

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

- Stephen Lessard, President-elect New York County Lawyers Association/Orrick, Herrington & Sutcliffe
- Dana Montalto, Veterans Legal Clinic, Legal Services Center of Harvard Law School
- Jennifer Fulmer, Managing Pro Bono Attorney, Legal Services of Northern Virginia
- Justine Pelham, Veterans Law Pro Bono Project, Legal Services of Northern Virginia
- Patty Fain, Pro Bono Coordinator, Montana Supreme Court Pro Bono Program

Veterans Law CLE

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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
Orrick, Herrington & Sutcliffe LLP
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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



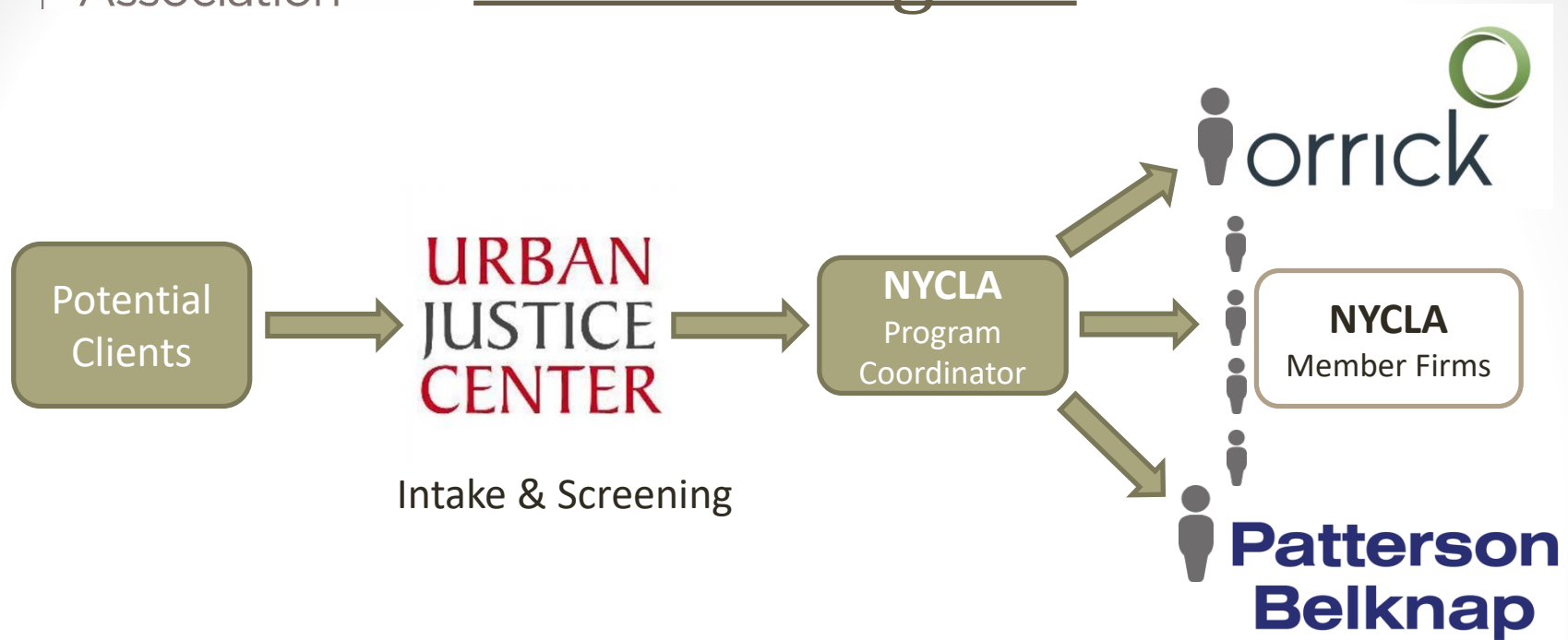
June 2013 – June 2018

- 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

Stephen C. Lessard
President-elect

New York County Lawyers Association
slessard@orrick.com



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

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/>