

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

COMMITTEE ON PROVISION
FOR THE DELIVERY OF LEGAL SERVICES

OPEN SESSION

Friday, November 19, 2004

1:30 p.m.

The Westin Cincinnati
21 E. Fifth Street
Cincinnati, Ohio

COMMITTEE MEMBERS PRESENT:

David Hall, Chairman
Maria Luisa Mercado (by telephone)
Florentino A. Subia
Ernestine P. Watlington (by telephone)

OTHER BOARD MEMBERS PRESENT:

(None)

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President
Dick Cullison, Executive Director, Legal Aid of the
Bluegrass
Brenda Combs, Business Director, Legal Aid of the
Bluegrass
Karen Dozier, Executive Assistant to the President
Linda Perle, Center for Law & Social Policy
Bernice Phillips, Nominee, LSC Board of Directors
David Richardson, Treasurer, LSC
Howard L. Tankersley, Vice President of Legal Aid of
the Bluegrass/Northern Kentucky Bar Association
Charles E. Wynder, Jr., National Legal Aid and
Defender Association
Patricia Pap, Management Information Exchange

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P R O C E E D I N G S

CHAIRMAN HALL: This is the first visit here in Cincinnati of the Legal Services Corporation Board. My name is David Hall. I am the chair of the Provisions Committee. We have some of our members who are going to be connected by phone, so I would ask that we make that connection now.

Maria Luisa Mercado and Ernestine Watlington should be by phone, and Florentino Subia is here, a committee member, and of course, our president, Helaine Barnett is here as well. Are other members connected? No. Is there any way to confirm they are present?

(Off the record.)

CHAIRMAN HALL: Sorry for that little interlude, but I think we're set now and we will begin. Committee member Ernestine Watlington is connected with us. There are some other board members and committee members who may be calling in and joining as we go forward.

So we are just going to go ahead and proceed. I do want to recognize Bernice Phillips, board member designee, who is in the room and we are hoping that in the

months to come she will be confirmed and --

MS. PHILLIPS: Days to come.

CHAIRMAN HALL: Days to come, be confirmed as a board member.

APPROVAL OF AGENDA

M O T I O N

CHAIRMAN HALL: I would like to start the meeting by first asking for an approval of the agenda. Ernestine, would you second?

MS. WATLINGTON: Hello?

CHAIRMAN HALL: Would you second the motion to approve the agenda? Please do. Can you hear me? Ernestine, can you hear me? We may be having a one-way. I'll do it, but in the chair's discretion to approve our motion to approve the agenda. We also have --

MS. DOZIER: Ernestine?

MS. WATLINGTON: Uh-huh.

MS. DOZIER: Can you hear us here in the room?

MS. WATLINGTON: Is this --

MS. DOZIER: This is Karen. Can you hear us in the room?

MS. WATLINGTON: I can only hear your voice. I don't hear anyone else.

MS. DOZIER: So you cannot hear Mr. Hall?

MS. WATLINGTON: No. I can only hear you when you talked just now to me, directly in a telephone call, I guess.

SPEAKER: Excuse me, can you hear me? I just joined. Hi, Pat?

MS. DOZIER: Pat's not in the room. This is Karen.

SPEAKER: Okay. Could you let her know. This is Maria Luisa Mercado's assistant, and she should be joining in the conference call. I believe you guys were going to be contacting her. Her hearing is running a little bit late, so she should be at the number that was given to you guys, within the next 15 minutes.

MS. DOZIER: Okay. She should use the call-in number that Pat sent her.

SPEAKER: Just have her call in?

MS. DOZIER: Yes, thank you.

SPEAKER: Okay, I sure will. Thank you.

MS. DOZIER: Mr. Hall, can you B-

MS. WATLINGTON: There is a conference center --

CHAIRMAN HALL: Ernestine, can you hear me now?

Ernestine?

MS. WATLINGTON: Yes. Now I hear better.

CHAIRMAN HALL: You can hear me?

MS. WATLINGTON: Yes.

CHAIRMAN HALL: Okay, that's good. This is David Hall. We were proceeding with approving the agenda, and Florentino Subia had made a motion to approve the agenda, and I was just asking you if you would second that for me. Are you still there?

MS. WATLINGTON: Yes, I'm listening.

CHAIRMAN HALL: Okay. Can we get a second from you of approving the agenda that is before us?

MS. WATLINGTON: Yes, yes.

CHAIRMAN HALL: Thank you.

APPROVAL OF SEPT. 10, 2004 MEETING MINUTES

CHAIRMAN HALL: We also have our minutes from September 10th, our meeting September 10th in Montana. Can we get a motion to approve those minutes?

M O T I O N

CHAIRMAN HALL: We have a motion. Would you second that also, Ernestine?

MS. WATLINGTON: Yes, yes.

CHAIRMAN HALL: Thank you very much. So our agenda and our minutes have been approved.

We are delighted to be in Cincinnati and northern Kentucky. The Provisions Committee has been moving around --

MS. WATLINGTON: We're on the agenda.

CHAIRMAN HALL: Excuse me? The Provisions Committee has been moving around the country, being able to hear testimony from various legal services offices, and one of the themes that we have been concerned about is hearing from the field about their definitions and understanding of quality.

The Provisions Committee felt that one of the high agenda items for this year on the end of the state planning process was to get a better understanding of what quality, what the quality delivery of legal services entails.

Instead of just asking the corporation to define

that, and just going by the ABA standards, we thought it would be a good thing to begin to hear from members in the field, as to how they defined, how do they ensure that their operations are at a quality level, and how do they ensure that the clients are really getting the service and the results that they need.

So we are delighted to be able to continue that theme here in Cincinnati and Northern Kentucky.

MS. WATLINGTON: David?

CHAIRMAN HALL: Yes.

MS. WATLINGTON: This is Ernestine. You seem to be -- you go in and out -- your voice does.

CHAIRMAN HALL: Okay. I'll try to keep the mike closer to me, so you can hear. Is that better?

MS. WATLINGTON: Yes, it is.

CHAIRMAN HALL: Okay. I would also ask our presenters when you come forward to do the same, because the same problem may exist.

MS. WATLINGTON: Okay, thank you.

CHAIRMAN HALL: You're welcome. So we are delighted to have individuals from Kentucky Legal Aid of

Bluegrass to come before us, and other members of the bar in this area to come before us and share on that particular topic.

So we are going to move into our committee meeting by first inviting Howard Tankersley, vice president and president-elect of the Northern Kentucky Bar Association, to come forth and give us words of welcome.

MR. TANKERSLEY: Mr. Chairman and members of the committee, thank you very much. I am Howard Tankersley. I am the president-elect of the Northern Kentucky Bar Association. I'm also the vice president of the board of directors of the Legal Aid of the Bluegrass.

As many of you may know, Kentucky is just a couple of miles south of here, across the Ohio River, and many of you flew into the Cincinnati Airport, which also happens to be in Kentucky. So even though the meeting is emanating from Cincinnati, Ohio, I would welcome you all to greater Northern Kentucky.

I've been a member of the board of directors of Legal Aid of the Bluegrass for about nine years now, and during that nine-year stint, our board or our program has

merged twice with other programs in the Commonwealth of Kentucky.

We went from an eight-county service area to now a 33-county service area, generally in the north and the eastern portion of the state.

We service Lexington, which is the first or second most populous metropolitan area here in the Commonwealth, and northern Kentucky, which is the first, second or third most populous area in the Commonwealth as well.

My purpose here today is to first welcome you, and to introduce our executive director. Many of you know Dick Cullison. He has been the executive director of Legal Aid of the Bluegrass for 20 years. Out of law school, he clerked for Supreme Court justice, Kentucky Supreme Court Justice Lukowski, and then went directly from there to work at Legal Aid of the Bluegrass. So basically his only legal job has been with Legal Aid of the Bluegrass, which at that time was called Northern Kentucky Legal Aid.

From a board standpoint, I'd like to stress and Dick will cover this in more detail, the challenges that we face as a board as our program grows. Obviously, and I'm

sure you hear this all over the country, our program grows.

The poor population increases. Our responsibilities to those, to provide legal services increases, and hopefully our funding increases. Sometimes it doesn't; sometimes it remains static, and that's always a challenge. It's always a challenge to try to be creative and provide high quality service to the poor community.

But then, as is often the case, the challenge becomes funding, and Dick, of course, will address that in much greater detail in his remarks. But let me please say this about Dick. I admire Dick very much. Dick is the model, I think, that many of us who go to law school look to.

All of us say that we go to law school to help people. You want to provide service; you want to help your fellow man; you want to make your community better. Dick has successfully met that goal. He's the smartest lawyer that I know.

He's the most efficient and hard-working executive director of any organization that I'm involved with. He's

just the heart and soul of this organization and he has just done a phenomenal job as far as growing our organization, merging with other organizations, and just managing that organization.

As our immediate past president said, he's the rare instance of a good litigator, a very good litigator, and a good administrator. So without further ado, let me again welcome you folks here. Thank you for having us, and I'll turn the program over to Dick Cullison.

MR. CULLISON: Thank you.

CHAIRMAN HALL: Dick, I had high expectations before you came here, but they're very high now.

MR. CULLISON: Well, thank you, Howard, for those kind words.

(Laughter.)

MR. CULLISON: I hope you have our booklet in front of you. If you'll turn to the first tab, it has a map of Kentucky, and lo and behold the shaded blue part, portion is Legal Aid of the Bluegrass. Most 33 counties are our service area, and you might note that we are the top program in Kentucky.

We have accomplished a merger twice in the past six years. We have a common set of core priorities in the entire state of Kentucky, and essentially we represent people in consumer cases, housing cases, family law, including domestic violence, and government benefits.

That's pretty much the core anywhere you go. We have special programs that go beyond that. We have a special project where we represent immigrants of domestic violence, which I'll explain in more detail.

We have volunteers who counsel the elderly on public benefits. We run a couple of nursing home ombudsman programs. But our core programs are the big four areas -- consumer, family, housing and public benefits.

In trying to come up with a thought today on what are some indices of quality that are a little bit different from what we usually examine, I came up with two, and I'm going to tell stories about our program. One engaging the program, I think, is does the program have the capacity to adapt to an emergency situation?

Every Legal Services lawyer that I've ever met, their biggest fear is something in the community happens,

where they have to drop what they're doing, put everything in the drawer or on the back burner, learn a new area of the law, and go out there and fix something, take a month off, take six weeks off, go fix something because your community needs it.

Can the program do that? If the program can do that, I would suggest to you that that's one indicia that things might -- that the store may be minded well, if they have the capacity to do that.

The other thing that I thought of does the program have the capacity to implement an entirely new program in an area of law that they're not familiar with, that they haven't done before? Do they have the capacity, because of client need, to start something from the ground up, you know, turn on the machine and make it go?

Again, if they can do that, it's not necessarily conclusive evidence that it's a high quality program, but it's strong evidence that there's something good going on here, if that program has the capacity to take something from the ground up that they've never done before, and build it into a successful program.

Odds are they can go that because success is transferable. The skills necessary to achieve that are transferable skills. For that reason, I'd like to talk about two things that have occurred in our program.

One was our implementation of a domestic violence in the immigrant community project, that we started from ground up, and the other was last year's response to the Medicaid crisis in nursing homes in Kentucky.

I'll start first with the immigrant project, because until about 2001 our program rarely represented a non-citizen. We rarely had to deal with someone who was not minimally proficient in English. All that has changed in the last three or four years. The estimates are that the Hispanic population in Kentucky has increased by 700 percent during the last three years alone.

In about 2001, we started thinking that maybe we should do something about this. Now this project of ours, you know, obviously it's not as impressive as what goes on in New York City or Los Angeles, where I assume they have people on the phone speaking 19 languages. This was one program in Kentucky where we made a decision that it's time

we do something about it.

Mark Twain said that when the world ended, he wanted to be in Kentucky, because it would take them 20 years to figure it out. That's part of where we were in 2001. We were about 20 years behind the curve and we were just beginning to figure it out.

And we started the project with a grant from MAPLE, now Equal Justice Works, and Lea Webb was the attorney we hired to head up that project. At this time, I'd like to turn it over to Lea Webb, who will introduce one of the clients who was helped as a result of Legal Aid of the Bluegrass' implementation of this project.

MS. WEBB: My name is Lea Webb, and I'm the attorney who started this project, which was founded on providing assistance to victims of domestic violence, but has led to us beginning very successful outreach to the immigrant community in general, and I think has become a great basis for us serving our entire community much better.

I want to say just a couple of things. One is that quality legal services, in my opinion, depends

absolutely first on quality communication with the client. So language access is a tremendous and large part of beginning successful outreach into immigrant communities.

Instituting these programs and making those changes at Legal Aid of the Bluegrass has been really a pleasure, because change has been encouraged and embraced from the top down.

So we've taken very seriously the Department of Justice guidance on language access, and we've followed all of their steps and we continually train and retrain staff so that they're comfortable working across language barriers.

I want to introduce a client who's going to tell you more, and I don't have much more to say. But I want to introduce to you Marisol de la Borda. She's from Lexington, Kentucky, which is the southern end of our territory, and she'll tell you her story.

I'm not going to speak for her. I'd just like to say that it is a real honor to be able to work with clients like Marisol and all of the clients I've worked with, and it's really been wonderful to work with her. So, Marisol.

And Holly Delaney, who also works with our program, will be interpreting for Marisol today.

CHAIRMAN HALL: Welcome.

MS. DE LA BORDA: My name is Daisy Marisol De La Borda. I am Peruvian and I have a child who's three years old. I'd like to express my thanks to all of you for the opportunity that I have to represent women who are suffering domestic violence, and that thanks to an institution like the Legal Aid of the Bluegrass, they have helped us so much in providing us services and legal services in our own language, and then in different forms.

On a personal note, I have received on behalf of the Legal Aid of the Bluegrass help in many different forms, and I believe that without this help I would not have been able to face my many different cases.

I had problems with my husband since the time that we were dating. There existed verbal aggression and also on some occasions physical aggression. When we married, the physical aggression continued. I really did not understand what was happening. I thought that it was a phase of a newly-wed couple.

But as time went on, the situation become worse, and my husband became more physically violent. I sincerely did not know how to control the situation, and I was embarrassed to speak with my family or friends regarding the situation.

Neither my husband nor my mother-in-law liked for me to have visitors, and when I did receive visitors, I received them at the door of the house. My family asked me how I was doing, because they saw me very thin and sad, and I would tell them that it was because I could not sleep because of my son.

When I came to the United States, I lived in a house with my brother-in-law, and the situation continued, the domestic violence continued. In the home that we lived in with my brother-in-law, it was like a hell for me. They would not allow me to cook or to use the telephone, and they would not let my son watch television.

They had me as a servant in the house, and I could not leave the house, because if I did, they would report it to my husband. My husband Alberto would return to the home angry; sometimes he would pull my hair and he would kick

me.

I felt very alone and abandoned. I did not know what to do. I was very afraid. Also I could not leave the house because my ex brother-in-law would tell me I would be assaulted or they would kidnap my child. Now that I was in a country that was foreign to me, and in which I did not speak the language, and I did not know.

I was afraid because of my legal status and not knowing the laws of this country. Alberto said that no one should know about our problems because I could be deported or they could take away my son.

When we moved from there, I did not have a telephone. I did not speak English and I could not drive, and Alberto did not want me to get a job or to learn English. I think for all of these reasons, this was the motive that caused me not to seek assistance.

MS. WATLINGTON: This is Ernestine.

MS. DE LA BORDA: Now I think that if the office of the Legal Aid of the Bluegrass had not offered me services or assistance, that my situation would have been worse or the same. That all of the situation that I was

living through would have either brought me to insanity or to a hospital.

CHAIRMAN HALL: Why don't we stop just for a moment. I apologize for the interruption.

MS. MERCADO: I couldn't hear anything in the committee. I could hear Ernestine but I can't hear anybody else.

MS. WATLINGTON: Neither can I.

MS. MERCADO: I can't hear the committee.

CHAIRMAN HALL: Maria and Ernestine, we are trying to adjust it so that the mikes are clear, but we are hearing you. So if you're not hearing us, just indicate and we're trying to talk louder. But we're getting you loud and clear.

So we're going to start over again. We're having some presentations that are being made to us at this time, and we want to continue with those presentations.

MS. DE LA BORDA: I learned that there were legal services which were free on behalf of the Legal Aid of the Bluegrass. It encouraged me to know that there were people who spoke Spanish who could help in my situation. The

services the attorneys provided me were excellent.

I was able to obtain a no-violent contact protective order, and child support for my son. I was also able to obtain sole custody of my son in the divorce decree. The first time that my husband violated the protective order, as to say he hit me again. I called the police and Alberto left the house. It was then I decided to report to the court the violation of the protective order.

He was in prison, and the judge from the criminal court gave him a no contact order for two years. I had to move from my house, because I was afraid of Alberto and his family. I lived in a small apartment where there were cockroaches. It was winter and my son was very small. I had to drive a long way to go to work. It was all very difficult for me.

Besides all of that, my husband Alberto was calling me, telling me to please come and return with him.

When I did not accept, he threatened me, saying that he could have me deported, or that I would be sorry if I didn't return to him. I felt very afraid and for this

reason I went to a shelter to be more protected.

After I left the shelter, the attorneys of the Legal Aid helped me to finish my divorce, and now I feel more sure of myself and more protected because I know that now Alberto no longer has power over me.

Now am I not afraid of being deported, because thanks to the attorney Lea Webb, she did an application for me to have a legal status, to have a legal status, and to receive work from it. For all of these reasons, my son and I now live a life in peace.

Thanks to the services of the Legal Aid, many women will be able to leave their situation of domestic violence and move forward with their lives. Thank you very much.

CHAIRMAN HALL: Thank you very much, Marisol. We appreciate you sharing such a personal and intimate story.

It is a story of empowerment. I am thankful that you have the courage to seek the support and that the support was there. So thank you for sharing with us today.

MS. DE LA BORDA: Thank you. I was a little bit nervous.

CHAIRMAN HALL: Technology. We would again just ask our presenters to speak as loud as you can. Maria and Ernestine, are you hearing me now?

MS. WATLINGTON: Yes, I am.

CHAIRMAN HALL: Okay. So I think it's only going to work if we're kind of speaking directly in the mike. So we're now going to turn back to Richard Cullison, who is the executive director of Legal Services, to continue our presentation.

MR. CULLISON: Stories such as the one you've just heard were a real eye-opener for me and for Legal Aid of the Bluegrass. We found that these people, whom we were able to represent under the Kennedy-Kassebaum amendment, presented fact patterns that were much more brutal than many we had seen in our other domestic violence cases.

The fact that the women we were representing in these proceedings faced the possibility of never seeing their children again should things go wrong, upped the ante considerably for the attorney practicing these type of cases.

But this was the type of pressure that we felt we

should be willing to accept. It was an eye-opener for me, because we talk about things like Kennedy clients, domestic violence victims, undocumented people. But it really is not any of that. What is really is is Marisol De la Borda.

That's what this project is, and for her story we have dozens and dozens of others of a similar nature.

Because of our success in implementing this project, we're proud to announce that we've received a 200,000 a year LAV grant for the upcoming two years, so that we can hire another Spanish-speaking attorney and another Spanish-speaking paralegal, so that we won't have to spread our staff so thin in representing people such as Marisol de la Borda.

So that's the story that I wanted to tell concerning successful implementation of a project, which I think conceivably is one indicia of quality, can the program successfully implement a new project.

The next thing I'd like to talk about is can the program adapt to an emergency. In 2003, without any hearings, without any legislation, Kentucky's Medicaid Department decided that it was going to tighten up the

standards for Medicaid, for one to be eligible for Medicaid to pay the nursing home bill.

They tightened it up so stringently so virtually nobody could apply, and thousands of frail elderly people faced the prospect of eviction from their nursing homes due to non-payment.

The Kentucky Legal Services community, this is four programs, responded quickly and heroically in my opinion. Through the use of task forces, list services, coordinated pro bono efforts they prepared and executed a strategy to fix this problem on very short notice.

The first strategy was to request administrative hearings on behalf of the people who were going to be kicked out of the nursing homes. I'd like to read you some of the fact patterns of our clients, that the state of Kentucky decided were no longer ill enough to be eligible.

One Ms. Kerr was 93 years old. She was a double-leg amputee suffering from circulatory problems, congestive heart failure, cardiac dysrhythmia, deepening thrombosis, hypertension gut anxiety, blockage of the esophagus that was inoperable because of her weak heart;

deaf in one ear, used a hearing aid. Had a full set of dentures, and was put on a new heart medicine that needed monitoring for side effects, including confusion, loss of balance, and equilibrium.

These are just some of Ms. Kerr's medical problems. She was ruled by the state of Kentucky to be no longer sick enough to be eligible for nursing care.

Ms. Barnett, no relation to the president, I don't believe, was 89 years old. Suffered from end stage rheumatoid arthritis, muscle weakness, pain, stiffness, swelling, loss of function in all her joints and extremities, lost mobility following a hip replacement, had a back compression fracture that was inoperable; suffered knee degeneration, dementia, anxiety, hypertension, etcetera. Can only walk a few steps with a walker. Cannot maneuver a wheelchair without assistance, et cetera, et cetera.

I could give you 3,500 of these stories. So we had a coordinated response, shared data, began winning administrative hearings.

Now concurrent with this, another entity litigated

to establish whether or not these new standards were lawful or unlawful, and ultimately obtained a ruling that the new standards were unlawful. The Legal Services community stood by their clients, to make sure that the results of that litigation inured to the benefit of our individual clients.

Ultimately what happened is that 3,500 persons who would otherwise have lost their nursing care were restored.

Most of this work, from the Legal Services end, was accomplished in about three months.

Now concurrent with this, there was a new economic regulation vis-a-vis long term care that said the following, that every person in a nursing home who was on Medicaid that had income in excess of triple the SSI amount or 1,696 a month, had to put their income into a qualified income trust, or lose their Medicaid.

Not one person in Kentucky knew what a qualified income trust was, and again, through the use of the list serves, the task forces, we assigned people to develop a qualified income trust form.

In fact, what we did, because the state would not

help us develop a bullet-proof form, we assigned two separate individuals in different programs to design a form that he and she thought were bullet-proof, and then submit them to a committee for comparison.

So they worked independent of one another, to see how closely they would resemble each other when we had a final product. Within a week, by melding the two of them together, we had what we thought was a pretty decent form.

We got volunteer probate attorneys to work with us. But in all candor, they didn't know anything about a qualified income trust either because there wasn't any such animal in Kentucky until we did it.

And then we recruited pro bono attorneys and did some work ourselves. Legal Aid of the Bluegrass did about 200 of these in about 30 days' time, and we did in excess of 700 of them statewide, all in a one-month period.

I recruited 13 pro bono attorneys to go with me to nursing homes, and we scheduled a qualified income trust party at four nursing homes in Northern Kentucky, where we executed one every 45 minutes. Lined the trustees up and had an assembly line.

But the rapid response to this emergency, again, it turned out to be about 1,000 people who otherwise probably would have lost their eligibility for Medicaid payment in a nursing facility, had not there been this rapid response.

So my point is that in my opinion, another indicia of quality is do you have the capacity to drop what you're doing and do something weird? And this was weird, because we are not probate lawyers.

We do not draft trust instruments routinely, and we had to figure it out. I think that the communication mechanisms throughout the network of legal services providers in Kentucky was absolutely essential to make sure that this was a true state-wide response to a state-created problem that affected the most vulnerable people in the Commonwealth.

I think that we can be proud of this effort that we met in 2003. So to the extent that we're looking for something a little bit unusual in attempting to assess quality, I think those are two things to think about.

Can we implement new programs because of client

need, and overcome the institutional inertia that's resistant to positive change for the betterment of our clients and in a real pinch can you drop what you're doing a fix a problem?

I'd like now to turn to Tab 4 in my materials, which I call the relationship between funding and quality.

If Brenda Combs, who is our business administrator, can join me, I would appreciate it, because we have an unusual situation in our program in that although LSC is about 37 percent of our funding, in order to get the additional 63 percent of our funding we have to attract, care, feed and nurture about 60 different grants.

Each grant has its own idiosyncracies. Very few of them are in perpetuity. Very few of them give you inflation increases each year, but every one of them requires a tremendous amount of care, feeding and reporting.

Brenda Combs, our business director, takes care of all that stuff. So I thought it would be fitting if she could say a few words today.

MS. COMBS: Good afternoon. Am I coming through?

Good afternoon. It's a pleasure to be here this afternoon with you, in the shared endeavor of promoting equal justice for all, regardless of whether they can afford it.

I just wanted to say that the last six years has been pretty challenging for our program, in that we have brokered two mergers. I have gone from overseeing eight to nine funding sources, to overseeing somewhere close to 60 funding sources.

That's a challenge to quality, I believe, is do programs have an adequate business structure to care and feed resources, and keep those resources coming in, with which the program can continue to do its vital work. For us, it has been a challenge, and I think that Dick will talk to you in further detail about that. Thank you.

MR. CULLISON: To get to about \$3 million in funding for 129,000 poor people, which gives us a little bit in excess of \$21 a poor person, we have to take care of 60 grants. That is not nearly as efficient as if we had three or four funding sources giving us up to \$3 million.

Obviously, the administrative cost in attracting that money is substantial. I'm one who is willing to spend

\$1,000 to attract an \$800 grant, because you make friends, and the people that give you the \$800 and who respect the work you do, you never know when they're going to find you \$8,000 lying around somewhere.

When it's time to go for a file fee increase, which apparently Ohio is engaged in now -- we have a higher file fee for legal services than Ohio does. It's because we created political support by going after these small partnerships.

That being said, if we're going to look at quality, we have to recognize that you can't do quality on the cheap. One pet peeve of mine, and I'm the president of the Southeast Project Directors Association, is the tremendous disparity in funding for the Legal Services programs across the United States, based on their capacity to raise non-LSC dollars.

If you look at Tab C, which is the breakdown of per capita funding state by state, you will see that Minnesota, for example, if you add all their LSC and non-LSC money together, has \$60 per poor person.

Alabama at the bottom has \$10 a poor person. A

little the Bluegrass, which is not on here because this is a state chart, not a program chart, but Kentucky is in there at about \$18 a poor person. Legal Aid of the Bluegrass is about \$21 a poor person, thanks in large part to the generosity of United Way and some of our other grant capacities.

It's very difficult when you start talking about an accreditation process or a quality matrix, to try to come up with one system that works for a \$10 a poor person program, and a \$60 a poor person program. That is the challenge.

If you focus on case handling, and I think for many of us in legal services when we had the perpetual mantra that we provided high quality legal services, oftentimes we were talking about our competence and our proficiency at handling cases, as opposed to the overall total quality of the program.

I think we rested on the thought that if we could have a standard of practice that was considerably above the malpractice standard, if we had legal work supervision, if we had client involvement in making decisions to a greater

extent than the professional rules of responsibility would require; if we devoted resources to discovery and to making sure that we were -- that cases were well-handled, that that was all we needed to do for quality.

I think that we're getting more sophisticated now, and that quality has to be quality of the entire delivery mechanism, and not just quality case work. For quality case work, I would suggest that the standard could be pretty much the same in Alabama or Minnesota.

The indicia of whether a case is being handled well, high quality advocacy on that case is going to be the same. The advocacy isn't going to be that much different in Alabama or Minnesota when we're talking one case, and whether that one case was handled well.

The question, though, is what about this big difference in funding? Is Alabama and Minnesota going to be the same; it's just that Minnesota is going to do six times as much work per capita as Alabama, or is Alabama going to have to have a completely different delivery mechanism than Minnesota, because of the staggering difference in available funds to do the job.

Of course, I would suggest that it probably means completely different delivery mechanisms, and not simply a matter that one does more volume than the other. I think that no matter what we do for the foreseeable future, there's going to be tremendous disparity in the revenue available program by program.

Surely, you can come up with some ideas now and then to level that out a little bit. There's a little bit of discretionary funds here and there, but it's pretty much a drop in the bucket.

For the foreseeable future in Legal Services, no matter what we do and no matter what we would like to see we have to acknowledge in my opinion that the programs across the country are all going to be apples and oranges.

In my opinion, rather than trying to make all programs apples or all programs oranges, what we ought to be doing is making sure that we have high quality apples and that we have high quality oranges.

Because a \$10 per poor person can still be a good program. They can be a high quality \$10 a poor person program if they play the hand they're dealt well. And by

the same token, a \$60 a poor person program in theory can be a poor program if they get good cards and they don't play them right.

So that's the challenge that you have, and I think most of us in the community welcome an opportunity to be engaged in this dialogue, to try to come up with something where we can see that every program can move toward high or highest quality, that it's not without its challenges as I'm sure all of you are aware.

One other chart that I have in the booklet is Chart B. I just wanted to -- I assume you've all seen this at one time or another. But I think sometimes it doesn't register with us that the amount of money that LOC provides for the delivery of legal services to the poor in this country, when adjusted for inflation, is approaching a record low level.

In terms of 2003 dollars, which is the column on the right, as of 2003, there's \$346,646,000. When adjusted for inflation, there were only four years when it's been lower than that, and that's been '96, '97, '98 and '99, and disregarding 1975, which was the first year.

But every other year in the 18-year history, the 28-year history, LOC has provided more money and in some years considerably more money. If we're basing more or less flat funding in '04 and again in '05, by '05 we're back down to that 1998 mark, where there really will be the lowest funding that LSC has provided the program since its inception in 1975.

That has tremendous impact in the programs, and here's why. Most of your other grants are time-limited, or are flat and don't have inflation brought into it. The file fees tend to be flat. The LAV grants and so on tend to be time limited.

So if you're going to get operating revenue, you need to get your inflation money from somewhere. If LSC is a third of your funding, in order to have a three percent increase in your budget, you need a nine percent increase in the LSC budget in many instances, and that has not been happening in recent years.

Because of that, we're in a constant struggle. We're like a shark. We have to keep moving or die. We're in a constant struggle to raise enough money just to give a

two percent, three percent raise to somebody or pay their medical insurance for another year.

On \$3 million budget, we have to raise \$75,000 more each year or reduce expenses by \$75,000 each year to break even. That's a 2-1/2 percent inflation factor. Well this year, we got hit with a 50 percent increase in our medical insurance premiums.

So instead of \$75,000, this year I have to figure out a way to raise \$150,000 next year just to break even. Some years you can do it; many years you can't. What happens is you keep getting smaller and smaller, and over time it kills you.

You know, if I have to raise \$75,000 and can't do it, it means that one relatively high paid position by our standards has to leave, or two moderate-paid positions have to leave or three very low positions have to leave. You keep balancing the books by getting smaller and smaller.

My theory is if this keeps us, we'll only have one employee left, but that employee will have pretty good health insurance. But I think that we have look at, whether it's from LOC or whether it's from other sources,

we have to at least get to the point where you can get a program to \$24, \$25 a poor person, which would be a little above average nationally.

Then have some sort of inflation hedge where you can get it up to where you can afford to have a couple of lawyers for every 10,000 poor people in your community; put an inflation COLA on it. If we can't do that, then our capacity for quality depends on just extraordinary effort and extraordinary sacrifice on the part of the employees, which our employees have proven time and time again they're willing to meet the challenge.

But nobody can hold out forever. So I really think that if we're going to get serious about having high quality in every program in the country, moving towards the highest quality in every program in the country, we have to at least take a serious look at the low-end funded programs, to see if we can't come up with a way of doing a little better.

With that, I'll stop and answer any questions that any of you may have.

CHAIRMAN HALL: Okay. Thank you very much

everyone, for some very excellent presentations. I do have some follow-up questions, but I would first find out if any of the other board members, those on the phone, or those here might have of any of our presenters, and I recognize that our board members on the phone may not have been able to hear everything, but I'd like to start and find out if there are any questions that you may have.

MS. MERCADO: This is Maria Luisa. Actually, the last part of the presentation, I think, the funding of services has always been one of the most difficult things for us to deal with, in trying to justify to Congress to give us what is even a minimum cost.

I'm wondering and looking at it from my fellow practitioner private hat, what that means for an attorney to handle. If you're doing two attorneys for 10,000 people, well, one attorney can handle 5,000 clients per year, what that means in the sense of quality of service, malpractice. So those are the kinds of issues that come up. Are those factors taken into consideration when we're saying two attorneys for 10,000 poor people?

MR. CULLISON: That's an old formula that was the

old minimum access formula. It did not necessarily mean that every one of them presented a case at your office that you handled in a given year. You know, in Kentucky --

MS. MERCADO: Some of those, over 1,000 people per year. Could you as an attorney represent 1,000 people a year?

MR. CULLISON: In my opinion, not well. If you're talking about -- there are some times you win things that have spin-off benefits beyond the client that you help. If you set a precedent, for example, one case could help a thousand or indeed many more poor people than that.

As far as extended services, extended service cases in the drawer that one attorney churns in a year, it would be nowhere near a thousand. It would be in the 100 to 200 range, I would estimate.

Now of course that is not always the most sophisticated way of looking at it. All programs now in the last decade have increased dramatically the number of advice-only cases for want of a better word, the hotline approach, to providing advice only, and in some instances brief service to clients where there may never be a

face-to-face meeting.

When you factor those statistics in, you still don't get up anywhere near a thousand per advocate. But it does increase dramatically the statistics showing the number of persons helped, of course. Other questions?

CHAIRMAN HALL: I guess I would like to just get a better understanding of the point you were making about the different delivery systems that you might have in a \$60 per poor person state versus a \$10 per poor person state.

For example, I'm from Massachusetts and on that list, it's pretty high up there, 57. Yet my experience is that they are feeling pressed in trying to do, you know, advice cases, hotlines, etcetera. So how does the delivery system look different in the "poor" or the \$10 per poor person state?

MR. CULLISON: I think the first thing you'd have to decide would be what do you want the program to be? What are your values? If you had very, very little money, it might be reasonable to say that we just don't have capacity to do high volume individual representation any more. We don't have that capacity.

Therefore, we are going to focus on one case a time that are going to have positive benefits for large numbers of poor people. For example, the Medicaid case that I described. That would be one legitimate decision that could be made, if you had extraordinarily scarce resources.

At the other end of the spectrum, you could decide we value individual representation above all else, or we're going to do as much of it as we can high quality. If it's only five percent of the demand that we're meeting we're going to make sure that those five percent get very good representation.

It will be a model for the way things are supposed to be, and eventually we're going to attract more money do a higher percentage. The other thing you can do is to experiment with alternative delivery proposals that are being experimented with across the country -- pro se clinics, more advice over the telephone.

So I'm not sure that I can answer your question as to what a \$10 program should be, because it depends to some extent on what it is you want to do, or what a \$60 program

ought to be.

But I can say with a great deal of confidence that you're not going to be able to exactly the same in both of those programs. It's going to be a lot different. I've always had the opinion that to the extent you can have a mix, that that was a good idea.

That obviously you want have as dynamic a pro bono or private attorney involvement program as you can possibly muster.

My personal view is it is important to take individuals, hear their stories, provide extended service, solve their problems, vindicate their rights in court, recognizing that under present funding levels it is unlikely you are able to do that for all of them, and in some instances, you will not able to do it for even a significant percentage of the folks.

I also think it's important that as a law firm who's charge it is to provide high quality legal services to low income people, to help them solve the problems they identify, it's important that we devote some resources to addressing what I would call systemic problems, problems

where an effort that's successful will improve the lives of large numbers of poor people.

So I've taken the approach that a mixed approach was the best -- about what is the appropriate mix. But don't think that we can come up with a cookie cutter, one size fits all answer to this.

CHAIRMAN HALL: On just a few others, and some for clarification. When you were talking about the Medicaid crisis, and I think the very innovative approach that you took to addressing that problem, I just want to understand better myself what -- how did the state tighten up the rules, so that so many people were evicted? What exactly did they change, and what was the motivation behind that change that forced you to have to deal with this question?

MS. MERCADO: I can't hear anyone.

MR. CULLISON: The question was, what was the motivation of the state in tightening up the eligibility for Medicaid in the long-term care context? The answer is, the state of Kentucky was facing a large shortfall in its Medicaid budget, and they wanted to trim expenses.

The mechanism was there were three -- that there

were a list of nine -- actually originally a list of about 12 impairments or ailments. If someone had one of those, then it significantly impeded their capacity to perform daily living functions that could be found eligible.

What the state did was reduce the 12 down to 9, and said you had to meet three of the criteria in order to be eligible for Medicaid services. We called it "the three strikes and you're in rule."

The problem was the three -- to meet three of the nine, they were so cut and dried, that it was very difficult to do an individual assessment on an individual, to see whether they really had to be in the facility because they could not function at home.

In other words, it wasn't enough that you couldn't move the wheelchair to the toilet. It wasn't enough that in addition to that, you couldn't lift the food off the plate to your mouth. You had to have some third impairment, and it was virtually impossible for most people to have three of the bad things.

In a charitable vein I will say it was a misguided attempt to tighten up the criteria. If one were cynical,

one would say that they made it so tight that nobody could meet it, so that -- because it was a fiscal rather than a medical decision.

CHAIRMAN HALL: And your basis for overturning that and getting someone to see that they were illegal was -- what was your theory there?

MR. CULLISON: There were several legal theories, some of which were simply that on the individual cases, lo and behold they actually did meet three of the nine. The legal theory on why the whole thing was illegal was that under Medicaid law, Federal law requires that all persons be eligible for Medicaid nursing home payment if nursing home care is reasonably medically necessary.

So the issue was if you changed your eligibility criteria based on fiscal considerations rather than medical considerations, whether the state was complying with Federal law, which mandated that anyone who had a medical necessity for nursing facility care on Medicaid's dime, should have been able to receive it. That was the legal theory.

CHAIRMAN HALL: Okay, thank you. You mentioned

earlier also about a LAV grant, and I just didn't know what that stood for.

MR. CULLISON: Yes sir. I'm sorry to use an acronym. It's Legal Assistance to Victims of domestic violence. It's under the Violence Against Women Act funding, which the acronym for that is VAWA. We refer to that as a VAWA go grant, because there are relatively few restrictions on what you can do on behalf of victims under the LAV or the VAWA go grant.

There's also a VAWA stop grant, and under the VAWA stop grant you can assist individuals in protective order proceedings to stop the violence, but you're not allowed to use those funds for divorce, to get divorced.

Which is another thing about having 60 grants. When you have 60 grants, and each one has -- I mean virtually every grant we have has something quirky like that in it, that you have to adhere to -- well, if you're going to run an honest program, you've got to adhere to the grant conditions.

But beyond that, if you want to get -- if you want to have a chance to refund, you've got to obey the grant

terms, and so you've got to keep track of all that stuff.

CHAIRMAN HALL: My final question. I think the two indicia that you shared with us, that is, can you deal with an emergency situation and can you start a new program that really addresses client needs, are very much appreciated, and we haven't heard those before. I think definitely need to be added to our list of ways in which you track quality. I think they are innovative and creative additions to the list.

I guess I would be interested in just hearing from you what are some other things, besides those two very creative and very innovative things, that in the Bluegrass operation that is important to you as the executive director, in ensuring that it is a quality overall operation, not just the cases, as you said.

And in particular, I am concerned about the issue of training for especially new lawyers, but even existing lawyers, and whether you feel you have the capacity to do that with all of the crunch that you've been talking about in regards to funding.

So in general, what are the other indicia and

specifically the training issue?

MR. CULLISON: Training new staff is important. Some sort of supervisory or administrative structure is important. Accountability is important.

MS. WATLINGTON: This is Ernestine. I don't hear anything.

MR. CULLISON: In terms of training, I think that --

CHAIRMAN HALL: Excuse me. Ernestine, you're not hearing?

MS. WATLINGTON: Not really.

CHAIRMAN HALL: If you could speak a little louder and more into the mike.

MR. CULLISON: All the stuff that Mr. Hall said is important. Training is important, accountability is important, oversight, etcetera. I think my experience was that that was a big adjustment when we got bigger.

You know, in a one-office program, relationships tend to be collegial. You tend to know each other very well. You tend to know each other's strengths and weaknesses. You've lived together for a long time.

And when we got bigger, it required new systems, new management structure. We had to -- we didn't have to, but we were happy to promote Brenda to business director. We have an advocacy director. We try to have decent administrative or managing attorneys on site in each office, and the use of computer case management tracking and so on. All that is helpful.

We have come up with new protocols for recently-hired attorneys, where there is considerably more structure to the mentoring than has historically been the case in our program.

We have requirements that they sit in on a certain number of a particular type of case before they handle one alone, and then that they be observed by a senior attorney before they be turned loose alone and so on.

We've implemented that in the last year or so, because we acknowledge that the old methods we had, that we never had a pure sink or swim philosophy obviously, but let's just say it tilted a little more in that direction in the old days than it does now.

So all that stuff is important. I think that that

kind of stuff does lend itself to an accreditation-type model, where you can have some standards that -- I think if you have standards and people adhere to it, you're increasing -- you're enhancing the odds that you're going to have a quality program. I don't think there's a guarantee.

I mean, you heard these stories about stuff that we're doing today, and probably that sounds pretty good. That sounds like pretty good stuff. But, you know, you don't have clue whether the attorney who did the good stuff, exactly how they were trained or whether they had case reviews, or whether their files were a mess or whether their files were in good order.

So to some extent in looking at quality, I think to some extent the anecdotal stuff is important. What is the program -- what's the thing the program's most proud of the last year or two they've done? I think the anecdotal stuff counts.

But I don't think that that means that the -- but as a requisite to getting there, it will enhance the odds considerably if you have a decent structure in place, would

be my two cents on it.

And then of course the other question you had is affordability on training. I think it's foolish to scrimp on that. You know, I think that no matter how down and out you are, you're going to scrape up the money to send somebody. If there's a basic skills training, you scrape up the money and you send him or her to it.

We have a state support system in Kentucky where the Access to Justice Foundation puts on poverty law trainings for all the programs in Kentucky. The programs have committee meetings to decide what the training calendar is going to be for the year, and that works very well. It keeps the cost somewhat nominal.

But, you know, there's a lot I'll scrimp on, but training wouldn't be one of them.

CHAIRMAN HALL: Thank you very much. Are there any other questions from board members?

MS. MERCADO: I just had an additional question on the training.

CHAIRMAN HALL: Yes, please go ahead.

MS. MERCADO: Do you see -- I apologize. My mind

just went blank. Is it Mr. Cullison?

MR. CULLISON: Yes.

MS. MERCADO: On the training issue, I know that's sort of like a state-by-state type situation. Is there any benefit, and part of, you know, looking with all these diminution dollars and the reality that lawyers need to keep abreast of the law, and certainly maybe lawyers need to be trained in the skill, you know, of litigating. Whether you get part of that pro bono or part of it as training from your local state bar, should that be part of sort of a national budgetary item that should go to the states for training?

MR. CULLISON: I think it would be a good idea to do that. I think, of course, we used to have back up centers who provided excellent resources and excellent training on the LSC dime, and that was changed in 1996.

We used to have regional training centers, who would focus on topics that were not state-specific, such as the Federal law, whether it Federal housing or Medicare/Medicaid, the Federal discrimination statutes, whatever, and in addition to that provided basic skills

training. In my opinion, that worked pretty well. Now --

MS. MERCADO: I mean is that part of the quality of legal services that we're providing our client community by having training and educated -- not only a training and support staff to carry out that work --

MR. CULLISON: I think training of the legal staff and the support staff is vital, and probably a requisite to having a quality program. Who funds it is a little beyond my pay grade, I think, but I think that our program will provide the requisite training that we need to do an effective job.

Would we like to have some grant source out there that would do that for us and we can save our training budget for some other purpose? You bet we would. On the other hand, when you're dealing with a finite number of dollars, I think that without knowing what the competing budgetary considerations are it's a little difficult for me to say that that percent ought to go into national training.

But I think when LSC did do national training, it worked pretty well.

CHAIRMAN HALL: Any other questions? Well, on behalf of the Provisions Committee, we really want to thank you, Dick and Howard and Lea and Holly and Marisol and Brenda and others who have come before us. I think you have provided us with some very insightful information.

I don't just say this lightly. I think your take on other ways to measure the quality of a program is very unique and different, and I think it will be something that gives us some deep thought in looking at other programs and trying to come to a conclusion around the quality issue.

So thank you for the materials and the preparation, and for allowing us to hear from you.

MR. CULLISON: Well, on behalf of the entire staff I think I can say that it's really been a pleasure, and we appreciate the fact that you all are in my adopted state of Kentucky, that you all are wrestling with this issue.

I think that it is something that we can come up with a way of measuring it. I just don't think that it's -- I think we can come up with ways of knowing when we have quality. I just think that it is -- it's going to be a real wrestling match for you all, but I think that we can

do it.

CHAIRMAN HALL: Yes. Well, we are looking forward to the wrestling, and we decided early on that we didn't want to wrestle alone, and that's why we have been getting some very good input from various parts of the country. So thank you very much.

REPORT ON MENTORING PROJECT

CHAIRMAN HALL: Our next item on the agenda is a status report on the mentoring project. A number of meetings ago, Olivia Johnson, representing the Diversity in Leadership Group came and made a proposal to us around developing a mentoring project, to develop diverse leadership for the future.

The Provisions Committee asked the president of LSC to look into that project or proposal, to see what could be done. There's been work done in regards to moving that idea forward, and I wanted to ask Helaine to give us an update on that.

MS. BARNETT: Thank you. I would like to report briefly on the status of our mentoring project, the purpose of which the chairman has just repeated, is to help create

a core of well-trained and diverse leaders for the legal services community, recognizing they are our future.

Just to highlight a few of the issues. Our internal Legal Service Corporation staff committee meet with leaders of NLADA, who are responsible for their leadership and diversity initiatives. Chuck Wynder is in the audience, and he was one of those leaders with whom we met.

They challenged us to consider broadening our concept of the design of our program beyond a very labor-intensive and potentially inconsistent one-on-one mentoring relationship.

We are looking to see if there is an effective way to combine the benefits of a one-on-one mentoring relationship --

MS. WATLINGTON: This is Ernestine. I don't hear anything.

CHAIRMAN HALL: A little louder.

MS. BARNETT: With training and support for a larger group of diverse participants. We are also collaborating with the NLADA and with the Management

Information Exchange, in the development of a leadership training curriculum, and in fact we will meet with Patricia Pap, who is in the audience today, from MIE, in early December.

As we heard in our presentation this morning, MIE conducts new director training and other leadership programs, and we want to collaborate and coordinate our efforts in light of the work of our national partners.

As part of that effort, we are also looking to revise NLADA's core competencies for the public defender leaders. The competencies need to reflect the somewhat different skills required for LSC-funded civil program leaders, and the competencies must also accurately reflect and support the goals and objectives of the mentoring project.

A funding issue concerning the propriety of the use of LSC funds, to pay for the professional development of grantee staff, still needs to be further researched and resolved. We need to keep LSC's leadership and diversity advisory council informed of our thinking, and bring the council up to date.

So our plans remains to continue to meet on a regular basis, to develop our proposed recommendations. We will then share our thoughts with LSC leadership and diversity advisory council, to receive their input on our proposed design, and do the same with our national partners, with NLADA, with CLASP and with MIE.

Our goal is to try to accomplish all of this in time to present to the Provisions Committee our recommendations at our annual meeting in February.

CHAIRMAN HALL: Thank you. Any questions from board members about the mentoring project?

MS. MERCADO: David, the only thing I would say, for those of us on the phones, since we missed --

CHAIRMAN HALL: Could you speak a little louder? Now we're having a little problem hearing you.

MS. MERCADO: If we could just get a copy of her remarks, that would be great.

CHAIRMAN HALL: A copy of Helaine's remarks?

MS. MERCADO: Yes. We didn't hear most of it.

CHAIRMAN HALL: Okay, all right. We can make sure that that happens. Any other questions? Okay, thank you,

and I'll thank you for keeping that moving and I look forward to February and seeing the full proposal.

PUBLIC COMMENT

CHAIRMAN HALL: The next item is public comment. Is there any public comment to come before the Provisions Committee?

(No response)

OTHER BUSINESS

CHAIRMAN HALL: There appears not be any. Are there any other acts or new business that any of the committee members would like to raise? If not, I will consider an act of adjournment.

M O T I O N

MS. MERCADO: So moved.

CHAIRMAN HALL: And seconds? So the Provisions Committee is now adjourned. Thank you again to all of those who participated.

(Whereupon, at 3:18 p.m., the meeting was adjourned.)

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