

LEGAL AID IN THE UNITED STATES

AN UPDATE FOR 2023

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This Update is the National Report for the United States prepared for the International Legal Aid Group (ILAG). This report, an update to previous national reports, covers the period from May 2021 through April 2023. The report is divided into two parts: national update and other legal aid and access to justice developments.

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PART ONE: NATIONAL REPORT

OVERVIEW

The United States is a representative democratic republic, which operates as a federal system. There is a federal court system, but it does not control the state court systems. There are 50 states, the District of Columbia (DC), Puerto Rico and several territories each with their own legal systems. Each state, DC, Puerto Rico and the territories have their own court systems. State court systems include many levels of courts that vary by state, counties within each state and cities within each county. Civil legal aid and indigent public defense are separate systems. There is no national legal aid budget. At the Federal level, the Legal Services Corporation (LSC) funds part of the state based civil legal aid system. The federal Criminal Justice Act funds the federal defender system for federal criminal cases.

Local public defender offices and private attorneys receiving court appointments or under contract provide defense in state criminal cases. These are state and locally funded. The US does not have a national defender system for state criminal cases, which are the vast majority of criminal cases in the US. Access to justice activities are primary state activities.

Last year, Maine - which had been the last remaining state that did not employ full-time public defense attorneys - hired four attorneys as employees of the Maine Commission on Indigent Legal Services to provide representation in rural areas of the state.

Civil legal aid in the United States is provided by 705 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 \$2.7 billion. The largest element of the civil legal aid system is comprised of the 132 independent programs with 899 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 other federal sources and IOLTA programs than LSC. In addition, there are a variety of other sources, including local governments, the private bar, United Way, cy press distributions and private foundation

The Trump Administration called for the elimination of LSC and no further funding.¹ This did not happen. In fact, LSC funding increased from \$410 million to \$466 million.

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

The Trump Administration also eliminated the Access to Justice Initiative of the Department of Justice (DOJ) and suspended the White House Legal Aid Inter-Agency Roundtable (LAIR).

The Biden Administration sought increased funding and Congress appropriated \$94 annualized new funding and \$60 million one-time funding for LSC. This the largest increase in funding since the Carter Administration. The Biden Administration also reinstated the Access to Justice Initiative in a new Office for Access to Justice at DOJ now headed by a former public defender and also reinstated LAIR with a permanent director. LAIR has issued two new reports one on the federal response to Covid and the other on simplifying government forms and processes to increase access to government programs, forms and benefits.

Federal funding for LSC reflects the fundamental national interest in the rule of law. Eliminating LSC funding would effectively eliminate civil legal aid in some states and diminish it in every state, with a resulting loss of confidence in the fairness of the justice system for those who cannot afford to pay for legal assistance. Today, even with federal funding of LSC, in many jurisdictions 90% or more of family cases and landlord-tenant cases involve unrepresented litigants, and legal aid providers must regularly turn away at least half of the eligible clients seeking their help.”

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). Today, the Caucus is headed by Rep. Tom Emmer, Rep. Brian Fitzpatrick, and Rep. Mary Gay Scanlon.

At the state level, more state funds were available for civil legal aid at the beginning of 2023. This is because state budgets have recovered from the great recession although IOLTA revenues continue to be lower than 9 years ago.

While the Trump Administration has proposed to eliminate LSC, the LSC board appointed by President Obama remained until 2023, but many continued to serve including Board Chair John Levy.

LSC has pioneered the use of technology to expand access to civil legal aid and to the courts. Since 2000, LSC has funded more than 859 projects totaling over \$81 million in Technology Initiative Grants (TIG). 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.

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.

COUNTRY DETAILS

The total population of the United States at the beginning of 2023 is 336.3 million. The GDP at the end of 2022 is \$23.32 trillion.

The official poverty rate for 2021 was 11,6%; there were 37.9 million people in poverty. The official poverty line for a 4 person household is \$27,575. LSC and most civil legal aid programs use 125% of the poverty line for basic eligibility or, for a family of 4, \$34,689 and 53.7 million people eligible.

According to a recent study by the American Bar Association², as of January 1, 2019, there are 1,352,027 practicing lawyers in the US. There is no statistical breakdown of these into practice areas. Based on other data sources, including the Justice Index, there are 10,479 FTE attorneys involved in directly delivering civil legal assistance to the poor. LSC funded are 5,629 and non-LSC are 4850. There are also about 3000 non-lawyer advocates representing the poor in administrative hearings and other representational activities. The non-lawyer advocates are staff of legal aid programs. We do not have any surveys or counts of the number of public defenders in the US.

LEGAL AID ORGANIZATION/AUTHORITY

Criminal legal aid

There is a right to counsel i felonies (*Gideon v. Wainwright* 372 U.S. 335 (1963)), delinquency cases involving juveniles (*In re Gault*, 387 U.S. 1 (1967)) and misdemeanor prosecution of adults (*Argersinger v. Hamlin*, (1972)). The right is enforced at the state and local level.

The Criminal Justice Act 18 U.S, C, §3006A provides for the right to counsel at the federal level and established the Federal Defender Service. Counsel appointed under the CJA are from either a panel of private attorneys designated by the court, or a federal defender organization (FDO). There are two types of FDOs: (1) federal public defender organizations, which consist of federal employees who are part of the judiciary, and (2) community defender organizations, which are private, state-chartered, non-profit corporations funded by annual federal grants from the judiciary. An FDO may be

² <https://www.americanbar.org/content/dam/aba/images/news/2019/08/ProfileOfProfession-total-hi.pdf>

established in any district (or combination of adjacent districts) in which at least 200 appointments are made annually. There are currently 81 FDOs with more than 3,500 employees serving 91 of the 94 judicial districts. For FY 2020, the judiciary projects that federal defenders will be appointed in approximately 120,700 representations.

The CJA also provides for the appointment of private trial lawyers who serve on a panel maintained by each district or appellate court, and who are assigned by the court to represent financially eligible defendants. In situations where federal defenders are unavailable due to FDO conflicts or workload demands, and in the districts not served by an FDO, panel attorneys are appointed to represent eligible individuals. Nationally, almost 90 percent of the more than 10,000 panel attorneys accepting CJA appointments work in small law firms (six or fewer lawyers), and approximately 60 percent are solo practitioners. The CJA provides that these attorneys shall be reimbursed for their expenses and compensated at statutorily authorized hourly rates for their services. For FY 2021, the judiciary projects that panel attorneys will be appointed in approximately 83,900 representations.

Civil legal aid

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*, 564 US 431 (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.³

Three states (Washington, Maryland and Connecticut) and sixteen cities have enacted legislation providing for a right to counsel in eviction proceedings: including New York City, Newark, San Francisco, Philadelphia, Cleveland, Baltimore, Boulder, Louisville, Kansas City, Denver, Toledo, Minneapolis and Seattle. For more information about implementation of the right to counsel developments, see appendix.

Recently, the American Bar Association adopted ABA Ten Guidelines for Residential Eviction Laws dated February 2022 setting out basic norms for evictions including that “No tenant should face eviction without access to full, quality representation by an attorney.”⁴ NCCRC compiled a document that shows all the studies on tenant representation and finds that **3% of tenants have counsel, compared to 81% of landlords.**

³[ABA Directory of Law Governing Appointment of Counsel in State Civil Proceedings](http://civilrighttocounsel.org/map). See also <http://civilrighttocounsel.org/map>

⁴<https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2022/612-midyear-2022.pdf>

2021 was a banner year on the child right to counsel front, as both North Dakota and Washington passed major bills establishing a right to counsel for children in child welfare proceedings. The North Dakota bill has the qualifier that the child be “of sufficient age and competency to assist counsel”, but it requires appointment regardless of income and also extends the right to counsel to Child In Need of Services proceedings. The Washington State bill is the result of years of tireless advocacy by many in that state, and is to be phased in over a 6-year period.

INSTITUTIONAL FRAMEWORK FOR LEGAL AID

At the federal level on the civil side is the Legal Services Corporation. In 1974, Congress passed and the President signed the Legal Services Corporation Act (42 U.S.C. 2996), 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. 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 132 grantees that operate local, regional or statewide civil legal assistance programs.⁵ 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.

The Board consists of 11 members. Prior LSC Board Members, Julie Reiskin, John Levi, Robert Grey, Gloria Valencia-Weber, Laurie Mikva, Victor Maddox, Mathew Keenan and Father Pius Pietrzyk were joined by Frank Neuner, from the law firm of NeunerPate in Lafayette, Louisiana; Abigail Kuzma, former Indiana Assistant/ Attorney General and a current member of the LSC Governance and Performance and Delivery of Legal Services Committees; and John G. Malcolm, vice president at the Institute for Constitutional Government, and director of the Meese Center for Legal & Judicial Studies at the Heritage Foundation.

⁵ For more detailed information about LSC, See www.lsc.gov and its Annual Reports, Fact Books and Appropriation proposals.

Funding

Congress approved funding for LSC at \$489 million for 2022 with \$40 million for disaster relief and \$569 million for 2023 with \$20 million for disaster relief. LSC was funded at \$365 in 2014. If LSC funding would have kept up with inflation since its peak in 1980, today LSC would be funded at over a billion.

The White House released the President's Budget for FY2024, which signals to Congress about the spending priorities of the administration for the coming fiscal year. The \$1.9 trillion budget framework would increase federal spending by around 15 percent over current levels, including \$800 million for the Legal Services Corporation (LSC), a proposed increase of more than 40 percent. This is the highest amount a President has ever sought for the agency.

For the third consecutive year, the President's Budget also calls for greater flexibility around the composition of LSC grantee boards, and asks Congress to limit existing restrictions on the activities of LSC grantee to LSC funds only.

Subsequently, LSC released its own budget request to Congress for FY2024. The agency is seeking at least \$1.576 billion, which is almost three times its current budget. LSC's request provides a number of explanations for this, highlighting the growing numbers of legal problems for which low-income people do not receive assistance, while also noting other factors such as inflation and the need to improve staff compensation at grantee organizations.

Defender

At the federal level on the criminal side is the Defender Services Office (DSO), located within the Administrative Office of the U.S. Courts, whose mission is to uphold the right to counsel guaranteed by the Sixth Amendment, the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and other congressional mandates.

The four primary goals of the Federal Defender Services program are to:

- provide timely assigned counsel services to all eligible persons;
- provide appointed counsel services that are consistent with the best practices of the legal profession;
- provide cost-effective services; and
- protect the independence of the defense function performed by assigned counsel so that the rights of individual defendants are safeguarded and enforced.

At the state level: On the civil side, there are few state government institutions with responsibility for civil legal aid. Most states (41) have Access to justice Commissions but these are not generally government agencies. Most states have, usually through the state bar association, entities that distribute IOLTA, filing fee funds and other state appropriated funds.

Similarly, on the defender side, few government agencies oversee and fund criminal defense services. Twenty-two states have statewide defender programs (e.g. Wisconsin, Colorado, New Mexico, Vermont) that provide support, training, research and in actual representation. In many jurisdictions, there are only local defender programs, contract attorneys and court appointed attorney panels to provide representation in criminal cases.

BUDGET AND SPENDING

Civil legal aid

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The last available total funding for civil legal aid is from 2021.

Civil Legal Aid Funding for 2021

(Source ABAArray; millions of \$)

State General Revenue	319
Court Fees and Fines	1,032
IOLTA	172
Legal Community Bar	153
CY Press	77
Foundation/Corp Grants	272
Other Strategies	190
Legal Services Corporation	409
Subtotal, 50 states	2,671
District of Columbia	29
Puerto Rico and US territories	22.5
GRAND TOTAL	2,722

Among LSC grantees, only 36.8% of their funding comes from LSC.

92 of the 132 LSC grantees have less than 50% of their funding from LSC.

Public Defense

We have incomplete data on how much is spent on public defense in the US. The Federal Defender program has a budget of over \$1.1 billion.⁶ According to a 2015 Special Report from the Office of Justice Programs of the US Department of Justice, state government expenditures in 2012 were \$2.3 billion annually.⁷ This figure does not include county and jurisdictional appropriations for indigent defense and many large states (e.g., California, Florida, New York, Texas, Michigan, and Illinois) have only county and jurisdictional appropriations for indigent defense.

⁶ The Judiciary Fiscal Year 2019 Congressional Budget Summary at 37 <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/congressional-budget-request>

⁷ <https://www.bjs.gov/content/pub/pdf/sqide0812.pdf>

SCOPE, CASELOAD AND ELIGIBILITY

Clients served

According to 2021 data reported to LSC (the last available data), LSC programs provided services in 713,000 cases and served 1.59 million people in households. The majority of services provided (77.8%) were counsel and advice (61,4%) and brief service (15.6%). Cases involving extended service were 22.3%. Family law cases provided (29.2%) housing (35.4%), income maintenance (10.9%) and consumer (7.2%).

Covid had a significant impact on civil legal aid demands for services. Programs report increases in evictions, housing foreclosures, unemployment cases, domestic violence, and benefit cases. For example, LSC did a brief study in August of 2020: “The need for legal aid has spiked as the pandemic continues to disrupt the lives and financial security of people across the country. Housing is a particular concern. LSC estimated that more than 5.13 million households who qualify for LSC-funded services are at risk of eviction. Civil legal needs have also surged in others key areas served by LSC grantees, including unemployment, domestic violence and health care.⁸ LSC estimated the cost of meeting just the eviction needs of its clients would be 2,567,000,000.

Scope of civil legal aid funding

As noted previously, 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*, 564 US 431 (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 the US system, as a general matter, funding is not targeted for specific cases or types of advocacy. Instead, each civil legal aid program determines the scope of services and the clients they are going to serve. Most civil legal aid programs provide legal advice and full representation before courts and administrative tribunals. However, there are small entities not funded by LSC that provide limited services in specific locales or for particular client groups,

Legal aid programs can provide assistance to both court ADR programs and non-court ADR programs. There is no national data on civil case types. LSC data is likely similar to data across the civil legal aid spectrum.

Legal aid programs funded by LSC have limitations on the clients that they can serve.

⁸<https://www.lsc.gov/media-center/press-releases/2021/legal-services-corporation-requests-supplemental-funding-help>

LSC-funded programs are permitted to serve financially eligible individuals who are U.S. citizens or who are members of specified categories of aliens. 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. In addition, 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.

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. Nor is there a “significance test” required by LSC or state funders. 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). However, Congress has imposed restrictions on what LSC can fund and what its recipients can do, and a few other states have similar restrictions.

However, some government and private funding sources 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 to seek this funding, and many do. It is the program itself that decides internally whether to seek such funding.

Congress had added no new restrictions for LSC funded programs. No states added new restrictions on their funding. The current restrictions are described at: <https://legalaidhistory.org/histories/civil-legal-aid-history/restrictions/>

Process for obtaining civil legal aid

Funding entities, including LSC, do not have any formal role in deciding whether legal aid is provided. Clients contact legal aid offices directly or by phone contact.

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 formation 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. 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.

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. All states have a statewide website, most of which also contain information useful to both advocates and clients. Most of these statewide web sites were made possible by the Technology Initiative Grants program of LSC. 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.

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.

Each civil legal aid program funded by LSC must have a client grievance procedure consistent with 45 CFR 1621. There is no appeal to LSC, however. Clients could also report concerns to the relevant state bar or sue.

There is no national data available on the total number of applicants served.

Eligible Criteria for civil legal aid

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 \$34,688 for a family of 4.

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 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.

Eligibility criteria for criminal legal aid

Federal: This portion summarizes access to justice for defendants in federal criminal proceedings in the United States, and it relies heavily upon the 2017 Report of the Ad Hoc Committee to Review the Criminal Justice Act (the Cardone Report). The Cardone Report is publicly available and may be found at <https://cjastudy.fd.org/>.

The touchstone for understanding the provision of criminal defense services for those who cannot afford the assistance of counsel in federal proceedings as required by the U.S. Constitution is the Criminal Justice Act (CJA) of 1964, 18 U.S.C. § 3006A. Representation under the CJA includes not just counsel but also investigative, expert,

and other services necessary for a full and fair defense.⁹ Any financially eligible person who is charged with a felony or a Class A misdemeanor; is a juvenile alleged to have committed an act of juvenile delinquency¹⁰; is charged with a violation of probation; is under arrest, when such representation is required by law; is charged with a violation of supervised release¹¹; is subject to a mental condition hearing¹²; is in custody as a material witness; is entitled to the appointment of counsel under the sixth amendment to the Constitution; faces loss of liberty in a case, and federal law requires the appointment of counsel; or is entitled to counsel for verification of consent in international prisoner transfers¹³ will be provided representation under the CJA.¹⁴

Furthermore, whenever a magistrate judge or federal court determines that the interests of justice so require, representation may also be provided under the CJA for any financially eligible who is charged with a Class B or C misdemeanor, or any infraction for which a sentence to confinement is authorized, or when the person is seeking relief under section 2241, 2254, or 2255 of Title 28 of the United States Code (writs of habeas corpus).¹⁵ Thus, the CJA's scope is broad and covers defendants throughout the entire federal criminal justice process, from pretrial matters through trial and direct appeal, as well as habeas corpus proceedings—fully 93 percent of individuals haled into federal criminal court require counsel appointed under the CJA.¹⁶

State and county: There is no uniform method for determining eligibility for indigent legal services in the United States. Typically, eligibility is determined by an individual's financial capacity to hire an attorney. This is usually determined through financial records. Approximately eighty percent of felony defendants in large state courts were represented by public defenders or assigned counsel pursuant to a federal government study conducted in 2013 and updated in 2016.¹⁷ Many state, county and municipal jurisdictions rely on federal poverty guidelines issued by the Health and Human Services Department, while some systems promulgate their own eligibility criteria.

⁹ 18 U.S.C. § 3006A (a).

¹⁰ As defined by 18 U.S.C. § 5031. See 18 U.S.C. § 3006A (a) (1) (B).

¹¹ Or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release. See 18 U.S.C. 18 U.S.C. § 3006A (a) (1) (E).

¹² Under Chapter 313 of Title 18. See 18 U.S.C. § 3006A (a) (1) (F).

¹³ Under 18 U.S.C. § 4109. See 18 U.S.C. § 3006A (a) (1) (J).

¹⁴ 18 U.S.C. § 3006A (a) (1).

¹⁵ 18 U.S.C. § 3006A (a) (2).

¹⁶ Cardone at 17.

¹⁷ SUZANNE M. STRONG, U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STATS., NCJ 250249, STATE-ADMINISTERED INDIGENT DEFENSE SYSTEMS, 2013 (2016), <https://www.bjs.gov/content/pub/pdf/saids13.pdf>

Most states also have various fees that courts charge indigent defendants when they request indigent legal services.¹⁸ When a defendant requests the assistance of counsel, judges are authorized to compel criminal defendants to pay a fee for those services. Failure to pay fees, however, does not permit counsel to be denied and nearly all states allow trial judges to waive these fees when a defendant is unable to pay.¹⁹ Additionally, most states authorize some form of recoupment that is at the discretion of a trial judge after trial. Some recoupment statutes apply only to convicted defendants; however, others impose recoupment on defendants even if they are acquitted.²⁰

Process for obtaining criminal legal aid

Federal: One of the unique aspects of the CJA is that each of the 94 jurisdictions, with the approval of the judicial council of the federal circuit in which each court is located, is required to publish a plan for furnishing representation under the CJA.²¹ Prior to approving a district's plan, the circuit judicial council must add a supplement with provisions for representation on appeal.²² These plans give local district and circuit courts significant authority in administering the program, and this local control creates considerable variation across districts in the provision of defense services.²³

The individuals who deliver criminal defense services consist of private lawyers as well as employees of institutional defender offices as determined by each district, both of which are funded by the federal judiciary under a separate appropriation from Congress. As the Cardone Report put it:

Since the CJA's amendment in 1970, the federal defender program has functioned as a hybrid system comprised of public defender offices and appointed private attorneys. This system allows for flexibility, since panel attorneys can step in to handle a sharp increase in prosecutions. It also addresses conflicts that may arise in multi-defendant cases, with the defender office often taking the lead defendant while panel attorneys act as counsel for the other defendants. The current system offers the consistency of having an institutional defender office, which not only sets the bar for defense best practices locally but, with ready access to

¹⁸ Ronald F. Wright & Wayne A. Logan, *The Political Economy of Application Fees for Indigent Criminal Defense*, 47 WM. & MARY L. REV. 2045, 2052-54 (2006),

<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1261&context=wmlr>

¹⁹ *Id.* at 2053-54.

²⁰ Helen A. Anderson, *Penalizing Poverty: Making Criminal Defendants Pay for Their Court-Appointed Counsel Though Recoupment and Contribution*, 42 U. MICH. J. L. REFORM 323, 327-34 (2009),

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1252&context=mjlr>

²¹ 18 U.S.C. § 3006A (a).

²² *Id.*

²³ Cardone at 20.

resources, can often provide training opportunities and assistance to panel attorneys in that district.²⁴

There are two types of institutional defender offices available for districts that require at least 200 CJA appointments annually: Federal Public Defender Organizations (FPDOs) and Community Defender Organizations (CDOs).²⁵ FPDOs are headed by a federal public defender appointed by the federal circuit in which the office is located for four-year terms. All FPDO staff are federal employees and each circuit court determines the number of assistant federal defenders an office may hire.²⁶ In contrast, CDOs are non-profit corporations funded through grants administered by the Defender Services program. CDOs are managed by a board of directors and employ an executive director who functions as the district's federal defender.²⁷

From the perspective of a defendant and the public, FPDOs and CDOs look very similar from the outside and operate nearly identically, and they are referred to collectively as "federal defender organizations," or FDOs. Today, there are a total of 81 FDOs with approximately 3,850 employees throughout the United States and its territories, 64 of which are FPDOs while the remaining 17 are CDOs. Although districts are not mandated to establish FDOs, they cover 91 of 94 federal districts (some offices cover more than one district) and they represent approximately 60 percent of clients appointed under the CJA.²⁸

Private attorneys, depending on the district, either apply to be included on the local "CJA panel" or are placed on the panel through some other process. Panel attorneys are often solo practitioners or from small firms and also take paying clients in addition to their appointed cases. Each district has a CJA panel attorney district representative to communicate with the national program and disseminate information among panel attorneys.²⁹ Nationwide, there are approximately 12,000 private panel attorneys and together they handle about 40 percent of representations under the CJA at an hourly rate of \$158 in non-capital cases and \$202 in capital cases.³⁰

The Cardone Report succinctly described the governance structure of the federal defender program:

²⁴ *Id.* at 18.

²⁵ 18 U.S.C. § 3006A (g).

²⁶ 18 U.S.C. § 3006A (g) (2) (A).

²⁷ 18 U.S.C. § 3006A (a) (2) (B); see also Cardone at 18.

²⁸ <https://www.uscourts.gov/services-forms/defender-services>

²⁹ Cardone at 18-19.

³⁰ <https://www.uscourts.gov/services-forms/defender-services>

The Criminal Justice Act places the national administration of the program under the authority of the Judicial Conference of the United States (JCUS or Judicial Conference) and the Administrative Office of the United States Courts (AO or Administrative Office). JCUS is authorized to create rules and regulations for the program, while the director of the AO is tasked with supervising the expenditures of funds appropriated for indigent defense. The statute also charges JCUS with determining the hourly rate for panel attorneys as well as the maximum amount to be paid to a panel attorney on any one case without additional justification and oversight.

The Judicial Conference is the judiciary's governing body. It consists of the Chief Justice of the Supreme Court, who presides; the chief judges of each circuit; and one district judge from each circuit. The Conference administers judiciary funds and makes policy for the administration of the courts. JCUS has committees to advise the larger Conference on a variety of matters, such as the Committee on Criminal Law, the Committee on Court Administration and Case Management, and the Committee on Information Technology. The Executive Committee is the chief decision-making body within the Conference, determining the jurisdiction of the other committees and setting the calendar and agenda for JCUS.

The Defender Services Committee (DSC), comprised entirely of judges, is the JCUS Committee charged with overseeing the CJA program. DSC provides policy guidance, reviews budget and staffing requests for defender offices, monitors legislation affecting the appointment and compensation of counsel, assists to ensure adequate and appropriate training for defense attorneys, and helps determine long-range goals for the program. As part of the DSC's process, it receives feedback from the defender community through established working and advisory groups. Although DSC is directly responsible for overseeing the defender program, under the current JCUS structure, this Committee does not have final decision-making authority on any aspect of the CJA program.

The AO performs administrative functions for the federal judiciary and oversees the expenditure of appropriated funds. Its mission is to serve and support the federal judiciary pursuant to the policies, guidance, and direction of the Judicial Conference. The AO provides the working staff for all JCUS committees and so plays an important role in JCUS policymaking. It assists in creating the judiciary's budget, maintains a legislative office that has contacts with Congressional staffers to track and offer comment on legislation affecting the judiciary, and provides auditing services and financial accountability for court entities, among other tasks.

Within the AO, the office responsible for staffing DSC and assisting in the national administration of the CJA is the Defender Services Office (DSO). DSO's mission is divided between supporting defenders and panel attorneys and, as part of the AO, supporting judiciary interests. DSO provides training to CJA practitioners, advises on legal and policy issues affecting the provision of counsel and other services under the CJA, assists individual defender offices in formulating budgets, serves as staff to AO working and advisory groups, and collects [caseload-related] data on the defender program.³¹

The size of the federal defender services program, while much smaller than the Department of Justice that investigates and prosecutes cases on behalf of the United States, is nonetheless large and considered the "gold standard" of the criminal defense bar by many across the country.³² The program today has a budget of over \$1.5 billion³³ and is responsible for more than 250,000 representations under the CJA.³⁴ FDO staff is determined by a work measurement formula that helps ensure caseloads do not reach the levels of some beleaguered state public defender offices, and the combination of FDOs working together with panel attorneys helps maintain a standard level of proficiency for the complex cases they handle in federal court.

State and County: The process for obtaining criminal legal aid is initiated when a person charged with a crime invokes their right to counsel, when being taken into custody or at any time after charges are brought. In 1966 the U.S. Supreme Court ruled that when a suspect is being taken into custody certain rights and warnings must be given to them. The essential rights and warnings include the right to remain silent, the right to talk to an attorney before you answer any questions and if you cannot afford a lawyer, the right to have one appointed for you. Additionally, suspects must be advised that anything they say can be used against them in court. This decision was handed down in the case of *Miranda v. Arizona* and is referred to as *Miranda* rights.³⁵

Generally, a judge will determine whether a person facing charge is eligible to receive indigent legal services and those legal services will either come from a state-sponsored public defender organization or private attorneys that are acquired through contract. A defendant usually can request a court-appointed attorney during arraignment. Each state, and sometimes each county, has its own procedure and rules to determine

³¹ Cardone at 19-20.

³² <https://www.nacdl.org/Landing/PublicDefense>

³³ The Judiciary Fiscal Year 2019 Congressional Budget Summary at 37 <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/congressional-budget-request>

³⁴ Cardone at XXVII.

³⁵ *Miranda v. Arizona*, 384 U.S. 426 (1966).

whether a criminal defendant qualifies for indigent legal services. Many jurisdictions rely on the federal government's poverty guidelines as illustrated above.

The method for providing criminal legal aid attorneys varies by state. Some states provide indigent legal services through statewide, countywide, or citywide public defender offices. Other states don't have public defender offices, but instead, a contract system, where various private attorneys and law firms bid for contracts to represent a certain amount of cases at a set price.³⁶ Generally, a court will contact one of these offices to assign the case to an attorney. A criminal defendant will not be able to pick their appointed counsel³⁷; however, the Sixth Amendment includes the right to "effective" counsel and, in limited circumstances, a criminal defendant may request a replacement for their appointed attorney. Lastly, a defendant has the constitutional right to refuse counsel and represent themselves in state criminal proceedings so long as the judge determines that the defendant is competent to understand and participate in court proceedings.³⁸ In a study conducted in 2013, the federal Bureau of Justice Statistics found that there were 2,696,710 cases closed that involved the aid of state-administered indigent legal services in twenty-eight states, and the District of Columbia. States that did not participate include: Alabama, Arizona, California, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Michigan, Mississippi, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, and Washington.

However, as noted in the Cardone Report, structural problems continue to exist within the program more than 50 years after the CJA's enactment. The fundamental issue of maintaining a constitutionally guaranteed function centered on advocating for individuals' rights independent from the judges who hear criminal cases led to the Committee's unanimous recommendation: that Congress create an independent defender commission within the judicial branch, but outside the jurisdiction of the Judicial Conference and AO.³⁹ This recommendation is still being considered and studied even as most of the Committee's interim recommendations have already been adopted, either as written or in modified form. While much has been done, more is needed before the full promise of the sixth amendment can be fulfilled at the federal level within the United States.

³⁶ Id.

³⁷ *United States v. Gonzales-Lopez*, 548 U.S. 140, 151 (2006).

³⁸ *Faretta v. California*, 422 U.S. 806, 835 (1975).

³⁹ Cardone at 243.

QUALITY ASSURANCE

Civil legal aid

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. 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.⁴⁰ 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. The ABA also produced Principals for a State System of Civil Legal Aid, which set out 10 principals for statewide systems of civil legal aid.⁴¹

In 2021, the ABA again revised the standards.⁴² The 2021 standards attempt to recognize the changes experienced by legal aid organizations, client communities, and society at large since the last revision in 2006. Technology has advanced, professional rules have changed, and the country has experienced a reckoning with racism. The Standards have been updated herein to reflect these changes. Legal aid organizations have become more complex in order to respond to the changing environments in which they operate. For this reason, a Standard for Leadership and Management has been added. Wherever possible, the Standards reference external guidance, such as those that govern the practice of law, best practices for board governance, and rules that govern accounting practices. Legal aid organizations do not operate in a vacuum and must often rely on external guidance. The Standards highlight where expectations of legal aid organizations should be different from those governing other types of lawyers or nonprofit organizations because of legal aid organizations' unique missions and relationships with their clients.

⁴⁰ www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2006.pdf

⁴¹ https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_at_tencivilprinciples.authcheckdam.pdf

⁴² <https://lasclv.org/wp-content/uploads/ABA-Standards-Revised-2021.pdf>

LSC uses LSC Performance Criteria,⁴³ 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.

LSC conducts two types of on-site LSC program visits to ensure compliance with the law and regulations and to ensure quality of services. For example, LSC's Office of Compliance and Enforcement conducted 21 oversight visits and completed 39 compliance visits in 2021. In 2020, effected by Covid, LSC conducted 20 program performance oversight visits and 11 compliance visits. Some state IOLTA and civil legal assistance funders also conduct evaluations of program often using the LSC performance measures. There is no national data on these non-LSC efforts.

There is no requirement that civil legal aid providers engage in continuing legal education or skills training. Lawyers working in legal aid programs may have continuing legal education requirements from their state bar associations, but these CLE requirements appl to all attorneys in a state.

Each civil legal aid program funded by LSC must have a client grievance procedure consistent with 45 CFR 1621. There is no appeal to LSC, however. Clients could also report concerns to the relevant state bar or sue.

The LSC regulation requires that the governing body of each program establish a grievance committee or committees, composed of lawyer and client members of the governing body, in approximately the same proportion in which they are on the governing body. Each program must establish a simple procedure for review of complaints by applicants about decisions to deny legal assistance to the applicant. In addition, each program must establish procedures for the review of complaints by clients about the manner or quality of legal assistance that has been rendered by the recipient the client. The procedure must provide for prompt consideration of each complaint by the Executive Director or the Executive Director's designee and an opportunity for the complainant, if the Executive Director or the Executive Director's designee is unable to resolve the matter, to submit an oral or written statement to a grievance committee established by the governing body. A file containing every complaint and a statement of its disposition shall be preserved for examination by LSC.

⁴³ <http://www.lsc.gov/pdfs/LSCPerformanceCriteriaReferencingABAStandards.pdf>

The file shall include any written statement submitted by the complainant or transcribed by the recipient from a complainant's oral statement.

Public Defense

Standards have been developed for public defense, principally by NLADA and the ABA. NLADA standards include:

- o Performance Guidelines for Criminal Defense Representation (2006): <http://www.nlada.org/defender-standards/performance-guidelines>
- o Model Contract for Public Defense Services (2000): <http://www.nlada.org/defender-standards/model-contract>
- o Defender Training and Development Standards (1997): <http://www.nlada.org/defender-standards/training>
- o Standards for the Administration of Assigned Counsel Systems (1989): <http://www.nlada.org/defender-standards/assigned-counsel>
- o Standards for the Appointment and Appointment of Counsel in Death Penalty Cases (1988): <http://www.nlada.org/defender-standards/death-penalty>
- o Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984): <http://www.nlada.org/defender-standards/guidelines-governmental-contracts>
- o Standards and Evaluation Design for Appellate Defender Offices (1980): <http://www.nlada.org/defender-standards/appellate>
- o Guidelines for Legal Defense Systems in the United States (1976): <http://www.nlada.org/defender-standards/guidelines-legal-defense-systems>
- o National Advisory Commission on Criminal Justice Standards and Goals: The Defense (1973): <http://www.nlada.org/defender-standards/national-advisory-commission>
- o Uniform Law Commissioners' Model Public Defender Act (1970): <http://www.nlada.org/defender-standards/model-public-defender-act>

ABA directory of indigent defense standards: ⁴⁴

- o Ten Principles of a Public Defense Delivery System (2002): https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.pdf

⁴⁴https://www.americanbar.org/groups/legal_aid_indigent_defendants/indigent_defense_systems_improvement/standards-and-policies/

- o Ten Guidelines on Court Fines and Fees:
https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ind_10_guidelines_court_fines.pdf
- o Eight Guidelines of Public Defense Related to Excessive Workloads:
https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.pdf
- o ABA Standards for Criminal Justice: Providing Defense Services:
https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_toc/
- o ABA Formal Opinion 06-441: Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation:
https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441.pdf
- o ABA policies and guidelines related to indigent defense:
https://www.americanbar.org/groups/legal_aid_indigent_defendants/indigent_defense_systems_improvement/standards-and-policies/policies-and-guidelines/

Defenders use these standards to improve their own representation; policymakers use them to determine how to allocate criminal justice resources; and researchers use them to measure the quality and impact of defenders' work. The ABA Ten principals of a Public Defense Delivery System⁴⁵ were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney. The more extensive ABA policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992).

Unlike civil legal aid, no federal entity or other entity monitors and enforces these standards. Some public defender programs (e.g., Public Defender Services of DC) incorporate the standards into their practice guidelines, evaluation systems and training protocols.⁴⁶ NLADA, the 6th Amendment Center and the ABA use these standards when evaluating specific programs or systems, but such evaluations are at the request of the program or system.

⁴⁵

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.pdf

⁴⁶ <https://www.pdsdc.org/>

PUBLIC LEGAL EDUCATION

Every state has a state website that includes information about legal rights of low and moderate-income persons. These also include common legal problems facing low and moderate-income persons and what can be done to enforce and protect their rights. See, for example, Michigan Legal Help at <https://michiganlegalhelp.org/> and pine Tree Legal Assistance (Maine) at <https://ptla.org/>. Pine Tree also houses a veterans' web site that includes critical information about the legal rights of veterans.

In addition, Voices for Civil Justice (Voices) is the national communications and media resource for advocates of civil legal aid and civil justice reform. Voices' mission is to drive a drumbeat of media coverage that educates policy makers and the engaged public about what civil legal aid is, why it matters, and why it deserves support. Voices garners media coverage that builds awareness and support for reforming the civil justice system so that it works for everyone, not just for the wealthy and powerful.

Its staff taped a 1,500-member, 50-state network of advocates and spokespeople to generate media coverage. Averaging about two media placements per week, Voices has had a hand in more than 500 news stories, opinion pieces, editorials and columns that illuminate how civil legal aid is a lifeline for people who must navigate the civil justice system to protect their families, homes and livelihoods. These pieces have appeared in some 200 media outlets, including prominent legacy outlets like: The New York Times, Washington Post, Wall Street Journal, USA Today, Los Angeles Times, The Atlantic, The New Yorker, Associated Press and Bloomberg News; national broadcast and digital outlets like NPR, CBS Evening News, PBS News Hour, CNN, FoxNews.com, and NBCNews.com; and outlets for specialized audiences like the Chronicle of Philanthropy, Governing, National Law Journal, American Lawyer Magazine, Law360, and even Sports Illustrated.

In early 2019, Voices achieved a long-sought goal: to create a digital stories website and campaign that conveys a common narrative about reforming the civil justice system so it works for everyone, not just those with lawyers. There has long been a need for a unified narrative about the crisis in the civil justice system, and it was Voices' 2017 opinion research by Lake Research Partners that made this possible. The research confirmed the voting public's strong support for reforming the civil justice system to make it more accessible, with key findings as follows:

- Overwhelming majorities of voters believe it is important to ensure that everyone has access to the civil justice system.
- Voters believe 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 assistance they need, when they need it, and in a form they can use.
- Strong majorities of voters support increasing state funding to build a more accessible civil justice system, and surprisingly that support remains robust even when tied to the notion of raising taxes to do so.

The new messaging resource, called “All Rise for Civil Justice” defines and conveys the urgency of the crisis; explains how it affects people’s ability to protect their families, homes and livelihoods; and spotlights practical solutions available to address the crisis. The website uses easy-to-share mediums like video, photos, animations and mapping to tell the stories of people suffering the consequences of a civil justice system that fails ordinary Americans. It is intended to be a one-stop shop for resources to better tell the stories of affected people, families and communities. It is intended to promote message discipline to advocate more consistently and persuasively for system-wide change.

Voices sunsetted its staff operations on December 31, 2022. The network continues and the website VoicesforCivilJustice.org is now hosted as an archival resource through the National Association of IOLTA programs. The separate website for “All Rise for Civil Justice” was folded into the main Voices website.

ALTERNATIVE SOURCES OF LEGAL SERVICES

Pro Bono: Legal aid non-profit providers are supplemented by approximately 900 pro bono programs, which exist in every state and virtually every locale. 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.

The ABA Standing Committee on Pro Bono and Public Service conducted a new survey in 2017 of lawyer pro bono service in 24 states.⁴⁷ 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 47,000 attorneys, revealed that private lawyers in those states contributed an average of 36.9 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.

⁴⁷https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lc_pb_supporting_justice_iv_final.authcheckdam.pdf

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.⁴⁸ Of the 713939 cases closed by LSC program in 2021, the most recent figures available, 56,454 were done by private attorneys. Of these cases, 43,938 were done by pro bono attorneys and 12,516 by contract or Judicare attorneys.⁴⁹

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. Since its creation in 2014, the Pro Bono Innovation Fund has invested more than \$35 million to 121 projects in 36 states and the District of Columbia. The PBIF program offers three categories of grants: Project, Sustainability, and Transformation. See www.lsc.gov for further information.

2022 PBI Grants: LSC awarded Pro Bono Innovation Fund grants totaling \$4.75 million to 15 legal aid organizations.

Currently, 18 states have some form of mandatory or voluntary reporting of pro bono hours each year.

Law school clinical programs: 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.

Self-help programs: 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.

⁴⁸ The requirement is imposed by LSC through its regulatory authority. See 45 CFR 1614.

⁴⁹ <https://lsc-live.app.box.com/s/5lbcn4ncgqu5bbm31wh9v5xl80kxz0xf>

A 2016 report of a study of the civil court system, Civil Justice initiative, The Landscape of Civil Litigation in State Courts,⁵⁰ 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.

California has the most extensive network of self-help centers with 80. New York also has a vibrant program of 27 self-help centers around the state and assisted nearly 215,000 unrepresented litigants.⁵¹

The rise of the self-represented litigant (SRL) has created an unprecedented disruption in the practice of law and the management of courts. Beginning in 2005, the SRLN, a leading voice in the national movement for 100% access to civil justice, supports justice system professionals focused on the question of how best to reform ALL aspects of the legal system (courts, legal aid, the bar and non-legal partners) so that SRLs experience the courts (and indeed the legal system) as a consumer oriented environment guided by the principles of equal protection and due process. SRLN is a resource center that provides toolkits, evaluation, implementation guidance and thought leadership; we are a network that connects and supports reform minded leaders throughout the country; and offer a geospatial data and analysis hub for the civil justice space. See www.srln.org

Judicare: 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 cases. 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.

Private lawyers: In addition, private lawyers provide representation for a fee, often taken from client recoveries in personal injury cases, Supplemental Security Income and Social Security cases.

Legal aid programs normally do not provide representation in fee-generating cases except in narrow circumstances. For example, LSC Regulation §1609, states that LSC

⁵⁰ <http://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>

⁵¹ See art page 12 http://www.nycourts.gov/ip/ny2j/pdfs/NYA2J_2016report.pdf

programs cannot use LSC funds for fee-generating cases. 45 C.F.R. §1609. This provision also applies to private funds, but not to non-LSC public funds. The purpose of §1609 is to ensure recipients assist eligible clients in obtaining appropriate legal services while limiting the use of sparse legal services resources when private attorneys are able and willing to provide adequate representation. Nevertheless, LSC has recognized that, for a number of reasons, there are certain cases for which no private attorney is agreeable to take. For this reason, §1609 provides multiple exemptions and exceptions to the general prohibition against fee-generating cases, as well as guidance for when a case does not fall into an exemption or exception category.

Non-lawyers: Non-lawyers work in civil legal aid programs. While we do not have data from all civil legal aid programs, those funded by LSC employed 2007 non-lawyers out of 7877 advocacy staff in 2021. In addition to LSC funded program staff who are non-lawyers, there are new initiatives that use non-lawyers in the US. The most well-known is the Limited License Legal Technician (LLLT) certification program in Washington State. In June 2020, the Washington Supreme Court ended the program for future LLLTs.⁵²

LLLT 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.⁵³ 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. There are now 39 LLLTs licensed to practice in Washington State but only 35 are active. Of these, 8 work in law firms; 26 own independent firms (out of the

⁵² <https://www.abajournal.com/news/article/washington-supreme-court-decides-to-sunset-pioneering-limited-license-program>

⁵³ See Brooks Holland, "The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice," 82 SUPRA 75 (2013).

26, one also works for a legal service provider and as a courthouse facilitator); and 1 jointly owns a law firm with an attorney. In addition, 44 are now eligible to take the LLLT exam and 16 have completed the core curriculum and now in then practicum program. Over 200 are taking the core curriculum in various community colleges.⁵⁴

For more information, see: “Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice” by Rebecca M. Donalds⁵⁵, and “Washington’s Limited License Legal Technician Rule and Pathway to Expanded Access for Consumers” by Stephen R. Crossland and Paula C. Littlewood.⁵⁶

Utah began its Paralegal Practitioner program along the lines of the Washington State program to provide a subset of discrete legal services that can be provided by a licensed paralegal practitioner (LPP) in three practice areas: temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change; eviction; and debt collection.⁵⁷ The Court promulgated rules to govern LPPs and the program went into effect on November 1, 2018. The program is modeled after the Washington program. Licensing of the first LPPs began in 2019.

Arizona: In 2020, the Arizona Supreme Court created a Legal Paraprofessional (LP) a professional with specific education and experience who is licensed to provide legal services in limited practice areas.

These areas include:

- Family law;
- Limited jurisdiction civil cases;
- Limited jurisdiction criminal cases where no jail time is involved; and
- State administrative law (where the administrative agency allows).

LP services may include:

- Drafting, signing, and filing legal /documents;
- Providing advice, opinions, or recommendations about possible legal rights, remedies, defenses, options or strategies;
- Appearing before a court or tribunal; and

⁵⁴ These data are based on conversations with Steve Crossland, Paula Littlewood and Renata Garcia.

⁵⁵ Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice by Rebecca M. Donalds, 42 Seattle University Law Review 1 (2018)

⁵⁶ Washington’s Limited License Legal Technician Rule and Pathway to Expanded Access for Consumers by Stephen R. Crossland and Paula C. Littlewood, Volume 122, Issue 3 Dickinson Law Review 859 (Spring 2018) <https://ideas.dickinsonlaw.psu.edu/cgi/viewcontent.cgi?article=1043&context=dlr>

⁵⁷

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

- Negotiating on behalf of a client in the areas or practice: (i) that are authorized by the law and (ii) that the LP has received a license and endorsement for that area of law.

Minnesota began the Legal Paraprofessional Pilot Project which is intended to increase access to civil legal representation in case types where one or both parties typically appear without legal representation. The Minnesota Supreme Court issued an order on September 29, 2020, which authorized the Pilot Project, effective March 1, 2021 through March 2023. The Pilot Project permits legal paraprofessionals, under the supervision of a Minnesota licensed attorney, to provide legal advice and, in some cases, represent a client in court in two legal areas: landlord-tenant disputes and family law disputes.

Colorado recently established a new program. The Colorado Supreme Court rule is effective July 1, 2023, but it is not expected to have licensed legal paraprofessionals (LLPs) until next January at the earliest. Those hoping to become LLPs must take and pass courses in family law and ethics. They must also have 1500 hours of practice as a paralegal, 500 of which would be in the area of family law. Some LLP applicants will have the requisite experience.

The Colorado Supreme Court eliminated the recommendation that LLPs could only represent clients in which the family's net marital assets were under \$200,000. The court also expanded the recommendations to allow LLPs to make opening and closing arguments in court, but LLPs will not be able to examine or cross-examine witnesses.⁵⁸

Similar state efforts are under consideration in California and other states. The Institute for the Advancement of the American Legal System at the University of Denver Law School recently announced that its new "Unlocking Legal Regulation" project will work with Utah officials to test what could be groundbreaking regulations on allowing nonlawyers to provide legal services.⁵⁹ A recent report from the Utah Work Group on Regulatory Reform suggested changes intended to improve access to justice for residents unable to afford private attorneys in civil and family court cases.⁶⁰ Panels in California and Arizona have made similar recommendations, using similar rationale. The *Utah report urged an increased role for nonlawyers in legal services, including tech companies, and mandated creation of a regulatory agency to determine how they could help. Michael Houlberg at IAALS wrote a report about proposals in Colorado and other states regarding licensed paralegals. IAALS calls them Allied Legal Professionals

⁵⁸https://www.coloradopolitics.com/courts/colorad-supreme-court-enacts-groundbreaking-legal-paraprofessional-framework/article_e425693e-cdbe-11ed-821c-67fb807023a2.html

⁵⁹<https://iaals.du.edu/projects/unlocking-legal-regulation>

⁶⁰<https://src.bna.com/KRO>

A recent study examines a host of non-lawyer programs that have developed in addition to the LLLT program in Washington State. See **Nonlawyer Navigators in State Courts: An Emerging Consensus; A survey of the national landscape of nonlawyer navigator programs in state courts assisting self-represented litigants** by Mary E. McClymont The Justice Lab at Georgetown Law Center assisted by Katherine R. Alteneider, Tanina Rostain, & Rebecca L. Sandefur.⁶¹

According to the study:

This survey of the current national landscape identified and analyzed 23 programs in 15 states and the District of Columbia. The report describes program features and offers practical considerations for creating and implementing such programs. The programs use nonlawyer navigators who are not court staff, operate physically within a court, and provide direct “person to person” assistance to SRLs. Navigators in the study are defined as individuals who do not have full, formal legal credentials and training (i.e., a law degree), who assist SRLs with basic civil legal problems. They do not act or operate under an attorney/client relationship and they are part of a formal program and institutional auspices that provides specialized training.

Navigators work on a range of case types such as family, housing, debt collection, domestic violence, conservatorship, and elder abuse. Programs demonstrate that well-trained and appropriately supervised navigators can perform a wide array of tasks. For example, they help SRLs find their way around the court; get practical information and referrals to other sources of assistance; or complete their court paperwork. Navigators also accompany SRLs to court to provide emotional back up, help answer the judge’s factual questions, or resolve a matter with opposing counsel.

Program managers are mindful of admonitions against nonlawyers providing legal advice and take the need for quality assurance measures seriously. Navigators come from a range of backgrounds, including paid staff, AmeriCorps members, and volunteers, among them college and graduate students, recent graduates, and retirees. The diversity of backgrounds and skill sets show the potential for using many more of these individuals, as well as for recruiting new types of community actors as navigators.

⁶¹ https://www.ncsc.org/_data/assets/pdf_file/0024/53691/Justice-Lab-Navigator-Report-6.11.19.pdf

HOLISTIC LEGAL SERVICES

Many civil legal aid programs incorporate holistic services in their program's structure. For example, some include social work as part of their program. See, e.g., *Expanding Civil Legal Services to Include Social Work* by Anne K Sweeney and Daniella Lachina of Cleveland Legal Aid.⁶²

On recent example: In 2019, Alaska Legal Services Corporation (ALSC) began the Community Justice Worker program as a new approach to solving the justice gap, by empowering legal advocates in rural Alaska communities to provide certain legal services with ALSC's training and supervision. This program is the first of its kind in the nation, a partnership of ALSC, Alaska Pacific University, and Alaska Native Tribal Health Consortium that looks beyond lawyer-based solutions to achieve justice.

The Alaska Supreme Court has approved a waiver that will permit Community Justice Workers trained and supervised by ALSC to provide limited scope legal help in certain situations. An American Bar Foundation-affiliated research team designed the evidence-based training programs needed to expand the skills and practice of the Community Justice Workers and bring this project to scale across Alaska as well as in other communities that face similar challenges.

The most prevalent form of holistic services in US civil legal Aid is Medical-legal Partnerships (MLP).

MLPs 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 450 hospitals and clinics in 49 states and the District of Columbia. Over three quarters of LSC-funded civil legal aid programs have a medical-legal partnership. There are 170 legal aid agencies and 58 law schools. 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 because 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). See <https://medical-legalpartnership.org/> e In 2008, the ABA established a national support center to assist medical-legal partnerships in

⁶² Management Information Exchange Journal, Volume XXXIII No.4 Winter 2018.

securing pro bono participation, promoting best practices related to MLP-pro bono practice, and ensuring quality service delivery.

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 98 health care centers now have MLPs.

See also: “Medical–Legal Partnerships: 11 Years' Experience Of Providing Acute Legal Advice For Critically Ill Patients And Their Families” by C. Andrew Eynon, Lucy J. Robinson and Kara M. Smith,⁶³ and “Addressing Social Determinants of Health Through Medical Legal Partnerships”, by Marsha Regenstein, Jennifer Trott, Alanna Williamson and Joanna Theiss.⁶⁴

Holistic Public Defender Services

The pioneer in holistic services for public defender programs is Bronx Defenders, a ground-breaking, nationally recognized model of defense called holistic defense that achieves better outcomes for their clients. Each year, they defend 27,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and they reach thousands more through their community intake and outreach programs. But they don't stop there. They take what they learn and launch innovative initiatives designed to bring about real and lasting change for the communities they serve.

An arrest and criminal charge alone can have a devastating impact on a person's life. In New York State, more than 1 in 3 people arrested are never convicted of any crime or offense, yet they suffer dramatic consequences as a result of their arrest alone. This collateral damage, and the instability that results, can be far more devastating than any of the direct penalties that accompany the criminal conviction.

Their social workers and non-legal advocates learn about the challenges that clients face and help them tackle the issues that stand in the way of the futures they seek.

Their advocates bring together different areas of expertise to find creative solutions and defenses. Whether a client decides to fight their case or seek an alternative resolution, their team stands behind them, making sure they get the justice they deserve.

⁶³Medical–Legal Partnerships: 11 Years' Experience Of Providing Acute Legal Advice For Critically Ill Patients And Their Families by C. Andrew Eynon, Lucy J. Robinson and Kara M. Smith, March 2019, Journal of the Intensive Care Society

⁶⁴Addressing Social Determinants of Health Through Medical Legal Partnerships, by Marsha Regenstein, Jennifer Trott, Alanna Williamson and Joanna Theiss, Health Affairs, Vol. 37, No. 3: March 2018. <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2017.1264>.

Their teams go where the clients go, beyond the confines of a single case or courtroom. They know that once someone is in the justice system, it can be staggeringly hard to get out. An arrest for a drug charge can lead to a deportation case. A housing case can lead to a child welfare case. As a team, their criminal, civil, immigration and family defense attorneys — alongside social workers and non-lawyer advocates — go where the client goes addressing the complex web of legal issues, cases, and consequences that can arise from justice involvement.

The Center for Holistic Defense of Bronx Defenders provides in-depth technical assistance to public defender offices across the country, hosts site visits, provides training opportunities for practitioners, and participates in conferences and symposia.

Since 2010, the Center has provided technical assistance to public defender offices in 38 states and the District of Columbia, as well as in 4 other countries. At its inception, The Center awarded year-long technical assistance grants to public defender offices. Building on years of experience, The Center now has a dynamic model that allows for technical assistance to be tailored according to the need of the organization or office making the request.

Another example is the DC Public Defenders program. For more than 60 years, PDS has led the nation in providing exceptional advocacy and quality legal representation to indigent adults and children. Judges and prosecutors alike, as well as public defender agencies and criminal justice bars across the country, acknowledge and respect the outstanding work of PDS's attorneys. PDS is recognized as one of the few defender organizations in the world to meet the standards outlined in the American Bar Association's Ten.

"PDS was set up as a model public defender organization....We give people a fighting chance, just as rich people have....We are helping people at a very crucial time in their lives. We are dealing with people facing scornful, judgmental attitudes. PDS attorneys force the system to see people as human beings – not just criminals, or bodies moving through the system." (By Avis E. Buchanan during an interview with the Washington Council of Lawyers upon receiving their 2014 Presidents' Award for Public Service.)

The Civil Legal Services Division (CLS) provides legal representation to clients in a wide range of civil matters that are collateral or ancillary to the clients' involvement in the delinquency or criminal justice system, or that involve a restraint on liberty (e.g., certain contempt proceedings). The types of collateral and ancillary civil issues these clients face are complex and almost limitless in number (adverse immigration consequences, loss of parental rights, loss of housing, seizure of property, loss of

employment) and can arise even if the person is acquitted of the criminal charges or has been only arrested and never charged.

The Community Defender Division (CDD) works to help their clients in the District—both adults and children—face their legal difficulties that stem from prior arrests, convictions, and incarceration. These cutting-edge programs provide comprehensive legal services to clients who are impacted by their criminal or juvenile records. In their Prisoner & Reentry Legal Services Program, clients may seek representation for a range of issues, including: criminal records; employment; background checks; child support; parole; and prisoners' rights. In the Juvenile Services Program, children may seek assistance regarding issues, including: their rights after they are committed; their rights while they are detained; and their rights while placed out of their homes.

UN SDG STANDARD 16.3

On September 15, 2016, access to justice experts from the academic and nonprofit communities gathered 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.

As part of the Civil Society Consultation, the academic and nonprofit experts provided government officials with recommended indicators in the following categories.⁶⁵

- Criminal Justice Indicators, focusing on indigent defense, the intersection of the civil & criminal justice systems, and reentry
- Civil Justice Indicators, focusing on
 - Disability
 - disaster response
 - education
 - employment/labor
 - family law and matrimonial matters
 - *finance and consumer protection (including credit card debt and home foreclosure)
 - gender-based violence
 - healthcare
 - housing
 - immigration
 - public benefits
 - tribes and tribal members
 - veterans and service members

⁶⁵ <https://ncforaj.org/wp-content/uploads/2016/12/Written-Submissions-Rev.-12.1.16-final-correct.pdf>

Upon the adoption of the UN Sustainable Development Agenda and President Obama's issuance of a Presidential Memorandum⁶⁶ formally establishing the White House Legal Aid Interagency Roundtable (LAIR), and charging it with responsibility for assisting the United States in implementing Goal 16. As discussed in my 2017 national report, on November 30, 2016, the U.S. Government issued the First Annual Report of the White House Legal Aid Interagency Roundtable: Expanding Access to Justice.⁶⁷ The Report documents the many steps taken by the LAIR agencies to advance agency goals in collaboration with civil legal aid. LAIR's efforts to advance development of indicators for Goal 16 are described in this factsheet released in January 2017.

In 2021, Attorney General Garland announced the restoration of a standalone Office for Access to Justice within the Justice Department dedicated to improving the federal government's understanding of and capacity to address the most urgent legal needs of communities across America. In addition, in his capacity as co-chair of the Legal Aid Interagency Roundtable, Attorney General Garland, together with White House Counsel Dana Remus, also released the Roundtable's 2021 report, "Access to Justice in the Age of COVID-19". The 2021 Roundtable focused on barriers to access to justice that were exposed and exacerbated during the COVID-19 pandemic and identified the innovative strategies adopted by Roundtable members in response.

On March 21, 2023, the White House and the Department of Justice released the 2022 Legal Aid Interagency Roundtable Report, "Access to Justice through Simplification: A Roadmap for People-Centered Simplification of Federal Government Forms, Processes, and Language." The Report was prepared pursuant to President Biden's Presidential Memorandum on Restoring the Department of Justice's Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable (May 18, 2021). The Report focuses on simplifying government forms and processes so the American people can access federal programs, services, and benefits with reduced need for legal help as a step towards closing the justice gap that exists in the U.S. today.

The 2022 Report can be accessed here.⁶⁸ The report focuses on ways the federal government can simplify its forms and processes to reduce the need for individuals to seek legal assistance. In 2022, the Roundtable focused on expanding access to programs, services, and benefits by developing a simplification roadmap and

⁶⁶<https://www.whitehouse.gov/the-press-office/2015/09/24/presidential-memorandum-establishment-white-house-legal-aid-interagency>

⁶⁷<https://www.justice.gov/atj/page/file/913981/download>

⁶⁸<https://www.justice.gov/d9/2023-03/Legal%20Aid%20Interagency%20Roundtable%202022%20Report.pdf>

highlighting member agencies' best practices. The Roundtable's 2022 report identifies a three-step path forward to: (1) understand the barriers to access through meaningful engagement with communities served and impacted by government programs, (2) implement strategies through incorporating feedback from engagement, and (3) evaluate the impact of the simplification efforts to determine whether they have meaningfully expanded access, or if further improvements are possible. The report also features successful form and process simplification efforts by member agencies and promotes commitments for government-wide access improvements through hum/an-centered design and community engagement.

The United States continues to report data for a number of indicators that have been agreed upon through the UN process. The data for Goal 16 can be found here: <https://sdg.data.gov/peace-and-justice-strong-institutions/>.

In 2019, for the first time since the United Nations adopted the Sustainable Justice Agenda, global community came together to focus on Goal 16's call to "ensure equal access to justice for all." On this occasion, NLADA launched an initiative to further connect the U.S. corporate community interested in advancing access to justice with opportunities to strategically collaborate with NLADA's members – civil legal aid offices, public defender offices, and clients across the country – to advance the goal of providing *100% justice for all*. This effort will create opportunities for the U.S. corporate community to display their efforts to close the "justice gap" on the global stage.

NLADA has been guided by its Corporate Advisory Committee (CAC) in launching this work through a number of occasions including a roundtable with its CAC members and other corporate partners on *Access to Justice: U.S. Corporate Leadership on Goal 16* in May 2019 in Louisville, Kentucky during the annual Equal Justice Conference. The roundtable provided a forum for participants to exchange information and promising practices on corporate-led access to justice /activities.

On July 17, 2019, NLADA co-sponsored an event on *How Legal Empowerment Advances Sustainable Development Goals* with the Task Force on Justice, the Bernstein Institute for Human Rights, Namath, and the Open Government Partnership connected to the United Nations High-Level Political Forum on Sustainable Development. At that event, NLADA issued a policy brief written by NLADA Senior Fellow Maha Jweied, who formally led the U.S. Department of Justice's Office for Access to Justice and served as the U.S. Government's Goal 16 Subject-Matter Expert. The policy brief identifies the ways in which corporate America advances access to justice and describes three main strategies: (1) Contributing Resources; (2) Advancing Policy and Legal Reform; and (3) Implementing Sound Business Practices. It also includes a call to the business community for increased partnership with NLADA

and other public interest organizations to accelerate their efforts to respond to the legal needs of low-income and vulnerable members of our society.

Expanding on this activity, in September 2019, NLADA sponsored a successful United Nations (UN) Sustainable Development Summit side-event. Hosted by AT&T in Rockefeller Plaza in New York, and co-sponsored by AT&T, Hewlett Packard Enterprises, Pathfinders for Peaceful, Just and Inclusive Societies, Namati, and the Justice for All Campaign, the gathering highlighted the ways in which the corporate community advances access to justice. At the event, NLADA recently launched a new working group of the CAC to advance Goal 16 of the UN Sustainable Development Agenda. The Goal 16 Working Group identifies access to justice policy initiatives that can be advanced through our public-private partnership. The working group was successfully integrated with the United Nations SDG Partnerships Platform. NLADA held the first meeting of this working group during our Annual Conference in Detroit, Michigan in November with three meetings to follow in 2020.

A new project, Responsible Business Initiative for Justice (RBIJ), co-Directed by Maha Jweied, an attendee at the 2011 ILAG Conference, is an international non-profit working with companies to champion fairness, equality, and effectiveness across systems of punishment and incarceration. RBIJ developed from the campaign movement on the ground and the growing need for key economic stakeholders to help drive change. RBIJ engages, educates and equips businesses – and their leaders – to participate in meaningful advocacy on key criminal justice issues, support policy-specific reform campaigns, and use their resources and operations to be a force for good in society,

OTHER

Most Innovative Project 2021-2023: Reestablishment of the Office for Access to Justice at the Department of Justice and restoring White House Legal Aid Inter-agency Roundtable.

In addition, LSC undertook work on the Effect of State and Local Laws on Evictions Study as directed by Congress in the FY 2020 appropriations legislation. LSC has made significant improvements to the LSC Eviction Tracker, which provides near-real time and historical data on eviction case filings in courts around the country, and released two briefs: Fast and Cheap which examines the low cost of file evictions and face-paced nature of the eviction process; and Effective Volunteer Partnerships which describes innovative pro bono partnerships in eviction defense. LSC will release a comprehensive final report on Eviction in Spring 2023 as well as a new Eviction Tracker site that integrates updates to the Eviction Laws Database.

LSC also published White Paper on Illegal Evictions for their series: Housing Insecurity in the U.S. and the Role of Legal Aid. The brief mentions Right to Counsel as one of the tenant protections that legal aid providers and advocates have said “would make a difference for tenants in illegal eviction cases.” LSC also tracks some of the RTC programs across the country as part of its survey.

Most Disappointing Trend 2021-2023: failure to appropriate sufficient funding to LSC to close the Justice Gap.

Biggest Challenge for 2033: retaining LSC funding levels. Congress may press for substantial cuts in domestic spending including LSC.

Covid Effects: The 2021 LAIR Roundtable’s 2021 report, “Access to Justice in the Age of COVID-19,” focused on barriers to access to justice that were exposed and exacerbated during the COVID-19 pandemic and identified the innovative strategies adopted by Roundtable members including LSC in response.

Covid had a significant impact on civil legal aid demands for services. Programs report increases in evictions, housing foreclosures, unemployment cases, domestic violence, and benefit cases. For example, LSC did a brief study in August of 2020: “The need for legal aid has spiked as the pandemic continues to disrupt the lives and financial security of people across the country. Housing is a particular concern. LSC estimated that more than 5.13 million households who qualify for LSC-funded services are at risk of eviction. Civil legal needs have also surged in others key areas served by LSC grantees, including unemployment, domestic violence and health care.⁶⁹ LSC estimated the cost of meeting just the eviction needs of its clients would be 2,567,000,000. The 2022 Justice Gap study, described later, also addressed the impact of COVID:

The new study offers insights into the covid-19 pandemic’s disproportionate impact on low-income Americans. One third of low-income Americans personally experienced at least one civil legal problem related to the pandemic in the past year, compared to 18% of those at or above 400% of the federal poverty level.

The types of civil legal problems most likely to be attributed to the Covid-19 pandemic are those involving income maintenance, education and housing. More than one-half of low-income Americans experiencing problems related to unemployment benefits and eviction attributed them to the pandemic.

⁶⁹<https://www.lsc.gov/media-center/press-releases/2021/legal-services-corporation-requests-supplemental-funding-help>

PART TWO: OTHER CIVIL LEGAL AID DEVELOPMENTS

For an overview of the US legal System and the histories of civil legal aid, public defense and state access to justice initiatives, see www.legalaidhistory.org.

LEGAL SERVICES CORPORATION

For a full review of LSC developments, see www.lsc.gov. LSC produces a comprehensive Annual Report, a detail Fact Book and detailed Budget Request containing much data about LSC-funded programs,. LSC also conducts Access to Justice seminars, Congressional briefings, podcasts and prepares task force reports. This ILAG report highlights only a few of LSC activities and updates.

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.⁷⁰ 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.
- 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. XVIII, No. 4, Winter 2014.

⁷⁰ <http://tig.lsc.gov/resources/grantee-resources/report-summit-use-technology-expand-access-justice>

2022 TIG grants: The Legal Services Corporation (LSC) awarded 33 Technology Initiative Grants (TIG) to 29 legal services providers totaling \$4,679,135. These organizations will use the funds to leverage technology in delivering high-quality legal assistance to low-income Americans.

In the **2021 cycle**, LSC awarded 35 TIGs to 29 legal services organizations totaling over \$4 million. Among the grants awarded are several projects that improve online self-help resources. Other projects will increase access to justice for vulnerable populations and improve internal efficiency so that grantees can serve more clients.

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.⁷¹

Recently Microsoft announced the development of what it called Legal Navigator. Legal Navigator can't offer advice, but it will be able to walk a user step-by-step through the red tape of executing, say, a divorce. The tool was originally conceived with more of a

⁷¹ <https://richardzorza.files.wordpress.com/2017/05/introduction-litigant-portal.pdf>

hard-coded linear approach in mind. In other words, Question A would automatically trigger a response containing Answer B. But advances such as natural language processing convinced Microsoft that an AI-based approach was the way to go. Users will have the option of browsing the system by clicking on topics like “Family Law” or engaging with a Chabot-inspired interface. The Legal Navigator team worked with lawyers, law students, and court systems to evaluate real legal aid questions and link them to the appropriate responses. For example, if a user says “I’m afraid that my boyfriend is going to hurt me and my children,” the machine would ideally generate instructions for obtaining a protective order without the phrase “protective order” ever having to be uttered (or typed). “The idea is [the users] don’t even have to know that they have a legal problem,” said Glenn Rawdon, program counsel for technology at the Legal Services Corporation. Early versions of the Navigator will focus exclusively on family law, housing and consumer issues. According to Rawdon, those three areas comprise about 90 percent of what brings people through the doors of a legal aid center. Hawaii and Alaska will serve as the pilot states for the tool’s launch. An official launch date has not been determined. “The idea is for us to run this for a couple of years until we can get Hawaii and Alaska going, maybe onboard a few more states and then figure out where the permanent home of Legal Navigator would be,” Rawdon said.

Outcome and performance measures

In 2014, LSC embarked on a major new project to measure results. LSC employs a range of strategies and systems t/o 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 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/>.

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 and now deceased 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.

Emerging Leaders Council

The Legal Services Corporation's Emerging Leaders Council was formed in 2018 and will bring together some of the country's rising leaders to help increase public awareness of the crisis in civil legal aid and the importance of providing equal access to justice to all low-income Americans. Members will lend their voices and expertise to enhancing LSC's message by participating in congressional briefings, speaking publicly about civil legal aid's value, penning op-eds, and undertaking outreach activities. The group's efforts will complement the work of LSC's existing Leaders Council. Kristen Sunday, founder of Paladin PBC, and Brad Robertson, partner at Bradley Arant Boult Cummings LLP, will serve as co-chairs of the Emerging Leaders Council. Council members were drawn from business, law, government, academia, and other fields.

Other LSC Initiatives

LSC's Board of Directors formed task forces to address the role of legal aid in responding to the opioid crisis, to natural disasters, Veterans and rural delivery.

LSC hosted congressional briefings on important legal matters that LSC grantees handle as well as recent developments in the legal aid community. The briefings were organized in cooperation with Members of Congress:

LSC also conducted a number of Access to Justice Forums in DC and around the country including virtual forums in 2021 and 2022.

As an example, on Monday March 27, LSC also hosted an Access to Justice Forum at the U.S. Capitol. Attendees heard remarks from members of Congress, including: Sen. Ben Cardin (MD); Sen. Chris Murphy (CT); Rep. Mary Gay Scanlon (PA-5); Rep. Matt Cartwright (PA-8). Other speakers included Rachel Rossi (Director of the Office of Access to Justice at the U.S. Department of Justice), best-selling author John Grisham, and the LSC Board Chairman John Levi.

In addition to these speakers, there were also two panel discussions. LSC President Ron Flagg moderated a panel that included the Hon. Meagan A. Flynn (Chief Justice, Oregon Supreme Court) Hon. Lorie S. Gildea (Chief Justice, Minnesota Supreme Court), Hon. Nathan L. Hecht (Chief Justice, Texas Supreme Court) and Hon. Loretta H. Rush (Chief Justice, Indiana Supreme Court). President Flagg led the chief justices in a discussion about the promise of using non-lawyers to help close the justice gap. They also discussed some of the specific efforts and pilot programs already underway in some of the panelists' states.

In the second panel, Harriet Miers (Partner, Locke Lorde, LLP) led business leaders Ivan K. Fong (General Counsel, Medtronic), Rena H. Reiss (Executive Vice President and General Counsel, Marriott International), and John F. Schultz (Executive Vice President and Chief Operating Officer, Hewlett Packard Enterprise) in a conversation about why access to justice is an important issue to the business community. Following the forum, LSC hosted a reception at the United States Supreme Court where retired Supreme Court Justice Anthony Kennedy gave remarks.

DOJ FEDERAL ACCESS TO JUSTICE ACTIVITY

Launched in 2010, closed in April 2018, and reopened in 2021, the U.S. Department of Justice's Office for Access to Justice (ATJ) serves as the primary office in the Executive Branch focused on legal services for low-income and vulnerable individuals. The Legal Aid Interagency Roundtable (LAIR)

LAIR was established as a White House initiative that promoted civil legal aid as a critical component of the work of all federal departments and agencies, and the memorandum establishes various actions for reinvigorating that work, including by requiring that designees from at least 23 federal entities meet at least three times a year and report to the President annually.

As noted previously, DOJ re-established the Office of Access to Justice in 2021. ATJ's mission is to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. ATJ is dedicated to improving the federal government's understanding of and capacity to address the most urgent legal needs of communities across America. ATJ 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.

ATJ is guided by three principles:

- Promoting Accessibility — eliminating barriers that prevent people from understanding and exercising their rights.
- Ensuring Fairness — delivering fair and just outcomes for all parties, including those facing financial and other disadvantages.
- Increasing Efficiency — delivering fair and just outcomes effectively, without waste or duplication.

To translate these principles into action, ATJ pursues strategies to leverage and better allocate justice resources, and works to:

- Advance new statutory, policy, and practice changes that support development of quality indigent defense and civil legal aid delivery systems at the state and federal level;
- Promote less lawyer-intensive and court-intensive solutions to legal problems; and
- Expand research on innovative strategies to close the gap between the need for, and the availability of, quality legal assistance.

On March 21, 2023 the White House and the Department of Justice released the 2022 Legal Aid Interagency Roundtable Report, *Access to Justice through Simplification: A Roadmap for People-Centered Simplification of Federal Government Forms, Processes, and Language*. The Report was prepared pursuant to President Biden’s Presidential Memorandum on Restoring the Department of Justice’s Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable (May 18, 2021). The Report focuses on simplifying government forms and processes so the American people can access federal programs, services, and benefits with reduced need for legal help as a step towards closing the justice gap that exists in the U.S. today.

The Justice Department on April 20, 2023 issued a Dear Colleague Letter for state and local courts and juvenile justice agencies regarding the imposition and enforcement of fines and fees for adults and youth. The letter addresses common court-imposed fines and fees practices, and cautions against those practices that may be unlawful, unfairly penalize individuals who are unable to pay or otherwise have a discriminatory effect. The department provides this letter as part of its ongoing commitment to fairness, economic justice and combating the policies that disproportionately contribute to justice system involvement for low-income communities.

The letter highlights a number of key issues regarding fines and fees, such as the importance of conducting a meaningful ability-to-pay assessment before imposing adverse consequences for failure to pay, considering alternatives to fines and fees, guarding against excessive penalties and ensuring due process protections, including the assistance of counsel when appropriate.

The letter reminds court systems and other federal financial assistance recipients of their ongoing obligations not to discriminate on the basis of race, color, national origin, religion, sex and disability; to provide meaningful access to individuals with limited English proficiency; and to ensure that appropriate recordkeeping can help identify and avoid potential violations of federal nondiscrimination laws. The department will also follow up on this letter by building a best practices guide, highlighting innovative work by states and court leaders in this area.

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.

This May 2021, the Justice in Government project, including its Grants Matrices, library of research briefs with their easy-to-use bite-size findings, and COVID-19 and data resources, will move to NLADA Legal Aid Research site.

JGP and NLADA produced 15 Research Notes beginning in August of 2019 which can be found at www.legalaidresearch.org:

No. 1 – Reentry

No. 5 – Human trafficking

No. 2 – Veterans

No. 6 – Elder Justice

No. 3 - Opioids

No. 7 – New Research and Resources

No. 4 - Foster Care

No. 8 – Housing

No. 9 – Domestic Violence

No. 13 - 2020 Wrap Up

No. 10 – Child Welfare

No. 14 – Housing Update

No. 11 – Health and MLPs

No. 15 – Virtual Mediation Case Study

No. 12 – Consumers

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 on 100% access to justice. 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.⁷²

Since 2017, the seven Justice for All awardee states worked with a variety of traditional and non-traditional civil justice stakeholders to develop a strategic action plan for state civil justice systems where everyone can get the legal information and help they need, when they need it, and in a form they can use to protect their families, homes and livelihood. Each state inventory assessment and strategic action plan identified targeted areas of action with the potential to significantly improve the accessibility and fairness of state justice systems.

These efforts will embrace new partners with a stake in civil justice reforms and will explore a continuum of meaningful and appropriate services to help people obtain effective assistance. They include: • Creating a housing pilot in a gateway city to achieve housing stability for households facing eviction before eviction complaints are

⁷²[http://www.ncsc.org/~media/Microsites/Files/access/Justice for All Guidance Materials Final.ashx](http://www.ncsc.org/~media/Microsites/Files/access/Justice%20for%20All%20Guidance%20Materials%20Final.ashx)

filed in court (Massachusetts); • Integrating libraries as legal resource centers (New York and Georgia); • Developing robust web portal content, design, and supports (Minnesota); • Instituting targeted litigant supports (plain language forms, simplified procedures, etc.) in debt collection cases (Alaska); • Creating a consumer debt pilot in a large city to help consumers avert financial crisis or navigate successfully through such a crisis before or after debt collection cases are brought (Massachusetts); • Convening and training non-traditional civil justice stakeholders to expand and strengthen justice related capacity and partnerships (Alaska and Hawaii); • Creating an inter-agency roundtable to better identify, align, and leverage existing resources (Hawaii); • Using business process and user design concepts to strengthen referrals and triage, resource integration/alignment, and improved community outreach (Colorado). Awardee states will pursue their implementation pilots throughout 2018 and evaluate how their efforts significantly improved the fairness and accessibility of state civil justice systems

Recently, seven additional states were added: four more in 2018 (New Mexico, Montana, Florida and Kentucky) and three in 2019 (Illinois, Michigan and Louisiana). For more information, see <https://www.ncsc.org/jfa>

The Conference of Chief Justices passed Resolution 3, Expanding Meaningful Justice for All, at their 2018 mid-year meeting.⁷³ The Resolution explicitly supports the Justice for All project and encourages all states to undertake a strategic planning process to close their access to justice gaps.

The National Center for State Courts also prepared the Lessons from the Field document that contains a link to the state plans and summarizes main themes from the plans.

For a thorough report on Justice for All projects, see https://www.ncsc.org/_data/assets/pdf_file/0031/64975/5-year-report.pdf

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

⁷³https://www.ncsc.org/_data/assets/pdf_file/0011/23510/01312018-expanding-meaningful-access-to-justice-for-all.pdf

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, 41 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 above), 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:⁷⁴

- 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.⁷⁵ 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

⁷⁴ See Access to Justice Commission Updates 2016-2017 https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/Is_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

⁷⁵ These 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.

initiatives, legal answers websites, court based facilitators/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**.

Through a subcommittee of the ATJ Board's Delivery Systems Committee, systemic efforts have been undertaken to encourage, monitor, and support strategies to implement these goals at the programmatic level and on statewide basis. In addition, significant new investment was made to develop trainings, tools, and related resources to help all programs understand and effectively address the race equity challenges and commitments set forth in Goal 1 of the State Plan (goals that infuse all other goals in the Plan), the Equity and Justice Community Leadership Academy, (<https://justleadwa.org/leadership-academy/>) and the related Race Equity and Justice Initiative (<https://wareji.org/about/>) the latter two of which are coordinated principally through a new state support organization – JustLead Washington. (<https://justleadwa.org/>). Through the Washington State Office of Civil Legal Aid, significant state funding has been invested in JustLead WA's development of a Race Equity Organizational Toolkit and race equity training curricula.

A second example is the Permanent Commission on Access to Justice in New York which has undertaken a number of initiatives, including supporting the allocation of \$100 million each year for civil legal aid in New York state.

DOCUMENT ASSEMBLY⁷⁶

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

⁷⁶ Claudia Johnson, LawHelp Interactive Program Manager, provided essential assistance in developing this section.

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 (<http://www.lawhelpinteractive.org/>) 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. Participating programs use HotDocs Corporation's HotDocs Developer (<http://www.hotdocs.com/>) 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 (LHI) 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.

LHI is 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.

For a short video about LawHelp see: <https://youtu.be/68vVyT1PwK0>

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 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.⁷⁷

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.

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 NY State Chief Judge Jonathan Lippman).

The updated and expanded Justice Index 2022 at NCAJ's new website <https://ncaj.org> was recently published.

⁷⁷ 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

The Justice Index is a snapshot of the degree to which each US state has adopted selected best policies for ensuring access to justice for all people. In its 2014 and 2016 versions, the Justice Index focused on four key areas -- attorney access, self-help access, language access and disability access. In 2021, it includes those areas plus policies for curbing abusive fines and fees practices. The Justice Index benchmarks and findings serve as a platform that supports policy change in justice systems across the US.

Attorney Access: NCAJ continues to maintain the Civil Legal Aid Attorney Count as part of the Justice Index, and to rank the states on their performance on attorney access benchmarks (including pro bono benchmarks). Here are some highlights:

NCAJ has identified 25 policies every state should adopt to ensure that people who should be able to get help from a lawyer, are actually able to. We then looked at every US state to determine how many of these policies they actually have in place. In our findings, we track such key policies as: "civil rights to counsel," policies for promoting pro bono service, "unbundling" laws, and policies providing for the publication of court data on the number of people without lawyers in the courts. NCAJ also maintains a Count of the number of civil legal aid lawyers in each state. In addition to our 25 attorney access policy benchmarks, this best policy benchmark recognizes that each state should work toward the goal of ensuring that there are at least 10 legal aid attorneys for every 10,000 people living below 200% of the federal poverty line. This goal is in contrast to the higher national average of approximately 40 attorneys per 10,000 people in the general population. The Civil Legal Aid Attorney Count findings for each state reflect how far almost all the states are from reaching the Justice Index policy goal. Key findings include:

- 27 states and Puerto Rico had fewer than 1 civil legal aid attorney per 10,000 people below 200% of poverty.
- only 6 states (plus Washington, DC) had more than 2 civil legal aid attorneys per 10,000 people below 200% of poverty.
- the total number of individual civil legal aid attorneys is 10,479, consisting of 5,629 LSC civil legal aid attorneys and 4,850 non-LSC civil legal aid attorneys.
- the total number of civil legal aid organizations is 705, consisting of 129 LSC civil legal aid organizations and 576 non-LSC civil legal aid organizations.

Coverage in all benchmark categories – In addition to attorney access, the Justice Index contains findings for each state on:

- self-representation policies, such as: access to justice commissions, guidance for judges and staff on assisting self-represented litigants, improved filing technologies and forms, waiver of filing fees.
- language access policies, such as: free interpreting, tracking of complaints, notice of free language services, provision of language services at clerks' desks.
- disability access policies, such as: free sign language interpreting, admission of support animals without advance requirements, tracking and reporting of disability accommodations.
- fines and fees policies, such as: right to counsel, elimination of voting rights suspensions for failure to have paid fines and fees, assurance of hearings on ability to pay, data tracking, and data transparency.

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.

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.⁷⁸

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

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-

⁷⁸ See Luz . Herrera, Law Firm Incubator Programs, MIE Journal, Volume XXXI, Fall 2017.

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.

In addition to NCAJ, there are starting to be more of these, they overlap a bit with the Centers on the Profession, but consider:

- Stanford has the Rhode Center.
- South Carolina has one (Elizabeth Chambliss),
- Georgia State has one (Lauren Sudeall, although she is moving to Vanderbilt),
- Arizona has one (Stacy Butler)
- UC Irvine

ONLINE DISPUTE RESOLUTION

Unlike the Dutch and British Columbia, the US has not yet fully developed an online dispute resolution forum.⁷⁹ According to a study discussed below by the National Legal Aid and Defender Association:

⁷⁹ 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

In the last few years, however, ODR has seen a surge in both just interest and in use. According to the ABA, the United States had only a single Court-Annexed (hosted or supported by the judicial branch) ODR program in 2014.⁸ Although that number would grow to 15 by 2016, all 15 of them were located in a single state (Michigan). There were, however, 16 new Court Annexed ODR sites in 2018 and 31 new ones in 2019. Around the time NLADA began this research, there were 66 Court-Annexed ODR sites in 12 states. There is no sign that this growth, which saw a near doubling of ODR sites in 2019, will slow down, and ODR platforms appear to be here to stay. What is driving such an increased interest in ODR? Is it justice for the low-income clients of legal aid? Or is it something else? The interest in ODR so far has not been coming from the civil legal aid community. For example, look at The Legal Services Corporation (LSC) Technology Initiative Grant (TIG) program. ...In addition to their basic field grants to programs, they have also annually requested applications for TIGs since 2000, and they currently fund projects in the categories of “Innovations and Enhancements” “Replication and Adaptation,” and “Technology Improvement Projects.” Despite a diverse array of projects, no legal aid program has ever been awarded a TIG from LSC for any project related to ODR.

The National Legal Aid & Defender Association conducted research to inform Pew Charitable Trusts, in furtherance of Pew’s Civil Legal System Modernization Project, on the views and experiences of the civil legal aid community as they relate to Online Dispute Resolution (ODR).⁸⁰ For the purposes of the report, the civil legal aid community is broadly defined, including legal services advocates, members of the client community, mediators, judges, other court personnel, and technologists who specialize in the legal tech field. NLADA conducted this study over the course of 13 months, during which it held seven focus groups and a number of individual interviews. Overall, the study included 53 total participants.

The key themes were:

- Initial Suspicion, Distrust, and Concerns
- A Problematic Status Quo: Acknowledging the Current Environment
- Data Security

expert system designed to support problem diagnosis, information, self-resolution and streaming processes.

⁸⁰Ensuring Equity in Efficiency: The Civil Legal Aid Community’s Views of Online Dispute Resolution, https://www.nlada.org/sites/default/files/NLADA%20Pew%20ODR%20Report%20Final%20Draft%20Ensuring%20Equity%20in%20Efficiency_0.pdf

- Access, Autonomy, and Assistance
- Recognizing and Identifying the Potential Promise of ODR

In consideration of those themes and their relationship to each other, the report concludes in a fifth section by identifying four guiding principles. Those are:

- Be Transparent
- Make it (Vulnerable) Client-Centered
- Create Multiple and Easy to Use Off-Ramps
- Get Good Data, But Not Too Much, and Evaluate for Equity

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 possible replication across the system.⁸¹ 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 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

⁸¹ 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).

access page on the website, so that researchers have easy access to GAR data, Justice Gap data and other resources.

On July 23, 2018, the National Science Foundation (NSF) announced a new award to promote AtJ scholarship, naming Rebecca Sandefur principal investigator, and Alyx Mark and David Udell co-principal investigators. According to NSF's announcement⁸²:

This project will consist of a census-style survey of academic disciplines engaged in access to justice scholarship and an intensive workshop. It is designed to build a research field and an evidence base by identifying emerging access to justice researchers, coordinating collaboration across academic disciplines, and producing a research agenda and original scholarship to give access to justice research the vigor and definition of a field.

Rebecca Sandefur from The American Bar Foundation has recently secured funding from The JPB Foundation to launch an Access to Justice Scholars Program. It offers mentorship and support to five junior faculty and one postdoc as they conduct research and grow the field. The program also has an opportunity for senior faculty to mentor the junior faculty.⁸³

The Justice Lab: The Justice Lab is a new center created at Georgetown University Law Center to address in a variety of ways the access crisis in our civil justice system. The Centers and Institutes at Georgetown University Law Center generate ideas through research and scholarship, engage students with real-world learning opportunities, and build bridges to the city, nation and world. The Justice Lab works to:

- Provide strategic planning and other technical assistance to access to justice commissions, courts, and other entities committed to addressing the civil justice gap;
- Promote the growing role of digital and other technologies to support legal aid agencies and provide self-help legal resources to unrepresented people;
- Undertake empirical research to produce actionable data on unmet legal needs and approaches to address them;
- Design and test new approaches for expanding access to justice services; and
- Serve as resource for legal aid agencies and courts seeking to build access to justice technologies.

⁸²https://www.nsf.gov/awardsearch/showAward?AWD_ID=1823791&HistoricalAwards=false

⁸³http://www.americanbarfoundation.org/research/Fellowshipopportunities/ABF_JPB_Foundation_Access_to_Justice_Scholars_Program0.html

The Lab has undertaken pioneering work on, among other things, the creation of an affordable law firm model; the development of technology apps; and research on the use of lay/nonlawyers navigators in the state courts to provide legal help to unrepresented litigants. All are innovations to address the civil justice crisis. The Justice Lab is co-directed by Tanina Rostain, Professor, and Sheldon Krantz, Adjunct Professor. Mary McClymont is Senior Fellow and Adjunct Professor.

The Georgetown University Law Center has announced the first three court projects selected for its inaugural Judicial Innovation Fellowship, which will embed technologists and software designers in state, local and tribal courts to develop tech-based solutions to improve access to the judicial system.

The program selected three projects for its shortlist among 18 proposals received from 14 courts across the country. Three fellows, with backgrounds as technologists, designers, data scientists or product managers, will be selected to join the Georgetown University Law Center in September to work on projects from Tennessee, Kansas and Utah.

In Chattanooga, Tennessee, the Judicial Innovation fellow will study how the Hamilton County General Sessions Court and Hamilton County Mayor's Office share data to better understand and improve the experience of individuals navigating government services, the criminal justice system and court debt obligations.

In Kansas City or Topeka, the selected fellow will work with the Kansas Supreme Court Office of Judicial Administration to design a new electronic filing system to ease the burden of self-represented litigants.

And in Salt Lake City, a fellow will work with the Utah State Courts Self-Help Center to also develop internal processes to help self-represented litigants, as well as create a guide for hypothesis testing and a style guide for court tools.

The new program is led by Schmidt Innovation Fellow Jason Tashea and Georgetown Law professor and program co-founder Tanina Rostain. The fellowship is being funded by the New Venture Fund and the Pew Charitable Trusts, and will be based in the Justice Lab at Georgetown University Law Center.

Access to Justice Lab: The Access to Justice Lab at Harvard Law School 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) (<https://clp.law.harvard.edu/about/mission/>) 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 (A2J) Lab's vision is that lawyers, judges, and legal policymakers have access to and use credible data to make the justice system better serve individuals and families who cannot afford to hire lawyers. By demonstrating to legal professionals the value of using rigorous data about how the justice system works, the lab can transform law into an evidence-based field to improve outcomes for everyone.

A research center at Harvard Law School, the A2J Lab designs and implements randomized control trials (RCTs) to create gold-standard research to provide answers to critical questions in access to justice. This approach generates the data that legal professionals and policymakers require to evaluate proposed solutions and shows them the value of utilizing empirical research. The A2J Lab:

- *Builds coalitions to ask hard questions, identifies barriers to access, and proposes solutions.* The A2J Lab creates diverse research coalitions with a particular emphasis on including judges and lawyers. With a national focus, the team is currently exploring, developing, and implementing studies in over twenty states.
- *Designs and fields randomized experiments to learn which interventions succeed.* Every one of the A2J Lab's studies includes a field RCT as its backbone. Using a ten-step process, the A2J Lab's staff collaborate with field partners to design and implement RCTs in the justice system from conception to launch.
- *Shares data transparently and creates actionable lessons about how to make the justice system work better for everyone.* The A2J Lab generalizes data into actionable lessons and best practices to allow field partners and their peers to make adjustments on the ground. By training legal professionals in quantitative research methods and partnering with law schools to integrate field research into legal education, the A2J Lab equips scholars and the next generation of practitioners to transform law into an evidence-based profession.

Making Justice Accessible Project

A major new publication “**Access to Justice**,” (the Winter 2019 issue of *Dædalus*, the Journal of the American Academy of Arts and Sciences), is a multidisciplinary examination of this crisis, from the challenges of providing quality legal assistance to more people, to the social and economic costs of an often unresponsive legal system, to the opportunities for improvement offered by new technologies, professional

innovations, and fresh ways of thinking about the crisis.⁸⁴ This issue of *Dædalus* is part of a larger, ongoing effort of the American Academy to gather information about the national need for improved legal access, study innovations piloted around the country to fill this need, and advance a set of clear, national recommendations for closing the justice gap — between supply and demand for services provided by lawyers and other problem-solvers. **Access to Justice**” features the essays discussed in Appendix 1

Two new reports from the American Academy of Arts and Sciences’ Making Justice Accessible project were produced in 2020 and 2021. The first, *Civil Justice for All* provides a national overview of the crisis in legal services by focusing on four common categories of civil legal problems: family, healthcare, housing, and veterans affairs. By addressing these issues within the larger context of American civil justice, this report advances a set of clear, national recommendations for closing the gap between the supply and the demand for legal assistance in the United States. The Report recommends the following:

- First, and above all, dedicate a consequential infusion of financial and human resources to closing the civil justice gap, and seek a significant shift in mindset—extending beyond lawyers the duty and capacity to assist those with legal need—to make genuine strides toward “justice for all”;
- Second, increase the number of legal services lawyers who focus on the needs of low-income Americans;
- In the fall of 2019, HiiL and IAALS (Institute for the Advancement of the American Legal System) launched a nationwide study on access to justice in the United States, **Justice Needs and Satisfaction in the United States of America 2021 Legal problems in daily life**. According to the Introduction to the Report:

“While it is widely understood that there is an access to justice problem in the United States, the full extent of the justice crisis has been less clear. The focus in the access to justice community historically has been on meeting the legal needs of those with low income, who have trouble accessing an expensive, complicated, and outdated legal system. While these individuals are a key vulnerable population, the access to justice problem in the United States extends far beyond those of low income. Believing that a full picture of the access to justice problem in the United States would help to bring a greater understanding of the challenges and effective solutions to ensure justice for all, HiiL and IAALS launched this nationwide effort to assess legal needs in the United States across all income levels. This is the first nationwide survey of its size to measure how Americans across a broad range of sociodemographic groups

⁸⁴ <https://www.amacad.org/daedalus/access-to-justice>

experience and resolve their legal problems. This study has three key goals: • To provide nationwide representative data on access to justice and the justice needs that people in the United States face every day. • To develop a greater understanding of how people in the United States resolve those justice needs, as well as what is working and what is not, to inform and help reform efforts. • To urge an evidence-based strategy for justice system improvement, always revolving around the needs of people.”⁸⁵

- Third, increase the number of lawyers providing pro bono and other volunteer assistance, to supplement the corps of legal services lawyers;
- Fourth, bring many new advocates—service providers who are not lawyers—into the effort to solve civil justice problems;
- Fifth, foster greater collaboration among legal services providers and other trusted professionals—such as doctors, nurses, and social workers;
- Sixth, expand efforts to make legal systems easier to understand and use through the simplification of language, forms, and procedures and the wider use of technology; and
- Seventh, create a national team, or even a new national organization, to coordinate the efforts listed above, collect much-needed data on the state of civil justice, and help identify and publicize effective innovations that improve access.⁸⁶

The second white paper, *Measuring Civil Justice for All*⁸⁷, identifies the essential facts that should be collected about civil justice activity in the United States and the entities best placed to collect that information. It also describes a range of data access standards that would help to guide the use of civil justice data for administrative and research purposes. This white paper outlines a fundamental research agenda for an area in which studies are proliferating but are not yet connected and guided by a set of integrating questions. It also outlines practical steps for taking action on that agenda.

⁸⁵<https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf>

⁸⁶https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf

⁸⁷<https://www.amacad.org/sites/default/files/publication/downloads/2021-Measuring-Civil-Justice-for-All.pdf>

LEGAL NEEDS STUDY

2022 Justice Gap Study: LSC released a far-reaching new report on the crisis in civil legal aid, “The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans.”

This is LSC’s fourth justice gap study that documents the volume of civil legal needs faced by low-income Americans, assesses the extent to which they seek and receive help, and measures the shortfall between their civil legal needs and the resources available to address these needs. The deficit between resources and need is called the “justice gap.” The new study reveals that the justice gap is vast. Low-income Americans received no or inadequate legal help for a staggering 92% of all the civil legal problems that impacted them substantially. These problems are widespread, with 74% of low-income households experiencing at least one in the past year, and 39% experiencing five or more.

In its 2017 justice gap report, LSC, using slightly different methodology, found that 86% of the civil legal problems of low-income Americans did not get any or enough legal help.

In 2021, low-income individuals brought an estimated 1.9 million problems to LSC-funded legal aid organizations. LSC grantees were unable to provide any or enough legal help for an estimated 1.4 million of those problems. They could not provide any legal help at all for one-half of the eligible problems low-income Americans brought to their doors. Previous surveys reveal that this “turn away” rate has not improved since the first justice gap study in 2005.

The most common types of civil legal problems low-income individuals and families face involve health care, housing, consumer issues and income maintenance. More than half of those who experienced a problem say it substantially impacted their life—with consequences affecting their finances, mental health, physical health and safety, and relationships.

As a result of the significant, persistent barriers preventing low-income Americans from receiving legal assistance, many people are skeptical of the civil justice system. Of those surveyed, only 28% agreed that people like them are treated fairly.

In cases where low-income people did not seek legal assistance for their problem, the belief that costs would preclude them from receiving legal help was the most common reason.

The new study offers insights into the COVID-19 pandemic’s disproportionate impact on low-income Americans. One third of low-income Americans personally experienced at

least one civil legal problem related to the pandemic in the past year, compared to 18% of those at or above 400% of the federal poverty level.

The types of civil legal problems most likely to be attributed to the covid-19 pandemic are those involving income maintenance, education and housing. More than one-half of low-income Americans experiencing problems related to unemployment benefits and eviction attributed them to the pandemic.

The study also provides special focus on seniors, veterans, children, survivors of domestic violence, people in rural areas and those with high housing costs.

This year's study made several updates to improve the 2021 justice gap measurement survey and provide the most comprehensive estimate of the civil legal problems* experienced by low-income people in America today.

OUTREACH INITIATIVES

Legal aid programs in the US have historically struggled to deliver legal assistance to residents residing in rural areas not near metro areas. Congress required LSC to do a study of special problems of access and special legal problems in 1978, known as the 1007(h) study. One group studied was residents residing in rural areas. One of the approaches used was circuit riding where legal aid staff rode in buses to rural areas, met with clients and provided advice and legal representation. This approach was used in Georgia, Vermont, Maine, Michigan and elsewhere. Today, California and other programs are using a similar technique.

The Justice Bus Project of OneJustice takes teams of attorney and law student volunteers from urban areas to set up free legal clinics for low-income Californians living in rural and isolated communities. These clinics provide life-changing legal assistance to low-income veterans, vulnerable seniors, children with disabilities, low-wage workers, immigrant youth, and families. The team works closely with law schools, law firms, and in-house legal departments to carefully match volunteer interests with the regions and communities we serve with the Justice Bus Project. Trips are usually one full day in length, although they also offer longer trips for law schools as part of alternative spring and winter holiday breaks. Justice Bus trips are coordinated through both our San Francisco and Los Angeles offices, allowing convenient departure from urban areas in both Northern and Southern California.

Neighborhood Legal Services of Buffalo, New York recently became one of the very first legal services agencies to join OneJustice's national JUSTICE BUS Network. The Network aims to leverage the impact of pro bono volunteers by connecting with rural, isolated, and underserved communities. Through its Justice Bus project, Neighborhood

Legal Services replicates the highly successful California-based program, which utilizes pro bono attorneys and law students, in partnership with legal services attorneys, to overcome transportation barriers impacting the provision of free legal services in Western New York. Neighborhood Legal Services' local Justice Bus partners include: Erie County Bar Association Volunteer Lawyers Project; University at Buffalo School of Law; Seneca Street Community Development Corporation; and the Western New York Law Center.

CONCLUSION

While there is a right to counsel in felonies (*Gideon v. Wainwright* 372 U.S. 335 (1963)), delinquency cases involving juveniles (*In re Gault*, 387 U.S. 1 (1967) and misdemeanor prosecution of adults (*Argersinger v. Hamlin*, (1972) the promise of *Gideon* at the state and local levels has not been achieved. Accused persons who are unable to afford counsel do not receive the same kind of competent, well-supported, conscientious lawyer every person of financial means seeks to retain when charged with criminal conduct and faced with a loss of liberty.⁸⁸

At the federal level, while much better resourced and staffed than state and local defender programs, structural problems continue to exist within the federal defender program more than 50 years after the CJA's enactment. The federal defender system has not solved the fundamental issue of maintaining a constitutionally guaranteed defender function centered on advocating for individuals' rights independent from the judges who hear criminal cases.

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. Expanding access through technology and self-help representation activities continues and has increased. However, progress has been slow in meeting the second. There have been increases in state funding as well as from other funding sources. The

⁸⁸ Norman Lefstein, "Will We Ever Succeed in Fulfilling *Gideon's* Promise?" 51 *Indiana Law Review* 39 (2018).

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 in most areas of the United States and particularly with regard to housing evictions. 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. There are not enough actual staff lawyers, paralegals, 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. While LSC funding increased, it did not gain as much as hoped.. As a result, many low-income persons who are eligible for civil legal assistance are unable to obtain it. The basic civil legal aid system has not closed the “justice gap.”

APPENDIX

Right to Counsel and Other Housing Developments

The MIE Journal released its Fall 2022 issue, featuring pieces about the right to counsel for tenants!

In the article, *Implementing a Statewide Right to Counsel for Tenants: Learning from Washington, Maryland, and Connecticut*, we had the pleasure of developing a Q/A piece with Karen Wabeke (Program Manager for Access to Counsel in Evictions, Maryland Legal Services), Natalie Wagner (Executive Director, Connecticut Bar Foundation), and Philippe Knab (Reentry and Eviction Defense Program Manager, Washington State Office of Civil Legal Aid).

The article highlights their experience implementing the only statewide RTC programs in the country and includes insights on funding, intake, and recommendations for other programs. We're immensely proud to add this piece to the tools available for jurisdictions working on a right to counsel enactment or implementation.

The entire issue is available with an MIE subscription, where you'll find this piece and other fascinating articles about tenant representation, eviction diversion, and RTC for tenants.

- *The History and Current Status of Philadelphia's Eviction Diversion Program* by Sue Wasserkrug, Esq., Director of Mediation, Counseling or Referral Assistance Services, Inc.
- *Los Angeles Right to Counsel Coalition History & Codification Efforts* by Barbara Schultz, Director of Housing Justice, Legal Aid Foundation of Los Angeles.
- *The Montana Eviction Intervention Project: Legal Relief for Montana Tenants in the Wake of the COVID-19 Pandemic* by Emily McLean, Housing Navigator; Brittney Mada, Staff Attorney; William F. Hooks, Director of Advocacy, Montana Legal Services Association.
- *Building the Plane While We Fly It — Implementing Year One of Washington State's Right to Counsel in Evictions* by Scott Crain, Statewide Advocacy Counsel; Michelle Lucas, Eviction Prevention Unit Managing Attorney; Abigail G. Daquiz, Director of Advocacy, Northwest Justice Project.

- *Lessons Learned from Starting an Eviction Clinic During a Pandemic* by Andrew Thomas, Housing Resource Attorney and Tenant Assistance Legal Clinic Director, Indiana Legal Services.

On June 24, 2021 Associate Attorney General Vanita Gupta issued a letter⁸⁹ to chief justices and state court administrators encouraging them to take steps to keep families in their homes. The letter suggests requiring landlords to apply for rental assistance before filing; extend time in pending cases; modify summonses and other form filings; and partner with legal services organizations and community based organizations.

Counties around the country are considering allocating federal and state funds for right to counsel in eviction proceedings. Sonoma County in California has allocated \$712,000 in “federal and state dollars” for tenant representation. Santa Monica has launched what is being called a “pilot right to counsel program”, which is essentially includes RTC.

In January, the White House released a White House Blueprint for a Renters Bill of Rights. The Blueprint urges states to, among other things, provide “30 days’ notice of an eviction action and the right to counsel during an eviction proceeding...” This document was the product of strong advocacy by tenant organizers and housing justice groups across the country, such as Peoples’ Action’s Campaign, which released a report that included the right to counsel.

The Eviction Lab’s new piece covers how advocates, organizers, and tenants have shifted the landscape for renters, including those facing eviction across the country - and that the momentum to see even greater change is not lessening. The piece provides an overview of the different types of tenant protections advocates have pushed for and that cities, states, and courts have put in place to change eviction practices around the country. These protections range from mandatory pre-filing interventions to substantive changes in the process, like just cause requirements. It also outlines the resurgence in tenant unions and associations that are demanding larger housing justice reforms.

The National League of Cities (NLC) published a new tracking tool that looks at eviction prevention policies across 200 cities and D.C. The tool is described as an “interactive resource that aims to help elected officials, city staff, non-profits, service providers, researchers and others, better understand the local eviction prevention landscape in the US.” The tool tracks Right to Counsel programs, as well as Access to Representation

⁸⁹https://www.nlada.org/sites/default/files/Letter%20from%20Associate%20Attorney%20General%20Gupta_June%2024%202021.pdf

programs that “provide legal guidance to tenants facing eviction outside of a Right to Counsel ordinance push the right to counsel forward.”

Freddie Mac recently produced a comparative analysis of state landlord-tenants laws, specifically assessing various tenant protections. “The research offers a full accounting of 18 different tenant protection topics and provides examples of the nuanced approaches different states have taken to govern the unique relationship between landlords and tenants.” A right to counsel for tenants was one of the tenant protections reviewed, noting that RTC was a protection in three states (Maryland, Connecticut, and Washington State).

Stout recently released its second annual evaluation of Cleveland’s RTC program.. The report assesses the program during three critical stages. Critical findings include:

- Since July 2020, Cleveland Legal Aid attorneys helped **86% of all RTC clients achieve their goals.**
- When it was the client’s goal, attorneys helped **prevent an eviction judgment or an involuntary move 90% of the time.**
- The report also estimated that the City has seen **between \$11.8-14 million in financial benefits** due to avoided expenditures related to the housing social safety net, foster care, education, health care, and tax base erosion caused by out-migration.

The First Annual ATJ Roundtable

Hosted by Fordham Law School & National Center for Access to Justice in New York City, May 19-20, 2022.

Authors:

1. Robin Bartram, Assistant Professor of Sociology, Tulane University, “Routine Dilapidation: Home Repairs and Environmental Housing Injustice”.
2. Theresa Rocha Beardall, Assistant Professor of Sociology, University of Washington, “Sovereign Immobility and Indian Child Welfare”.
3. Anna E. Carpenter, Professor of Law and Director of Clinical Programs, University of Utah, “This Is Insane”: Lawyer Reactions To Liberalization of The Legal Market”. (With Alyx Mark)
4. Elizabeth Chambliss, Henry Harman Edens Professor of Law and Director Nmr Center On Professionalism, University of South Carolina School of Law, “Private Practice In Rural South Carolina”.

5. Casey Chiappetta, Principal Associate, Pew Charitable Trust, “Civil Court Modernization Framework”. (With Darcy White)
6. Rebecca Ann Johnson, Assistant Professor, Department of Sociology, Dartmouth College, “Data-Driven Civil Rights Remedies: A Case Study With Civil Rights Oversight of New York City Public Housing”. (With Josh Grossman and Yyler Simko)
7. Carlos A. Manjarrez, Senior Vice President For Program Planning and Research, Novakultura Consulting, “Data Is Never Free, But It Can Be Liberated”.
8. Lisa V. Martin, Associate Professor of Law, University of South Carolina of School of, “Domestic Violence and Access To Civil Justice In South Carolina”.
9. Alyx Mark, Assistant Professor of Government, Wesleyan University, “‘This Is Insane’: Lawyer Reactions To Liberalization of The Legal Market”. (With Anna E. Carpenter)
10. Victor David Quintanilla, Professor, Indiana University School of Law, “A Redemptive Self Intervention Pro Bono Publico”.
11. Kathryn A. Sabbeth, Associate Professor of Law, University of North Carolina School of Law, “Market-Based Law Development”.
12. Amy Schaufele, American University School of Law, “Insurgent Citizenship: How Noncitizens Denounce Immigration Scams and Frame Rights”.
13. Lauren Sudeall, Associate Professor of Law and Director of Center For Access To Justice, Georgia State Law, “The De(Legal)lization of Poverty (Or, Lessons From Decriminalization)”.
14. Amy Widman, Associate Clinical Professor of Law, Rutgers Law School, “Executive Branch Justice: What We Can Learn From Administrative Adjudications”.

Discussants:

1. Matthew Burnett, American Bar Foundation
2. Matthew Diller, Dean and Paul L. Fuller Professor of Law, Fordham University School of Law
3. Bruce A. Green, Louis Stein Chair and Director of Louis Stein Center For Law And Ethics, Fordham University School of Law
4. Tanina Rostain, Professor of Law, Georgetown University Law Center,
5. Rebecca Sandefur, Faculty Fellow, American Bar Foundation; Professor, School of Social and Family Dynamics, Arizona State University

6. David Udell, Executive Director of National Center For Access to Justice And Co-Director of A2j Initiative, Fordham University School of Law.