

MASSACHUSETTS ACCESS TO JUSTICE COMMISSION

SPECIAL PLANNING COMMITTEE

PROGRESS REPORT AND RECOMMENDATIONS
FALL 2013

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Preface

This is the third report of the Special Planning Committee (hereafter "Committee") of the Massachusetts Access to Justice Commission (hereafter "Commission"). The Committee is responsible for the Commission's work on the leadership, planning and management of the delivery system -- the system of delivering legal services to low- and moderate- income clients. A parallel Revenue Enhancement Committee works on ways to increase funding for the delivery system.

The Commission, created by the Supreme Judicial Court in February 2005 and reconstituted in February 2010, seeks to improve access to justice in the Commonwealth. The legal services delivery system is a critical component of the access to justice movement.

The Committee issued its "First Interim Report" to the Commission in June 2011, received and discussed comments on that Report over the summer, and then produced the resulting "Second Interim Report," which was adopted by the Commission in September 2011. This draft "Progress Report and Recommendations: Fall 2013" will follow a similar course. The Committee will distribute it to Commissioners, funders and legal aid programs for comment and discussion in the winter of 2013-14 and will issue a revised, final Report by the spring.

In the Second Interim Report, the Commission's role was identified as planning and issue spotting. In that role as planner and issue spotter, we have become concerned about the ability of the delivery system to make and implement decisions about some fundamental issues affecting services to clients. While our sense was that what appeared to be generally high quality work was being done for clients across the state, we observed that the delivery system, as a whole, was challenged to follow and implement important planning recommendations and was not able to plan and effectively implement several others.

This difficulty is the underlying theme of this Progress Report. We want to focus attention on decision-making and implementation of improvements by the delivery system. As part of that focus, we propose to be more involved in the next two years than we were two years ago. We think we were remiss in making recommendations and then not helping to carry them out. We plan to join with the delivery system in implementing the planning recommendations that were not implemented before. We believe that we can aid the delivery system in making and implementing critical decisions about intake and screening, systemic advocacy, priorities, evaluation, and technology.

Special Planning Committee

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MASSACHUSETTS ACCESS TO JUSTICE COMMISSION

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Recommendations

The Committee recommends a three-part plan for the delivery system during the next two years:

1. Continue what is working well.
2. With the active participation of the Committee, plan and carry out five important projects:
 - Increasing Systemic Advocacy
 - Creating a Rational, Efficient State System for Screening, Referral and Intake
 - Improving Resource Use: Knowing What We Do and Doing More
 - Getting More Productivity Through Technology
 - Learning More Through Review and Evaluation
3. Open a Dialogue About Methods of Statewide Decision-Making and Important Planning Issues Not Currently Being Addressed Such As Equity in Resource and Service Distribution and Whether a Statewide Service Delivery Structure Would Improve Decision-Making and Service Delivery to Clients.

Progress Report

Background

The Massachusetts legal aid delivery system¹ continues to be viewed at the top nationally in innovative, effective advocacy. Several of our regional and statewide programs are without peer. Despite significant reductions in funding during the past several years, we remain one of the leading states in total resources per poor person. Our programs are led by skilled executives and dedicated board members, employ excellent staff, and implement sophisticated anti-poverty strategies. Our Judiciary is highly respected nationally and strong in its support for access to justice. The organized bar has an unbroken record of activism in the name of access to justice dating to the 19th Century. Few states can come close to our record.

The last two years have continued this history of excellence. We have successfully navigated major leadership transitions in our largest regional program, our largest state support program and several other programs. Where program performance lagged behind our high expectations, we have seen new leadership emerge and program restructuring result in significant improvement. In every region, and in the statewide delivery system, the commitment to high quality representation of clients has been maintained despite the dramatic drop in IOLTA funds and the increasing crisis in LSC support. During this period, program staff in regional programs have accepted salary freezes, furlough days and benefit reductions and continued to maintain the excellence of their services.

The Commission has played its own part in the record of the three years since it was reconstituted by the Supreme Judicial Court in February 2010. The Access to Justice Registration fee and the Pro Hac Vice fee are contributing about \$1.5 million dollars per year to the programs. As this Report is issued, the IOLTA Committee, with significant support from the Commission, MLAC and the Massachusetts and Boston Bar Associations, has a proposed amendment of Rule 23 pending before the SJC that will bring IOLTA at least 50% of all class action residuals. With financial support from the Public Welfare Foundation and the ABA, the Commission's Revenue Enhancement Committee has received a feasibility study for a major fund raising campaign in the philanthropic world in Massachusetts and is moving forward with its recommendations.

During the last decade, the delivery system has spent a lot of time and energy on structure. The Commission's predecessor organization, the State Planning Board, was created primarily in

¹ References to "the delivery system" in this report refer to the 19 separate legal services programs that are funded by LSC or MLAC. LSC funds MJP, NCLA, VLP (and LARC through VLP) and MVNSLS. MLAC funds CLA, LSSCC, GBLS, CLSSAC, MWLS, NLS, CLC, NCLC, PLS, NCELP, DLS, MLRI, MAC, CPR and MVNSLS. There are a substantial number of providers of legal assistance to low income families that do not receive such funding. They are referred to as "the broader delivery system." Examples include Medical-Legal Partnership|Boston, PAIR, NLG, CLUM and law school clinics.

response to LSC's concerns about structure. LSC's state planning criteria led Massachusetts to consolidate its six LSC grants into just four and to build regions around them which included an MLAC grantee not tainted by LSC funds. In the years of the first Commission (2005-2010), the consequences of structural change slowly took shape. The second Commission (2010 - present) formed the Special Planning Committee in large part because of ongoing structural questions. The current status of this structural work was explored in a series of meetings with regional leaders during 2012-2013, which are described later in this Report.² There are still important structural issues in the regional delivery systems, but the Committee believes that the Commission, MLAC, and to a lesser degree LSC, are now in a position to respond effectively.

The Focus of the Next Two Years

The Committee recommends that the primary focus of the next two years be on the ability of the delivery system to plan for and implement substantive change in some of the ways services are delivered to clients. We offer our recommendations with a deep respect for what the staffs and boards of the programs are doing. All of us have committed substantial portions of our professional lives to the work of legal services. We accept our responsibility to do more than offer well-meaning words. We propose to participate in implementing these recommendations for two reasons. First, we hope we can be helpful in translating our recommendations into practical steps for the field programs. Second, we feel we should be accountable along with the programs for making change happen or for failing in the attempt.

1. Continue What Is Working Well

Structural change seems to take a long time and challenges our program leaders and board members when decisions are required, but the regions have been coming to grips with structural issues. MLAC has provided direction and needed supplemental funding and has been a helpful partner with LSC in support of structural change. The Commission through the Committee has performed its issue-spotting role effectively.

MLAC has been thoughtful in its strategic planning and implementation. It has taken on important leadership in its Financial and Delivery System Task Forces and sponsored training on diversity and on using financial projections effectively in management.

While the people serving as executive directors of almost every field program have changed in the past five years, the institution of "the Project Directors" has remained stable. They have taken on roles in promoting new commitments to claiming and collecting attorneys' fees and ensuring necessary comments on proposed changes in ethical and civil practice rules. Despite the financial crisis, our conversations and collective observations convince us that the basic delivery of services to clients is running smoothly and should continue to do so.

² See *infra* at pages 15-16.

2. Plan and Implement Five Projects

PROJECT 1. Increasing Systemic Advocacy

Assess steps that can and should be taken by the field programs, MLRI, the other MLAC-funded statewide programs, the Commission and MLAC itself, to increase the extent of" systemic advocacy," and plan and implement a concerted statewide effort to lead every local program to undertake more work directed at solving systemic problems of poverty, including the filing of more class actions lawsuits where appropriate.³

This Project is already off to a good, if delayed, start. MLRI and the Advocacy Coordination Committee accepted this recommendation. They proposed a combination of initial training to acquaint program staff with the concepts involved, followed by development of local and regional program plans for instituting change, followed by additional training and support for implementing the plan and, finally, a report on how things had gone. However, the systemic advocacy effort was deferred while the attorney's fee campaign was undertaken.

The Attorney General's HomeCorps is a prime example of what this Project can lead to. MLAC obtained funds and working with some program staff formulated a high quality, systemic advocacy mission to be carried out by a virtual law firm. With leadership from Will Ogburn and Meg Connolly, advocates on the firm's staff were trained with an eye to the systemic issues they would encounter. In a matter of months the intended orientation toward systemic advocacy was implemented.

A gathering together of program staff for a day or two of informative and inspirational sessions and team building exercises is one of the tools often employed when a leadership decision to emphasize a new advocacy approach is implemented. This year's conference on the historic anti-poverty mission of legal services, co-sponsored by the Project Directors and MCLE, was such an opportunity. When the systemic advocacy recommendation is implemented, this annual conference should be an important element of the effort.

PROJECT 2. Creating a Rational, Efficient State System for Screening, Referral and Intake

Based on the Task Force Report on current practices in the four regions, including the Northeast Region's process which does not include a hotline, develop best practices for screening, providing telephone advice to, intake and referring of applicants for further services in ways that benefit the applicants to the extent

³ Based on Recommendation Number 6 in the Second Interim Report.

appropriate in light of resources and allow for a significant reduction in the allocation of field program staff to these functions, and implement systems based on the best practices for regional or statewide performance of these functions.

Nothing in the Massachusetts' delivery system has stood out more prominently in the last sixteen years than the creation of specialized regional helplines⁴ funded primarily with LSC dollars and without MLAC resources. In the mid-1990s, as new and heavy-handed Congressional restrictions limited the use of LSC funds and the activities of organizations that accepted those funds, the Massachusetts' model was implemented.⁵ New Center for Legal Advocacy spun off from Southeastern Massachusetts Legal Assistance Corporation and took over the LSC grant. Massachusetts Justice Project was formed by combining the LSC grants previously received by WMLS and LACCM. In both cases, the programs giving up their LSC funding preserved their ability to provide a full range of advocacy services to a full range of income eligible individuals with MLAC, IOLTA and other funds. In the Boston area,⁶ GBLS relinquished LSC funding in favor of VLP and VLP provided LSC funds to LARC to perform helpline services for , GBLS and VLP. In all three cases, the LSC program also provided screening, referral and intake services of some kind. At both NCLA and MJP staff advocates also provided some direct representation beyond advice as well. VLP has a core staff that recruits, trains, mentors and coordinates services by volunteer attorneys to handle full service matters as well as taking on some of this work in-house.

In the Second Interim Report, the Committee pointed out how difficult it had been over the years to identify needs for improvements in the delivery system, to analyze options and, particularly, to make and implement decisions in an efficient and effective manner. Our Report emphasized the importance of these leadership functions, and some individuals argued that only a single, statewide program could be relied upon to provide truly effective leadership. At the time of our report, our concerns were directed to the significant resources which were being placed at the front end of the delivery system at a time when resources for more broad based legal assistance were declining. We also heard concerns about duplication of services. We wanted to explore whether the state or its separate regions could create a better, more efficient and effective intake system by examining the regional systems and identifying best practices. These best practices could then be adopted statewide to maximize the best use of limited resources and decrease or eliminate duplication on the front end. , This issue presented a perfect opportunity to explore leadership in shaping the next vision of a more effective intake process.⁷ The Project Directors agreed to examine the intake system. In comments to the draft of the Second Interim Report, as we noted in our recommendation, they offered to take this area on through an already-existing task force. The Committee concurred.

⁴ A "helpline" is a "hotline" that doesn't always provide immediate responses over the phone.

⁵ It's really the New England model, since versions of the LSC-funded helpline were also developed in New Hampshire, Vermont and Connecticut. No state outside New England chose this model. Today the Connecticut and Vermont helplines continue to operate while the New Hampshire structure changed many years ago.

⁶ The use of regional designations was part of the 2003 State Plan.

⁷ The term "intake" is used, in this discussion, to stand for screening, referral and providing advice on a helpline, as well as actually performing intake services for a region's programs.

The Committee suggested that the task force deal with such questions as the strengths and weaknesses of each region's current practices, how to enhance the ability to screen, advise and refer potential clients in a way that allows for a significant reduction in the allocation of staff of the field programs, what needs did a regional delivery system have and how did the helplines meet those needs, what advantages and disadvantages could be discerned by comparing the Northeast intake system to that of the other three regions, what "best practices" should be built into future intake systems, what alternative resources can we build into the system to free up resources for more broad based advocacy and were other states doing intake in ways we should emulate?

After the Project Directors had reviewed and modified the membership of the task force, it went to work under the able leadership of Project Directors Gordon Shaw and Rosa Previdi. A year after issuance of the Second Interim Report, the Task Force presented its report in October 2012. It contained extensive descriptions of each region's intake system, but it did not contain comparative analysis of the systems, weigh pros and cons of each approach, reach conclusions about which system would be best going forward or set out the best practices that might guide state or regional decision-making on these issues.

With the Task Force report in hand, the Committee recommends that the next step is a project designed to plan and implement the best possible delivery system approach to intake, screening, telephone advice and referral. Our current thoughts are that such a project might include the following characteristics.

There should be a single "legal aid" phone number and web application process for screening calls for help throughout the state. The output of the screener should be referral to the region which might provide representation or to the most likely alternative source of assistance. No legal advice would be given by the screeners. Ideally, the referral into the legal aid intake system could be accomplished without hanging up on the caller.

Each region should utilize technology based applications to minimize reliance on telephone intake systems. Basic field programs should explore alternatives to using program staff to give callers hotline advice. Consider bar associations and other local referral networks including volunteer resources as alternatives, if at all. Programs should also identify lower priority legal matters for which no referral is available and consider giving an "honest no."

Intakes by the basic field programs should be limited to matters which fall within program priorities, and those priorities will be more detailed, so that fewer unacceptable cases will be processed by advocates.

Moving away from responsibility for a high volume advice service should free up resources for advocacy only our legal aid and pro bono programs can provide -- complex representation in cases of broad impact and cases in which the party we represent is particularly likely to forfeit important rights regarding basic human needs (the ABA "right to counsel" resolution's phrase).

Some may wish to debate whether it is wise to de-emphasize the hotline function. We think the message of our pull-back from our helplines is related to the issue of the best use of limited resources. Devoting substantial resources to such a function should not be our highest priority. Moreover, the courts are likely to take an increasing role in helping self-representing litigants deal with their legal problems. Some of these roles will involve legal advice (lawyer for the day) while others will limit themselves to legal information (court service centers). The effectiveness of these court-based systems will have a direct impact on the difficulty legal aid staff will have with saying "no." We will want to encourage the funding and successful administration of the court-based systems.

PROJECT 3. Improving Resource Use: Knowing What We Do and Doing More

Develop greater regional (and eventually statewide) awareness of the ways in which the delivery system allocates its current resources among operating functions (such as telephone advice and systemic advocacy), areas of substantive law, and population groups. Review the potential for recruiting more volunteer resources to meet needs identified by this exercise. Use the awareness to target the work for clients to produce greater impact.⁸

While some individual programs have engaged in meaningful priority setting, the Committee continues to believe that this is a missed opportunity for the delivery system as a whole. Accordingly, we suggest the following approach: This Project would begin with a limited data gathering effort about the use of current funds and volunteers and then lead each region to become more intentional about its choices. The goal of this Project is improving the effectiveness of regional delivery systems in meeting the most important client needs in the region.

The Project is a direct carryover from the Second Interim Report. In that Report we attempted to detail the kinds of analytical frameworks that might be involved in planning and implementing this Project. In Appendix I to this Progress Report, the frameworks are laid out in a form that might be used to gather initial data in thinking about resource use.

Each Region might design its implementation of this Project in a way that uniquely coincided with its regional resources and client needs. It might also lead to or be enhanced by a conference to discuss impact and mission issues or a training program to develop the skills needed for sophisticated targeting of resources. The current flurry of activity involving incubators linking underemployed lawyers to underserved populations⁹ and increasing interest in nonlawyer roles in the delivery system (see New York, California and Washington State proposals and ABA Future of Law School Education Task Force) should be part of this Project.

⁸ Based on Recommendations Number 7 and 8 in the Second Interim Report.

⁹ In Massachusetts at the moment there are three versions of incubators being promoted.

In addition, the state of pro bono work in the regions is due for a thoughtful review. The core pro bono effort of the regions is based on the LSC requirement that an amount equal to 12.5 percent of each LSC grant be spent involving private attorneys.¹⁰ Each region has staff members funded to develop programs using private attorneys to supplement staff representation of eligible individuals in high priority areas. The pro bono coordinators of local programs are meeting regularly and sharing information about best practices.

In the past several years LSC has paid considerable attention to the state of private attorney involvement in LSC-funded programs. A Task Force prepared a comprehensive report on ways to enhance pro bono programs. A pair of LSC hearings seeking input on ways to modify the PAI rule were held this summer. The ABA recently completed a comprehensive assessment of the state of pro bono nationally. New York has recently instituted a 50-hour requirement for admission to the bar and is considering a proposal for mandatory reporting of pro bono services.

Our local PAI programs could benefit from the same kind of probing questions as those asked by this Project regarding types of service, types of cases and population groups. Perhaps this part of the Project should be conducted under the auspices of the SJC Pro Bono Committee, led by a small leadership group with representation from bar associations, corporate counsel, the judiciary and regional programs. The main goals of the initiative would be to adopt objectives for PAI that are more ambitious, to identify more creative ways to conduct PAI efforts locally and to reinvigorate our Massachusetts endeavors. We might examine questions such as whether we just want a few more pro bono lawyers handling cases or whether we want 25 hours a year from 30,000 lawyers?¹¹ We might identify the kinds of pro bono services clients need and figure out how we could support and motivate private lawyers to provide more of those services.

PROJECT 4. Getting More Productivity Through Technology

In concert with Harvard Law School's Berkman Center for Internet and Technology, LSC's Technology Innovation Staff and experts in legal services programs and the state courts, and under coordination with the Technology and Website Working Group, identify the five to ten best new ideas in the country for the more effective use of technology as a means to address many of the issues identified in the Interim Report.¹²

Our sense is that the programs would seize on technological improvements if more funding were available to develop and implement them. MLAC is taking a lead role in looking into needs and opportunities. The Commission's working group is primarily focused on improving MLRI's websites, and on assistance to self-representing litigants through a pro bono website and A2JAuthor scripts. It is also supporting court commitments to standardized forms in multiple

¹⁰ 45 C.F.R. 1614.

¹¹ The ABA Study found that 80% of lawyers do at least some pro bono, that the average attorney doing pro bono does 56.5 hours per year and the median for all attorneys is 30 hours per year. Only a quarter of this service came through an organized legal services or bar program.

¹² Based on Recommendation Number 9 in the Second Interim Report.

languages. It has not been focused on the technology of the law firm, including such issues as case management systems, program administration or video conferencing. Ideally it could join with MLAC and regional leaders in addressing these issues. We are quite convinced that there are ideas/ approaches in other states about which our programs need to become knowledgeable.

If there is no worker in the delivery system who can competently develop the needed improvements under an MLAC contract, a consultant should be retained.

PROJECT 5. Learning More Through Review and Evaluation

Develop practical management tools with which to specify the objectives of the most important local program undertakings (grants, projects, client service initiatives), to gather data as the undertakings proceed, to review the successes and failures of such efforts and to evaluate the results in ways that inform future project planning and management.¹³

This recommendation envisions the development of a systematic use of evaluation as part of the management of important program projects. At the start of a project, planners would articulate project goals in measurable terms and would design an evaluation scheme for ascertaining to what degree the goals have been achieved. The project plan would assure that the data needed for evaluation was collected during the project. The project would be evaluated according to the plan and lessons would be learned for use in managing future projects.¹⁴

We recommend that MLAC fund a consultant to develop the tools that programs might use to build evaluation into their more important projects and grants. We encourage MBF and BBF to join in this effort to increase the effectiveness of their grants by promoting the use of evaluation as a management device of their grantees. The consultant should develop a method of observing the implementation and effects of project evaluation -- the evaluation tools should be evaluated.

3. Open A Dialogue About Methods Of Statewide Decision-Making And Important Planning Issues Not Currently Being Addressed Such As Equity In Resource And Service Distribution And Whether A Statewide Service Delivery Structure Would Improve Decision-Making And Service Delivery To Clients.

¹³ Based on Recommendation Number 10 in the Second Interim Report.

¹⁴ MLAC reinstated its peer evaluation system in 2012 after several years without it for budgetary reasons. While quite well regarded, this system is designed to provide information to the program evaluated and to MLAC rather than provide information for sharing among programs and the Commission.

The five projects described above, which should form the primary focus of the system-wide efforts over at least the next two years, merit attention because of the importance of each issue to the clients and client population of the commonwealth. We also believe, however, that the solutions in each area will require us all to make progress on an over-arching challenge to the system: the absence of a coherent and well-defined mechanism for making decisions affecting the state's legal services delivery system. Whether the issue involves the challenges of developing a coherent intake and screening system, aggressively utilizing advances in technology that benefit all parts of the delivery system, the desirability of developing and applying common metrics for evaluating the effectiveness of legal services initiatives, or the goal of insuring that different delivery decisions in the regions flow from the unique needs of the regions, rather than program history and culture, we believe those challenges would be easier to address if there were a more effective structure for making decisions that impact the whole delivery system.

One national scholar has described legal services in the United States as involving many arms and legs but no central brain.¹⁵ What is the central brain for the Massachusetts legal services system? The project directors, individually and collectively, are crucial players in the decision-making process, but given their obligations to their staff, boards, funders and client communities, they should not be expected to carry the responsibility for statewide decision-making alone. MLAC, too, must be an important player, but in a system that includes programs that are not funded by MLAC, and which must be insulated at times from legislative pressures, MLAC also cannot alone be expected to carry the responsibility. The Commission, through the SPC or more generally, can, and should, play an important role in shining the light on statewide issues, but cannot and should not alone be the central brain either. Confronting the barriers to statewide decision-making is an ultimate challenge that cuts across the projects articulated above.

The challenges to making decisions impacting our statewide delivery system make it more difficult to address two lurking questions that persist in our various conversations with the programs: 1) the role of equity in resource and service distribution and 2) whether a state-wide service delivery system would improve service delivery. To our ears, the equity issue often is framed in terms of money: whether the differences in the programs' successes in regional fundraising create imbalances around the state that should be ameliorated. We believe that the equity question is far more complicated and, when discussed, should be framed in terms of broader goals such as equal access, not a mathematical calculation of dollars per poor person. Our focus on technology, evaluation and a statewide intake and screening system reflect in part a desire to achieve greater access in all parts of the Commonwealth. Our request for information about the allocation of resources among subject areas and client populations, as well as the search for best practices with the collaborations with private lawyers, law students, social service agencies, lay advocates and client populations also stem in part from the desire to share resources among the regions to improve services as well as access.

¹⁵ Rebecca L. Sandefur and Aaron C. Smyth, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project 21* (American Bar Foundation 2011).

Even with respect to the financial aspects, any equity discussion would need to attempt to address the extent to which a program's services benefit only the clients and client communities in a program's service area, as opposed to those which yield statewide benefits. We further believe that no equity decisions should result in disincentives for local fundraising, which we believe serves to expand the pool of funding for the statewide delivery system as a whole. These are difficult conversations, but as long as concerns about equity persist, the conversations should occur transparently, rather than in the shadows. The difficulties inherent in any conversation about equities is apparent; however, developing a mechanism to discuss, plan and implement matters impacting our statewide delivery system should provide some pathways to fruitful resolution.

The second question that continues to lurk is whether a unified, statewide structure would improve service delivery.¹⁶ No member of the SPC currently favors moving toward a single, state-wide program. The ability to identify and serve regional and local needs, as well as the ability to leverage political support from all parts of the Commonwealth (including by maintaining diversity of board membership geographically) seem to us to be better served by maintaining different programs across the state. Moreover, as we observed in the Second Interim Report, "[w]hile we support the program mergers that are under way, or under consideration, in a number of regions, we do not view structural changes as a panacea. Mergers and other structural changes carry a heavy price in terms of time, effort, energy and potential difficulties for staff and the ongoing legal work, at least in the short run."

The discussion of a unified, statewide structure might stop short of full unification. Perhaps some functions could be identified for state-level decision-making and administration while others remain regional. The value of consistency in decision-making on technology, for example, is often mentioned in this context. Another approach would be to strengthen the role of MLAC or MLRI into a combined funder and support center, emulating the role of Legal Services of New Jersey and its relationship to five regional programs in the state. Other variations with stronger central entities and local corporations as well are found in New York City and North Carolina.

That being said, a statewide program would in theory provide the mechanism for statewide decision-making and coordination that seems lacking. There would at least be a structure for analyzing and implementing substantive changes, including moving toward a statewide intake system, implementing technological changes statewide, utilizing common metrics and data collection for evaluation, and assessing regional imbalances. We have called upon MLAC to identify administrative tasks that might increase savings and efficiencies around the state if adopted on a broader or even statewide basis, as opposed to program by program. Should the delivery system fail to make the type of progress that we believe needs to occur over the next few years on the projects we identify above, we may come to the conclusion that there is little choice but to confront the question of a statewide delivery system with more urgency.

¹⁶ Often called a "single, statewide program" but rarely meant to be one. The need to separate the taint of LSC funds on non-LSC funds would require at least a complex, multi-corporation system. The seven successful "statewide" support centers would also need to be considered in the new structure.

Meetings With Program Leadership and an Update on Structure

During 2010-11, the Massachusetts legal services delivery system invested considerable resources in structural change at the regional level. The Second Interim Report recommended that the Committee follow-up on developments in the different regions¹⁷, and during 2012-13 the Committee met with a leadership group from each region and from MLRI.¹⁸ In most cases the group included the board chairs and executive directors of the regional programs. The meetings were all cordial and informative.

The Committee formulated a series of region-specific questions around which the meetings were conducted. Overall, and with exceptions, the regions were implementing their new structures more slowly than we, or they, had anticipated. Changes in structure (mergers, take-overs, partnerships, formation of subsidiaries and reallocation of functions) were sometimes executed before the region had determined how the changed structure would relate to client services. Briefly, these were some of the Committee's specific observations.

The **Southeast Region** appears to be experiencing difficult times. The region has suffered more than most regional programs from the financial troubles of the last few years. New Center for Legal Advocacy has ceded the LSC grant to South Coastal Counties Legal Services and gone out of business. An LLC has been created to meet MLAC's requirement that MLAC funds be available without encumbrance from LSC restrictions to meet client needs. At the time of our meeting the former Executive Director had become a judge and his replacement had only recently been promoted from the Litigation Director position. The new CEO was fully engaged in implementing the structural changes and had not developed a long-term plan for how the changes would be used to increase systemic advocacy, collect more attorneys' fees and otherwise improve services for clients.

Two years ago, the Committee viewed the structural issues confronting LACCM, WMLS and MJP as similar to those that had already arisen in the Southeast. The **West/Central Region's** leadership studied the Southeast example and learned from it. WMLS was absorbed first. Priorities for services were set after a series of community meetings throughout the service area. The consolidation with the LSC grantee (MJP) was put off from a possible early date of January 2012 until January 2014. The structural changes have thus far been accomplished carefully and efficiently. Whether the changes might

¹⁷ Recommendation Number 4 in the Second Interim Report.

¹⁸ In our Second Interim Report we concluded that the seven statewide MLAC grantees were doing an excellent job. The Committee did not make any structural recommendations in regard to those grantees, and did not revisit them during the past two years. Elsewhere in this report we note the leadership of NCLC's Will Ogburn in taking on the mortgage foreclosure virtual law firm and CPR's former executive director, Steven Schwartz, in the attorney's fee and systemic advocacy campaigns.

lead to increased systemic advocacy and what the LLC's regional role would be was not clear to us.

The **Northeast Region** has experienced severe adverse effects from the IOLTA crisis. For FY 2014 revenues, not including reserves, Neighborhood Legal Services has shrunk to \$1,836,735 and MVNSLS to \$1,484,739. Together they enjoy fewer resources than the Southeast region or the West/Central Region.

At the staff level, program leaders report effective cooperation between the programs. Both programs value and do impact work, and NLS continues to provide representation (such as class action counsel) that an LSC grantee cannot undertake. At the Executive Director and board levels, however, despite having a single group of individuals serving as both boards of directors, the region continues to have some struggles. The Committee continues to support consolidation with an LLC or other non-LSC vehicle, and hopes the region will finally perceive itself as served by a single provider.

On the surface, there has been little change in the **East Region** during the last two years. Funding cuts have hurt everyone. The largest regional program, GBLS, has been able to stretch its reserves and mount a major fund drive among Boston law firms¹⁹ to keep up its operations; but, without another fund drive, GBLS may face lay-offs in 2014. Beneath the surface in the East Region, the regional leaders are discussing some challenging issues. The Regional Agreement among the five programs has governed fund raising competition in the region for years; now it is being reconsidered. The roles of a regional hotline, and the structure that will manage the screening, advice, referral and initial intake best, continue under discussion. These discussion need to be completed.

The East Region has traditionally provided several types of statewide services. VLP was a national leader in pro bono and private attorney involvement work; its initiatives naturally led in Massachusetts. It will soon put a statewide pro bono website into operation, leading to new opportunities for involving private attorney in serving low-income clients. GBLS has played a leadership role across the state in many substantive practice areas such as immigration and legislative advocacy. More recently, MLRI relied on GBLS leadership in family and elder law and cut back its own role. GBLS's cadre of senior litigators do a substantial amount of the state's impact litigation.

MLRI has accomplished major progress on the issues it confronted two years ago. Fund raising and effective financial management have balanced the books despite the tight financial environment. The new Executive Director, Georgia Katsoulomitis, has accepted responsibilities for state substantive leadership on such Commission recommendations as the expansion of housing court jurisdiction, and the second round of civil right to counsel pilots as well as participating as a critical player in the attorney's fee campaign and the encouragement of more systemic advocacy. Her management of expense reduction, which included eliciting priority perceptions from around the state and then implementing the results, was laudable.

¹⁹ The "Marshall Plan," headed by retired Chief Justice Margaret Marshall, was a notable success.

APPENDIX I

Frameworks for Project 3.

Using the terms suggested in the Second Interim Report may help make this Project more understandable.

Work might begin by having each region determine its actual allocation of resources (money or advocate time) among several sets of variables by answering these questions:

Extents of service -- All of the region's budgeted resources are allocated among these four functions (you may have to use overhead rates to allocate shared space and administrative cost). We would want to define the terms, too. How much of your resources do you use for:

\$ _____ (1) Intake, screening, referral and other client access functions;

\$ _____ (2) Client Education, brief advice, clinics and other forms of assistance to otherwise self-represented individuals;

\$ _____ (3) Extended Advocacy Casework; and

\$ _____ (4) Systemic Advocacy.

With funding divided up this way, what is the region's impact on the quality and quantity of basic human needs obtained by the region's eligible client population? What do your clients and communities "get" from each of these functions. Would a different allocation increase the impact? What allocation would maximize the impact?

Substantive areas -- Divide all of the region's budgeted resources among the following six substantive areas. [The list will vary for each program depending on the work the program does. Overhead and administration will need to be allocated among the substantive areas.] How much of your resources do you use for:

\$ _____ (1) Housing, homelessness

\$ _____ (2) Family, domestic violence

\$ _____ (3) Consumer, employment

\$ _____ (4) Income maintenance, benefits

\$ _____ (5) Health

\$ _____ (6) Other

By what measures do you keep track of the impact of your services on each of these substantive areas? For example, if you consider your goal eradicating poverty, then ask yourself how many clients and families are escaping poverty as a result of regional advocacy in each substantive area? Could regional advocacy produce greater economic benefits for the region's eligible client population if resources were reallocated among the substantive areas?

Population groups -- If all of the region's budgeted resources are allocated among the following population groups (count each client or effort only once, in whatever category defines the highest priority category that applies), how much of your resources do you use for:

\$ _____ (1) Victims of domestic violence

\$ _____ (2) Children

\$ _____ (3) Elders

\$ _____ (4) Racial and ethnic minorities

\$ _____ (5) Disabled

\$ _____ (6) Others

You may list other population groups or combine groups if that is the way you target your resources (e.g., children in homes with domestic violence). Allocate overhead and administration among the groups. How do these allocations relate to the potential to make the greatest difference in the lives of eligible individuals within each group? Do the allocations overlook opportunities for major impacts on some populations while funding others with less potential?

Increasing impact through volunteer resources. You are also allocating the volunteer resources you develop along the same spectra as your budgeted resources. How much of the following kinds of donated resources are you using this year? (This might best be valued in hours rather than dollars.)

a. Social services agencies staff _____

b. Client groups _____

- b. **Pro Bono lawyers** _____
- c. **Law Graduates** _____
- d. **Law Students** _____
- e. **Lay Advocates** _____

Look back over the three spectra: functions, substantive problems and population groups. How are you allocating the volunteer resources in each situation? Are there higher impact potentials available? If some work is having a particularly great impact, are there types of volunteers that would be particularly useful if recruited? Would the cost of mobilizing a resource be justified by the impact on regional clients that might be obtained?

The structured questions posed in these examples offer program leaders an opportunity to consider the choices they are making in their regional efforts. In our Committee meetings in each region, there was not much evidence of purposeful resource allocation of the kind suggested in this Project.

APPENDIX II

There were five recommendations in the Second Interim Report on which progress was made but not discussed at any length in this Progress Report.

1. An explicit goal of the AJC should be to insure that ongoing, careful and comprehensive planning becomes a regular feature of the delivery system. The SPC should remain in effect to continue to oversee planning of the delivery system on behalf of the AJC.

Within the broad planning responsibilities of the AJC are many other organizations with planning responsibilities of their own. As the source of the largest grants for civil legal services, MLAC's planning role with its grantees is particularly important. The SPC and MLAC leadership should continue to discuss fulfilling their respective roles efficiently, supportively and with minimal confusion.

Compared to three years ago, there is much more system-level planning today. The Commission's activities are today articulated in its Statement of Strategies, Goals and Objectives for 2013, which includes extensive sections on funding, pro bono and the delivery system. The SPC continued its activities, as documented in this report. Resource development has seen successful efforts to establish registration fees and pro hac vice fees and a promising IOLTA initiative on class action residuals. Working with the Project Directors, the Commission has caused an effort to build attorneys fee work in regional programs and is proactively exploring fund raising among business leaders and non-lawyer donors. Similar efforts to plan for screening and intake systems, to encourage more systemic advocacy, to develop more effective priority setting and to assess the success of advocacy efforts have been less successful substantively, as detailed in this report.

MLAC has completed a substantial strategic planning process and is implementing that plan's recommendations through task forces on financial issues and the delivery system as well as staff and board undertakings. The Executive Directors of the LSC and MLAC-funded programs continue to meet periodically, share information among themselves and represent their collective interests through a rotating leadership and executive council as well as a reactivated Advocacy Coordination Committee facilitated by Mass Law Reform.

The Commission, MLAC and the Project Directors have been communicating effectively and supportively and with little apparent confusion about roles. In its strategic planning process, the MLAC Board adopted several amendments in response to suggestions made in the Commission's comments and led MLAC to take responsibility for several of the recommendations of the Second Interim Report. The Commission is represented on both MLAC Task Forces. The Financial Issues Task Force employed the Commission consultant to prepare and present a day-long training for Project Directors and financial officers regarding budgeting in tight times. MLAC provides the largest share of financial support for the Commission's consultant, along with the BBF and, in prior years, the MBF. MLAC's Executive Director is a member of the Commission's Special Planning Committee.

Planning relevant to the legal services delivery system has also made major strides in the Trial Court. The recently adopted Strategic Plan for the Trial Court, created under the leadership of the CJAM and Chief Administrator Harry Spence, envisions pilot court service centers before the end of 2013, and major improvements in assistance for self-representing litigants in 2014. A leading factor in these court-based developments is the work of the Trial Court's Access to Justice initiative, led by Hon. Dina Fein.

2. The DLS Working Group should begin to take over from the SPC, where possible, the details of work with the programs, including the identification of innovations and experiments that could expand access to justice even assuming no increase in financial resources. The lines between the DLS, SPC and AJC roles will shift over time and should be regularly discussed.

When the Commission was reconstituted in 2010, one of the Working Groups was about Delivery of Legal Services. This Working Group has been relatively inactive, and the Special Planning Committee has taken the lead on delivery issues. One reason is that the major issues in this area involve complex organizational questions and potential conflicts among major institutions in the access to justice community. Staff and board members of these institutions have local loyalties and self-interests that they have fiduciary responsibilities to uphold.

Meanwhile, the SPC was created to work on several important delivery system issues that seemed to need the weight of the whole Commission. Led by a Commission co-chair, and including the Commission consultant, the co-chairs of the Delivery of Legal Services Working Group, two private attorney Commissioners who have been local board chairmen, and the MLAC Executive Director, the SPC has proven an effective vehicle for some of the hard questions about delivering services.

As its placement in the list of recommendations in the Second Interim Report suggests, the SPC is part of the necessary leadership, planning and coordination infrastructure of the Massachusetts delivery system. But the SPC's role is not to be a virtual CEO for the state. It's job is to point a light on dark corners, raise difficult questions and find helpful ways to solve fundamental problems in the delivery system. Dealing with these issues is the responsibility of system funders, grantee boards and program managers and staff. To the degree that the SPC identifies needs and recommends actions that are not subsequently acknowledged and effectively responded to by system leaders, there is a weakness in our state delivery system structure.

The SPC design should be continued, perhaps renamed to indicate that it is a permanent committee. In time, its membership will evolve, but it is probably useful to have the MLAC Executive Director and the chief Commission staff member on the Committee, to have the non-judicial Commission co-chair head up the Committee and to include Commissioners who are Project Directors and experienced program board members. The Commission should recruit capable Commissioners to play these roles.

3. The SPC and DLS should work with the funders, the programs and their staffs to develop comprehensive communications and coordination among all of them regarding planning, innovations, best practices and challenges in the delivery system.

The Commission has not been very active in directly implementing this recommendation. In the next year this recommendation should be more systematically explored.

However, there have been important developments in inter-program communications and coordination. Mass Law Reform has conducted a participatory priority setting and seems to be effectively occupying its central substantive role. MLAC's strategic planning process and implementation, including its Task Forces, promote coordination. Commission activities usually involve collaborations, such as in support for technological advances, seeking new fund sources, proposing expansion of housing court jurisdiction,, civil right to counsel pilot programs, encouragement of the attorneys fee and systemic advocacy campaigns, and the inquiry into screening, referral, intake and advice processes. The statewide task force led by former BBA President J.D. Smeallie, and the Commission exploration of business and private donor fund raising, demonstrate success at coordination and communication.

Project Directors joined with MCLE to sponsor a day-long conference on the legal services program as an anti-poverty device. It was the first conference in many years designed to bring together all legal services advocates. The conference planners promise to do it again next year.

A major innovation in the delivery system involved dramatic new approaches to collaboration. The Attorney General obtained a massive cash settlement as part of a national prosecution of five major banks for improper practices leading to illegal foreclosures. As part of her HomeCorps program, funds were offered to create a special mortgage foreclosure legal services programs. MLAC took the leadership role and convened leading legal services managers and advocates, the Executive Director of the National Consumer Law Center accepted the management responsibility and a virtual law firm was created to employ 19 full-time advocates providing representation in foreclosure litigations. The advocates are centrally managed but located in local legal services offices, they received excellent initial training for their coordinated efforts, and they set high standards for their advocacy. Perhaps other statewide substantive problems will be attacked using similarly high levels of communication and coordination in the future; the virtual law firm is a potential bridge between the efficiencies of statewide programs and the values of community-based advocacy that have traditionally infused Massachusetts legal services.

11. We recommend that the programs follow through on the suggestions contained in the Revenue Enhancement Committee's Report concerning the generation of additional funding sources.

The Revenue Enhancement Committee, working with the IOLTA Committee, with the support of MLAC, the Massachusetts and Boston Bar Associations and Foundations and program leadership, has been implementing all of its recommendations with excellent results so far. These have included establishment of a fee for appearances Pro Hac Vice, the attorney's fee

campaign, sponsorship of the Feasibility Study of philanthropic giving and support for the IOLTA Committee's proposal to amend Rule 23 regarding the distribution of class action residuals.

12. We recommend that this Second Interim Report be circulated widely, including, but not limited to all programs and persons with whom we met, with the hope that points raised here will contribute to ongoing conversations, experiments and initiatives to address many of the key problems facing the current delivery system. We also recommend that the comments to the first Interim Report be posted on our website.

This recommendation was fully implemented.

Glossary of Abbreviations and Common Names:

Commission -- Massachusetts Access to Justice Commission -- AJC
Committee -- Special Planning Committee of the Commission -- SPC
REC -- Revenue Enhancement Committee of the Commission
DLS -- Delivery of Legal Services Working Group of the Commission
SJC -- Supreme Judicial Court
MLAC - Massachusetts Legal Assistance Corporation
LSC -- Legal Services Corporation
PAI -- Private attorney involvement
IOLTA -- Interest on Lawyer Trust Accounts Committee
ABA -- American Bar Association
MBA(F) -- Massachusetts Bar Association (Foundation)
BBA(F) -- Boston Bar Association (Foundation)
GBLS -- Greater Boston Legal Services
OEO -- Office of Economic Opportunity
NLADA --- National Legal Aid and Defender Association
CLA -- Community Legal Assistance
LACCM -- Legal Assistance Corporation of Central Massachusetts
WMLS -- Western Massachusetts Legal Assistance
MLRI -- Massachusetts Law Reform Institute -- Mass Law Reform
MJP -- Massachusetts Justice Project
VLP -- Volunteer Lawyers Project
NLS -- Neighborhood Legal Services
MVNSLS -- Merrimack Valley North Shore Legal Services
SCCLS -- South Coastal Counties Legal Assistance
LARC -- Legal Advocacy and Referral Center
NCLA -- New Center for Legal Advocacy
LLC -- Limited liability corporation