Counterpart Conference
on Legal Services
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Baltimore, Maryland

EXECUTIVE SUMMARY
The conference opened with remarks from the moderator and introductions of the participants and their organizations.

THE "MODEL" AIDS LEGAL-SERVICES PROGRAM

Today, AIDS legal-services programs are continuously facing new demands as the face of AIDS changes and new populations are affected. They are asked to take on new legal issues and serve new populations, yet maintain the expertise they have acquired on other issues and with older populations. For most organizations, this is an impossible task, given the constraints of limited financial and human resources. Prioritization becomes critical, but raises new questions regarding the appropriate criteria. Symptomatology, “first-come first-serve,” financial eligibility, or the legal issue at hand are all potential boundary lines. But are some criteria more appropriate than others, and to what extent should personal values shape the prioritization process?

Once the agency’s perspective has been defined, the client must be defined based on an evaluation of his or her needs. What services are most essential? How can service delivery be improved? What avenues exist for cooperation and collaboration with other service providers? Additionally, the unique organizational structure of each provider—departments of large AIDS service organizations (ASOs), law-school clinics, projects in legal-services corporations, stand-alone nonprofits—must be taken into account. How will volunteer attorneys be used, and how should training be conducted? How can public policy decision making be affected? How can legal or service delivery precedents be set? Finally, how can clients or
individuals who may need services in the future be educated about those services in the present?

In attempting to answer these questions for themselves, most participants initially viewed the HIV-infected individual as their client. Most also agreed that they had had to revise that definition to include anyone affected by HIV, thus allowing family members or lovers of infected individuals to be served, as well as individuals perceived to be infected with the virus. Several participants noted that conflicts of interest can arise among individuals originally representing themselves as a unit, particularly in family law. To prevent being caught between conflicting interests, these participants make it very clear up front that their obligation is either to the person infected with HIV, or to those whose interest is congruent with that of the HIV-positive person.

Most participants agreed that as their case loads increased, they began to focus on those individuals whose legal problem related to their HIV, or perceived HIV, status. Exceptions to this were estate planning and debtor/creditor or bankruptcy services, which were made available to all persons with HIV. Additionally, all the programs maintained financial-eligibility criteria. Those operating under the auspices of legal-services corporations serve indigent populations; among programs not required to use poverty-line criteria, most are able to serve the working poor. Some programs, working under ASOs, have only been able to serve non-agency clients as they have added to their volunteer attorney panel. Most participants also agreed that fee-generating cases, whether due to affluent
clients or potential civil-suit fees, were referred out of house, usually to referral panel attorneys sensitive to issues associated with HIV.

Participants acknowledged that many factors influence the way they practice: their own values and judgments, as well as the perspective and baggage that clients bring with them. Most participants decided which types of cases they would handle. In particular, most were reluctant to accept the increasing number of tort cases arising from transmission issues. In response, one participant reminded others that for many years immigration and women's legal issues were ignored, reflecting the racism and sexism in our society, and that it was imperative to acknowledge that an "ism" might be behind rejection of transmission tort cases. Another participant refused such cases because he feared they might set a bad precedent, potentially limiting the civil rights of persons with HIV. A third participant disliked the concept of litigating a case where the outcome may be determined by whose lifestyle, the plaintiff's or the defendant's, is more objectionable to the judge. Finally, one participant will accept transmission cases brought by health-care workers, essentially because he relies so heavily on health-care workers in his work.

Client needs and perspective help define the attorney-client relationship. Sometimes, the lawyer "may be the first person ... in the whole world [the client] has told of their HIV status." Even clients otherwise well integrated into social services are dealing with various traumas, crises, and needs associated with their HIV status. The attorney must also take on the roles of counselor and social worker by identifying and assessing client needs and determining necessary interventions.
Some participants provide referrals to social workers, psychologists, or psychotherapists who accept HIV-infected clients, forging relationships with community mental-health agencies to do so. One participant noted, “It’s clear that the way I’m helping more than anything is by using the contacts that I have in the community to get the person services.” In many instances, these counselors agree to bill their fees to Medicare or Medicaid or provide pro bono services. Creating these linkages with the mental health community not only assists the client, but aids the attorneys in their legal work. Clients become more cooperative as their depression, hostility, and fears recede.

Some participants execute dual consents between the mental-health provider and attorney, allowing for exchange of information and collaboration. Others felt that the decision should be left to the client on a case-by-case basis. These participants were particularly wary of “becoming enmeshed” with other providers—eg, being identified as favoring one provider over another, being asked how to maintain patients’ records, or establishing a relationship with a provider when the possibility exists that a (current or future) client might want to sue them. When the client’s attorney and case manager work in the same organization, similar conflicts arise when case managers ask to share confidential client information. It’s important to be clear that client confidentiality exists for both individuals, a distinction that most licensed mental-health professionals will already be aware of.
Another reason to forge relationships with case managers is to educate them. Case managers often see a client's needs and changing situation as they occur, and can be instrumental in assisting clients in seeking legal counsel or representation. In other situations, case managers may be practicing law in attempting to help their clients. Maintaining a relationship with case managers allows attorneys a certain degree of control in their education of appropriate methods of handling legal issues. Case managers and other social-service and health-care providers can be trained to identify legal issues, and training can reinforce legal codes, regarding discrimination issues for example. One stand-alone organization feels so strongly about the need for linkages between service providers that they have hired their own case manager. While not case management in the traditional sense of "we've got you covered," the case manager is able to make referrals to services in the community. Another organization sees potential for case managers to advocate for clients, given the attorney shortage faced by most organizations.

Finally, the issues that make most clients eligible for mental-health services may often make them difficult or problem clients for the attorney. Participants further recognized that such client conduct was often precipitated by psychopathologic features. Accordingly, staff are expected to make appropriate referrals, although they are not expected to make diagnoses. One organization maintains a strict written policy that abusive callers will not be served if they continue to be abusive.
VOLUNTEER AND STAFF ATTORNEY MANAGEMENT

Running an AIDS legal-services program differs from managing other kinds of legal services, essentially because of the nature of the population served, including clients with emotional and mental-health problems and substance abusers. Considering that most legal-services attorneys wear many hats, including that of social worker; encounter burnout from excessive hours and large caseloads; and must deal with grief from multiple losses, including friends, coworkers, and clients, being asked to serve clients whose needs are so complex makes it much more difficult to recruit volunteer attorneys and staff.

Exacerbating the recruitment situation may be the gay and lesbian identification of ASO legal programs, if not the multitude of controversies associated with programs suing governments and businesses. Particularly problematic is recruitment of attorneys of color and attorneys willing to handle the messier, more complicated, and time-consuming aspects of legal services law, ie, landlord and tenant (L&T) cases, family law, and prison cases.

Recruiting attorneys of color may be particularly difficult, but is also particularly important in serving specific populations, especially where language may be a barrier. Minority attorneys face a variety of stresses making it difficult for them to volunteer time. They may be trying to survive in an office where they are the only person of color, and they very likely have many demands being made on their time and services. In addition, they may perceive AIDS as a "gay white male disease" that has nothing to do
with them or their community. They may even feel that they will be perceived as gay by being associated with such an organization.

Most participants received recruitment assistance from their local bar association or its pro bono arm. In one city, the executive director of the bar pro bono arm visits law firms to discuss volunteer options with various legal-services organizations. Major law firms and their managing partners can be very useful in combating some of the phobias associated with volunteering for an AIDS organization if they encourage their attorneys to get involved and volunteer themselves. The relationship can be established slowly, by first assisting the firm and allowing attorney relationships to be created before beginning recruitment, or by going directly to the managing partner. Collaborative relationships must be forged, especially with communities of color. One participant hopes to be able to recruit Spanish-speaking attorneys for her organization's main clinic once the clinic her ASO started in the Latino neighborhood, which has been adopted and staffed by a community law firm, gets established.

Making the volunteering process as painless as possible is very helpful in recruitment, especially if the organization makes it clear they are available as backup. One participant trains his volunteers, provides them with a computer disk with all the forms they'll need and a manual, and makes available law students should they need research assistance. He even gives them his telephone number should they have a problem. Mandatory pro bono is also effective, although the value of forced assistance is debatable. Utilizing law students and paralegals is another way of dealing with a shortage of volunteer attorneys.
The tougher issue of getting attorneys to take family law, prison, and L&T cases gives rise to the question of the role of volunteers. Should new strategies be devised to attract volunteers into accepting such cases? Will volunteers ever take such cases? If not, is it a viable role for them? If volunteers never take these cases, how can these needs be met? L&T cases constitute the bulk of many participants' practices and are a province of traditional legal services, yet most of these cases do not meet traditional legal-services criteria. Some participants implemented strategies to force legal services to accept these cases by forcing them to extend the parameters for HIV-positive individuals. In family-law cases, pro bono mediation is expedient, and has worked well for one participant.

As with recruitment, most bar associations assist in volunteer training. Several participants indicated that their training sessions took place only once a year, but that they provided mandatory videotaped training for new volunteers year-round. Training can be conducted by experienced volunteers or outside experts. For another participant, conducting hourly training sessions during lunchtime worked better than daylong sessions. Mandatory mentoring with experienced volunteers has worked well for another participant. Manuals are also successful training tools, and major firms can be solicited to assist in adapting manuals from other states to their state's law. Quality assurance can only be measured by evaluating the client's satisfaction, especially for non-attorney managers, by sending questionnaires to clients eliciting detailed responses. Quality assurance can also be maintained through follow-up with the attorney, using the standard bar association referral panel methodology. The attorney is asked
to report the status of each case and last action taken, thus gently nudging remiss attorneys into action.

Although there is a misperception that legal-service providers are insulated from burnout by dealing with "secondary" issues in service delivery, the reality is quite different. Attorneys constantly deal with clients in crisis. They often have friends, colleagues, or family who are affected by the epidemic. Those who do the work in an attempt to stem the tide of the epidemic may also deal with frustration at the perceived meaningless impact. All of these pressures cause burnout and must be dealt with. For some, it may mean changing their expectations to note that peoples' lives are being improved. For others, flexibility is essential, and might mean the ability to devote time to one project and then move on to another, different challenge. Some challenges might be: finding time to take a course unrelated to work, or to go away for the weekend; setting limits; finding rejuvenation in the courage and spirit of clients and friends; seeing a therapist; or taking a break from work with clients for a short time.

MEETING THE NEEDS OF A MULTICULTURAL POPULATION

"Cultural competency," a new concept in certain parts of the country, refers to the fact that in order to reach and serve the needs of certain populations, care and service providers must do more than speak the language of "political correctness." Their actions must show an understanding and awareness of the issues that are particular to the culture or ethnicity in question. Providers should utilize staff and volunteers from the communities in question, thus providing the greatest degree of
understanding and competency. Additionally, the different needs, legal and otherwise, of various populations need to be recognized and understood in order to be met effectively. One participant noted that this was a particular obstacle with legal-service providers to whom these are foreign concepts.

Recognizing the needs of a certain population goes beyond, for example, making a Spanish-speaking provider available to Hispanic clients. It means understanding that in Hispanic and Latino cultures, most providers come from the middle and upper classes and may not be appropriate in reaching most clients, or that a Puerto Rican may not be the most appropriate person to assist a client from Central America. Even if the provider is from the proper class and country, he or she cannot harbor homophobic feelings. Cultural competency means being aware of how all these various factors affect the provider's ability to reach out to and assist clients from different cultures.

One participant noted that more and more, substance abusers, the mentally ill, and members of other subcultures require the understanding of ASO staff. These clients are often the victims of biased attitudes and even biased policy programming. Providers need to educate themselves regarding relevant issues and rethink institutional approaches to meet these individuals' needs. For example, one participant noted that a housing requirement of staying clean for 5 years is unrealistic and does not meet the needs of the client.

Several participants expressed a conflict between their agencies' attempts to meet the needs presented by an epidemic that does not discriminate and
their desire to maintain their roots as gay- and lesbian-identified and staffed organizations. Maintaining this identification was especially important in cities that lacked adequate, sensitive responses to the needs of the gay male community. Participants discussed difficulties in reaching minority heterosexual populations (due to continued feelings of immunity from AIDS), rural residents, undocumented populations, adolescents, and disabled communities.

Participants identified two critical issues in service provision: first, how to make your services known to and have them utilized by the various communities; second, how to take your services out into the communities you want to reach. Several participants noted that this is a circular process that begins by conducting outreach to communities. These organizations conduct clinics and workshops in target community neighborhoods, at hospitals, methadone clinics, etc. For especially hard-to-reach populations, they conduct clinics at facilities where “they will have to emerge for medical treatment.” As the sensitivity and quality of their services is made known by word of mouth, these organizations find that members of these communities will come to their offices for assistance. Outreach is particularly effective when offering clinics on entitlement issues, which are essential for most people, especially if staff or volunteers at the clinics are also members of the community. One drawback when a community-based program or location becomes AIDS-identified is that sometimes people will not access it due to confidentiality concerns. One participant proposed that using neutral neighborhood sites such as a substance-abuse recovery program or women’s shelter can defuse this.
Collaboration with organizations of color is essential to serving these populations. Community organizations help you build trust, and can provide information or training. They can also serve as sources for staff and volunteers, providing linguistic capability. When looking at the spectrum of populations that an ASO must now provide services to, collaboration may alternatively mean informing those already involved in working with those populations (whether minorities, women, or adolescents) about HIV issues, so they can provide these services themselves. Along those lines, one participant consults with local schools to develop their policies on issues of discrimination, confidentiality, and sex education, providing better services for at-risk adolescent populations.

Collaboration and training are also important in working with public-health officials and Immigration and Naturalization Services (INS) directors to obtain 212G immigration waivers, which allow HIV-positive immigrants to change their status or leave or enter the country. Documentation that should be submitted includes certification from the local health department that the individual does not pose a public health danger, and a medical-education piece on HIV risks and transmission modes.

The Immigration Exclusion Act, the federal act that governs these issues, is the epitome of everything that is being fought against in this epidemic, ie, violations of confidentiality and adverse consequences based on seropositivity. The act requires mandatory testing, the purpose of which is to disclose the results, and prohibits HIV-positive persons from changing their immigration status. Contrary to the beliefs of most policy makers, this
act relates to a domestic issue that affects people living in the United States whose families and support networks are also in this country. This law affects such people predominantly in their application for benefits. While changes are unlikely at the federal level, there is hope that restrictions on state laws and drug programs can be removed. National health care reform, if enacted as currently written, will disentitle half of undocumented immigrants, the number currently believed to be covered under employers' private health insurance.

FINANCIAL ADVOCACY AND ENTITLEMENTS

The top three services requested by one agency's clients are financial assistance, legal assistance, and housing assistance. Participants agreed that there are two pieces to the puzzle in providing financial advocacy. Currently, most clients accessing financial advocacy have waited until the last minute and are in crisis or emergency situations. Alternatively, there is a need to educate working, asymptomatic people with HIV about benefits and related issues so that they can begin life planning. Different programs are necessary to serve these diverse needs.

In one agency, clients seeking financial advocacy are given an initial interview that reviews their overall financial situation, including insurance and employment or social security benefits. During the course of the interview, the advocate will also discuss disability insurance requirements and estate planning. Advocates will assist clients in filling out paperwork and applications as needed. Generally, clinics are conducted monthly. For crisis situations, clients can make appointments
with the advocates immediately. In another organization, weekly benefits clinics are conducted through the case-management department, which sends clients to the legal clinic when a hearing and representation in court are necessary. Other agencies conduct monthly bankruptcy and/or benefits clinics at hospital sites or in collaborative relationships with agencies serving people of color. Agency case managers assist in bringing in clients and in helping their clients identify issues.

For asymptomatic and non-crisis clients, most organizations offered informational seminars. Participants agreed that, while useful, these seminars will continue to be accessed by those more comfortable in dealing with lawyers. These seminars discuss maintaining a source of income and insurance, regular and disability insurance requirements, wills, powers of attorney, and potential legal issues. This information allows individuals to maintain control of their financial and legal decisions for as long as possible, and for such reasons use of income guideline criteria was discouraged by the participants. Other venues for getting the information out are bringing an advocate into support groups to make presentations, providing legal HIV checkups at testing sites, or distributing legal-services flyers at testing sites.

Most participants agreed that they make extensive use of non-lawyers as advocates. A legal background is not necessary, as they train advocates extensively; one organization provides 10 hours of training in conjunction with benefits-agency personnel. It may even be preferred that advocates not be lawyers, as clients may interact with them better and be less wary. Sometimes follow-up is necessary, and non-lawyers are more patient in
working through situations with clients, referring to team lawyers when legal/court issues arise. Additionally, volunteers are used by some organizations to make home and hospital visits to fill out benefit applications. One participant noted, interestingly, that many social workers are no longer trained or take time to help clients with the applications. One organization that tracks denials for benefits notes that denials are given primarily to people who have not been through their benefits program, making the program very successful.

Regarding special populations, a project in Philadelphia attempts to assist prisoners about to re-enter society; because they are ineligible to apply for benefits while incarcerated, on their release they have nothing. For relatives of children providing care, the Title 4E foster-care system basically excludes those seeking legal custody from receiving benefits, giving benefits only to families that give up legal custody to the state. Additionally, benefits are miniscule compared to Aid to Families with Dependent Children (AFDC). Viatical settlements, where a percentage of insurance policy's face value is provided, are reviewed by most agencies who will also negotiate with companies, leading to disbursement of higher percentages of the policy's face value. Seller representative firms, such as MVR in New York, do similar work. Negative aspects to viatical settlements are onerous reporting requirements, which some participants try to negotiate to bimonthly postcards.
Participants agreed that child welfare laws do not work in preserving family integrity or the rights of the child, and statute reform and litigation proceedings may be necessary. The beginning portion of this discussion was spent in explaining the mechanisms whereby guardianship arrangements in Illinois and Florida were obtained. The current Florida statute requires the consent of both parents, which is often difficult to obtain, especially if there are children from more than one father.

In Illinois, a two-fold attack to the problem was used: statute reform and impact litigation. The statute reform utilized a broad coalition of agencies and groups to force state representatives and senators to draft a law. The statute provides for short-term guardianship for up to 60 days, and standby guardianship, where the parent designates a guardian to take effect after her death. Additionally, a litigious decision was won which notes that a trial court has the inherent power to appoint a standby guardian without specific statutory authorization upon determination of whether the appointment was necessary, convenient, and in the best interest of the child. It was suggested that this decision could be used in support of similar litigation in other states, given its reliance upon Illinois' probate code (a model probate code used by 35 other states).

Several participants expressed the ethical dilemma of representing a parent, and what their obligations were with regard to the interests of the child. A particularly sticky situation is when the non-custodial parent has questions about the consequences of signing consent forms. One
participant lets clients know that if their independent investigation determines that the client or potential standby guardian is not the best caretaker of the child, they will not go forward.

Guardianship proceedings are time-consuming projects; in New York they take about 6 months. They are a viable remedy for only a small percentage of clients. Participants felt that other solutions were needed for clients where guardianship proceedings were not essential. Some participants only filed guardianship proceedings if it seemed that guardianship would be contested, or in cases where the mother wanted to guarantee the father did not have access to the child, generally due to abusive behavior. In instances of the latter, one participant warned against biases due to disputes between the parents, and noted that if conflicts arose between her client’s wishes and the child’s best interests, she would ask the court to appoint an attorney for the child.

As an alternative remedy, one participant is able to utilize executed powers of attorney by the custodial parent designating responsibility. While not legally binding, 90% of providers and schools accept these powers. Another participant noted that the Illinois short-term guardianship law requires no court involvement and can be filed without use of a lawyer. In Michigan, short-term guardians can be appointed via powers of attorney which are good for 6 months. Another participant found that he is fairly successful at getting non-involved fathers to agree to guardians appointed during the mother’s lifetime, so he submits a petition on behalf of the custodial parent and potential guardian to be co-guardians during the mother’s lifetime. After the mother’s death, the judge’s review will be of an established
guardianship to which the father already consented. Because these measures are not foolproof, if the mother insists that the father should not get custody due to abuse, he obtains the mother's affidavit to that effect, explaining the reasons.

Another problematic issue is when the custodial parent has died, no guardian has been appointed, and the noncustodial parent is absent. Decisions on behalf of the child can only be made by a court-appointed guardian, but in this instance, there is no one able to designate a guardian. In Maryland, it is fairly easy to get the judge to approve a temporary guardianship for a custodial relative, maintaining full rights for the noncustodial parent. Drafters of New York's standby guardian law attempted to include a proviso that parents or guardians could designate standby guardians; this was deleted by the legislature. AFDC awards benefits based on with whom the child is living.

**DISCRIMINATION AND HIV/AIDS**

Discrimination involving HIV and AIDS issues may manifest itself as landlord/tenant housing disputes or violations of the Federal Fair Housing Act; lack of access to the employment application process or competition for a particular job; or violations of the Americans with Disabilities Act, ERISA, the Federal Rehabilitation Act 504, or the state Handicapper's Act. One of the most common problems is breach of confidentiality, particularly by health-care providers. More than any other aspect of legal services, discrimination cases invoke the traditional use of legal skills through litigation. Often attorneys will seek resolution through litigation in
affecting larger civil rights and constitutional law issues. Perhaps though, given the lack of longevity of the population being served, alternative means of resolving these legal matters need to be found and utilized.

Some participants have achieved resolution through mediation and arbitration. Sometimes mediation services can be donated, but are in any case far less costly and time-consuming than a court procedure. Other participants have successfully utilized city, county, or state human rights commissions, especially when the city government has committed to the timely handling of cases involving persons with terminal illness. In one such city, matters handled through the city human rights ordinance are usually resolved within 6 months. Other communities, such as Puerto Rico, may entirely lack this remedy and depend on federal law. In cities where quick remedies are not available, publicizing an issue may force parties to agree to settlements or agencies to change policies.

The Americans with Disabilities Act (ADA), a federal law that compels all employers providing any type of public service to comply with anti-discriminatory regulations for handicapped employees, has its own problems. Most significantly, the extended regulatory process through the EEOC makes it an unpopular remedy after the fact. While there are also questions of interpretation, on what constitutes reasonable accommodation, especially for a roller-coaster disease such as AIDS, the ADA is most often used as a preventative measure. One participant advises clients to notify their employer of their HIV status to ensure that they will be afforded accommodation at a later time. The participants agree that accommodation must be requested in order to be provided, but there are
various interpretations of what should trigger reasonable accommodation. One participant understands diminution in performance to be the trigger, while another participant understands accommodation to be triggered based on the employee's feelings that accommodation is needed.

Courts such as the Michigan Supreme Court have upheld using the statute in instances where a person is perceived to have a handicap, even if they do not. Other interpretations have now made it necessary for providers such as doctors and lawyers to provide interpreter services for a hearing-impaired client or be in a position of having denied access to those services.

In the interests of time, many participants will settle for "quick and dirty" settlements rather than wait for substantial yet empiric victories later. In the case of the ADA, one participant is particularly concerned about obtaining health care and disability benefits for her clients, which result in larger awards.

On issues of confidentiality, most states' laws provide for compensatory damages, not a particularly valuable remedy if a client is unemployed. As a result, most participants' only recourse was writing nasty letters to hospitals and other offenders. Breaches of confidentiality may also occur under employer prescription plans where many pharmacies will send the employer a list of the medications purchased by each employee. This practice has caused lots of people to avoid using their work-related plans when purchasing medications.
Clients often experience denial of health care. In hospital settings, one remedy is a written complaint to the hospital administrator. Working with local education and training centers (ETCs) to provide legal training to health-care providers can help. One participant envisions that state licensing boards may be helpful in training health-care workers. Licensing boards may also be effective avenues for policing practitioners upon issuance of complaints, given their sensitivity to adverse publicity. In some areas, doctors and especially dentists have taken to advertising their married and/or HIV-negative status.

IDENTIFYING AND OBTAINING FUNDING SOURCES FOR HIV/AIDS LEGAL-SERVICES PROGRAMS

AIDS legal-services programs, even those in large, well-established ASOs, experience great difficulty getting funding. A basic reason is the perception that legal services are a luxury for people living with HIV or AIDS and therefore less worthy of funding than programs catering to crisis needs, such as housing, or traditional case management or client services. There is also a misconception that all lawyers, even those working in poverty law, are well-off. The controversy surrounding many legal-services providers, and potential adversarial relationships with health-care providers, corporate employers, and others, raise fears of being sued.

Lawyers need to be proactive in eradicating many of these images by successfully raising funds to maintain and develop essential programs. One problem may be that lawyers, overwhelmed with their own caseloads, have not been participants in the processes. Collaborative relationships
with community-based organizations and participation in Ryan White planning councils and city planning councils are good ways of raising awareness of legal-related HIV needs and your organization’s services, and are consequently beneficial in raising funds. Communicating, not only with clients, but with other providers and planning councils, about what legal services can do for the HIV-affected client is critical to erasing that barrier to fundraising and to establishing collaborative relationships. One participant was able to earmark dollars from the agency-sponsored AIDS walk for the legal services department of her ASO by discussing the department’s financial needs with her executive director, and establishing relationships with private law firms, government lawyers, and law schools to get volunteers and funding commitments. The program has been extremely successful, earning $190,000 in its third year, and has produced increased visibility and volunteer recruitment. Another participant noted that he would not support walk dollars earmarked for a particular program, but would use a similar collaborative approach to impress upon the agency the need for an increased percentage of walk funding.

Various funding sources exist for legal-services providers. Ryan White is one AIDS-specific source, although most participants indicated they did not receive this funding. Housing Opportunities for People with AIDS (HOPWA) provides grants to assist in training in housing and housing discrimination issues in addition to direct services. Local bar associations are legal-specific sources. Other sources include departments of public health, private foundations, corporate donors, and individual donors.
One participant pointed out that the ETC program, which is federally mandated to provide training to health care providers, will sometimes subcontract the legal training component. Another participant received funding for recruitment and training of attorneys through Interest on Lawyers Trust Account (IOLTA). Funding from this interest-dependent source has decreased in recent years due to the decrease in interest rates, and the program is not AIDS-specific. Opportunities for income from training exist in most areas. One participant litigated a case that resulted in mandatory training on discrimination issues for hospital doctors and nurses; the hospital then hired his organization to conduct the training sessions. Another organization conducts educational training on a sliding-scale basis; their fee for corporations, hospitals, and other large organizations is $125/hour. In the course of this work, this program has received requests to consult on developing workplace policy, a potentially fruitful area they are considering. Ultimately important in whether they accept this work will be how they resolve potential liability, their ability to sue consulting clients, and what client/attorney relationship has been developed.

Some participants noted that the fee-generating cases in their work should not be ignored. New IRS rules permit 501c3 firms to charge fees, and such revenue-earning organizations are looked upon more favorably by foundations. Most participants did not receive substantial revenues from fee-generating cases, primarily due to generous sliding-scale structures and soft enforcement. The rule of thumb is, a case that does not come under the program’s mandate should not be accepted simply because it’s a fee-generating case, but if it is accepted and it brings in money, all the better.
Fee-generating cases in direct services come from clients who have the ability to pay but who prefer HIV-sensitive attorneys. Reduced fee rates vary, from $40/hour charged by one referral service's panel of attorneys, to $125 maximum charge for an estate planning package for one law school clinic.

Another potential income generator is state programs that provide one-time fees to practitioners who successfully obtain social security benefits for clients previously receiving state aid. In Illinois, this amount is $1400 per person; a similar program exists in Pennsylvania.

BUILDING COOPERATIVE EFFORTS BETWEEN LEGAL SERVICE PROVIDERS, HIGH-IMPACT LITIGATORS, AND PUBLIC POLICY

As one participant noted, after years of working in direct services, "What became really clear to me is, ... I was just constantly ... putting a Band-Aid on the same client and never connecting it." To effectively meet and resolve the needs of people living with HIV or AIDS, day-to-day service provision is not enough. Legislative reform is essential to change and improve how the epidemic is being dealt with across the country, and how that affects the lives of people with HIV or AIDS, as is high-impact litigation that can establish case law.

For most participants, running a direct services practice is a more than a full-time occupation. Reaching the largest number of people with quality services leaves no time to grapple with impact litigation and legislative reform. Yet most participants agree that it is important to maintain
involvement in these areas. Some participants feel it is important that some percentage of a legal-services organization's caseload be impact litigation. They see it as both the natural progression of the organization and as an important way to develop new skills and morale and prevent burnout. Others felt that these two areas are too disparate to be handled effectively by one person. One solution was to hire a staff member whose sole responsibility is to litigate. Such staff can be assisted by law students. IOLTA supplies fellowships for students doing litigation research, and one participant has been able to get law school credit for some of his students.

Some participants will assist other litigators as co-counsel, supplying them with information. As co-counsel on high-impact litigation, participants can maintain involvement in the strategies implemented by the litigating firm, in many cases the American Civil Liberties Union (ACLU), Lambda Legal Defense and Education Fund, Gay and Lesbian Advocates and Defenders (GLAD), or other agencies with little or no direct client contact. One participant noted that he works a lot with the ACLU, but doesn't agree with them on a lot of issues: "But I think we have to be there. Otherwise they do loony things because they're missing clients. They take positions that just drive me crazy." At other times, the litigation firms may not even agree to take on a case. Offering to supply students to do research may be a factor in getting big private firms to take on such cases, although some participants noted that when they have spoken to such firms they receive conflict of interest responses, especially on insurance cap cases.

When other firms take on cases, especially on a pro bono basis, participants noted that they had to clearly define their position: they will produce the
original press release, and the litigator must make clear that the case is a pro bono referral from their organization. Maintaining a policy or communications director is helpful in managing interactions with the media and keeping up with such impact litigation issues.

On the legislative front, an effective way to keep connections between providers and policy and ensure appropriate policy recommendations to legislators is to have a city or state AIDS legislative committee that includes legal service providers. Providers can also be proactive in sitting on task forces in their area to discuss potential legislative agendas. Legal-services directors in ASOs should also establish contact with their public policy colleagues and executive directors. Representatives of the large ASOs sit on the AIDS Action Council’s committee, and obtaining these individuals’ support can affect council decisions. One participant noted that when agency representatives, such as the executive director, testify at government hearings, it is important to involve clients and staff working with those clients. Finally, moving away from a regressive agenda of fighting bad legislation toward a proactive, positive one can be more effective in providing concrete solutions and allowing legislators to focus on a positive angle. One participant has found this to be a proven, effective strategy.

Along these lines, maintaining advocacy roles and positive press relations is an effective way of getting messages out to the public and keeping the focus and pressure on certain issues.