presented, we will then have 25 minutes on each topic for public comment, questions, and panel discussion.

I'd ask the panelists, when you speak on each subject, please identify yourself and your institutional affiliation so that those who are

listening in can hear right away who you are and what your perspective is each time that you're going to speak.

I'm going to propose that we just go in order, from your right to left, I guess. We'll start with John Whitfield. And I would ask that panel members attempt, in the course of their opening remarks, to address the questions that were published in the Federal Register and the supplemental questions that we sent to you last week.

For those of you who are participating in the webinar, in addition to the questions that were identified in the Federal Register notice, we did send out from LSC last week to the panelists a list of questions that we ask that they try to respond to in their remarks. Those questions are posted on the website addresses that I gave you so that you can have access to them.

With that, I'll ask John Whitfield to start.

MR. WHITFIELD: So we're addressing topic Number 1?

MR. O'BRIEN: Yes, sir, please.

II. TOPIC 1

MR. WHITFIELD: I'm John Whitfield, the executive director of Blue Ridge Legal Services, a legal aid society in the Shenandoah Valley of Virginia. I'm appearing today on behalf of the National Legal Aid and Defender Association to present their perspective on these issues.

I had the privilege of serving on the LSC Pro Bono Task Force. I was impressed with the caliber of the participants on that committee, with the energy generated by that task force, with the ideas also generated.

Borrowing from an earlier day, I think the whole idea was to unleash the power of pro bono, and revising the PAI regulation is a wonderful first step in unleashing the power of pro bono because right now there are problems too restrictive, so that proposals that have been set forth, I think, would in fact allow the unleashing of pro bono.

On the first topic, regarding resources spent supervising and training law students and others, I think the key emphasis should be on expanding the

availability of legal assistance for folks living in poverty, and also for providing legal information for the client community.

So if the work of law students, pre-admission law graduates, paralegals, and others are part of that effort, then certainly any of the resources that an LSC-funded program expends to support those efforts we believe should be included in the 12-1/2 percent obligation.

We believe that not only the categories of folks already listed should be included, but also paralegals and attorneys who are not licensed in the state where they are assisting. Those legal professionals can provide a lot of assistance as volunteers to legal aid efforts.

Certainly in administrative proceedings, it comports with the unauthorized practice of law rules to allow them to represent our clients, whether they're a paralegal or an attorney who's not licensed in the state that they're working in. So those are obvious examples of additional groups of legal professionals whose volunteer efforts ought to be encompassed in the

PAI rule.

We think the definition of "private attorney," as found in the current regulation, is confusing and limiting because of course it's already conceded that government attorneys, corporate attorneys, in-house counsel, and others who you really don't think of as private attorneys necessarily ought to be included, and are included, in the scope of the PAI reg.

So we think maybe instead of defining private attorney as being someone other than a staff attorney, which is a really backwards way of getting into this, you should start afresh and consider building the regulation around volunteer attorneys or attorneys and other legal community volunteers, with the definition of "attorney" including all attorneys, whether they're in private practice, whether they work for the government, whether employed by a corporation, or employed by a nonprofit organization.

Likewise, other legal community volunteers could include law students, pre-admission law graduates, paralegals, and attorneys who are licensed in another state who volunteer as part of the program's

PAI effort.

The idea is that the states' unauthorized practice of law regulations ought to limit the scope of the volunteers under this reg, and not artificially limit it more than the state allows. The entire concept is to expand the use of volunteers from the legal profession in helping our client base.

Likewise, we think the definition of a private attorney should be broad enough to include attorneys who have little or no other income. That's the problem with the incubator issue. Attorneys who are just starting out in practice wouldn't meet the definition of a non-staff attorney, and we think that's just a crazy artifact that should be jettisoned in a revision to the rule.

I think that's what we've got on that.

PRESIDENT SANDMAN: Thank you, John.

If we could go to the next panelist addressing topic number 1. And if you could please pull the microphone in front of you and speak directly into it. Thank you.

MS. RISSER: Good afternoon. Good afternoon.

I'm Patricia Risser, and I am the PAI coordinator for Legal Action of Wisconsin. We're located in Wisconsin, clearly. We serve 39 counties. We are one of two LSC grantees in Wisconsin.

I thank you very much for the opportunity to participate in this activity as Part 1614 reaches nearly 30. It should be a mature rule. But 30 is not too late to make changes.

I'm very impressed with the thoughtfulness and the compassion with which my colleagues who are appearing here today and who've written to the Corporation on behalf of changing, updating 1614. All of the people here today and the people who participated in July demonstrate a huge commitment to serving the legal needs of poor people in this country. And everybody's looking to enhance the services, to increase the services.

So you'll have some difficult decisions ahead with that goal in mind because it seems to us who are doing this on a daily basis to be an intractable problem. But there are certainly improvements that can be made.

Unlike many of you, I spent most of my legal career in the private sector. I worked as a solo, I worked in small law firms, and I do appreciate the sacrifice that many of our volunteers invest in providing service. And it is a sacrifice. When you're a solo, it means there is no paycheck for the time you're spending.

But this is a great gig for me, and I've said it on many occasions, because what could a lawyer imagine that would be better to do than to assist other professionals doing good legal work for no other reason than to help somebody who really needs a lawyer?

The message I bring to you today is that it is important to increase the flexibility and creativity of all aspects of the PAI regulation. But it is equally important to maintain focus on what we were designed to do and what we do best, and in many cases, in many states, we are the only ones providing extended service to low-income individuals who need a lawyer with them before the agency, before the court, and to manage and to represent them with a party on the other side who is represented.

So that's a very important tenet from Legal Action of Wisconsin. That would be one of the things I would hope you'd take with you, is the value of representation. And if I didn't understand it when I arrived at Legal Services, I certainly understand it today. And I hope that some of the other issues will be evident in my comments.

I also want to encourage all of you -- the board, the staff, and my colleagues -- that it is still very important to reinforce, in the total legal community, the importance of promoting pro bono. While I see much more attention on pro bono than when I started at Legal Action nine years ago, there's a long way to go in my state, at least, in terms of the commitment to pro bono, to having the courts commit to pro bono in all its facets, not just providing a little bit of service to a lot of people, but toward making the real commitment, which is getting the case from the beginning to the end.

Legal Action supports increased flexibility, retaining the focus on providing services that, in many cases, LSC-funded programs are the only providers or

the primary providers in a state, providing extended service.

I certainly have seen the development and growth of many programs in my immediate community, in Milwaukee. But I work with my colleagues throughout our 39 counties, and they are seeing that courts are establishing clinics and bar associations and limited projects and that sort of thing. But there aren't any new legal services providers like us.

In the Milwaukee community, we have a legal aid society. Thankfully, we have kind of a counterpart. It does help us address conflicts. It helps us cover more of the waterfront. But I don't see any new programs coming in Wisconsin that are providing the type of service that we provide.

I want the LSC to consider flexibility on not just the issues that have been raised about 1614, but I'd also ask you to give serious consideration to adjusting the 12-1/2 percent requirement. This is a constant issue for programs like mine, especially in the recent years, where we have such fluctuations in funding, and not just the actual money but also how

that money comes to us and when we know about that money. The LSC has been kind of riding the waves.

We endorse the involvement of students and others. I've mentioned the paralegals. I've also mentioned the other people who provide support services to professionals. We have a particular need for more interpreters. We train our volunteers to work with interpreters, and they are willing to do so. We need to help with that as well.

But Wisconsin has very strict rules on student practice as well as very strict rules about the unauthorized practice of law. And so while the rule may change, many of the programs may not be able to adopt those benefits before their states also step up and make some important changes.

Thank you very much.

PRESIDENT SANDMAN: Thank you.

MR. O'BRIEN: Thanks very much. My name is Mark O'Brien, and I'm the executive director of Pro Bono Net, which is a national nonprofit that works to increase access to justice through promoting the adoption of innovative uses of technology and

collaboration within the nonprofit legal sector.

I'm grateful for the opportunity to present and speak to the board and to appear with my fellow panelists. I, like others, have been very impressed by the quality of thought that's gone into the remarks beforehand and what I'm hearing right now from fellow panelists.

I've also been really impressed by the work of the board over the last few years to really rethink how the Legal Services Corporation best meets its mission in changing times. And I think that the work and the inventiveness that we've seen in the report of the Pro Bono Task Force very much matches the board and staff of Legal Services Corporation's efforts around rethinking how technology plays a way in the delivery of legal services.

I've had the opportunity to work over a 20-year period now or more on both pro bono and technology with grantees of the Legal Services Corporation. The very first pro bono case I ever worked on was with South Brooklyn Legal Services around trade school fraud cases. That was when I was at a

private law firm. And now, in running Pro Bono Net, I have the opportunity to work with many of your grantees around how technology plays a role in their service delivery.

It's from those two sets of experiences that I want to just speak very briefly on this first question, and speak in particular on Pro Bono Net's experience over the year working with legal services grantee programs and other legal services providers around disaster legal assistance.

We've worked in the aftermath of 9/11 in New York, in the aftermath of Katrina with grantee programs, with programs affected by hurricanes in Texas, tornadoes in Oklahoma, and most recently around the aftermath of Superstorm Sandy.

We've found over the years that in times of exigent circumstances, when organizations need to look beyond their own individual capacity to deliver services but think about how their capacity fits into the broader capacity and needs of their community, that it very often becomes obvious why we need to take broader perspectives, not just in delivering services

in those times of exigent need, but really, we live in a time of exigent need every day for the communities that we're trying to serve.

So to think creatively about how we bring more resources to bear, and that includes students -- we've seen in the aftermath of Sandy, most recently, law students and pre-admission law graduates played critical roles in expanding the capacity of LSC providers in the affected communities by helping clients in intake, to help them with brief services, understanding how to navigate complex bureaucracies to achieve the benefits that they were entitled to.

Very importantly, in gathering facts and data from the communities, the Legal Services Corporation grantees in Queens, in Brooklyn, in Staten Island, we worked very closely with them in a project to do a canvassing of affected communities that drew on law student volunteers from throughout the New York City area that really, in the very early days after the storm, allowed the legal services program to really have feet on the ground in the communities, to engage in providing legal information in canvassing, but also

to collect information about what were the problems people had, what types of services they had applied for, where they were facing challenges in applying for services, so that those programs could be more responsive to the needs in their community.

That kind of work, I think, was as essential to enabling those programs to make the right decisions about where to not only put their pro bono resources but their own staff resources in most effectively meeting need. I think that work is work that should be undertaken by legal services programs, and only by drawing on law students and other volunteers in doing that can they effectively scale.

It's not just in times of disaster, but more generally, as Pro Bono Net operates Law Help Interactive one minute and a number of other technology-based systems.

So we've worked -- I'm co-teaching a course at Georgetown this spring where law students will be partnering with legal services providers to design and then create web applications that could be used to enhance the work of advocates in effectively screening

and having just-in-time knowledge resources that will allow them to carry out their work more effectively, and also can provide assistance and information directly to the public. I think all of those activities should be encouraged and supported within the PAI program.

One last comment, Jim, in terms of other types of professions to think about?

PRESIDENT SANDMAN: We don't have a hard red light.

MR. O'BRIEN: All right. I have a soft red light for now, but it's coming.

Other types of professions: When we think about what are the professions that go into the makings of any modern law practice, and thinking about the broader law practice management professions and what would be the opportunity for the Legal Services Corporation not only to handle individual cases but to think through what types of systems, at the LSC Tech Summit we talked at some degree about the importance of business process analysis so that we can craft service delivery models that best take advantage of and are

best structured to take advantage of the skills of lawyers doing the types of high-value work that Patricia spoke to, while taking advantage of other related professionals to help deliver some other technology-enabled services.

So I think that the time and expertise of those professions is very expensive, hard to come by. I think that if LSC and others could think about working with other associations that are promoting the notion of skilled, professional volunteerism, that expanding the PAI program to include those types of law practice management skills as well is something worth considering.

PRESIDENT SANDMAN: Thank you, Mark.

MR. UDELL: I'm David Udell. I run the National Center for Access to Justice. We are based at Cardozo Law School, where I also have an appointment as a visiting professor from practice. And I'm here to speak in support of the proposal to expand the definition, particularly with respect to law students, which is a subject I've focused on in my work over the last two years.

I have been working in a number of different ways to highlight the importance of relying on law students to help narrow the justice gap. Historically, law students have always volunteered in a variety of activities, but there hasn't been as much of an intentional focus on what they can do to help the legal services community and to help the courts in responding to the huge problem of millions of people annually proceeding without legal representation or, really, assistance from anyone in civil legal matters.

So it has seemed wise to me to spend some time trying to think more intentionally about how to address that phenomenon and how to help everyone, in legal education especially, but also in the legal services bar and in the courts, to refocus where students apply their energies.

In particular, I would note that I've worked closely with the New York Unified Court System over the last year or so in helping to understand and interpret its new 50-hour pro bono service requirement that's been established as a condition for admission to the New York Bar, and have been a contributing author to

the two reports of the task force to expand legal services in New York City with respect to the portions of those reports dealing with law student pro bono service.

I'm also working with CLEA, the Clinical Legal Education Association, to help draft a best practices guide for pro bono service by law students, which I hope will come out in the fall, as well as writing my own report on the subject.

I want to thank the board for this opportunity, and just to note that the idea of doing these workshops with members of the public and members of the community of justice system stakeholders I think is a wonderful thing, a tribute to the openness of the board.

I also want to underline the fact that I'm grateful to Mark Freedman for his graciousness throughout the comment period in making it such an easy and good thing to participate in.

I want to start by identifying a few principles that I think are important in the context of a discussion of law student pro bono, and I'll just

list these off.

The first is the importance of preserving quality, and in this regard I would note that while there is a phenomenon in this country of underemployed law graduates, that's a systemic phenomenon, and it is important for the legal services community to be alert to it.

But I don't think I would recommend using that phrase as a way of structuring the rule. At the end of the day, we want to be sure that the Legal Services Corporation and its grantees are relying on the best possible people.

Every unemployed law graduate is an underemployed law graduate. Every person who hasn't been hired yet is one. And I'm not sure the new terminology really is constructive in the context of what should particularly legal services programs do with respect to who they enlist as volunteers and who they enlist as employees.

It's important to assure the impact of law student pro bono. In the law school world and also in the courts, there's an increased attention to what are

students doing and how can we make sure that it's having an effect. In New York, the court is in the process of developing a better understanding of how to evaluate impact, and I think that's important from the legal services side as well.

PRESIDENT SANDMAN: David, we've had a request that if you could pull the microphone closer to you and speak directly into it. People on the webinar are having difficulty hearing.

MR. UDELL: I'll start over.

(Laughter.)

MR. UDELL: I hope this is better. Thank you for calling that to my attention.

So in addition to preserving quality and assuring impact, funding is important, obviously, and that's part of the central focus of today's talk. But I think there's a tendency in some quarters to, on the one hand, presume that pro bono is free, while on the other hand, what we're learning is that through a more intentional focus on pro bono by law students, there are many partners that also want to be involved.

I think that's important from the legal

services side to appreciate that while the schools themselves are pressed for funding, like everyone else in the larger community, they do have resources that can help, as do the courts. And so these partners are very important to making law student pro bono work for the legal services programs.

It's also important -- this is another principle -- to ensure flexibility for the programs. In saying that the definition of "attorney" or "private attorney" should be expanded to embrace law students and certain other categories of people.

Part of the idea really is to just assure that the programs have the room to choose where to spend their money and what to emphasize. And where there are instances in which they can have first-rate programs involving students and spend their money to supervise and administer those programs, that's quite important.

Then I would add that it's very important, as another principle, to enable the programs to work with the much larger community of other pro bono participants. Students need to be able to work effectively through legal services offices, but with

supervising pro bono attorneys from private firms, for example, and with organizations that are other nonprofits that engage in other categories of work. And often, those partnerships will be very important.

Of course, the most important underlying principle is that law student pro bono be something that truly does expand the capacity of the programs, as has been articulated earlier by other speakers today.

I want to spend a moment just saying, what can students do? There's so many things that they do. They talk with clients as part of intake. They analyze and develop facts. They interpret law and draft affirmative and responsive pleadings. In the right cases and instances, they can present oral argument, carry out legal research, interpret and explain legal documents, and educate the public in Know Your Rights trainings.

With my time limited, I'll just say that the 50-hour rule in New York has created a very unusual moment in which people in the law schools and in the courts are looking for ways to construct larger pro bono programs that enlist students in more deliberate

ways to tackle specific problems, to time things better, because every year there will be more students across the country seeking pro bono opportunities.

Then I would close just by saying thank you again for this opportunity. I look forward to the discussion period.

MR. O'BRIEN: Thank you.

MS. VAN DULMEN: Hi. I'm Jennifer van Dulmen, the managing attorney of the Access to Justice unit at Community Legal Aid in Akron, Ohio. But I'm here today on behalf of NAPBPro, the National Association of Pro Bono Professionals.

NAPBPro would like to thank LSC for the opportunity to be here today. We believe that pro bono has unlimited potential, and like the other panelists today, we are excited to see that pro bono has been unleashed and happy that LSC is taking a closer look.

We believe also that collaboration is the key, that pro bono partners mean partners, that pro bono needs to be empowered within the legal community to become an equal partner in the service delivery system with the staff-model programs.

But there are barriers that exist to unleashing pro bono. There are structural barriers, like sometimes excessive regulation and lack of resources. And there's also attitudinal barriers, such as pro bono in some programs, we believe a minority of programs, where our members have reported that pro bono is simply tolerated within their programs.

We would like to get past those barriers, and we believe that the Pro Bono Task Force report lays out a blueprint for that. And we've seen a lot of progress in the different national initiatives that we've been involved with over the last few years.

But like my other panelists, we also note that pro bono is not free. You must have resources and partners in order to have a successful pro bono program. There are some other elements that we believe lay out the foundations of what is a successful program.

First, we believe that we need to have full-time, dedicated, and skilled pro bono professionals. Those professionals help the pro bono programs be successful, and when they're understaffed,

it makes it much more difficult to do that.

Secondly, we believe that pro bono needs to be empowered within legal services programs. They need to have the opportunity to be involved in decisions that impact the delivery system, including intake and service delivery systems. In some programs, our members report that they have no ability to make decisions or be part of those decisions, and pro bono is more of a second thought.

Third, we believe that pro bono professionals need to be working in partnership with each other, have opportunities for collaboration, and that they need to be trained. Pro bono professionals are a small niche within the legal community.

Those of us who do pro bono realize that there just aren't that many of us in the nation. We need opportunities to work with others who have similar skill sets, and we can hear ideas and bounce those off of each other.

Fourth, we believe that pro bono also needs to have professional standards. We look to the ABA standards as a good starting ground because there are

many standards that are enunciated there. We want pro bono to be seen as just as professional as the staff program, and we hope that programs take that seriously and encourage their pro bono professionals to do that.

All that being said, we're in favor of all three of the recommendations today, and I'm specifically wanting to talk about the law students, deferred associates, and other professionals.

We hope that LSC will consider adopting this recommendation, with a couple of conditions. First, we would like LSC to consider a condition that would look to programs to demonstrate that they are in fact a program that meets the foundational elements of a strong pro bono program before expanding use within that particular program.

Again, the majority of our program and our members, we believe, we are in complete compliance with LSC regulations and have phenomenal programs and do everything they can to expand pro bono. But for those programs that are struggling, we would hope that they would focus on what their initial mission before allowing that mission to be expanded.

Secondly, we would like LSC to consider a cap on the percentage of PAI allocation that can be used towards these activities. What we mean by that is we believe that this is a very valuable activity, but similar to Ms. Risser -- I hope I pronounced your name correctly -- her position, we also believe that extended services is critical.

We need to see the impact of the work that is done, and we think that that can be done when there's equal balances. If you dilute the resources and allow everything to go towards -- all the allocation to go towards activities that may be more likely to produce a briefer service, then perhaps it makes it more difficult to focus those funds as well on expanding private attorney involvement.

The attorneys are the people who are likely to resolve issues with more of an impact, and that's probably a poor choice of words, to say it that way. Attorneys have a license to get into court, and there are matters in which attorneys must be present in order to preserve the legal rights of low-income people. That license is the opportunity for people to get into

court. And we need to have PAI allocation that supports attorneys as well as others.

That being said, we hope that LSC does not over-regulate the programs. And we are giving you a very challenging mission because we are telling you we believe that there are some things that need to be considered, and at the same time we're asking you to allow the regulations to be as flexible as possible and allow law students and others to participate and be able to build to the PAI grants.

One of our members noted that 89 percent of the law students who participated in their program later came back to volunteer in their program. It is very clear that law students can increase the capacity with programs, and we strongly encourage LSC to adopt this recommendation.

PRESIDENT SANDMAN: Thank you very much.

MS. SKILLITER: Good afternoon. My name is Melissa Skilliter, and I'm a pro bono coordinator with Ohio State Legal Services based in Columbus. And I also would like to thank you for the opportunity to speak with you today.

Generally, my program very broadly supports the proposed changes that have been laid out for consideration today. I would like to say with regard to expanding the definition of private attorneys specifically, we definitely support that. Ms. van Dulmen just mentioned that many student volunteers go on to be lifelong supporters of legal services, and we've found that to be the case as well.

One of the questions that came up in the session in Denver was what difference do the PAI regs make? Several of the presenters in that session said that they were going above and beyond, easily, that 12-1/2 percent, and they were continuing to engage in these other activities that weren't necessarily counting towards that PAI requirement. And I wanted to address that question.

There are going to be plenty of people that go beyond that 12-1/2 percent. But the reality is that in some programs and in some cases, those regs are going to make a determination on what projects are pursued and what projects are not. Time and money are scarce resources, particularly lately.

Our recommendation would be to try to keep the regulations broad enough so that a program can look for what's going to make the biggest impact for their clients and for their population, and pursue that in a way that they think is best in their circumstance.

I have a couple of examples the way, at least in my program, that it has played a role in my work. For example, there's a local paralegal association that in neighboring counties is doing a wills clinic, and in that situation, it's overseen by volunteer attorneys.

At this point, we have not been able to secure volunteer attorneys to oversee it, so for us it would not be a private attorney involvement project. And so at this point, we've not been able to dedicate the resources to it because we can't divert my time and attention from what I'm doing into a new project which would be, we believe, valuable for our clients. And that's one way in which the paralegals can be a necessary resource.

We also host a low-income taxpayer clinic, and one of the categories of volunteers that I urged you to consider in my comments were CPAs, licensed

accountants. A lot of our work with the low-income taxpayer clinic is in the administrative system before the IRS, and by and large, the accountants have a better idea of what they're doing in that seem than the licensed attorneys.

We do a lot of training. We do a lot of oversight. But if I had, in a perfect world, to pick between using a CPA and using an attorney, typically I'm going to lean towards a CPA. And of course, we make the best decision for our client at the time. It would be nice for the regs to give us the flexibility to choose the more qualified individual to help our client to do that and pursue that with the encouragement of the regs.

There are several other circumstances where this comes up. It's been said pro bono isn't free and that's certainly true, particularly students. It takes a lot of time and investment. And we believe that's a lot of good work that LSC could be part of and taking credit for and encouraging, and we would like to encourage you to do so. Thank you.

PRESIDENT SANDMAN: Thank you.

We now have 25 minutes for public comment and questions. I'd first like to call for public comment and ask if anyone who's participating in the webinar and would like to speak, if they would indicate by using the "Raise My Hand" feature. And we will unmute your phone and call on you.

We have a request to speak from Mary Ryan.

MS. RYAN: Good afternoon, Jim. Let me first say how grateful I am to be able to speak to you remotely like this. It's been a pleasure to be able to work with you.

Let me introduce myself. I'm speaking primarily in my capacity as chair of the American Bar Association's Pro Bono Committee, but I'm also very pleased to say that I was a member of the LSC Pro Bono Task Force and know how much time and effort, including by some of your panelists, went into the recommendations that you're considering.

I know my colleague, Lisa Wood, who is the chair of the Standing Committee on Legal Aid and Indigent Defendants, has already expressed the ABA's gratitude to the Legal Services Corporation for

reexamining this regulation and indicating our strong hope that the revisions will assist your programs and maximizing the use of PAI by giving them the flexibility that the specific questions we're addressing today reflect.

There are a couple of specific comments that I would make on this first topic, one in general to reiterate our written comments that we think that the private attorney involvement regulation, or whatever name it ends up going by, should include all members of the legal community, not necessarily expanding to include other professions, although as our last speaker just pointed out, contributions can be valuable from other professionals.

But we want to harness the power of the legal community, and that would include law students. It would include recent graduates who are not licensed. And it would include those attorneys practicing in states where they're not licensed but are authorized to practice under court or bar rules or perhaps might be providing assistance that doesn't constitute the practice of law, just as David Udell just spoke about,

some of the things that law students can do without being licensed such as interviewing clients or conducting factual investigations. Attorneys who may not be licensed to practice could also provide that kind of assistance.

I will have some comments on another topic or perhaps more down the road. But one thing I did want to comment on: I believe that the 12-1/2 percent measure that's reflected in the PAI rule is the result of a longstanding effort between the American Bar Association and LSC to try to enhance services to LSC's client community by fully engaging the bar and the legal community in a very robust fashion.

We hope that the LSC board will continue to appreciate the value of that by maintaining the 12-1/2 percent, but giving the programs the flexibility to enable them to feel that it's a benefit and not a burden in any way to do that.

So thank you for the opportunity to participate like this.

We have a question that's been submitted online by Julie Reiskin, who is not able to speak up.

But her question is, and I address this to the panel -- the question is: "For those of you who have raised issues about the 12-1/2 percent requirement, is your suggestion that there should be no percentage of basic field grant expenditure on pro bono? Or is it that it should be a percentage other than 12-1/2 percent? If you think it should be a percentage other than 12-1/2 percent, what do you think the right number should be?"

MS. RISSER: Since I'm the first one who brought this up, I guess I'll enter into the fray.

PRESIDENT SANDMAN: Could I ask --

MS. RISSER: And I am Pat Risser from Legal Action of Wisconsin.

PRESIDENT SANDMAN: Yes. Thank you.

MS. RISSER: Our program has struggled with the 12-1/2 percent throughout its history. We always spend that amount, but not without experiencing the impact throughout our program.

With that in mind, and particularly given the current vagaries, I'm going to call it, of the funding situation where we rely primarily on LSC funding but not exclusively -- we have other sources of funding

that have their own set of requirements -- the budget looks different from month to month based on what assumptions you make about future decision-making.

We would appreciate the opportunity, as an established program, to have a reasonable definition -- and I'm using the word "reasonable" as the definition -- for a program like ours that has a proven track record and meets many of the criteria, if not all of the criteria, that Ms. van Dulmen discussed.

PRESIDENT SANDMAN: I have a followup question on that. The current PAI rule has a procedure for a grantee to apply for a waiver of the PAI rule. Can you comment on your program's experience in contemplating the waiver application process as a way of dealing with the issues that you've identified?

MS. RISSER: From my perspective, the waiver permission can impose its own burdens. Once, during the time I've been there, we have requested a waiver, and the differential was, from my perspective, relatively small. I think it was about the 30,000 range, if I'm not mistaken.

But because our census adjustment and our

sequester adjustment and all those things are in play this year, we've already begun our discussions about requesting a waiver this year. I'm not sure that it's going to be essential. I think I'm going to know a little bit more in about a month because we have a fair amount of spending at the end of the year because of training and posting other activities.

But the waiver process takes a fair amount of time to work through for us. Maybe it can be moderated. Maybe that impact can be moderated a little bit. But those of us who have looked at the -- I mean, we certainly want to avoid it. It's kind of like, can you imagine, we're going to have to ask for a waiver this year?

We don't want to do it. So while it may provide the mechanism, it feels a little bit more -- it doesn't feel just flexible. It feels a little bit punitive, maybe a little bit excessive. But something on that order. Okay? An embarrassment, perhaps.

PRESIDENT SANDMAN: There's no one else on the webinar who's currently indicated that they wish to speak. So I'll ask now, if members of the board have

questions that they'd like to pose to the panel, to do so. If you could ask to be identified first so that we can take things up in order, that would be good.

Laurie, you had your hand up first. Laurie Mikva.

MS. MIKVA: My first question is actually a followup to that, which is how much will expanding what constitutes pro bono take care of the 12-1/2 percent?

MS. RISSER: That would be difficult for me to estimate for you because the flexibility is valuable in more ways than just meeting the 12-1/2 percent. It allows you to be more responsive, more flexible, more collaborative, all kinds of other things.

So when I speak to that point and encourage increased flexibility, it's more from that perspective than it is toward meeting the 12-1/2 percent, quite frankly. But it has the potential for refocusing how we meet the 12-1/2 percent.

I clearly ran out of time with my initial comments. I'm not going to use lots of time now to fill in. But the fact is that while we encourage the flexibility and the expansion, I'm not going to tell

you that we're going to rush into using lots of law students because we can't put them out there as advocates except in very limited cases.

My poll of my counterparts in the law schools -- we have two only in Wisconsin -- while they are encouraging pro bono activity and recognizing it and doing all kinds of other things, they aren't even close to requiring it, much less -- and I asked the question, how often the students participating in that are actually making use of the student practice rule in Wisconsin. And neither coordinator could remember a case in the last couple of years.

So getting students actually involved in being advocates, which is what our clients really need, is going to be limited, similar with our unauthorized practice of law. We've been working for two years in Wisconsin to try and get the state bar to petition the Supreme Court for a rule that will allow non-admitted, maybe recent law school graduates from another state -- we have a diploma privilege in Wisconsin. Anybody who graduates from either of our law schools is a member of the bar, is admitted to the bar automatically. We're

the only ones left.

I don't know how that impacts that. But the fact is that we still have rules about how non-admitted people who come into Wisconsin, how involved they can be. And at this point we're very reluctant, because of the definitions in our rules, to have non-admitted lawyers, either lawyers who've come into Wisconsin who haven't been admitted yet or lawyers who have gone inactive -- we're very reluctant to have them doing direct client service, meeting with clients, giving them advice, and that sort of thing. So I can't tell you that it's going to hugely expand what we are doing.

PRESIDENT SANDMAN: Yes, David Udell?

MR. UDELL: This is David Udell of the National Center for Access to Justice. I just wanted to add to this part of the conversation the idea that I believe was in the Pro Bono Task Force's report, which is to develop a grantmaking program that focuses on best practices in pro bono.

The sort of nightmare aspect of the 12-1/2 percent requirement is that it would direct spending on activities that are not worthwhile, whether by

attorneys or by students. And I think that trying to offer models that programs would want to replicate and feel that they have the capacity to replicate with partners in ways analogous to best practices would help move the conversation past, do we have to do it? Should it be required? And into, well, we want to do it because it does expand our capacity.

PRESIDENT SANDMAN: Yes, Jennifer?

MS. VAN DULMEN: I think that there's a tremendous capacity issue when you talk about law students. And to address your question, I understand why perhaps it's difficult in Wisconsin. But I think there are other states where the expansion of the pro bono regulation in this manner would allow more flexibility in billing.

As an example, my program -- and taking my NAPBPro hat off for a second -- my program works with law students with a pro bono bankruptcy program. We work with uncollectible clients who -- law students work directly with uncollectible clients to notify creditors that they're uncollectible to stop their harassment.

We have them working in will clinics. If I had the ability to utilize the funding for that in that way, I would also try to work towards developing a batch clinic for divorce cases. And I know the Dayton Lawyers Project also uses batch clinics for bankruptcies, and they could utilize law students to help with that.

Additionally, there is a program that I learned about at the Equal Justice Conference this year from our good friends up in Canada where law students are helping with screening and referral. And I think if you look at the numerous opportunities that we could use to expand -- really, some great ideas to expand pro bono, there's a lot of opportunities in different parts of the U.S. where perhaps law student regulations themselves -- excuse me, rules within the law school don't prohibit it where that would allow for increased flexibility in utilizing the PAI funds. Thank you.

PRESIDENT SANDMAN: Board member Julie Reiskin has raised her hand on the webinar. I think she may now be able to participate by audio. Julie, we've unmuted you, if you can use your phone.

MS. REISKIN: Okay. Great. Thank you. I totally agree with the need for extended services. And I understand with students, where there's a school year issue. But is there a reason why regular pro bono attorneys couldn't do or shouldn't do extended services work?

MS. RISSER: This is Patricia Risser of Legal Action. We certainly have lawyers doing extended service. That is the focus of our PAI efforts at Legal Action. Perhaps involved in your question is, can we get law students working with lawyers? And we have not had huge success with that.

We have tried to work with one of the law schools who want their law students working side by side with a lawyer; it's a great model. We have a tough time selling them a case and then selling them the additional responsibility of working with a law student.

It's not that we never do it. It's not that we don't try to do it. And in some cases, it works very well. But it's a tougher sell than I actually thought it would be. I thought it would be attractive

to volunteer lawyers.

MS. REISKIN: Thank you.

PRESIDENT SANDMAN: Charles Keckler has a question.

MR. KECKLER: David, did you want to go ahead and answer that?

MR. UDELL: If it's okay, I'll just make a very quick remark, which is that all lawyers were once law students. And I know that one of the programs profiled in the Pro Bono Task Force report is Southern Arizona Legal Aid, where they make a point of involving law students in their program, who eventually become lawyers, who then work with students who are in the same position they once were. And they found it to be a very successful model. And there are other models like that. I'll stop there.

MR. KECKLER: My question is whether the panelists see a distinction between two kinds of costs that come about with regard to underemployed lawyers, but also with students and pre-admission graduates, and that is payments to those lawyers in terms of low bono, in terms of judicare contract, or from the standpoint

of students, internships that are paid internships.

So there are those costs which, if they went to a private attorney as is currently defined, could come under their PAI costs. So there's that group of costs that's potentially out there. And then there's these other things which we've focused on, which is supervision -- that is, costs and accounting for the recipient itself in terms of training and supervising and keeping an eye on the students or the lawyers coming in.

I haven't decided certainly or have a firm set of beliefs about what the distinction is between those two sets of costs. But I think there seems to be one, and I wonder whether the panelists have that.

Just to expand a little bit on that, in terms of expanding the definition of private attorney, if you obviously have somebody who's a paid intern, they look like a very low-paid staff member. The distinctions become weaker there.

So I'm wondering about, is there a way for us or should we, as regulators, somehow distinguish between those two sets of costs, payments to the

volunteers or semi-volunteers and costs attributable to the grantee supervising those?

PRESIDENT SANDMAN: Jennifer?

MS. VAN DULMEN: Thank you. I do think that there is a difference between those costs, and I think that the difference is that if you had $10,000 -- that's just a random number -- to spend on pro bono, and in particular these types of things, if you look at the first definition where you're talking about contracts, low bono type of issues, you have a finite number of cases or matters that would go out under that type of a system because there is only $10,000 and it's contracted out, as opposed to the second way to look at it.

If you are training and investing in your law students, that could come back to you in multiple different ways over the years because you're investing in them and they'll hopefully return the investment. And I think many of us would agree that law students in fact do return on the investment.

So I wouldn't necessarily direct LSC in particular. But I do think that you could be aware

that there's a difference in the way that you're investing that money.

PRESIDENT SANDMAN: John Whitfield?

MR. WHITFIELD: John Whitfield, Blue Ridge Legal Services, responding to that question.

I believe that LSC should continue to allow both kinds of cost under the PAI reg. When it was first promulgated, LSC recognized that in certain situations with areas of law or geographical areas, it might be impractical or impossible or inefficient to try to run a pro bono program, and that judicare might be the most reasonable approach to involving the private bar.

I think that still is true in some situations today. And when we're trying to provide the most flexibility for programs to maximize the use of the private bar in meeting the overwhelming needs of our clients, we shouldn't consider now restricting that as an option.

PRESIDENT SANDMAN: Mark O'Brien?

MR. O'BRIEN: Yes. I just wanted to follow up briefly on John Whitfield's point. Again, drawing on

recent experience in the aftermath of Sandy, one of the critical needs in the communities, including client-eligible members of the community, was around insurance.

It was extremely difficult to find private law firms in the New York area that could take on -- that weren't conflicted out on insurance matters. And a huge amount of effort went into trying to recruit and figure out what kind of training and support to give to private attorneys.

I think that was work well worth doing, and a certain number of policyholder firms were able to be brought in and help on those cases. But I wondered for a while whether it wouldn't have been better to have set up a low fee referral model to lawyers who could handle those cases on a reduced fee-paying basis, might not have been more effective in addressing the client needs. So again, I think that there should be flexibility on that.

PRESIDENT SANDMAN: David?

MR. UDELL: David Udell of the National Center for Access to Justice. I just want to say that I

appreciate the question because as I read through the notices issued by LSC, it is an issue that I've found blurry in the presentation, I guess, in what's otherwise a very clear presentation throughout.

Particularly the reference to an incubator program, I think, was offered as an example in which money was being spent to run the incubator program, at least as I understand -- I may have it wrong -- as contrasted with money being spent on staff within the legal services program to help provide supervision to a program being funded elsewhere.

So I just found it very confusing. And I guess I have the disadvantage, or privilege -- I'm not sure what it is -- but of not struggling with this on a daily basis as someone who runs a legal services program. So I hesitate to offer too sharp an opinion on what programs should do.

But I would say that from where I sit, it looks to me as though, as my colleague to the left had mentioned, that spending the money on the supervision and the administration would seem to go further than paying the direct service. So I'd vote to do it that

way.

That is in some tension with preserving maximum flexibility for the program, such as I think is the countervailing value, and is also very important. I'll stop there.

MS. VAN DULMEN: I'm sorry. Just as a point of clarification -- Jennifer van Dulmen from NAPBPro -- I just want to be clear that I wasn't necessarily advocating for one or the other, just simply that there is a difference in the way that you would allocate that money because, as pointed out, there are different needs that come with running a pro bono program, and that flexibility is important.

But as far as what your return for your investment is, there's a difference in the way to look at the way that that money is allocated. Just simply the flexibility may need to be there in emergency or exigent circumstances.

MR. UDELL: This is David Udell. If I could just respond to that and say apology for any mischaracterization on the remark. I do think that hereto, best practices can help programs in the longer

run understand the ways that they can spend their PAI allocation in order to have the greatest impact.

MR. KECKLER: Yes. Thank you for all those comments which are going in there. I just wanted to clarify that my intention wasn't to say that we shouldn't stop paying lawyers, actual private attorneys under the current definition, for their expertise.

What I was a little bit concerned about or listening for opinions on is the idea of essentially using PAI money to pay people that don't have any other substantial source of private income. I don't have a particular concern about eliciting low bono and fees to those who do and who satisfy our current regulations.

But we could expand the regulations in lots of different ways. But two ways that we can expand it from a private attorney rule is we can change what counts as -- we can supervise supervision of private attorneys and others, or we can talk about changing the definition of private attorney to include member of a legal community. There's some different ways that we can go, and so I'm interested in ideas along those lines. Thanks.

PRESIDENT SANDMAN: I have a followup question on the supervision issue. Several of you have emphasized the importance of ensuring quality and impact in the work that might be done by law students or others who not only are not yet members of the bar but may not have graduated from law school.

What are your thoughts on whether and to what extent LSC should, by regulation, address a supervision requirement for people who fall into that category?

MS. SKILLITER: This is Melissa Skilliter with Ohio State Legal Services Association. In my opinion, it may be worth some consideration by LSC. But the programs are already licensed attorneys. We already have an obligation to supervise students if we're going to be giving them work.

We already have, by nature of being attorneys, an obligation to supervise that legal work. So it may be somewhat redundant to invest LSC resources into that effort where there's already an existing legal and ethical obligation to do so.

MR. WHITFIELD: This is John Whitfield. And I'll just concur in everything she just said.

III. TOPIC 2

PRESIDENT SANDMAN: Thank you. That exhausts our allotted time on this subject, so we're going to move on to topic 2. And on topic 2 we have four panel members who've indicated that they wish to speak -- John Whitfield, Jennifer van Dulmen, Pat Risser, and Mark O'Brien.

So we'll mix things up a little this time, again starting with six-minute opening statements. And we'll start with Jennifer.

MS. VAN DULMEN: Again, I'm Jennifer van Dulmen on behalf of the National Association of Pro Bono Professionals. We are in favor of expanding the regulations to allow for screening, advice, and referral. And I think the regulations, or at least this topic, could encompass a number of different things.

I understand that specifically it's addressing the types of programs, and that the advisory opinions as well as, I would presume, additional screening, advice, and referral types of programs.

Given that it could be an expansive type of

regulation change, I think we, as NAPBPro, have suggested that there be conditions, as we discussed before. We would ask that LSC consider conditions that would first look at the program to ensure that they are meeting the fundamental elements that we had outlined earlier, as well as consider a cap for these types of expenses, due to the fact that these types of activities are more likely to result in a brief service type of activity, and NAPBPro strongly encourages not only brief service but also recognizes the need for extended services representation.

A third condition, if you would say it as that, that we would ask that LSC consider is that LSC consider not allowing funds to be used as general screening. The concern that we have is if a program were to, for example, say, "Oh, great. This is an expanded use of the funds, and now I can use this for my basic eligibility screening," we would hope that the PAI funds that are otherwise designated to encourage private attorney involvement wouldn't be diluted to the extent that it would go to that general eligibility screening.

Perhaps that's not at all considered by LSC. It's simply a matter of we want to ensure that that is a protected type of funding, that the funding goes to encourage private attorney involvement rather than to a standard type of eligibility screening.

Again, we challenge LSC, given these constrictions we have proposed, to keep the regulations as flexible as possible. And we know that we're sort of giving you a message of, we hope that you will keep these ideals in mind, which may restrict, as well as asking you to be flexible.

So we understand we're proposing a difficult task. But we think that there would be a way to do both things, both keep the regulations flexible as well as protect money that would otherwise be able to go to these programs.

Screening advice and referral programs, we think, could increase pro bono in a number of different ways. First of all, it increases creativity within programs, which we think is extremely important that pro bono and staff model programs have the flexibility to be creative. Nobody knows how to spend their funds

better than the program themselves, and having that flexibility would allow them to do that.

It would also allow for a greater variety of opportunities for pro bono attorneys who may be interested or law students or others may be engaged in this type of work. And it can result in a greater capacity for the programs.

Some concerns, of course, as we mentioned, are the potential for abuse, which we would ask LSC to be concerned about that, as well as perhaps a shift in attitudes more towards brief services and less towards extended service type of litigation or impact type of litigation.

That was one of the things that our members had concerns about with regard to the potential of this program, is that the funds from their PAI allocation may be shifted from the current types of programs that are focused on extended service more towards screening, advice, or referral programs which may be more likely to result in a brief service type of program.

That would be all that we have to say. But thank you for the opportunity again to comment.

PRESIDENT SANDMAN: Thank you.

Mark O'Brien?

MR. O'BRIEN: Thanks. I'd like to just comment briefly on this proposed change, which I would also recommend that grantees be allowed to use their PAI resources in this way, and again go back to thinking about what is the most effective way to structure how legal services programs and where legal services programs are providing their services.

So thinking about the flexibility to partner with other community access organizations and to embed legal services in other institutions that are serving, whether they could include social services agencies, they could include libraries, they could include the courts.

The ability to be able to provide these kinds of brief advice and referrals as a component of embedding legal services where they need to be delivered, I think, is an important principle.

Again, I think this is an area where I'd borrow from, now that he's departed, David Udell's advice that rather than thinking about overly

regulating here, this is a place where the power to influence behavior through the development of best practices and the promotion of successful models will perhaps be more effective than thinking about regulatory enforcement.

PRESIDENT SANDMAN: Thank you.

Patricia Risser?

MS. RISSER: Thank you. The Pro Bono Task Force report, in its entirety, talked more and more about collaborating and cooperating and being part of the total picture. For a long time, we were the picture.

The picture has changed considerably over the last 30 years. There are more players. As I commented earlier, we still are the central providers of extended service. But I think it's important for us to be on the team, to participate; and for us to collaborate and cooperate, it is essential that we communicate and support, meaning encourage, help where we've got the unique resources to help or the expertise to help, but we should be involved in it. I encourage the LSC to adopt this expansion as well.

Screening is essential to any legal services program, and it's certainly essential to the cooperative atmosphere that's discussed in the task force report. So we think, we believe, that it's valuable to support screening activities.

We engage in screening in our firms. In our Milwaukee office, the services are diverse enough that we do screening in different subject areas. The Volunteer Lawyers Project has its own screening because we handle cases that aren't handled in-house by staff attorneys.

But screening is really at the heart of the matter of getting people to the service that they need. And our ability to support them should be -- not only our ability should be recognized, but we should be encouraged to participate in that.

To give you an example, I make a comment in my submission about how other programs feel about screening for our cases, for instance. We don't ask other people to do that, but because of the unique role we play in the communities we serve, the others are always interested in being able to screen and refer to

us.

An example: In Milwaukee, for the Milwaukee area, we know that if we were involved in a deeper way than we currently are -- we kind of are on the outside of the issue with the Milwaukee Justice Center. This is the Milwaukee Bar Association, the Clerk of Courts, and Marquette Law School banding together to provide service in the courthouse.

They know, all of those organizations know, our criteria in a general way, our criteria for accepting cases and clients. Do they want to screen? Do they want to do the eligibility screening? No, they don't. They don't largely because they're in the courthouse. They're viewed as a public service. While we're a public service also, our continued existence depends on screening and on doing eligibility screening.

So there are going to be some natural -- not barriers but natural cautions about participating with others in terms of screening and that sort of thing. But we certainly ought to be not only sharing with other providers information about our program, how

people can become eligible for our program, but also helping educate them about the issues that our clients are facing.

We are looked to in Wisconsin as the primary source of information about most of the issues that we handle. We're the experts on defending tenants in landlord/tenant disputes. We're the experts on public benefits. It's where everybody wants to come to get the information that they need to help direct people to the correct services. So there's a caution with that.

We work with them because that's an important part of what we do. And yet at the same time, as the volunteer coordinator, I have to recognize that I've seen some of my best volunteers coopted by these other programs. I'm a kid of the Sixties, so coopt is a big word.

But we've lost some volunteers, a measurable number of volunteers, to the organizations that are providing briefer service because -- I recognize it -- it's easier.

So we have this kind of push/pull. We want to collaborate. We want to be part of the solution.

Another Sixties statement. We want to be part of the solution, and yet we recognize that some of our volunteers, who have taken advantage of the training we give and the support we give, are not working for us any more. They're working for them.

But overall, cooperation wins the day in the program that I operate. Thank you.

PRESIDENT SANDMAN: Thank you.

John Whitfield?

MR. WHITFIELD: NLADA certainly supports the concept that grantees should be allowed to spend PAI resources to enhance their screening, advice, and referral programs. We believe that the test ought to be whether the engagement of the private attorney, or volunteer attorney or outside attorney, increases the resources available to the client community and/or improves the quality of services to the client community. The key is whether they're expanded resources to the community.

We had been given a specific question regarding Advisory Opinion 2009-1001, and we believe that a revised rule ought to overturn the result in

that opinion. In that opinion, three LSC grantees had a contract with a non-LSC-funded nonprofit law firm to provide specialized hotline intake services in 10,000 cases a year.

The opinion implicitly recognized that this contract would be permissible under the PAI reg if the firm were a for-profit firm. But because it was nonprofit, LSC directed its grantees not to report 10,000 LSC-eligible cases per year.

We think that was unnecessarily restrictive, and we think that a revised reg ought to allow those cases to be included and that arrangement to be permissible under the PAI reg. We think LSC should focus on the expansion of services to clients, not the legal structure of the volunteer or judicare attorneys.

As we've talked about earlier, we think the whole definition of private attorney needs to be revisited so that a volunteer or outside attorney could be someone who works for a government, someone who works with in-house counsel for a corporation, attorneys employed by law schools or by bar associations, or even by other nonprofits or public

interest law firms.

For instance, you could have staff attorneys who work for an ACLU organization. And if we can collaborate with them and bring their resources to bear on our clients' issues when they weren't previously focusing on our clients' issues, then that ought to be included under the PAI rule, we believe.

I guess, going down that continuum, at the very far extreme would be if you have another legal aid society who's doing exactly what you're doing but they're not getting LSC funds. If we collaborate with them, should that fall under the PAI reg?

Under the test that we're proposing, whether it expands the resources to the community, if that collaboration does not do so or result in additional clients being served, then no.

But if it's a public interest firm that's not exclusively engaged in the same mission that we're about, and if we can collaborate with them and bring their resources to bear in helping low-income clients' civil needs, I think that should be included.

PRESIDENT SANDMAN: Thank you. That concludes

the panelist presentations. We'll now check to see whether anyone participating in the webinar has asked to be recognized.

We do have a comment from Ken Penokie that he typed into the question box. His comment is:

"One issue that comes up in these times of shrinking budgets involves paid PAI attorneys. A worst case scenario, which is a real possibility, is a closing of an office that covers several counties. An option to continue service to those counties is by hiring a paid PAI attorney. The most logical and trained attorney to contract with would be the attorney who was laid off due to an office closing.

"Currently, that attorney could not be hired because of the restrictions on hiring past employees. Perhaps this rule could be tweaked to allow the hiring of a laid-off staff attorney to cover territory from a closed office."

Do any panel members have a comment on that?

MR. WHITFIELD: John Whitfield. That makes perfect sense to me. I think that that's an historical artifact in the old reg that we could -- in the

definition of staff attorney and private attorney that we could do away with.

PRESIDENT SANDMAN: Virginia Martin has asked to be recognized. We'll unmute you, Virginia. Please go ahead and make your comment.

MS. MARTIN: Thank you. My name is Ginny Martin, and I am director of the New Hampshire Bar's legal services programs. I'm also past president of NAPBPro. I served on the LSC Pro Bono Task Force as well. I appreciate this opportunity to make some comments.

One of the things that was mentioned earlier by one of the presenters is the push/pull, and there is a push/pull between the advice/brief services, which may be easier for volunteers to provide, and extended representation.

I think we need to aim for the highest and best use of resources, which includes volunteers. Sometimes we find ourselves in a quandary. We're a sub-grantee of the -- we initiate the PAI arms by the LSC grantees, which is a hotline.

We find ourselves in a quandary because the

hotline wants volunteer attorneys to handle family law calls provided by it, yet those cases are going to make their way to us to place with family law pro bono volunteers. So it's a difficult and delicate balance to try to strike.

If we need and anticipate volunteers, pro bono volunteers, to be the recipients of referrals, we have to be a little cautious -- not to say there's not a place for volunteers and providing it via hotlines or whatever other mechanisms there might be.

We just need to recognize, okay, when there's the need for extended services -- and we do most of the extended family law as well as private evictions and so on -- who's going to do that work? Thank you.

PRESIDENT SANDMAN: Mary Ryan has asked to be recognized. Mary, we're unmuting you.

MS. RYAN: Wow, that's exciting. There's been a reference this afternoon with regard to the position of NAPBPro. And one thing that, on behalf of our ABA Pro Bono Committee, we wanted to clarify, that while we very much appreciate NAPBPro's emphasis on the pro bono standards, and indeed, Ginny Martin and others played a

significant role in developing the standards, and we do promote the use of those standards by programs to understand and implement best practices, we think it's very important that the programs be given flexibility in implementing them.

We say in the introduction to the standards that the standards are intended to serve solely as guidelines and are not intended to create any mandatory requirements or minimum standards for performance.

So again, while they may very well and hopefully will be a useful resource for any of the LSC programs, we would tend to discourage their use as some kind of requirement or threshold either to qualify for PAI generally or to be allowed to use resources, such as law students or pre-admission law grads. Thank you.

PRESIDENT SANDMAN: Do the board members participating have any questions?

MR. KECKLER: I have a question about whether -- well, one of the concerns about using PAI funds for screening and referral services is, as I understand it, our inability to track fully what happens post-referral so that we can understand the nature of -- I guess

there's a compliance issue with regard to whether it fits our definitions under 1614. But then there's this broader policy concern about what the impact is of the PAI funds for these services.

Are there any thoughts on the panel about some ways that -- we talked about this at the last workshop a little bit about trying to track the results of referrals, and are certainly open to any thoughts on that.

But alternatively, or in addition, the idea of setting up some standards for the referral systems such that a referral system that satisfies certain conditions or certain standards in terms of -- it's discussed about allocating clients to lawyers with the proper expertise, and having standards built into those services.

So either tracking them on the back end or setting up standards on the front end in order to allay some of the concerns that have gone on prior -- are there any thoughts with regard to that?

MR. WHITFIELD: This is John Whitfield. With regard to tracking, certainly for those referrals under

the PAI reg that are counted as cases, LSC grantees are tracking those cases and reporting how the case was closed and doing oversight on those cases.

So the question is, for those non-case matters or other services that might be included under PAI activities, whether we would want to try to track them. And we may throw the baby out with the bath water if we try to do that.

From my own personal experience over years of working with PAI attorneys, they bridle at the reporting requirements we already ask them to cooperate with us on. So the more reporting we require of them, the less likely they will be to want to volunteer for us.

So, once again, if we want to expand the capacity by imposing additional reporting requirements on them, we may be shooting ourselves in the foot.

MS. VAN DULMEN: I would agree with that. Jennifer van Dulmen from NAPBPro. I would agree with your analysis of that situation. It is very difficult to get volunteers to report. And I think, actually, the pro bono system has done remarkable growth in the

last couple of years in regards to its ability to measure the outcomes.

You asked at the very beginning of our conversation today if -- let me get the exact question that you had asked -- how we could show the market value of the contributions, whether they exceed our investment.

I think that many pro bono programs have grown leaps and bounds in our ability to do that already with our current mechanisms. As an example, I can measure that my pro bono program had approximately $2 million worth of donated services last year.

I might not have been able to as easily measure that a few years ago, but more importantly, I'm able to better measure the outcome of the work that my volunteer attorneys have done. I know that that contribution of what they have been able to accomplish on my clients' behalf exceeds the amount that they have donated.

I didn't know that a couple years ago, and that's because we have -- and been encouraged to and been talking about and shown as best practices that

evaluating those outcomes are important.

I think the current mechanisms that we have to do so are not only outlined in the pro bono standards that the ABA has published, but also have been incorporated in many programs' current ability to track those cases, and those mechanisms exist already. I don't know that we need additional requirements to do so.

PRESIDENT SANDMAN: Laurie Mikva?

MS. MIKVA: Thank you. This actually is probably a question for you, President Sandman, which is the National Public Interest Foundation grant? Is that the one looking at outcome measures?

PRESIDENT SANDMAN: The Public Welfare Foundation grant, yes.

MS. MIKVA: Thank you. And is it looking at measuring outcomes in the pro bono context?

PRESIDENT SANDMAN: That hasn't been carved out specifically as an area to be looked at. But I think it's within the scope of client service that we will be looking at, yes.

Yes, Melissa?

MS. SKILLITER: This is Melissa Skilliter, Ohio State Legal Services Association. And I had some followup on Mr. Keckler's question.

I wanted to reiterate what Mr. Whitfield said about drawing a distinction, perhaps, between what's reported as an LSC case and what might be a different activity either under another service or another matter where I agree with Ms. van Dulmen that the operation that we have in place for cases is already sufficient.

But there are going to be situations, particularly with like these referral programs, where a referral program is an additional resource that we could operate if we didn't have the reporting requirements. And it's not a choice between a referral system with all of those followup mechanisms and all of that reporting; sometimes that's just not feasible, to do it and fulfill the LSC guidelines.

The question is going to be whether you can operate the referral system in addition to your regular case activities. And it's going to be an additional system that you might do as a matter or another service as opposed to operating on the same type of service

level that you would do as a case under the LSC regs. Thanks.

PRESIDENT SANDMAN: Mark O'Brien?

MR. O'BRIEN: Yes. I just wanted to make the observation that to the extent that programs are able to invest in the infrastructure required to do effective screening and referral, as with all of their work, there may in fact be built into the systems that would be developed new mechanisms for tracking the outcomes and make it easier for pro bono attorneys or people who took even brief service referrals to report back in some qualitative way.

So again, I don't think it's a question of setting up a new regulatory standard, but I think promoting best practices, and again, going back to my comment earlier about thinking about how would we engage other professionals beyond simply lawyers in thinking about the design of these systems and what the incentives are and ways to incentivize cooperation from folks who are taking our referrals. I think there's tremendous opportunities.

PRESIDENT SANDMAN: I have a question. Some

of the comments have either implicitly or explicitly expressed a preference for extended service over brief service. They seem to assume that extended service is necessarily better in this context.

My question is, why shouldn't LSC defer to the best judgment of local programs on that, to make the decision based on their local needs, the priorities they've established, and how they fit into the overall legal services environment in which they operate?

MR. WHITFIELD: This is John Whitfield, and I think LSC certainly should defer to the local programs and whether they believe in a particular area or particular kind of case, particular client, whether a brief service is desirable versus extended representation.

In an ideal situation with full resources, we would want to be able to provide every client with every need they had, whether it was brief service or simply advice. In many cases, advice or brief services are underserved clients; in other cases, that's exactly what they were seeking.

But under the concept of providing the program

and their potential volunteers and collaborators with the greatest flexibility to maximize the resources available to help our clients, allowing us to have that flexibility to choose in different situations whether a brief service program is a great thing if it brings in new resources, it should be left to the programs to do as they manage their resources.

PRESIDENT SANDMAN: I'd like to ask for some help in addressing one of the supplemental questions that we submitted to you, the question about alienage screening in particular.

There are some compliance issues here that I think underlie the concerns that LSC has expressed in the past on the issue that we've been discussing. For those who don't have it handy, I will read the question.

"Alienage screening is a particular concern," it says, "because the alienage restriction applies to all funding sources for LSC grantees. Can you suggest how to address alienage screening if LSC reconsiders the full screening requirement of OLA Legal Opinion EX-2008-1001 in clinics for which LSC grantees provide

organizational and technical support?" John?

MR. WHITFIELD: This is John Whitfield. Jim, I think that really goes almost to the third topic, to some extent. But I think the key is, in my view and in NLADA's view, that LSC grantees provide a range of services to our clients, and they're all important.

Some of them are cases, and then some of them LSC also promotes and encourages to do other services that aren't strictly reportable cases under the CSR handbook, and that both of those are valuable assistance to our clients, legal information versus representation or advice.

The same thing ought to hold true in PAI activities. That same full range ought to be allowed. So we may involve some PAI activity that has reportable cases and comply with every aspect of the CSR handbook, and they are reported as cases to LSC.

But there may be other services, other activities, that should be allowed, we believe, under the PAI involvement rule where you don't necessarily have all of that screening or that case oversight, yet the purpose, the intended target, are eligible clients.

And if, incidentally, and ineligible client benefits from that, that should not mean that the program is not allowed.

PRESIDENT SANDMAN: Mark O'Brien?

MR. O'BRIEN: Jim, I would just comment to agree with John on this. I think it's very important. I think the regulations around alienage are valid and important ones to consider.

But I think we also have to consider situations -- and again, I think of the disaster legal services provision -- where an over-emphasis on those types of strict regulations can actually impede the ability of LSC programs from putting themselves in a position where they can help eligible clients because they're more worried about the possibility of a service of value being delivered to someone who is not eligible, that they would actually refuse to go into a situation that could actually keep ten times as many eligible clients from receiving their services.

I think that again, the point about the ability to deliver services in integrated service models -- which is what we're going to get into, I

guess, in the last part more -- I think that there are in most situations LSC programs, at least in the jurisdictions that I've worked in, are very careful to try and bring in partners who would be able to better serve the needs of those clients for a full range of representation.

So I think they are careful to try and put themselves in a position where they're not taking on sole responsibility for ineligible client groups.

PRESIDENT SANDMAN: Thank you.

We've been going for about two hours now. I'd like to give our court reporter, our panelists, and our board members a brief break. We'll take a five-minute recess. For those of you who are on the phone, please stay on the line. For those of you who leave the room, please be back in five minutes. Thank you.

(A brief recess was taken.)

IV. TOPIC 3

PRESIDENT SANDMAN: We're ready to resume, please. We'll now move to topic number 3. I'll read topic number 3.

It is task force recommendation 2(c). 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 to count for PAI requirements.

We have five panelists who've asked to be heard on that, everyone except David Udell. And we will start with John Whitfield.

MR. WHITFIELD: John Whitfield with Blue Ridge Legal Services, speaking on behalf of the National Legal Aid and Defender Association.

Yes. We think absolutely that LSC should reexamine this rule that mandates adherence to the CSR handbook for matters to be counted towards PAI requirements. As I'd alluded to earlier, LSC currently allows grantees to do cases and other services, or used to be called other matters.

Other matters include such things as community legal education, other forms of providing legal information to our clients or groups, and those are not counted as cases but they are absolutely legitimate activities with LSC funds.

By the same token, it ought to hold true for

PAI activities as well. There's nothing that should mandate that a PAI activity has to be a case. There are lots of ways of involving the private bar, the legal profession, as volunteers in ways that can assist our clients with their legal problems without that activity necessarily being the case.

There have been instances where there are advice clinics that private firms or private bars or private attorneys are operating in a situation, either in a courthouse or elsewise, where they can't be screened conveniently. Yet it's providing an immense service to our client population. And if there's a way we can leverage that and cause those activities to happen, I think that's a good thing and LSC ought to encourage it, not impede it.

Yes, it's true that we won't know necessarily that every client, every person assisted that way would be an eligible client. But I think the test ought to be if the activity is designed and targeted to benefit the client base who is eligible. Then, if an incidentally non-eligible person is also benefitted, then that should not mean that it's an ineligible

activity.

I'll give you an example. Right now, LSC through its TIG grants in every state has LSC grantees posting legal information on the internet, telling people all kind of information about legal problems affecting our client population -- your rights as a tenant, how to avoid eviction, what to do if the landlord is trying to evict you, the eviction process.

Now, certainly lots of our clients benefit from that. We have no way of knowing if a landlord also doesn't read that and says, "Oh, this is how it's done," and that's not an intended beneficiary, and he's certainly not an eligible client. But it's still, I believe, a permissible LSC activity.

Now, you could say -- well, let's do another example. On one extreme, you post information on how to file and waive your filing fees due to your poverty. By definition, only going to low-income people; it seems like that would be a safe one. On the other hand, the other extreme would be your rights as an undocumented alien. That would probably fall outside the pale pretty easily.

So the subject matter sort of defines whether it's something within the scope of helping our clients, designed to help our client base or not, eligible clients.

If you were concerned that that website -- that someone who's not eligible, maybe someone who's not documented, might open that website and read information there, you could say, well, in that case we want you to screen everybody that uses that website.

Therefore, you want to put a password on that website, and anybody who wants to access that website has to call your office, go through intake, be screened, do the citizen attestation, and then you give them the password, and then they can go to the website and access that legal information you've posted there.

It's doable. But you would completely defeat the purpose of having those websites, which is to easily, conveniently distribute information to as many people as you can as easily and effectively as possible. You would defeat that by putting that password on there.

By analogy, the same thing would hold true at

PAI activities. By requiring any PAI activity to go through the CSR handbook, you're basically saying, we want a password on the website.

When you have all these PAI attorneys, firms, bar associations who want to help our clients, who are engaging in activities that are designed to help our client population, and we want to support that and want to encourage that and I think you do, too, don't require the password on the website by requiring that every person who benefits from it be screened and found eligible. If incidentally, once, someone is found not eligible, don't let that kill the program. Thank you.

PRESIDENT SANDMAN: Thank you.

Patricia?

MS. RISSER: Thank you. This remains the appropriate time to reexamine case handling requirements as they are applied to the private attorney involvement rule and to determine which of those requirements are really the essentials. And I recognize that alienage is probably at the top of the list. It may even exceed the income qualification. And I think it's also probably one of the most

difficult things to deal with.

Yet I would tell you that activities that screen and refer, we're doing it in-house. We're talking to -- and maybe before we get all the screening done, people may have actually learned something about the process of unemployment compensation claims or how to file a small claims action because we're trying to screen them to find out if they're even appropriate callers, much less eligible callers.

But providing support to the activities that do serve people who are not screened -- and that's been a lot of my conversation today, is talking about supporting those activities, not providing the screening but supporting those who do screen, so that when we invest money in training manuals, and we're the primary educator in our state for poverty law issues, that we aren't just providing it to the volunteer lawyers who are going to handle our eligible clients who have been screened according to our standards.

But we also want to partner up in the legal services community so that the lawyers from the AIDS resource center and the domestic abuse programs also

have an opportunity to take advantage of that training.

So again, our program has settled it out for what we do with our clients. I describe in my written submission the clinics that we use not just to screen, and we've already found people eligible before they come into our office, but our volunteers want us to develop the case to some extent. We use volunteer lawyers to do that.

But not all of these programs are going to invest that kind of effort. They're going to screen. They're going to refer. We want them making the best decisions about that. We want to be able to support them and count that toward our PAI investment in growing pro bono.

Let me see if there's some other points that I want to hit that are not in my writing. And I think I've addressed most of that. Do you intend to have a separate discussion of 2008-1001, or would you like me to comment on that now?

PRESIDENT SANDMAN: You can comment on that now. Thank you.

MS. RISSER: Okay. The effect of that ruling

actually had a chilling effect on two very important projects that we had spent some years working on. My predecessor, so going back more than ten years ago, had been very involved in Milwaukee County in established the first self-help clinic.

We brought in the child support agency. We brought in the Clerk of Court. We got the judges on line. And there was no interest on the part of anybody other than us in screening these people for income or whether they were citizens or not. But we were definitely the lead in getting this project off the ground.

We continued to provide support services, training, scheduling, and the infrastructure for a project like that. And many of our lawyers spent their non-work time working in that noontime clinic.

The effect of this rule was to stop that work. Fortunately for the community, somebody else was able to step in. The Milwaukee Bar Association stepped in. But it took them quite a while. It took a couple of years for them to shake it out and get it operating the way they have it now.

In another area, in Northwestern Wisconsin -- actually, it's north central, but in Milwaukee we think of it as north -- our Lacrosse service area, there's a veterans home in a neighboring county and we'd been very involved in going to the homeless center that we established near the VA hospital. We had several volunteer lawyers who were vets who were very interested in that, and so they wanted to take on responsibility for that.

But they didn't want to be screening people. They didn't want to have to disqualify them or say, "I can't serve you because." They're standing here. They've come in for that Wednesday afternoon or that Thursday clinic. We don't know exactly where they'd come from, but they were all homeless. And it put a chilling effect on that clinic, where they had to kind of slow down and reevaluate where we were.

Ultimately it meant that we now sent a staff member to drive about 45 minutes so that she could do the screening and the volunteer lawyer could do the work. He continued to counsel the clients who didn't qualify for our services, but we didn't consider them

cases. We didn't record his work that he did. He wasn't going to turn anybody away.

So we found a way to keep that one going, and it's still going. We've had a succession of volunteer lawyers, and that's a good thing, actually. But the effect of the decision is to pull us out or to take a step back from some of these activities that are important in our community.

It probably has a greater impact in the communities where there are fewer opportunities for people to access assistance, the smaller communities, the more rural communities where the only activity may be the one sponsored by the bar association, where they are not willing to screen people.

They may collect data on their income -- a very interesting phenomenon -- but it's done in ranges, generally. But they don't want to say no to anybody because their income is too high.

The alienage issue is another one altogether. We certainly continue to screen for that. We understand the importance of that when this rule was written. But that's another one of those things about

which I think that was 30 years ago.

There are different issues now about alienage than there were 30 years ago. Hopefully the issues can -- I'm not asking you to take this one on. I think it's a really big one. But it's certainly something that bears more thought. Thank you.

PRESIDENT SANDMAN: Mark O'Brien?

MR. O'BRIEN: Thanks. Again, I think this is one of those places where it's worth stopping for a moment and reflecting on what LSC's overall goals are. And I think that LSC's goal of full access, we need to think about how do we encourage grantees to structure programs and incentivize them to be delivering services in contexts where they can best support their communities' goals of full access to justice for the communities that they're serving.

That can mean participation in multi-organizational clinics, or even clinics by legal services organizations with bar associations, where volunteers are providing brief advice and service or maybe going to take cases on.

I see the value in maintaining a distinction

about cases that are going to be recognized as -- services that are going to be recognized as full cases for LSC grantees to make sure that those meet all the requirements.

But again, I would agree with the comments of the previous panelists that it doesn't make a lot of sense to try and distinguish between the support provided for clinics in which some of the cases -- try and distinguish which of the cases and what amount of our support went towards the cases that were eligible as full cases within the CSR and which of the services provided by our volunteers and our support and oversight and training of those people went into the services that they provide that wouldn't meet the CSR guidelines.

I made a couple of calls to programs that we work with in different parts of the country over the last week asking them about the outline that I had prepared. And I talked to a very senior person at one of the programs in New York, who was remembering in the immediate aftermath of Sandy going out and doing clinics, and how demoralizing it was for their staff,

as there were people queued up in lines in really desperate situations, to have to sit there and put them through a screening, that it almost seemed cruel at some point to have to go through all of the screening before they were able to offer people immediate assistance that they were seeking.

I also spoke to someone from one of the Oklahoma programs, who was talking about how, in the aftermath of the tornadoes there, how reassuring it was to see that all of the investments that LSC has made in the capacity of their program and others to use technology, and to make online systems available and training and support materials available to volunteers, have become the spine on which not only their own program was able to mount its legal relief efforts in the aftermath of the tornadoes, but the bar association and others were able to leverage that.

That was a great thing, and that thinking about how do we incentivize programs to think as broadly as possible in their support activities for the efforts of the private bar and partnering legal aid organizations that are not necessarily LSC programs

while maintaining strict adherence to the regulations for the cases that they're handling as full cases for their organizations, that we should be promoting the more expansive activities of grantees.

MS. VAN DULMEN: Jennifer van Dulmen on behalf of NAPBPro. Very briefly, NAPBPro, our recommendation is that LSC would adopt this recommendation, as the others as well. But there's much stronger support for this recommendation from our members than the other two recommendations.

Further, our members express less concern about any types of conditions and express that if there must be conditions, that you'd consider the other conditions we discussed in the past. But I think for the most part NAPBPro members really feel that this ought to go forward as it's been recommended.

In particular, I would talk about this from the client's perspective. What we're really talking about for the most part are outreach type of situations. And I think of this from a snowy Akron winter where a client comes in, and we've only been able to give them the opportunity to come to a clinic

because there's no other service that's available to them in the community. In fact, legal aid is usually the last door available to anybody who is of limited means.

So they come to the legal clinic trudging through the snow, maybe bringing two or three children and whatever else they need to bring, in order to accommodate our schedule to come to our outreach clinic. And what they're faced with is our eligibility standards.

They then fill out the form, and maybe they're eligible and maybe they're not. But sometimes they're not. And then I look at that from the volunteer attorney's perspective because they're sitting there watching us do this, and they see a woman come in with her three children and who's busy and who has accommodated her schedule to meet our schedules.

Then they are asked, "We have to turn them away," and the volunteer attorney wonders why because we're out there to serve the community. And their intent as a private attorney is to come out and serve the community, to do pro bono. Maybe they're

marginally over income. Maybe they're not.

The vast majority of the people who come to our outreach clinics are, in fact, eligible for our services. Regardless of whether we would screen them or we wouldn't screen them, the vast majority are. And it's difficult for volunteer attorneys in those situations to look at that client and see them walk out the door.

I think that's something that LSC should consider, not only from the client's perspective but also from the volunteer attorney's perspective. If we are trying to build pro bono, this is not the way to do it.

The volunteer attorneys, there are a couple who will say, "Are you sure this person's eligible?" I mean, there's those that will question when they think in their gut maybe this isn't the client who really needs service.

So I want to admit fully that there have been those volunteers who have done that when somebody is substantially over income. But the majority of volunteers would have said, "I'm here. I accommodated

my schedule. The client did the same. Let me serve that client."

So for those reasons, and also the reasons of offering a variety of opportunities for clients and the minimal impact of this type of a regulation on people who would be over income, I would ask that LSC would adopt this recommendation as it's stated.

PRESIDENT SANDMAN: Thank you.

MS. SKILLITER: Good afternoon. I'm Melissa Skilliter from Ohio State Legal Services Association, and we are the organization at issue in Advisory Opinion 2008-1001. And so this is of course a very important issue to us. It's really the reason that I'm here today.

I wanted to give you a little background about who we are and how we got here. We've got 30 rural counties with no major cities that probably any of you would have heard of before. No major firms. Most of our people, or most of the attorneys in our areas, are solo practitioners. A large firm to me is about ten attorneys, and most of our counties don't have firms of that size.

Over the last few years we have lost about a third of our staff attorneys, and so that's been due to attrition. With budget cuts as they are, we're not filling positions. We've been able to avoid layoffs of attorneys at this point, but that is under discussion right now.

So at this point we're trying to do even more than we've done with even less than we've had. I personally was a staff attorney in our Zanesville office. I'm married to a former staff attorney from our Zanesville office. I've worked in these clinics personally, and I worked side by side with the attorneys that volunteer there, so I feel like I know our people in our clinics quite well.

When the PAI regulations came into effect, we had a hard time getting a PAI program up and running in our area. To be honest, when we started as a legal program, there was resistance to our being in existence even at that level, and even more to us going out and trying to get people to aid in our efforts.

Early on, John McKay, former LSC board president, came in to one of our towns, Chillicothe, to

try to help us recruit, and we were thrilled at the effort although we didn't see a lot of return from that. What we've seen in our experience is the personal contacts and our relationships that we've been able to build over the years.

The clinics that we run were our first success with PAI. They were what really resonated with people. The attorneys in our areas, they're interested in helping their communities, as Jen said. They may not want to help legal aid; they may see us as a competitor or they may see us as an adversary. But they do, regardless of their other beliefs, look out into the need in their community and want to serve that.

We have over the years very much tried to build the perception and the fact in our community that these are collaborations, that these are not a legal aid project. They're almost, across the board, a joint project between the local bar association and our organization.

So we don't have 100 percent control over these clinics because they're not 100 percent owned by us. And that, I think, is a success of the clinics.

That's why attorneys show up for them. They're willing to help their bar. They're willing to help their community. They may or may not help legal aid, but that's not what they see themselves doing.

We have resisted the full screening that LSC has required of us for several reasons. First, like I said, the more control we exert over the operation of these clinics, the more they become our clinic, and in some of our places, the less they'll be supported by the people that volunteer there.

We will lose volunteers both by the additional hassle factor of additional screening and also of the beginning to assert what they would deem to be unnecessary control over what's really a community project.

It would be an additional dedication of time to do that in a time when we've got less time. We've got less staff to do it. One of the questions that was raised early on was about the investment made into PAI versus the return that you're getting on that. The additional screening on a clinic raises the investment on the time that we have to spend operating them while

at the same time limiting the return that we get on that.

We will see fewer clinic participants if we screen everyone at a full LSC screening level. That's because we'd either have to do it ahead of time, which will mean there are more people that don't get registered for it, or there's simply going to be more time that we invest in doing that.

There's already going to be clinics where people show up, wait for their time to get screened, and sometimes people stay and sometimes people don't. With the low-income community, sometimes you have to move swiftly and efficiently to make sure that you can fit in the window that they've got to try to deal with their problems.

Furthermore, the way we've been conducting our clinics, we don't consider them to be our clients. And so, as a community project, we have been able to send our conflict people there, which is considered by us and by our communities to be a true asset to the clinics.

Like I said, we're rural Southeastern Ohio,

and there is no bar referral program operating in any of our 30 counties. There isn't another legal aid-like project operating in any of our counties.

If we have screened somebody and admitted them as a client in the clinic and we are conflicted out from helping the adverse party in another situation, there's nowhere else for that person to go. We see that as probably our largest concern with fully meeting the LSC regs as they're currently being interpreted.

We believe it's an odd result, that the greater success that we have in making a program be a collaborative community project, the more difficult it is to count it as a PAI project.

I give, for example, the Fairfield County clinic, which operates in Lancaster, Ohio. It's very successful. It's loved by the participants that get their legal advice there, by the attorneys that volunteer, the people on the bench that refer local litigants there. We were even honored by a local legislature by a proclamation in our state general assembly.

The way it works right now is we have a

volunteer doing a limited financial screening, and then we have another volunteer doing the recruiting. Legal aid has a staff person there at the clinic to sort of help make things operate smoothly, answer questions, whether it be about the limited screening or about an area of law that the volunteer doesn't know anything about, and to provide support. And then also, if we've got too many clients and not enough volunteers, we'll do a full screening and have a staff person try to help control the flow of clinic participants.

But it operates very well. And to my knowledge, no one has questioned the way that we operate in regard to the quality of the product that we provide to our clients. However, where we stand right now with regard to the LSC regs is we've got a choice to make whether we're going to step up and tell our community partners, "I'm sorry, you have to change the way you're doing this. You have to change something that you like to something that you don't like as well."

We can limit the amount of assistance that clients get there. We can say, "I'm sorry, you can

only get legal information. You can do everything the same, and we can give you less help," and then that does count as a PAI activity.

Or we could pull out of the clinic altogether and say, "We appreciate this project so much that we're not going to hurt it to meet our PAI regs." And none of those options seems like a good one to me. We would not do any of those, we would not operate in that way, if it weren't for the LSC regs.

I think it's real detriment to have a regulation that interferes with our ability to help our clients and to work with our community partners in a way that doesn't have a benefit for the clients. And that's truly what is the most upsetting for me.

One of the questions that's been posed is how LSC would know that this is a project that is geared towards helping the poor. In my submission, I suggested that you might look to the group representation regulations, where you're looking at whether it's an organization that's primary purpose is to serve the income-eligible client population. I think that's a useful rubric.

We've also suggested that you look at the details of the clinic. For example, our clinics are taking place in churches in our Southeastern Ohio neighborhoods, and it's regarded by the bar as being a low-income service.

I can tell you when we went out into the communities and we said, "We'd like to do these pro bono clinics, and we'd like for you to meet with our clients," there was uproar. "You're going to steal our clients. You're going to take money out of our pocket. You're going to be seeing people that don't really qualify."

Some of those same people that were completely against the clinics are routine, regular volunteers now, and that does not happen if our volunteers think that we're seeing clients that can actually afford an attorney. And in our communities, these are solo practitioners who are representing the low to middle income people in their communities.

We're not pulling from Jones Day or something, where there really is no competition between the clinics and the attorneys. There's true competition

there, and they're supported by those same people that had those concerns.

I think if you look at the details of the way the projects are crafted, you'll be able to find a way to determine that our primary purpose is to serve income-eligible people, and that's what we're doing. There's a difference between walking out the door here into Georgetown and perhaps setting up a legal clinic, or in our situation, we're in a small town in rural Ohio in a church where people are really only turning if it's the only option that they've got.

So I appreciate the effort that you're taking to improve these regulations, and I hope that we'll be able to help you in that process. Thank you.

PRESIDENT SANDMAN: Thank you.

We don't have any questions on the webinar at this point. Do the board members participating have any questions? Charles?

MR. KECKLER: One of the things that has come up with regard to this, and your comments also raised it inferentially, has to do with the idea of there's a full LSC screening, which we're familiar with it. And

then there's no screening, which is the website model. Right?

So then you talked about limited screening that you were doing. So I'm wondering, there's obviously still many complications, with regard to the issue of accepting it as a client case and all of that, whether there is a role for limited screening such that you're providing an evidentiary basis.

You talked about an intent to serve the poor, and there's evidence about your intent. You talked about the design. You're designing it for people who would be the kind of people who would be eligible for our programs.

But then there's also the issue of effect. Is your intent being carried out? Is there some kind of evidentiary basis that you can develop from the standpoint of limited screening that can show that that intent is in fact being carried out?

So I was thinking, well, I'm not sure what exactly limited screening means in that context. I think there's a lot of different things. But it seems to me it would be useful in some ways to have, "are you

a citizen?" "Yes." "Do you have below a certain threshold?" "Yes."

Now, that doesn't obviously satisfy true LSC eligibility since some people who are not citizens are eligible and some income can vary, and assets and so forth, and all of that can change. But if you ask those two questions and you know that about the people at the clinic, would that be too onerous for them? Or how would that balance out? How would that balance work with something like that?

MS. SKILLITER: I have a response to that. It's Melissa Skilliter again. That's almost exactly what we're doing, and I don't believe that that's too onerous.

The second part of that question that you didn't raise is what happens when there are people there that are over the regular LSC income limits. I think that the first part with the level of screening comes into play in two parts, the check boxes that aren't the full screening.

But like I said, we also have volunteers doing that screening in some places, and we have less quality

assurances when we do it that way. I think that it's reliable and it's a reasonable thing to do, but it's a different thing for me to say, I can guarantee if I have my professional screener here, than if I have a volunteer. So that's one of the levels of scrutiny that I would put a pin in.

Then what I would also suggest is that we would be able to see some people who would be over the income as long as it was predominately to serve people with that reduced screening that were predominately eligible, so that it addresses the issue of people who, like Jen said, have trudged through the snow or are particularly sympathetic or, for whatever reason, the volunteers there on the ground have determined that it's within the purpose of the clinic to help serve that person.

So I would say that there should be some flexibility in there in seeing some people who are over the income limits as well as the reduced scrutiny in getting the questions answered themselves.

MR. WHITFIELD: John Whitfield also responding, and this is not for NLADA but my own

personal views, I guess. I find the idea interesting. If it were approached as one approach that could be used, so it was a sampling or an informal survey occasionally of the people who attended, and it was simple like, "Are you low income? Are you a citizen, or are you documented?" -- something very simple, something that they could complete in 30 seconds at the end of the session so that it would not interfere with their participation, and that if you just did that maybe occasionally.

Then if you found that the responses were predominately eligible clients, or not ineligible, then that would allow that to be counted as a permissible PAI service, not a PAI case. I think that would be an approach.

PRESIDENT SANDMAN: Board chair John Levi has a question. John?

CHAIRMAN LEVI: Am I unmuted?

PRESIDENT SANDMAN: Yes, you are.

CHAIRMAN LEVI: I didn't have so much a question, but I figured that you were nearing the end. And I just wanted to say I've been listening. I think

this has been a terrific afternoon, and I want to thank everybody for their time and their thoughtfulness.

Then for our management, really, are we able to pilot anything going forward in response to any of these three issues and see how they work? Or do we have to actually make the change and then see how we go from there?

PRESIDENT SANDMAN: I think that's something we can consider and discuss, the pilot approach.

CHAIRMAN LEVI: Finally, and it's not really relevant to the three things, I can't tell you how many people come up to me and say, "If you're going to change the rule, change the name, too, from private attorney involvement."

I don't know what our panelists think about that, but apparently it seems to engender some confusion. I don't know if it does for them or for others; I don't know what we would replace it with. So I know that's off track.

MR. O'BRIEN: Sounds like a focus group waiting to happen.

(Laughter.)

PRESIDENT SANDMAN: Virginia Martin has a question or a comment.

MS. MARTIN: Yes, I do. Thank you. This is Virginia Martin. I wanted to talk about the last part of topic 3, including that matters be accepted as grantee cases in order for programs to count towards PAI requirements. And again, the comments that I have are personal ones involving my own program. We are a subgrantee of LSC funds.

When we do the intake screening for a case, on our own find out that the person is eligible, refer it, do all of that work, we can only count that case as toward our PAI commitment or requirement if that case, the entire case and client, become a case and client of the LSC grantee.

It creates burdens for the LSC grantee. It creates conflicts. We also have to secure permission from the clients that we can disclose their confidential information to the LSC grantee.

So I just wanted to comment on that. It would seem to me that if a subgrantee is adhering to all of the case handling requirements, that couldn't we count

those cases toward our PAI requirement without those cases having to become cases of the LSC grantee?

PRESIDENT SANDMAN: Thank you.

Board member Julie Reiskin has a question or a comment. Julie?

MS. REISKIN: I just wanted to thank the panelists. Both your verbal comments and what you wrote has been really, really helpful and incredible. And I also echo what John said to the staff, that this has been a really instructive and useful and terrific webinar. So I just wanted to thank everyone.

PRESIDENT SANDMAN: Thank you, Julie.

Ken Penokie has a question or a comment.

MR. PENOKIE: I just want to comment on the modified screening. We do that on both our internet advice site, which we're not allowed to report on, and our clinical program in our only pseudo-large city, Traverse City.

What we do is we do not collect name and address. All the rest of the screening goes forward per LSC regulations. But by not collecting name and address, we are preventing ourselves from becoming

conflicted for our priority cases.

That's an example of a modified screening that could be allowed, and it has both the same purpose of making sure that the LSC regulations are complied with, but yet making sure that programs, especially in rural areas where there is no other resource, have the ability to protect their high priority case loads.

Right now none of the work that we do in this area is reported, and it does have a chilling effect, especially on our online system, which could have been greatly expanded. But we have been prevented from doing so because of these kind of restrictions.

I remind everybody that a worse case scenario on these programs is that a client who may not be eligible gets advice from a private attorney. We're not providing the resources for that advice. We're not giving that advice. It's some private attorney.

So it only makes sense, since the program's involvement in this advice is so much less, that the screening requirement be somewhat less also. Thank you.

PRESIDENT SANDMAN: Mark, did you have a

comment?

MR. O'BRIEN: Yes. It's Mark O'Brien. I just wanted to make a brief comment, that I think it's worth distinguishing between the kinds of surveying and data collection that we do for eligibility purposes and the kind of screening and data collection that we do for program effectiveness evaluation purposes.

I think that the trick for LSC in some ways is to figure out how to incentivize programs to do the latter. I don't think that some of the screening that we've been talking about should be necessarily a bar to service, but I think that programs should be encouraged to collect information so that they can assess, over time, well, are we serving -- we're doing this because we're intending to serve low-income community members. Do we know, after a period of time, that we're accomplishing that or not?

We may stop or modify the service, not because it fits with a regulation or not, but because in fact maybe we need to find a different way to reach that group of clients.

I think that LSC is at a point again where it

has made a great commitment to expanding access and placing LSC's programs in partnership with other justice partners in their communities to find the most effective methods to accomplish that goal. And we have to be careful about creating rules that would undermine the programs' abilities to do just that.

PRESIDENT SANDMAN: Are there any other questions or comments?

MR. WHITFIELD: I have a suggestion for a new name. Involvement of the Legal Profession.

PRESIDENT SANDMAN: ILP?

MS. VAN DULMEN: I have one question.

PRESIDENT SANDMAN: Yes?

MS. VAN DULMEN: As a final comment because I know we're coming to the end, I again want to thank LSC for taking the time to think about and really delve into these issues because it is so important.

I've heard from many members of NAPBPro, because many people have been around a lot longer than I have, that they were there back in the day, as they say, and where pro bono wasn't supported, and where the mandate was such a controversial thing within program.

And it still is in some programs, and some programs still struggle.

But the fact that LSC is taking a critical look at this and supporting pro bono and considering these recommendations as well as the remainder of the task force report, those blueprints, again is such an important thing to promote pro bono.

The private attorneys who work with our programs are critical, I think, to the success of legal aid programs and being able to deliver legal services to the poor. They're an important partner. And I think they recognize that more than ever, and LSC's role in providing leadership has been really critical in helping them be empowered to feel that they have a part of the responsibility to serve the poor. It's not just the legal aid programs.

So the role that you have taken is really important. And in particular, I heard Mr. Sandman talk about going to Congress a couple times. And that conversation or the things that I heard when he was talking about that were so important, I think, for legal aid programs to understand how the dollars are so

competitive at Congress.

I think legal aid programs stand behind Legal Services Corporation and want to do our best to show a good face. And I think pro bono is a place where our programs can shine in Congress because we involve the private bar. We involve the private sector as well as the public sector.

I am grateful that your allowing pro bono to shine, selfishly because I love pro bono, and also selflessly because I think our clients so greatly need this. And I'm grateful. That's mostly my point. Thank you.

PRESIDENT SANDMAN: Thank you.

I'd like to thank all of our panel members for their very thoughtful written comments and for your equally thoughtful oral comments today. It's been very helpful to our deliberations.

I'd also like to thank Mark Freedman and the Office of Legal Affairs for their work in organizing and facilitating this workshop.

MR. KECKLER: Thank you. And I would now, with my own personal thanks and the thanks of the

Operations and Regulations Committee, bring this rulemaking workshop to a close. Thank you all.

(Whereupon, at 4:26 p.m., the workshop was concluded.)

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