

CIVIL LEGAL AID IN THE UNITED STATES

AN UPDATE FOR 2017

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This Update is based on the National Report for the United States prepared for the International Legal Aid Group (ILAG) in May of 2017. This report, an update to previous national reports, covers the period from July of 2015 through December of 2017. The report is divided into two parts: civil legal aid and access to justice. The Appendix is a background report that includes more details about the US system.

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PART ONE
AN UPDATE ON CIVIL LEGAL AID IN THE UNITED STATES
OVERVIEW

Civil legal aid in the United States is provided by a large number of separate and independent primarily staff-based service providers funded by a variety of sources. The civil legal aid system is very fragmented and very unequal in funding both across states and within states. Current overall funding is approximately \$1.582 Billion, a 7.5% increase from 2015. The largest element of the civil legal aid system is comprised of the 133 independent programs with 813 offices that are funded and monitored by the Legal Services Corporation (LSC). LSC is also the largest single funder, but overall, more funds come from states and IOLTA programs than LSC. In addition, there are a variety of other sources, including local governments, other federal government sources, the private bar, United Way, cy press distributions and private foundations.

The first budget submission for Fiscal 2018 of the Trump Administration called for the elimination of LSC and no further funding.¹ This proposal was made despite the opposition of the American Bar Association² and numerous state and local bar associations,³ Corporation General Counsels of over 185 corporations,⁴ most leading newspaper editorial boards,⁵ major national law firms,⁶ over 150 law school deans⁷ and the Presidents of the Conference of Chief Justices and the Conference of State Court Administrators.⁸ On March 29, 2017, 148 Members of Congress sent a bi-partisan letter to the key House Appropriations Subcommittee Chair and Ranking Member supporting continued funding for LSC.

LSC issued a statement articulating strong bi-partisan support for LSC.⁹ The President of the National Legal Aid and Defender Association (NLADA) put it this way: “Support for LSC has a secure foundation on Capitol Hill, and it is Congress that will have the final say on the critical spending decisions proposed by OMB. Today, there is a deep reservoir of bipartisan support for the Corporation in Congress. LSC has been targeted by a small number of ideological opponents in the past, but the powerful message of

¹ https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf

² http://www.americanbar.org/news/abanews/aba-news-archives/2017/03/statement_of_abapre3.html

³ https://www.americanbar.org/groups/bar_services/resources/resourcepages/legalservicesfunding.html

⁴ <http://www.nlada.org/sites/default/files/Corporate%20Counsel%20LSC%20Letter.pdf>

⁵ <https://voicesforciviljustice.org/press-clips/>

⁶ On March 9, 2017, 157 of the nation’s largest law firms sent a letter to the Director of the Office of Management and Budget urging the Trump administration to continue funding LSC. See <http://www.nationallawjournal.com/image/nlj/LegalServicesLetter.pdf>

⁷ <http://www.stthomas.edu/media/schooloflaw/pdf/lawdeanslettertoCongress.pdf>

⁸ <https://lsc-live.app.box.com/s/fsv8qtmymis1zasrnj9zkt3ohhusosmu2>

⁹ <http://lsc.gov/media-center/press-releases/2017/legal-services-corporation-confident-bipartisan-support-congress>

justice and fairness has always prevailed.” An example of bi-partisan support is the new Congressional Access to Civil Legal Services Caucus launched by Congressman Joseph Kennedy of Massachusetts in December 2015 with Congresswoman Susan Brooks (R-IN5).

The Budget submission of the Administration was just the beginning of a long process.¹⁰ LSC submitted its own budget directly to Congress and asked for \$527.8 million for FY 2018.¹¹ The Senate Appropriations Committee voted on July 27 to approve a bill that would fund the LSC at its current level of \$385 million for FY 2018. The House Appropriations Committee bill provided \$300 million for FY 2018, an \$85 million cut that is disproportionately higher than the overall reduction in spending contained in the House allocations.

After the passage of three Continuing Resolutions (CR) to keep the federal government functioning through March 24, 2018, the Congress finally agreed on an omnibus appropriation bill that would fund LSC at \$410 million, \$25 million higher than the Senate Appropriations Committee bill.

LSC funding reached a high of \$420 million in 2010 but has now been reduced to \$385 million for 2017.¹² On the other hand, state funding has improved. At the state level, more state funds are available for civil legal aid at the beginning of 2017. This is because state budgets have recovered from the great recession although IOLTA revenues continue to be lower than 7 years ago because of interest rates reductions by the Federal Reserve and the substantial slowdown in housing purchases and other business activity.

While the Trump Administration has proposed to eliminate LSC, the LSC board appointed by President Obama and the LSC President remain. In addition, the initiative on Access to Justice (ATJ) at the Department of Justice continued through 2017 but has been limited in its role within the Department of Justice.¹³

LSC has pioneered the use of technology to expand access to civil legal aid and to the courts. After a Technology Summit in 2014, LSC set as its mission statement to provide some form of assistance to 100% of persons otherwise unable to afford an attorney for dealing with essential legal needs.

¹⁰ See Don Saunders, The Fight for LSC – A Look Ahead, and Alan W. Houseman, Lessons from Past Challenges to Civil Legal Aid, MIE Journal, Vol XXXI, Spring 2017

¹¹ <http://www.lsc.gov/media-center/publications/fiscal-year-2018-budget-request>

¹² https://www.washingtonpost.com/news/powerpost/wp/2017/05/01/whats-in-the-spending-agreement-we-read-it-so-you-dont-have-to/?hpid=hp_rhp-top-table-main_trumpbudget-0822pm%3Ahomepage%2Fstory&utm_term=.4f35cdc5d462

¹³ <https://www.nytimes.com/2018/02/01/us/politics/office-of-access-to-justice-department-closed.html>; <http://thehill.com/opinion/criminal-justice/376254-a-quiet-closing-with-resounding-impacts-on-equal-justice>

State activity on civil legal aid continues to increase. Most states established Access to Justice Commissions and moving forward in creating comprehensive, integrated state systems for the delivery of civil legal assistance. The long term trend toward the development of a state based comprehensive legal aid delivery system is very likely to continue.

An integrated and comprehensive civil legal assistance system should have the capacity to: (1) educate and inform low-income persons of their legal rights and responsibilities and the options and services available to solve their legal problems; and (2) ensure that all low-income persons, including individuals and groups who are politically or socially disfavored, have meaningful access to high-quality legal assistance providers when they require legal advice and representation.

The United States has made considerable progress in meeting the first of these two objectives (See Appendix at pages 79-82). However, progress has been slow in meeting the second. In most areas of the United States, there is not enough funding or pro bono assistance available to provide low-income persons who need it with legal advice, brief service, and most particularly extended representation. As a result, many low-income persons who are eligible for civil legal assistance are unable to obtain it.

LEGAL SERVICES CORPORATION

In 1974, Congress passed and the President signed the Legal Services Corporation Act. LSC is not a federal agency, nor a government controlled corporation, but a nonprofit corporation established with the powers of a District of Columbia corporation and those provided by the LSC Act. The President of the United States appoints a bipartisan eleven-member board that must be confirmed by the Senate. Board members serve in a volunteer capacity. The board then appoints the LSC President. Unlike many federal agencies or government corporations, the LSC president administers the Corporation, making all grants and contracts. LSC funds 133 grantees that operate local, regional or statewide civil legal assistance programs.¹⁴ Generally, one field program provides legal services in a designated geographic area. In addition, LSC, with Congressional approval, has earmarked funds for migrant and Native American grants for specialized programs that deliver services to these populations. All legal services programs are private, nonprofit entities, independent of LSC.

Funding

Congress approved funding for LSC for 2017 at \$385 million and \$410 million for 2018., 2018. It was funded at \$365 in 2014. It was funded at \$420 million in 2010, the highest funding ever received. Beginning in 2012, Congress, over the objections of LSC and the Administration, reduced funding significantly to \$348 million. See Appendix page 88

¹⁴ For more detailed information about LSC, See its Annual Reports <http://lsc.gov/media-center/publications/2015-annual-report> and <https://www.lsc.gov/media-center/publications/2016-annual-report> and its annual Fact Books <http://lsc.gov/media-center/publications/lsc-numbers-2015> and <https://lsc-live.app.box.com/s/5lbcn4ncqqu5bbm31wh9v5xl80kxz0xf>.

for details about LSC funding over the years. If LSC funding would have kept up with inflation since its peak in 1980, today LSC would be funded at \$936 million.

Clients Served

According to 2016 data reported to LSC (the last available data)¹⁵, LSC programs provided services in 736,404 cases and served 1,790,667 people in households. The majority of services provided (76%) were counsel and advice (60%) and brief service (16%). Cases involving extended service were 24%. The largest category of cases was family law cases (32%) following by housing (28.3%), income maintenance (10.6%) and consumer (9.9%).

Eligibility

LSC-funded programs may only use LSC funds to provide legal assistance to clients who meet specific financial eligibility guidelines. The basic rule is that LSC programs serve clients at or under 125% of the Poverty Guidelines, or \$30,750 for a family of 4. LSC programs set their own asset ceilings for individual clients. LSC-funded programs are also permitted to provide legal assistance to organizations of low-income persons, such as welfare rights or tenant organizations. LSC funded programs cannot serve most aliens nor incarcerated prisoners.

Regulations and Restrictions

Congress had added no new restrictions for LSC funded programs. No states added new restrictions on their funding. The current restrictions are described in the Appendix at pages 83-86.

Technology Initiatives

The 2015 Update report described the technology summit that LSC had convened. In December of 2014, LSC issued its report on the summit.¹⁶ LSC set as its mission statement to provide some form of assistance to 100% of persons otherwise unable to afford an attorney for dealing with essential legal needs. This involved five main areas:

- Creating automated forms and other documents to support self-help and limited scope legal representation.
- Taking advantage of mobile technologies to reach more persons more effectively.
- Applying business practice analyses to all access-to-justice activities to make them as efficient as practicable.
- Developing “expert systems” to assist lawyers and other service providers.

¹⁵ <https://lsc-live.app.box.com/s/5lbcn4ncgqu5bbm31wh9v5xl80kxz0xf>

¹⁶ <http://tig.lsc.gov/resources/grantee-resources/report-summit-use-technology-expand-access-justice>

- Creating in each state a unified “legal portal” using an automated triage process to direct persons to the most appropriate form of legal assistance and to guide them through the process.

For a longer discussion on the impact of technology and 100% access see: Glenn Rawdon, “Everyone, Anytime, Anywhere” in MIE Journal, Vol. XXVIII, No.3, Fall 2014 and Ronald W. Staudt, “Inventing a 100% Future for Legal Aid,” MIE Journal, Vol. XXVIII, No. 4, Winter 2014.

2016 TIG Grants: In 2016, LSC made 34 Technology Initiative Grant (TIG) awards totaling \$4.2 million to 27 grantees. The grants will support a variety of initiatives, including online classroom training modules for pro bono attorneys, self-represented litigants, legal aid attorneys, and court personnel in South Carolina; kiosks at domestic violence shelters to provide assistance in English and Spanish in Texas; and automated forms for Native American self-represented users in Montana.¹⁷

2017 TIG Grants: On November 9, 2017, LSC announced 25 TIG grants to 22 legal services organizations in 18 states. “LSC’s Technology Initiative Grants expand access to justice for millions of Americans who cannot afford a lawyer,” explained LSC President Jim Sandman. “The grants make legal information, court forms, video instruction, and practical tips available to people who otherwise would have to navigate the legal system without any help.” Among the 25 funded initiatives are projects to create interactive legal forms for self-represented litigants, to enhance an online statewide “access portal” with a chatbot feature and to produce online resources for veterans and military families confronting legal problems.¹⁸

2018 Access to Justice Technology Fellows: LSC announced on November 27, 2017 that it has partnered with the 2018 ATJ Tech Fellows program to expand the summer fellows program, designed to equip “the next generation of future lawyers with the skills and competencies to better ensure access to justice.” ATJ Tech Fellows, a Seattle University School of Law-affiliated fellows program, was launched in 2017 and connects law students with civil legal services organizations for an immersive, 10-week, full-time, paid project-based placement. Students spend the summer leveraging technology, data, and design as they develop solutions to address barriers that prevent low-income Americans from receiving legal help. The fellows program also provides skills training, mentorship, advising, leadership development, and collaborative virtual teaming activities. The partnership will support funding for 21 positions placed at the recently announced TIG grant recipient organizations to help develop cutting-edge technologies for improving efficiency and providing greater access to high-quality legal assistance for low-income Americans. The TIG program supports legal innovation projects that explore new ways of serving eligible clients, to build the programs’ capacities, and to support the efforts of pro bono attorneys. Students will pursue a

¹⁷ For a full listing of TIG grants see page 27 of LSC Budget Request <http://www.lsc.gov/media-center/publications/fiscal-year-2018-budget-request>

¹⁸ <https://www.lsc.gov/media-center/press-releases/2017/lsc-awards-nearly-4-million-technology-grants-legal-aid>

number of innovative projects through this unique collaboration, such as creating interactive legal forms for self-represented litigants, enhancing an online statewide “access portal” with a chatbot feature, and producing online resources for veterans and military families confronting legal problems.

Website Evaluation: The Ford Foundation funded a full evaluation and assessment of the websites network created in part through TIG grants from the past. Beginning in 2000, LSC developed a network of state-specific legal aid websites to serve low-income litigants who are unable to afford an attorney. Statewide websites provide users with a variety of legal tools and resources, including overviews of common poverty law issues and step-by-step guides for individuals representing themselves. They connect users to appropriate legal aid providers, self-help centers, and lawyer referral services in their community. Increasingly, sites host collections of automated court forms, known as interactive interviews, to guide users through simple questions and then deliver the forms necessary to engage in a legal process (e.g. filing for a simple divorce). LSC also supported the development of two statewide website templates (i.e., DLAW and LawHelp). They awarded grants to local legal aid providers to create websites in every state using one of the templates. All 50 states, the District of Columbia, and the U.S. territories have websites, and the majority of these sites still utilize one of the two original templates. This network of 53 websites was the focus of the assessment described in the internal report.

The assessment reviewed criteria in the following focus areas:

- Content: Plain Language, Language Access, Content Presentation
- Access: Accessibility, User Support, Mobile Friendly, Community Engagement
- Design: Ease of Navigation, Visual Design & Iconography

The basic findings of the assessment were:

- Sites that used visual design purposefully to enhance usability performed best.
- Information density and content presentation was a consistent challenge. Most sites across the network were information dense (i.e., contained long lists of onsite and/or offsite links), which made scanning difficult. These experiences would make it hard for users to resolve legal issues on their own. Other sites achieved the right balance of information density by curating a set of guides that provided a limited number of articles. Finding content for a given legal issue on these sites was simple.
- The customization available to Drupal-based sites allowed them to produce more usable experiences. Template providers created templates that were either flexible, but required some development expertise, (i.e., DLAW), or more restricted but came with support from the template providers themselves (i.e., LawHelp). As a result, LawHelp may be easier to use, since many websites managers functioned as content managers and not developers. By comparison,

the DLAW template may be more difficult to learn initially, but offered greater flexibility for creating a positive user experience.

- A future system of templates should deliver a streamlined experience for end users, while removing the guess work for website managers about how to implement a great user experience. Templates that provide straightforward navigation, flat information architecture, and a curated set of articles will establish a strong foundation for statewide sites.

In July of 2017, LSC released a [new Toolkit](#) created by Ernst & Young LLP¹⁹ which comes with some design examples. These examples include concepts for pretty much every part of a legal aid website along with all the necessary resources to make them including the exact colors, icons, and fonts used.

Portal Project: In late 2016, LSC released an RFP, with proposals due Jan 19, 2017, for the portal project. On April 25, LSC, Microsoft Corporation, and Pro Bono Net named Alaska and Hawaii as state partners in a pilot program to develop online, statewide legal portals to direct individuals with civil legal needs to the most appropriate forms of assistance. The goal is to *develop* a single, statewide, unified legal access portal which provides information anywhere, any time to every person seeking assistance and to provide assistance from a person – lawyer or otherwise – anywhere, if resources are available. The portal will use methods such as branching logic questions and gamification to assess the capabilities and circumstances of an inquirer, which will be part of the referral logic. The portal will generate information on the legal needs of persons using it and on the results achieved from the referrals provided. The portal will aggregate this information and provide it regularly to all participating entities. The portal will be an integrated system of resources, rules, and recommendations through which users can be matched with available services and applicable resources. The site will analyze users’ responses to questions and direct them to the most appropriate resource, considering factors such as case or situations complexity, the user’s capacity to use technology, strength and representation of the opponent, the importance of the user’s stake in the outcome, and the availability of resources, updated in real time. All access to justice entities in a participating jurisdiction (including legal aid entities, courts, court administrators, the organized bar, interested law firms and lawyers, law schools, libraries, pro bono support entities, and other interested community entities) will have a presence on the portal and will receive appropriate referrals from it. If a referral proves inappropriate, the entity to which the referral was made may make a different referral. The system will preserve the confidentiality of information an inquirer provides.²⁰

Pro Bono Innovation Fund

At the first LSC 40th Anniversary celebration in 2014, LSC President Jim Sandman presented the first Pro Bono Innovation Fund grants to 11 LSC grantee executive directors. In September of 2015, LSC awarded grants to 15 legal aid organizations to

¹⁹ <http://webassessment.lsc.gov/>

²⁰ <https://richardzorza.files.wordpress.com/2017/05/introduction-litigant-portal.pdf>

support innovations in pro bono legal services for low-income clients. Many of the projects use technology to connect low-income populations to resources and services, while others aim to increase efficiency and effectiveness through partnerships with law schools, community organizations, and in-house corporate attorneys. Some projects address issues affecting specific populations such as seniors, veterans, and low-income students.

On September 29, 2016, LSC announced that 11 legal aid organizations will receive 2016 grants to support innovations in pro bono legal services for low-income clients. Many of the LSC-funded projects will use technology to connect low-income populations to the services they need and to train volunteers on how to provide legal information effectively. Other projects will focus on building partnerships between LSC-funded legal aid programs and the community, law schools, and other local service providers. The goal of all the projects is to engage pro bono lawyers and other volunteers to leverage LSC's federal funding and increase the legal resources available to low-income Americans.²¹

On September 21, 2017, LSC announced today that 15 legal aid organizations will receive 2017 grants to expand pro bono legal services for low-income clients. Many of the projects the grants will fund focus on building new partnerships between legal aid programs and law schools, law firms, and other local service providers. The projects offer effective, replicable solutions to persistent challenges in current pro bono delivery systems. For example, Legal Services NYC will use its grant to support its Military Monday project, which brings together corporations, law firms, and legal services to assist low-income veterans. Through a combination of monthly legal clinics and ongoing representation, pro bono attorneys and Legal Services NYC staff will help veterans with pressing legal issues including disability benefits, safe and affordable housing, and child support.²²

New Justice Gap Study

In June of 2017, LSC released its new Justice Gape report: Legal Services Corporation. 2017. *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*. Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, DC.²³

To update two previous Justice Gap reports, LSC contracted with NORC at the University of Chicago to conduct a survey of more than 2,000 adults living in low-income households. For the purposes of the survey, "low-income households" are households at or below 125% of the Federal Poverty Level (FPL), the income eligibility standard for people seeking assistance from an LSC-funded legal aid program. The survey was

²¹ For all full listing of the Pro Bono grants see LSC Budget Request at page 32 <http://www.lsc.gov/media-center/publications/fiscal-year-2018-budget-request>

²² <https://www.lsc.gov/media-center/press-releases/2017/lsc-awards-fourth-round-pro-bono-innovation-grants-assist-low>

²³ <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>

administered using telephone and web interview modes to gather detailed information about low-income Americans' civil legal needs at the individual level, household level, and level of specific civil legal problems.

According to the Report, the survey was designed to accomplish the following goals:

- “• Measure the prevalence of civil legal problems in low-income households in the past 12 months;
- Assess the degree to which individuals with civil legal problems sought help for those problems;
- Describe the types and sources of help that low-income individuals sought for their civil legal problems;
- Evaluate low-income Americans' attitudes and perceptions about the fairness and efficacy of the civil legal system; and
- Permit analysis of how experiences with civil legal issues, help-seeking behavior, and perceptions vary with demographic characteristics.”

This report also presents analysis of data from LSC's 2017 Intake Census. LSC asked its 133 grantee programs to participate in an “intake census” during a six-week period spanning March and April 2017. As part of this census, grantees tracked the number of individuals approaching them for help with a civil legal problem that they were unable to serve, able to serve to some extent (but not fully), and able to serve fully. Grantees recorded the type of assistance individuals received and categorized the reasons individuals were not fully served where applicable.

In 2017, low-income Americans will approach LSC-funded legal aid organizations for help with an estimated 1.7 million civil legal problems. They will receive legal help of some kind for 59% of these problems, but are expected to receive enough help to fully address their legal needs for only 28% to 38% of them. More than half (53% to 70%) of the problems that low-income Americans bring to LSC grantees will receive limited legal help or no legal help at all because of a lack of resources to serve them.

The study found seven of every 10 low-income households have experienced at least one civil legal problem in the past year. A full 70% of low-income Americans with civil legal problems reported that at least one of their problems affected them very much or severely. They seek legal help, however, for only 20% of their civil legal problems. Many who do not seek legal help report concerns about the cost of such help, not being sure if their issues are legal in nature, and not knowing where to look for help.

Based on the analysis presented in this report, LSC found three key findings relating to the magnitude of the justice gap in 2017:

- “• Eighty-six percent of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help;
- Of the estimated 1.7 million civil legal problems for which low-income Americans seek LSC-funded legal aid, 1.0 to 1.2 million (62% to 72%) receive inadequate or no

legal assistance;

- In 2017, low-income Americans will likely not get their legal needs fully met for between 907,000 and 1.2 million civil legal problems that they bring to LSC-funded legal aid programs, due to limited resources among LSC grantees. This represents the vast majority (85% to 97%) of all of the problems receiving limited or no legal assistance from LSC grantees.”

There have been many discussions of the justice gap. See for example, “An Unacceptable Justice Gap: The Legal Services Corporation and Its Fight for Civil Legal Aid” by William Roberts²⁴ and “The Justice Gap: America’s Unfulfilled Promise of ‘Equal Justice Under Law’” by Lincoln Caplan in the Harvard Magazine.²⁵

Outcome and Performance Measures

LSC has embarked on a major new project to measure results. LSC currently employs a range of strategies and systems to collect data to document the need for and effect of civil legal aid for low-income Americans; to assess and improve its grantees’ operations; and to equip its grantees with tools and resources to better evaluate, improve, and expand the services they provide to their client communities. These systems include LSC’s Case Services Report (CSR) system, periodic surveys of grantees, evaluation of Census Bureau data, on-site assessments of grantees, and administration of the grants competition and renewal process.

Working with a data collection consulting firm and an Advisory Committee of legal aid directors, LSC staff and others (the author was a member), the project recently finalized an extensive toolkit to work with LSC program case management systems to produce outcome and other relevant data to help programs measure outcomes and performance. The toolkit can be found at <http://clo.lsc.gov/>.

White House Conferences

Since the last National Report, there was one White House Conferences on Access to Justice held on April 19, 2016. Then Vice President Joseph Biden, Congressman Joseph P. Kennedy III, and Acting Secretary of the Army Patrick J. Murphy, White House Counsel W. Neil Eggleston, and Attorney General Loretta E. Lynch each delivered speeches expressing support for legal aid. Congressman Kennedy described how he launched the new Congressional Access to Civil Legal Services Caucus last December with Congresswoman Susan Brooks (R-IN5). Then Vice President Biden made a special appearance and expressed his and the administration’s deep commitment to supporting legal aid. Paulette Brown, president of the American Bar Association, emphasized the critical importance of legal aid and increasing access to justice in her remarks. Lisa Foster, Director of the U.S. Department of Justice Office for Access to Justice moderated a panel of state chief justices on efforts to address unconstitutional fines and fees practices that negatively affect poor people and, in

²⁴ <http://washingtonlawyer.dcbbar.org/november2016/>

²⁵ <https://today.law.harvard.edu/harvard-magazine-justice-gap>

particular, people of color, creating a cycle of poverty and court-involvement.²⁶ On the panel were: Chief Justice Scott Bales, Arizona Supreme Court; Chief Justice Patricia Breckenridge, Supreme Court of Missouri; Chief Justice David E. Gilbertson, South Dakota Supreme Court; Chief Justice Nathan L. Hecht, Supreme Court of Texas; Chief Justice Jorge Labarga, Supreme Court of Florida; Chief Justice Mark D. Martin, Supreme Court of North Carolina; and Chief Judge Eric T. Washington, District of Columbia Court of Appeals.

Jim Sandman moderated a panel of exemplar partnerships that utilize technology to increase access to justice. M. Nalani Fujimori Kaina, executive director of the Legal Aid Society of Hawaii and Mark O'Brien, co-founder and executive director of Pro Bono Net, discussed their partnership to bridge geographical difficulties in providing services to people across islands and in rural areas. Julia R. Wilson, chief executive officer of OneJustice, and Phong Wong, pro bono director at the Legal Aid Foundation of Los Angeles, spoke about their partnership to streamline training of pro bono volunteers, easing the burden on legal aid providers while still ensuring quality in services, thus removing significant barriers to volunteerism.

Martha Minow, LSC board co-chair and then dean of Harvard Law School, moderated a discussion by executives from the business community: Debra A. Cafaro, chairman and chief executive officer, Ventas, Inc.; Kenneth C. Frazier, chairman and chief executive officer, Merck & Co., Inc.; John W. Rogers Jr., chairman and chief executive officer, Ariel Investments; David M. Rubenstein, co-founder and co-chief executive officer, The Carlyle Group; Amy W. Schulman, chief executive officer, Arsia Therapeutics and chairman and chief executive officer, Lyndra; Brad L. Smith, president and chief legal officer, Microsoft Corporation; and Arne M. Sorenson, president and chief executive officer, Marriott International. Each spoke about why they personally support access to justice and why the business community should do the same.

Forum on Increasing Access to Justice at Georgetown Law Center

On April 25, 2017, LSC held a Forum on Increasing Access to Justice at Georgetown University Law Center in conjunction with its Board of Directors' quarterly meeting. Rep. Thomas E. Emmer (MN-6), Rep. Joseph P. Kennedy III (MA-4), LSC Board Chair John G. Levi, Georgetown Law Dean William M. Treanor, and ABA President Linda Klein delivered remarks.

The forum included three panels. The first, "The Importance of Access to the Justice to the Judiciary," featured state Supreme Court justices from four states and a United

²⁶ See, e.g., a November 2016 report from the Massachusetts Trial Court Fines and Fees working group to review and endorse recommendations that DOJ CRT outlined in its March 2016 "Dear Colleague" letter about fines and fees.

<http://www.mass.gov/courts/docs/trial-court/report-of-the-fines-and-fees-working-group.pdf>

States Circuit Judge discussing barriers to justice and the impact unrepresented litigants have on the justice system. Harvard Law School Dean and LSC Board Vice Chair Martha Minow moderated. Six corporate leaders representing Cisco Systems, Hewlett Packard Enterprise, KPMG LLP, Microsoft Corporation, Viacom, and Visa served as panelists for the second panel, "Perspectives on Access to Justice from the Business Community." They discussed why American businesses depend on a justice system where consumers, employees, and employers can access their legal rights and protections. Teresa Wynn Roseborough, Executive Vice President, General Counsel, and Corporate Secretary at The Home Depot served as moderator. The final panel, "Addressing the Legal Needs of Low-Income Veterans Through Medical-Legal Partnerships," highlighted LSC grantees' work on behalf of veterans across the country. LSC President James J. Sandman moderated.

Forum on Access to Justice at Harvard Law School

On October 16, 2017 at Harvard Law School, LSC sponsored a forum on access to justice. Welcoming remarks by John G. Levi, chairman of the Legal Services Corporation Board of Directors, and Dean John F. Manning of Harvard Law School preceded several panels of distinguished speakers on current efforts of the judiciary, American businesses, and law schools to improve access to justice and further efforts that could be made.

A moderated discussion, "Natural Disasters, Legal Aid and the Justice System," included Chief Justice Nathan L. Hecht of the Supreme Court of Texas and Chief Justice Jorge Labarga of the Florida Supreme Court. It was moderated by Judge Jonathan Lippman, of counsel at Latham & Watkins LLP and former chief judge of New York.

A panel discussion, "The Importance of Access to Justice to American Business," included comments from Paul T. Dacier, general counsel at Indigo Agriculture; Alex Dimitrief, senior vice president and general counsel at General Electric Company; Frank R. Jimenez, vice president, general counsel and corporate secretary at Raytheon Company; and Kathleen E. McGrath, assistant vice president and senior counsel at Liberty Mutual Insurance Company. The panel was moderated by Ron Flagg, vice president for legal affairs, general counsel and corporate secretary at the Legal Services Corporation. Professor D. James Greiner, faculty director of Harvard's Access to Justice Lab (the Lab), spoke about current projects being conducted by the Lab to further evidence-based practices in the legal system.

A second panel discussion, "Law Schools' Work and Access to Justice," included dialogue from Dean Danielle M. Conway of University of Maine School of Law; Dean Thomas J. Miles of University of Chicago Law School; Dean Maureen A. O'Rourke of Boston University School of Law; Dean Daniel B. Rodriguez of Northwestern University Pritzker School of Law; Dean Vincent D. Rougeau of Boston College Law School; Dean Theodore Ruger of University of Pennsylvania Law School; and Dean Robert K. Vischer of University of St. Thomas School of Law. The panel was moderated by Harvard Law

School professor and vice chair of the Legal Services Corporation Board of Directors, Martha Minow.

President Jim Sandman moderated an examination of The Justice for All Project that included speakers Chief Justice Ralph D. Gants, Massachusetts Supreme Judicial Court; Shelley Spacek Miller, senior court research analyst at the National Center for State Courts; and Justice Laurie D. Zelon, California 2nd District Court of Appeal.

Leaders Council

In May of 2016, LSC formed a new Leaders Council to raise public awareness of the current crisis in legal aid. The Leaders Council consists of high-profile and influential leaders from various industries. They include public figures such as former Major League Baseball player Henry "Hank" Aaron, author John Grisham, University of Michigan head football coach Jim Harbaugh, former Attorney General Eric Holder, Viacom Vice Chair Shari Redstone, and Microsoft Corporation President and Chief Legal Officer Brad Smith. Earl Johnson is a member. A full list of the more than 40 notable individuals joining the Leaders Council is available online at <https://lsc40.lsc.gov/leaders-council/>. Kenneth C. Frazier, CEO of pharmaceutical company Merck & Co., and Harriet Miers, a partner at Locke Lord and former White House Counsel to President George W. Bush, serve as co-chairs of the Leaders Council.

OTHER CIVIL LEGAL AID DEVELOPMENTS

Funding

While LSC remains the single largest funder, funding for civil legal aid is from a variety of sources with state sources being the largest. It is not accurate to say that civil legal aid funding is down, even though LSC funds have been reduced since their high in 2010. In 2016, seven states received increases in state funding, and no state faced a decrease. However, states that receive funding from filing fees saw reductions due to fewer filings. The funding in 2016 which totaled \$1,582,068,000 is set out below.

General Revenue and Filing Fees	\$336,499,000
IOLTA	\$63,070,000
Other Public Funds	\$391,046,000
Legal Community/Bar	\$110,342,000

CY Press	\$56,297,000
Foundation/Corporation Grants	\$151,648,000
Other Strategies	\$134,877,000
Legal Services Corporation	\$338,289,000

Total funding in 2016 was 7.5% higher than in 2015.

Among LSC grantees, only 36.8% of their funding comes from LSC. 92 of the 133 grantees have less than 50% of their funding from LSC.

Pro Bono

Pro bono efforts are the primary supplement to the staff attorney system and, in many respects, are an integral and integrated part of that system. Pro bono efforts in the United States continue to expand and engage more private attorneys, providing greater levels of service.

The American Bar Association’s Standing Committee on Pro Bono and Public Services issued a report—Supporting Justice III: A Report on the Pro Bono Work of America’s Lawyers (March 2013)—which reports on a 2012 survey completed by 2876 lawyers throughout the country in private practice, corporate counsel offices, government, and academic settings.²⁷ The study found that 63% of respondents worked on matters that address the everyday legal problems of people in poverty and 36% of the lawyers who responded met the ABA’s aspirational goal of providing at least 50 hours of free pro bono services to persons of limited means.

The ABA Standing Committee on Pro Bono and Public Service conducted a new survey in 2017 of lawyer pro bono service in 24 states. The participating states represented a spectrum of states in terms of urban/rural distribution, political leaning, pro bono policies, and attorney demographics. The results, which included insights from over 45,000 attorneys, revealed that private lawyers in those states contributed an average of 29.1 hours of pro bono service to individual clients in 2016. By combining the results of this study with the annual reports of private attorney involvement submitted by grantees to LSC, it is estimated that LSC-funded organizations stimulate well over one million hours annually of pro bono service by private lawyers.

A recent survey developed by Robert Half Legal, a premier legal staffing and consulting solutions firm specializing in the placement of lawyers, paralegals and other highly

²⁷

http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf

skilled legal professionals found: “Nearly one-third (30 percent) of lawyers said they donate 80-plus hours to pro bono or volunteer service each year, up seven points since the survey was last conducted in 2014. Sixteen percent of survey respondents contribute fewer than 10 pro bono hours annually, up from eight percent in 2014. The average number of annual pro bono hours lawyers reported is 64, an eight-percent increase from 2014, which exceeds the minimum goal of 50 hours recommended by the American Bar Association. Lawyers employed at law firms donated an average of 70 hours to pro bono service each year, while their corporate counterparts logged 36 volunteer hours.”

For 9 years, the ABA has sponsored a National Celebration of Pro Bono. For example, in October of 2016, there were over 1,150 events by pro bono programs, pro bono award ceremonies, fundraisers and Veterans events in 49 states, DC and Chile. These were sponsored by 600 bar associations, courts, legal aid and pro bono programs, law firms and law schools. The 2017 national celebration ran from October 22-28.

ABA Free Legal Answers was launched by the ABA Standing Committee on Pro Bono and Public Service in August 2016 as a virtual legal aid clinic through which low to moderate income users can pose civil legal questions to pro bono attorneys licensed in their state. Currently, over 3000 attorneys are registered to respond to questions on ABA Free Legal Answers and over 9100 client questions have been submitted since launch of the website. Forty-two jurisdictions are committed to participate and 38 of them are connected to the site in various stages of access by clients, pro bono attorneys and/or state administrators.

LSC has been a leader in encouraging pro bono. Since 1981, LSC-funded programs have had to provide a portion of their funding for private attorney involvement. Currently, each LSC-funded provider must expend 12.5% of its LSC funding for private attorney involvement.²⁸ Of the 736,404 cases closed by LSC program in 2016, the most recent figures available, 87,322 were done by private attorneys. Of these cases, 73,627 were done by pro bono attorneys and 13,695 by contract or Judicare attorneys.²⁹

Currently, 18 states have some form of mandatory or voluntary reporting of pro bono hours each year. A California bill would require attorneys to report to the State Bar the number of pro bono hours they have worked and the amount they have donated to legal aid organizations passed the Senate Judiciary Committee on April 25, 2017.

A thorough review of pro bono was provided in a recent article by April Faith-Slaker: **What We Know And Need To Know About Pro Bono Service Delivery** 67 South Carolina Law Review 267³⁰

Medical Legal Partnerships

²⁸ The requirement is imposed by LSC through its regulatory authority. See 45 CFR 1614.

²⁹ <https://lsc-live.app.box.com/s/5lbcn4ncgqu5bbm31wh9v5xl80kxz0xf>

³⁰ <https://perma.cc/62JG-38NZ>

Medical-legal Partnerships (MLP) integrate lawyers into the health care setting to help patients navigate the complex legal systems that often hold solutions to many social determinants of health. MLPs are active in 294 hospitals and clinics in 41 states. Over half of LSC-funded civil legal aid programs have a medical-legal partnership. MLPs assist low-income and other vulnerable patients with receipt of public benefits, food security concerns, disability issues, housing problems, special education advocacy, employment instability, immigration issues, family law issues and other problems that affect individual and community health and require legal remedies. MLPs also train clinicians and other healthcare team members in the social determinants of health and work to identify both health-harming civil legal needs and their related policy solutions.

MLPs did not evolve as a result of LSC promotion or any LSC earmarked funding. MLPs developed through efforts of the National Center for Medical Legal Partnerships (now at George Washington University). In 2008, the ABA established a national support center to assist medical-legal partnerships in securing pro bono participation, promoting best practices related to MLP-pro bono practice, and ensuring quality service delivery.

Every year, The National Center convenes a conference. The 12th Annual Medical-Legal Partnership Summit was held on April 5-7 at the National Harbor, Maryland. The 2017 Summit featured plenary sessions on medical-legal partnership's value in veteran and complex care settings, as well as sessions on quality improvement measures and the future of MLP in the current healthcare landscape. Workshops, affinity groups, and an accredited poster session offered new research and practices related to the integration of care.

Federal Funding: Several years ago the Health Resources and Services Administration of the Department of Health and Human Services awarded the National Center a cooperative agreement to provide training and technical assistance to community health centers to support integration of civil legal aid services into health care delivery at the health centers. Over 60 health care centers now have MLPs.

A recent report - *Building Resources to Support Civil Legal Aid Access in HRSA-Funded Health Centers* by *Joanna Theiss, JD, LLM; Sharena Hagins, MPH, CHES; Marsha Regenstein, PhD; and Ellen Lawton, JD*³¹ - discusses the experiences of six health centers that used expanded services awards from HRS to support legal-related enabling services. The lessons they learned demonstrate the catalyzing force that occurs when health centers and civil legal aid services collaborate, and the opportunity for other health centers to leverage a range of funding opportunities for fostering medical-legal partnerships. This issue brief describes the ways that a supplemental funding opportunity sparked MLP growth in health centers, resulting in expansions in civil legal aid services provided to health center patients by partnering civil legal aid organizations and law school clinics. It shares the experiences of health centers from Hawai'i to New Hampshire that received expanded services awards from HRSA and used them for legal-related enabling services, and extrapolates lessons for other health

³¹ <http://medical-legalpartnership.org/building-resources/>

centers about the impact of collaborations between health centers and civil legal aid services and how to leverage funding opportunities for fostering medical-legal partnerships.

A 2016 report by Barbara Hoffman of the National Center for Medical-Legal Partnership - Addressing Cancer Survivors' Employment Problems Through Medical-Legal Partnerships - reviews the cultural changes that affect cancer survivors at work, explains how their legal needs can impact their quality of life, and proposes that medical-legal partnerships are an ideal model to provide legal resources to underserved survivors to help them avoid and address negative employment consequences.³² One of the non-medical consequences of cancer survivors living more productively during cancer treatment, living longer after cancer treatment, and living with cancer is employment problems that implicate legal issues. Some of these employment problems include: reduced income, loss of medical insurance, lost promotional opportunities, and limited work-related social interactions. A cancer experience can also affect a survivor's ability to obtain an initial job, maintain employment, make career advancements, and change jobs. This article proposes that at each of these stages, legal resources could help survivors address their obstacles. It outlines several ways medical-legal partnerships can address the work-related legal needs of cancer survivors including: providing survivors documentation of their cancer diagnosis, treatment summary, and whether the patient is able to continue working; supporting their patients' requests for reasonable accommodations; providing an assessment for an individual cancer patient; and providing medical information to support a patient's request for leave under the FMLA.

Another recent report in January of 2017, [Law as Healer: How Paying for Medical-Legal Partnerships Saves Lives and Money](#) by Dayna Bowen Matthew of The Brookings Institution, explores a large body of empirical evidence showing that increased access to legal services via medical legal partnerships can substantially improve health outcomes. Built on the merger of legal aid and health care providers, the MLP approach provides a more holistic model for addressing social and health related issues among low income populations. The author offers several policy recommendations to develop sustainable funding for MLP programs that pursue legal resolutions to health-harming social risks.

Recent Studies: A recent national survey - Civil Legal Services and Medical-Legal Partnerships Needed by the Homeless Population: A National Survey by Jack Tsai, PhD, Darlene Jenkins, DrPH, and Ellen Lawton, JD - was designed to examine civil legal needs among people experiencing homelessness and the extent to which medical-legal partnerships exist in homeless service sites, which promote the integration of civil legal aid professionals into health care settings. It surveyed a national sample of 48 homeless service sites across 26 states in November 2015. The survey asked about

³² : <http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1540/91WLRO001.pdf?sequence=1&isAllowed=y>

needs, attitudes, and practices related to civil legal issues, including medical-legal partnerships. The survey found: More than 90% of the homeless service sites reported that their patients experienced at least 1 civil legal issue, particularly around housing, employment, health insurance, and disability benefits. However, only half of all sites reported screening patients for civil legal issues, and only 10% had a medical-legal partnership. The large majority of sites reported interest in receiving training on screening for civil legal issues and developing medical-legal partnerships. Conclusions reached: There is great need and potential to deploy civil legal services in health settings to serve unstably housed populations. Training homeless service providers how to screen for civil legal issues and how to develop medical-legal partnerships would better equip them to provide comprehensive care.³³

Another recent study, *Medical-Legal Partnerships At Veterans Affairs Medical Centers Improved Housing And Psychosocial Outcomes For Vets* by Jack Tsai; Margaret Middleton; Jennifer Villegas; Cindy Johnson; Randye Retkin; Alison Seidman; Scott Sherman; and Robert A. Rosenheck³⁴ describes the outcomes of veterans who accessed legal services at four partnership sites in Connecticut and New York in the period 2014–16. Medical-legal partnerships—collaborations between legal professionals and health care providers that help patients address civil legal problems that can affect health and well-being—have been implemented at several Veterans Affairs (VA) medical centers to serve homeless and low-income veterans with mental illness. The partnerships served 950 veterans, who collectively had 1,384 legal issues; on average, the issues took 5.4 hours' worth of legal services to resolve. The most common problems were related to VA benefits, housing, family issues, and consumer issues. Among a subsample of 148 veterans who were followed for one year, we observed significant improvements in housing, income, and mental health. Veterans who received more partnership services showed greater improvements in housing and mental health than those who received fewer services, and those who achieved their predefined legal goals showed greater improvements in housing status and community integration than those who did not. Medical-legal partnerships represent an opportunity to expand cross-sector, community-based partnerships in the VA health care system to address social determinants of mental health.

PART TWO

UPDATE ON ACCESS TO JUSTICE DEVELOPMENTS IN THE US

³³ See <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2016.303596>

³⁴ HEALTH AFFAIRS, VOL. 36, NO. 12:, DECEMBER 2017

Former Chief Justice Lippman of the New York Court of Appeals (highest court in NY State) has been a leader in attempting to improve access to justice in NY and around the country.³⁵ In his report *State of the Judiciary 2015*³⁶ he set out a clarion call about access to justice that is worth including in this report:

“Access to justice means ensuring that litigants have meaningful representation when their liberty or the very necessities of life are at stake. Access to justice is the issue when citizens struggle to understand our justice system and the judicial process is hidden from view. Access to justice is also front and center when rich and poor, the privileged and the disadvantaged alike seek a level playing field before the courts, and it is what victims want when they enter the halls of our courts desperately seeking assistance. And access to justice is the driving force behind the court system’s determination to secure the resources necessary to meet our constitutional mission of fostering equal justice. Access to justice means that everybody —regardless of race, ethnicity or orientation, irrespective of wealth or poverty, whether we are mighty or weak —each and every one of us gets his or her day in court. Equal justice, that defining principle of our country, requires that every human being has access to the courts and a judicial system where the scales of justice are exquisitely balanced.”

DEPARTMENT OF JUSTICE ACCESS TO JUSTICE INITIATIVE

Since its launch in 2010, the Access to Justice Initiative (ATJ) has worked to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. The Initiative's staff works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance, and to improve the justice delivery systems that serve people who are unable to afford lawyers.

WH-LAIR: One of the most effective ongoing initiatives involves the Legal Aid Interagency Roundtable or “LAIR” which was conceived of and staffed by ATJ. The LAIR, which includes 22 participating federal agencies, works to raise awareness about the profound impact legal aid programs can have in advancing federal efforts to promote access to health and housing, education and employment, family stability and community well-being. The goal is to maximize federal program effectiveness by integrating legal aid providers as partners, grantees or sub-grantees in federal safety-net programs when doing so can improve outcomes. Since 2012, LAIR has worked to inspire collaborations that increase access to justice and improve outcomes for vulnerable and underserved people. NLADA’s Civil Legal Aid Initiative, with support

³⁵ For example, under his leadership, over \$350 million has been invested in civil legal aid programs in NY over the last 4 years. In September of 2016, \$85 million was awarded to 83 NY grantees.

³⁶ <http://www.nycourts.gov/ctapps/news/SOJ-2015.pdf>

from the Public Welfare Foundation and the Kresge Foundation, has worked closely with DOJ ATJ to complement the work of WH-LAIR.

On September 24, 2015, President Obama issued a Presidential Memorandum formally establishing the White House Legal Aid Interagency Roundtable. Through this Presidential Memorandum, the Roundtable's mission has been explicitly expanded to "advance relevant evidence-based research, data collection, and analysis of civil legal aid and indigent defense, and promulgate best practices." Ambassador to the United Nations Samantha Power announced the Presidential Memorandum on the eve of the adoption of the United Nations' historic 2030 Agenda for Sustainable Development. The Memorandum expands the number of participating agencies, urges these agencies to accelerate and deepen their commitment to legal aid, and directs them to assist the United States in the implementation of Goal 16 of the 2030 Agenda.

In November of 2016, The Department of Justice issued the first annual report of the White House Legal Aid Interagency Roundtable (WH-LAIR), Expanding Access to Justice, Strengthening Federal Programs, to President Obama. This report documents how WH-LAIR has worked over the past four years to inspire innovative interagency collaborations that support and protect individuals who are frequently overlooked and often underserved. It also provides dozens of examples of agencies working together and with legal aid to develop programs that advance their common goals. Finally, the report discusses how the WH-LAIR agencies are collaborating with state and local partners to ensure that the most vulnerable among us receive the fair treatment and equal justice that they deserve.

May 2015 Research Conference: On May 20 – 21, 2015, the ATJ and National Institute of Justice, in collaboration with the National Science Foundation, hosted a Civil Legal Aid Research Workshop.³⁷ The workshop – a first of its kind – was designed to help create a civil legal aid research agenda and identify federal priorities on civil legal aid for the conveners and the White House Legal Aid Interagency Roundtable (WH-LAIR).

The workshop brought together an Expert Working Group (EWG) of approximately 40 domestic and international researchers and practitioners to discuss both the existing literature as well as the research gaps concerning civil legal aid and its intersection with public safety and criminal justice. The workshop served multiple goals: First, it assisted NIJ to identify a civil legal aid research agenda in anticipation of dedicated funding of this work. Second, the workshop enabled WH-LAIR agencies to hear from civil legal aid experts and researchers on the effectiveness of civil legal aid at the intersection with criminal justice. Finally, the workshop helped spur domestic activities to support the United Nations' (U.N.) efforts to establish indicators on access to justice as a development and anti-poverty goal. In anticipation of the U.N.'s inclusion of Goal 16 in the Agenda, the EWG considered how access to justice might be tracked and which indicators could be used for that purpose.

³⁷ <https://www.justice.gov/lair/file/828316/download>

As noted earlier, the Access to Justice Project is being phased out.³⁸

JUSTICE IN GOVERNMENT PROJECT

In 2017, Karen Lash, former Deputy Director of the DOJ Office for Access to Justice and Executive Director of the Legal Aid Interagency Roundtable, became a Practitioner-in-Residence at the American University School of Public Affairs Justice Programs Office and developed the Justice in Government Project (JGP). The goal of JGP is to develop state and local executive branch strategies for incorporating legal aid into government programs, policies and initiatives that serve low-income and underserved populations. For its first two years, JGP will work closely with an initial cohort of legal profession leaders (e.g., staff or board members of IOLTA Foundations, Access to Justice Commissions, state Attorney General offices) from Arizona, California, Mississippi and Wisconsin. JGP will formalize collaborations with state agencies responsible for increasing access to health care, housing, employment and education, and improving family stability and public safety. This project aims to produce: sustainable infrastructure that supports and funds civil legal aid for its pilot states; online toolkit reinforced by training and technical assistance to support activities in other interested states; new dollars for civil legal aid into the future; and new and nontraditional allies for civil justice stakeholders.

COMMISSION ON THE FUTURE OF LEGAL SERVICES

The American Bar Association Commission on the Future of Legal Services conducted a comprehensive examination of issues related to the delivery of, and the public's access to, legal services in the United States.

In October 2015, The Commission proposed ABA Model Regulatory Objectives as follows:

- A. Protection of the public
- B. Advancement of the administration of justice and the rule of law
- C. Access to information about, and advancement of the public's understanding of the law, legal issues, and the civil and criminal justice systems
- D. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
- E. Delivery of affordable and accessible legal services
- F. Efficient, competent, and ethical delivery of legal services
- G. Protection of confidential information
- H. Independence of professional judgment

³⁸ <http://thehill.com/opinion/criminal-justice/376254-a-quiet-closing-with-resounding-impacts-on-equal-justice>

- I. Accessible civil remedies for breach of duties owed and disciplinary sanctions for incompetence, misconduct, and negligence.
- J. Diversity and inclusion among legal services providers and freedom from discrimination in the delivery of legal services and in the justice system

In August 2016, another important resource became available: [the final report of the ABA Commission on the Future of Legal Services](#). It contains findings and recommendations from the Commission's two-year effort. The following highlights are from the ABA's press release on the report: "Most people living in poverty and moderate-income individuals do not receive the legal help they need, and many people, including those in the middle class, do not know they have legal problems; public trust in obtaining justice is compromised by bias, discrimination, complexity, and lack of resources; the proliferation of technology, such as mobile apps and artificial intelligence, continues to change how legal services can be accessed and delivered; and the traditional law practice model constrains innovations and access."

Among the recommendations is one to "support the goal of providing some form of effective assistance for essential civil legal needs to all persons otherwise unable to afford a lawyer", and one suggested way to accomplish this is that "Legal representation should be provided as a matter of right at public expense to low-income persons in adversarial proceedings in those categories of proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody." This echoes the ABA's prior Resolution, which called for a right to counsel in basic human needs civil cases.

Adopting a cornerstone recommendation from the Commission, the ABA has established a new Center for Innovation to drive innovation in the legal system, serve as a resource for ABA members, maintain an inventory of the ABA's and others' innovation efforts, and offer innovative fellowships to work with other professionals to create models to improve the justice system. The ABA Center for Innovation officially launched on September 1, 2016, with a mission to encourage and accelerate innovations that improve the affordability, effectiveness, efficiency, and accessibility of legal services.

Among recent activities, the Center is assisting the New York State Unified Court System with a court-annexed online dispute resolution pilot project that will seek to resolve consumer debt cases more efficiently and effectively. (See page 47) Through the contacts of the Center, the newly created Harvard Access to Justice Lab is assisting with the development of appropriate metrics to assess the effectiveness of this pilot.

The Center is also assisting with a free, online legal checkup tool that is being created by a working group led by the ABA Standing Committee on the Delivery of Legal Services. The checkup will consist of an expert system of branching questions and answers that helps members of the public to identify legal issues in specific subject areas and refers them to appropriate resources. Center members and staff are in the early stages of developing a social entrepreneurship project, in which legal tech and other companies focus on sharing their technology to legal aid organizations at a discounted rate or pro bono. Further, the Center is establishing a comprehensive Innovations Clearinghouse to catalog ongoing legal services innovations around the world so that we can better understand existing efforts, avoid duplicating current

projects, and inform the Center’s decisions regarding new initiatives. A prioritized list of areas of focus for the Center will be the basis of a nationwide “Call for Project Proposals” competition. Selected projects will receive technical support, collaborative resources and, in some cases, small monetary grants to assist in the development and implementation of worthwhile endeavors that advance the Center’s mission.

CONFERENCE OF CHIEF JUSTICES RESOLUTIONS

The Conference of Chief Justices and the Conference of State Court Administrators at their joint meeting in July 2015 adopted three resolutions relating to access to justice:

- Resolution 4 – In Support of the Statement of Best Practices for State Funding of Civil Legal Aid Prepared by the ABA Resource Center for Access to Justice Initiatives
- Resolution 5 – Reaffirming the Commitment to Meaningful Access to Justice for All
- Resolution 7 – Reaffirming the Critical Importance of Adequate Funding of the Legal Services Corporation

Resolution 5 specifically supported “the aspirational goal of 100 percent access to effective assistance for essential civil legal needs,” urged “their members to provide leadership in achieving that goal and to work with their Access to Justice Commission or other such entities to develop a strategic plan with realistic and measurable outcomes,” and urged “the National Center for State Courts and other national organizations to develop tools and provide assistance to states in achieving the goal of 100 percent access through a continuum of meaningful and appropriate services.”

JUSTICE FOR ALL PROJECT

In November, 2016, the National Conference of State Courts and the Public Welfare Foundation announced that grants were awarded to seven states under the Justice for All project, which is supported by the Public Welfare Foundation and housed at the National Center for State Courts. The grants will support each state grantee in forming partnerships with all relevant stakeholders in the civil justice community and beyond to develop state assessments and strategic action plans in order to implement Resolution 5 referenced above. Mary McClymont, president of the Foundation, stated: “The goal is to build a coordinated and integrated continuum of services with the user in mind — people with essential civil legal needs, especially those who cannot afford lawyers. The grants will help states bring together all civil justice stakeholders to determine the most effective ways to deliver those services.” The seven grants are to Alaska, Colorado, Georgia, Hawaii, Massachusetts, Minnesota, and New York. The [Justice of All Strategic Planning Guidance](#), issued in August of 2016, identifies the basic services which need to be available to all if 100% access is to be provided. In April, 2017 all of the JFA grantees completed their reporting for the first quarter. Each state made significant progress in attracting a wide cross section of participants in the process, and all are focused on completing their inventory assessment.

STATE ACCESS TO JUSTICE COMMISSIONS

The evolving effort to create in every state a comprehensive, integrated statewide delivery system, often called a state justice community, continues. These delivery systems include LSC and non-LSC providers, pro bono programs and initiatives, other service providers including human service providers, pro se initiatives, law school clinics, and key elements of the private bar and the state judicial system. In theory, these state justice communities seek to ensure easy points of entry for all low-income clients, ensure coordination among all institutional and individual providers and partners, allocate resources among providers to ensure that representation can occur in all forums for all low-income persons, and provide access to a range of services for all eligible clients no matter where they live, the language they speak, or the ethnic or cultural group of which they are a member.

One of the most effective ways to develop, expand, and institutionalize comprehensive, integrated state systems for the delivery of civil legal aid is through the establishment of state Access to Justice Commissions. Access to Justice Commissions are often created by Supreme Court rule or order in response to a petition or request by the state bar, sometimes with formal support from other key stakeholder entities as well. Their members are representative of the courts, the organized bar, civil legal aid providers, law schools, and other key entities and are either appointed directly by these entities or appointed by the Supreme Court based on nominations by the other entities. They are conceived as having a continuing existence, in contrast to a blue-ribbon body created to issue a report and then sunset. They have a broad charge to engage in ongoing assessment of the civil legal needs of low-income people in the state and to develop, coordinate, and oversee initiatives to respond to those needs.

In a few states, Access to Justice Commissions have existed for a decade or more, including the Washington State Access to Justice Board, the California Access to Justice Commission, and Maine's Justice Action Group. Currently, 40 states have active Access to Justice Commissions and new commissions are on the drawing boards in more states.

With generous support from the Public Welfare Foundation, the ABA Resource Center for Access to Justice Initiatives is collaborating with Voices for Civil Justice and the Self Represented Litigation Network to provide capacity building support to Access to Justice Commissions in the three priority areas. In collaboration with Voices for Civil Justice, capacity-building support is being provided to enable Commissions to develop their communications and media capabilities. Voices has been working very closely with the following ATJ Commissions to develop statewide plans: Arkansas, Maryland, New Mexico, Tennessee, Virginia and Washington. In collaboration with the Self Represented Litigation Network (SRLN) (described below), capacity-building support is being provided to enable Commissions to develop innovations to address challenges presented by the influx of self-represented litigants. SRLN has developed monthly presentations by experts which address a range of topics that have been identified as most useful to the Commissions. SRLN is working with twenty-seven Commissions on this topic. Capacity-building support is being provided by ABA consultant to enable

Commissions to develop their campaigns and plans to expand funding for civil legal aid. This capacity-building group is focusing on two topics: 1) state legislative funding and 2) private funding from the legal community.

Access to Justice Commissions carry out a number of activities:³⁹

Funding for civil legal aid: Increasing state legislative funding (appropriations and legislatively enacted filing fees add-ons), funding from changes in court rules/statutes (e.g., pro hac vice fees and cy pres distributions) and private funding from foundations, the bar and the general public.⁴⁰ Many states run public relations and public outreach campaigns as part of fund raising initiatives.

Developmental Activities: Undertaking state legal needs and economic impact studies, convening public forums across a state, developing strategic plans for access to justice and holding access to justice seminars and conferences on general and specific topics (e.g. law schools, technology).

Self-represented litigation: simplification of court processes and forms; developing court-based self-help centers; producing educational programs, handbooks and materials; changes in the Code of Judicial Conduct; increasing language access; and cultivating partnerships with public libraries as points of access to legal assistance.

Best practices for administrative agencies, strategic plans and recommendations have also been developed to guide future endeavors.

Pro bono initiatives: implementation of Supreme Court recognition programs, mentorship and training programs, retiring and retired lawyer programs, specialized pro bono programs, regional committees, and rule and policy changes to support pro bono work.

Limited scope representation: formulating or amending rules of professional conduct or rules of procedure, and developing and providing educational resources.

Legal aid delivery initiatives: expanded uses of information technology, remote video conferencing, triage approaches, portal projects, legal incubator programs, disability access initiatives, addressing racial disparities, mediation and ADR initiatives, legal

³⁹ See Access to Justice Commission Updates 2016-2017 https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls_atj_meeting2017_atjreports.authcheckdam.pdf See also an article by April Faith-Slaker, Director of the ABA Resource Center: **Access to Justice Commissions – Accomplishments, Challenges and Opportunities**, Management Information Exchange Journal, Fall 2015 at p 13. https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/2015_atjcommissions_mie.authcheckdam.pdf

⁴⁰These state sources have experienced increases from those sources in recent years. In fact, over the past decade, in many states, state legislative funding has had the biggest impact on increased funding for access to justice.

answers websites, court based vacillators/navigators and limited licenses for non-lawyers and legal technicians.

Law school and legal profession efforts: new law school initiatives, pro bono admission requirements for graduation, implicit bias training, poverty simulations, and proposals to add questions about access and poverty law to bar exams.

A recent example of what one of the innovators is doing is the Washington State Access to Justice Board which completed a new state plan in May of 2017. The State Plan sets forth five goals intended to reflect the universal commitment for an equitable legal system: (1) Promote and foster **race equity**; (2) Provide clients with **legal education** to understand when their problem is legal in nature; (3) **Increase access** for underserved and underrepresented communities; (4) Develop and increase **holistic client-centered services**; and (5) Engage in **systemic advocacy**.

Another example is Illinois where The [new strategic plan from the Illinois Access to Justice Commission](#) set forth Principles as follows:

Plain Language Principle: Court users should have access to a wide variety of plain language resources designed to help them understand and exercise their civil and procedural rights and reduce the number of barriers encountered while using the court system.

Process Simplification Principle: Court users should find that court procedures and policies are streamlined and efficient to allow for a positive user experience with the court system while still preserving substantive and procedural fairness and due process rights.

Procedural Fairness Principle: Court users should have access to a court system that serves as a fair, impartial, and transparent forum in which they are addressed with dignity, respect, equality, and professional courtesy by all judges, circuit clerks, and other court staff .

Equal Access Principle: Court users should have access to justice through full participation in the judicial process, regardless of their socio-economic status, English language proficiency, cultural background, legal representation status, or other circumstances.

Continuous Improvement Principle: The ATJ Commission should strive for continuous improvement and increased capacity to best meet the diverse and constantly evolving needs of court users.

CIVIL RIGHT TO COUNSEL

In the United States, there is no general right to state-funded counsel in civil proceedings. See *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981) and *Turner v. Rogers*, 131 S.Ct. 2507 (2011).

However, state courts and state statutes or court rules, as well as some federal statutes, have provided the right to counsel in several categories of cases including termination of parental rights, adoption, and other areas. In 2014, the ABA completed the [ABA Directory of Law Governing Appointment of Counsel in State Civil Proceedings](#).

This project, done in collaboration with the National Coalition for a Civil Right to Counsel (NCCRC) over the course of several years, transformed the NCCRC's research memos on the right to counsel in each state into a format suitable for state trial court judges. Each state's entry is organized by subject matter, and within that, by the source of law that requires, permits, or does not permit appointment of counsel. An effort to bring the Directory up to 2017 law is nearly complete.

NCCRC⁴¹ has an interactive map which gives a 50-state view of the latest civil right to counsel activities, the status of civil right to counsel law by type of case (child welfare, paternity, guardianship, etc.), the efforts in which the NCCRC is involved, or the states where NCCRC has a presence. <http://civilrighttocounsel.org/map> In November 2017, for example, NCCRC posted "States with Provisions for Appointing Counsel in Adult Guardianship Proceedings" by *John Pollock, Coordinator, National Coalition for a Civil Right to Counsel*.⁴²

Recent State litigation developments:

- The New Jersey Supreme Court recognized a right to counsel for parents in private adoption cases.
- The Pennsylvania Supreme Court held that children in termination of parental rights cases have a right to appointed counsel and that the failure to appoint counsel is structural error.
- South Carolina has joined Virginia and Kansas in recognizing a constitutional right to appointed counsel for sex offender commitment proceedings, and importantly, the right extends not just to the commitment, but also subsequent habeas proceedings challenging ineffective assistance of counsel.
- The Utah Supreme Court held that some parents have right to counsel in private termination cases.
- A NY court held that wards have constitutional right to counsel in guardianship proceedings.
- The NJ Supreme Court recognized the right to counsel for parents in adoption cases.
- The Massachusetts Supreme Judicial Court held that parents have right to counsel in private child guardianship establishment and modification proceedings.
- The Texas Supreme Court held that the parental right to counsel in abuse/neglect cases extends to high court appeal.

⁴¹ I thank John Pollock, Coordinator of the National Coalition for a Civil Right to Counsel for providing information for this report.

⁴² <https://civilrighttocounsel-nccrc.pbworks.com/w/file/113268199/Adult%20guardianship%20statutes%20and%20rules%20in%20all%2050%20states.pdf>

- The Supreme Court of Pennsylvania held that children have a right to counsel in termination of parental rights proceedings conducted pursuant to the Adoption Code.
- The Kentucky Court of Appeals held a right to counsel for termination of parental rights includes adoption.
- The Supreme Court of Ohio that when the state seeks to terminate a parent's parental rights, the parent has the right to counsel. The parent cannot be deprived of that right unless the court finds that the parent has knowingly waived the right to counsel. Waiver of counsel cannot be inferred from the unexplained failure of the parent to appear at a hearing.

Civil forfeiture: Calls to reform civil forfeiture proceedings have come from both Democrats and Republicans, with legislation filed in 2016 at both the federal and state level. While some of this reform would abolish civil forfeiture altogether, other bills would improve the due process provided, including guaranteeing counsel for indigent defendants. In 2016, Nebraska authorized appointment of counsel in civil forfeiture cases

State legislative developments in 2016 and 2017:

- Housing:
 - Significant right to counsel or housing expansion bills passed in D.C., New York City, and Philadelphia, as described further below.
 - In San Francisco, an ordinance that also would provide a right to counsel in eviction case has been introduced to the Board of Supervisors and is co-sponsored by the Board's President. The ordinance relies on [prior study data from San Francisco](#) showing the potential cost savings when housing representation is provided. In addition, a ballot initiative was introduced in San Francisco to provide a right to counsel in eviction cases.
 - A bill was introduced in Massachusetts by Boston Mayor Marty Walsh that would establish a statewide right to counsel for eviction cases.
- Family law:
 - Child welfare matters:
 - The Mississippi Legislature enacted a law authorizing judges to appoint counsel for parents in abuse/neglect and termination of parental rights cases.
 - Delaware granted the right to counsel for children in termination cases.
 - Arkansas passed a bill specifying that court must appoint counsel for parents immediately following the ex parte emergency dependency proceeding.
 - Minnesota clarified that children 10 and over have a right to counsel in child welfare cases and required notification of such right, plus strengthened waiver provisions.
 - Nevada required counsel to be appointed for children in dependency and termination of parental rights cases, rather than being discretionary.

- Private custody matters:
 - Utah authorized appointment of counsel in private termination cases.
 - Hawaii permitted an arbiter in family law disputes to appoint counsel for the child at the expense of the parties.
 - Iowa required that Guardian ad Litem (GALs) for children in dissolution and custody actions be attorneys, and specified that the court can appoint an attorney separate from the GAL (at which point same person cannot fill both roles).
- Adult guardianship proceedings:
 - Nevada required court to appoint counsel for adult ward in guardianship proceeding without request.
 - South Carolina required appointment of both counsel and GAL for adult guardianship proceedings (current law only requires appointment of counsel that serves GAL role).
- Louisiana, New Hampshire, and Utah enacted a law to provide counsel prior to incarcerating indigent defendants in fines and fees cases.
- Connecticut provided funding to establish domestic violence representation pilot projects.
- Kansas required the court to appoint counsel for indigent persons in sex offender commitment review hearings.
- On November 29, 2017, the Milwaukee Common Council unanimously passed an initiative to provide Municipal Court representation to indigent residents in non-criminal cases. The proposed ordinance passed unanimously, allocating up to \$45,000 to the non-profit Legal Action of Wisconsin (LAW). In partnership with the city, LAW will offer free representation to residents who can't afford an attorney in Municipal Court cases, especially in cases where police officers are expected to testify against the defendant, or in cases where defendants face suspension of licenses or jail time.

Federal Agency: On Jan 17, 2017, the U.S. Dep't of Health & Human Services' Administration on Children, Youth and Families (ACYF) issued a [information memorandum](#) to state governmental agencies managing child welfare proceedings that has strong language supporting universal provision of counsel to parents and children.

- "There is consensus in the field that the rights at stake for parents and the complexity of legal proceedings in child welfare cases require all parents to have competent legal counsel.
- "While CAPTA allows for the appointment of an attorney and/or a court appointed special advocate (CASA), there is widespread agreement in the field that children require legal representation in child welfare proceedings.
- "There is a growing body of empirical research linking early appointment of counsel (at or prior to a party's initial appearance in court) and effective

- legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government.
- "There is also evidence that legal representation helps ensure more thoughtful and effective case planning.

Right to Representation in Washington State Administrative Hearings: The Washington State Office of Administrative Hearings (OAH) has enacted a new rule that provides for a representational accommodation under the Americans with Disabilities Act for hearings appellants who have disabilities that prevent self-representation. The rule becomes effective on Jan. 1, 2018.⁴³ The new rule creates a process for an ALJ or any party to refer an appellant to the OAH ADA coordinator if there is a reasonable belief that a disability may prevent the appellant from self-representation. It requires that OAH do an individualized and fact-specific evaluation of the effects of an appellant's disability on the ability to represent him or herself at hearing. If no other accommodation meets the appellant's need, OAH will provide representation for the appellant at no cost as an ADA accommodation. OAH will set up a network and training of individuals to serve as suitable representatives. Data on the representational accommodation program will be collected to assess its effectiveness and results. OAH is the first central panel hearings agency in the country to do an affirmative rule which now serves as a model for other hearing agencies and courts. The rulemaking was initiated after the Seattle University School of Law Administrative Law Clinic filed a petition for rulemaking.

The Conference of State Court Administrators (COSCA) previously released a white paper called [*The Demographic Imperative: Guardianships and Conservatorships*](#) that said, "In states where right to counsel has not been addressed, courts should take a leadership role in requiring the appointment of counsel to protect the rights of persons with diminished capacity." In August of 2017, COSCA issued a [revised policy statement on child welfare cases](#). Their old child welfare policy only referred to courts ensuring "the legal representation of children", whereas the new policy urges trial courts to ensure "the legal representation of children and parents in all child protection cases and at every stage of the case."

New York City to Provide Right to Counsel in Housing Court: On February 12, 2017, New York City Mayor Bill de Blasio announced that he would support Intro 214, a pending bill to provide a right to counsel for low-income families in eviction proceedings who are at 200% or below of the poverty level. On July 21, 2017, the New York City Council enacted Intro 214-b, and on August 11, 2017, [Intro 214-b](#) was signed by the Mayor. Providing counsel will happen by increasing the City's eviction legal aid spending by \$93 million (on top of the \$60 million the Mayor invested in 2014), which will occur over 5 years. In doing so, NYC will become the first jurisdiction in the country to provide a right to counsel in housing cases, making this an enormous step forward for

⁴³ See <http://lawfilesexult.leg.wa.gov/law/wsr/2017/17/17-17-079.htm>
<http://app.leg.wa.gov/wac/default.aspx?cite=10-24-010>

the civil right to counsel movement in the United States.⁴⁴ The city will begin by offering lawyers to people living in certain zip codes, and every tenant facing eviction and earning less than \$49,200 for a family of four will be entitled to a lawyer by 2022. Tenants who make more than that won't get a lawyer to represent them in court, but will get a brief consultation with legal experts before they appear. De Blasio objected to having the bill cover NYCHA tenants appearing in administrative tribunals, which is often a first step before housing court. Under the version that was passed, there will be a pilot program set up to give legal assistance to those tenants,⁴⁵

DC Civil Gideon and Housing Project: The 2015 Update I discussed a new two-fold project in DC to institute a Civil Gideon initiative in Landlord-Tenant Court to dramatically increase the number of litigants who have counsel when they are in danger of losing their homes. The project matches every litigant living in public or subsidized housing, or who has a housing subsidy, and does not already have counsel, with counsel. In addition, the D.C. Bar Pro Bono Program and other housing advocacy partners collaborate on a larger project to revamp substantially the broken shelter and emergency housing system, focus efforts to preserve existing affordable housing and increase production of affordable housing, litigate to enforce fair housing laws, and advocate for policy changes to ensure that every District resident has a safe and affordable place to call home.⁴⁶

Since the Project began functioning in 2016, fourteen law firms accepting case referrals and over 100 of these cases were accepted by firms participating in the Project. Three legal aid programs, Bread for the City, Legal Aid, and Legal Counsel for the Elderly, have provided representation in over 400 additional cases. Initial outcome data shows some positive results when tenants are represented by the project, such as a greater likelihood of tenants to contest or resolve the case, a lower likelihood of tenants entering into a consent judgment, defaulting, or having a writ issued against them. Specifically: tenants who received an outreach letter are four times more likely to be represented; tenants represented under the Project are six times more likely to contest the case against them by requesting a trial or hearing; represented tenants receive six times as much time to resolve their cases (2 weeks versus 12 weeks); represented tenants are

⁴⁴ See, The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A. This March 2016 report provided a cost/benefit analysis to NYC regarding the cost of City Council Intro 214-A, legislation. The report concludes that New York City would realize a benefit from Intro 214-A of \$320 million annually https://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf

⁴⁵ An article of relevance is by Andrew Scherer in which he explains why New York City's very impressive and vast expansion of funding for eviction-prevention legal services is, alone, not enough, and why establishing a right to counsel for low-income tenants who face eviction is such an important, timely and critical public policy measure. See **Impact: Collected Essays on Expanding Access to Justice** at <http://comms.nyls.edu/flipbooks/ICPI-Impact-Journal-2016/mobile/index.html#p=1> See also Andrew Scherer, **New York City's "Universal Access" Legislation: One Giant Leap rfor Civil Right to Counsel**, MIE Journal, Volume XXXI, Fall, 2017 and Kathryn A. Sabbeth, **Housing Defense as the New Gideon**, Harvard Journal of Law and Gender, Vol. 41

⁴⁶ See "Right to Counsel in Landlord-Tenant Court," William Roberts, <http://washingtonlawyer.dcb.org/november2017/index.php#/32>

eight times less likely to enter a consent judgment or receive a default judgment; and represented tenants are six times less likely to have a writ issued against them, which places tenants at imminent risk of eviction.

In May 2017, the Washington, D.C. Council approved a budget that sets aside \$4.5 million for a program to offer free legal aid to tenants facing eviction. As in New York, residents earning up to 200 percent of the poverty line would be eligible. The program will be administered by the D.C. Bar as part of its Housing Right to Counsel Project.⁴⁷

Philadelphia: On June 29, 2017, the City Council of Philadelphia, Pennsylvania announced an historic investment in legal assistance for low-income renters who face eviction. The \$500,000 in new funding, which Council passed unanimously, will nearly double legal and supportive services for such renters, many of whom are threatened with losing their homes simply for standing up for their right to safe, quality, and habitable housing.⁴⁸

Justice Index: The Justice Index (see below for more information) is a tool that ranks all states on a variety of metrics, such as the number of attorneys available for poor people, language access, resources made available for self-represented litigants and people with disabilities, and so on. For 2016, the Index added some right to counsel questions to the 2016 version of the Index. The Index now asks whether the states, through a statewide, statute, rule, regulation, appropriation or other written guidance:

- Collect data on frequency of right to counsel appointments.
- Collect data on quality of right to counsel representation.
- Collect data on frequency of discretionary appointments of Counsel.
- Recognize a right to counsel in housing cases.
- Recognize a right to counsel in abuse/neglect cases.
- Provide for appointment of counsel as accommodation.
- Recognize a right to counsel in involuntary commitment.
- Recognize a right to counsel in guardianship.

California Pilot Project: Under a 2009 law, the California Judicial Council oversees ten pilot projects in seven counties for appointment of counsel in civil cases including housing, domestic violence, child custody, and probate guardianship. The projects started in fiscal year 2011-2012 and were authorized for a three-year period subject to renewal. In September 2010, then-Chief Justice Ron George appointed a 16-member committee to oversee implementation of the program, chaired by retired Court of Appeal Justice Earl Johnson, Jr. Seven projects were funded initially in San Francisco, Bakersfield, San Diego, Santa Barbara, Northern California, and Los Angeles (2

⁴⁷ See Beth Harrison, **District of Columbia Joins Right to Counsel Movement with New Eviction Defense Funding**, MIE Journal, Volume XXXI, Fall, 2017

⁴⁸ <http://phlcouncil.com/philadelphia-makes-historic-investment-fighting-eviction> and Ethan Fogel, **Addressing the Representation Crisis in Eviction Matters – Philadelphia’s Recent Experience**, MIE Journal, Volume XXXI, Fall 2017

projects).⁴⁹ Evaluation of the pilots was designed with a national advisory committee. The legislation also required data collection and evaluation of both the civil representation and court-innovation components in order to provide a basis to revise and extend the legislation. In June 2016 the Governor signed legislation making the Shriver pilots permanent. In addition to Earl Johnson, Bonnie Hough is substantially involved in these pilots.

In July of 2017, The Judicial Council of California released the Evaluation of the Sargent Shriver Civil Counsel Act (AB590) prepared by NPC Research of Portland Oregon. Also released were the recommendations of the Shriver Civil Counsel Act Implementation Committee headed by Jon. Earl Johnson, JR.⁵⁰

In the first five years, the 10 pilot projects served nearly 27,000 individuals facing the loss of their homes, child custody disputes, or the urgent need for a family guardianship or conservatorship. The housing services alone affected over 73,000 household members.

Housing/unlawful detainers. Six of the programs provided assistance with housing and unlawful detainers. Among cases that received full representation by Shriver counsel, the study found that:

- Significantly fewer Shriver cases ended by default.
- Representation by Shriver counsel helped tenants avoid evictions.
- Most cases settled, providing more certainty for both landlords and tenants.
- Shriver services supported longer-term housing stability. The higher rate of settlement agreements among Shriver clients, and the terms of those agreements, helped families in the process of securing replacement housing.

Child custody. Three programs provided Shriver services to help parents who were otherwise self-represented and facing opposing parties represented by attorneys in cases where sole custody was at issue. Roughly half of these cases had intertwined issues of domestic violence. The study found that:

- A higher proportion of Shriver cases reached settlement.
- Judicial involvement in settlement conferences increases the rate of settlement.
- Attorneys increased collaboration between the parties.
- Significantly fewer Shriver cases involved subsequent requests to modify orders.

Guardianships and conservatorships. Improving family stability through the establishment of guardianships and conservatorships was the goal of the one pilot probate project, particularly where there were significant risk factors for the children or disabled persons involved. The study found that:

⁴⁹ For a thorough discussion of the pilots see Clare Pastore, "California's Sargent Shriver Civil Counsel Act Tests Impact of More Assistance for Low-Income Litigants," 47 Clearinghouse Review 97 (July-August 2013).

⁵⁰<https://jcc.legistar.com/View.ashx?M=F&ID=5319197&GUID=A7E82A2C-C90F-41BF-AA2B-1EC3E5825C4C>

- Court proceedings in Shriver cases were more efficient and translated into cost savings for the court. The combined benefits of Shriver representation and assistance from the probate facilitator reduced the court costs to process a case by an average of 25 percent.
- Guardianship petitions were successfully filed.
- The project helped prevent the need for additional governmental services.

Impact of legal assistance. The following findings were true across all three case types, unless otherwise indicated. The evaluation clearly supported the important role of attorneys in representing their clients, in reaching settlements, and in helping ensure more efficient use of judicial resources:

- Attorneys help settle cases, positively impacting all parties involved and freeing up limited judicial resources. Shriver counsel help individuals have more reasonable expectations regarding what can be accomplished and what is beyond the scope of the case. The random assignment study of three projects found that, among cases with Shriver representation, 67 percent were settled, 3 percent resolved via trial, and 8 percent ended by default. In contrast, among non-Shriver comparison cases, 34 percent were settled, 14 percent resolved via trial, and 26 percent ended by default.
- Balanced representation facilitates settlement of cases that should settle and trial of those that should be tried. This both improves litigant satisfaction and enhances court efficiency.
- Shriver cases involve more efficient court proceedings, including fewer continuances, fewer trials, and more settlements across all three case types. The provision of Shriver services made notable contributions to court efficiency and improved the quality of information available to the court. Cases with a Shriver attorney were resolved more efficiently than were cases without Shriver services, and courts received more comprehensive and relevant information on which to base decisions.
- Attorney involvement improves the durability of court orders.
- Attorney resources are used most effectively with well-designed triage systems. Such systems are critical to the smooth functioning of the continuum of service.

Findings concerning court innovations:

- Court-based opportunities for settlement discussion, including mediation and settlement masters, are an effective way to resolve cases before trial, benefiting all parties.
- The improved use of technology, including expansion of e-filing, helps facilitate the efficient handling of cases.
- In housing cases, the masking of the court files from public view is a key component to encourage settlements.
- Expanded court-based self-help centers are a critical piece of the continuum of service.

Counsel in deportation proceedings: The nation's first institutionally provided, universal representation system of counsel for detained immigrants in deportation proceedings began in 2013 when New York City gave \$500,000 towards the establishment of the pilot project which is administered by the Vera Institute of Justice.

In June 2014 the City announced it would infuse another \$4.9 million into the program, New York Immigrant Family Unity Project (NYIFUP). Note that an earlier study by the City Bar Justice Project concluded that almost 40% of those in removal proceedings might have a viable defense. A recent [ABA Journal](#) story about the project cites some stunning statistics:

- Prior to the project, 60 percent of detained New Yorkers went without representation. As the result of the project, all detained immigrants in New York City are now represented.
- The success rate for unrepresented detainees in immigration court: 3 percent.
- The success rate of project attorneys as of December 2015: 69 percent.

The Vera Institute has released a [report](#) evaluating the New York Immigrant Family Unity Project and finding that the rate of success for immigrants jumped from 4% when pro se to 48% when represented by counsel, which is a 1,100% increase.

On April 12,, 2017, the Vera Institute of Justice and partner organizations announced that detained New Yorkers in all upstate immigration courts will now be eligible to receive legal counsel during deportation proceedings. The 2018 New York State budget included a grant of \$4 million to significantly expand NYIFUP.

Vera Institute's new [Safety and Fairness for Everyone \(SAFE\) Cities Network](#) will extend a similar program to 11 cities: Atlanta, Austin, Baltimore, Chicago, Columbus (Ohio), Dane County (Wisconsin), Oakland and Alameda County (California), Prince George's County (Maryland), Sacramento, San Antonio and Santa Ana (California). **San Francisco, DC and Chicago** have also recently increased their financial commitment to providing representation to immigrants facing deportation. In April 2017, the Seattle City Council voted to create [a \\$1 million legal-defense fund](#) for immigrants whom the federal government attempts to deport. And the Metropolitan King County Council [approved \\$750,000](#) for immigrant and refugee programs, including \$300,000 for the defense of people in immigration court. The city and county will distribute the money to nonprofit organizations such as the Northwest Immigrant Rights Project to do the legal work.

New York is also launching a new program to ensure immigrants have access to legal help. The initiative, called the Liberty Defense Project, is a public-private partnership between the state, legal advocacy groups, private law firms and financial supporters, such as the Carnegie Corporation of New York and the Ford Foundation. The project will provide immigrants access to pro bono legal representation and assistance regardless of their legal status. Some 230 private legal firms, advocacy organizations, and legal groups will participate in the program.

Deportation Studies: Maggie Corser, **Access to Justice: Ensuring Counsel for Immigrants Facing Deportation in the D.C. Metropolitan Area**, Center for Popular Democracy (March 2017).⁵¹ This report documents that every year nearly 4000 immigrants in the D.C. metropolitan area face detention and deportation because they

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https://populardemocracy.org/sites/default/files/DC_Access_to_Counsel_rev4_033117%20%281%29.pdf

cannot afford a lawyer. Many of these individuals have legal claims they could assert for their right to remain in the United States. However, without the assistance of legal counsel to help navigate the extremely complex area of immigration law, they are unable to articulate those claims to an immigration judge. Having a lawyer in Arlington more than doubled a person's chances of being able to remain in the U.S. and quadrupled a person's chance of obtaining relief in Baltimore. Between 2010 and 2015, Immigration and Customs Enforcement (ICE) detained nearly 15,000 people in local and county jails throughout the states of Maryland and Virginia. In both regions, people who did not have lawyers were more than twice as likely to remain detained during the entirety of their immigration case, even if they may have been eligible for release on bond. In light of the report findings, the report calls on elected officials, in partnership with service providers, to establish a publicly funded universal representation program for immigrants facing detention and deportation in Arlington, Virginia and Baltimore, Maryland. In response, In January, D.C. Mayor Muriel E. Bowser (D) [announced \\$500,000 in grants to help defend](#) immigrants in court.

The American Immigration Council has released a new [report](#) on access to counsel in immigration proceedings. The report finds, among other things, that across the nation, only 37% of immigrants have counsel for removal proceedings, and that represented immigrants as compared to pro se immigrants are far more likely to be released from detention (4x more likely), apply for relief from deportation (11x more likely if detained, 5x more likely if not), and successfully obtain such relief (2x more likely if detained, 5x more likely if not).

ABA Resolution Calls for Right to Counsel in Immigration Cases: At its 2017 annual meeting, the American Bar Association adopted [Resolution 115](#), which supports a right to counsel "in removal proceedings before the Executive Office for Immigration Review (in Immigration Courts and before the Board of Immigration Appeals)." It adds that if the federal government does not provide one, states and cities should provide such counsel. It also urges that governments prioritize detained immigrants in removal proceedings.

Right to Counsel Studies: A December 2015 study, *Justice Diverted: How Renters Are Processed in the Baltimore City Rent Court*, by the Public Justice Center, focuses on the "Rent Court" in Baltimore City, where 6,000 to 7,000 renter households are judicially evicted for not paying the rent. From July 2014 through July 2015, the Public Justice Center partnered with the Right to Housing Alliance to study the experiences and outcomes of renters who appeared at Rent Court to defend against rent eviction cases. This report is based on a survey of nearly 300 Rent Court renter-defendants, extended interviews, reviews of court records and data from Baltimore Housing and the Maryland Department of the Environment, and the Public Justice Center's experience in defending tenants in rent cases. The study shows that the court system prioritizes efficiencies which privilege the landlord's bottom line, and as a result, it decidedly ignores two predominating realities of poor renters and their housing. First, renters lack access to timely legal advice and have insufficient knowledge to navigate the process. Second, renters are poor, have few rental options other than Baltimore's crumbling

housing stock, and look to the court to enforce housing standards. The report concludes with five major recommendations for reforming the Rent Court system and protecting the rights of some of Baltimore’s most vulnerable residents: First, cut Rent Court dockets in half and strengthen overall fairness of the process by requiring a pre-filing notice and waiting period that would ensure that renters receive documentation of the landlord’s claims, time to remedy the dispute before litigation begins, and time to prepare a defense if necessary. Second, level the playing field at court by expanding legal help for renters – increasing renters’ access to legal information, assistance at court, and legal representation. Third, demand that landlords and agents document their rent claims, as well as their alleged compliance with licensing and lead-risk legal requirements, and hold them accountable through a consistent application of existing legal standards and tenant protections. Fourth, expand landlord licensing requirements that ensure annual health and safety inspections to all rental housing in Baltimore – not just multi-family dwellings and rooming houses. Fifth, fund eviction prevention programs to meet the scale of the eviction crisis.

A multi-year, collaborative study, **The Longer-Term Influence of Civil Legal Services on Battered Women**,⁵² funded by the National Institute for Justice and operated by the University of Iowa and Iowa Legal Aid focused on the impact of providing counsel for victims of intimate partner violence in protection order, custody, child support, and marriage dissolution cases. The study found that after being provided counsel:

- Women reported substantially less physical violence (a decrease of around 75%);
- Women’s symptomatic responses to traumatic stressors, including intrusive thoughts, avoidant behaviors, hyperarousal, and depressive symptoms, significantly decreased;
- Women’s economic situation improved. Women reported a statistically significant increase in the adequacy of their family resources. Women also reported a decrease in difficulty living on their current income, an increase in monthly income, and a decrease in the number of assistance resources used.

Several recent articles on the right to counsel:

Tonya Brito has written an extensive paper, [What We Know and Need to Know About Civil Gideon](#), at the behest of the ABA Commission on the Future of Legal Services.

The July 2017 issue of the Clearinghouse Review included an article “Access to Justice for All: A Comprehensive Look at the Civil Right to Counsel Across the United States⁵³”, based primarily on the work of the National Coalition of a Civil Right to Council.

Lisa Stifler, *Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions*, 11 Harv. L. & Poly. Rev. 91 (2017), available

⁵² <https://www.ncjrs.gov/pdffiles1/nij/grants/249879.pdf>

⁵³ <http://povertylaw.org/clearinghouse/article/access>

at <http://harvardlpr.com/wp-content/uploads/2017/02/HLP106.pdf>. This article notes that in debt collection, defendants are typically represented between 0-10% of the time, and that "Data indicates that unrepresented defendants who entered into settlement agreements may not be better off than those who received default judgments." Conversely, "more than seventy percent of the time consumers with attorney representation either prevailed against the plaintiff debt buyer or had their cases dismissed."

Joel Tay, *Consumer Debt Collection in Massachusetts: Is Civil Gideon a Solution?*, 11 Harv. L. & Poly. Rev. 1 (2017), available at <http://harvardlpr.com/wp-content/uploads/2017/02/HLP103.pdf>. This article makes the policy case for a right to counsel in debt cases based on the high rate of default, the predatory tactics used by lenders, and the significant consequences at stake, and then talks about how such a right could be implemented in Massachusetts.

Wesley Brockway, *Rationing Justice: The Need for Appointed Counsel in Removal Proceedings of Unaccompanied Immigrant Children*, 88 U. Colo. L. Rev. 179 (Winter 2017). It argues that unaccompanied children have a due process right to counsel in immigration proceedings.

Raymond H. Brescia, **Safe at Home: Considering a Right to Counsel in Civil Cases as a State Constitutional Matter**, *MAKING A MODERN CONSTITUTION: THE PROSPECTS FOR CONSTITUTIONAL REFORM IN NEW YORK* (Scott Fein and Rose Mary Bailly, eds.) (NYSBA, 2016); *Albany Law School Working Papers Series No. 9 for 2016-2017*. This Chapter explored the legal and policy arguments for an amendment to the New York state constitution to recognize, in that constitution, an explicit right to counsel in civil cases where fundamental human needs are at stake.

SELF-HELP LITIGANTS AND PRO SE DEVELOPMENTS

A significant development in civil legal aid in the United States is the rapid expansion of efforts to help people who are attempting to represent themselves in courts. These are described as "pro se," "self-help," or "self-represented" litigants. Historically, parties in high-volume courts such as traffic, housing, and small claims courts consisted primarily of pro se litigants. However, more recently, pro se litigants have also begun to dominate family law dockets across the country. There are also significant increases in pro se representation in probate and other civil matters as well.

California has the most extensive network of self-help centers with 80. \$11.2 million of state court funds are provided to support court-based, attorney-supervised, self-help centers in the state. This supplements the family law facilitator program which provides over \$16 million for these services in cases involving child support and parentage. Filing fee revenue helps to support small claims advisors who are increasingly included in self-help center operations. These funds have been supplemented with local court

funding. Some county governments, including Los Angeles and San Francisco, also provide funding for self-help services at courts to help address the needs of their constituents. There are additional specialized grant funds including partnership grant funds which provide \$1.6 million for legal services agencies to provide self help services at local courts. Many courts also provide additional funding from their general court budget for their self help centers. New York also has a vibrant program of 27 self help centers around the state and assisted nearly 215,000 unrepresented litigants. ⁵⁴

California recently produced a video on “triage”- a matching process to enable a user to get access to the information and effective assistance they need, when they need it, and in a format they can use. The video can be found on the website <http://www.publicwelfare.org/civil-legal-aid/> with Bonnie Hough as the spokesperson. As Mary McClymont, President of the video’s funder the Public Welfare Foundation stated: “In a state that has a self-help center in every trial court jurisdiction, the video features San Francisco, one of the most longstanding of these centers and an example of the importance of self-help services to closing the civil justice gap. As I hope you will agree, the video offers a picture of how a well-developed self-help center can be an important tool to support a person who is without legal help. It can guide and refer the user to the right kind of legal help or to relevant social services depending on the need. The video also seeks to help the viewer understand the use of “triage.”

A 2016 report of a study of the civil court system, Civil Justice initiative, The Landscape of Civil Litigation in State Courts, <http://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx> found a relatively large proportion of cases (76%) in which at least one party was self-represented, usually the defendant. Tort cases were the only ones in which a majority (64%) of cases had both parties represented by attorneys. Small claims dockets had an unexpectedly high proportion (76%) of plaintiffs who were represented by attorneys, which suggests that small claims courts, which were originally developed as a forum for self-represented litigants to obtain access to courts through simplified procedures, have become the forum of choice for attorney-represented plaintiffs in lower-value debt collection cases.

Recent developments include:

Remote Services Study: A State Justice Institute (SJI) supported national study of how remote services (phone, internet, video, mobile etc.) are used in delivering self-help. The project studied services in 8 sites: Alaska, Utah, Montana, California (2 sites), Idaho, Minnesota and Maryland, and runs from March 2013 – April 2015. The findings of the study conclude that remote services are cost effective, and efficient. They also found that providing multiple remote services concurrently can be most effective (telephone, email, chat, text messaging, and web chat). The study did not include use of

⁵⁴ See art page 12 http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2016report.pdf

online forms as one of the tools use to provide remote assistance and services, nor online triage. In 2016, a [Resource Guide](#) on Serving Self-Represented Litigants Remotely (SRLN 2016) was completed. The *Resource Guide* provides options for courts and other entities interested in providing services to self-represented litigants using means that are not face-to-face, instead of, or in addition to, in-person alternatives such as walk-in services, workshops, and clinics. It also includes information regarding technology and business process options and describes a study of how eight sites provide remote self-help services to self-represented litigants and its principal findings and recommendations.

E-Filing and Self Represented Litigants: Using identical survey instruments, the Superior Court in Orange County and the Texas Office of Court Administration (Texas AOC) gathered valuable e-filing insights into the following questions for both represented and self-represented parties: What are we learning about self-represented litigants who e-file? Who are they? Where are they? What cases do they file? How do the tools work for them? Orange County, with mandatory e-filing in civil cases, received survey responses from approximately 1,300 people in 2013. In 2015, the Texas AOC used the same survey to gather responses from approximately 500 respondents who had the option of e-filing in civil cases. The most significant take-away in comparing the results in the vastly different jurisdictions (in terms of population, geography, culture, court structure and legal requirements) is that the results were nearly the same; and these results support the conclusion that e-filing does not generally create unmanageable barriers for SRLs in civil cases. See <http://www.srln.org/node/686>

In 2015, the New York Access to Justice Program create an e-filing website for unrepresented litigants to streamline the process and explain the e-filing procedure in simple terms that non-attorneys can better understand. The new website explains the basics of e-filing to help a litigant decide whether e-filing is right for him or her. The website clarifies the procedure for setting up an account to start a case or e-file in an existing case. In addition, the website contains content explaining what is needed before logging in, including information about motions, fee waivers and document redaction. The website also contains helpful links to explain terms, find forms and find live assistance. The e-filing website for unrepresented litigants was launched in early 2016: <http://www.nycourts.gov/efile-unrepresented>.

LA's Online Traffic Avatar Radically Changes Customer Experience. The Superior Court of Los Angeles County handles approximately 1.2 million new traffic citations a year. Several years ago, as a result of a state budget crisis that led to courthouse closures and reduced staffing, people waited as long as 2.5 hours to see a clerk for their traffic matter. The Los Angeles Superior Court created “Gina”, the online assistant that is helping tens of thousands of people before the court handle their traffic citations online. When visiting the traffic section of the court's website, litigants can interact with Gina to pay a traffic ticket, register for traffic school, or schedule a court date. Gina is multilingual and can help court users in English, Armenian, Chinese, Korean, Spanish and Vietnamese. Gina is part of a larger online effort by the LA Superior Court to enable court users to perform many critical traffic court transactions without ever setting foot in

the courthouse. Gina alone has about 200,000 interactions a year, and combined with the overhaul of the court's online traffic court program, typical wait times in LA's traffic courts have been dramatically cut down to 8-12 minutes.

Gina now helps 4,000 customers per week handle their traffic citations online, without the need to travel to the courthouse, wait in long lines, and take up clerk time. The Los Angeles Superior Court plans to expand her availability in other areas of law in the coming year. Gina has recently been named to the 2016 National Association for Court Management (NACM) Top 10 Court Technology Solutions list. See <http://www.srln.org/node/1186>

Self-Represented Litigation (SRL) Network: Over the last twelve years, the SRL Network, which brings together courts, bar and access to justice organizations in support of innovations in services for the self-represented, has undertaken a number of activities to ensure the justice system works for all including those forced to go to court on their own. See www.srln.org

National Self-Help Center & Forms Inventory: The SRL Network completed a national inventory of Self-Help Centers and SRL friendly forms to help better understand the distribution of self-help services around the country. This Inventory will not only facilitate networking between states to share information and resources, but also help develop a strategy to help support the growth of self-help services so that self-represented litigants in every county in America will eventually have access to the most appropriate innovations for their jurisdiction. This work will be the foundation of planned on-line Innovation Tool that will serve as an updated enhancement to the *Best Practices Guide* (2008 rev.)

RLN Launches GIS for Justice Google Group: Spatial thinking has the power to inform decision making, to influence public opinion, and to communicate complicated data more simply. To encourage spatial thinking for justice, SRLN has launched a GIS Google Group to help foster innovation and collaboration among justice system professionals in using geographic information systems (GIS), mapping technology, and data for improving access to justice. The list is community-based resource for professionals working together and includes techies, civil legal aid professionals, court administrators, attorneys, researchers, and students in this space. See . <http://www.srln.org/node/1200>

SRLN Online Tool: SRLN launched a national, but highly granulated [online tool](#) for looking at national county by county level statistics for fourteen critical driving factors in understanding need and developing the strategies for meeting them. Those factors are: Population density; Children; Young Adults; Adults (30-44); Midlife Adults (45-99); Seniors (60 +); High school graduates; Rentals; Vehicle access; Active Duty Military; Veterans; Racial Diversity; Foreign Born; Language Other Than English Spoken at Home; Poverty; Where Is Mobile Broadband Available?; How Fast Is Mobile Broadband?; Where Are Homes Connected to High-Speed Internet?

Recently SRLN created an SRLN Brief on Design Thinking 101 to share with colleagues and stakeholders who may not be familiar with the terms or the power of the approach. The *SRLN Brief* introduces three commonly used terms: design thinking, legal design and agile, includes an example of applying these concepts to forms development and provides an introductory reading list. See <https://www.srln.org/node/1311/srln-intro-design-thinking-srln-2017>..

In a new report, **Natalie Anne Knowlton, Cases Without Counsel: Our Recommendations after Listening to the Litigants** (June 8th, 2016),⁵⁵ The Institute for the Advancement of the American Legal System (IAALS) at the University of Denver Law School undertook a qualitative empirical research study designed to explore the issue of self-representation from the litigants' perspective. Our [Cases Without Counsel](#) project gathered detailed narratives directly from family court self-represented litigants and those who engage with litigants in the court through one-on-one interviews. The study findings (detailed in the [companion Research report](#)) present an array of suggestions for how to better serve litigants without lawyers. This [Recommendations report](#) includes the various stakeholder recommendations alongside [materials and resources](#) for those interested in learning more or implementing various components in their respective jurisdictions. Fundamentally, the report suggests a change in the conversation on self-representation. System stakeholders must accept the onus of shared responsibility for helping self-represented litigants through the process. IAALS encourages court, legal, and broader community stakeholders to view these recommendations as blueprints for a coordinated response to better assist self-represented litigants in family court and a means through which to fulfill this shared responsibility.

DOCUMENT ASSEMBLY⁵⁶

To respond to the crisis of litigants representing themselves, legal aid programs, self-help centers, courts and others are using online document-assembly software to help those in need complete legal forms easily and in quality way. Document assembly software asks questions and then puts the answers to these questions into the appropriate places on forms. The interview provides guidance and definitions as it goes along. The software also often provides an easy way to integrate definitions and explanations of basic legal terms and concepts. At the end of the interview the person receives complete documents with printed instructions on what they need to do with the forms.

LawHelp Interactive (or LHI and formerly known as NPADO) is a web site that lets people create legal documents. [LawHelp Interactive](#) was developed to make implementing document assembly initiatives easier and less costly for legal aid organizations as well as pro bono and court-based access-to-justice programs.

⁵⁵ <http://iaals.du.edu/honoring-families/publications/cases-without-counsel-our-recommendations-after-listening-litigants>

⁵⁶ Claudia Johnson, LawHelp Interactive Program Manager, provided essential assistance in developing this section.

Participating programs use [HotDocs Corporation's, HotDocs Developer](#) , and optionally the [Center for Access to Justice and Technology's A2J Author](#), to create online forms and documents. Templates are uploaded to the LawHelp Interactive server and made available to advocates, pro bono volunteers, and self-represented litigants through legal aid and court websites. End users do not have to pay to use the interviews or assemble packages. Other similar platforms do charge per document assembly fees ranging from \$14.99 to \$349.00.

A project of Pro Bono Net in partnership with Ohio Legal Services Association (OSLSA), a national nonprofit organization that works with courts, legal-aid organizations, and pro bono programs to increase access to justice through innovative uses of technology, LHI offers the technical infrastructure necessary for online document assembly, as well as programmatic and technical support for local projects. This project started in 2001 when, through its TIG program, LSC funded a pilot project to learn more about the potential of document assembly. LHI's national infrastructure developed from this initial funding, as well as from a generous LexisNexis donation of a HotDocs Server license. Initial participants were legal-aid organizations and pro bono programs that wanted to provide document-assembly content for legal advocates. This goal expanded to include assisting self-represented litigants with the launch of A2J Author, a tool that creates customer-friendly interfaces for data collection and document assembly. For a few states, this expanded focus provided an opportunity for legal-aid programs and courts to collaborate. Together, they could create tools to improve access to justice and to increase court efficiency.

From 2013 to 2014, the LHI technical infrastructure was updated to bring up to date with modern technology. This additional investment has allowed LHI to provide more options for those using LHI to support attorneys doing remote document co-production with their clients. In 2016, LHI started to work to move the platform to be mobile compatible, so that end users can do their work on hand held devices. In 2017, the LHI site will be redesigned with mobile users in mind and the site will be refreshed to better meet the needs of the multiple user communities it serves.

In some states, LHI integrated into case management systems used by both courts and legal aid groups. For example, since 2012, in New York, the NY Courts have a project that enables victims of violence to create a document and then e-file with the support of trained lay advocates. In Minnesota, at self-help centers in Hennepin County, self-help center visitors can e-file without fees, civil harassment orders and domestic order of protection requests. The rate of growth of e-filing in NY from 2014 to 2016 was 39%. The rate of growth for Minnesota efilings from 2014 to 2016 was 106%.

LHI is hoping to be able to e-file in two additional locations in 2017/2018. To e-file, LHI does not request credit card numbers of end users, nor does it request e-filing fees, or convenient fees. Most other platforms to charge, sometimes for both the assembly and the e filing transmission. LHI has been e-filing with these two states since 2012 and was the first and remains the only nonprofit e-filing platform in the US.

In 2016, there were 985,465 interviews generated by A2J Author and HotDocs and 529,368 documents created from those interviews by advocates, court staff, self helpers, and users who prefer not to create accounts in LHI. Some of the states with the highest rate of utilization increases in 2016 included Nevada, with over a 1000% rate of growth due to use of LHI forms in an expungement clinic, Texas 116% rate of growth, Montana 78% rate of growth, Virginia 55% rate of growth due to increased referrals from courts to legal services websites and resources, and Washington State, at 38% due to ongoing support and outreach on their online forms. Since 2005, LHI has provided 5,875,230 Million interviews and assembled over 3,212,802 documents.

According to the LHI statistics, for the seventh consecutive year, the New York State courts lead LHI in the number of assemblies. There were 138,730 assemblies from DIY Form programs. Overall, there was a 22% increase in the Access to Justice Program LHI assemblies from 2015. The three most used DIY programs were the Support Modification Petition Program, the Uncontested Divorce Program, and the Small Estate Affidavit Program. They comprised almost 49% of all Access to Justice Program DIY assemblies.

Michigan ranks second among states for the number of documents assembled on LawHelp Interactive, following only behind New York. In 2016, users started 172,319 Michigan interviews, and from these interviews, 86,824 sets of forms were completed – an average of 241 per day. The most popular tools are divorce (including answer/counterclaim, 54,065 sets of forms produced); child custody (4,871 sets of forms produced); food stamp calculator (7,362 produced), and fee waiver (3,235 produced).

In 2016, LHI did an end user survey to gather a better understanding of who the end users are. The survey was posted in the LHI platform in the Fall of 2016, and was done as part of a site design review. Almost half end users of LHI are high school graduates or have 1-2 years of college (49%). One out of five LHI users are college grads, and 12% have graduate school degrees. Only 10% of LHI users were below an 11th grade educational level. LHI is a platform used by attorneys, court staff, and legal aid staff, thus the use by staff and volunteers from these groups, as well as social service organizations like shelters impact these educational statistics.

Most LHI users are 25-44 year old (48%). Only 15% of LHI users are 18-24 years old. Those aged 45-54% comprise 18% of LHI users, and those 55-64 years old make up 13% of LHI end users.

Over a third of LHI users are in lower income ranges \$0-\$24,999 and 22% of users are in the 25,000-49,000 income range. Those over 75% make up 13% of LHI end users, which include lawyers and staff at courts and other nonprofit agencies. Approximately 14% of LHI users preferred not to answer the income question. LHI users are familiar with other technology and media. Almost ¾ of LHI users are on Facebook, almost 2/3 (64%) make purchases at Amazon, a quarter of users play with Xbox, Wii, and play Station and use their consoles to make purchases or access the internet. Users were also using Instagram and twitter and using Roku and similar devices to connect to the

internet. Over 2/3 of all LHI are users are persons facing legal problems (67%). The rest of users were advocates including DV advocates, legal aid staff, court self help, and other, which includes family or friends.

In 2015 and 2016 Bay Area Legal Aid and San Diego Legal Aid created online forms for use with LHI. The Bay Legal forms center around consumer self help services provided by Bay Legal in multiple counties of the San Francisco Bay Area, including San Mateo and Alameda County. In San Diego, legal aid is starting to create a document assembly library to eventually use in partnership with other social agencies.

Another way in which the online forms are being used to support attorney work flows are new capacities built in the back end of LHI. One of the newest models is a tool being tested in NY, called Closing the Gap (CG). CG lets lawyers video with their clients, text with them, set up appointments and then create forms through LHI—all from one platform. It is not a case management system, but it has features that let the lawyers manage their online interactions with clients remotely. The integration of Closing the Gap to LHI is being funded through a Pro Bono Initiative grant to the Legal Aid Society of Northeastern NY. Other legal non profits are part of the grant, including Legal Assistance of Western NY and the Volunteer Legal Services Project of Monroe County. It basically uses a new feature of LHI known as LHI Connect that enables lawyers and their clients to co-author documents through the LHI back end. In the new platform, lawyers are using the virtual Closing the Gap platform with online forms—to help those in need create housing and consumer matters in a pro bono model.⁵⁷

New Apps: As technology gets further commoditized and is better understood, other non profits are now creating apps and tools that meet needs for those facing online problems. One of such apps, in the immigration context is Immi. Immi is a platform and tool that helps people identify immigration options. It is developed by PBN, and is used across the country. I includes tools, educational materials, and self-screening tools.
<https://www.immi.org/>

Other emerging tools include phone apps that let tenants take pictures and document habitability problems through phone apps. <https://www.justfix.nyc/> or the Debt and Eviction Defense navigator (DEN). Tools like these enable social workers and others perform quick legal screens, in this case for home bound elderly, to connect them with nonprofit attorneys when legal emergencies are spotted. This adoption of mobile technology and use by non legal groups is likely to continue as a way to leverage other networks and partnership outside of the legal services community.
<http://www.connectingjusticecommunities.com/jasa-and-pbn-team-up-to-relax-in-the-den/2014/11/>

COURT-BASED DOCUMENT ASSEMBLY DEVELOPMENTS

⁵⁷ <http://www.lsc.gov/grants-grantee-resources/our-grant-programs/pro-bono-innovation-fund/current-grants>

The last update reported on the New York State (NYS) court system Internet-based document assembly programs using available technology specifically designed to address the barriers to justice that litigants face when they create their court papers. The NYS court system has been extremely successful with its programs, known as DIY (Do-It- Yourself) Forms, which create court papers and instructions for unrepresented litigants employing A2J Author and HotDocs software. Completed programs are hosted on Pro Bono Net's national online document assembly project, LawHelp Interactive (LHI).

The latest data shows how effective the NY system is. In 2016, DIY User Surveys provided the following findings:

- 95% of litigants found that the DIY Form program saved them time. This percentage has stayed steady from year to year.
- 77% of litigants were referred to the DIY Form program by a court employee, an increase of 12% from 2015.
- 80% of litigants use the DIY Form program in a court facility such as a Clerk's Office or Help Center. This is a significant increase of 19% from 2015. • 36% of litigants had an income of less than \$19,999.
- 75% of litigants are between the ages of 25 and 44.
- 85% of litigants have internet in their home.
- 18% of DIY users have used a DIY Form program before. In 2015, this was 16%.⁵⁸

In addition to New York, only the California, Arkansas, Minnesota, and New Mexico state court systems presently contract with Pro Bono Net to utilize LHI on their own. The majority of document assembly programs hosted on LHI are produced by legal service organizations. Over forty territories produce A2J Author programs, some in partnership with state courts. Yet the most successful authors of A2J Author programs on LHI are the New York and California court systems.⁵⁹ For a thorough discussion of the New York program, see Rochelle Klempner, "The Case for Court-Based Document Assembly Programs: A Review of New York State Court System's "DIY" Forms." http://www.nycourts.gov/ip/nya2j/pdfs/RochelleKlempner_Court-BasedDIYForms.pdf

⁵⁸ See at page 34 http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2016report.pdf

⁵⁹ **One of the main providers of technical assistance on online forms recently provided advice on how to proceed: [Guest Blogger Claudia Johnson: What I've learned in the past 9 years of helping legal aid, courts, and other non-profits create online forms to promote Access for All](#)**

PORTALS FOR ACCESS

As noted above, LSC partnered with Microsoft Corporation and Pro Bono Net to develop portals in Alaska and Hawaii pilots intended to demonstrate how this approach can be replicated as widely as possible in an economic fashion.

In Illinois, Illinois Legal Aid Online (ILAO) developed a one-stop website as a destination to begin looking for a solution to a problem for SRLs (and lawyers alike). ILAO's portal Illinoislegalaid.org is more than just a static, informational website. Instead, it uses the information users provide to steer users in the direction of how to deal with their legal aid issue or where they might find direct assistance with their needs for free, for a reduced fee, or through a paid service, depending on your circumstances. And it seems to be working, with over 150,000 visits in January 2017.

Users of the portal may have one or more legal issues imbedded in their problem. The portal uses a series of simple questions to diagnose their situation, what type of help they need, where are they located, and what is their income level. Through this "legal triage" process, the user finds information about the issue they are dealing with, useful forms, referrals to applicable programs (depending on their economic status, location, etc.), and even online intake to seek free online assistance from a legal professional or aid organization.

This legal aid portal model is being implemented throughout the United States. Many people can't afford a lawyer and there are not enough pro bono attorneys to help everyone, but they still must engage in the legal system to solve critical problems like domestic violence, divorce, eviction, and foreclosure. These portals provide an ecosystem of numerous paths to legal services and other options. Many legal portals have the capacity to serve various languages, technology proficiencies, and communication platforms via computer or mobile device (the majority of ILAO users visit from a mobile device).

ILAO is one of 25 statewide legal portals using technology to ensure that effective assistance is provided to those otherwise unable to afford an attorney for dealing with essential civil legal needs. In addition to helping SRLs access legal information and locate referrals to affordable legal services, this system of portals hopes to connect the public to more information about their legal rights, court information, social services in their area, and other resources.

Another example of thinking about portals was a convening in June of 2016 by the Institute for the Advancement of the American Legal System (IAALS) to discuss the development of an online tool designed to help people with potential family law legal problems including self-represented litigants. This Litigant Portal would be a destination on the internet to which individuals could go when looking for a solution to a problem. The participants were shown Rechtwitzer 2.0 and MyLawBC. The convening proposed a pilot project in at least two courts in the same state and possibly a third project in a

separate state. See, Rebecca Love Kourlis, Natalie Anne Knowlton & Logan Cornett, **A Court Compass for Litigants** (July 2016) IAALS. 60

The 2015 Update discussed the evaluation of Michigan Legal Help, In 2016, MLH continued work on a project to develop and integrate a triage system that will help guide all litigants to the most appropriate resources available to them along the continuum of services available in Michigan, from assisted self-help to unbundled assistance to full representation by a legal services attorney, pro bono attorney or private attorney. The triage system will use advanced logic trees to help identify what a user's legal problem is and what services the user likely qualifies for, then directs the user to the most appropriate resources to resolve his or her problem given what is available in the community. MLH's Director is also working with State Bar of Michigan staff to integrate triage into their online lawyer referral. MLH is also working with legal services program directors to fully integrate online intake for legal services programs as a part of triage, with a tentative launch date of September, 2017.

LANGUAGE ACCESS

Effective access to justice requires that courts design, implement, and enforce a comprehensive system of language access services that is suited to the needs of the communities they serve. Many individuals come into contact with the court system to gather information about their legal rights and responsibilities, to protect important rights, to participate in court-mandated or court-offered programs, to benefit from mediation and other dispute resolution court-based programs, and to seek out assistance from pro bono or self-help centers operated by the court. Meaningful access at each of these points of contact is critical to achieving justice. The full spectrum of language services available to provide meaningful access to the programs and services for LEP persons, includes, but is not limited to, in-person interpreter services, telephonic and video remote interpreter services, translation of written materials, and bilingual staff services.

The American Bar Association (ABA), the Department of Justice (DOJ) and the National Center for State Courts (NSCS) and State Justice Institute (SJI) have developed comprehensive guidance on what courts and court systems need to do.

The ABA developed 10 Standards for Language Access in Courts. The first Standard on Fundamental Principles provides: As a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access

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http://iaals.du.edu/sites/default/files/documents/publications/court_compass_convening_report.pdf

services, so that persons needing to access the court are able to do so in a language they understand, and are able to be understood by the court.⁶¹

NCSC and SJI issued “A National Call to Action: Access to Justice for Limited English Proficient Litigants, Creating Solutions to Language Barriers in State Courts” which reports on a 2012 National Summit on Language Access in the Courts, a survey and assessment on language access and a 9 step roadmap for a successful language access program.

DOJ issued “Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency” (DOJ LEP Guidance) in 2000, followed by amended Guidance in 2001 and 2002. The DOJ LEP Guidance utilizes the following four factors to determine whether recipients have taken reasonable steps to ensure “meaningful access:” (1) the number or proportion of LEP persons; (2) the frequency with which LEP individuals come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/recipient and costs.” In 2014, DOJ issued “Language Access Planning and Technical Assistance Tool for Courts” to assist courts and court systems as they develop comprehensive language access programs. In 2016, DOJ issued Language Access in State Courts provides a brief overview of the importance of legal requirements for, and accomplishments in, providing language access services in state courts across the country.⁶²

An example of a state strategic plan for language access is the 2015 **Strategic Plan for Language Access in the California Courts** prepared by the Judicial Council of California http://www.courts.ca.gov/documents/CLASP_report_060514.pdf

VOICES FOR CIVIL JUSTICE (VOICES)

Voices is a national nonprofit communications hub launched in 2013 that raises awareness of civil legal aid. It is directed by Martha Bergmark, former Executive Vice President and President of LSC. Voices seeks to strengthen and broaden the brand identity of civil legal aid and to establish, via a drumbeat of media coverage, a comprehensive narrative of what civil legal aid is and why it matters. Ultimately, the measure of success will be the growth of resources and support for civil legal aid. For more information, see <http://voicesforciviljustice.org/>

Voices undertook a 2016 survey of communications activity in the civil legal aid sector. At the organizational level:

⁶¹ See **American Bar Association Standards for Language Access in Courts** http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal_authcheckdam.pdf

⁶² See <https://www.justice.gov/crt/file/892036/download>

- 32 percent of respondents said their organization has a written strategic communications plan for the entire organization. In 2014 the number was 26 percent.
- 37 percent of respondents said their organization has a written media plan for a specific case or campaign. This is unchanged from 2014.

Communications planning at the statewide level is quite different. Only 3.5 percent of those who responded on behalf of statewide entities (e.g. Access to Justice commissions, IOLTA funders) said their state has a written, coordinated communications plan. Twenty-nine percent report that their state has a written plan for specific initiatives such as fundraising and legislative advocacy.

At the organizational level:

- Three fifths indicated their organization has in-house staff with designated responsibilities for communications / media relations activities. The same was true in 2014, but the amount of staff time has increased. The 2016 survey shows;
 - a 6 percent increase in organizations devoting 50-100% FTE to communications;
 - a 4 percent increase in organizations devoting 101-150% FTE to communications; and
 - a 3.5 percent increase in organizations devoting 201% FTE or more to communications.

Of responses on behalf of statewide entities:

- One third have designated staffing (including consultants); and
- 38 percent have a designated committee or working group that meets regularly to coordinate communications, media and messaging.

Finally, systematic tracking of media coverage is up across the sector, and social media usage remains very high (nearly 90 percent) at the organization level, with Facebook, Twitter and YouTube the most used.

In July of 2017, Voices released findings of Voices' latest round of messaging research conducted by Celinda Lake; "[Building a Civil Justice System that Delivers Justice for All](#)." It is the most comprehensive study of civil legal aid messaging we've undertaken since the initial Voices study in 2013. According to the research 84 percent of voters believe it is important for our democracy to ensure everyone has access to the civil justice system – an enormous level of support, indicating this is a core value of a large majority of Americans. And, 82 percent of voters agree that "*equal justice under the law is a right, not a privilege.*" Voters want civil justice reform, and they strongly support a wide range of services to enable everyone to get access to the information and effective assistance they need when they need it and in a form they can use.

JUSTICE INDEX

In 2014, the National Center for Access to Justice at Cardozo Law School (NCAJ), www.ncforaj.org, launched the Justice Index, www.justiceindex.org. (In 2016, NCAJ moved to Fordham Law School where they co-chair a school Access to Justice Initiative with Dean Matthew Diller and former NYS Chief Judge Jonathan Lippman).

The Justice Index is a website that uses data, indicators and indexing to rank the 50 states, Puerto Rico, and Washington, D.C., on their adoption of selected best policies and practices for access to justice. Its driving idea is that a responsible comparison of the access to justice policies established in the states will, in turn, promote a dialogue about those policies both within and between the states, which in turn will prompt reform that expands access to justice. By making selected policy models highly visible, the Justice Index makes it easy to understand what is important in state justice systems, easy to see which states are doing the best at it, and easy for everyone to replicate the best policies. Because the policies improve lives, the Justice Index is an important resource for low income and of color individuals and communities, and for activists, advocates, officials and all who work to reform the civil justice system.

The Justice Index ranks states in four sub-indexes comprised of multiple indicators, each weighted 1, 5 or 10 points, as follows:

- Attorney Access Index – ratio of civil legal aid attorneys per 10,000 poor
- Self-Represented Index – policies to assist self-represented litigants
- Language Access Index – policies to assist people with limited English proficiency
- Disability Access Index – policies to assist people with disabilities

The Justice Index also ranks each state in a Composite Index by according each state's score in each sub-index a weight of 25% of the state's composite score, and then comparing those composite scores.

The Justice Index contains 28 issue areas, 112 indicators, and 5,000 data points organized in four sub-index categories. Operating under NCAJ's direction, teams of volunteer attorneys gathered data and also conducted a quality assurance review of data provided by courts, legal aid programs and other stakeholders. Complete indicators, and all data and rankings, are at www.justiceindex.org.

ACCESS TO JUSTICE INDICATORS

On September 15, 2016, access to justice experts from the academic and nonprofit communities meet for a Consultation with U.S. government officials to recommend "access to justice indicators" to guide data collection for tracking and promoting access to justice in the United States. The Consultation, the first held between U.S. government officials and civil society experts on access to justice indicators, is a step towards U.S. implementation of Goal 16 of the 2030 Sustainable Development Goals, or SDGs. Participating in the Consultation were fifteen officials from agencies in the White House Legal Aid Interagency Roundtable (WH-LAIR), as well as thirty access to justice experts

from the academic and nonprofit communities. The consultation produced suggestions for indicators at both the specific and general level.⁶³

LIMITED SCOPE REPRESENTATION

The American Bar Association has set out the circumstances under which lawyers may limit the scope of their representation in Rule 1.2(c) of the Model Rules of Professional Conduct. This Rule requires lawyers who limit the scope of their representation to do so only in those cases where the limitation is reasonable under the circumstances and the client gives informed consent to the limitation.

Forty-one states have now adopted Rule 1.2(c) or a substantially similar rule. Most of those states that have varied from the Model Rule require the client's consent to be in writing. A few have set out a checklist of tasks to be assumed when the lawyer provides a limited scope of representation.

The American Bar Association issued a new ethics opinion, Formal Opinion 472, on November 30, 2015 which set out recommendations on how lawyers should communicate with persons receiving limited-scope legal services, including the lawyer providing the service and the lawyer representing the other side of the dispute.

NON-LAWYER ADVOCATES

The Limited License Legal Technician (LLLT) certification program in Washington State allows certified persons to provide a range of legal services with areas defined by a 13 member Limited License Legal Technical Board. These technicians set up legal practices, establish fees, operate independently and provide individualized information regarding court procedures, reviewing documents and completing forms, performing legal research, drafting letters and pleadings, advising clients as to necessary documents and explaining how such documents or pleading may affect the client's case. However, the technicians could not represent a client in legal negotiations, in court, in formal administrative proceedings or in other formal dispute resolution process unless specifically permitted.⁶⁴ Technicians must complete an associate level college degree, 45 credit hours in an ABA approved program and training in a practice area. They must also pass a core education exam, professional responsibility exam and a practice area exam. Finally, they must obtain 3,000 hours of substantive law-related experience, supervised by a lawyer and within 3 years before or after passing the examination.

The only practice area now available is family law including child support modification, dissolution and separation, domestic violence, parenting and support actions, paternity and relocation. Washington may expand in the future to Health care and Estate in 2017.

⁶³ <http://ncforaj.org/wp-content/uploads/2016/12/NCAJ-CHRI-9-15-16-Recommended-AtJ-National-Indicators-12-1-16-final.pdf>

⁶⁴ See Brooks Holland, "The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice," 82 SUPRA 75 (2013).

There are now 20 LLLTs practicing in Washington State. Of the 20 practitioners, 10 are connected to law firms and 10 are independent.

The Preliminary [Evaluation of the Washington State Limited License Legal Technician](#) (LLLT) program, performed by the National Center for State Courts and the American Bar Foundation (Becky Sandefur), was released in March of 2017. According to the Executive Summary: “The evaluation shows that the program has been appropriately designed to provide legal services to those who cannot afford a lawyer but still wish or need assistance. The training program prepares LLLTs to perform their role competently while keeping within the legal scope of that role. Customers have found their legal assistance to be valuable and well worth the cost. The legitimacy of the role appears to be widely accepted in spite of its short track record. There are some questions about how best to scale up the program. The biggest current bottleneck is the required year of training with the University of Washington (UW) Law School. Washington State is actively pursuing other ways to mitigate that constraint. The regulatory costs of the program are not yet close to breaking even, but scaling up the program significantly would resolve that issue. LLLTs would greatly benefit from additional training on business management and marketing, but several of the first LLLTs are successfully running a full-time LLLT practice. The LLLT program suggests that new legal roles with costs lower than traditional lawyers are a potentially significant strategy for meeting the legal needs of many people who now are dealing with their legal problems unassisted. Creating similar programs in other states would clearly improve access to justice for a broad section of the public.”

Utah is currently designing its Paralegal Practitioner program along the lines of the Washington State program. A Task Force appointed by the Utah Supreme Court recommended in November of 2015 that the Supreme Court should exercise its constitutional authority to govern the practice of law to create a subset of discrete legal services that can be provided by a licensed paralegal practitioner in three practice areas: temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change; eviction; and debt collection.⁶⁵

In April 2017, a working group was created by the Montana Supreme Court to study the idea of a Limited License Legal Technician (LLLT) for Montana in order to address challenges related to self-represented litigants and litigants of modest means.

In a June 2017 report, the Oregon State Bar’s Futures Task Force recommended the “licensure of paraprofessionals who would be authorized to provide limited legal services, without attorney supervision, to self-represented litigants in (1) family law and (2) landlord-tenant proceedings.” The report tracks other parameters in Washington and Utah.⁶⁶

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http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf

⁶⁶ See Oregon State Bar Futures Task Force Executive Summary (June 2017)

http://www.osbar.org/_docs/resources/taskforces/futures/FuturesTF_Summary.pdf

New York Navigators Program: The New York pilot program permits trained non-lawyers to provide out-of-court assistance in housing and consumer credit. The role of the Navigators includes the provision of the following types of assistance, free of charge, to litigants:

- Preliminary discussions with litigants to listen and explain the process
- Review of the papers litigants have received and assembled to explain their relevance to the process
- Provision of information to litigants about appropriate or available court services (including interpreters)
- Description for litigants of the individuals they will see in court and their roles (e.g. judge, court clerk, law clerk), as well as likely discussion topics and the best manner of response to each
- Assistance to litigants in filling out court-approved DIY forms and help in identifying additional resources available on the Internet
- Court accompaniment, including giving notes or reminders to litigants where and when necessary
- Statements of fact to the judge, but only if asked a direct factual question by the judge
- Taking notes during any conference or hearing to discuss with litigants afterwards so that the litigants are clear about what has been said or decided and what the litigants must do to comply with any directions they may have been given
- Some Navigators in the Housing Court, in addition, provide more in-depth service and remain with litigants to help provide needed social services, including benefits to cover rent arrears where available (see full description in Overview of program below).

In December of 2016, a [report](#) was released by the National Center for State Courts, American Bar Foundation, and Public Welfare Foundation that evaluated 3 pilot projects of the New York City Court Navigators Program. **Roles Beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and its Three Pilot Projects.** The report was prepared by Rebecca L. Sandefur, American Bar Foundation, and Thomas M. Clarke, National Center for State Courts.

The Navigator Program created the following pilots with the following results:

The Access to Justice Navigators Pilot Project, which uses a trained volunteer “navigator for the day” model to provide in-courthouse support in eviction and consumer debt cases (accompany litigants when they meet with judge or opposing side, help organize papers, explain court process, etc). Surveys of litigants revealed that litigants who received the help of any kind of Navigator were 56 percent more likely than unassisted litigants to say they were able to tell their side of the story In addition, judges ordered landlords to make needed repairs about 50 percent more often in Navigator-assisted cases.

The Housing Court Answers Navigators Pilot Project, which uses a trained volunteer “navigator for the day” model in Brooklyn Housing Court to help tenants file an answer. Litigants assisted by Housing Court Answers Navigators asserted more than twice as many defenses as litigants who received no assistance. A review of case files reveals that tenants assisted by a Housing Court Answers Navigator were 87 percent more likely than unassisted tenants to have their defenses recognized and addressed by the court. For instance, judges ordered landlords to make needed repairs about 50 percent more often in Navigator-assisted cases.

The University Settlement Navigators Pilot Project, which uses trained caseworkers that are employees of a nonprofit to provide more extensive assistance in Brooklyn Housing Court (such as connecting tenants to potential grants/benefits/social services, assisting with the completion of paperwork, checking in with the tenants for the duration of their case, etc). The Housing Court Answers pilot refers cases to the University Settlement Navigators Pilot where such cases appear as if they could benefit from the additional assistance. As stated in the report, “University Settlement Navigators project targets tenants who may be particularly vulnerable to eviction, such as those with limited English proficiency, limited literacy, cognitive limitations, or underlying social service needs that may be contributing to housing insecurity, those facing claims for substantial amounts of back rent, and those eligible for rent subsidies or other social programs.” In cases assisted by these University Settlement Navigators, zero percent of tenants experienced eviction from their homes by a marshal. By contrast, in recent years, one formal eviction occurs for about every 9 nonpayment cases filed citywide. One caveat is that only 567 out of the 1,371 cases handled by the HCA navigators were referred to the University Settlement Navigators Pilot, and of those 567, only 301 received assistance, meaning that the pilot was able to select the cases where it would have the greatest impact.

General findings include:

- People without formal legal training can provide meaningful assistance and services to litigants who are not represented by a lawyer.
- These services can impact several kinds of outcomes, ranging from litigants’ understanding of court processes and empowerment to present their side of the case, to providing more relevant information to the decision-maker, to formal legal outcomes and the real-life outcomes experienced by assisted litigants and their families.
- The tasks Navigators are actually able to perform, and thus their impact, are influenced by the philosophy and attitude of the court in which the services are provided, including the attitudes of case processing staff and judges.
- Contributions of Navigators’ work to legal outcomes and real-life outcomes such as eviction prevention are likely similarly influenced by court environment and by the range of services and benefit programs available in the jurisdiction. The availability of such services and benefits to which Navigators can connect litigants is a major mechanism of Navigator impact. Some jurisdictions, such as New York City, have significantly more such resources than most.

- The impact of Roles Beyond Lawyers programs on legal outcomes can be greatly assisted by the availability and use of plain language, standardized legal forms, such as the Answer form, and of software programs (what in New York are called “DIY” programs) that help litigants prepare legal documents such as answers. Such programs have been developed for many jurisdictions, facilitating the replication of Roles Beyond Lawyers programs.

The Access to Justice Program of the NY State Courts also facilitated another study of the CNP conducted by Pro Bono Net, funded by a Legal Services Corporation Technology Initiative Grant awarded to LAWNY (Legal Assistance of Western New York), to assess and create technology to assist the Court Navigators. As a result of this study, Pro Bono Net working with Legal Services NYC and Georgetown University Law Center’s Technology Innovation and Law Practicum class, created an app for the CNP called the “Navigator’s Compass.” The Navigator’s Compass, using Neota Logic, is designed to help Court Navigators issue spot and connect litigants with appropriate referrals, resources and court services, like interpreters, Help Centers, DIY Forms and other key resources described in the 200+ page Navigator training manual. The Access to Justice Program is in the process of fine tuning and correcting the app.

Other New York Developments: In his 2015 State of the Judiciary speech, NY Chief Justice Lippman announced his plan to propose to the legislature "legislation this year that calls for a further level of involvement by non-lawyers in assisting litigants. This proposal would codify a more substantial role for non-lawyers by establishing a category of service providers called “Court Advocates” in Housing Court and in consumer credit cases to assist low-income litigants."

In November of 2015, Chief Judge Lippman announced a network of walk-in storefronts will be first of its kind in New York and the nation to bring basic legal information, assistance and support to residents in low -income communities. The new program will bring a corps of trained community volunteers to storefront locations in our most vulnerable neighborhoods, offering free legal information, assistance and referrals to residents grappling with legal problems relating to the very basics of life. *The storefronts will be called "Legal Hand," the program will be operated by the [Center for Court Innovation](#) and local community-based legal aid providers. One center is already open with two more to come soon.* Each Legal Hand will be managed by a volunteer coordinator and staffed with trained volunteers to provide information and guidance to low-income individuals on how to navigate the court and social services system and how to protect and represent themselves in a legal matter. A legal services attorney will also be on-site to help train and aid volunteers. The Legal Hand volunteers will receive substantive training focusing on areas where emergencies commonly arise, such as housing, physical safety, immigration, family matters and benefits. Training will also cover cultural competency, interviewing skills, the limits on the advice non-lawyer volunteers are legally permitted to provide and the availability of referrals to other services, including full legal representation. Periodic training will continue throughout each volunteer’s tenure. Volunteers come from a wide spectrum of backgrounds including retirees, college students, long-time residents and individuals new to the community.

Federal Immigration System: On Jan 18, [the rules changes governing non-lawyer practice in the immigration system](#) became effective. See 81 FR 92346 (December 19, 2016). Nonprofits that meet certain requirements apply for recognition and non-attorney staff members may apply for accreditation after completing rigorous training focused on immigration law. Accredited individuals can help clients with immigration matters before government agencies, including U.S. Citizenship and Immigration Services and the asylum office. Certain accredited representatives may represent clients in immigration court. Currently, nearly 1,000 nonprofits are recognized and 1,900 non-attorney staff members are accredited.

NEW LAWYER INITIATIVES

The ABA Task Force on the Legal Access Job Corps recently invited state and local bar associations, bar foundations, law schools, courts, government agencies, and other similar organizations to apply for an ABA catalyst grant available to support the implementation of innovative programs to enlist recently-admitted lawyers in providing legal services to persons of modest means. A number of programs have been developed in various locations to utilize recently-admitted lawyers in better serving the legal needs of poor and moderate income persons. The Task Force seeks to foster further innovative initiatives that achieve similar objectives.

LEGAL INCUBATORS

A relatively new development in access to justice is the legal incubator. The first legal incubator began in 2007, the Community Legal Resource Network at the City University of New York School of Law. Its mission is to provide support to their graduates interested in launching their own practice to serve low-income communities that lack access to legal representations. Since then, more than 60 legal incubators are up and running, with 75% of them having been formed since 2014. American Bar Association, ABA Standing Commission on the Delivery of Legal Services, *2016 Comprehensive Survey of Lawyer Incubators*, 2016. Though their missions vary, most incubators embrace the importance of innovation and technology in the legal field and focus on the delivery of legal services to the un- and under-represented.

Incubators foster the lawyers working with them to understand and cultivate the services they wish to provide. They perform market research to determine how to best reach the underserved population. They assist the community in identifying legal needs, and create legal packages that are affordable, understandable, and accessible. The end goal is to assist attorney is establishing successful and sustainable practices.⁶⁷

Incubators are an excellent trial ground for legal technology. Incubator attorneys explore innovative means to deliver legal services in a controlled environment. The

⁶⁷ See Luz E. Herrera, **Law Firm Incubator Programs**, MIE Journal, Volume XXXI, Fall 2017

implementation of technological tools is essential to create the successful small firms of the future. Automating intakes, implementing e-discovery, utilizing special software, building online legal resource centers, and other processes are in the pipeline to improve the delivery of legal services. With the majority of programs still in their infancy, few of these firms operate independently, but this is likely to change with new classes graduating from more than 60 programs across the nation annually.

Though much of the rapid growth in the incubator movement is attributed to the recent graduate's placement challenges, the result has opened opportunities for new attorneys to gain experience and build responsive practices to assist unmet needs in their areas of interest. In addition to family law, small businesses need counsel to assist with licensing and liability protection; tenants need assistance in protecting their rights; and employees need help identifying issues. Some incubators have performed market research and focus on the practice areas where there is the most need, but a common goal is to assist attorneys in creating projects that will lead to successful lawyers.

Most incubators embrace the idea of community lawyering. An important aspect of community lawyering is assisting non-lawyers in the identification of legal issues. Many incubators are hosting community meetings and presenting to groups on hot topics, creating online content and other innovative educational resources to assist potential clients in learning more about their rights or an issue they or a family member/ friend may have. Using thoughtful language, posting through social media and creating digestible content are some of the many ways incubator participants are collaborating with their colleagues to create shared message for the non-lawyer.

LAW SCHOOLS

Law schools and law school clinical programs also supplement the staff attorney system. Virtually every ABA-accredited law school operates a clinical law teaching program. Some operate a number of clinics that actually service individual or group clients. In some areas, such as the District of Columbia, the law school clinics are an integral part of the civil legal aid system. In other areas, law school may work closely with legal aid programs and send law students to the programs for part of their clinical training. In some areas, law school clinics are small programs that operate totally independent of civil legal aid programs. Overall, law school clinical programs are a very small component of the delivery system, accounting for less than 2% of the clients served.

New York Developments; Under the leadership of Chief Justice Lippman, New York became the first state in the nation to promulgate a rule requiring law students to complete 50 hours of pro bono service before gaining admission to the New York bar. New Jersey, California, and Montana among others are considering similar rules to the one developed in New York. In 2016, the American Association of Law Schools

reported that law school students performed more than 2.2 million hours of pro bono work while on campus which is valued at more than \$52 million.⁶⁸

New York's new Pro Bono Scholars Program, introduced in New York in February of 2014 gives law students an incentive to devote their last semester of law school to pro bono work, making a significant contribution to addressing the access to justice gap. New York's Poverty Justice Solutions is a new program launched in 2015 that is designed to extend the reach of the Pro Bono Scholars program. Each year, Poverty Justice Solutions will take 20 exceptional Pro Bono Scholars and place them after graduation and admission in two-year fellowships with civil legal service providers in New York.

National Center for Access to Justice: In the fall of 2016 Fordham Law School began its Access to Justice Initiative. The effort aims to serve as a national model for legal education in accordance with the law school's credo, "In the Service of Others." Fordham Law aspires to bring the importance of adequate representation to the fore throughout its curriculum, educating students about the justice gap and opportunities for reform. The initiative will focus their direct-service efforts as students and faculty provide legal help in communities direly in need. Finally, Fordham will bring to bear its research capacity, informing lawyers, policymakers and the public about access to justice. As a capstone to this commitment, the National Center for Access to Justice relocated to Fordham Law in fall 2016 to infuse the initiative with cutting-edge research and analytical techniques. The center created the data-driven Justice Index, www.justiceindex.org, which ranks, compares and promotes progress in state justice systems to help expand and assure access to justice for all.

In addition, the National Center for Access to Justice is developing guidance on tracking outcomes for civil legal aid programs and their funders. Legal aid programs generate data daily, but their research is zooming in on the hard questions, including how to measure systemic impacts, how to sort causation from correlation, and how to gauge lasting benefits secured for clients, families, and communities. The [project](#) relies on interviews of leaders in the field, research on strategies used in fields that include education and health care, and a synthesis of the literature. The goal is to illuminate ways to streamline data collection, improve quality of data collected, and strengthen advocacy for clients.

LegalRnD, the Center for Legal Services Innovation, at Michigan State University Law School, seeks to improve legal-service delivery and access across the legal industry. They accomplish this mission through research and development of efficient, high-quality legal-service delivery tools and systems. LegalRnD brings together professionals from a broad range of disciplines. Contributors start with well-established concepts—such as lean thinking—and use them to improve legal-service delivery. They train their students in these concepts and study them with our partners, including: legal aid

⁶⁸ <http://www.nationallawjournal.com/id=1202776171405/Law-Students-Performed-22-Million-Pro-Bono-Hours-Last-Year?slreturn=20170310114608>

organizations, solo practitioners, corporate legal departments, law firms, courts, and entire justice systems.⁶⁹

A recent article by Raymond H. Brescia, **When Interests Converge: An Access-to-Justice Mission for Law Schools**, *Georgetown Journal on Poverty Law & Policy*, Forthcoming; *Albany Law School Research Paper No. 1 for 2016-2017* argues for an explicit access to justice mission for law schools to help increase demand for legal services, re-establish the value of legal assistance to the community, restore the importance of the legal profession in preserving and extending important rights and interests, and improve the demand for legal education.

ONLINE DISPUTE RESOLUTION

Unlike the Dutch and British Columbia, the US has not yet fully developed an online dispute resolution forum.⁷⁰ Several states, including California and New York, are beginning to develop such forums. For example, the New York Access to Justice Program is working on the Permanent Access to Justice Commission's committee to develop an Online Dispute Resolution (ODR) pilot program to evaluate the feasibility, cost and effectiveness of ODR in consumer credit cases and its use as a component in improving access to justice. Ultimately, this program allowed parties to consumer debt cases to try to settle their disputes online between themselves. If a resolution cannot be reached, the parties would work online with an assigned trained mediator through the Community Dispute Resolution Centers to settle their case. Development and implementation of the ODR pilot program will continue in 2017.

DELIVERY RESEARCH

The US now recognizes that its system should have an ongoing and institutionalized capacity to conduct research on how to improve the delivery of civil legal aid and conduct and evaluate demonstration projects testing new ideas and innovations for

⁶⁹ <https://www.legaltechlever.com/2017/07/law-schools-as-labs-for-legal-services-innovation-and-research-development-examples-at-legalrnd/>

⁷⁰ The Dutch Legal Aid Board developed a legal advice site known as Rechtwijzer, variously translated as 'conflict resolution guide' or 'interactive platform to justice'. The Web-based Rechtwijzer used an intelligent questionnaire format, and provides problem diagnosis, triage, information, guidance and self-help tools for non-lawyer users. The Dutch discontinued the original online conflict resolution platform Rechtwijzer in March of 2017, but developed a new online platform that began in September of 2017. British Columbia is also establishing a Civil Resolution Tribunal (CRT) an online tribunal handling small claims (up to \$25,000 CAD) and strata (condominium) disputes in British Columbia. To date, the most developed portion of the CRT's end-to-end platform continues to be the Solution Explorer, an online expert system designed to support problem diagnosis, information, self-resolution and streaming processes.

possible replication across the system.⁷¹ NLADA received funding for and has developed a resource library of prior and ongoing delivery research. See www.legalaidresearch.org.

The United States had such a component, the Research Institute, during the first era of the Legal Services Corporation from 1976 – 1981. During the funding and political crisis of 1981, the Research Institute was closed. It is not yet clear that the US will be able to find government funding for such an entity.

LSC raised private funding for and has recently established an Office of Data Governance and Analysis which now has six analysts. During its first year, the Office worked on a range of projects which focused on cleaning up and posting LSC administrative data. They also set up a data users group made up of program staff from different legal services across the country to help build capacity in the field. They were involved in the release of a new Justice Gap report and are also preparing to release a catalogue of maps related to civil legal issues. They are in the process of building a new data access page on the website, so that researchers have easy access to GAR data, Justice Gap data and other resources.

President Obama's budget requests in 2015, 2016 and 2017 included \$2.7 million for civil legal research to be managed by the National Institute of Justice in cooperation with Department of Justice's Access to Justice Office. That would have been the first time that the federal government invested in delivery research on civil legal aid since the demise in 1981 of the Research Institute at LSC. Congress did not fund these requests.

Access to Justice Lab: The Access to Justice Lab was founded in July 2016 thanks to the generous support of the Laura and John Arnold Foundation. The Arnold Foundation's core objective "is to address our nation's most pressing and persistent challenges using evidence-based, multi-disciplinary approaches." The Lab is housed within the Center on the Legal Profession (CLP) at Harvard Law School, which seeks to make a substantial contribution to the modern practice of law by increasing understanding of the structures, norms and dynamics of the global legal profession. The Access to Justice Lab is dedicated to transforming adjudicatory administration and engagement with the courts into evidence-based fields. The Lab will produce randomized control trials ("RCTs") directly involving courts and lawyers, particularly in the areas of access to justice and court administration (including agency adjudication). It will also combat the legal profession's current hostility to RCTs through short courses, publications, presentations, and other methods. At the end of 2017, the Lab has over 6,360 participants enrolled in the Lab's evaluations. It is collaborating with 38 partners, including court systems, legal aid organizations, and other academic institutions. Over

⁷¹ How an Evidence-Based Delivery System Can Improve Legal Aid for Low- and Moderate-Income Americans by Jeffrey Selbin, Josh Rosenthal, and Jeanne Charn (Center for American Progress) June 2011 <http://www.americanprogress.org/issues/open-government/report/2011/06/22/9707/access-to-evidence/> See also, Laura K. Abel, *Evidence Based Access to Justice*, University of Pennsylvania Journal of Law and Social Change, Volume 13 No.3, (2009-2010) at p, 295 and *Designing Access: Using Institutional Design to Improve Decision Making About the Distribution of Free Civil Legal Aid*,7 Harvard Law & Policy Review 61 (2013).

75 student team members, along with Lab staff, have developed over 1,850 pages of self-help materials, as well as two digital self-help tools, to test for efficacy as they seek to learn the best way to help pro se defendants.

Prior to the creation of Access to Justice Lab. D. James Greiner and Andrea J. Matthews conducted a study, **The Problem of Default, Part I**, that focused on the problem of routine default by human defendants, using the Boston Municipal Court's (BMC) debt collection docket as the laboratory. They designed interventions consisting of two forms of mailings: Limited and Maximal. For the limited, they mailed the defendant a manila envelope containing a study letter from Volunteer Lawyers Project (VLP), three copies of a check-box style Answer form, a business envelope addressed to BMC, a business envelope addressed to the plaintiff's attorney, a map to the courthouse, and a post-it note appropriate for a wall calendar saying "Go To Court Today!". Volunteer interns handwrote the address on the manila envelope. On all three copies of the Answer form, volunteer interns handwrote as much case-specific information as they could, including the case number, the plaintiff's name, the name and address of plaintiff's attorney, and the defendant's name and address. For the Maximal: First, they mailed the defendant a handwritten postcard from VLP stating, "Dear [Recipient Name], Help is on the way. Look for me!." Next to "me" was a hand-drawn arrow pointing to an image of Blob. The next day, they mailed the defendant the same manila envelope (with corresponding contents) that those in the "Limited" group received, except that the two business envelopes to the Court and to the Plaintiff's attorney had stamps. They studied the effectiveness of our two mailings in a randomized control trial that included a no-intervention control group. They found no difference in effectiveness between our two mailings, and that both roughly double the rate at which defendants participate in their lawsuits (results are statistically significant). Specifically: As compared to a randomly selected Control group with a 13% answer rate (corresponding to an 87% default rate), our "Limited" intervention group saw a 24% answer rate, and our "Maximal" intervention group saw a 24% answer rate. The corresponding rates for whether the defendant appeared at the first scheduled court hearing were 7.5%% for the Control group, 14% for the Limited group, and 15.3 for the Maximal group. Differences between the Control versus the Limited and Maximal groups were statistically significant. Differences between the Limited and Maximal groups were not.

The results of this study shed some light on a few different areas of debate in the legal arena:

- why people obey the law and engage in official proceedings (and why they don't)
- the role of civil legal services providers and the types of services they provide
- how courts present themselves to and interact with people without lawyers

The Lab is now engaged in a follow-up study which builds on the smaller pilot study in Boston, and will include multiple legal service providers and multiple court locations.

By randomly varying the format and content of the package, the Research Team will learn what is necessary and cost effective to reduce default rates. Potential areas of exploration include the appearance of the external envelope; the text of the letter; whether the letter includes cartoons and/or other illustrations; the contents of the package (e.g., whether Answer forms, return envelopes, maps to courthouses, and reminder post-it notes are included); and whether the materials are translated, and if so, into what languages.

The **Financial Distress Research Project** will provide rigorous evidence on the problem that, as of 2014, more than [77 million people in the U.S.](#) had at least one account reported as “in collection” on their credit reports, owing an average of \$5,178 (median \$1,349). Distressed debt results in collection lawsuits, a messy and error-prone credit report, and a potential need for bankruptcy. The Project is a partnership among multiple branches of government, academia (students and professors), multiple non-profit service providers, and the private sector. Its backbone is a gold-standard randomized control trial. The Project will combine this randomized design with highly consequential credit reporting information. And it will supplement all of this information with the results of surveys and court records. The Project will include the Creation of self-help materials. More than 60 law students, most of them volunteers, have already dedicated thousands of hours to court observations, individual interviews, and research with one goal in mind: the production of a state of the art self-help Assistance Packet covering how to (1) litigate a debt collection action, (2) pull, review, and correct errors in a credit report, (3) self-diagnose on whether bankruptcy or negotiation with other creditors is the right option, (4) negotiate with other creditors (with specific materials tailored to credit card, medical, and public/private student loan debt), and (5) file a successful Chapter 7 bankruptcy (including attempting to discharge student loans in bankruptcy). The Assistance Packet was created specifically for the capabilities of its target audience, namely, persons in financial distress. Thus, it features cartoons that teach legal concepts, material designed to combat feelings of shame and guilt, and small items (such as detachable post-it notes) that have been shown to aid in plan-making and follow-through.

The field operation includes Intake and randomization. An individual who has been sued in debt collection proceedings, who calls a study-created hotline, who meets eligibility criteria (e.g., income and assets below study ceilings), and who agrees to participate will receive limited advice and assistance over the telephone. After she executes appropriate waiver and consent forms (including consent to allow the Lab to access credit information), she will be randomized to one of four treatment conditions: Group one will receive a self-help packet for debt-related legal issues and self-help financial counseling packet. A second group will receive self-help packet for debt-related legal issues and \$50 incentive to undergo Internet or telephone financial counseling. A third group will receive an offer of attorney-client relationship on for debt-related legal issues and self-help financial counseling packet. The fourth group will receive an offer of attorney-client relationship on for debt-related legal issues and \$50 incentive to undergo Internet or telephone.

Finally, the project will collect outcome information. The Lab will obtain deidentified credit scores and credit report attributes for each study participant as of three, two, and one years before entry into the study. They will also collect this information at one, two, and three years subsequent to entry. They will collect case records from small claims and bankruptcy courts. And they will survey study participants at intake, year one, and year two to measure overall financial well-being, perceived stress levels, and other wellness indicators. A comparison of financial health across our four groups will provide gold-standard evidence regarding the effectiveness of self-help packets, financial counseling, and attorney representation.

This study began its field operation in the spring of 2017.

Guardianship Service of Process Study: In September, 2017, the Lab began a new study with the **Boston Court Service Center** (“CSC”) and the **Volunteer Lawyers Project** (“VLP”) of the **Boston Bar Association**. The RTC evaluates whether self-help materials can make a difference for court users seeking guardianship over incapacitated adults or minors. CSC and VLP reported high rates of return visits from users they assisted with filling out petitions. Those petitioners often got stuck trying to navigate the often-labyrinthine service of process requirements. Because the process is complicated and the constituencies served have limited access to legal resources, promotion and development of self-help materials seemed like a natural response. The associated study will lead to randomized provision of printed materials for both adult or minor guardianship cases and in English or Spanish. In addition, minor guardianship petitioners randomized to receive the hard copy booklets will also gain access to an online tool. That site walks users through their unique legal needs, much like the software pioneered by TurboTax and other online service providers. The RCT will compare rates of successful service, among other outcomes, between the treatment and control groups.

If self-help packets or a new tech tool can help people file for guardianship and then correctly complete service of process, then legal services providers know what types of resources to invest in and how best to allocate their limited resources. And if the self-help materials aren’t at all effective, perhaps The Lab can learn something about the procedural hurdles and have a better understanding of how these hurdles themselves may need to change.

The Intimate Partner Violence Triage Study: Another example of work being done is the Intimate Partner Violence Triage Study. A legal aid organization in northeast Ohio currently triages victims or survivors of domestic violence who seek civil protection orders to one of three service levels: an offer of full representation, a telephone call plus a self-help packet, or a self-help packet alone. The Intimate Partner Violence Triage Study will randomly divide callers into a triage process guided by an attorney, or a random triage process. It will measure both the outcome in court (who obtains the court order that they were seeking), and whether the process prevents further abuse. Unlike many randomized trials, however, the Study will go beyond mere “treated” versus “control” comparisons and provide strong guidance to future service providers and

researchers. Specifically, the presence of a fully randomized group (the second treatment arm) will allow the researchers to provide data-driven, rigorous evidence on the following questions critical to the legal scheme constructed to protect DV/IPV victims:

- What background variables (observable at intake) predict whether a legal aid provider will offer higher as opposed to lower levels of service?
- What background variables (observable at intake) predict whether a DV/IPV victim can obtain a restraining order on her own?
- How much does legal representation increase the probability of obtaining a restraining order over a telephone call and/or a self-help assistance packet?
- How effective is a restraining order in preventing revictimization, forestalling the need for subsequent police calls, and reducing state medical expenditures?

This study is currently in development.

The Federal Court Mediation Study evaluates rigorously all of the dimensions Alternative Dispute Resolution (ADR) proponents cite in advocating such programs. They conducted a randomized control trial in one setting: civil rights cases brought by inmates in one federal correctional facility in Nevada. Almost every court system in the nation has an ADR program, and for most courts, at least some classes of litigants are compelled to use it before or during formal litigation.

Proponents of ADR claim that it furthers social welfare on at least four separate dimensions:

1. conserving judicial resources,
2. conserving party resources,
3. increasing party satisfaction, and
4. increasing party compliance with the decision or outcome.

Opponents, meanwhile, claim that direct negotiation can achieve these same benefits, and that the high cost of litigation provides a strong incentive for parties to settle on their own. The question, therefore, is whether the presence of the ADR neutral (a mediator, a judge) is really necessary to help the parties do what they could do on their own via direct negotiation.

After a thorough screening and intake process, consenting individuals will be randomized into one of two groups:

- Treated group: mediation
- Control group: strong suggestion to negotiate

Randomization has closed, and more than half of the cases have reached final resolution. Data they will analyze:

- Federal court case records
- Number of hours spent by state attorneys general per case
- Case outcomes, in both settlements and court orders
- Inmate plaintiff surveys
- Future complaints

This study has completed randomization and is in the outcome collection phase.

The Social Security Disability Study examines whether a law student clinic can deliver effective results to those seeking disability benefits. To be eligible for the study, an individual must be an adult seeking to appeal an adverse decision regarding eligibility for disability benefits to an administrative law judge (“ALJ”). The decision might have been either a denial of a request for reconsideration (under the traditional Social Security Administration (“SSA”) system) or an adverse ruling from a federal reviewing officer (under the new Disability Service Improvement (“DSI”) process). The applicant might be seeking benefits under either the Social Security Disability Insurance (“SSDI”) program or the Supplemental Security Income (“SSI”) program.

After a thorough screening and intake process, consenting individuals are randomized into one of two groups: Treated group: representation by student advocate in a law school clinic and a Control group: a self-help packet on disability appeals, as The Labll as referral to other legal services providers, and a copy of their own intake information (to streamline the information-gathering that another legal services provider would need).

When the field operation is over, the Lab will analyze the following outcomes for both groups:

- Were benefits awarded or denied?
- If awarded, what amount?
- Compliance with the randomization: did individuals in the control group obtain representation elsewhere? Did individuals in the treatment group continue with their representation?

This study is currently in randomization.

The Divorce Study examined whether pro bono representation made a difference in people seeking a divorce filed for and got a divorce. For the past 30 years, an increasing number of people come to court without a lawyer. As more people come to courts to access their legal rights, they are met with fewer free or low-cost legal services to help. Across the country, legal practitioners, scholars, and appellate courts have begun to question whether court procedure is effectively preventing access to justice.

Courts, legal services providers, and state and local Bars have responded to the flood of people without lawyers in numerous ways, including:

- amending ethical rules to legitimate already-existing forms of lawyer representation
- self-help centers
- uniform court forms
- self-help materials
- technology
- and non-lawyer representation.

Some of the efforts to stem the tide of pro se, self-represented, or unrepresented litigants have focused on connecting people with lawyers: by increasing **pro bono efforts** and leveraging different technologies to connect people with free legal aid or low-cost representation. Recent efforts, however, primarily focus on alternatives to representation, and very few efforts address changes to court processes themselves.

During the study, potential clients seeking a divorce underwent a 45-60-minute interview to determine eligibility and learn more about the details of their case.

After the interview, consenting study-eligible individuals were randomized to one of two groups: Treated group: an effort by the service provider to find a pro bono attorney to represent her; Control group: a referral to existing self-help resources and an offer to answer questions by telephone.

The Lab reviewed the court case files for all study participants, to review which cases successfully (a) filed for divorce in court, and (b) got divorced. The study found that 55.4% of the treated group filed for divorce, compared to 14.8% of the control group. In addition, 45.9% of the treated group successfully divorced within 36 months, compared to 8.4% of the control group.

Pre-trial release study: To address ineffective detention policies before trial, a number of reform efforts are underway to better predict an arrestee’s actual risk of failure to appear (FTA) and recidivism. The most prominent new tool is the actuarial risk assessment mechanism, one of many evidence-based practices now used in criminal and other legal spheres. In partnership with the Laura and John Arnold Foundation (LJAF), the A2J Lab will evaluate the effectiveness of the Public Safety Assessment (PSA) in several jurisdictions across the country. The purpose of the study is to test whether an actuarial risk assessment tool that avoids the need for arrestee interviews produces better pretrial incarceration decisions and associated decreases in FTA and repeat offenses. The Lab is currently engaged to evaluate the PSA’s effectiveness in Dane County, Wisconsin. The LJAF’s team is working with Dane County to implement the PSA, including the construction of a software system that can receive data inputs and produce the basic PSA printout for the judge (known in Dane County as the Commissioner), the prosecutor, and the defense attorney to examine. Cases will be randomized either to the “treatment” group, in which instance the Clerk’s Office will produce the PSA printout, append it to the case file, and make it available to the prosecuting and defense attorneys as well as to the Commissioner in time for the initial appearance; or to the “control” group, in which instance, the Clerk’s Office will not

produce the PSA printout. Randomization will be by case number. This study is currently in the field.

Other Recent studies and reports include:

Rebecca Sandefur completed a synthesis of the findings of extant studies of lawyers' impact on civil case outcomes: **Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact.**⁷² Her analysis concluded that knowledge of substantive law explains little of lawyers' advantage compared to lay people appearing unrepresented. Instead, lawyers' impact is greatest when they assist in navigating relatively simple procedures and where their relational expertise helps courts follow their own rules.

Emily S. Taylor Poppe & Jeffrey J. Rachlinski, [*Do Lawyers Matter? The Effect of legal Representation in Civil Disputes*](#), 43 Pepp. L. Rev. 881 (2016) surveyed the existing research literature and concludes that lawyers make a significant difference in cases involving housing, family law, employment law, small claims, tax, bankruptcy, and torts. The study warns that much of the existing research has limits, such as not necessarily ensuring that a lawyer, and not some other factor in the litigant's life, actually caused the positive outcome. However, they still conclude that "in most areas, the empirical evidence indicates that lawyers benefit their clients."

April Kuehnhoff and Cherie Ching, **Defusing Debt: A Survey of Debt-Related Civil Legal Aid Programs in the United States** (June 2016 National Consumer Law Center)⁷³ Civil legal aid organizations provide critical front-line services for low-income and elderly people across the country facing debt collection activity. In order to better understand the work that these organizations are doing to serve some of the nation's most vulnerable consumers, the National Consumer Law Center (NCLC) developed a survey to gather data about what kind of representation organizations provided to clients who are being contacted or sued by debt collectors, debt buyers, or creditors. Significantly, this survey found that 94% of organizations listed the lack of funding or staff as a challenge in their debt defense work. Survey results indicate that: 91% of organizations provided pre-litigation services, 98% provided litigation services, 100% provided post-judgment services, and 69% provided bankruptcy services; 84% of organizations file affirmative claims against debt collectors, debt buyers, or creditors; 79% of organizations brought claims under the Fair Debt Collection Practices Act (FDCPA) and 75% brought claims under state consumer protection statutes; 50% of organizations engaged in legislative, regulatory, or court rule reform efforts; and 34% percent of organizations partially self-funded their debt defense work through fee-shifting statutes or client payments;

⁷² See https://www.researchgate.net/publication/281467509_Elements_of_Professional_Expertise

⁷³ http://www.nclc.org/images/pdf/debt_collection/debt-defense-survey-2016.pdf

As discussed in The Anti-Poverty Impact of Civil Legal Aid,⁷⁴ many states have done studies that assess the financial impact of civil legal aid.⁷⁵ There are 84 such studies.⁷⁶ There are 4 new studies ([Florida](#), [Maine](#), Mississippi and [Minnesota](#)) assessing the financial impact of civil legal aid. These studies use various methodologies but reach similar conclusions. For example, the Minnesota study finds “that for every dollar spent on civil legal aid, the economic return is \$3.94...Minnesota civil legal aid programs generated \$133 million in revenue.” The Mississippi study found that for every \$1 dollar invested there were \$12.05 in impacts.⁷⁷

In October of 2016, NPC Research released **Evaluation of the Introduction of Plain Language Forms with a Spanish Translation in Two Family Court Settings**⁷⁸ NPC Research, under a contract from Texas Rio Grande Legal Aid, funded under a TIG grant undertook an examination of the effectiveness of the provision of the plain language, English/Spanish forms in two sites: Sonoma County Family Court Services (California) and Travis County Family Court Services (Texas). As the report points out: “There has long been strong political support for making sure that governmental information, forms, and websites are written in plain understandable language, and translated into the primary languages of those who use them. But making the needed changes has often been delayed by fears of the costs. Now comes dramatic evidence of the impact on institutions, in this case the courts, of making these changes. Moreover, the new research described here also strongly suggests that cost savings are high enough to more than justify the investments needed.” The report points out the difficulties in implementation of the study, but determined that, one court was able to reduce the number of returns to court by over 70% by putting such a system in place in domestic violence cases involving people who spoke either English or Spanish. The Travis County Court in Austin, Texas, deployed computer software that generated orders as directed by the judge, and the software automatically used only standardized easy-to-understand English to create the full court orders. Where needed, the software then used approved similarly easy-to-understand Spanish translations of the standardized language to create a translation of the order. The researchers then studied the rate of return to court for alleged violations for the 6-week period following the order and found the over 70% reduction overall. They were then able to estimate the total savings from this reduction as over \$100,000 over a 3-month period.

Another recent study is by Shanahan, Colleen F. and Carpenter, Anna E. and Mark, Alyx, **Can a Little Representation Be a Dangerous Thing?** 67 Hastings L. J. 1367 (2016); Temple University Legal Studies Research Paper No. 2016-15.⁷⁹ According to

⁷⁴ The paper can be found at <http://www.internationallegalaidgroup.org/index.php/papers-publications/conference-papers-reports/category/5-edinburgh-2015-conference-papers>

⁷⁵ The ABA did a chart on impact studies and state legal needs studies at http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj_commission_self-assessment_materials1/studies.html

⁷⁶ See <http://legalaidresearch.org/search-filter#!/topic=223>.

⁷⁷ [MS - Mississippi Access to Justice Commission Releases Study Showing Significant Economic Impact of Legal Aid](#)

⁷⁸ https://richardzorza.files.wordpress.com/2016/11/plain-language-report_10-24-16.pdf

⁷⁹ Available at SSRN: <https://ssrn.com/abstract=2731305>

the Abstract: “Access to justice interventions that provide a little representation, including nonlawyer representation and various forms of limited legal services, may be valuable solutions for low- and middle-income Americans. However, a thoughtful approach to improving access to justice efforts should recognize that a little representation may have risks. In particular, one potential risk of a little representation is that while it provides assistance with a discrete legal need in a specific moment, the nature of the assistance is incompatible with challenging the law. As a result, individual litigants do not have the benefit of legal challenges in their own cases and our legal system develops devoid of law reform that reflects the needs of low- and middle-income litigants.”

Enrique Pumar and Faith Mullen, **The Community Listening Project**, Public Welfare Foundation, DC Consortium of Legal Services Providers, Catholic University of America April 1, 2016. The Community Listening Project, sponsored by the DC Consortium of Legal Service Providers, assessed the various challenges experienced by D.C.'s poorest residents in an effort to determine how to better serve members of the community in most need of assistance. Gathering insight from 600 low-income residents through focus groups and directly administered surveys, this study makes use of quantitative and qualitative methods to evaluate barriers that prevent individuals from overcoming poverty. Key findings include:

- Housing was the most cited concern for residents in the past two years, identified by 30% of participants w/ issues related to quality and accessibility; 36% expressed worries about safety in current living arrangements
- Nearly a third of participants identified as homeless, expressing concern about the quality and availability of shelters as well as the dangers of living on the streets; almost 75% of those who live at a regular location on the streets had been victimized
- Crime is a major issue as a third of participants identified as victims, the majority involving property offenses; meanwhile, a fourth expressed having problems with law enforcement ranging from unwarranted stops and rough treatment to feeling one's concerns were not taken seriously
- A vast majority of participants felt strongly that much needed legal services were too costly, with many discouraged from searching due to a perceived lack of adequate, affordable help; those who did have access to a lawyer believed cost correlated positively with the quality of services
- Typically relying on public transportation, participants expressed concern about rising costs and unreliable public services,

ACCESS TO JUSTICE ARTICLES

Among articles that do not fit within prior categories are:

Chase T. Rogers, **Access to Justice: New Approaches to Ensure Meaningful Participation**, 90 New York University Law Review 1447 (November 2015). The Brennan Lecture at the law school by the Chief Justice of the Connecticut Supreme Court discussed innovative approaches that courts are employing and developing to ensure that all participants in court proceedings have meaningful access to justice. Approaches included making the most of technological advancements to provide electronic access to information and to promote an understanding of the legal process, working with the legal community to provide representation to self-represented parties, and examining the legal process in order to simplify procedures, better manage cases, control costs, and provide workable alternatives to traditional methods for resolving disputes.

Five Broad New Ideas to Cut Through the Access to Justice-Commercialization-Deregulation Conundrum by Richard Zorza , 29 Georgetown Journal of Legal Ethics 683 (2016). Richard proposes fully achieving that 100 percent access goal by integrating broad regulatory changes with largely positive economic incentives on courts, bar and legal aid designed to increase efficiency and reduce costs, and with politically achievable ways of bringing in additional resources. The five proposed solutions are: (1) Releasing non-profit legal-serving entities from almost all regulation, while moving the subsidy system of legal aid to a genuinely competitive model; (2) Deploying a mix of more limited de-regulation on the bar as a whole, combined with inter-related mandated sliding fees and broad tax incentives, for both litigants and providers; (3) Maintaining almost all regulation, but placing the obligation of ensuring and providing 100 percent access to justice services on the bar as a whole, while giving the bar the authority to tax its members to fulfill that obligation and modify regulation; (4) Internalizing all costs of access to justice into the court system, in order to incentivize court simplification and some appropriate deregulation; and (5) Allowing for broad National Technology Limited Practice Licenses on condition of free services for the poor and reasonable ones for middle income, and with appropriate regulatory relaxations.

David Udell, National Center for Access to Justice, **Taking Stock of the Civil Legal Aid Movement in 2015: the Year the Pieces Came Together to Increase Access to Justice in the United States**, December 31, 2015. This document outlines the civil legal aid reform initiatives that occurred in the United States in 2015, and projects the movement's course in 2016.⁸⁰

Richard Zorza has put together [This new Table](#) that compares three sets of ideas: the [Guidance for NCSC Grants for Strategic Planning funded by Public Welfare Foundation](#) to implement the [CCJ/COSCA Resolution](#), the [Report of the ABA Commission of the Future of Legal Services](#), and the [NCSC/IILS Civil Justice Initiative Report also endorsed by CC/COSCA Resolution](#).

⁸⁰ <http://legalaidresearch.org/pub/4883/taking-stock-of-the-civil-legal-aid-movement-in-2015-the-year-the-pieces-came-together-to-increase-access-to-justice-in-the-united-state>

Legal Aid Society of San Mateo County, Community Legal Services in East Palo Alto, The Anti-Eviction Mapping Project, **San Mateo County Eviction Report 2016**, December 31, 2016. This report is an analysis of 3,145 eviction cases handled by the Legal Aid Society of San Mateo County and Community Legal Services in East Palo Alto over a three-year period. The data provides the first attempt to evaluate eviction activity in San Mateo County on a wide scale.⁸¹

Raymond H. Brescia, Four Questions at the Intersection of the Legal Profession and Technology, for Both Evangelists and Skeptics, [Albany Law Journal of Science and Technology, Vol. 26, 2016](#)

Rebecca L. Sandefur, **Americans' Experience with Civil Justice Problems and the Role of Civil Legal Assistance**, February 29, 2016. Rebecca Sandefur's presentation before the White House Legal Aid Interagency Roundtable details the prevalence of civil justice problems in the lives of the American population and legal aid's role in solving these problems. Her research shows that more than half of Americans experience a civil justice problem every year to 18 months, and an even higher percentage of racial and ethnic minorities and poor people are vulnerable to justice problems. However, many do not recognize their issues as legal problem and thus do not seek services from legal aid. Sandefur's research shows that legal aid and intervention can help those with civil justice problems to rectify their issues more favorably. Additionally, legal aid is helpful in preventing a single civil justice issue from cascading into many more, which is a very common occurrence under such circumstances.⁸²

Rebecca L. Sandefur, **What We Know And Need To Know About The Legal Needs Of The Public**, *67 South Carolina Law Review*, 443 (2016)⁸³

Jeffrey Selbin and Scott L Cummings, **Poverty Law: United States in** James D Write, *International Encyclopedia of the Behavior and Social Sciences*, 2nd Edition, Vol. 18. Oxford: Elsevier pp. 733-740. This article discusses the changes in poverty law in the United States. The authors contend that the rise of the federal welfare state shaped the contours of poverty law in the first half of the twentieth century. This combined with the rights revolution at mid-century to mobilize legal services lawyers and courts in the War on Poverty, which was the zenith of the antipoverty movement. The welfare state's subsequent decline and federal court retrenchment channeled the antipoverty movement in new directions forged by decentralization, privatization, and globalization: moving it downward (from federal to local), outward (from state to market), and beyond (from domestic to global).

Christopher Albin-Lackey, **Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor**, Human Rights Watch, January 20, 2016. Incorporating over 100 interviews as well as relevant literature and empirical data, this article

⁸¹ <http://legalaidresearch.org/pub/4896/san-mateo-county-eviction-report-2016/>

⁸² <http://legalaidresearch.org/pub/4676/americans-experience-with-civil-justice-problems-and-the-role-of-civil-legal-assistance/>

⁸³ <https://perma.cc/85B8-HZPF>

develops a comprehensive assessment of practices that fail to serve equal access to justice in debt buying cases. Additionally, it describes potential solutions to alleviate inequality in the courts through reform legislation and increased funding for legal aid programs focused on serving low-income clients.⁸⁴

How Can Legal Services Better Meet the Needs of Low-Income LGBT Seniors? By Denny Chan and Vanessa Barrington of Justice in Aging (June 1, 2016) was published to help raise awareness of the additional legal needs LGBT seniors may face that are layered on top of the more common needs of older adults.⁸⁵ The organization proposes that because low-income LGBT older adults have lived with decades of discrimination that have led to higher rates of poverty, this group of older Americans has an even greater need for legal services to defend their rights and ensure they have access to the income supports, health care, and housing they need. The report concludes by encouraging legal services to gain competence in the legal issues facing this group, finding creative ways to reach older LGBT individuals who need help, and developing the cultural competency to build trust.

Finally, Earl Johnson completed his book on the history of civil legal aid: **To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States.**⁸⁶ See also my book review.⁸⁷

CONCLUSION

While the trends in US civil legal aid over the last fifteen years continued through 2016, the election in 2016 changed the picture. The new Administration proposed the elimination of funding for LSC. At the time of this writing, we do not yet know the full extent of the problem for LSC funding. The Congress has not acted on a final FY 2018 budget. Because of increased bi-partisan support for LSC, Administration proposals to eliminate may not be enacted.

Through 2017, there were increases in state funding as well as from other funding sources. The decreases in IOLTA funding have slowed although IOLTA funding remains lower than before the Great Recession. There are more Access to Justice Commissions and increased attention to civil legal aid at the state level. The notion of a right to counsel in civil matters has gained renewed attention. Yet, the basic civil legal aid system has not closed the “justice gap.” Efforts to expand access through technology and self-help representation activities continued and have expanded, but the fundamental problem remains: there are not enough actual staff lawyers, paralegals,

<http://legalaidresearch.org/pub/4764/rubber-stamp-justice-us-courts-debt-buying-corporations-and-the-poor/>⁸⁴

⁸⁵ <https://www.justiceinaging.org/wp-content/uploads/2016/06/How-Can-Legal-Services-Better-Meet-the-Needs-of-Low-Income-LGBT-Seniors.pdf>

⁸⁶ <https://www.amazon.com/Establish-Justice-All-volumes-Future/dp/0313357064>

⁸⁷ <http://heinonline.org/HOL/LandingPage?handle=hein.journals/geojpvlp23&div=16&id=&page=>

lay advocates, law students and private attorneys available to meet the huge needs of low-income persons for advice, brief service and full representation. With the Obama Administration came the possibility that there would be increased efforts to expand the civil legal aid system to address significantly more of the legal needs of low-income persons in the United States through increased federal funding and supportive reauthorization legislation and an effort to rebuild the legal aid infrastructure. This did not happen. The Congresses elected since 2010 have significantly changed the possibilities for increased funding and major new advances.

APPENDIX

BACKGROUND on US CIVIL LEAL AID SYSTEM

CURRENT LEGAL AID SYSTEM

Civil legal aid in the United States is provided by a large number of separate and independent staff-based service providers funded by a variety of sources.⁸⁸ The current overall funding is approximately \$1.582 billion.⁸⁹ The largest element of the civil legal aid system is comprised of the 133 programs that are funded and monitored by LSC. LSC is also the largest single funder, but overall, far more funds come from states and IOLTA programs than LSC.⁹⁰ In addition, there are a variety of other sources, including local governments, other federal government sources, the private bar, United Way, and private foundations.

In addition to the LSC-funded providers, there are many other legal services providers that do not receive LSC funds but are supported by funds from these other sources. Most are small entities that provide limited services in specific locales or for particular client groups, but many are full-service providers that operate alongside the LSC providers in the jurisdictions they both serve. For example, in the District of Columbia, the largest single general service provider is the Legal Aid Society of DC, a non-LSC funded provider.

These staff-based providers are supplemented by approximately 900 pro bono programs, which exist in every state and virtually every locale.⁹¹ These pro bono programs are either components of bar associations, component units of legal aid staff programs, or independent nonprofit entities with staff that refers cases to lawyers on the pro bono panels. Law school clinical programs and self-help programs also supplement the staff delivery system. There remain a very few “judicare” programs directly funded by either LSC or other funders; indeed, LSC funds only one small judicare program, which now has staff attorneys and paralegals who deliver legal assistance in some

⁸⁸ We do not know the exact number of civil legal aid programs. Previously I identified approximately 500 civil legal aid programs around the country. If we also include the 160 programs affiliated with the Catholic Legal Immigration Network (www.cliniclegal.org) and the law school clinical programs operated by the 204 law schools, then we reach a total of 864. This figure excludes the 900 pro bono programs identified by the American Bar Association. Another calculation done by NLADA concluded that 1147 staff-based programs, employing 6783 FTE attorneys, are involved in some form of civil legal assistance to the poor.

⁸⁹ The data on funding comes from the ABA Resource Center for Access to Justice Initiatives, a project of the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants.

⁹⁰ IOLTA stands for “Interest on Lawyer Trust Account.” IOLTA programs capture pooled interest on small amounts or short-term deposits of client trust funds used for court fees, settlement payments, or similar client needs that had previously been held only in non-interest-bearing accounts.

⁹¹ This estimate comes from Steve Scudder, Committee Counsel, ABA Standing Committee on Pro Bono and Public Service; Directory of Pro Bono Programs, <http://www.abanet.org/legalservices/probono/directory.html#>.

cases.⁹² It is very rare that a funder will directly fund, by contract or otherwise, individual lawyers or law firms. However, some staff attorney programs have created judicare components or contracted with individual lawyers and law firms, who are paid by the staff program to provide legal assistance to certain groups of clients.

The United States system also includes approximately thirty-eight state advocacy and support organizations that advocate before state legislative and administrative bodies on policy issues affecting low-income persons.⁹³ Some of these also provide training and technical support to local legal aid advocates on key substantive issues.⁹⁴ Moreover, more than 30 entities are engaged in advocacy on behalf of low-income persons at the federal level. Fifteen of these were formerly funded by LSC and were part of the national support network; others never were funded by LSC.⁹⁵

The US system has a diverse set of programs providing civil legal assistance, a range of initiatives to serve clients, a wide range of funding sources, considerable fragmentation of the civil legal aid system, lack of state coordination and inequality in funding both across states and within states. Rebecca Sandefur and her colleague Aaron Smyth have issued a report, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project* (American Bar Foundation) October 7, 2011 that describes these trends and provides a national overview and state by state information on who is eligible for civil legal assistance, how services are produced and delivered, how eligible people may connect with services, how civil legal assistance is funded and coordinated and how both free and fee generating limited-scope civil legal services are provided.

Over the last twenty years, the civil legal aid system has begun in earnest to utilize innovations in technology to improve and expand access to the civil justice system. As a result, low-income persons have access to information about legal rights and responsibilities and about the options and services available to solve their legal problems, protect their legal rights, and promote their legal interests. Technological innovation in virtually all states has led to the creation of Web sites that offer community legal education information, pro se legal assistance, and other information about the courts and social services. Most legal aid programs now have Web sites with over 300 sites.⁹⁶ All states have a statewide website, most of which also contain information

⁹² The LSC funded judicare program is Wisconsin Judicare, Inc., in Wausau, Wisconsin.

⁹³ Alan W. Houseman, *Civil Legal Aid in the United States: An Overview of the Program and Developments in 2005*, at 4 (July 2005), available at http://www.clasp.org/publications/us_overview_program_2005.pdf [hereinafter *Overview*]; Alan W. Houseman, *The Missing Link of State Justice Communities: The Capacity in Each State for State Level Advocacy, Coordination and Support*, Project for the Future of Equal Justice and the Center for Law and Social Policy (Nov. 2001), available at http://www.clasp.org/publications/missing_link.pdf [hereinafter *Missing Link*].

⁹⁴ *Overview*, *supra* note 8, at 4; *Missing Link*, *supra* note 8.

⁹⁵ The number of national support and advocacy centers is based on my own calculation. Pine Tree Legal Assistance lists twenty-four national advocacy centers (www.ptla.org/ptlasite/links/support.htm) and the Sargent Shriver National Center on Poverty Law lists six additional centers not on the Pine Tree web site listing on the inside back cover of the *Clearinghouse Review*.

⁹⁶ Pine Tree Legal Assistance lists 232 legal services sites on its webpage, <http://www.ptla.org/ptlasite/links/services.htm>.

useful both to advocates and clients. Most of these statewide web sites were made possible by the Technology Initiative Grants program of LSC. All of these state sites can be accessed through www.lawhelp.org. Half of the sites are hosted on one platform operated by Pro Bono net. Dozens of national sites provide substantive legal information to advocates; other national sites support delivery, management, and technology functions. Many program, statewide, and national websites are using cutting-edge software and offering extensive functionality. Projects in many states use kiosks with touch-screen computers that allow clients to produce court-ready pleadings and access to other services, such as help with filing for the Earned Income Tax Credit. Video conferencing is being used in Montana and other states to connect clients in remote locations with local courthouses and legal services attorneys.

Finally, increasing numbers of legal aid programs across the country, in partnership with the courts and legal community, are using document assembly applications, most notably HotDocs and A2j Author to expand and make more efficient the provision of legal services to clients. These projects generally focus on the use of document assembly for pro se resources used by the public and automated documents used by legal aid staff to more efficiently represent their clients. Many of these projects nationally are coordinated through Law Help Interactive, which is a project of Pro Bono Net.⁹⁷

A2J Author uses HotDocs Online software to assist self-represented litigants in a web mediated process to assess eligibility, gather pertinent information to prepare a set of simple court forms, and then deliver those forms ready to be signed and filed. A2J Author is equipped with “just in time” help tools, including the ability to speak each word of the interview to the user in English or Spanish. The user can be directed to other websites to obtain explanations of technical terms.

In addition, there has been a rapid expansion of efforts by courts, legal aid providers, and bar associations to help people who are attempting to represent themselves in courts. Civil legal aid programs are devoting substantial time and resources to address the issue of assistance to pro se litigants. Many legal aid programs throughout the country operate self-help programs independently or in conjunction with courts. Some programs provide only access to information about the law, legal rights, and the legal process in written form, on the internet, on videotape, through seminars, or through in-person assistance. Other programs actually provide individualized legal advice and often provide also legal assistance in drafting documents and advice about how to pursue cases. Often, programs provide both printed and internet-accessible forms for use by persons without legal training, and they may provide also assistance in completing the forms.

A critical part of expanding access has focused on a range of limited legal assistance initiatives to provide less than extended representation to clients who either do not need such extended representation in order to solve their legal problems or live in areas

⁹⁷ <cid:part1.01080802.04000605@iowalaw.org><http://www.probono.net/>

without direct access to lawyers or entities available to provide extended representation. Many legal aid programs now operate legal hotlines, which enable low-income persons who believe they have a legal problem to speak by telephone to a skilled attorney or paralegal and receive advice and brief service. Legal hotlines may provide answers to clients' legal questions, analysis of clients' legal problems, and advice on solving those problems so that the client can resolve the problem with the information from phone consultation. Hotlines may also perform brief services when those are likely to solve the problem and make referrals if further legal assistance is necessary. Hotlines now operate in over 92 programs in forty-five states, Puerto Rico, and the District of Columbia.⁹⁸ Some hotlines focus on particular client groups, such as the elderly. Others serve the low-income population in general. Finally, more and more states have a central phone number (or several regional phone numbers) that clients can call to be referred to the appropriate program or to obtain brief advice about their legal problems.

Legal Services Corporation

In 1974, Congress passed and the President signed the Legal Services Corporation Act, the comprehensive legislation to make permanent the legal services program started under the Economic Opportunity Act. The LSC Act was reauthorized in 1977, but has not been reauthorized since.

LSC is not a federal agency, nor a government controlled corporation, but a nonprofit corporation established with the powers of a District of Columbia corporation and those provided by the LSC Act. The President of the United States appoints a bipartisan eleven-member board that must be confirmed by the Senate. Board members serve in a volunteer capacity, are not Executive branch employees and, under the LSC Act, cannot be fired by the President. Board members serve for three-year terms but hold over at the conclusion of their terms until new board members are qualified, i.e. confirmed by the Senate. The Chair of the board is chosen by the board, not by the President. The LSC board also appoints a president for LSC as well as certain key officers of the Corporation who serve at the pleasure of the board. The LSC president appoints the remaining members of the LSC staff. The LSC president and staff are not federal employees.

Unlike many federal agencies or government corporations, the LSC president administers the Corporation, making all grants and contracts. The LSC board does provide general oversight of LSC, makes broad policies, and promulgates the rules, regulations and guidelines governing LSC and the legal services grantees it funds. The board also submits its budget mark directly to Congress. The board generally meets at least four times a year for two days, with additional conference call meetings in between.

LSC funds 133 grantees that operate local, regional or statewide civil legal assistance programs with 813 offices throughout the country. Generally, one field program

⁹⁸ The data reported here is available in the State-By-State Legal Hotline Directory available on the website for the Technical Support for Legal Hotlines Project, sponsored by the Administration on Aging and the AARP Foundation, at www.legalhotlines.org.

provides legal services in a designated geographic area. In addition, LSC, with Congressional approval, has earmarked funds for migrant and Native American grants for specialized programs that deliver services to these populations. All legal services programs are private, nonprofit entities, independent of LSC. All LSC grantees are governed by boards which consist of 60% attorneys and one-third eligible clients. By LSC regulation, all programs must expend 12.5% of their basic LSC grant on the involvement of private attorneys in the delivery of legal services.

ELIGIBILITY AND RESTRICTIONS

Eligibility

The latest data from the American Community Survey indicate that 61.8 million Americans are eligible for civil legal assistance from LSC funded programs.

Legal aid programs funded by LSC have limitations on the clients that they can serve. The primary limitations relate to financial eligibility and status as an alien. LSC programs may use funds from sources other than LSC to serve individuals or groups who do not meet the LSC financial guidelines, but they may not serve aliens who do not meet the alien eligibility guidelines.

Legal aid programs that do not receive funding for LSC often restrict service to clients who meet financial eligibility guidelines. These guidelines often mirror the LSC guidelines but may be more generous or more restrictive than those guidelines, depending on the program's priorities or on restrictions that may be imposed by other funders.

LSC-funded programs may only use LSC funds to provide legal assistance to clients who meet specific financial eligibility guidelines. The basic rule is that LSC programs serve clients at or under 125% of the Poverty Guidelines,⁹⁹ or \$30,313 for a family of 4.

LSC programs set their own asset ceilings for individual clients. These asset ceilings may be waived under certain circumstances. LSC programs may serve individuals who meet the asset ceilings and whose income is below 125% of the current official Federal Poverty Guidelines (poverty guidelines), which are revised annually by the U.S. government. In addition, under certain circumstances LSC programs may serve individuals who meet the asset guidelines and whose income exceeds 125% of the poverty guidelines. LSC programs may serve, without regard to income, those

⁹⁹ This figure represents 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services under guidance from the Office of Management and Budget (in the Executive Office of the President). The poverty guidelines are income thresholds that were established in the 1963 and updated by a cost of living index each year. The research underlying the original thresholds was based on food expenditures by low-income families in 1955. Calculations at the time showed the families then spent about a third of their income on food. The low-income food budget was multiplied by three to come up with the poverty line. There has been much controversy about the adequacy of the poverty guidelines, but they have not been changed and remain the basis for eligibility and income distribution for many federal programs.

individuals who are seeking to maintain benefits provided by governmental programs for low-income individuals or families or whose income is primarily devoted to medical or nursing home expenses. LSC programs may also serve individuals whose income does not exceed 200% of the poverty guidelines if they are seeking to maintain or obtain certain governmental benefits or if the program has determined that they should be financially eligible based on certain other specified factors.¹⁰⁰

LSC-funded programs are also permitted to provide legal assistance to organizations of low-income persons, such as welfare rights or tenant organizations. To qualify for LSC funded assistance, the client organization must lack the means to retain private counsel, and the majority of its members must be financially eligible under the LSC regulations; or the organization must have as its principal activity the delivery of services to financially eligible members of the community.

LSC-funded programs are permitted to serve financially eligible individuals who are U.S. citizens or who are members of specified categories of aliens.¹⁰¹ LSC programs cannot assist undocumented aliens; aliens seeking asylum, refugee status, or conditional entrant status; or other categories of aliens who are legally in the U.S., including students and tourists.

Furthermore, LSC programs are not permitted to provide certain services to prisoners. Specifically, LSC programs cannot participate in civil litigation on behalf of a person incarcerated in a federal, state or local prison or participate in administrative proceedings challenging the conditions of incarceration.¹⁰² Also, LSC programs are not permitted to represent persons convicted of or charged with drug crimes in public housing evictions when the evictions are based on threats to the health or safety of public housing residents or employees.¹⁰³

Unlike civil legal aid plans in most developed countries, neither LSC nor most state funders impose a formal “merit” test on applicants for service and representation.¹⁰⁴ Nor is there a “significance test” required by LSC or state funders.¹⁰⁵ Programs may impose their own criteria for service, such as only providing advice and brief service in certain kinds of cases or providing assistance only in particular categories of cases or with regard to specific issues. But the decision to limit service is a program-by-program decision and not a decision made by LSC or most other major institutional funders, such as state IOLTA programs. Some other funders limit the use of their resources to certain clients or types of cases, such as domestic violence victims.

¹⁰⁰ See 45 CFR 1611.

¹⁰¹ 45 CFR 1626

¹⁰² 45 CFR 1637

¹⁰³ 45 CFR 1633

¹⁰⁴ A merit test requires some degree of possible success, such as the reasonable likelihood, reasonable probability, or reasonable possibility of success.

¹⁰⁵ A significance test usually is expressed as a significant or substantial interest and sometimes measured against a hypothetical “modest income litigant” and whether such a person would hire a lawyer in a particular case.

Civil legal aid programs generally do not impose co-payments or client contributions from the clients served, and neither LSC nor state funders require co-payments or client contributions. In fact, LSC prohibits its programs from using co-payments for clients eligible for LSC funded services. In addition, since the U.S. legal system is not generally a “loser pays” system, civil legal aid clients and programs are not usually required to reimburse an opponent’s legal fees and costs if they lose.

Restrictions

Much of the funding for civil legal aid programs is provided to the programs without earmarks on who can be served and what can be done. With these funds, the programs themselves make the key decisions about who will be served, the scope of service provided, the types of substantive areas in which legal assistance will be provided, the mix of attorneys and paralegals who will provide services, and the type of services provided (such as advice, brief services, extended representation, and law reform). While Congress has imposed restrictions on what LSC can fund and what its recipients can do, and a few other states have similar restrictions, in the U.S. system, LSC, IOLTA, and many other funders do not decide what kinds of cases programs will handle and which clients they will serve. It is the program itself that undertakes planning and priority setting and decides who will deliver the services (staff attorney or private attorney). As a corollary to this responsibility, it is the program that oversees how these services are delivered and evaluates the quality of work that is provided by its staff attorneys and the pro bono and paid private attorneys with whom the program works.

However, there are some government and private funding sources that limit their funding to specific types of clients (e.g., aliens) or specific types of cases (e.g., domestic violence). Civil legal aid programs can decide whether or not to seek this funding, and many do. It is the program itself that decides internally whether to seek such funding.

The U.S. Congress has imposed some restrictions on what types of cases civil legal aid programs funded by LSC can bring and what types of advocacy they can pursue even with non-LSC funds. LSC funded providers are precluded from most advocacy and representation before legislative bodies and in administrative rulemaking proceedings, except in a few circumstances. In addition, LSC programs cannot initiate, participate, or engage in any class actions. LSC programs are prohibited from representation in redistricting cases and from participating in any litigation with regard to abortion. Although prior to 1996 there had been some restrictions on what LSC-funded legal services programs could do, particularly with LSC funds, the 1996 restrictions prohibited LSC grantees from using funds available from most non-LSC sources to undertake those activities that are restricted with the use of LSC funds.

In other words, all of a LSC grantee's funds, from whatever source, are restricted.¹⁰⁶ Nevertheless, the restrictions do not cover most of the work that LSC programs can do on behalf of the low-income community, and LSC-funded programs can continue to provide representation in over 95% of the cases they were able to undertake prior to the imposition of the 1996 restrictions.

In 2009, Congress lifted the restriction on claiming, collecting and retaining attorneys' fees from adverse parties.

THE JUSTICE GAP

Through the innovative technologies described above, the civil legal aid system has made continuing progress in expanding access to legal information in most areas of the United States. But there is not enough funding available to provide all low-income persons who need it with legal advice, brief service, and particularly extended representation by a lawyer or paralegal. As a result, many low-income persons who are eligible for and need civil legal assistance are unable to obtain it.

Prior to the new Justice Gap study in 2017 noted above, LSC had conducted two earlier studies: "*Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*,"¹⁰⁷ examined the adequacy of available funding to meet the legal needs of the low-income population in the United States. The study was updated in 2009, employing the same methodology to document the continued need for civil legal aid among low-income Americans.¹⁰⁸ The studies revealed three main commonalities. First, both studies showed that for every client who received service from an LSC grantee, one eligible applicant was turned away. In other words, 50 percent of potential clients that request assistance are turned away due to lack of resources on the part of the program. Second, the studies each looked at a number of individual state studies addressing the civil legal problems faced by states' respective low-income residents conducted over the last nine years. Seven of the state studies validated the findings of the national study conducted by the American Bar Association (ABA) in 1994, which demonstrated that less than 20 percent of the legal needs of low-income Americans were being met. Finally, the studies identified the number of legal aid lawyers in both LSC and non-LSC funded programs, and compared that number to the total number of attorneys providing personal legal services to the general population. The study determined that, at best, there is one legal aid attorney for every 6,415 low-income persons. In contrast, the ratio of attorneys delivering personal legal

¹⁰⁶ For a more detailed discussion of the restrictions, see Alan W. Houseman, *Restrictions By Funders and the Ethical Practice of Law*, 67 *Fordham L. Rev.* 2187 at 2189-2190 (1999). See also Rebekah Diller and Emily Savner, *A Call to End Federal Restrictions on Legal Aid for the Poor*, Brennan Center for Justice (June 2009).

¹⁰⁷ See generally LEGAL SERVICES CORP., *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* (Sept. 2005), available at http://www.lsc.gov/press/documents/LSC%20Justice%20Gap_FINAL_1001.pdf.

¹⁰⁸ See generally LEGAL SERVICES CORP., *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* (Sept. 2009), available at http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf [hereinafter HOUSEMAN, JUSTICE GAP].

services to the *general* population is approximately one for every 429 persons, or fourteen times more.

Thus, the major problem in achieving meaningful access to a full range of high-quality legal assistance programs is the lack of programs with sufficient funding to provide the legal advice, brief service, and extended representation necessary to meet the legal needs of low-income persons.

However, there are two other related major inadequacies in the civil legal aid system. First, in many states, there are few, if any, non-LSC providers to ensure that low-income persons have access to the full range of services that they need and which cannot be provided by LSC recipients because of restrictions or limited resources. Second, state advocacy, training, and support are insufficient in many states and totally inadequate or non-existent in many others.

A significant gap in the civil legal aid system in the United States, and particularly in the many states with limited non-LSC resources, is the lack of providers that can (1) serve prisoners, aliens, and others who cannot be represented by LSC funded providers; (2) bring class actions and effectively; and (3) engage in advocacy in all relevant forums, including legislative and administrative rule-making and policy-making forums. In large parts of the country such providers do not exist, or, if they exist, they are small, under-funded, and not able to meet the need that exists. This problem is, in part, a result of the restrictions imposed on LSC-funded entities by the 1996 appropriation riders.¹⁰⁹

A final component of the “justice gap” is the lack of statewide support and coordinated advocacy. Historically, LSC and some IOLTA funders have sought to ensure coordination and support for all legal providers and their partners, along with a central focus on statewide issues of importance to low-income persons, including representation before legislative and administrative bodies. The loss of over \$10 million in state support funding as a result of the Congressional funding decision made in 1996 has taken a large toll on the state support structure that was previously in place.¹¹⁰ Many of the state support units and the regional training centers that were part of larger programs have been eliminated. In a number of states, there has been no state-level policy advocacy, no significant training of staff, no information sharing about new developments, no litigation support, and no effective coordination among providers. Several new entities have been created to carry on state level advocacy, particularly policy advocacy. However, virtually all of these new entities are severely under-funded

¹⁰⁹ Some have turned to the courts to address this fundamental challenge, initially culminating in the United States Supreme Court decision in *Velazquez v. LSC*, which struck down one part of the restriction that prohibited representation of clients in welfare cases where a challenge to a welfare law or regulation was necessary. 531 U.S. 533 (2001). The remaining 1995 restrictions were upheld. Three other cases unsuccessfully challenged LSC rules on “program integrity.” The “program integrity” provision requires that LSC programs “have objective integrity and independence from any organization that engages in restricted activities.” 45 C.F.R. §1610.8 (2005). The regulation sets out criteria by which LSC will measure compliance. It was these criteria and their implementation that were challenged.

¹¹⁰ *Missing Link*, *supra* note 8, at 6.

and under-staffed. Several of the remaining freestanding state support programs have survived, but, with a few exceptions, they have not made up the loss of LSC funds.¹¹¹

FUNDING

Where We Are Today

As noted above, the United States civil legal aid system is not funded by one principal source. There was over \$1 billion in the civil legal assistance system as of the beginning of 2017.

State General Revenue and Filing Fees:	\$336,499,000
IOLTA	\$63,070,000
Other Public Funds	\$391,046,000
Legal Community/Bar	\$110,342,000
CY Press	\$56,297,000
Foundation/Corporation Grants	\$151,648,000
Other Strategies (United Way, Attys Fees)	\$134,877,000
Legal Services Corporation	\$338,289,000

While LSC funds are distributed according to the 2010 census data on individuals living below the poverty line, the other funding sources are not distributed equally among states. There is a significant difference in funding among the states. In terms of dollars per poor people, states differed widely with 102.59 for a high, and \$9.30 for a low. The lowest-funded states are in the South and Rocky Mountain states, and the highest-funded states are in the Northeast, Mid-Atlantic, Midwest, and West.

While non-LSC funding sources have been steadily increasing overall, LSC funding has not kept pace. LSC funding today purchases less than half of what it did in 1980, the time when LSC funding provided what was called “minimum access” or an amount that could support two lawyers for each 10,000 poor people in a geographic area. Since 1980, LSC has been unable to convince Congress to appropriate sufficient funding to maintain the level of access achieved then. LSC has lost considerable ground because of three significant budget reductions (in 1982, 1996 and 2012) and the inability to keep with up inflation. The following chart presents a few funding comparisons:

LSC FUNDING COMPARED TO INFLATION

¹¹¹ A few states – including California, Florida, Massachusetts, New Jersey, New York, Ohio, Vermont, Washington, Michigan – have preserved and/or strengthened the capacity for state-level advocacy, coordination, and information dissemination; increased training; and developed very comprehensive state support systems.

Grant Year	Annual LSC Appropriation in Actual Dollars	Appropriation If It Had Kept Up With Inflation	Percentage Change From 1980 (Using 1980 Dollars)
1975	71,500,000		
1980	300,000,000	300,000,000	0.0%
1981	321,300,000	331,004,146	-2.9%
1982	241,000,000	351,219,424	-31.4%
1990	316,525,000	475,649,712	-33.5%
1995	400,000,000	554,737,587	-27.9%
1996	278,000,000	570,998,079	-51.3%
2002	329,300,000	623,444,568	-47.2%
2005	330,804,705	704,055,010	-53.0%

2007	348,500,000	733,178,279	-52.5%
2008	350,490,000	739,072,032	-52.6%
2009	390,000,000	752,938,299	-48.2%
2010	420,000,000	767,497,879	-45.3%
2011	404,200,000	783,790,743	-51.6%
2012	348,000,000	801,123,576	-56.6%
2014	365,000,000	861,902,912	-57.7%
2015	375,000,000	871,304,722	-57%
2017	385,000,000	936,391,172	-58.9%

In 2011 and 2012, LSC surveyed its 134 grantees about the impact of funding cuts. The survey included questions on staff reductions, furloughs, salary freezes, benefit reductions, and office closures. With 97% of grantees reporting, it was clear that most grantees are experiencing financial distress, including office closures, staff reductions, and decreased client services.

Highlights of the results include:

- Between 2010 and 2012, 923 full-time positions—385 attorneys, 180 paralegals, and 358 support staff—were eliminated due to funding cuts. This represents a 10.3% loss of legal aid staff in just two years.
- Including attrition, LSC grantees reported a total net reduction of 323 staff members in 2012—almost half of which (45.8%) were attorneys.
- 56% of the responding grantees projected budget deficits for 2012 in the amount of \$22 million.
- More than 54% of grantees expected to freeze salaries in 2012 and anticipated reducing employee benefits.
- 72% of grantees anticipated making significant changes in client services in 2012 as a result of funding cuts.

Over the last twenty-five years, there has been a radical shift in funding from LSC and federal sources to a far more diversified funding base, including substantial increases in funding from state sources. Many legal services providers have developed the ability to generate significant additional revenue at the state and local level. Overall, funding has grown in actual dollars and when adjusted for inflation, but LSC funding has continued to decline, as shown above. However, there is high variability among states in terms of success in attracting funding. There is a wide gap between the highest- and lowest-funded states – a difference so great that it makes talking about average funding on a national level almost meaningless.

As many commentators have pointed out, the United States system is funded far below the level of funding provided by most of the other Western, developed nations.¹¹² Even though the US is far behind virtually all developed countries with regard to civil legal aid funding, it is important to recognize that, over the last decade, the U.S. system has grown from approximately \$800 million to over \$1.34 billion (including the District of Columbia, Puerto Rico, and the territories).

Future Funding

Future funding for civil legal assistance will come from five sources:

- federal government;
- state and local governmental funds;
- IOLTA funds;
- private bar contributions; and

¹¹² See Earl Johnson, *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 *FORDHAM INT'L L. J.* 83 (2001).

- other private sources, such as foundations and United Way Campaigns.

1. Federal Funding through LSC

Even though forty-one states plus the District of Columbia now have non-LSC funding that exceeds LSC funding, and even though new funding will continue to come from non-LSC sources, increased funding from the federal government will continue to be essential for two reasons. First, civil legal service is a federal responsibility, and LSC continues to be the primary single funder and standard setter. Second, there are many parts of the country – particularly the South, Southwest, and Rocky Mountain states – that have not yet developed sufficient non-LSC funds to operate their civil legal assistance program without federal support.

Supporters of increased federal funding will have to overcome significant political barriers to substantially increase federal funding for civil legal assistance. Although LSC leadership has made substantial progress in developing a much stronger bipartisan consensus in favor of funding for LSC,¹¹³ the political leadership, particularly in the Congress, remains divided about whether there should continue to be a federal program and its scope.

2. State IOLTA and Governmental Sources

Since 1982, funding from state and local governments has increased from a few million dollars to over \$500 or more million.¹¹⁴ Until recently, this increase has been primarily through IOLTA programs, which have now been implemented in every state.¹¹⁵ But funding from court fees and general state revenue has now overtaken IOLTA funding in many states. Because of decreases in interest rates and the slowdown in economic activity as a result of the recession, IOLTA funds were reduced sharply between 2008 and 2017, and funding in 2018 is likely to continue at a low level. With the prospect of significant state budget deficits, state appropriations for legal services may also be reduced in the future.

IOLTA programs have developed a number of strategies to increase IOTA funding. Forty-four states (have adopted mandatory IOLTA and are no longer permitting lawyers to opt out. Thirty two states have adopted “comparability” provisions which require that financial institutions pay IOLTA accounts no less than the interest rate generally available to non-IOLTA depositors at the same institution. A few states have pursued strategies that designate what “reasonable fees” can be charged by the financial

¹¹³ John McKay *Federally Funded Legal Services: A New Vision of Equal Justice Under Law*, 68 TENN. L. REV. 101, 110-11 (Fall 2000).

¹¹⁴ The exact amount of state funding for civil legal assistance has not been fully documented, because much of this funding has gone to non-LSC funded programs, which, unlike LSC-funded programs, do not have to report to any central funding source.

¹¹⁵ In 2003, the United States Supreme Court upheld the constitutionality of the IOLTA program in a narrow 5-4 decision, *Brown v. Legal Foundation of Washington*. 538 U.S. 216 (2003). The Court held that although the IOLTA program does involve a taking of private property – interest in escrow accounts that was owned by the depositors – for a legitimate public use, there was no violation of the Just Compensation Clause of the Constitution because the owner did not have a pecuniary loss.

institution to the IOLTA account, making impermissible other fees that should be borne by the lawyer or law firm maintaining the account. Some have prohibited “negative netting” which is the practice of using earnings from one IOLTA account to pay fees on another IOLTA account. Finally, some states have established Honor Rolls or Prime Partner Programs under which banks that agree to pay a higher rate on IOLTA accounts receive recognition by the IOLTA program.

Within the last ten years, substantial new state funding has come from general state or local governmental appropriations, as well as efforts such as filing fee surcharges, state abandoned property funds, and other governmental initiatives. Obtaining (and retaining) state appropriations and filing fee/fine surcharges to fund civil legal aid has become more difficult as the country’s economic problems have continued. In response, bench and bar leaders, working closely with their legal aid providers, are redoubling their efforts to maintain and increase revenue. Funding in most states that use court fees and fines rather than appropriations as the funding mechanism for legal services remained level, but there were some significant changes in a few states.

3. Right to Counsel in Civil Cases at State Expense

In the United States, there is no general right to state-funded counsel in civil proceedings. The United States Constitution does not provide an explicit right to state-funded counsel in civil proceedings, although the Fourteenth Amendment does prohibit a State from depriving “any person of life, liberty, or property, without due process of law” or denying “to any person within its jurisdiction the equal protection of the laws.” Unlike *Gideon v. Wainwright*,¹¹⁶ in which the United States Supreme Court held that there must be counsel in criminal cases in which the defendant faces imprisonment or loss of physical liberty, the Court refused to find a constitutional right to counsel in civil cases when first faced with the issue in 1981. In *Lassiter v. Department of Social Services*,¹¹⁷ the Supreme Court held in a 5-4 ruling that the due process clause of the federal constitution did not provide for the guaranteed appointment of counsel for indigent parents facing the termination of parental rights. Rather, “the decision whether due process calls for the appointment of counsel for indigent parents in termination proceedings is to be answered in the first instance by the trial court, subject, of course, to appellate review.”¹¹⁸

This basic framework was continued in 2011 when the Supreme Court decided *Turner v. Rogers*, 131 S.Ct.2507 (2011) which held that a parent jailed for civil contempt due to failure to pay child support is not categorically entitled to counsel when (1) the state provides other procedural safeguards; (2) the contemnor’s opponent is neither the state nor represented by counsel; and (3) the matter is not “unusually complex.” The court also determined that there is not a presumption in favor of counsel when physical liberty is at stake. However, the Court did hold that the state must provide four safeguards to ensure due process. These were: (1) notice to the defendant that his “ability to Pay” is a critical issue in the contempt proceeding; (2) the use of a form to elicit relevant

¹¹⁶ 372 U.S. 335 (1963).

¹¹⁷ 452 U.S. 18 (1981).

¹¹⁸ *Lassiter*, 452 U.S. at 32.

financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status; and (4) an express finding by the court that the defendant has the ability to pay.

This decision has been viewed in very different perspectives. Some viewed the decision as a terrible loss with few redeeming qualities. For example, Professor Gene Nichol, the keynote speaker at a 2011 conference sponsored by the National Coalition for the Civil Right to Counsel ¹¹⁹said of Turner: “Turner v. Rogers is not a lodestar or watershed of progress...it did not impose a requirement of meaningful and effective opportunity to be heard...” On the other hand many access to justice proponents found in Turner “a new day for judges and the self-represented,” and a “watershed for the right to counsel and self-representation.” ¹²⁰ As Russell Engler states in a thorough discussion of this issue, “while the decision represents a civil-right-to-counsel ‘loss’, it might well represent an access-to-justice ‘win.’” ¹²¹

No state constitution explicitly sets out a state-funded right to counsel in civil cases. Virtually all state constitutions have due process and equal protection clauses whose wording may differ from the federal constitution but whose scope have often been interpreted to be similar to or even broader than the federal constitution’s provisions. These provisions have been the primary legal framework for asserting the right to counsel in civil cases at state expense. Many state constitutions have “access to court” provisions, and some have provisions incorporating English common law rights. Recently, advocates have pursued these provisions to assert the state-paid right to civil counsel.

In limited categories of cases, some state legislatures have enacted statutes requiring state-funded counsel to be appointed for one or more parties,¹²² and the highest courts in some states have judicially decided that state-funded counsel should be provided as of right to some parties.¹²³ These state-funded counsel provisions or court rulings are

¹¹⁹ The National Coalition for the Civil Right to Counsel is a coalition of over 240 participants from 35 states and is housed at the Public Justice Center in Maryland.

¹²⁰ Richard Zorza has written numerous articles laying out a detailed set of best practices for judges in light of Turner. See, e.g., Richard Zorza, “A new Day for Judges and the Self-Represented: The Implications of Turner v. Rogers,” *Judge Journal*, Vol 50, No. 4 Fall 2011 at 16 and “Turner v. Rogers: The Implications for Access to Justice Strategies” *Judicare*, Vol. 95, No.6, May-June 2012 at 255.

¹²¹ . See “*Turner v. Rogers* and the Essential Role of the Courts in Delivering Access to Justice,” 7 *Harvard Law & Policy Review* 31 (2013). See also Benjamin Barton & Stephanos Bibas, “Triaging Appointed-Counsel Funding and Pro Se Access to Justice,” 160 *U. Pa. L. Rev.* 967 (2012); John Pollock & Michael Greco, “Response, It’s Not Triage if the Patient Bleeds Out,” 161 *U. Pa. L. Rev.* PENumbra 40 (2012) and John Pollock, “The Case Against Case-by-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases.” 61 *Drake L. Rev.* 763 (2013).

¹²² Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 *CLEARINGHOUSE REVIEW* 245 (July-Aug. 2006).

¹²³ A thorough exploration of state cases since *Lassiter* is found in the article by Clare Pastore, *Life after Lassiter: An Overview of State-Court Right-to-Counsel Decisions*. 40 *CLEARINGHOUSE REVIEW* 186 (July-Aug. 2006). See also 92 *A.L.R.5th* 379 (2001 & Supp. 2006) (providing detailed analysis of state court cases involving termination of parental rights and the developments subsequent to *Lassiter*); Bruce A. Boyer, *Justice, Access to the Courts, and the Right to Free Counsel for Indigent Parents: The Continuing Scourge of Lassiter v. Department of Social Services of Durham*, 36 *LOY. U. CHI. L.J.* 363, 367 (2005) (noting that forty states now provide free counsel

generally in the family law area and civil commitment. There are a few federal statutory requirements for appointment of counsel in civil cases, but these are very limited.

Thus, in the vast majority of civil cases, there is no constitutional or statutory right to state-funded counsel. Based on the usual caseloads of most general civil legal aid providers, it would be fair to conclude that there is no statutory right to counsel in over 98 percent of the cases that would directly involve low-income persons as defendants or plaintiffs.¹²⁴

Most commentators do not believe that there will be any significant right-to-counsel developments at the federal level because of the current make-up of the United States Supreme Court. Instead, most action that is occurring is focused at the state level in a few states. Major initiatives have been underway in several states to litigate a constitutional right to civil counsel at state expense.¹²⁵ So far, there have not been any recent state court decisions expanding the right to counsel in civil cases beyond the family law areas described above.

In addition to litigation in the courts, there are significant efforts to develop more expansive state /statutes that provide for the right to counsel in civil cases at state expense in situations that go far beyond the few areas that now provide for such counsel.¹²⁶ In 2010, the Maryland Access to Commission published *Implementing a Civil Right to Counsel in Maryland*. In the first part of the document, the Commission articulates how a civil right to counsel in basic human needs cases might be implemented should a right be established by case law or legislation. In the second section, the Commission tries to answer the difficult question of “how much might it cost?” In 2013, a Maryland bill to create a statewide task force to explore civil right to counsel issues was signed into law. The Maryland Access to Justice Commission will provide staff for the task force which is to report to the Governors, the Chief Judge of the Court of Appeals, and the presiding offices of the legislature by October 1, 2014.

In several states, advocates have turned to setting pilot projects that provide counsel in a category or categories of cases:

for parents in state-initiated termination-of-parental rights actions, up from thirty-three at the time of the *Lassiter* decision); Rosalie R. Young, *The Right to Appointed Counsel in Termination of Parental Rights Proceedings: The States' Response to Lassiter*, 14 *TOURO L. REV.* 247 (1997) (particularly note Tables I and II at pp. 276, 277).

¹²⁴ Data from the Legal Services Corporation tracks the number and type of cases that LSC-funded programs bring. According to 2007 data, for example, LSC-funded programs provided some kind of legal assistance in 906,507 cases. They provided legal assistance in only 2,167 termination of parental rights cases, or .24% of the total cases, and in 787 mental health cases, or .09% of the cases brought. Even assuming there is a statutory or constitutional right to civil counsel in all of these cases, then LSC-funded entities handled only .3% of the total cases, or less than one percent. Even if we assume in some other categories of cases there is a statutory right to counsel, it is doubtful that the total number of cases would reach one percent. Most state funders do not require collection of this level of case-type data. When non-LSC funded programs have collected similar data, the percentages have historically tracked the data for LSC-funded programs.

¹²⁵ See 40 *CLEARINGHOUSE REVIEW* (July-Aug. 2006) (discussing various theories and state initiatives throughout the volume).

¹²⁶ Clare Pastore, *The California Model Statute Task Force*, 40 *CLEARINGHOUSE REVIEW* 176 (July-Aug. 2006); Russell Engler, *Toward a Context-Based Civil Right to Counsel Through “Access to Justice” Initiatives*, 40 *CLEARINGHOUSE REVIEW* 196 (July-Aug. 2006).

California had the most extensive pilot project that is described above.

Massachusetts began pilot projects in 2009. The two Massachusetts pilot projects are explored the impact of full representation in eviction cases. The pilots grow out of the work of the Boston Bar Association's Task Force on Expanding the Civil Right to Counsel, as described in its report: *Gideon's New Trumpet: Expanding the Civil Right to Counsel in Massachusetts*.¹²⁷ The pilot projects tested the theory that an expanded civil right to counsel should target the cases in which counsel is most likely to affect the outcome. Representation was focused on scenarios identified through a survey of housing experts in the state: 1) where the eviction was tied to a mental disability; 2) where it involves criminal conduct, and 3) where a viable defense exists and listed factors reveal a power imbalance likely to deprive a tenant of an affordable apartment. One pilot project was situated in a specialized housing court and another in a generalized district court, since evictions occur in both types of courts. In addition to randomized studies, ¹²⁸ the Task Force supplemented the statistical analysis with other evaluation tools, including follow-up interviews with clients, project attorneys, Court clerks, judges, and homeless shelter providers, to better understand the impact of representation on outcomes and on the tenants' lives.

According to the March 2012 Report, *The Importance of Representation in Eviction Cases and Homeless Prevention* issued by the Boston Bar Association Task Force on the Civil Rights to Counsel, both pilot projects prevented evictions, protected the rights of tenants, and maintained shelter in a high rate of cases. In Quincy, two-thirds of the tenants who received full representation were able to stay in their homes, compared with one-third of those who lacked representation. Even for those represented tenants who moved, they were better able to manage their exit on their own timetable and their own terms. Full representation therefore allowed more than two-thirds of the tenants in this pilot to avoid the destabilizing consequences of eviction, including potential homelessness. Represented tenants also received almost five times the financial benefit (e.g., damages, cancellation of past due rent) as those without full representation.

In Northeast, because a robust program already made limited representation available to all parties, the study essentially compared varying levels of legal representation, rather than full representation and a lack of representation. The data there showed no measurable difference in outcomes between the treated and control groups. One-third of the tenants in each group kept possession and the financial benefits between the two groups were also similar. These possession rates for both the treated and control groups of tenants were well above the state average for possession rates for tenants generally, confirming the importance of representation in Northeast as well as Quincy.

The Report concluded: "The findings of both pilot studies confirm that extensive assistance from lawyers is essential to helping tenants preserve their housing and avoid

¹²⁷ See http://www.bostonbar.org/prs/nr_0809/GideonsNewTrumpet.pdf.

¹²⁸ See Dr. James Greiner, Cassandra Wolos Pattanayak and Jonathan Hennessy, "The Limits of Unbundled Legal Assistance: A Randomized Study in Massachusetts District Court and Prospects for the Future," 126 *Harvard Law Review* 903 (February 2013).

the potential for homelessness, including all of the far-reaching tangible and intangible costs to tenants and society generally that are associated with homelessness... Based on all of the available data, the Task Force concludes that expanding the right to counsel, including full representation as of right, makes an enormous difference in the types of eviction cases identified by the targeted representation model in both the District Court and the Housing Court.”

A collaboration of legal services programs in Massachusetts recently launched a new pilot project to provide legal help to people facing evictions in MetroWest and Worcester County. Funded by a \$400,000 grant from Attorney General Martha Coakley’s office, the HomeCorps Homelessness Prevention Project will provide free representation to low-income tenants and landlords in Worcester Housing Court and Framingham District Court. As manager of the project, the Massachusetts Law Reform Institute will be working with regional legal services providers, including MetroWest Legal Services in Framingham, as well as a special advisory panel. In addition to assisting with eviction cases in court, the project also aims to measure how successful its efforts are in terms of helping residents stay in their homes.

PRO BONO

Pro bono efforts are the primary supplement to the staff attorney system and, in many respects, are an integral and integrated part of that system. Pro bono efforts in the United States continue to expand and engage more private attorneys, providing greater levels of service.

The American Bar Association’s Standing Committee on Pro Bono and Public Services recently issued a new report—Supporting Justice III: A Report on the Pro Bono Work of America’s Lawyers (March 2013)—which reports on a 2012 survey completed by 2876 lawyers throughout the country in private practice, corporate counsel offices, government, and academic settings.¹²⁹ This report is based on a new survey similar to the ones done by the ABA in 2004 and 2008. The new study focused directly on what lawyers did for persons of limited means and for organizations that address the needs of persons of limited means. The study found that 63% of respondents worked on matters that address the everyday legal problems of people in poverty and 36% of the lawyers who responded met the ABA’s aspirational goal of providing at least 50 hours of free pro bono services to persons of limited means.

There are many steps that have been undertaken to increase pro bono including the ABA Annual Pro Bono week, various state and local bar efforts to increase and reward pro bono efforts, and various initiatives outlined below that LSC has taken. However, we do not know: the quality of pro bono services; how priorities are set within the pro bono systems; the relationships between nonprofit providers and law firms who provide assistance pro bono including which cases are referred and why; how pro bono is

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http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf

marketed; and how law firms makes decisions about which cases they take and the relationship to this pro bono effort and community need.¹³⁰

The Legal Services Corporation has been a leader in encouraging pro bono. Since 1981, LSC-funded programs have had to provide a portion of their funding for private attorney involvement. Currently, each LSC-funded provider must expend 12.5% of its LSC funding for private attorney involvement.¹³¹ LSC did adopt a new Private Attorney Involvement regulation (45 CFR 1614 (November 14, 2014) which expanded whom could be counted as private attorneys, made the uses of the 12.5% funding more flexible and updated the regulation to address the delivery system in 2014 and not the system of 1985 when the regulation was developed. The new regulation grew out of the Legal Services Corporation, *Report of the Pro Bono Task Force* at 2, October 2012, available at <http://lri.lsc.gov/legal-representation/private-attorney-involvement/resources> which had recommended that “LSC Should Revise Its Private Attorney Involvement (PAI) Regulation to Encourage Pro Bono.”

In addition to the LSC initiatives, there continue to be substantial efforts by both the American Bar Association and state and local bar associations to increase pro bono activity among all segments of the practicing bar, including government attorneys and corporate counsel.

Pro bono work is an aspirational ethical goal in the U.S. It is included in Rule 6.1 of the ABA Model Rules of Professional Conduct and has been adopted by most states in their state ethical rules. Although Rule 6.1 is not mandatory but aspirational, a few states have required that all members of the Bar report annually on their pro bono activity. According to a survey put together by the ABA Standing Committee on Pro Bono and Public Service, only 6 states have adopted mandatory reporting requirements and eleven have voluntary reporting. Seven permit attorneys who take pro bono cases to earn credit toward mandatory legal education requirements.

In addition to mandatory reporting efforts, much is happening at the state level to expand pro bono services for low-income persons. A number of states have modified their Rules of Professional Conduct to promote pro bono service. The highest courts of several states have been very involved in promoting pro bono. The courts have used their judicial authority under state law to create formal statewide pro bono systems. For example, state-level commissions and local committees, with judicial or joint bar-judicial leadership, have been created by Supreme Court rule in Indiana, Maryland, Nevada, and Florida. Several states have also initiated major state pro bono recruitment campaigns led by the chief justice and bar presidents or have initiated other efforts to expand pro bono service in the states. Most states now have extensive Web-based resources to support pro bono attorneys.

¹³⁰ For a thoughtful discussion about what we know and don't know about pro bono, see Scott I, Cummings and Rebecca L. Sandefur, “Beyond the Numbers: What We Know – and Should Know – about American Pro Bono,” 7 *Harvard Law & Policy Review* 83 (2013).

¹³¹ The requirement is imposed by LSC through its regulatory authority. See 45 CFR 1614.

Finally, the Pro Bono Institute's Law Firm Pro Bono Project created a challenge to large firms around the country to contribute 3 to 5% of their total billable hours to the provision of pro bono legal services. Today, 140 law firms are signatories to that challenge.¹³² The Pro Bono Institute also has a challenge for corporate in-house counsel to increase the number of significant pro bono activities among lawyers who work on legal matters directly for corporations. The Corporate Pro Bono Challenge is a simple, voluntary statement of commitment to pro bono service by corporate legal departments, their lawyers, and staff. The goal is for one-half of the legal staff to support and participate in pro bono services.¹³³ There are now over 114 signatories to the corporate pro bono challenge.

To expand pro bono assistance by attorneys in corporate legal departments, many states are authorizing non-locally licensed in-house counsel to provide pro bono legal services even though the attorneys are not licensed in the state where they work. Courts in Connecticut, Florida, Iowa, Massachusetts, Minnesota, Colorado and Virginia have amended or are considering amendments to their practice rules that expand pro bono by authorized in-house counsel.

SELF-HELP LITIGANTS AND PRO SE DEVELOPMENTS

A significant development in civil legal aid in the United States is the rapid expansion of efforts to help people who are attempting to represent themselves in courts. These are described as "pro se," "self-help," or "self-represented" litigants. Historically, parties in high-volume courts such as traffic, housing, and small claims courts consisted primarily of pro se litigants. However, more recently, pro se litigants have also begun to dominate family law dockets across the country. There are also significant increases in pro se representation in probate and other civil matters as well.

The United States does not have complete and comprehensive national data on self-help litigants. Some 2014 state data illustrates the scope of the problem:

- New York: 2.3 million self-represented in civil justice system; 90 percent in housing matters; 97% in child support matters.
- Connecticut: 85% self represented in family cases; 28% of all civil cases
- Wisconsin: 70% in family cases
- Massachusetts: 92% in housing matters
- Maryland: 70% in civil cases
- Oregon: 65% in family cases
- Texas: 21.6% of family cases

¹³² Information is available from the Pro Bono Institute. See www.probonoinst.org.

¹³³ <http://www.probonoinst.org/>

We do not know how many self-represented litigants appear in state and federal courts and on what types of matters, what impact self representation has had on the courts, the impact of programs to assist pro se litigants have on the courts and on the litigants, and whether self-represented litigants who receive assistance are more likely to obtain a favorable court outcome.

Over the last ten years, the Self-Represented Litigation (SRL) Network, which brings together courts, bar and access to justice organizations in support of innovations in services for the self-represented, has undertaken a number of activities to ensure the justice system works for all including those forced to go to court on their own. For example, the Network developed a judicial curriculum and leadership package which includes PowerPoint slides, detailed faculty notes, an Activity Handbook, which describes activities that help participants to understand underlying issues and begin the planning process, and a Resource Handbook. The judicial curriculum was launched at Harvard Law School in late 2007. Teams from 30 states, the District of Columbia, and four territories consisting of 150 participants including five chief justices, attended the conference. The Network also developed Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes and Issues for Exploration which includes 41 Best Practices.¹³⁴ More information about the Self-Help Litigation Network and self-help programs can be found at www.SelfHelpSupport.org, an online resource where pro se and self-help programs can access and share the resources they need to maximize their effectiveness.¹³⁵

The network convener, Richard Zorza, has also written about the entire access to justice system and has recently laid out a challenging thesis about what he deems an emerging consensus among courts, bar, and legal aid: “court simplification and services; bar flexibility; legal aid efficiency and availability; and systems of triage and assignment.” See Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, JUDICARE, Volume 94, Number 4 (January-February 2011) at 156. See also, Richard Zorza, “A new Day for Judges and the Self-Represented: The Implications of Turner v. Rogers, Judge Journal. Vol. 50, NO. 4 Fall 2011 at 16; “Turner v. Rogers: The Implications for Access to Justice Strategies” *Judicare*, Vol. 95, No.6, May-June 2012 at 255; “The Access to Justice ‘Sorting Hat’: Towards a System of Triage and Intake that Maximizes Access and Outcomes,” 89 *Denver University Law Review* 859 (2012); and *The Sustainable 21st Century Law Library: Vision, Deployment and Assessment for Access to Justice* (April 2012).

Many courts have developed self-help programs. These vary widely, however. Some routinely include broad ranges of information resources and many provide training for judges in how best to facilitate access for the self-represented. Some courts provide electronic document-assembly services, while others provide clinics and individual informational services. These services have been facilitated by guidelines, protocols,

¹³⁴ See http://www.ncsconline.org/WC/Publications/KIS_ProSeBestPracticesSRLN.pdf.

¹³⁵ This site was initially funded by the State Justice Institute, hosted on Pro Bono Net, and maintained by the National Center for State Courts. It has approximately 4,000 participants and 2000 documents in its library. An interesting effort to change how courts operate is found in a book by Richard Zorza, *The Self-Help Friendly Court*, National Center for State Courts (2002).

and codes of ethics governing the appropriate role of court staff in provision information assistance.

The most effective and comprehensive efforts have been in California under the guidance of Bonnie Hough who supervises the Equal Access Program—Center for Families, Children, and the Courts, California Administrative Office of the Courts, San Francisco. The Judicial Council's efforts and vision were formally established and defined in February 2004 the Judicial Council of California adopted its *Statewide Action Plan for Serving Self-Represented Litigants*, a comprehensive action plan aimed at addressing the legal needs of the growing numbers of self-represented Californians, while improving court efficiency and effectiveness. The action plan placed at its core court-based, staffed self-help centers, recognizing that these centers, supervised by an attorney, are the optimum way to increase meaningful access to the courts by self-represented litigants throughout the state. Self-help centers provide court users information about the applicable laws and court processes, procedures, and operations. They have significantly enhanced access and fairness. The plan also recognized that partnerships among the courts, legal services programs, pro bono programs, local bar associations, public law libraries, law schools, social services agencies, and other agencies are critical to providing the comprehensive range of services required. The plan recommended that court-based self-help centers serve as focal points for collaboration between these entities. This effort has proved to be effective and cost efficient. A recent study done for the Center for Families, Children and the Court, Administrative Office of the Court, found that up to \$3 in court sending were saved by expenditures on self-represented services.¹³⁶

Many U.S. civil legal aid programs are devoting substantial time and resources to address the issue of assistance to pro se litigants. Many legal aid programs throughout the country operate self-help programs independently or in conjunction with courts. We do not have accurate data on how many such programs exist, but we do know that they cover a wide range of services. A 2005 directory listed over 413 separate self-help assistance programs sponsored through legal aid programs with pro se initiatives.¹³⁷ Some programs provide only access to information about the law, legal rights, and the legal process in written form, on the Internet, on videotape, through seminars, or through in-person assistance. Other programs actually provide legal advice and often provide also legal assistance in drafting documents and advice about how to pursue cases. Often, programs provide both written and Internet-accessible forms for use by persons without legal training; some also provide assistance in completing the forms.

For example, the Maryland legal Aid Bureau provides direct informational services in the courthouse under contract to the courts. In California, legal services programs receive \$1.5 million for court-based services to low-income self-represented litigants. Thirty programs are currently funded and provide assistance to litigants in cases involving domestic violence, guardianship, family law, landlord-tenant, expungment of criminal

¹³⁶ See John Greacen, *The Benefits and Costs of Programs to Assist Self-Represented Litigants Results from Limited Data Gathering Conducted by Six Trial Courts in California's San Joaquin Valley*, May, 2009 . www.courtinfo.ca.gov.

¹³⁷ *Pro Se Legal Services Directory*, AARP Legal Advocacy Group (September 2005).

records, and other civil matters. An appellate self-help center has also been created. In Illinois legal aid programs are funded by IOLTA to provide court-based informational services, by agreement and in cooperation with local courts.

ENSURING QUALITY

In the United States efforts are made to ensure the quality of civil legal services, through the use of case management systems, the establishment of standards and performance criteria, and the use of peer review onsite examination of the overall effectiveness of programs—based on the standards and performance criteria. Until recently, outcome measures were not been used extensively, although five state IOLTA/state funding programs require their grantees to report on outcome measures.¹³⁸ LSC has now required every LSC funded program to use outcome measures.

In 2006, the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) revised the ABA Standards for Provision of Civil Legal Aid.¹³⁹ These revised Standards were presented to and adopted by the ABA House of Delegates at its August 2006 meeting. The revised Standards, for the first time, provide guidance on limited representation, legal advice, brief service, support for pro se activities, and the provision of legal information. The revised Standards also include new standards for diversity, cultural competence, and language competency.

LSC has also completed a revision of the LSC Performance Criteria,¹⁴⁰ which were originally developed in 1992 as a tool to evaluate LSC programs through a peer review system. These criteria have been the framework for much of the program evaluation that has gone on in civil legal aid, both by LSC and by peer reviews conducted by others for the program. Some IOLTA and state funders also use staff and peers from programs to monitor and evaluate their grantees, based on the Standards and Criteria. All LSC-funded providers are required to utilize case management systems, and many non-LSC providers utilize similar systems.

Many civil legal aid programs have developed their own evaluation systems, which are designed to help individual programs perform better and to better market what they accomplish to state appropriators, funders, the public, and the press. Some programs have developed rigorous internal evaluation systems, including the use of outcome measurements, to evaluate whether they have accomplish what they set out to do for their clients. The programs have used a variety of creative techniques to conduct their outcome evaluations, including focus groups, client follow-up interviews; interviews of court and social service agency personnel, courtroom observation, and court case file review. In California, the Legal Services Trust Fund, which is the state IOLTA funder,

¹³⁸ New York, Maryland, Virginia, Texas, and Arizona measure specific outcomes that could be achieved for clients in specific substantive areas, such as housing, and which focus primarily on the immediate result of a particular case or activity (such as “prevented an eviction”). These systems do not capture information on what ultimately happened to the client. All of these states use the information collected to report to their state legislatures and the public about what the grantees have accomplished with IOLTA and state funding.

¹³⁹ www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2006.pdf

¹⁴⁰ <http://www.lsc.gov/pdfs/LSCPerformanceCriteriaReferencingABAStandards.pdf>

and the Administrative Office of the Courts (AOC) teamed up to support the development of a “tool kit” of program self-evaluation tools for use by programs as a part of the statewide system of evaluation. The Management Information Exchange’s (MIE) Technology Evaluation Project (TEP) also developed a set of tools—also referred to as a “tool kit”—that is available for programs to use to evaluate their Web sites and their use of video conferencing and legal work stations, which serve clients through “virtual law offices.”

A new agenda is beginning to emerge around quality improvement. This include formal peer review evaluation systems instituted by funders that use peer colleagues from other legal services programs, law schools, the evaluation community, and the private bar to systematically review the work of each program over a three to five year cycle. It also include access to a technical assistance pool by legal services providers so that they can bring in peers on their own to assist with specific problem areas or to do overall program reviews. Providers will be assisted in establishing “program-owned evaluations” that are rigorous internal evaluation systems used to evaluate whether they are accomplishing the goals that they set out to achieve for their clients.

In addition, there is renew discussion about the use of outcome and performance measures and renewed initiatives to help programs to establish their own outcome measurement systems that are keyed to the outcomes the programs themselves have determined are relevant to their own program management objectives, and should develop templates and tools to assist grantees to set goals and measure outcomes.

Furthermore, we will see new data collection systems that will give funders data that will help them make the case for increased funding and ensure accountability to Congress and other government funders. The current data collected by LSC and most other funders is not sufficient to explain the breadth of actual services legal aid programs provide or to review quality, efficiency and effectiveness. That is why LSC has moved forward with its new project, reported earlier, designed to improve LSC’s data collection and reporting mechanisms and to educate LSC grantees about collection, analysis, and use of data.

Finally, NLADA established a staffed initiative to direct its on-going efforts to support and improve the quality and impact of civil legal aid programs. First, to make existing research easily accessible and understandable to busy administrators and lawyers within civil legal aid programs, NLADA created a blog-database – www.legalaidresearch.org - that captures the information about successful evidence-based practices and the results of research and posts those findings in an easily accessible web-based format. A second initiative (Strategic Advocacy for Lasting Results or SALR) provides direct assistance to member programs to help strengthen the quality and impact of services to clients and low-income communities.