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The ABA Got It Right: Veterans Need Our Help

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The ABA Got It Right: Veterans Need Our Help**By Patricia E. Roberts****CLINICAL LEGAL
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In August 2014, the American Bar Association's (ABA) House of Delegates adopted Resolution 104A, encouraging "all law schools to create veterans law clinics to ensure that all veterans who cannot afford legal services can access them," and that for those schools lacking resources to create a stand-alone veterans law clinic, "the school is urged to meet those legal needs of qualifying veterans through an existing clinic."¹ As a clinician in William & Mary's Puller Veterans Benefits Clinic, I was excited by the ABA's encouragement for law schools to help in addressing the unmet legal needs of those who served our country. Not everyone applauded the ABA's Resolution. For instance, there are those who do not believe the ABA should propose what can be interpreted as an unfunded mandate regarding law school curricular efforts and clinical focus, and there are colleagues in the veterans law arena who, with good reason, fear law schools getting involved in this complex area of the law without the requisite skill and experience, thus potentially causing more harm than good for the veterans they seek to serve.

While it is understandable that some may object to directives from the ABA, as thoughtfully discussed in the companion piece to this article, I propose we take Resolution 104A in a more positive light, as encouragement that the nation's law schools and students recognize the unmet legal needs of our veteran

population, and, with the necessary training and skill, make a concerted effort to help address those needs. This article in no way implies that veterans are more deserving than the other worthy constituencies our law school clinics already serve, or that, when law schools consider development of new clinics, the needs of veterans should trump those of other marginalized and underserved populations. Instead, I suggest that when evaluating which clients to serve, the clinical community give very serious consideration to those who are serving or did serve in our armed forces.

The estimated number of all veterans currently living in the United States is over 22 million.² Since September 11, 2001, almost 2.7 million veterans have deployed to Iraq, Afghanistan and other combat zones,³ and they face multiple challenges when they attempt reintegration with their families and communities. These range from, among other things, the impact of disabilities and moral injuries sustained during service, finding employment, and addressing their unmet legal needs. These brave men and women, serving in the longest period of war in our nation's history,⁴ constitute less than 1% of the nation's population.⁵ We enjoy the safety and security their sacrifices provide, but only 5% of us are directly impacted by their actual service.⁶ An all-volunteer force has resulted in redeployments in record-breaking numbers; the medical care offered today results in less casualties, but more service members who

survive with significant injuries; and the strain on service members personally and professionally often includes legal matters for which they either cannot afford to hire a lawyer, or for which attorneys' fees are disallowed.

The Department of Veterans Affairs (VA) has identified legal needs as among the most significant unmet needs of homeless and poor veterans.⁷ The strains of multiple deployments can result in financial and housing legal issues, as well as matters such as divorce, custody, estate planning, accessing public benefits, guardianship, and criminal record expungements. In order to assist with some of the unmet legal needs among veterans, the Legal Services Corporation began an initiative in 2010 focused on improving access to justice for low-income military veterans and for military families, but they are limited in which types of cases they are allowed to undertake.⁸ The ABA, through their Military Pro Bono Project,⁹ ABA Homefront, and Veterans' Claims Assistance Network,¹⁰ are utilizing private attorneys willing to provide pro bono assistance to veterans, as are many state and local bar associations. Equal Justice Works, through their Veterans' Legal Corp,¹¹ have undertaken funding three years of fellows and law students who will assist veterans with their civil legal issues, including disability claims. Despite these organized efforts to aid veterans in need of legal assistance but unable to afford it, there remains a significant unmet need

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in a variety of legal issues facing veterans, areas of need where some law school clinics are already providing assistance, and where there is room for many more to do so.¹²

In 2008, there were approximately half a dozen law schools with clinics, programs or pro bono initiatives focused on meeting the legal needs of service members and veterans; in 2012 there were 25; now there are more than forty.¹³ These initiatives include a variety of models, some are volunteer efforts, others are for academic credit, some are in partnership with other legal services organizations, and others are in partnership with medical centers or schools. Several law school clinics help active duty service members with their civil legal needs, or are involved in veteran treatment courts, or aid veterans in other unmet legal needs such as financial, housing, family law, employment, education and health and public benefit matters; there are also law schools that take a more systemic approach to improving the VA's treatment of veterans through litigation or legislation and policy drafting. From one-day advice and counsel sessions or participating in a local stand down, to visiting homeless shelters or a VA healthcare center to offer legal services, or working with a volunteer attorney or legal aid organization in the community who works with veterans, there are limitless ways for students to get involved, showing one veteran at a time that we are glad they are home and we are eager to help.

Increasingly, law school clinics and

programs are choosing to serve veterans by aiding them in the disability compensation process with the VA. Given the increasing number of law schools choosing to focus in this area, and my own work with veterans' disability claims, this article will focus on that particular model of assistance to veterans. However, all of the foregoing legal needs can be the subject of a much-needed and successful law school clinic or pro bono initiative aiding veterans and service members.

The VA disability compensation process is complex and confusing to most veterans, and factual and legal analysis in preparation of a comprehensive claim or appeal on behalf of a veteran can result in greater success in adjudication. More thorough claims submissions can also result in a significant reduction in multi-year wait times if those claims are accurately decided, thereby eliminating the need for the veteran to appeal the decision. According to the VA's Monday Morning Status Report for March 28, 2015, the number of backlogged disability claims (defined as pending for 125 or more days) was estimated at 193,662; with 464,897 total claims pending.¹⁴ Although the VA completed a record-breaking 1 million claims per year over the past three years, with an even higher amount in 2014, the number of claims received continues to exceed the number processed.¹⁵

The backlog will continue to grow, and law clinics can aid that backlog by preparing comprehensive claims packages on behalf of veterans.

It is estimated that 45% of the 1.6 million veterans from the wars in Iraq and Afghanistan have filed a disability compensation claim, with an average of eight to nine ailments claimed to be service-connected.¹⁶ In addition to our current conflict veterans, veterans from our prior wars are aging, making disability more likely; "45% of World War II veterans, 24.8% of Viet Nam [sic] veterans, and 16.3% of the Gulf and Iraq War veterans are disabled."¹⁷ For those veterans who do file claims for disability compensation, the delays and appeals that result are alarming. If an initial disability claim is unsuccessful and a veteran appeals, the average waiting time for the nearly 300,000 veterans awaiting appeal is more than 1,200 days from filing at the agency level to a decision at the Board of Veterans Appeals (BVA).¹⁸ Once at the BVA, more than half of all VA disability appeal cases are sent back for another review¹⁹ — sometimes more than once; these remanded cases are meant to take priority at the agency level, which, if occurs, means that new claims are waiting even longer for adjudication. For those cases appealed from the BVA to the Court of Appeals for Veterans Claims, there is a wait of more than 250 more days, with a significant number of those cases remanded, at least in part.²⁰ Not only are these inexcusable timelines for veterans with disabilities to await decisions on their claims, attorneys who choose to assist veterans with their claims may only charge fees

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after the Agency of Original Jurisdiction (the Regional Office) issues an initial decision on a claim and the veteran files a Notice of Disagreement.²¹ Those attorneys must also be accredited by the VA in order to assist veterans.²²

The fee prohibition and the additional VA accreditation requirements serve as a disincentive to many attorneys, yet without attorney assistance at the initial stages of a VA claim, veterans are often unaware of the evidence necessary to support their request for benefits. When veterans are unaware of the evidentiary requirements or type of evidence necessary for a successful claim, or, as a result of their disabilities, are unable to effectively acquire appropriate evidence in support, their claims are more likely to be denied. With a VA national average of 205 days to complete a rating claim,²³ there is an extraordinary delay before a veteran even has the opportunity to hire an attorney and begin the long road to appealing an initial entitlement or ratings decision, with the result likely to be a remand and more delays.

The ABA's Resolution encouraging law schools to create clinics serving veterans, or adding veteran legal services to existing clinics, was welcomed by this clinician. Whether or not one agrees with the ABA's authority to exert any influence over law schools with such resolutions, there is certainly plenty of work to be done to aid our veterans in their reintegration and unmet legal needs, work that is rewarding as well as challenging to our law

students. There are many synergies between the vast needs of our veteran population and the educational experiences sought by our students. In addition, aiding veterans in our law school clinical programs provides rich opportunities for client interaction, client-centeredness, work in a variety of practice areas, interprofessional experiences, and, in the case of disability compensation benefits, a deep foray into administrative law from agency level through federal court. Finally, with an all-volunteer force whose sacrifices impact relatively few of us on a daily basis, other than to ensure the freedom and protection we have come to expect, veteran and service member clinics offer an opportunity for us to say thank you and recognize that our freedom comes at a cost. As President George Washington noted, "The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive the Veterans of earlier wars were treated and appreciated by their nation."²⁴ Our law school clinic staff and students, with appropriate training and resources, can positively impact not only the veterans of today, but increase the likelihood that there will be people willing to serve tomorrow.

Notes

¹ See Terry Carter, *ABA House Urges Law Schools to Create Veterans' Law Clinics*, ABA J. (Aug. 11, 2014), <http://www.abajournal.com/news/article/aba-house-urges-law-schools-to-create-veterans-law-clinics>.

² See http://www.va.gov/vetdata/docs/QuickFacts/Population_quickfacts.pdf (last visited 4/24/15).

³ Phillip Carter, *Foreword* to OLIVER GOULD ET AL., *THE MISSION CONTINUES: A CASE STUDY OF THE WELL AFTER SERVICE MODEL, VOICES FROM THE FIELD 5* (2014), http://www.cnas.org/sites/default/files/publications-pdf/CNAS_WellAfterServiceCaseStudy_VoicesFromTheField_updated.pdf.

⁴ Howard Schultz & Rajiv Chandrasekaran, *Want to Help Veterans? Stop Pitying them*, Wash. Post (Oct. 31, 2014), http://www.washingtonpost.com/opinions/want-to-help-veterans-stop-pitying-them/2014/10/31/1885e088-5eb9-11e4-9f3a-7e28799e0549_story.html.

⁵ Ellen Schell, *Military & Veteran Cultural Competence For Attorneys & Advocates Why You Need To Know*, BATTERED WOMEN'S JUSTICE PROJECT 5 (Apr. 25, 2012), <http://www.bwjp.org/files/bwjp/files/Military-and-Veteran-Cultural-Competence-for-Attorneys-and-Advocates.pdf> (containing PowerPoint slides from a webinar put on by Ellen Schell).

⁶ Schultz & Chandrasekaran, *supra* note 4.

⁷ *Veterans Legal Corps to be Largest Deployment of Lawyers Serving Veterans*, EQUAL JUSTICE WORKS, <http://www.equaljusticeworks.org/news/06-26-13-Veterans-Legal-Corps> (last visited Mar. 10, 2015).

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⁸ *Serving Veterans and Military Families*, LEGAL SERVICES CORP., <http://www.lsc.gov/about/about-legal-aid/serving-veterans-and-military-families> (last visited Mar. 10, 2015).

⁹ Am. Bar Assn., *Military Pro Bono Project*, MILITARYPROBONO.ORG, <http://www.militaryprobono.org/> (last visited Apr. 24, 2015).

¹⁰ *Veterans' Claims Assistance Network: For Attorneys*, AM. BAR ASSN., http://www.americanbar.org/portals/public_resources/aba_home_front/Military_Pro_Bono/aba-veterans-claims-and-assistance-network/attorneys.html (last visited Mar. 10, 2015).

¹¹ See <http://www.equaljusticeworks.org/news/06-26-13-Veterans-Legal-Corps> (last visited Apr. 24, 2015).

¹² Patricia E. Roberts, *Post-9/11 Veterans: Welcoming Them Home As Colleagues And Clients*, 45 UNIV. MEMPHIS L. REV. 51 (forthcoming 2015).

¹³ According to information compiled

by the Puller Clinic in February 2015 (results on file with author).

¹⁴ http://benefits.va.gov/REPORTS/detailed_claims_data.asp#Reports.

¹⁵ <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2582>.

¹⁶ Marilyn Marchione, *U.S. Vets' Disability Filings Reach Historic Rate*, The Associated Press (May 28, 2012) available at <http://usatoday30.usatoday.com/news/health/story/2012-05-28/veteran-disability/55250092/1> (last checked Apr. 24, 2015).

¹⁷ ROSEMARY R. FRENCH & NORMA BAYES, *GUIDE TO VETERANS LEGAL ISSUES* 8 (2nd ed. 2014), available at http://www.benchmarkinstitute.org/t_b_y_t/_s_u_b_s_t_a_n_t_i_v_e/_g_u_i_d_e_to_v_e_t_e_r_a_n_s_l_e_g_a_l_i_s_s_u_e_s.p_d_f.

¹⁸ Jacqueline Klimas, *Disability Appeals Process Forces Some Vets To Wait Years*, The Washington Times (Jan. 22, 2015) available at <http://www.washingtontimes.com/news/2015/jan/22/veterans-wait-years>

for-disability-appeals-process/ (last checked Apr. 24, 2015).

¹⁹ *Id.*

²⁰ Annual Report, United States Court of Appeals for Veterans Claims, October 1, 2012 to September 30, 2013 (Fiscal Year 2013) available at <https://www.uscourts.cavc.gov/documents/FY2013AnnualReport.pdf>.

²¹ *Accreditation Frequently Asked Questions*, U.S. DEP'T OF VETERANS AFFAIRS, available at http://www.va.gov/ogc/accred_faqs.asp (last visited Mar. 15, 2015) (quoting 38 C.F.R. § 14.629 (b)(1)(iii)).

²² *Id.*

²³ See *Aspire Benefits*, U.S. DEP'T OF VETERANS AFFAIRS, <http://www.app.hospitalcompare.va.gov> (last visited Mar. 10, 2015).

²⁴ See http://americanveteransmemorial.org/Military_Quotes.html.

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