

# Creating a Sustainable Volunteer or Student Discharge Upgrade Program: Innovations, Frustrations, and Achievements

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**Veterans Law CLE**

**Missoula, Montana**

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Alexander Blewett III

**SCHOOL OF LAW**

UNIVERSITY OF MONTANA

# Veterans Discharge Upgrade Pro Bono Program

Stephen C. Lessard  
NYCLA, President-Elect  
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# The Need

## **Thousands of veterans live with less than fully Honorable discharges that can be administratively upgraded**

- 210,000 veterans in NYC; 15.2% of veterans have less than fully Honorable discharges
  - There are 98,386 veterans in Montana (Jan. 6, 2017)
- PTSD underdiagnosed and stigmatized
- New guidance on cases involving mental health issues, traumatic brain injury, or sexual assault
  - Requires “liberal consideration”
  - Recognizes these issues were “far less understood than they are today”
  - Since 2013, grant rate for ABCMR in PTSD cases has risen from 3.7% to 45%

## Representation Before Discharge Review Boards & Boards of Correction of Military/Naval Records

- Written applications and in-person hearings
  - Grounds for relief: equity and propriety
  - In-person hearings require travel to Washington DC
- Legal representation greatly increases an applicant's odds of success
  - Grant rates are inconsistent, and generally low
  - Vast majority of applicants are pro se
  - "Small investments in pro bono legal services can help unlock a lifetime of access to the V.A. and help the neediest veterans with bad paper move on with their lives." Phillip Carter, *The Vets We Reject and Ignore*, N.Y. Times (Nov. 10, 2013).

# Pilot Program



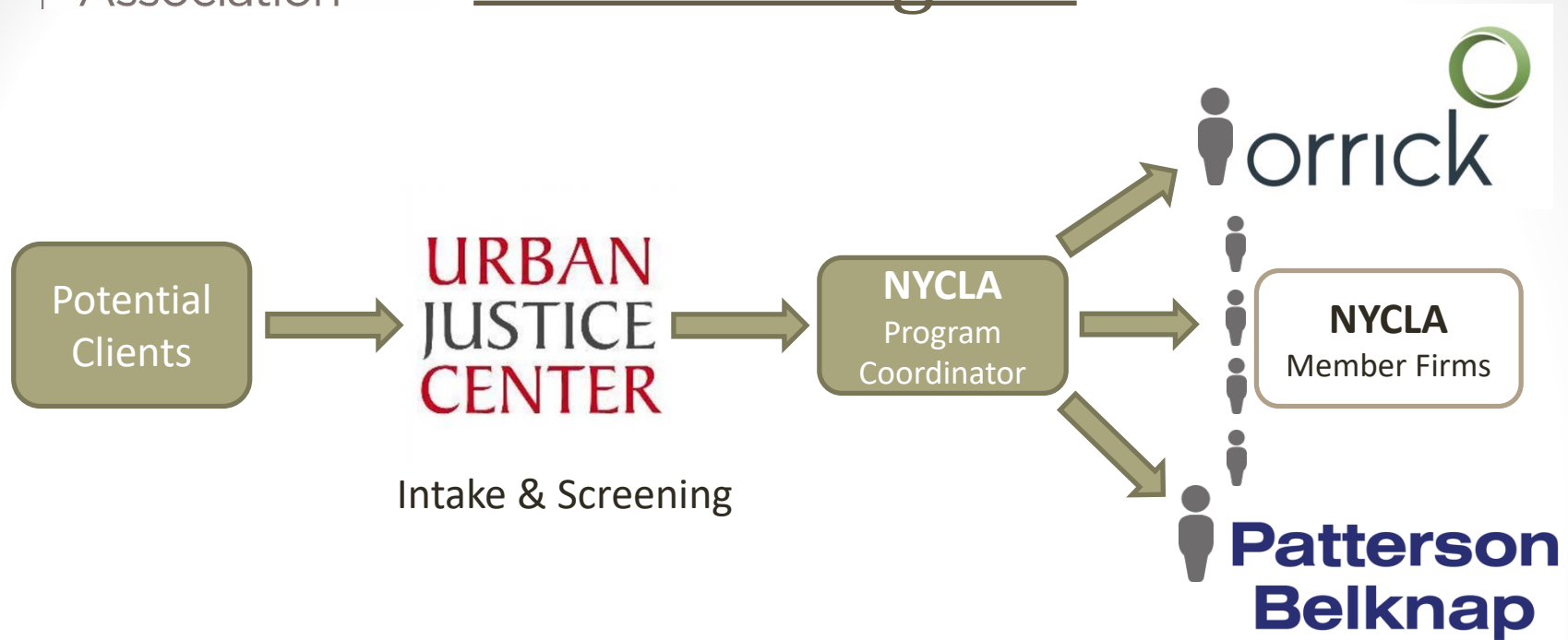
June 2013 – June 2018

- 27 Clients
- 6,041 attorney hours
- \$31,847 in expenses
- 5 Upgrades; 3 Appeals (62.5 % success rate)
- 272 hours per client
- \$1,180 per client

## Our Resources

- Urban Justice Center – Veterans Advocacy Project (UJC - VAP)
  - Training and substantive guidance
- Forensic Psychologists
  - Relationships with local clinical programs
- Congressional Representatives
  - Letters of support
- Veterans Defense Program (N.Y. State Defenders' Association)
  - Cultural competency training
- Volunteer Lawyers for Veterans (Fordham Law – Feerick Center)
  - Student intern program, in development

# Current Program



## Program Expansion

- Focus on recruiting NYCLA member firms
- Solo practitioners on a case-by-case basis only
- UJC to provide training for new firms; online resources

## Program Structure

- Program Coordinator oversees administration, reviews and reports
- PC overseen by Chair of the Pro Bono Committee and the Director of Pro Bono Programs
- Firm liaisons interface with PC

## Resource Expansion

- Leverage NYCLA marketing and imprimatur
- Recruit additional psychiatry programs for pro bono evaluations
- Partner with additional veterans service organizations

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# VETERANS JUSTICE PRO BONO PARTNERSHIP

Dana Montalto  
Attorney & Clinical Instructor  
Veterans Legal Clinic



# WHY A PRO BONO PANEL?

More veterans seeking discharge upgrades than clinic (or other legal organizations) can represent

Previous efforts to increase pro bono resources through training alone insufficient

Lack of DU experience/expertise in private bar



# STRUCTURE OF PRO BONO PANEL

- **intake assessment:** on the merits, obtain and review records
  - All discharge statuses (Honorable to Dishonorable)
  - New England veterans (but mostly Massachusetts)
- **pro bono trainings:** annual, at Boston Bar Association, videotaped/available online
  - Most attorneys from large Boston law firms, but also some in-house counsel and outside of Boston
- **referral:** match pro bono attorneys to veterans
- **ongoing case support:** stay in touch with pro bono attorneys through the case, provide guidance and consultation, offer resources and templates



# WHAT MAKES A GOOD REFERRAL

Appropriate case for a pro bono referral

- Case theory
- Resources needed
- Difficulty

Referral packet with resources

Dedicated pro bono team with law firm support

Veteran who is ready to engage with the pro bono team



# CHALLENGES—AND WHAT TO DO ABOUT THEM

## Lack of expertise in discharge upgrade law

- Case advisor
- Trainings, resources, templates, examples
- Fewer firms with more cases

## At-risk, low-income, in-need veteran clients

- Train about cultural competency and lawyering for low-income clients
- Be explicit about best ways to stay in touch with clients

## Firm resources for experts

- Highlight up front in the referral whether case might need an expert
- Counsel pro bono teams about finding pro bono experts or working with treating doctors



# SUCCESSSES (AND “TEMPORARY SETBACKS”)

- 100+ pro bono attorneys trained and working on cases
- ~12 law firms overall (both large and small), but vast majority placed with 6 large law firms (and 1 in-house counsel office)
- ~60 cases referred
- 3 case decisions: 2 favorable, 1 unfavorable (but being appealed)



# CONTACT

**Veterans** from New England seeking a discharge upgrade:  
call our intake line at (617) 390-2525

**Attorneys** interested in discharge upgrade *pro bono* advocacy:  
contact Dana Montalto at (617) 390-2737 or [dmontalto@law.harvard.edu](mailto:dmontalto@law.harvard.edu)

**Upcoming Training** on Thursday, April 25 at Boston Bar Association

**More Information** at <http://www.legalservicescenter.org/get-involved/volunteer-opportunities/veterans-justice-pro-bono-partnership/>

# Veterans Law Project

## Creating a Sustainable Volunteer or Student Discharge Upgrade Program: Innovations, Frustrations, and Achievements

Jennifer Fulmer, Pro Bono  
Managing Attorney &  
Justine Pelham, Veterans Law Project  
Attorney

March 2019



# LSNV

LEGAL SERVICES  
OF NORTHERN VIRGINIA

*Opening Doors to Justice*



# Background

- 2015 grant from Equal Justice Works and AmeriCorps launched the **Veterans Law Project (VLP)**
  - About 800,000 veterans in VA
    - 1/4 in NOVA with Fairfax and Prince William Counties having a higher percentage of veteran residents than the national average.
  - Objective - Traditional Poverty Law and Veteran Specific Issue
    - At capacity on traditional poverty law issues -> Gap in services for veteran specific legal issues
- 2017 LSC/PBIF -meet gap through pro bono
  - All of VA

# Veterans Law Project



# LSNV

LEGAL SERVICES  
OF NORTHERN VIRGINIA

*Opening Doors to Justice*

LSNV's Veterans Law Project provides legal assistance to low-income veterans in need of discharge upgrades and access to VA healthcare.

While LSNV is known in the community for its committed service on traditional poverty law issues, successfully serving veterans on veteran-specific issues requires a focused and coordinated outreach campaign with the Veteran community and the enlistment of pro bono attorneys.



# Project Partners

- Antonin Scalia Law School's Mason Veterans and Servicemembers Legal Clinic (M-VETS)
- Hewlett Packard Enterprise (HPE)
- Hilton Worldwide
- Miles & Stockbridge
- Hogan Lovells
- Transurban USA
- Virginia State Bar Young Lawyers Conference

# Discharge Upgrade Pro Bono Project Structure

## Initial Client Interview

- M-VETS Student Advisors & Project Paralegal provide Veterans with thorough legal assessment, eligibility, and legal checkup of all possible civil legal issues, discharge upgrades, and VA character of discharge cases.
- Project Attorney reviews assessment & requests relevant records

## Medical Records Review

- Once all relevant medical records (STRs, mental health records, post-service medical records, etc.) are obtained, then records are reviewed by HPE volunteers.
- HPE organizes records by highlighting, bookmarking, tabbing, and creating a table of contents for Pro Bono placement.

## Placement of cases to pro bono attorneys

- Once all medical and military records have been received, a case summary is drafted and sent to trained pro bono volunteers to represent clients.
- Project Attorney provides ongoing assistance to pro bono representatives



# Frustrations & Achievements

- Becoming a stakeholder in local veteran communities
- Outreach efforts
- Medical-Legal Partnerships with Vet Centers
- Community and legal trainings of specialized areas of law
- How to narrow legal issues/scope of pro bono cases

## CONTACT

Veterans in Virginia seeking a discharge upgrade can contact LSNV's intake line at (703) 778-6800, e-mail us at [veteranslaw@lsnv.org](mailto:veteranslaw@lsnv.org), or apply through our website at <http://www.lsnv.org/>



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# Montana Military Discharge Upgrade Project

*A joint project of*

*Alexander Blewett III School of Law Veterans Advocacy Clinic*

*State Bar of Montana Veterans Law Section*

*Montana Supreme Court Statewide Pro Bono Program*

# Military Discharge Upgrade Project Referral Process





# How Do Our Partners Fit Into the Process?

## **Alexander Blewett III School of Law Veterans Law Clinic**

- Interview eligible veterans
- Evaluate veteran intake for basic merit
- Veteran eligibility notification
- Screening Memo
- Student assistance to volunteer attorneys

## **State Bar of Montana Veterans Law Section**

- Assists with volunteer recruitment and placement
- Assists in development and delivery of continuing education, materials and resources
- Assists in raising awareness about veterans' needs

## **Montana Supreme Court Statewide Pro Bono Program**

- Evaluate basic intake for program eligibility
- Volunteer recruitment, retention, recording, and recognition
- Veteran upgrade case placement
- Assists in development and delivery of continuing education, materials and resources
- Communication among partners

Financial screening and malpractice coverage is provided by **Montana Legal Services Association, a Legal Services Corporation grantee**

# Strengths and Challenges

## Strengths

- Excellent leadership from ABIII Law School, Prof. Wandler
- Network of partners each doing a little without a lot
- Committed volunteers
- Excellent training opportunities
- A personal approach to program involvement and connection with veterans

## Challenges

- No specific funding or allocated staff
- No single portal for referral

# A Commitment to those who have served

*Prof. Hillary Wandler & The Alexander Blewett III School of Law*

*Col. Beverly Schneider*

*Robert Kampfer*

*Montana Justice Foundation*

*Crowley Fleck Law Firm*

*Volunteer Attorneys everywhere*



# Montana's Unique Pro Bono Attorney Population



## 3,174 Active, In-State Montana Attorneys

- 28% solo practitioners
- 23% government/public interest
- 16% 3-5 attorney firms
- 9% 2-attorney firms
- 6% 6-10 attorney firms
- 18% larger than ten attorneys

# Contact Information

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