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CIVIL LEGAL AID IN THE UNITED STATES
AN UPDATE FOR 2011

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The United States is facing both a crisis of funding and the possibility of entering a new era in civil legal aid. The funding crisis is at both the federal and state levels. At the federal level, a new Congress has begun significant deficit reduction by focusing on reducing domestic spending including LSC spending. At the state level, fewer state funds are available for civil legal aid. This is because the state budget problems are severe and IOLTA revenues are also on a downward trend because of interest rates reductions by the Federal Reserve and the substantial slowdown in housing purchases and other business activity.

However, for the first time since 1993, there is a President who is fully committed to expanding civil legal aid on a federal level and an administration sympathetic to rebuilding the civil legal aid delivery system and its long neglected infrastructure. The Obama Administration has assigned senior staff in the Domestic Policy Council to oversee civil legal aid, it has submitted budget proposals that include increases in funding for the Legal Services Corporation (LSC) and the elimination of several key restrictions on what LSC-funded programs can do. It has appointed a new board and that Board has just recently hired a new President. In addition, it has established a new initiative on Access to Justice (ATJ) at the Department of Justice to focus on both civil access and indigent criminal defense.

While state funding is lower than in the most recent past, state activity on civil legal aid continues to increase. More states are establishing Access to Justice Commissions and moving forward in creating comprehensive, integrated state systems for the delivery of civil legal assistance, consistent with the ABA Principles of a State System for the Delivery of Civil Legal Aid. The long term trend toward the development of a state based comprehensive legal aid delivery system is very likely to continue.

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

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

I. CURRENT LEGAL AID SYSTEM

Overview: Civil legal aid in the United States is provided by a large number of separate and independent staff-based service providers funded by a variety of sources.[1] The current overall funding is approximately $1.4 billion.[2] The largest element of the civil legal aid system is comprised of the 136 programs that are funded and monitored by

[1] We do not know the exact number of civil legal aid programs. Previously I identified approximately 500 civil legal aid programs around the country. If we also include the 160 programs affiliated with the Catholic Legal Immigration Network (www.cliniclegal.org) and the law school clinical programs operated by the 204 law schools, then we reach a total of 864. This figure excludes the 900 pro bono programs identified by the American Bar Association.

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

LSC. LSC is also the largest single funder, but overall, far more funds come from states and IOLTA programs than LSC. [3] In addition, there are a variety of other sources, including local governments, other federal government sources, the private bar, United Way, and private foundations.

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

These staff-based providers are supplemented by approximately 900 pro bono programs, which exist in every state and virtually every locale.[4] These pro bono programs are either components of bar associations, component units of legal aid staff programs, or independent nonprofit entities with staff that refers cases to lawyers on the pro bono panels. Law school clinical programs and self-help programs also supplement the staff delivery system. There remain a very few "judicare" programs directly funded by either LSC or other funders; indeed, LSC funds only one small judicare program, which now has staff attorneys and paralegals who deliver legal assistance in some cases.[5] 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.

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

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

[5] The LSC funded judicare program is Wisconsin Judicare, Inc., in Wausau, Wisconsin.

The United States system also includes approximately thirty-eight state advocacy and support organizations that advocate before state legislative and administrative bodies on policy issues affecting low-income persons.[6] Some of these also provide training and technical support to local legal aid advocates on key substantive issues.[7] Moreover, more than 30 entities are engaged in advocacy on behalf of low-income persons at the federal level. Fifteen of these were formerly funded by LSC and were part of the national support network; others never were funded by LSC.[8]

Over the last twelve 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 267 sites.[9] All states have a statewide website, most of which also contain information useful both to advocates and clients. Dozens of national sites provide substantive legal information to advocates; other national sites support delivery, management, and technology functions. Many program, statewide, and national websites are using cutting-edge software and offering extensive functionality. I-CAN projects in many states use kiosks with touch-screen computers that allow clients to produce court-ready

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

[7] *Overview*, *supra* note 8, at 4; *Missing Link*, *supra* note 8.

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

[9] Pine Tree Legal Assistance lists 232 legal services sites on its webpage, http://www.ptla.org/ptlasite/links/services.htm.

pleadings and access to other services, such as help with filing for the Earned Income Tax Credit.[10] 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, to expand and make more efficient the provision of legal services to clients. These projects generally focus on the use of document assembly for pro se resources used by the public and automated documents used by legal aid staff to more efficiently represent their clients. Many of these projects nationally are coordinated through National Public Automated Documents Online (NPADO), which is a project of Pro Bono Net. [11]

In addition, there has been a rapid expansion of efforts by courts, legal aid providers, and bar associations to help people who are attempting to represent themselves in courts. Civil legal aid programs are devoting substantial time and resources to address the issue of assistance to pro se litigants. Many legal aid programs throughout the country operate self-help programs independently or in conjunction with courts. Some programs provide only access to information about the law, legal rights, and the legal process in written form, on the Internet, on videotape, through seminars, or through in-person assistance. Other programs actually provide individualized legal advice and often provide also legal assistance in drafting documents and advice about how to pursue cases. Often, programs provide both printed and

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[10] The most well-known of the ICAN projects is operated by Legal Aid of Orange County, https://secure.icandocs.org/. I-CAN! E-File is available to taxpayers at www.icanefile.org and, for the first time, as part of the Free File Alliance, a group of organizations that provide free tax-filing services and are listed on the Internal Revenue Service website, www.irs.gov. I-Can has grown to include 560 partners in 49 states helping low-income workers apply for the Earned Income Tax Credit (EITC).This year, with about six weeks to go before the April 18 deadline for filing tax returns, the free system, called I-CAN! E-File has processed more than $110 million in EITC refunds and tax credits.

[11] <cid:part1.01080802.04000605@iowalaw.org>http://www.probono.net/

Internet-accessible forms for use by persons without legal training, and they may provide also assistance in completing the forms.

A critical part of expanding access has focused on a range of limited legal assistance initiatives to provide less than extended representation to clients who either do not need such extended representation in order to solve their legal problems or live in areas without direct access to lawyers or entities available to provide extended representation. Many legal aid programs now operate legal hotlines, which enable low-income persons who believe they have a legal problem to speak by telephone to a skilled attorney or paralegal and receive advice and brief service. Legal hotlines may provide answers to clients' legal questions, analysis of clients' legal problems, and advice on solving those problems so that the client can resolve the problem with the information from phone consultation. Hotlines may also perform brief services when those are likely to solve the problem and make referrals if further legal assistance is necessary. Hotlines now operate in over 165 programs in forty-nine states, Puerto Rico, and the District of Columbia.[12] Some hotlines focus on particular client groups, such as the elderly. Others serve the low-income population in general. Finally, more and more states have a central phone number (or several regional phone numbers) that clients can call to be referred to the appropriate program or to obtain brief advice about their legal problems.

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

LSC is not a federal agency, nor a government controlled corporation, but a nonprofit corporation established with the powers of a District of Columbia corporation and those provided by the LSC Act. The President of the United States appoints a bipartisan eleven-member board that must be confirmed by the Senate. Board

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

members serve in a volunteer capacity, are not Executive branch employees and, under the LSC Act, cannot be fired by the President. Board members serve for three-year terms but hold over at the conclusion of their terms until new board members are qualified, i.e. confirmed by the Senate. The Chair of the board is chosen by the board, not by the President. The LSC board also appoints a president for LSC as well as certain key officers of the Corporation who serve at the pleasure of the board. The LSC president appoints the remaining members of the LSC staff. The LSC president and staff are not federal employees.

Unlike many federal agencies or government corporations, the LSC president administers the Corporation, making all grants and contracts. The LSC board does provide general oversight of LSC, makes broad policies, and promulgates the rules, regulations and guidelines governing LSC and the legal services grantees it funds. The board also submits its budget mark directly to Congress. The board meets at least four times a year for one or two days, although a new board may decide to meet more often initially.

LSC funds 136 grantees that operate local, regional or statewide civil legal assistance programs. 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. All LSC grantees are governed by boards which consist of 60% attorneys and one-third eligible clients. By LSC regulation, all programs must expend 12.5% of their basic LSC grant on the involvement of private attorneys in the delivery of legal services.

Clients Served: National data on the number of clients serviced by the overall system of civil legal aid, the types of cases that are handled and the services provided do not exist. The only national data is from the 136 LSC funded programs. According

to 2010 data reported to LSC (the last available data), LSC programs provided services in 932,406 cases. The majority of services provided were counsel and advice (58.1%) and brief service (18.5%). Cases involving an administrative agency decision were 3.5% and court decisions were 9.9 %. The largest category of cases was family law cases (34.5%) following by housing (25.2%), consumer (12.2%) and income maintenance (12.7%).[13]

II. ELIGIBILITY AND RESTRICTIONS

Eligibility

According to the data from the American Community Survey, 57 million Americans were eligible for civil legal assistance from LSC funded programs in 2009. Today, that number has grown to more than 63 million.

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

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

[13] See Testimony of James J. Sandman Before the Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, Us House of Representatives.

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, [14] or $27,938 for a family of 4.

LSC programs set their own asset ceilings for individual clients. These asset ceilings may be waived under certain circumstances. LSC programs may serve individuals who meet the asset ceilings and whose income is below 125% of the current official Federal Poverty Guidelines (poverty guidelines), which are revised annually by the U.S. government. In addition, under certain circumstances LSC programs may serve individuals who meet the asset guidelines and whose income exceeds 125% of the poverty guidelines. LSC programs may serve, without regard to income, those individuals who are seeking to maintain benefits provided by governmental programs for low-income individuals or families or whose income is primarily devoted to medical or nursing home expenses. LSC programs may also serve individuals whose income does not exceed 200% of the poverty guidelines if they are seeking to maintain or obtain certain governmental benefits or if the program has determined that they should be financially eligible based on certain other specified factors.[15]

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

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

[15] See 45 CFR 1611.

LSC regulations; or the organization must have as its principal activity the delivery of services to financially eligible members of the community.

LSC-funded programs are permitted to serve financially eligible individuals who are U.S. citizens or who are members of specified categories of aliens.[16] 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.[17] Also, LSC programs are not permitted to represent persons convicted of or charged with drug crimes in public housing evictions when the evictions are based on threats to the health or safety of public housing residents or employees.[18]

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.[19] Nor is there a "significance test" required by LSC or state funders.[20] Programs may impose their own criteria for service, such as only providing advice and brief service in certain kinds of cases or providing assistance only in particular categories of cases or with regard to specific issues. But the decision to limit service is a program-by-program decision and not a decision made by LSC or most other major institutional funders, such as state IOLTA programs. Some other funders limit the use of their resources to certain clients or types of cases, such as domestic violence victims.

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[16] 45 CFR 1626

[17] 45 CFR 1637

[18] 45 CFR 1633

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

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

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

Restrictions

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

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

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

In other words, all of a LSC grantee's funds, from whatever source, are restricted.[21] Nevertheless, the restrictions do not cover most of the work that LSC programs can do on behalf of the low-income community, and LSC-funded programs can continue to provide representation in over 95% of the cases they were able to undertake prior to the imposition of the 1996 restrictions.

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

III. THE JUSTICE GAP

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

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

paralegal. As a result, many low-income persons who are eligible for civil legal assistance are unable to obtain it.

This "justice gap" was most recently demonstrated by the Legal Services Corporation (LSC) in a entitled, "*Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*,"[22] which examined the adequacy of available funding to meet the legal needs of the low-income population in the United States. The study was updated in 2009, employing the same methodology to document the continued need for civil legal aid among low-income Americans.[23] The studies revealed three main commonalities. First, both studies showed that for every client who received service from an LSC grantee, one eligible applicant was turned away. In other words, 50 percent of potential clients that request assistance are turned away due to lack of resources on the part of the program. Second, the studies each looked at a number of individual state studies addressing the civil legal problems faced by states' respective low-income residents conducted over the last nine years. Seven of the state studies validated the findings of the national study conducted by the American Bar Association (ABA) in 1994, which demonstrated that less than 20 percent of the legal needs of low-income Americans were being met. Finally, the studies identified the number of legal aid lawyers in both LSC and non-LSC funded programs, and compared that number to the total number of attorneys providing personal legal services to the general population. The study determined that, at best, there is one legal aid attorney for every 6,415 low-income persons. In contrast, the ratio of attorneys delivering personal legal services to the *general* population is approximately one for every 429 persons, or fourteen times more.

The Justice Gap study formed the basis of the funding requests that LSC has made to Congress. The funding request for FY 2010 $485,100,000, for 2011 and 2012

[22] *See generally* LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (Sept. 2005), *available at* http://www.lsc.gov/press/documents/LSC%20Justice%20Gap_FINAL_1001.pdf.
[23] *See generally* LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (Sept. 2009), *available at* http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf [hereinafter HOUSEMAN, JUSTICE GAP].

was $516,550,000. The Congress appropriated $420 million for FY 2010 and recently appropriated $404.2 million for4 2011, a 3.8% reduction, The President recommended $435 million for FY 2010 and 2011 and $450 million for 2012.

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

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

A significant gap in the civil legal aid system in the United States, and particularly in the many states with limited non-LSC resources, is the lack of providers that can (1) serve prisoners, aliens, and others who cannot be represented by LSC funded providers; (2) bring class actions and effectively and strategically use attorneys' fees statutes; and (3) engage in advocacy in all relevant forums, including legislative and administrative rule-making and policy-making forums. In large parts of the country such providers do not exist, or, if they exist, they are small, under-funded, and not able to meet the need that exists. This problem is, in part, a result of the restrictions imposed on LSC-funded entities by the 1996 appropriation riders.[24]

[24] Some have turned to the courts to address this fundamental challenge, initially culminating in the United States Supreme Court decision in *Velazquez v. LSC*, which struck down one part of the restriction that prohibited representation of clients in welfare cases where a challenge to a welfare law or regulation was necessary. 531 U.S. 533 (2001). The remaining 1995 restrictions were upheld. There are three ongoing cases that are challenging LSC rules on "program integrity." The "program integrity" provision requires that LSC programs "have objective integrity and independence from any organization that engages in restricted activities." 45 C.F.R. §1610.8 (2005). The regulation sets out criteria by which LSC will measure compliance. It is these criteria and their implementation that are being challenged. So far, none of the cases have been successful in changing the "program integrity" provision.

A final component of the "justice gap" is the lack of statewide support and coordinated advocacy. Historically, LSC and some IOLTA funders have sought to ensure coordination and support for all legal providers and their partners, along with a central focus on statewide issues of importance to low-income persons, including representation before legislative and administrative bodies. The loss of over $10 million in state support funding as a result of the Congressional funding decision made in 1996 has taken a large toll on the state support structure that was previously in place.[25] Many of the state support units and the regional training centers that were part of larger programs have been eliminated. In a number of states, there has been no state-level policy advocacy, no significant training of staff, no information sharing about new developments, no litigation support, and no effective coordination among providers. Several new entities have been created to carry on state level advocacy, particularly policy advocacy. However, virtually all of these new entities are severely under-funded and under-staffed. Several of the remaining freestanding state support programs have survived, but, with a few exceptions, they have not made up the loss of LSC funds.[26]

IV. FUNDING

A. *Where We Are Today*

As noted above, the United States civil legal aid system is not funded by one principal source. There was about $1.4 billion in the civil legal assistance system as of the beginning of 2010.

State General Revenue and Filing Fees:	$420,249, 500
IOLTA	$183,708
Other Public Funds	$283,853,000
Legal Community/Bar	$76,245,000

[25] *Missing Link*, *supra* note 8, at 6.

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

CY Press	$20,310,000
Foundation/Corporation Grants	$112,272,000
Other Strategies (United Way, Attys Fees)	$90,958,000
Legal Services Corporation	$371,406,991

While LSC funds are distributed according to the 2000 census data on individuals living below the poverty line ($10.21 per poor person in 2011), the other funding sources are not distributed equally among states. There is a significant difference in funding among the states. In fact the highest funded state is funded at 10 times the lowest funded state. The lowest-funded states are in the South and Rocky Mountain states, and the highest-funded states are in the Northeast, Mid-Atlantic, Midwest, and West.

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

LSC FUNDING COMPARED TO INFLATION

Grant Year	Annual LSC Appropriation in Actual Dollars	Appropriation If It Had Kept Up With Inflation	Percentage Change From 1980 (Using 1980 Dollars)
1975	71,500,000		
1980	300,000.000	300,000,000	0.0%
1981	321,300,000	331,004,146	-2.9%
1982	241,000,000	351,219,424	-31.4%
1990	316,525,000	475,649,712	-33.5%
1995	400,000,000	554,737,587	-27.9%
1996	278,000,000	570,998,079	-51.3%
2002	329,300,000	623,444,568	-47.2%
2005	330,804,705	704,055,010	-53.0%
2007	348,500,000	733,178,279	-52.5%
2008	350,490,000	739,072,032	-52.6%
2009	390,000,000	752,938,299	-48.2%
2010	420,000,000	767,497,879	-45.3%
2010	404,200,000	783,790,743	-51.6%

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

As many commentators have pointed out, the United States system is funded far below the level of funding provided by most of the other Western, developed nations.[27] Even at the lower end, Germany and Finland invest more than three times as much of their gross domestic product (GDP) as the United States does in serving the civil legal needs of lower income populations. At the higher end, England spends twelve times as much of its GDP as the United States does to provide civil legal aid to its citizens. In between, New Zealand spends five times more than the United States, and the Netherlands over seven times as much. Canadian provinces are also in the middle, but several spend significantly more than the US on civil legal aid. Even though the US is far behind virtually all developed countries with regard to civil legal aid funding, it is important to recognize that, over the last decade, the U.S. system has grown from approximately $800 million to over $1.4 billion (including the District of Columbia, Puerto Rico, and the territories).

B. *Future Funding*

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

- federal government;
- state and local governmental funds;
- IOLTA funds;
- private bar contributions; and
- other private sources, such as foundations and United Way Campaigns.

1. Federal Funding through LSC

Even though forty-one states plus the District of Columbia now have non-LSC funding that exceeds LSC funding, and even though new funding will continue to come from non-LSC sources, increased funding from the federal government will continue to

[27] *See* Earl Johnson, *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INT'L L. J. S83 (2001).

be essential for two reasons. First, civil legal service is a federal responsibility, and LSC continues to be the primary single funder and standard setter. Second, there are many parts of the country – particularly the South, Southwest, and Rocky Mountain states – that have not yet developed sufficient non-LSC funds to operate their civil legal assistance program without federal support.

Supporters of increased federal funding will have to overcome significant political barriers to substantially increase federal funding for civil legal assistance. On the one hand, although LSC leadership has made substantial progress in developing a much stronger bipartisan consensus in favor of funding for LSC,[28] the political leadership, particularly in the Congress, remains divided about whether there should continue to be a federal program and its scope. On the other hand, the Obama Administration is strongly supportive of LSC and is seeking increased funding and removal of restrictions on activities as a key part of its civil rights agenda.

During the recent debate on the 2011 appropriations for the federal government, the House faced an amendment that would have eliminated all funding for LSC grantees. Although that amendment was defeated on a bipartisan vote, the bill that passed the House contained a cut of $70 million. The 2011 appropriations bill that Congress adopted in April, however, only reduced LSC by $15.8 million. We are likely to see similar efforts to completely eliminate LSC funding again during consideration of the Fiscal Year (FY) 2012 appropriation. While we are confident that the Senate and President Obama will prevent LSC from being eliminated entirely, there remains a real possibility that funding could be severely reduced. Depending on what happens in the 2012 election, LSC may well face a genuine existential threat. Numerous conservative think tanks such as the Heritage Foundation have long called for the elimination of LSC, and at least one of the various reports on deficit reduction (e.g. The Debt Reduction Task Force of the Bipartisan Policy Center chaired by Senator Pete Domenici and Alice Rivlin) included LSC in the lists of programs that could be terminated.

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

2. State IOLTA and Governmental Sources

Since 1982, funding from state and local governments has increased from a few million dollars to over $500 or more million.[29] Until recently, this increase has been primarily through IOLTA programs, which have now been implemented in every state.[30] But funding from court fees and general state revenue has now overtaken IOLTA funding in many states. By 2008, IOLTA funding had increased to $213,495,000. IOLTA grants to legal services programs in 2009 totaled $184 million. The total of all grants in 2009 (including legal services, administration of justice, public education, etc.) was $213.4 million. The discrepancy between the total income and the grant levels can be attributed to the fact that grants are often paid out of the previous year's income, as well as to the fact that some programs use reserve funds to stabilize grants. Because of decreases in interest rates and the slowdown in economic activity as a result of the recession, IOLTA funds were reduced sharply between 2008 and 2010, and funding in 2011 is likely to be even lower than it was in 2010. With the prospect of significant state budget deficits, state appropriations for legal services may also be reduced in the future.

On December 29, 2010, President Obama signed into law legislation (H.R. 6398), extending full FDIC insurance coverage for IOLTA accounts, regardless of amount, through December 31, 2012. IOLTA accounts had received full FDIC insurance coverage since November 2008, when the FDIC created the Transaction Account Guarantee (TAG) Program. However, when Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in June 2010, it extended full FDIC coverage through December 31, 2012, but only to non-interest bearing accounts. If the

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

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

corrective IOLTA legislation had not been enacted, the full insurance coverage for those accounts would have expired on December 31, 2010.

IOLTA programs have developed a number of strategies to increase IOTA funding. Forty-four states (have adopted mandatory IOLTA and are no longer permitting lawyers to opt out. Thirty two states have adopted "comparability" provisions which require that financial institutions pay IOLTA accounts no less than the interest rate generally available to non-IOLTA depositors at the same institution. A few states have pursued strategies that designate what "reasonable fees" can be charged by the financial institution to the IOLTA account, making impermissible other fees that should be borne by the lawyer or law firm maintaining the account. Some have prohibited "negative netting" which is the practice of using earnings from one IOLTA account to pay fees on another IOLTA account. Finally, some states have established Honor Rolls or Prime Partner Programs under which banks that agree to pay a higher rate on IOLTA accounts receive recognition by the IOLTA program.

Within the last seven years, substantial new state funding has come from general state or local governmental appropriations, as well as efforts such as filing fee surcharges, state abandoned property funds, and other governmental initiatives. State governmental increases were likely to continue as long as state financial conditions remain in good shape. However, as a result of the current recession, state financial conditions are now far worse than those at the federal level. States are facing huge budget deficits, and most do not have the capacity to deficit spend because of state constitutional provisions requiring a balanced state budget.

Obtaining (and retaining) state appropriations and filing fee/fine surcharges to fund civil legal aid has become more difficult as the country's economic problems have continued. In response, bench and bar leaders, working closely with their legal aid providers, are redoubling their efforts to maintain and increase revenue. In 2010, results were very mixed. There were a few states with major increases or decreases, and many states with less severe reductions. In virtually all circumstances, any increases in state

funding helped to offset losses from other funding sources, rather than increasing services. A few states increased state funding temporarily to compensate for significant IOLTA losses. Funding in most states that use court fees and fines rather than appropriations as the funding mechanism for legal services remained level.

3. Right to Counsel in Civil Cases at State Expense

In the United States, there is no general right to state-funded counsel in civil proceedings. The United States Constitution does not provide an explicit right to state-funded counsel in civil proceedings, although the Fourteenth Amendment does prohibit a State from depriving "any person of life, liberty, or property, without due process of law" or denying "to any person within its jurisdiction the equal protection of the laws." Unlike *Gideon v. Wainwright*,[31] in which the United States Supreme Court held that there must be counsel in criminal cases in which the defendant faces imprisonment or loss of physical liberty, the Court refused to find a constitutional right to counsel in civil cases when first faced with the issue in 1981. In *Lassiter v. Department of Social Services*,[32] the Supreme Court held in a 5-4 ruling that the due process clause of the federal constitution did not provide for the guaranteed appointment of counsel for indigent parents facing the termination of parental rights. Rather, "the decision whether due process calls for the appointment of counsel for indigent parents in termination proceedings is to be answered in the first instance by the trial court, subject, of course, to appellate review."[33]

No state constitution explicitly sets out a state-funded right to counsel in civil cases. Virtually all state constitutions have due process and equal protection clauses whose wording may differ from the federal constitution but whose scope have often been interpreted to be similar to or even broader than the federal constitution's provisions. These provisions have been the primary legal framework for asserting the right to counsel in civil cases at state expense. Many state constitutions have "access to

[31] 372 U.S. 335 (1963).
[32] 452 U.S. 18 (1981).
[33] *Lassiter*, 452 U.S. at 32.

court" provisions, and some have provisions incorporating English common law rights. Recently, advocates have pursued these provisions to assert the state-paid right to civil counsel.

In limited categories of cases, some state legislatures have enacted statutes requiring state-funded counsel to be appointed for one or more parties,[34] and the highest courts in some states have judicially decided that state-funded counsel should be provided as of right to some parties.[35] These state-funded counsel provisions or court rulings are generally in the family law area and civil commitment. There are a few federal statutory requirements for appointment of counsel in civil cases, but these are very limited.

Thus, in the vast majority of civil cases, there is no constitutional or statutory right to state-funded counsel. Based on the usual caseloads of most general civil legal aid providers, it would be fair to conclude that there is no statutory right to counsel in over 98 percent of the cases that would directly involve low-income persons as defendants or plaintiffs.[36]

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

[35] A thorough exploration of state cases since *Lassiter* is found in the article by Clare Pastore, *Life after Lassiter: An Overview of State-Court Right-to-Counsel Decisions*. 40 CLEARINGHOUSE REVIEW 186 (July-Aug. 2006). *See also* 92 A.L.R.5th 379 (2001 & Supp. 2006) (providing detailed analysis of state court cases involving termination of parental rights and the developments subsequent to *Lassiter*); Bruce A. Boyer, *Justice, Access to the Courts, and the Right to Free Counsel for Indigent Parents: The Continuing Scourge of Lassiter v. Department of Social Services of Durham*, 36 LOY. U. CHI. L.J. 363, 367 (2005) (noting that forty states now provide free counsel for parents in state-initiated termination-of-parental rights actions, up from thirty-three at the time of the *Lassiter* decision); Rosalie R. Young, *The Right to Appointed Counsel in Termination of Parental Rights Proceedings: The States' Response to Lassiter*, 14 TOURO L. REV. 247 (1997) (particularly note Tables I and II at pp. 276, 277).

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

Most commentators do not believe that there will be any significant right-to-counsel developments at the federal level because of the current make-up of the United States Supreme Court. Instead, most action that is occurring is focused at the state level in a few states. Major initiatives have been underway in several states to litigate a constitutional right to civil counsel at state expense.[37] So far, there have not been any recent state court decisions expanding the right to counsel in civil cases beyond the family law areas described above.

In addition to litigation in the courts, there are significant efforts to develop more expansive state statutes that provide for the right to counsel in civil cases at state expense in situations that go far beyond the few areas that now provide for such counsel.[38] In 2010, the Maryland Access to Commission published *Implementing a Civil Right to Counsel in Maryland*. In the first part of the document, the Commission articulates how a civil right to counsel in basic human needs cases might be implemented should a right be established by case law or legislation. In the second section, the Commission tries to answer the difficult question of "how much might it cost?"

> In three states, advocates have turned to setting pilot [projects that provide counsel in a category or categories of cases. Massachusetts began pilot projects in 2009. The two Massachusetts pilot projects are exploring the impact of full representation in eviction cases. The pilots grow out of the work of the Boston Bar Association's Task Force on Expanding the Civil Right to Counsel, as described in its report: *Gideon's New Trumpet: Expanding the Civil Right to Counsel in Massachusetts*.[39] The pilot projects test the theory that an expanded civil right to counsel should target the cases in which counsel is most likely to affect the outcome. Representation is focusing on scenarios identified through a survey of housing experts in the state: 1) where the eviction was tied

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

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

[39] See http://www.bostonbar.org/prs/nr_0809/GideonsNewTrumpet.pdf.

to a mental disability; 2) where it involves criminal conduct, and 3) where a viable defense exists and listed factors reveal a power imbalance likely to deprive a tenant of an affordable apartment. One pilot project is situated in a specialized housing court and another in a generalized district court, since evictions occur in both types of courts. The funding supports representation through two legal aid offices. Evaluative tools, including a randomized experiment, will attempt to measure the efficacy of the program, testing the theory that representation in fact preserves shelter. The projects also hope to estimate the number of these types of eviction cases statewide, in case the program becomes the basis for a statewide proposal

The Boston Bar Association Civil Right to Counsel Task Force is also seeking to develop pilot projects exploring the impact of full representation in custody cases. Requests for proposals have been sent to legal services programs and county bar associations. Two types of custody cases will be covered: those involving domestic violence (indicated by the presence of a restraining order) and those where only one side represented. Proposals must represent collaboration between a county probate/family court judge, a legal aid program, and the county bar. The Task Force will select potential pilot projects and seek funding for them.

The Texas Access to Justice Foundation funded two pilot civil right to counsel projects for a 20 month cycle from January 1, 2010 to August 31, 2011. The two projects are joint collaborations with courts in underserved counties and two legal aid programs. The Tenant Defense Project conducted by Lone Star Legal Aid provides for appointment of counsel for persons involving eviction appeals in three counties. The Border Foreclosure Defense Project, conducted by Texas Rio Grande Legal Aid, is partnering with courts in six counties to represent low income persons in foreclosure hearings involving foreclosure of homes in equity loans, tax loans and reverse mortgages. The two projects are also required to collect data that will be used for further development by the Texas Access to Justice Commission, bar associations and state legislature.

Under a 2009 law, the California Judicial Council will oversee pilot projects in designated jurisdictions for appointment of counsel in civil cases such as housing, domestic violence, child custody, guardianship, conservatorship and elder abuse. . The projects will start in fiscal year 2011-2012 and will initially be authorized for a three-year period. Total funding is expected to be approximately $10 million per year, funded by a $10 increase on certain court services. In September 2010, then-Chief Justice Ron George appointed a 16-member committee to oversee implementation of the program, chaired by retired Court of Appeal Justice and ILAG member Earl Johnson, Jr. The committee has received 18 proposals from legal aid agencies and local courts wishing to partner in the development of pilot projects. Recommendations will be made to the California Judicial Council on April 29. The projects are scheduled to start operating on October 1. Evaluation of the pilots is being designed with a national advisory committee that includes one ILAG member, Ab Currie. The legislation also requires data collection and evaluation of both the civil representation and court-innovation components in order to provide a basis to revise and extend the legislation. [40]

Finally, at the ABA Annual Meeting in August 2010, the House of Delegates adopted resolutions supporting a Model Access Act and Basic Principles of a Right to Counsel in Civil Legal Proceedings. Both initiatives follow up on the ABA's landmark resolution in 2006 calling on federal, state and territorial governments to provide low-income individuals with state-funded counsel when basic human needs are at stake. The Model Act complements the ABA's support of existing LSC-funded and other local legal aid programs by establishing a statutory right to counsel in those basic areas of human need identified in the 2006 Resolution and by providing a mechanism for implementing that right. Commentary acknowledges and identifies alternatives to meet local needs of jurisdictions considering implementation of the Model Act. The goal of the Model Access Act is to provide interested legislators with a basis for beginning

[40] For a description of the process by which the legislation was adopted and the actual framework established by the legislation see Kevin G. Baker and Julia R. Wilson, *Stepping Across the Threshold: Assembly Bill 590 Boosts Legislative Strategies for Expanding Access to Civil Counsel,* 43 CLEARINGHOUSE REVIEW 550 (March-April 2010).

discussions in their jurisdictions that will lead to implementation of a statutory right to counsel. The Basic Principles of a Right to Counsel in Civil Legal Proceedings expand upon the 2006 resolution by setting out the minimum basic requirements for providing a right to counsel, culled from the larger body of relevant case law, statutes, standards, rules, journal articles, and other sources of legal information.

V. FUTURE DEVELOPMENTS AFFECTING LSC

First, the Administration has indicated its support for increased funding for LSC when it recommended that Congress appropriate $450 million for LSC for FY 2012. Technically, LSC submits its budget directly to Congress. The LSC Budget is not a part of the Administration's budget and LSC does not go through all of the steps and review of other federal Departments and Agencies that are part of the President's budget. However, the President's recommendation is often very important to the Congress, particularly in a new Administration with a Congress controlled by the same party as the President. Thus, President Obama's recommendation of $450 million signals a high level of support for LSC by the Administration and in many respects frames the playing field for Congressional action.

Second, the Administration has nominated and the Senate confirmed a new Board. The Board Chair is John G. Levi, a partner in the Chicago office of Sidley Austin, LLP and a leader juvenile justice and access to justice in Chicago for many years. The Vice Chair is Martha Minow, Dean of Harvard Law School. The bi-partisan board includes 6 Democrats and 5 Republicans. Other notable members include Robert Grey, Former President of the American Bar Association.

Third, the new Board recently hired as new President, Jim Sandman. Prior to coming to LSC, Jim was general counsel for the District of Columbia Public Schools and for 30 years an attorney at Arnold & Porter, where is served as

managing partner from 1995 – 2005. He was also President of the DC Bar from 2006-2007, Co-Chair of DC Judicial Conference Committee on Pro Bono Legal Services, a member of the Pro Bono Institute Law Firm Pro Bono Project Advisory Committee and served on the ABA Standing Committee on Pro Bono and Public Service.

Fourth, the new Board created ad *Special Task Force on Fiscal Oversight* to study how fiscal oversight of grantees is currently performed by the Corporation and to report to the Board its findings and recommendations. The Task Force is comprised two LSC Board members, Victor Maddox and Robert Grey and persons from outside the Corporation and the Board. It includes three senior executives of Fortune 500 corporations, six leaders of national foundations, two experienced accounting executives, and two former inspectors general. The Task Force hopes to complete its work this summer or fall.

Fifth, the LSC Board has created a Legal Services Corporation Pro Bono Task Force with Martha Minow and Harry J.F. Korrell III as the co-chairs. The Task Force will have a membership that can provide guidance on pro bono in urban and rural communities, can help us better understand what steps to recommend to LSC funded programs, can identify the most effective delivery models, can help us improve our outreach to the organized bar, the business community, national and state bar associations and others, and can position the Corporation to more consistently foster recognition of the importance of pro bono.

Sixth, the LSC Act has not been reauthorized since 1977. Although the reauthorization section of the LSC Act expired in 1980, there is no sunset provision, and the LSC Act continues as the legislative framework for the program. LSC remains in existence because Congress has continued to appropriate funds to support it. Since 1980, Congress has made numerous legislative changes affecting LSC's operation through riders to the appropriations acts. For the first time since 1995, there is

Congressional interest in considering a reauthorization of LSC. Senator Tom Harkin, the lead supporter of LSC in the Senate at this time, and a key member of the Senate Committee that oversees LSC, introduced a reauthorization bill, the Civil Access to Justice Act of 2009, and a similar bill was introduced in the House. Congress did not take up reauthorization during the 2009-2010 session.

VI. DEPARTMENT OF JUSTICE ACCESS TO JUSTICE INITIATIVE

In 2010, the Department of Justice hired Larry Tribe, Constitutional Law Professor at Harvard to head up a new initiative at the DOJ to expand access to justice. Larry has decided to return to Harvard for medical reasons but the initiative goes on and they are hoping to have a new director shortly. That initiative has undertaken a variety of activities in both the civil and indigent defense arenas.

First, it has led an effort to expand Access to Justice Commissions including a speech by Larry Tribe at the Annual Conference of Chief Justices in July. That led to a joint resolution of the Conference of Chief Justices and Conference of State Court Administrators in support of state Access to Justice Commissions and has raised the visibility of the state Access to Justice commission model around the country. The resolution states that the CCJ and COSCA support the aspirational goal that every state and United States territory have an active Access to Justice commission or comparable body. As a result of the resolution, bench and bar leaders in 6 states have begun working with the ABA Resource Center for Access to Justice Initiatives toward possible creation of new commissions

Second, the ATJ initiative has led efforts to remove artificial and enormously counterproductive obstacles to pro bono representation for limited purposes (unbundled representation), relaxing conflict rules for pro bono attorneys, permitting pro bono lawyers licensed in jurisdictions other than the state to practice and more meaningful self-representation beyond technology and form simplification such as clear rules that

govern how court staff and non-lawyers may guide prospective litigants through the process of filling out self-help forms.

Third, ATJ has promoted foreclosure mediation and is now funding research on what is working.

Fourth, ATJ is convening an inter agency working group; to focus on language access and to develop clear standards and best practices.

Fifth, ATJ worked closely with the ABA, NLADA and others to ensure Full FDIC Insurance Coverage Continued for IOLTA Accounts as referenced earlier on page 14.

Sixth, ATJ has worked with the Commerce Department to provide grants under its Broad Band Technology grant programs to Washington and North Carolina to expand access to legal aid in rural areas.

Seventh, ATJ developed a "pipeline" project, aimed at bridging and coordinating domestic violence services among law schools, law firms, legal services programs and pro bono professionals. Victims in this program are initially seen at law school clinics with legal services programs serving as backups for cases requiring more extensive representation. Law firms provide financial support for the project. The project currently has two initiatives, one in Baltimore and one in New Orleans

The ATJ initiative has developed a comprehensive agenda for indigent criminal defense and is now developing a similar comprehensive agenda for civil legal aid.

VII. SUPPLEMENTS TO THE STAFF ATTORNEY SYSTEM

PRO BONO

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

While there is no reliable data about how much pro bono activity is actually going on, states are starting to measure the amount of pro bono being done either through surveys or through mandatory reporting requirements. The American Bar Association's Standing Committee on Pro Bono and Public Services recently issued a new report—**Supporting Justice II: A Report on the Pro Bono Work of America's Lawyers—** which reports on a 2008 survey of 1,100 lawyers throughout the country in private practice, corporate counsel offices, government, and academic settings. This report is based on a new survey similar to the one done by the ABA in 2004. The new study focused directly on what lawyers did for persons of limited means and for organizations that address the needs of persons of limited means. The study found that 73% of respondents provided free pro bono services to people of limited means and organizations serving the poor, and 27% of the lawyers surveyed met the ABA's aspirational goal of providing at least 50 hours of free pro bono services to persons of limited means.

The Legal Services Corporation has been a leader in encouraging pro bono. Since 1981, LSC-funded programs have had to provide a portion of their funding for private attorney involvement. Currently, each LSC-funded provider must expend 12.5% of its LSC funding for private attorney involvement.[41] Of the 920,447 cases closed by LSC program in 2009, the most recent figures available, 103,744 were done by private

[41] The requirement is imposed by LSC through its regulatory authority. See 45 CFR 1614.

attorneys. Of these cases, 65,022 were done by pro bono attorneys, 33,653 by contract or judicare attorneys, and 5009 by other PAI approaches.

In 2007, LSC began three new initiatives. In April LSC board adopted a resolution in that encouraged LSC-funded programs to undertake greater pro bono activity and pledged to publicize and recognize the work of LSC-funded programs in pursuing private attorney involvement initiatives. Since then, most LSC-funded programs have adopted similar resolutions. Second, LSC joined with the ABA to create a National Celebration of Pro Bono. Third, on December 20, 2007, LSC issued a new Program Letter that provided guidance to LSC-funded program on resources and innovative approaches to more effectively integrate private attorneys into the provision of high quality civil legal assistance.

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

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

In addition to mandatory reporting efforts, much is happening at the state level to expand pro bono services for low-income persons. A number of states have modified their Rules of Professional Conduct to promote pro bono service. The highest courts of several states have been very involved in promoting pro bono. The courts have used

their judicial authority under state law to create formal statewide pro bono systems. For example, state-level commissions and local committees, with judicial or joint bar-judicial leadership, have been created by Supreme Court rule in Indiana, Maryland, Nevada, and Florida. Several states have also initiated major state pro bono recruitment campaigns led by the chief justice and bar presidents or have initiated other efforts to expand pro bono service in the states. Most states now have extensive Web-based resources to support pro bono attorneys.

Finally, the Pro Bono Institute's Law Firm Pro Bono Project created a challenge to large firms around the country to contribute 3 to 5% of their total billable hours to the provision of pro bono legal services. Today, 150 law firms are signatories to that challenge.[42] The Pro Bono Institute also began a new challenge for corporate in-house counsel to increase the number of significant pro bono activities among lawyers who work on legal matters directly for corporations. The Corporate Pro Bono Challenge is a simple, voluntary statement of commitment to pro bono service by corporate legal departments, their lawyers, and staff. The goal is for one-half of the legal staff to support and participate in pro bono services.[43] There are now 100 signatories to the corporate pro bono challenge.

The need for civil legal aid cannot be met without increasing the use of private attorneys, both pro bono and paid. This will involve far more than tapping individual attorneys for work on a particular case, although in many parts of the country that will remain a real challenge. To move forward with a more effective private attorney system, LSC, DOJ, and ATJ Commissions must increase the number of lawyers and law firms and the amount of time they spend on assistance to low-income persons and also help civil legal aid providers to use those resources and have systems in place to gauge where private bar involvement can be most effectively utilized.

LAW SCHOOLS

[42] Information is available from the Pro Bono Institute. See www.probonoinst.org.
[43] http://www.probonoinst.org/

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

However, law schools have also focused more broadly on equal justice beginning in December 1999,when the American Association of Law Schools (AALS) created an equal justice project—Pursuing Equal Justice: Law Schools and the Provision of Legal Services. The results of this effort are catalogued in an AALS report in March of 2002, **AALS Equal Justice Project: Pursuing Equal Justice: Law Schools and the Provision of Legal Services**.

Since the publication of this report, AALS has adopted a Statement of Core Values, which requires AALS members to have "a faculty composed primarily of full-time teachers/scholars who constitute a self-governing intellectual community engaged in the creation and dissemination of knowledge about law, legal processes, and legal systems, and who are devoted to fostering justice and public service in the legal community…." AALS is also working with Equal Justice Works, the organization of public interest law student organizations, to develop a reporting scheme to provide information on public interest activities of law schools. New courses in social justice and equal justice have also been started in a number of law schools; and several new textbooks include substantial materials about civil legal aid, equal justice, and social justice activities.

VIII. SELF-HELP LITIGANTS AND PRO SE DEVELOPMENTS

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

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

Over the last several years, the Self-Represented Litigation Network, which brings together courts, bar and access to justice organizations in support of innovations in services for the self-represented, has undertaken a number of activities to ensure the justice system works for all including those forced to go to court on their own. For example, the Network developed a judicial curriculum and leadership package which includes PowerPoint slides, detailed faculty notes, an Activity Handbook, which describes activities that help participants to understand underlying issues and begin the planning process, and a Resource Handbook. The judicial curriculum was launched at Harvard Law School in late 2007. Teams from 30 states, the District of Columbia, and four territories consisting of 150 participants including five chief justices, attended the conference. The Network also developed Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes and Issues for Exploration which includes

41 Best Practices.[44] More information about the Self-Help Litigation Network and self-help programs can be found at www.SelfHelpSupport.org, an online resource where pro se and self-help programs can access and share the resources they need to maximize their effectiveness.[45]

The network convener, Richard Zorza, has also written about the entire access to justice system and has recently laid out a challenging thesis about what he deems an emerging consensus among courts, bar, and legal aid: "court simplification and services; bar flexibility; legal aid efficiency and availability; and systems of triage and assignment." See Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, JUDICARE, Volume 94, Number 4 (January-February 2011) at 156.

Many courts have developed self-help programs. The American Bar Association Standing Committee on the Delivery of Legal Services Pro Se/Unbundling Resource Center list 77 self-service centers in 467 states. These vary widely, however. Some routinely include broad ranges of information resources and many provide training for judges in how best to facilitate access for the self-represented. Some courts provide electronic document-assembly services, while others provide clinics and individual informational services. These services have been facilitated by guidelines, protocols, and codes of ethics governing the appropriate role of court staff in provision information assistance.

The most effective and comprehensive efforts have been in California under the guidance of Bonnie Hough who supervises the Equal Access Program—Center for Families, Children, and the Courts, California Administrative Office of the Courts, San Francisco. The Judicial Council's efforts and vision were formally established and defined in February 2004 the Judicial Council of California adopted its *Statewide Action*

[44] See http://www.ncsconline,irg/WC/Publictions/KIS_ProSeBestPracticesSRLN.pdf.

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

Plan for Serving Self-Represented Litigants, a comprehensive action plan aimed at addressing the legal needs of the growing numbers of self-represented Californians, while improving court efficiency and effectiveness. The action plan placed at its core court-based, staffed self-help centers, recognizing that these centers, supervised by an attorney, are the optimum way to increase meaningful access to the courts by self-represented litigants throughout the state. Self-help centers provide court users information about the applicable laws and court processes, procedures, and operations. They have significantly enhanced access and fairness. The plan also recognized that partnerships among the courts, legal services programs, pro bono programs, local bar associations, public law libraries, law schools, social services agencies, and other agencies are critical to providing the comprehensive range of services required. The plan recommended that court-based self-help centers serve as focal points for collaboration between these entities. This effort has proved to be effective and cost efficient. A recent study done for the Center for Families, Children and the Court, Administrative Office of the Court, found that up to $3 in court sending were saved by expenditures on self-represented services.[46]

Many U.S. civil legal aid programs are devoting substantial time and resources to address the issue of assistance to pro se litigants. Many legal aid programs throughout the country operate self-help programs independently or in conjunction with courts. We do not have accurate data on how many such programs exist, but we do know that they cover a wide range of services. A 2005 directory listed over 413 separate self-help assistance programs sponsored through legal aid programs with pro se initiatives.[47] Some programs provide only access to information about the law, legal rights, and the legal process in written form, on the Internet, on videotape, through seminars, or through in-person assistance. Other programs actually provide legal advice and often provide also legal assistance in drafting documents and advice about how to pursue

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

[47] *Pro Se Legal Services Directory*, AARP Legal Advocacy Group (September 2005).

cases. Often, programs provide both written and Internet-accessible forms for use by persons without legal training; some also provide assistance in completing the forms.

For example, the Maryland legal Aid Bureau provides direct informational services in the courthouse under contract to the courts. In California, legal services programs receive $1.5 million for court-based services to low-income self-represented litigants. Thirty programs are currently funded and provide assistance to litigants in cases involving domestic violence, guardianship, family law, landlord-tenant, expungment of criminal records, and other civil matters. An appellate self-help center has also been created. In Illinois legal aid programs are funded by IOLTA to provide court-based informational services, by agreement and in cooperation with local courts.

IX. ENSURING QUALITY

In the United States efforts are made to ensure the quality of civil legal services, through the use of case management systems, the establishment of standards and performance criteria, and the use of peer review onsite examination of the overall effectiveness of programs—based on the standards and performance criteria. Generally, outcome measures have not been used extensively, although five state IOLTA/state funding programs require their grantees to report on outcome measures.[48]

In 2006, the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) revised the ABA **Standards for Provision of Civil Legal Aid.**[49] 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

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

[49] www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2006.pdf

provision of legal information. The revised Standards also include new standards for diversity, cultural competence, and language competency.

LSC has also completed a revision of the **LSC Performance Criteria**,[50] which were originally developed in 1992 as a tool to evaluate LSC programs through a peer review system. These criteria have been the framework for much of the program evaluation that has gone on in civil legal aid, both by LSC and by peer reviews conducted by others for the program. Some IOLTA and state funders also use staff and peers from programs to monitor and evaluate their grantees, based on the **Standards** and **Criteria**. All LSC-funded providers are required to utilize case management systems, and many non-LSC providers utilize similar systems.

Many civil legal aid programs have developed their own evaluation systems, which are designed to help individual programs perform better and to better market what they accomplish to state appropriators, funders, the public, and the press. Some programs have developed rigorous internal evaluation systems, including the use of outcome measurements, to evaluate whether they have accomplish what they set out to do for their clients. The programs have used a variety of creative techniques to conduct their outcome evaluations, including focus groups, client follow-up interviews; interviews of court and social service agency personnel, courtroom observation, and court case file review. In California, the Legal Services Trust Fund, which is the state IOLTA funder, and the Administrative Office of the Courts (AOC) teamed up to support the development of a "tool kit" of program self-evaluation tools for use by programs as a part of the statewide system of evaluation. The Management Information Exchange's (MIE) Technology Evaluation Project (TEP) also developed a set of tools—also referred to as a "tool kit"—that is available for programs to use to evaluate their Web sites and their use of video conferencing and legal work stations, which serve clients through "virtual law offices."

[50] http://www.lsc.gov/pdfs/LSCPerformanceCriteriaReferencingABAStandards.pdf

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

In addition, there is renew discussion about the use of outcome and performance measures and renewed initiatives to help programs to establish their own outcome measurement systems that are keyed to the outcomes the programs themselves have determined are relevant to their own program management objectives, and should develop templates and tools to assist grantees to set goals and measure outcomes. This approach will encourage programs to be deliberate about what they are trying to achieve and to develop systems to measure whether they are achieving what they set out to do. This approach would also begin to give LSC, IOLTA, other state funders, ATJ Commissions, and private foundations information about what the programs are doing and how well they are doing it, and it would provide LSC and other funders with a laboratory to learn what works and does not work to improve program quality and effectiveness.

Furthermore, we are likely to see new data collection systems that will give funders data that will help them make the case for increased funding and ensure accountability to Congress and other government funders. The current data collected by LSC and most other funders is not sufficient to explain the breadth of actual services legal aid programs provide or to review quality, efficiency and effectiveness.

Finally, NLADA is establishing a staffed initiative to direct its on-going efforts to support and improve the quality and impact of civil legal aid programs. The initiative will

provide direct assistance to member programs to help strengthen the quality and impact of services to clients and low-income communities. NLADA is also hiring a Director of Quality and Program Enhancement.

X. NEW DELIVERY APPROACHES

The information technology revolution of the late 1990s led to a number of new delivery approaches that are now universal throughout the civil legal aid community, including hotlines, statewide web sites, pro bono net, computerized case management systems and HotDocs document assembly application. Two new approaches may further transform the civil legal aid system.

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 – income supports for hungry families, utility shut-off protection during cold winter months, and mold removal from the home of asthmatics.

Doctors and lawyers are now partnered at over 190 hospitals and health centers in 40 states nationwide**,** in Pediatrics, Family Medicine, Internal Medicine, Oncology, and Geriatrics. This new health care team addresses families' unmet basic needs – for food, housing, income, education and stability – needs that families report to their doctors, but that have legal remedies. MLPs rely on legal aid agencies for case-handling and expertise and receive *pro bono* assistance from dozens of law firms across the U.S. Over 100 civil legal aid programs and over half of LSC-funded legal services programs have an active medical-legal partnership program. In addition, 45 private law firms are providing pro bono assistance for MLP programs, over 44 law schools are engaged in MLP activities; and more than 20 post-graduate law fellows have been funded to work in medical-legal partnerships. [51]

[51] See **www.medical-legalpartnership.org**

A National Center for Medical-Legal Partnership supports local programs in their efforts to reorient legal interventions into the health care setting for early detection, prevention and efficiency in legal matters in order to maximally impact health and legal outcomes of patients, their families and the community. In 2008, the ABA established a national support center to assist medical-legal partnerships in securing pro bono participation, promoting best practices related to MLP-pro bono practice, and ensuring quality service delivery.[52]

A2J Author

A more recent technology innovation grew out of work done in 1999 and 2000 by Ronald Staudt and colleagues at the Center for Access to Justice and Technology at Chicago-Kent College of Law. In 2004, Chicago-Kent College of law joined with the Center for Computer-Assisted Legal Instruction to build Access to Justice Author ("A2J Author"), which was designed as a "tool to build tools." This technology uses HotDocs Online software to assist self-represented litigants in a web mediated process to assess eligibility, gather pertinent information to prepare a set of simple court forms, and then deliver those forms ready to be signed and filed. A2J Author is equipped with “just in time” help tools, including the ability to speak each word of the interview to the user in English or Spanish. The user can be directed to other websites to obtain explanations of technical terms.[53]

Several states are pioneering the use of A2JAuthor. Idaho developed a strong A2J Author partnership between the state supreme court and the statewide legal aid society and launched its A2J Author project in 2005. In the three years between launch and October 2008, more than 72,000 A2J Guided Interviews were used by public

[52] See www.medlegalprobono.org

[53] The information provided in the text is taken by permission of the author Ronald W. Staudt from an article to be published in the Loyola of Los Angeles Law Review entitled “All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice.”

customers of the Idaho legal aid website. Of these interviews, 35,800 resulted in the completion of customized forms for filing in the court system in Idaho.

In Illinois a coordinated statewide legal aid website, Illinois Legal Aid Online, functioned as a service platform to deliver A2J Guided Interviews and automated documents to low-income people. Illinois Legal Aid Online hosts dozens of Guided Interviews created with A2J Author to help low-income Illinois customers prepare simple court forms, letters to creditors, notices to landlords, and other documents that trigger official action or protect legal rights. In 2008, customers of the Illinois Legal Aid Online public site completed more than 13,000 A2J Guided Interviews.

Iowa Legal Aid is pioneering the use of A2J Guided Interviews to deliver access to their case management system over the web directly to their potential customers. Iowa plans to deliver, on its statewide information website, a link to an A2J Guided Interview that would allow any potential client to interview him or herself, determine financial eligibility, provide preliminary information to locate the client problem within the service coverage of the agency, and deliver it all at any time of the night or day. Ohio legal services agencies have replicated the Iowa project. Legal Aid of Western Ohio has built an A2J Guided Interview for intake over the web that will deliver prospective client data directly into its case management system. Other legal aid agencies in Ohio will follow suit once the first project is working.

Brief Services Unit

AARP Legal Counsel for the Elderly, the initiator of legal hotlines, also operates a Brief Services Unit (BSU) which is staffed by two full-time attorneys. They have 5-10 trained volunteers who assist with interviewing and follow-up casework volunteering on average one day a week. The volunteers are a mix of five retired volunteers and then a few law student volunteers. Cases, which are scheduled for them by the hotline attorneys who are located next door, involve more in-depth work than the hotline can handle efficiently. The BSU cases involve minimal court work and are on the order of

250+ cases in a year. BSU cases typically involve fact investigation, letter writing, informal negotiation, document drafting and occasional representation at a conference or hearing. Substantive areas run the gamut: consumer fraud and abuse; identity theft; grandparent subsidy and custody work; debt collection defense; procurement of public benefits (food stamps, Medicaid/DC Alliance, QMB, rental and utility assistance, SSI/Social Security, TANF, Veterans pension); landlord/tenant matters (rent recalculation, reasonable accommodation requests and security deposit refunds); deed transfer and probate matters; tax deed foreclosure prevention; tax assistance; student loan discharge cases; and employment matters (pension, unemployment compensation, wage claim and Workers Compensation cases). A significant number of more involved cases they develop and place with the pro bono unit. The BSU has been in operation since about 2001.

The brief services unit frees the hotline from cases that would greatly slow it down, and frees more seasoned attorneys to work on in-depth court work. It also allows clients with routine issues to have those problems addressed relatively quickly and in a streamlined manner. The hotline can thus handle more cases and handle callers more quickly. It also is a good conduit for cases needing development before going to the pro bono project. A good pro bono project sends out cases where the facts have been developed, and the issues, deadlines and adverse parties have been identified. The Brief Services Unit has identified more than its share of systemic issues (e.g., problems with Medicaid coverage of home care, Social Security issues, unfair consumer practices, etc.). The hotline, by contrast, has rarely, if ever, identified systemic issues.

However, the BSU is a high volume practice. Attorneys need to be carefully supervised because many different areas of law are involved. It can lead to burn-out more quickly because of the volume of cases, breadth of case types and more superficial nature of the client involvement. For professional development, it is necessary to build in some opportunity for more in-depth case work and other projects. It is also important for the office to place equally high value on early, pre-litigation intervention as on major court victories.

XI. DELIVERY RESEARCH

There is a growing recognition in the US that our 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. 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. Since then, only a limited amount of legal services delivery research has been undertaken. It is not yet clear that the US will be able to find funding for such an entity, particularly in these hard economic times with deficit reduction at the heart of the federal agenda, but there is at least serious discussion going on about the need for such a delivery research capacity.[54]

Two recent studies that illustrate what could be done with a delivery research capacity. In *Randomized Evaluation in Legal Assistance: Report of a First Study, A Critical Review of the Literature, and Prospects for the Future* by D. James Greiner (Harvard Law) and Cassandra Wolos Pattanayak, (Harvard University) the authors undertook a randomized evaluation of the Harvard Legal Aid Bureau's representation of claimants seeking unemployment benefits. The study focused on a randomized of an offer of representation and not a randomized study of actual representation. The study found that an offer of representation by the HLAB did not produce an increase in the probability that the claimant would prevail. In addition the study found that the offer of representation produced a delay in adjudication by an average of sixteen days. The study has raised a number of questions and concerns about the conclusions that can be

[54] One recent article discussed the need for such research: 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.

drawn from studying an offer of representation,[55] but highlights the need for further studies of legal services delivery systems and innovations.

Another study that was recently completed examined the outcomes of tenants in eviction proceedings who were provided unbundled legal aid with the outcomes of tenants without any assistance those with full representation. The study, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, by Jessica K. Steinberg of George Washington University Law School.[56] The study tracked outcomes for 100 tenants facing eviction in a single California trail court all of whom received unbundled help drafting a responsive pleading, and a third of whom also received one-time assistance negotiation with their landlord at a pre-trial settlement conference. The case results of those tenants were then compared to hose obtained by two other groups: (1) 300 tenants who received no legal assistance at all and (2) 20 tenants who received full representation. The study found that the tenants who had received unbundled legal services fared no better than their unassisted counterparts on either possession or monetary outcomes. However, tenants who received full representation achieved outcomes far superior to either the unbundled or unassisted tenant group.

Finally, Wayne Moore, former Director of AARP Legal Counsel for the Elderly in Washington, DC, an innovator in civil legal aid who helped develop pro bono programs, the use of volunteers, and legal hotlines and has been active in the self-help movement, has written a book, **Delivering Legal Services to Low-Income People**.[57] The book lays out his view of what the legal services delivery system should be focusing on the range of functions that the system should have and the ways it should be organized. The book also includes an examination of LSC funded programs using Case Service Reporting data and compares programs based on their staffing and that data. It also sets out recommendations for Boards of Directors, funders and the Legal Services Corporation.

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[55] See Concurring Opinions, Symposium, What Difference Representation, at www.xoncurringopinion.com/archives/category/representation-symposium.
[56] The study has not yet been published.
[57] Available at https://www.createspace.com/3466223

XII. STATE JUSTICE COMMUNITIES

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

One of the most effective ways to develop, expand, and institutionalize comprehensive, integrated state systems for the delivery of civil legal aid is through the establishment of state Access to Justice Commissions. These commissions are 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, 25 states have

active Access to Justice Commissions and new commissions are on the drawing boards in six more states.

CONCLUSION

The trends in US civil legal aid over the last twelve years continued through 2010. We saw increases in state funding as well as from other funding sources. However, we saw decreases in both IOLTA funding in 2010 and here are likely more to come in 2011. There are more Access to Justice Commissions and increased attention to civil legal aid at the state level. The notion of a right to counsel in civil matters has gained renewed attention. Yet, the basic civil legal aid system has not closed the "justice gap." Efforts to expand access through technology and self-help representation activities continued and have expanded, but the fundamental problem remains: there are not enough actual staff lawyers, paralegals 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. The new Congress has significantly changed the possibilities for increased funding and major new advances into a discussion of funding reductions and limiting federal funding for civil legal aid. However, it is too early to tell what will happen during the remainder of 2011 and 2012 to federal funding for and new initiatives around civil legal aid.