

**CIVIL LEGAL AID IN THE UNITED STATES**  
**AN UPDATE FOR 2017**  
**A REPORT FOR THE INTERNATIONAL LEGAL AID GROUP**  
**ALAN W. HOUSEMAN, PRESIDENT**  
**CONSORTIUM FOR THE NATIONAL EQUAL JUSTICE LIBRARY**  
**MAY 2017**

The National Report for the United States (US) for the International Legal Aid Group (ILAG) consists of two parts: Part I is an update to previous national reports covering the period from July of 2015 through April of 2017.<sup>1</sup> Part I is divided into two parts: civil legal aid and access to justice. Part II is a Background Part that includes details about the US system.

**PART I – AN UPDATE**

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

**OVERVIEW**

The first budget submission for Fiscal 2018 of the Trump Administration called for the elimination of LSC and no further funding.<sup>2</sup> This proposal was made despite the opposition of the American Bar Association<sup>3</sup> and numerous state and local bar associations,<sup>4</sup> Corporation General Counsels of over 185 corporations,<sup>5</sup> most leading

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<sup>1</sup> I wish to acknowledge the people who provided crucial information for this report: Bonnie Hough, Claudia Johnson, Angela Tripp, John Pollack, Nancy Drain, April Faith-Slaker, David Bonebrake, Meredith McBurney, Rebecca Sandefur

<sup>2</sup> [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018\\_blueprint.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf)

<sup>3</sup> [http://www.americanbar.org/news/abanews/aba-news-archives/2017/03/statement\\_of\\_abapre3.html](http://www.americanbar.org/news/abanews/aba-news-archives/2017/03/statement_of_abapre3.html)

<sup>4</sup> [https://www.americanbar.org/groups/bar\\_services/resources/resourcepages/legalservicesfunding.html](https://www.americanbar.org/groups/bar_services/resources/resourcepages/legalservicesfunding.html)

<sup>5</sup> <http://www.nlada.org/sites/default/files/Corporate%20Counsel%20LSC%20Letter.pdf>

newspaper editorial boards,<sup>6</sup> major national law firms,<sup>7</sup> over 150 law school deans<sup>8</sup> and the Presidents of the Conference of Chief Justices and the Conference of State Court Administrators.<sup>9</sup> On March 29, 2017, 148 Members of Congress sent a bi-partisan letter to the key House Appropriations Subcommittee Chair and Ranking Member supporting continued funding for LSC.

LSC issued a statement articulating strong bi-partisan support for LSC.<sup>10</sup> The President of the National Legal Aid and Defender Association (NLADA) put it this way: “Support for LSC has a secure foundation on Capitol Hill, and it is Congress that will have the final say on the critical spending decisions proposed by OMB. Today, there is a deep reservoir of bipartisan support for the Corporation in Congress. LSC has been targeted by a small number of ideological opponents in the past, but the powerful message of justice and fairness has always prevailed.” An example of bi-partisan support is the new Congressional Access to Civil Legal Services Caucus launched by Congressman Joseph Kennedy of Massachusetts in December 2015 with Congresswoman Susan Brooks (R-IN5).

The Budget submission of the Administration is just the beginning of a long process. LSC submitted its own budget directly to Congress and asked for \$527.8 million for FY 2018. The Congress will likely pass a Budget Resolution (that does not go to the President) that provides guidance to the House and Senate Appropriation committees. Those committees do the actual work of specific appropriation levels. These are then voted on, first by the House, and then later by the Senate. It is unlikely that key votes will occur until July or September.

LSC funding reached a high of \$420 million in 2010 but has now been reduced to \$385 million for 2017.<sup>11</sup> On the other hand, state funding has improved. At the state level, more state funds are available for civil legal aid at the beginning of 2017. This is because state budgets have recovered from the great recession although IOLTA revenues continue to be lower than 7 years ago because of interest rates reductions by the Federal Reserve and the substantial slowdown in housing purchases and other business activity.

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<sup>6</sup> <https://voicesforciviljustice.org/press-clips/>

<sup>7</sup> On March 9, 2017, 157 of the nation’s largest law firms sent a letter to the Director of the Office of Management and Budget urging the Trump administration to continue funding LSC. See <http://www.nationallawjournal.com/image/nlj/LegalServicesLetter.pdf>

<sup>8</sup> <http://www.stthomas.edu/media/schooloflaw/pdf/lawdeanslettertoCongress.pdf>

<sup>9</sup> <https://lsc-live.app.box.com/s/fsv8qtmymis1zasrnj9zkt3ohhusosmu2>

<sup>10</sup> <http://lsc.gov/media-center/press-releases/2017/legal-services-corporation-confident-bipartisan-support-congress>

<sup>11</sup> [https://www.washingtonpost.com/news/powerpost/wp/2017/05/01/whats-in-the-spending-agreement-we-read-it-so-you-dont-have-to/?hpid=hp\\_rhp-top-table-main\\_trumpbudget-0822pm%3Ahomepage%2Fstory&utm\\_term=.4f35cdc5d462](https://www.washingtonpost.com/news/powerpost/wp/2017/05/01/whats-in-the-spending-agreement-we-read-it-so-you-dont-have-to/?hpid=hp_rhp-top-table-main_trumpbudget-0822pm%3Ahomepage%2Fstory&utm_term=.4f35cdc5d462)

President Obama was fully committed to expanding civil legal aid on a federal level and his administration was sympathetic to rebuilding the civil legal aid delivery system and its long neglected infrastructure. The Trump Administration is entirely different and has proposed to eliminate LSC. The board appointed by President Obama and the LSC President remain. In addition, the initiative on Access to Justice (ATJ) at the Department of Justice continues but also may be eliminated in 2017.

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

State activity on civil legal aid continues to increase. Most states established Access to Justice Commissions and moving forward in creating comprehensive, integrated state systems for the delivery of civil legal assistance, 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 (See Part II at pages 56-58). However, progress has been slow in meeting the second. In most areas of the United States, there is not enough funding or pro bono assistance available to provide low-income persons who need it with legal advice, brief service, and most particularly extended representation. As a result, many low-income persons who are eligible for civil legal assistance are unable to obtain it.

## **LEGAL SERVICES CORPORATION**

In 1974, Congress passed and the President signed the Legal Services Corporation Act. LSC is not a federal agency, nor a government controlled corporation, but a nonprofit corporation established with the powers of a District of Columbia corporation and those provided by the LSC Act. The President of the United States appoints a bipartisan eleven-member board that must be confirmed by the Senate. Board members serve in a volunteer capacity. Unlike many federal agencies or government corporations, the LSC president administers the Corporation, making all grants and contracts. LSC funds 133 grantees that operate local, regional or statewide civil legal assistance programs.<sup>12</sup> Generally, one field program provides legal services in a

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<sup>12</sup> For more detailed information about LSC, See its Annual Report <http://lsc.gov/media-center/publications/2015-annual-report> and its annual Fact Book <http://lsc.gov/media-center/publications/lsc-numbers-2015>.

designated geographic area. In addition, LSC, with Congressional approval, has earmarked funds for migrant and Native American grants for specialized programs that deliver services to these populations. All legal services programs are private, nonprofit entities, independent of LSC.

## **Funding**

Congress has just approved funding for LSC for 2017 at \$385 million. It was funded at \$365 in 2014. It was funded at \$420 million in 2010, the highest funding ever received. Beginning in 2012, Congress, over the objections of LSC and the Administration, reduced funding significantly to \$348 million. See page 66 for details about LSC funding over the years. If LSC funding would have kept up with inflation since its peak in 1980, today LSC would be funded at \$936 million.

LSC requested \$527.8 million for 2018. The Administration proposed no funding. 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.

## **Clients Served**

According to 2015 data reported to LSC (the last available data), LSC programs provided services in 755,774 cases and served 1,861,333 people in households. The majority of services provided were counsel and advice (60.2%) and brief service (16.2%). Cases involving an administrative agency decision were 3.0 % and court decisions were 14.8 %. The largest category of cases was family law cases (31.8%) following by housing (28.3%), income maintenance (10.8%) and consumer (10.3%).

## **Eligibility**

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

## **Regulations and Restrictions**

Congress had added no new restrictions for LSC funded programs. No states added new restrictions on their funding. The current restrictions are described in Part II at pages 61-62.

## **Technology Initiatives**

The 2015 Update report described the technology summit that LSC had convened. In December of 2014, LSC issued its report on the summit.<sup>13</sup> LSC set as its mission statement to provide some form of assistance to 100% of persons otherwise unable to afford an attorney for dealing with essential legal needs. This involved five main areas:

- Creating automated forms and other documents to support self-help and limited scope legal representation.
- Taking advantage of mobile technologies to reach more persons more effectively.
- Applying business practice analyses to all access-to-justice activities to make them as efficient as practicable.
- Developing “expert systems” to assist lawyers and other service providers.
- Creating in each state a unified “legal portal” using an automated triage process to direct persons to the most appropriate form of legal assistance and to guide them through the process.

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

**2015 TIG Grants:** LSC provided \$4.2 Million in TIG grants to 30 organizations nationwide. The grants supported a variety of initiatives, including developing a website with special resources for seniors and domestic violence victims; creating a hotline for family and housing law advice that can be accessed by text message; and implementing a videoconferencing system to conduct remote client interviews and provide informational videos. Since its inception in 2000, LSC’s TIG program has awarded 644 grants for a total of more than \$53 million.

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

The Ford Foundation funded a full evaluation and assessment of the websites network created in part through TIG grants from the past. An internal report was recently completed and may be released later in 2017. Beginning in 2000, LSC developed a network of state-specific legal aid websites to serve low-income litigants who are unable to afford an attorney. Statewide websites provide users with a variety of legal tools and

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<sup>13</sup> <http://tig.lsc.gov/resources/grantee-resources/report-summit-use-technology-expand-access-justice>

resources, including overviews of common poverty law issues and step-by-step guides for individuals representing themselves. They connect users to appropriate legal aid providers, self-help centers, and lawyer referral services in their community. Increasingly, sites host collections of automated court forms, known as interactive interviews, to guide users through simple questions and then deliver the forms necessary to engage in a legal process (e.g. filing for a simple divorce). LSC also supported the development of two statewide website templates (i.e., DLAW and LawHelp). They awarded grants to local legal aid providers to create websites in every state using one of the templates. All 50 states, the District of Columbia, and the U.S. territories have websites, and the majority of these sites still utilize one of the two original templates. This network of 53 websites was the focus of the assessment described in the internal report.

The assessment reviewed criteria in the following focus areas:

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

The basic findings of the assessment were:

- Sites that used visual design purposefully to enhance usability performed best.
- Information density and content presentation was a consistent challenge. Most sites across the network were information dense (i.e., contained long lists of onsite and/or offsite links), which made scanning difficult. These experiences would make it hard for users to resolve legal issues on their own. Other sites achieved the right balance of information density by curating a set of guides that provided a limited number of articles. Finding content for a given legal issue on these sites was simple.
- The customization available to Drupal-based sites allowed them to produce more usable experiences. Template providers created templates that were either flexible, but required some development expertise, (i.e., DLAW), or more restricted but came with support from the template providers themselves (i.e., LawHelp). As a result, LawHelp may be easier to use, since many websites managers functioned as content managers and not developers. By comparison, the DLAW template may be more difficult to learn initially, but offered greater flexibility for creating a positive user experience.
- A future system of templates should deliver a streamlined experience for end users, while removing the guess work for website managers about how to implement a great user experience. Templates that provide straightforward navigation, flat information architecture, and a curated set of articles will establish a strong foundation for statewide sites.

As noted in the Assessment, Illinois Legal Aid Online is considered by LSC and legal aid website advocates one of the best if not the best legal aid website in the US.<sup>14</sup>

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

## **Outcome and Performance Measures**

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

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

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<sup>14</sup> [http://www.abajournal.com/magazine/article/illinois\\_legal\\_aid\\_online/](http://www.abajournal.com/magazine/article/illinois_legal_aid_online/)

The Public Welfare Foundation has awarded LSC a new grant of \$100,000 for new outcomes-related work.

### **White House Conferences**

Since the last National Report, there was one White House Conference on Access to Justice held on April 19, 2016. Then Vice President Joseph Biden, Congressman Joseph P. Kennedy III, and Acting Secretary of the Army Patrick J. Murphy, White House Counsel W. Neil Eggleston, and Attorney General Loretta E. Lynch each delivered speeches expressing support for legal aid. Congressman Kennedy described how he launched the new Congressional Access to Civil Legal Services Caucus last December with Congresswoman Susan Brooks (R-IN5). Then Vice President Biden made a special appearance and expressed his and the administration's deep commitment to supporting legal aid. Paulette Brown, president of the American Bar Association, emphasized the critical importance of legal aid and increasing access to justice in her remarks. Lisa Foster, Director of the U.S. Department of Justice Office for Access to Justice moderated a panel of state chief justices on efforts to address unconstitutional fines and fees practices that negatively affect poor people and, in particular, people of color, creating a cycle of poverty and court-involvement. On the panel were: Chief Justice Scott Bales, Arizona Supreme Court; Chief Justice Patricia Breckenridge, Supreme Court of Missouri; Chief Justice David E. Gilbertson, South Dakota Supreme Court; Chief Justice Nathan L. Hecht, Supreme Court of Texas; Chief Justice Jorge Labarga, Supreme Court of Florida; Chief Justice Mark D. Martin, Supreme Court of North Carolina; and Chief Judge Eric T. Washington, District of Columbia Court of Appeals.

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

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



During the forum, Jim Sandman, Brad Smith and Mark O'Brien announced a partnership between LSC, Microsoft and Pro Bono Net on a pilot program to develop model statewide portals to increase access to justice. The pilot will develop two such portals intended to provide a single, statewide point of access to effective assistance. Microsoft committed at least \$1 million in funding, technical support, and project management services to the pilot. Pro Bono Net will convene local partners and provide service design expertise to execute the pilot.

### **Forum on Increasing Access to Justice**

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

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

### **Leaders Council**

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

### **Pro Bono Innovation Fund**

At the first LSC 40<sup>th</sup> Anniversary celebration in 2014, LSC President Jim Sandman presented the first Pro Bono Innovation Fund grants to 11 LSC grantee executive directors. In September of 2015, LSC awarded grants to 15 legal aid organizations to support innovations in pro bono legal services for low-income clients. Many of the projects use technology to connect low-income populations to resources and services, while others aim to increase efficiency and effectiveness through partnerships with law schools, community organizations, and in-house corporate attorneys. Some projects address issues affecting specific populations such as seniors, veterans, and low-income students.

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

## **OTHER CIVIL LEGAL AID DEVELOPMENTS**

### **Funding**

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

General Revenue and Filing Fees	\$336,499,000
IOLTA	\$63,070,000
Other Public Funds	\$391,046,000
Legal Community/Bar	\$110,342,000
CY Press	\$56,297,000

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

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

Among LSC grantees, only 36.8% of their funding comes from LSC. 92 of the 134 grantees have less than 50% of their funding from LSC.

## Pro Bono

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

The American Bar Association’s Standing Committee on Pro Bono and Public Services issued a report—Supporting Justice III: A Report on the Pro Bono Work of America’s Lawyers (March 2013)—which reports on a 2012 survey completed by 2876 lawyers throughout the country in private practice, corporate counsel offices, government, and academic settings.<sup>15</sup> The study found that 63% of respondents worked on matters that address the everyday legal problems of people in poverty and 36% of the lawyers who responded met the ABA’s aspirational goal of providing at least 50 hours of free pro bono services to persons of limited means.

A recent survey developed by Robert Half Legal, a premier [legal staffing and consulting solutions firm](#) specializing in the placement of lawyers, paralegals and other highly skilled legal professionals found: Nearly one-third (30 percent) of lawyers said they donate 80-plus hours to pro bono or volunteer service each year, up seven points since the survey was last conducted in 2014. Sixteen percent of survey respondents contribute fewer than 10 pro bono hours annually, up from eight percent in 2014. The average number of annual pro bono hours lawyers reported is 64, an eight-percent increase from 2014, which exceeds the minimum goal of 50 hours recommended by the American Bar Association. Lawyers employed at law firms donated an average of 70 hours to pro bono service each year, while their corporate counterparts logged 36 volunteer hours.

For 8 years, the ABA has sponsored a National Celebration of Pro Bono. In October of 2016, there were over 1,150 events by pro bon programs, pro bono award ceremonies,

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[http://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/lc\\_pb\\_Supporting\\_Justice\\_III\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lc_pb_Supporting_Justice_III_final.authcheckdam.pdf)

fundraisers and Veterans events in 49 states, DC and Chile. These were sponsored by 600 bar associations, courts, legal aid and pro bono programs, law firms and law schools.

The 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.<sup>16</sup> Of the 755,774 cases closed by LSC program in 2015, the most recent figures available, 91,618 were done by private attorneys. Of these cases, 76,842 were done by pro bono attorneys and 14,776 by contract or Judicare attorneys.

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

A thorough review of pro bono was provided in a recent article by April Faith-Slaker: **What We Know And Need To Know About Pro Bono Service Delivery** 67 South Carolina Law Review 267<sup>17</sup>

### **Medical Legal Partnerships**

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

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

Every year, The National Center convenes a conference. The 12th Annual Medical-Legal Partnership Summit was held on April 5-7 at the National Harbor, Maryland. The 2017 Summit featured plenary sessions on medical-legal partnership's value in veteran

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<sup>16</sup> The requirement is imposed by LSC through its regulatory authority. See 45 CFR 1614.

<sup>17</sup> <https://perma.cc/62JG-38NZ>

and complex care settings, as well as sessions on quality improvement measures and the future of MLP in the current healthcare landscape. Workshops, affinity groups, and an accredited poster session offered new research and practices related to the integration of care.

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

A recent report - *Building Resources to Support Civil Legal Aid Access in HRSA-Funded Health Centers* by *Joanna Theiss, JD, LLM; Sharena Hagins, MPH, CHES; Marsha Regenstein, PhD; and Ellen Lawton, JD*<sup>18</sup> - discusses the experiences of six health centers that used expanded services awards from HRS to support legal-related enabling services. The lessons they learned demonstrate the catalyzing force that occurs when health centers and civil legal aid services collaborate, and the opportunity for other health centers to leverage a range of funding opportunities for fostering medical-legal partnerships. This issue brief describes the ways that a supplemental funding opportunity sparked MLP growth in health centers, resulting in expansions in civil legal aid services provided to health center patients by partnering civil legal aid organizations and law school clinics. It shares the experiences of health centers from Hawai'i to New Hampshire that received expanded services awards from HRSA and used them for legal-related enabling services, and extrapolates lessons for other health centers about the impact of collaborations between health centers and civil legal aid services and how to leverage funding opportunities for fostering medical-legal partnerships.

A recent national survey - *Civil Legal Services and Medical-Legal Partnerships Needed by the Homeless Population: A National Survey* by Jack Tsai, PhD, Darlene Jenkins, DrPH, and Ellen Lawton, JD - was designed to examine civil legal needs among people experiencing homelessness and the extent to which medical-legal partnerships exist in homeless service sites, which promote the integration of civil legal aid professionals into health care settings. It surveyed a national sample of 48 homeless service sites across 26 states in November 2015. The survey asked about needs, attitudes, and practices related to civil legal issues, including medical-legal partnerships. The survey found: More than 90% of the homeless service sites reported that their patients experienced at least 1 civil legal issue, particularly around housing, employment, health insurance, and disability benefits. However, only half of all sites reported screening patients for civil legal issues, and only 10% had a medical-legal partnership. The large majority of sites reported interest in receiving training on screening for civil legal issues and developing medical-legal partnerships. Conclusions reached: There is great need and potential to deploy civil legal services in health settings to serve unstably housed populations. Training homeless service providers how to screen for civil legal issues and how to

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<sup>18</sup> <http://medical-legalpartnership.org/building-resources/>

develop medical-legal partnerships would better equip them to provide comprehensive care. See <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2016.303596>

## **ACCESS TO JUSTICE DEVELOPMENTS**

Former Chief Justice Lippman of the New York Court of Appeals (highest court in NY State) has been a leader in attempting to improve access to justice in NY and around the country. Under his leadership, over \$350 million has been invested in civil legal aid programs in NY over the last 4 years. In September of 2016, \$85 million was awarded to 83 NY grantees. In his report State of the Judiciary 2015<sup>19</sup> he set out a clarion call about access to justice that is worth including in this report:

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

## **DEPARTMENT OF JUSTICE ACCESS TO JUSTICE INITIATIVE**

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

**WH-LAIR:** One of the most effective ongoing initiatives involves the Legal Aid Interagency Roundtable or “LAIR” which was conceived of and staffed by ATJ. The LAIR, which includes 22 participating federal agencies, works to raise awareness about the profound impact legal aid programs can have in advancing federal efforts to promote access to health and housing, education and employment, family stability and community well-being. The goal is to maximize federal program effectiveness by

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<sup>19</sup> <http://www.nycourts.gov/ctapps/news/SOJ-2015.pdf>

integrating legal aid providers as partners, grantees or sub-grantees in federal safety-net programs when doing so can improve outcomes. Since 2012, LAIR has worked to inspire collaborations that increase access to justice and improve outcomes for vulnerable and underserved people. NLADA's Civil Legal Aid Initiative, with support from the Public Welfare Foundation and the Kresge Foundation, has worked closely with DOJ ATJ to complement the work of WH-LAIR.

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

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

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

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

the Agenda, the EWG considered how access to justice might be tracked and which indicators could be used for that purpose.

## **COMMISSION ON THE FUTURE OF LEGAL SERVICES**

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

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

- A. Protection of the public
- B. Advancement of the administration of justice and the rule of law
- C. Access to information about, and advancement of the public's understanding of the law, legal issues, and the civil and criminal justice systems
- D. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
- E. Delivery of affordable and accessible legal services
- F. Efficient, competent, and ethical delivery of legal services
- G. Protection of confidential information
- H. Independence of professional judgment
- I. Accessible civil remedies for breach of duties owed and disciplinary sanctions for incompetence, misconduct, and negligence.
- J. Diversity and inclusion among legal services providers and freedom from discrimination in the delivery of legal services and in the justice system

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

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



custody.” This echoes the ABA’s prior Resolution, which called for a right to counsel in basic human needs civil cases.

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

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

The Center is also assisting with a free, online legal checkup tool that is being created by a working group led by the ABA Standing Committee on the Delivery of Legal Services. The checkup will consist of an expert system of branching questions and answers that helps members of the public to identify legal issues in specific subject areas and refers them to appropriate resources. Further, the Center is establishing a comprehensive Innovations Clearinghouse to catalog ongoing legal services innovations around the world so that we can better understand existing efforts, avoid duplicating current projects, and inform the Center’s decisions regarding new initiatives. A prioritized list of areas of focus for the Center will be the basis of a nationwide “Call for Project Proposals” competition. Selected projects will receive technical support, collaborative resources and, in some cases, small monetary grants to assist in the development and implementation of worthwhile endeavors that advance the Center’s mission.

## **CONFERENCE OF CHIEF JUSTICES RESOLUTIONS**

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

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

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

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

## **STATE ACCESS TO JUSTICE COMMISSIONS**

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

One of the most effective ways to develop, expand, and institutionalize comprehensive, integrated state systems for the delivery of civil legal aid is through the establishment of state Access to Justice Commissions. Access to Justice Commissions are created by Supreme Court rule or order in response to a petition or request by the state bar, sometimes with formal support from other key stakeholder entities as well. Their

members are representative of the courts, the organized bar, civil legal aid providers, law schools, and other key entities and are either appointed directly by these entities or appointed by the Supreme Court based on nominations by the other entities. They are conceived as having a continuing existence, in contrast to a blue-ribbon body created to issue a report and then sunset. They have a broad charge to engage in ongoing assessment of the civil legal needs of low-income people in the state and to develop, coordinate, and oversee initiatives to respond to those needs.

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

An update on what the Commissions are doing is found in an article by April Faith-Slaker, Director of the ABA Resource Center: **Access to Justice Commissions – Accomplishments, Challenges and Opportunities**, Management Information Exchange Journal, Fall 2015 at p 13.

## **CIVIL RIGHT TO COUNSEL**

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

However, state courts and state statutes or court rules have provided the right to counsel in several categories of cases including termination of parental rights, adoption, and other areas. In 2014, the ABA completed the [ABA Directory of Law Governing Appointment of Counsel in State Civil Proceedings](#). This project, done in collaboration with the National Coalition for a Civil Right to Counsel (NCCRC) over the course of several years, transformed the NCCRC's research memos on the right to counsel in each state into a format suitable for state trial court judges. Each state's entry is organized by subject matter, and within that, by the source of law that requires, permits, or does not permit appointment of counsel.

The National Coalition for a Civil Right to Counsel (NCCRC)<sup>20</sup> has an interactive map which gives a 50-state view of the latest civil right to counsel activities, the status of civil right to counsel law by type of case (child welfare, paternity, guardianship, etc.), the efforts in which the NCCRC is involved, or the states where NCCRC has a presence. <http://civilrighttocounsel.org/map>

### **Recent State litigation developments:**

- South Carolina has joined Virginia and Kansas in recognizing a constitutional right to appointed counsel for sex offender commitment proceedings, and

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<sup>20</sup> I thank John Pollock, Coordinator of the National Coalition for a Civil Right to Counsel for providing information for this report.

importantly, the right extends not just to the commitment, but also subsequent habeas proceedings challenging ineffective assistance of counsel.

- The Utah Supreme Court held that some parents have right to counsel in private termination cases.
- A NY court held that wards have constitutional right to counsel in guardianship proceedings.
- The NJ Supreme Court recognized the right to counsel for parents in adoption cases.
- The Massachusetts Supreme Judicial Court held that parents have right to counsel in private child guardianship establishment and modification proceedings.
- The Texas Supreme Court held that the parental right to counsel in abuse/neglect cases extends to high court appeal.
- The Supreme Court of Pennsylvania in *In re L.B.M.* held that children have a right to counsel in termination of parental rights proceedings conducted pursuant to the Adoption Code.

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

**State legislative developments in 2016:**

- D.C. Councilmember Kenyan McDuffie introduced the "Expanding Access To Justice Act Of 2016", which proposes to set up "civil right to counsel projects" that would expand representation for various types of eviction cases via grants made to DC legal aid providers. The bill was not acted on during the last Council, but was re-introduced in January 2017.
- Delaware granted the right to counsel for children in termination cases.
- The Mississippi Legislature enacted a law authorizing youth court judges to appoint counsel for parents in termination of parental rights cases.
- Utah authorized appointment of counsel in private termination cases.

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

- "There is consensus in the field that the rights at stake for parents and the complexity of legal proceedings in child welfare cases require all parents to have competent legal counsel.
- "While CAPTA allows for the appointment of an attorney and/or a court appointed special advocate (CASA), there is widespread agreement in the

field that children require legal representation in child welfare proceedings.

- "There is a growing body of empirical research linking early appointment of counsel (at or prior to a party's initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government.
- "There is also evidence that legal representation helps ensure more thoughtful and effective case planning.

**New York City to Provide Right to Counsel in Housing Court:** On February 12, 2017, Mayor Bill de Blasio announced that New York City will provide a right to counsel for low-income families who are at 200% or below of the poverty level. This will happen by increasing the City's eviction legal aid spending by \$93 million, which will occur over 5 years. In doing so, NYC will become the first jurisdiction in the country to provide a right to counsel in housing cases, making this an enormous step forward for the civil right to counsel movement in the United States. An article of relevance is by Andrew Scherer in which he explains why New York City's very impressive and vast expansion of funding for eviction-prevention legal services is, alone, not enough, and why establishing a right to counsel for low-income tenants who face eviction is such an important, timely and critical public policy measure. See **Impact: Collected Essays on Expanding Access to Justice** at <http://comms.nyls.edu/flipbooks/ICPI-Impact-Journal-2016/mobile/index.html#p=1> See also Kathryn A. Sabbeth, **Housing Defense as the New Gideon**, Harvard Journal of Law and Gender, Vol. 41<sup>21</sup>

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

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

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<sup>21</sup> [Housing Defense as the New Gideon](#).

again them by requesting a trial or hearing; represented tenants receive six times as much time to resolve their cases (2 weeks versus 12 weeks); represented tenants are eight times less likely to enter a consent judgment or receive a default judgment; and represented tenants are six times less likely to have a writ issued against them, which places tenants at imminent risk of eviction.

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

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

**Pilot Projects:** Many believe that pilot projects are a useful way to proceed to build support for a civil right to counsel. The most significant and ongoing pilot is in California. Under a 2009 law, the California Judicial Council oversees ten pilot projects in seven counties for appointment of counsel in civil cases including housing, domestic violence, child custody, and probate guardianship. The projects started in fiscal year 2011-2012 and were authorized for a three-year period subject to renewal. In September 2010, then-Chief Justice Ron George appointed a 16-member committee to oversee implementation of the program, chaired by retired Court of Appeal Justice Earl Johnson, Jr. Seven projects were funded initially in San Francisco, Bakersfield, San Diego, Santa Barbara, Northern California, and Los Angeles (2 projects).<sup>22</sup> Evaluation of the pilots was designed with a national advisory committee. 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. An initial report to the legislature by the Judicial Council of California was delivered on January 29, 2016. A more comprehensive evaluation is in progress. In June 2016 the Governor signed legislation making the Shriver pilots permanent. In addition to Earl Johnson, Bonnie Hough is substantially involved in these pilots.

The January 29 report reached the following conclusions:

To date, the pilot projects have provided invaluable legal representation to over 20,000 low-income Californians. The services are focused on helping vulnerable

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<sup>22</sup> For a thorough discussion of the pilots see Clare Pastore, “California’s Sargent Shriver Civil Counsel Act Tests Impact of More Assistance for Low-Income Litigants,” 47 Clearinghouse Review 97 (July-August 2013).

parties facing critical legal problems in the areas of child custody, eviction, and guardianships/conservatorships who are involved in the types of civil cases particularly susceptible to power imbalances between the parties.

Early evidence suggests that Shriver services are improving the administration of justice and balancing the playing field by offering legal representation in key cases, and preventing the loss of important legal rights. Shriver attorneys appear to be helping clients have realistic expectations for their cases. Clients are more likely to perceive that the results of their cases were fair -- even if the outcomes were not what they desired -- because they had had the opportunity to have their perspective heard.

Preliminary analysis of court data suggests that, compared to cases without Shriver representation, Shriver housing cases involve more dismissals, more settlements, and fewer trials, and Shriver probate cases involve fewer continuances, fewer hearings, and fewer unsuccessful filing attempts. Balanced representation and court innovations in custody cases appear to lead to more durable settlements in custody cases, alleviating strains on family members and the courts.

Not only can Shriver services and court innovations result in better outcomes for the individual clients, but these efficiencies can translate into significant cost savings to the court. Quicker resolution of cases means that judicial officers can attend to more cases (increased efficiency and volume) which benefits everyone coming before the court. Judges can have more time to attend to complex cases, and limited court resources can be used more effectively.

The services already provided under this critical legislation have reached thousands of vulnerable Californians. The results presented in this report, though preliminary, suggest that the pilot projects are providing a vital service, and are helping us understand how to truly reach 100% access to justice in California.

**Counsel in deportation proceedings:** The nation's first institutionally provided, universal representation system of counsel for immigrants in deportation proceedings began in 2013 when New York City gave \$500,000 towards the establishment of the pilot project which is administered by the Vera Institute of Justice. In June 2014 the City announced it would infuse another \$4.9 million into the program, New York Immigrant Family Unity Project (NYIFUP). Note that an earlier study by the City Bar Justice Project concluded that almost 40% of those in removal proceedings might have a viable defense. A recent [ABA Journal](#) story about the project cites some stunning statistics:

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

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

The success of the project has led to other places starting or exploring similar projects. **San Francisco, DC** and **Chicago** have also recently increased their financial commitment to providing representation to immigrants facing deportation. In April 2017, the Seattle City Council voted to create [a \\$1 million legal-defense fund](#) for immigrants whom the federal government attempts to deport. And the Metropolitan King County Council [approved \\$750,000](#) for immigrant and refugee programs, including \$300,000 for the defense of people in immigration court. The city and county will distribute the money to nonprofit organizations such as the Northwest Immigrant Rights Project to do the legal work.

Maggie Corser, **Access to Justice: Ensuring Counsel for Immigrants Facing Deportation in the D.C. Metropolitan Area**, Center for Popular Democracy (March 2017).<sup>23</sup> This report documents that every year nearly 4000 immigrants in the D.C. metropolitan area face detention and deportation because they cannot afford a lawyer. Many of these individuals have legal claims they could assert for their right to remain in the United States. However, without the assistance of legal counsel to help navigate the extremely complex area of immigration law, they are unable to articulate those claims to an immigration judge. Having a lawyer in Arlington more than doubled a person's chances of being able to remain in the U.S. and quadrupled a person's chance of obtaining relief in Baltimore. Between 2010 and 2015, Immigration and Customs Enforcement (ICE) detained nearly 15,000 people in local and county jails throughout the states of Maryland and Virginia. In both regions, people who did not have lawyers were more than twice as likely to remain detained during the entirety of their immigration case, even if they may have been eligible for release on bond. In light of the report findings, the report calls on elected officials, in partnership with service providers, to establish a publicly funded universal representation program for immigrants facing detention and deportation in Arlington, Virginia and Baltimore, Maryland. In response, In January, D.C. Mayor Muriel E. Bowser (D) announced \$500,000 in grants to help defend immigrants in court.

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

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[https://populardemocracy.org/sites/default/files/DC\\_Access\\_to\\_Counsel\\_rev4\\_033117%20%281%29.pdf](https://populardemocracy.org/sites/default/files/DC_Access_to_Counsel_rev4_033117%20%281%29.pdf)



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

**Studies:** A December 2015 study, *Justice Diverted: How Renters Are Processed in the Baltimore City Rent Court*, by the Public Justice Center, focuses on the “Rent Court” in Baltimore City, where 6,000 to 7,000 renter households are judicially evicted for not paying the rent. From July 2014 through July 2015, the Public Justice Center partnered with the Right to Housing Alliance to study the experiences and outcomes of renters who appeared at Rent Court to defend against rent eviction cases. This report is based on a survey of nearly 300 Rent Court renter-defendants, extended interviews, reviews of court records and data from Baltimore Housing and the Maryland Department of the Environment, and the Public Justice Center’s experience in defending tenants in rent cases. The study shows that the court system prioritizes efficiencies which privilege the landlord’s bottom line, and as a result, it decidedly ignores two predominating realities of poor renters and their housing. First, renters lack access to timely legal advice and have insufficient knowledge to navigate the process. Second, renters are poor, have few rental options other than Baltimore’s crumbling housing stock, and look to the court to enforce housing standards. The report concludes with five major recommendations for reforming the Rent Court system and protecting the rights of some of Baltimore’s most vulnerable residents: First, cut Rent Court dockets in half and strengthen overall fairness of the process by requiring a pre-filing notice and waiting period that would ensure that renters receive documentation of the landlord’s claims, time to remedy the dispute before litigation begins, and time to prepare a defense if necessary. Second, level the playing field at court by expanding legal help for renters – increasing renters’ access to legal information, assistance at court, and legal representation. Third, demand that landlords and agents document their rent claims, as well as their alleged compliance with licensing and lead-risk legal requirements, and hold them accountable through a consistent application of existing legal standards and tenant protections. Fourth, expand landlord licensing requirements that ensure annual health and safety inspections to all rental housing in Baltimore – not just multi-family dwellings and rooming houses. Fifth, fund eviction prevention programs to meet the scale of the eviction crisis.

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

A multi-year, collaborative study, **The Longer-Term Influence of Civil Legal Services on Battered Women**,<sup>24</sup> funded by the National Institute for Justice and operated by the University of Iowa and Iowa Legal Aid focused on the impact of providing counsel for

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<sup>24</sup> <https://www.ncjrs.gov/pdffiles1/nij/grants/249879.pdf>

victims of intimate partner violence in protection order, custody, child support, and marriage dissolution cases. The study found that after being provided counsel:

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

Several recent law review articles suggest a need for a right to counsel:

Lisa Stifler, *Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions*, 11 Harv. L. & Poly. Rev. 91 (2017), available at <http://harvardlpr.com/wp-content/uploads/2017/02/HLP106.pdf>. This article notes that in debt collection, defendants are typically represented between 0-10% of the time, and that "Data indicates that unrepresented defendants who entered into settlement agreements may not be better off than those who received default judgments." Conversely, "more than seventy percent of the time consumers with attorney representation either prevailed against the plaintiff debt buyer or had their cases dismissed."

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

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

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

Such a constitutional right would be the first recognized in a state constitution in the United States and could lead the way for more states to do the same.

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

California has the most extensive network of self-help centers with 80. \$11.2 million of state court funds are provided to support court-based, attorney-supervised, self-help centers in the state. This supplements the family law facilitator program which provides over \$16 million for these services in cases involving child support and parentage. Filing fee revenue helps to support small claims advisors who are increasingly included in self-help center operations. These funds have been supplemented with local court funding. Some county governments, including Los Angeles and San Francisco, also provide funding for self-help services at courts to help address the needs of their constituents. There are additional specialized grant funds including partnership grant funds which provide \$1.6 million for legal services agencies to provide self help services at local courts. Many courts also provide additional funding from their general court budget for their self help centers. New York also has a vibrant program of 27 self help centers around the state and assisted nearly 215,000 unrepresented litigants.<sup>25</sup>

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

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<sup>25</sup> See art page 12 [http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J\\_2016report.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2016report.pdf)

Recent developments include:

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

**Remote Services Study:** A State Justice Institute (SJI) supported national study of how remote services (phone, internet, video, mobile etc.) are used in delivering self-help. The project studied services in 8 sites: Alaska, Utah, Montana, California (2 sites), Idaho, Minnesota and Maryland, and runs from March 2013 – April 2015. The findings of the study conclude that remote services are cost effective, and efficient. They also found that providing multiple remote services concurrently can be most effective (telephone, email, chat, text messaging, and web chat). The study did not include use of online forms as one of the tools use to provide remote assistance and services, nor online triage. In 2016, a *Resource Guide* on Serving Self-Represented Litigants Remotely (SRLN 2016) was completed. The *Resource Guide* provides options for courts and other entities interested in providing services to self-represented litigants using means that are not face-to-face, instead of, or in addition to, in-person alternatives such as walk-in services, workshops, and clinics. It also includes information regarding technology and business process options and describes a study of how eight sites provide remote self-help services to self-represented litigants and its principal findings and recommendations.

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

In 2015, the New York Access to Justice Program create an e-filing website for unrepresented litigants to streamline the process and explain the e-filing procedure in simple terms that non-attorneys can better understand. The new website explains the

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

**LA's Online Traffic Avatar Radically Changes Customer Experience.** The Superior Court of Los Angeles County handles approximately 1.2 million new traffic citations a year. Two years ago, as a result of a state budget crisis that led to courthouse closures and reduced staffing, people waited as long as 2.5 hours to see a clerk for their traffic matter. Then came “Gina”, the online assistant that is helping tens of thousands of people at the Los Angeles Superior Court handle their traffic citations online. When visiting the traffic section of the court's website, litigants can interact with Gina to pay a traffic ticket, register for traffic school, or schedule a court date. Gina is multilingual and can help court users in English, Armenian, Chinese, Korean, Spanish and Vietnamese. Gina is part of a larger online effort by the LA Superior Court to enable court users to perform many critical traffic court transactions without ever setting foot in the courthouse. Gina alone has about 200,000 interactions a year, and combined with the overhaul of the court's online traffic court program, typical wait times in LA's traffic courts have been dramatically cut down to 8-12 minutes.

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

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

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

Home; Poverty; Where Is Mobile Broadband Available?; How Fast Is Mobile Broadband?; Where Are Homes Connected to High-Speed Internet?

In a new report, **Natalie Anne Knowlton, Cases Without Counsel: Our Recommendations after Listening to the Litigants** (June 8th, 2016),<sup>26</sup> The Institute for the Advancement of the American Legal System (IAALS) at the University of Denver Law School undertook a qualitative empirical research study designed to explore the issue of self-representation from the litigants' perspective. Our [Cases Without Counsel](#) project gathered detailed narratives directly from family court self-represented litigants and those who engage with litigants in the court through one-on-one interviews. The study findings (detailed in the [companion Research report](#)) present an array of suggestions for how to better serve litigants without lawyers This [Recommendations report](#) includes the various stakeholder recommendations alongside [materials and resources](#) for those interested in learning more or implementing various components in their respective jurisdictions. Fundamentally, the report suggests a change in the conversation on self-representation. System stakeholders must accept the onus of shared responsibility for helping self-represented litigants through the process. IAALS encourages court, legal, and broader community stakeholders to view these recommendations as blueprints for a coordinated response to better assist self-represented litigants in family court and a means through which to fulfill this shared responsibility.

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

## **DOCUMENT ASSEMBLY<sup>27</sup>**

To respond to the crisis of litigants representing themselves, legal aid programs, self-help centers, courts and others are using online document-assembly software to help those in need complete legal forms easily and in quality way. Document assembly software asks questions and then puts the answers to these questions into the appropriate places on forms. The interview provides guidance and definitions at it goes

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<sup>26</sup> <http://iaals.du.edu/honoring-families/publications/cases-without-counsel-our-recommendations-after-listening-litigants>

<sup>27</sup> Claudia Johnson, LawHelp Interactive Program Manager, provided essential assistance in developing this section.

along. The software also often provides an easy way to integrate definitions and explanations of basic legal terms and concepts. At the end of the interview the person receives complete documents with printed instructions on what they need to do with the forms.

**LawHelp Interactive (or LHI and formerly known as NPADO)** is a web site that lets people create legal documents. [LawHelp Interactive](#) was developed to make implementing document assembly initiatives easier and less costly for legal aid organizations as well as pro bono and court-based access-to-justice programs. Participating programs use [HotDocs Corporation's, HotDocs Developer](#), and optionally the [Center for Access to Justice and Technology's A2J Author](#), to create online forms and documents. Templates are uploaded to the LawHelp Interactive server and made available to advocates, pro bono volunteers, and self-represented litigants through legal aid and court websites. End users do not have to pay to use the interviews or assemble packages. Other similar platforms do charge per document assembly fees ranging from \$14.99 to \$349.00.

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

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

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

protection requests. The rate of growth of e-filing in NY from 2014 to 2016 was 39%. The rate of growth for Minnesota efilings from 2014 to 2016 was 106%.

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

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

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

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

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

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



Over a third of LHI users are in lower income ranges \$0-\$24,999 and 22% of users are in the 25,000-49,000 income range. Those over 75% make up 13% of LHI end users, which include lawyers and staff at courts and other nonprofit agencies. Approximately 14% of LHI users preferred not to answer the income question. LHI users are familiar with other technology and media. Almost ¾ of LHI users are on Facebook, almost 2/3 (64%) make purchases at Amazon, a quarter of users play with Xbox, Wii, and play Station and use their consoles to make purchases or access the internet. Users were also using Instagram and twitter and using Roku and similar devices to connect to the internet. Over 2/3 of all LHI are users are persons facing legal problems (67%). The rest of users were advocates including DV advocates, legal aid staff, court self help, and other, which includes family or friends.

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

Another way in which the online forms are being used to support attorney work flows are new capacities built in the back end of LHI. One of the newest models is a tool being tested in NY, called Closing the Gap (CG). CG lets lawyers video with their clients, text with them, set up appointments and then create forms through LHI—all from one platform. It is not a case management system, but it has features that let the lawyers manage their online interactions with clients remotely. The integration of Closing the Gap to LHI is being funded through a Pro Bono Initiative grant to the Legal Aid Society of Northeastern NY. Other legal non profits are part of the grant, including Legal Assistance of Western NY and the Volunteer Legal Services Project of Monroe County. It basically uses a new feature of LHI known as LHI Connect that enables lawyers and their clients to co-author documents through the LHI back end. In the new platform, lawyers are using the virtual Closing the Gap platform with online forms—to help those in need create housing and consumer matters in a pro bono model.<sup>28</sup>

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

Other emerging tools include phone apps that let tenants take pictures and document habitability problems through phone apps. <https://www.justfix.nyc/> or the Debt and Eviction Defense navigator (DEN). Tools like these enable social workers and others perform quick legal screens, in this case for home bound elderly, to connect them with

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<sup>28</sup> <http://www.lsc.gov/grants-grantee-resources/our-grant-programs/pro-bono-innovation-fund/current-grants>

nonprofit attorneys when legal emergencies are spotted. This adoption of mobile technology and use by non legal groups is likely to continue as a way to leverage other networks and partnership outside of the legal services community.

<http://www.connectingjusticecommunities.com/jasa-and-pbn-team-up-to-relax-in-the-den/2014/11/>

## **COURT-BASED DOCUMENT ASSEMBLY DEVELOPMENTS**

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

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

- 95% of litigants found that the DIY Form program saved them time. This percentage has stayed steady from year to year.
- 77% of litigants were referred to the DIY Form program by a court employee, an increase of 12% from 2015.
- 80% of litigants use the DIY Form program in a court facility such as a Clerk's Office or Help Center. This is a significant increase of 19% from 2015. • 36% of litigants had an income of less than \$19,999.
- 75% of litigants are between the ages of 25 and 44.
- 85% of litigants have internet in their home.
- 18% of DIY users have used a DIY Form program before. In 2015, this was 16%.<sup>29</sup>

In addition to New York, only the California, Arkansas, Minnesota, and New Mexico state court systems presently contract with Pro Bono Net to utilize LHI on their own. The majority of document assembly programs hosted on LHI are produced by legal service organizations. Over forty territories produce A2J Author programs, some in partnership with state courts. Yet the most successful authors of A2J Author programs on LHI are

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<sup>29</sup> See at page 34 [http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J\\_2016report.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2016report.pdf)

the New York and California court systems.<sup>30</sup> For a thorough discussion of the New York program, see Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of New York State Court System’s “DIY” Forms.”

[http://www.nyourts.gov/ip/nya2j/pdfs/RochelleKlempner\\_Court-BasedDIYForms.pdf](http://www.nyourts.gov/ip/nya2j/pdfs/RochelleKlempner_Court-BasedDIYForms.pdf)

## PORTALS FOR ACCESS

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

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

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

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

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<sup>30</sup> One of the main providers of technical assistance on online forms recently provided advice on how to proceed: [Guest Blogger Claudia Johnson: What I’ve learned in the past 9 years of helping legal aid, courts, and other non-profits create online forms to promote Access for All](#)

Another example of thinking about portals was a convening in June of 2016 by the Institute for the Advancement of the American Legal System (IAALS) to discuss the development of an online tool designed to help people with potential family law legal problems including self-represented litigants. This Litigant Portal would be a destination on the internet to which individuals could go when looking for a solution to a problem. The participants were shown Rechtwitzer 2.0 and MyLawBC. The convening proposed a pilot project in at least two courts in the same state and possibly a third project in a separate state. See, Rebecca Love Kourlis, Natalie Anne Knowlton & Logan Cornett, **A Court Compass for Litigants** (July 2016 ) IAALS. 31

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

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

## **LANGUAGE ACCESS**

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

and video remote interpreter services, translation of written materials, and bilingual staff services.

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

The ABA developed 10 Standards for Language Access in Courts. The first Standard on Fundamental Principles provides: As a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access services, so that persons needing to access the court are able to do so in a language they understand, and are able to be understood by the court. See ***American Bar Association Standards for Language Access in Courts*** [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/sclaid\\_standards\\_for\\_language\\_access\\_proposal.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/sclaid_standards_for_language_access_proposal.authcheckdam.pdf)

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

DOJ issued “Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency” (DOJ LEP Guidance) in 2000, followed by amended Guidance in 2001 and 2002. The DOJ LEP Guidance utilizes the following four factors to determine whether recipients have taken reasonable steps to ensure “meaningful access:” (1) the number or proportion of LEP persons; (2) the frequency with which LEP individuals come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/recipient and costs.” In 2014, DOJ issued “Language Access Planning and Technical Assistance Tool for Courts” to assist courts and court systems as they develop comprehensive language access programs. In 2016, DOJ issued Language Access in State Courts provides a brief overview of the importance of legal requirements for, and accomplishments in, providing language access services in state courts across the country.<sup>32</sup>

An example of a state strategic plan for language access is the 2015 **Strategic Plan for Language Access in the California Courts** prepared by the Judicial Council of California [http://www.courts.ca.gov/documents/CLASP\\_report\\_060514.pdf](http://www.courts.ca.gov/documents/CLASP_report_060514.pdf)

## **VOICES FOR CIVIL JUSTICE (VOICES)**

Voices is a relatively new national nonprofit communications hub launched in 2013 that raises awareness of civil legal aid. It is directed by Martha Bergmark, former Executive

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<sup>32</sup> See <https://www.justice.gov/crt/file/892036/download>

Vice President and President of LSC and former participant in ILAG. Voices seeks to strengthen and broaden the brand identity of civil legal aid and to establish, via a drumbeat of media coverage, a comprehensive narrative of what civil legal aid is and why it matters. Ultimately, the measure of success will be the growth of resources and support for civil legal aid. For more information, see <http://voicesforciviljustice.org/>

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

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

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

At the organizational level:

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

Of responses on behalf of statewide entities:

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

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

## **JUSTICE INDEX**

In 2014, the National Center for Access to Justice at Cardozo Law School (NCAJ), [www.ncforaj.org](http://www.ncforaj.org), launched the Justice Index, [www.justiceindex.org](http://www.justiceindex.org). (In 2016, NCAJ moved to Fordham Law School where they co-chair a school Access to Justice Initiative with Dean Matthew Diller and former NYS Chief Judge Jonathan Lippman). The Justice Index is the online resource that increases access to justice by researching and posting contemporaneous data on the presence and absence of best practices for assuring access to justice in the 50 states, the District of Columbia, and, this year, Puerto Rico. The Justice Index gathers data and ranks states based on their adoption of best practices for access to justice in four categories: (1) number of civil legal aid lawyers, (2) systems for self-represented litigants, (3) systems for people with limited English proficiency, and (4) systems for people with disabilities. The 2016 Justice Index was launched in May of 2016 and included a new section on the right to counsel in civil cases as noted above. They will be updating and expanding the Justice Index in 2017, while continuing to encourage its use as a platform for advocacy.

## **ACCESS TO JUSTICE INDICATORS**

On September 15, 2016, access to justice experts from the academic and nonprofit communities meet for a Consultation with U.S. government officials to recommend “access to justice indicators” to guide data collection for tracking and promoting access to justice in the United States. The Consultation, the first held between U.S. government officials and civil society experts on access to justice indicators, is a step towards U.S. implementation of Goal 16 of the 2030 Sustainable Development Goals, or SDGs. Participating in the Consultation were fifteen officials from agencies in the White House Legal Aid Interagency Roundtable (WH-LAIR), as well as thirty access to justice experts from the academic and nonprofit communities. The consultation produced suggestions for indicators at both the specific and general level.<sup>33</sup>

## **LIMITED SCOPE REPRESENTATION**

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

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

The American Bar Association issued a new ethics opinion, Formal Opinion 472, on November 39, 2015 which set out recommendations on how lawyers should

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<sup>33</sup> <http://ncforaj.org/wp-content/uploads/2016/12/NCAJ-CHRI-9-15-16-Recommended-AtJ-National-Indicators-12-1-16-final.pdf>

communicate with persons receiving limited-scope legal services, including the lawyer providing the service and the lawyer representing the other side of the dispute.

## **NON-LAWYER ADVOCATES**

In past reports, I described the Limited License Legal Technician (LLLT) certification program in Washington State that allows certified persons to provide a range of legal services with areas defined by a 13 member Limited License Legal Technical Board. These technicians set up legal practices, establish fees, operate independently and provide individualized information regarding court procedures, reviewing documents and completing forms, performing legal research, drafting letters and pleadings, advising clients as to necessary documents and explaining how such documents or pleading may affect the client's case. However, the technicians could not represent a client in legal negotiations, in court, in formal administrative proceedings or in other formal dispute resolution process unless specifically permitted.<sup>34</sup> Technicians must complete an associate level college degree, 45 credit hours in an ABA approved program and training in a practice area. They must also pass a core education exam, professional responsibility exam and a practice area exam. Finally, they must obtain 3,000 hours of substantive law-related experience, supervised by a lawyer and within 3 years before or after passing the examination.

The only practice area now available is family law including child support modification, dissolution and separation, domestic violence, parenting and support actions, paternity and relocation. Washington may expand in the future to Health care and Estate in 2017. There are now 20 LLLTs practicing in Washington State. Of the 20 practitioners, 10 are connected to law firms and 10 are independent.

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

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<sup>34</sup> See Brooks Holland, "The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice," 82 SUPRA 75 (2013).



strategy for meeting the legal needs of many people who now are dealing with their legal problems unassisted. Creating similar programs in other states would clearly improve access to justice for a broad section of the public.”

Utah is currently designing its Paralegal Practitioner program along the lines of the Washington State program. A Task Force appointed by the Utah Supreme Court recommended in November of 2015 that the Supreme Court should exercise its constitutional authority to govern the practice of law to create a subset of discrete legal services that can be provided by a licensed paralegal practitioner in three practice areas: temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change; eviction; and debt collection.<sup>35</sup>

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

In my last report, I discussed the New York pilot program to permit trained non-lawyers to provide out-of-court assistance in housing and consumer credit. The role of the Navigators includes the provision of the following types of assistance, free of charge, to litigants:

- Preliminary discussions with litigants to listen and explain the process
- Review of the papers litigants have received and assembled to explain their relevance to the process
- Provision of information to litigants about appropriate or available court services (including interpreters)
- Description for litigants of the individuals they will see in court and their roles (e.g. judge, court clerk, law clerk), as well as likely discussion topics and the best manner of response to each

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[http://www.utcourts.gov/committees/limited\\_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf](http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf)

- Assistance to litigants in filling out court-approved DIY forms and help in identifying additional resources available on the Internet
- Court accompaniment, including giving notes or reminders to litigants where and when necessary
- Statements of fact to the judge, but only if asked a direct factual question by the judge
- Taking notes during any conference or hearing to discuss with litigants afterwards so that the litigants are clear about what has been said or decided and what the litigants must do to comply with any directions they may have been given
- Some Navigators in the Housing Court, in addition, provide more in-depth service and remain with litigants to help provide needed social services, including benefits to cover rent arrears where available (see full description in Overview of program below).

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

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

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

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

The University Settlement Navigators Pilot Project, which uses trained caseworkers that are employees of a nonprofit to provide more extensive assistance in Brooklyn Housing Court (such as connecting tenants to potential grants/benefits/social services, assisting

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

General findings include:

- People without formal legal training can provide meaningful assistance and services to litigants who are not represented by a lawyer.
- These services can impact several kinds of outcomes, ranging from litigants' understanding of court processes and empowerment to present their side of the case, to providing more relevant information to the decision-maker, to formal legal outcomes and the real-life outcomes experienced by assisted litigants and their families.
- The tasks Navigators are actually able to perform, and thus their impact, are influenced by the philosophy and attitude of the court in which the services are provided, including the attitudes of case processing staff and judges.
- Contributions of Navigators' work to legal outcomes and real-life outcomes such as eviction prevention are likely similarly influenced by court environment and by the range of services and benefit programs available in the jurisdiction. The availability of such services and benefits to which Navigators can connect litigants is a major mechanism of Navigator impact. Some jurisdictions, such as New York City, have significantly more such resources than most.
- The impact of Roles Beyond Lawyers programs on legal outcomes can be greatly assisted by the availability and use of plain language, standardized legal forms, such as the Answer form, and of software programs (what in New York are called "DIY" programs) that help litigants prepare legal documents such as answers. Such programs have been developed for many jurisdictions, facilitating the replication of Roles Beyond Lawyers programs.

The Access to Justice Program of the NY State Courts also facilitated another study of the CNP conducted by Pro Bono Net, funded by a Legal Services Corporation Technology Initiative Grant awarded to LAWNY (Legal Assistance of Western New York), to assess and create technology to assist the Court Navigators. As a result of this study, Pro Bono Net working with Legal Services NYC and Georgetown University Law

Center's Technology Innovation and Law Practicum class, created an app for the CNP called the "Navigator's Compass." The Navigator's Compass, using Neota Logic, is designed to help Court Navigators issue spot and connect litigants with appropriate referrals, resources and court services, like interpreters, Help Centers, DIY Forms and other key resources described in the 200+ page Navigator training manual. The Access to Justice Program is in the process of fine tuning and correcting the app.

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

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

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

## **NEW LAWYER INITIATIVES**

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

## **LEGAL INCUBATORS**

A relatively new development in access to justice on which I have not previously reported is the legal incubator. The first legal incubator began in 2007, the Community Legal Resource Network at the City University of New York School of Law. Its mission is to provide support to their graduates interested in launching their own practice to serve low-income communities that lack access to legal representations. Since then, more than 60 legal incubators are up and running, with 75% of them having been formed since 2014. American Bar Association, ABA Standing Commission on the Delivery of Legal Services, *2016 Comprehensive Survey of Lawyer Incubators*, 2016. Though their missions vary, most incubators embrace the importance of innovation and technology in the legal field and focus on the delivery of legal services to the un- and under-represented.

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

Incubators are an excellent trial ground for legal technology. Incubator attorneys explore innovative means to deliver legal services in a controlled environment. The implementation of technological tools is essential to create the successful small firms of the future. Automating intakes, implementing e-discovery, utilizing special software, building online legal resource centers, and other processes are in the pipeline to improve the delivery of legal services. With the majority of programs still in their infancy, few of these firms operate independently, but this is likely to change with new classes graduating from more than 60 programs across the nation annually.

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

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

## **LAW SCHOOLS**

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

Under the leadership of Chief Justice Lippman, New York became the first state in the nation to promulgate a rule requiring law students to complete 50 hours of pro bono service before gaining admission to the New York bar. New Jersey, California, and Montana among others are considering similar rules to the one developed in New York. In 2016, the American Association of Law Schools reported that law school students performed more than 2.2 million hours of pro bono work while on campus which is valued at more than \$52 million.<sup>36</sup>

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

In the fall of 2016 Fordham Law School began its Access to Justice Initiative. The effort aims to serve as a national model for legal education in accordance with the law school's credo, "In the Service of Others." Fordham Law aspires to bring the importance of adequate representation to the fore throughout its curriculum, educating students about the justice gap and opportunities for reform. The initiative will focus our direct-

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<sup>36</sup> <http://www.nationallawjournal.com/id=1202776171405/Law-Students-Performed-22-Million-Pro-Bono-Hours-Last-Year?slreturn=20170310114608>

service efforts as students and faculty provide legal help in communities direly in need. Finally, Fordham will bring to bear its research capacity, informing lawyers, policymakers and the public about access to justice. As a capstone to this commitment, the National Center for Access to Justice relocated to Fordham Law in fall 2016 to infuse the initiative with cutting-edge research and analytical techniques. The center created the data-driven Justice Index, [www.justiceindex.org](http://www.justiceindex.org), which ranks, compares and promotes progress in state justice systems to help expand and assure access to justice for all.

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

## ONLINE DISPUTE RESOLUTION

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

## DELIVERY RESEARCH

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.<sup>37</sup> 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

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<sup>37</sup> How an Evidence-Based Delivery System Can Improve Legal Aid for Low- and Moderate-Income Americans by Jeffrey Selbin, Josh Rosenthal, and Jeanne Charn (Center for American Progress) June 2011 <http://www.americanprogress.org/issues/open-government/report/2011/06/22/9707/access-to-evidence/> See also, Laura K. Abel, *Evidence Based Access to Justice*, *University of Pennsylvania Journal of Law and Social Change*, Volume 13 No.3, (2009-2010) at p, 295 and *Designing Access: Using Institutional Design to Improve Decision Making About the Distribution of Free Civil Legal Aid*, *7 Harvard Law & Policy Review* 61 (2013).

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. LSC is trying to raise private funding for such an endeavor. The President's budget request in 2015, 2016 and 2017 included \$2.7 million for civil legal research to be managed by the National Institute of Justice in cooperation with Department of Justice's Access to Justice Office. This would be the first time that the federal government invested in delivery research on civil legal aid since the demise in 1981 of the Research Institute at LSC. Congress did not fund these requests. NLADA received funding for and has developed a resource library of prior and ongoing delivery research. See [www.legalaidresearch.org](http://www.legalaidresearch.org).

Recently, Harvard Law School established The Access to Justice Lab, a startup effort, with sufficient funding in hand for three years, headed by Jim Greiner. The Access to Justice Lab is dedicated to transforming adjudicatory administration and engagement with the courts into evidence-based fields. The Lab will produce randomized control trials ("RCTs") directly involving courts and lawyers, particularly in the areas of access to justice and court administration (including agency adjudication). It will also combat the legal profession's current hostility to RCTS through short courses, publications, presentations, and other methods.

Recent studies and reports include:

Rebecca Sandefur completed a synthesis of the findings of extant studies of lawyers' impact on civil case outcomes: **Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact.**<sup>38</sup> Her analysis concluded that knowledge of substantive law explains little of lawyers' advantage compared to lay people appearing unrepresented. Instead, lawyers' impact is greatest when they assist in navigating relatively simple procedures and where their relational expertise helps courts follow their own rules.

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

A 2015 study by D. James Greiner and Andrea J. Matthews, **The Problem of Default, Part I**, focuses on the problem of routine default by human defendants, using the Boston Municipal Court's (BMC) debt collection docket as the laboratory. They designed interventions consisting of two forms of mailings: Limited and Maximal. For the limited, they mailed the defendant a manila envelope containing a study letter from Volunteer Lawyers Project (VLP), three copies of a check-box style Answer form, a business

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<sup>38</sup> See [https://www.researchgate.net/publication/281467509\\_Elements\\_of\\_Professional\\_Expertise](https://www.researchgate.net/publication/281467509_Elements_of_Professional_Expertise)



envelope addressed to BMC, a business envelope addressed to the plaintiff's attorney, a map to the courthouse, and a post-it note appropriate for a wall calendar saying "Go To Court Today!". Volunteer interns handwrote the address on the manila envelope. On all three copies of the Answer form, volunteer interns handwrote as much case-specific information as they could, including the case number, the plaintiff's name, the name and address of plaintiff's attorney, and the defendant's name and address. For the Maximal: First, they mailed the defendant a handwritten postcard from VLP stating, "Dear [Recipient Name], Help is on the way. Look for me!" Next to "me" was a hand-drawn arrow pointing to an image of Blob. The next day, they mailed the defendant the same manila envelope (with corresponding contents) that those in the "Limited" group received, except that the two business envelopes to the Court and to the Plaintiff's attorney had stamps. They studied the effectiveness of our two mailings in a randomized control trial that included a no-intervention control group. They found no difference in effectiveness between our two mailings, and that both roughly double the rate at which defendants participate in their lawsuits (results are statistically significant). Specifically: As compared to a randomly selected Control group with a 13% answer rate (corresponding to an 87% default rate), our "Limited" intervention group saw a 24% answer rate, and our "Maximal" intervention group saw a 24% answer rate. The corresponding rates for whether the defendant appeared at the first scheduled court hearing were 7.5%% for the Control group, 14% for the Limited group, and 15.3 for the Maximal group. Differences between the Control versus the Limited and Maximal groups were statistically significant. Differences between the Limited and Maximal groups were not.

April Kuehnhoff and Cherie Ching, **Defusing Debt: A Survey of Debt-Related Civil Legal Aid Programs in the United States** (June 2016 National Consumer Law Center)<sup>39</sup> Civil legal aid organizations provide critical front-line services for low-income and elderly people across the country facing debt collection activity. In order to better understand the work that these organizations are doing to serve some of the nation's most vulnerable consumers, the National Consumer Law Center (NCLC) developed a survey to gather data about what kind of representation organizations provided to clients who are being contacted or sued by debt collectors, debt buyers, or creditors. Significantly, this survey found that 94% of organizations listed the lack of funding or staff as a challenge in their debt defense work. Survey results indicate that: 91% of organizations provided pre-litigation services, 98% provided litigation services, 100% provided post-judgment services, and 69% provided bankruptcy services; 84% of organizations file affirmative claims against debt collectors, debt buyers, or creditors; 79% of organizations brought claims under the Fair Debt Collection Practices Act (FDCPA) and 75% brought claims under state consumer protection statutes; 50% of organizations engaged in legislative, regulatory, or court rule reform efforts; and 34% percent of organizations partially self-funded their debt defense work through fee-shifting statutes or client payments;

Jim Greiner and Becky Sandefur are engaged in an ongoing debt collection representation study, and the abstract describing their study is available

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<sup>39</sup> [http://www.nclc.org/images/pdf/debt\\_collection/debt-defense-survey-2016.pdf](http://www.nclc.org/images/pdf/debt_collection/debt-defense-survey-2016.pdf)

here: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2213000](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2213000). The study likely won't be completed for several more years.

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

As discussed in my paper prepared for the Edinburgh Conference, *The Anti-Poverty Impact of Civil Legal Aid*,<sup>40</sup> many states have done studies that assess the financial impact of civil legal aid.<sup>41</sup> There are 83 such studies.<sup>42</sup> There are 3 new studies ([Florida](#), [Maine](#), and [Minnesota](#)) assessing the financial impact of civil legal aid. These studies use various methodologies but reach similar conclusions. For example, the Minnesota study finds “that for every dollar spent on civil legal aid, the economic return is \$3.94...Minnesota civil legal aid programs generated \$133 million in revenue.”

In October of 2016, NPC Research released **Evaluation of the Introduction of Plain Language Forms with a Spanish Translation in Two Family Court Settings**<sup>43</sup> NPC Research, under a contract from Texas Rio Grande Legal Aid, funded under a TIG grant undertook an examination of the effectiveness of the provision of the plain language, English/Spanish forms in two sites: Sonoma County Family Court Services (California) and Travis County Family Court Services (Texas). As the report points out: “There has long been strong political support for making sure that governmental information, forms, and websites are written in plain understandable language, and translated into the primary languages of those who use them. But making the needed changes has often been delayed by fears of the costs. Now comes dramatic evidence of the impact on institutions, in this case the courts, of making these changes. Moreover, the new research described here also strongly suggests that cost savings are high enough to more than justify the investments needed.” The report points out the difficulties in implementation of the study, but determined that, one court was able to reduce the number of returns to court by over 70% by putting such a system in place in domestic violence cases involving people who spoke either English or Spanish. The Travis County Court in Austin, Texas, deployed computer software that generated orders as directed by the judge, and the software automatically used only standardized easy-to-understand English to create the full court orders. Where needed, the software then used approved similarly easy-to-understand Spanish translations of the standardized

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<sup>40</sup> The paper can be found at <http://www.internationallegalaidgroup.org/index.php/papers-publications/conference-papers-reports/category/5-edinburgh-2015-conference-papers>

<sup>41</sup> The ABA did a chart on impact studies and state legal needs studies at [http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice/atj\\_commission\\_self-assessment\\_materials1/studies.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj_commission_self-assessment_materials1/studies.html)

<sup>42</sup> See <http://legalaiddresearch.org/search-filter/#!/topic=223>.

<sup>43</sup> [https://richardzorza.files.wordpress.com/2016/11/plain-language-report\\_10-24-16.pdf](https://richardzorza.files.wordpress.com/2016/11/plain-language-report_10-24-16.pdf)

language to create a translation of the order. The researchers then studied the rate of return to court for alleged violations for the 6-week period following the order and found the over 70% reduction overall. They were then able to estimate the total savings from this reduction as over \$100,000 over a 3-month period.

Another recent study is by Shanahan, Colleen F. and Carpenter, Anna E. and Mark, Alyx, **Can a Little Representation Be a Dangerous Thing?** 67 Hastings L. J. 1367 (2016); Temple University Legal Studies Research Paper No. 2016-15.<sup>44</sup> According to the Abstract: “Access to justice interventions that provide a little representation, including nonlawyer representation and various forms of limited legal services, may be valuable solutions for low- and middle-income Americans. However, a thoughtful approach to improving access to justice efforts should recognize that a little representation may have risks. In particular, one potential risk of a little representation is that while it provides assistance with a discrete legal need in a specific moment, the nature of the assistance is incompatible with challenging the law. As a result, individual litigants do not have the benefit of legal challenges in their own cases and our legal system develops devoid of law reform that reflects the needs of low- and middle-income litigants.”

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

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

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<sup>44</sup> Available at SSRN: <https://ssrn.com/abstract=2731305>

- Typically relying on public transportation, participants expressed concern about rising costs and unreliable public services,

## ACCESS TO JUSTICE ARTICLES

Among articles that do not fit within prior categories are:

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

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

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

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

Rebecca L. Sandefur, **What We Know And Need To Know About The Legal Needs Of The Public**, 67 *South Carolina Law Review*, 443 (2016)<sup>45</sup>

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

Finally, I should note the book by Earl Johnson: **To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States**<sup>46</sup> and my book review.<sup>47</sup>

## CONCLUSION

While the trends in US civil legal aid over the last fourteen years continued through 2016, the election in 2016 totally changes the picture. LSC faces the elimination of funding for Fiscal 2018 and, if it survives, substantial reductions in LSC funds. At the time of this writing, we do not yet know the full extent of the problem for LSC funding. The Administration has proposed elimination of LSC. The Congress will not act until the summer of fall. While there is increased bi-partisan support for LSC, it may not be sufficient to prevent Administration proposals from being enacted.

Through 2016, we saw increases in state funding as well as from other funding sources. The decreases in IOLTA funding have slowed although IOLTA funding remains lower than before the Great Recession. There are more Access to Justice Commissions and increased attention to civil legal aid at the state level. The notion of a right to counsel in civil matters has gained renewed attention. Yet, the basic civil legal aid system has not closed the "justice gap." Efforts to expand access through technology and self-help representation activities continued and have expanded, but the fundamental problem remains: there are not enough actual staff lawyers, paralegals, lay advocates, law students and private attorneys available to meet the huge needs of low-income persons for advice, brief service and full representation. With the Obama Administration came the possibility that there would be increased efforts to expand the civil legal aid system to address significantly more of the legal needs of low-income persons in the United States through increased federal funding and supportive reauthorization legislation and an effort to rebuild the legal aid infrastructure. The Congresses elected since 2010 have significantly changed the possibilities for increased funding and major new advances.

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<sup>45</sup> <https://perma.cc/85B8-HZPF>

<sup>46</sup> <https://www.amazon.com/Establish-Justice-All-volumes-Future/dp/0313357064>

<sup>47</sup> <http://heinonline.org/HOL/LandingPage?handle=hein.journals/geojpovlp23&div=16&id=&page=>



## PART II BACKGROUND

### CURRENT LEGAL AID SYSTEM

Civil legal aid in the United States is provided by a large number of separate and independent staff-based service providers funded by a variety of sources.<sup>48</sup> The current overall funding is approximately \$1.582 billion.<sup>49</sup> The largest element of the civil legal aid system is comprised of the 133 programs that are funded and monitored by LSC. LSC is also the largest single funder, but overall, far more funds come from states and IOLTA programs than LSC.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> It is very rare that a funder will directly fund, by contract or otherwise, individual

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<sup>48</sup> 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](http://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.

<sup>49</sup> 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.

<sup>50</sup> 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.

<sup>51</sup> 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#>.

<sup>52</sup> The LSC funded judicare program is Wisconsin Judicare, Inc., in Wausau, Wisconsin.

lawyers or law firms. However, some staff attorney programs have created judicare components or contracted with individual lawyers and law firms, who are paid by the staff program to provide legal assistance to certain groups of clients.

The United States system also includes approximately thirty-eight state advocacy and support organizations that advocate before state legislative and administrative bodies on policy issues affecting low-income persons.<sup>53</sup> Some of these also provide training and technical support to local legal aid advocates on key substantive issues.<sup>54</sup> 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.<sup>55</sup>

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

Over the last twenty years, the civil legal aid system has begun in earnest to utilize innovations in technology to improve and expand access to the civil justice system. As a result, low-income persons have access to information about legal rights and responsibilities and about the options and services available to solve their legal problems, protect their legal rights, and promote their legal interests. Technological innovation in virtually all states has led to the creation of Web sites that offer community legal education information, pro se legal assistance, and other information about the courts and social services. Most legal aid programs now have Web sites with over 300 sites.<sup>56</sup> All states have a statewide website, most of which also contain information useful both to advocates and clients. Most of these statewide web sites were made possible by the Technology Initiative Grants program of LSC. All of these state sites can

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<sup>53</sup> 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](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](http://www.clasp.org/publications/missing_link.pdf) [hereinafter *Missing Link*].

<sup>54</sup> *Overview*, *supra* note 8, at 4; *Missing Link*, *supra* note 8.

<sup>55</sup> 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](http://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*.

<sup>56</sup> Pine Tree Legal Assistance lists 232 legal services sites on its webpage, <http://www.ptla.org/ptlasite/links/services.htm>.



be accessed through [www.lawhelp.org](http://www.lawhelp.org). Half of the sites are hosted on one platform operated by Pro Bono net. Dozens of national sites provide substantive legal information to advocates; other national sites support delivery, management, and technology functions. Many program, statewide, and national websites are using cutting-edge software and offering extensive functionality. I-CAN projects in many states use kiosks with touch-screen computers that allow clients to produce court-ready pleadings and access to other services, such as help with filing for the Earned Income Tax Credit. Video conferencing is being used in Montana and other states to connect clients in remote locations with local courthouses and legal services attorneys.

Finally, increasing numbers of legal aid programs across the country, in partnership with the courts and legal community, are using document assembly applications, most notably HotDocs and A2j Author to expand and make more efficient the provision of legal services to clients. These projects generally focus on the use of document assembly for pro se resources used by the public and automated documents used by legal aid staff to more efficiently represent their clients. Many of these projects nationally are coordinated through Law Help Interactive, which is a project of Pro Bono Net.<sup>57</sup>

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

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

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

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<sup>57</sup> <[cid:part1.01080802.04000605@iowalaw.org](mailto:cid:part1.01080802.04000605@iowalaw.org)><http://www.probono.net/>

who believe they have a legal problem to speak by telephone to a skilled attorney or paralegal and receive advice and brief service. Legal hotlines may provide answers to clients' legal questions, analysis of clients' legal problems, and advice on solving those problems so that the client can resolve the problem with the information from phone consultation. Hotlines may also perform brief services when those are likely to solve the problem and make referrals if further legal assistance is necessary. Hotlines now operate in over 92 programs in forty-five states, Puerto Rico, and the District of Columbia.<sup>58</sup> Some hotlines focus on particular client groups, such as the elderly. Others serve the low-income population in general. Finally, more and more states have a central phone number (or several regional phone numbers) that clients can call to be referred to the appropriate program or to obtain brief advice about their legal problems.

### **Legal Services Corporation**

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

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

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

LSC funds 133 grantees that operate local, regional or statewide civil legal assistance programs with 813 offices throughout the country. Generally, one field program provides legal services in a designated geographic area. In addition, LSC, with Congressional approval, has earmarked funds for migrant and Native American grants

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<sup>58</sup> 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](http://www.legalhotlines.org).

for specialized programs that deliver services to these populations. All legal services programs are private, nonprofit entities, independent of LSC. All LSC grantees are governed by boards which consist of 60% attorneys and one-third eligible clients. By LSC regulation, all programs must expend 12.5% of their basic LSC grant on the involvement of private attorneys in the delivery of legal services.

## **ELIGIBILITY AND RESTRICTIONS**

### **Eligibility**

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

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

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

LSC-funded programs may only use LSC funds to provide legal assistance to clients who meet specific financial eligibility guidelines. The basic rule is that LSC programs serve clients at or under 125% of the Poverty Guidelines,<sup>59</sup> or \$30,313 for a family of 4.

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

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<sup>59</sup> This figure represents 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services under guidance from the Office of Management and Budget (in the Executive Office of the President). The poverty guidelines are income thresholds that were established in the 1963 and updated by a cost of living index each year. The research underlying the original thresholds was based on food expenditures by low-income families in 1955. Calculations at the time showed the families then spent about a third of their income on food. The low-income food budget was multiplied by three to come up with the poverty line. There has been much controversy about the adequacy of the poverty guidelines, but they have not been changed and remain the basis for eligibility and income distribution for many federal programs.

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.<sup>60</sup>

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

LSC-funded programs are permitted to serve financially eligible individuals who are U.S. citizens or who are members of specified categories of aliens.<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup>

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.<sup>64</sup> Nor is there a “significance test” required by LSC or state funders.<sup>65</sup> 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.

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

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<sup>60</sup> See 45 CFR 1611.

<sup>61</sup> 45 CFR 1626

<sup>62</sup> 45 CFR 1637

<sup>63</sup> 45 CFR 1633

<sup>64</sup> A merit test requires some degree of possible success, such as the reasonable likelihood, reasonable probability, or reasonable possibility of success.

<sup>65</sup> 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.

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.<sup>66</sup> 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

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<sup>66</sup> 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).

provide representation in over 95% of the cases they were able to undertake prior to the imposition of the 1996 restrictions.

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

## THE JUSTICE GAP

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

This "justice gap" demonstrated by the Legal Services Corporation (LSC) is entitled, "*Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*,"<sup>67</sup> 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.<sup>68</sup> 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.

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

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<sup>67</sup> 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](http://www.lsc.gov/press/documents/LSC%20Justice%20Gap_FINAL_1001.pdf).

<sup>68</sup> 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](http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf) [hereinafter HOUSEMAN, JUSTICE GAP].

legal advice, brief service, and extended representation necessary to meet the legal needs of low-income persons.

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

A significant gap in the civil legal aid system in the United States, and particularly in the many states with limited non-LSC resources, is the lack of providers that can (1) serve prisoners, aliens, and others who cannot be represented by LSC funded providers; (2) bring class actions and effectively; and (3) engage in advocacy in all relevant forums, including legislative and administrative rule-making and policy-making forums. In large parts of the country such providers do not exist, or, if they exist, they are small, under-funded, and not able to meet the need that exists. This problem is, in part, a result of the restrictions imposed on LSC-funded entities by the 1996 appropriation riders.<sup>69</sup>

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.<sup>70</sup> 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

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<sup>69</sup> Some have turned to the courts to address this fundamental challenge, initially culminating in the United States Supreme Court decision in *Velazquez v. LSC*, which struck down one part of the restriction that prohibited representation of clients in welfare cases where a challenge to a welfare law or regulation was necessary. 531 U.S. 533 (2001). The remaining 1995 restrictions were upheld. Three other cases unsuccessfully challenged LSC rules on “program integrity.” The “program integrity” provision requires that LSC programs “have objective integrity and independence from any organization that engages in restricted activities.” 45 C.F.R. §1610.8 (2005). The regulation sets out criteria by which LSC will measure compliance. It was these criteria and their implementation that were challenged.

<sup>70</sup> *Missing Link, supra* note 8, at 6.

and under-staffed. Several of the remaining freestanding state support programs have survived, but, with a few exceptions, they have not made up the loss of LSC funds.<sup>71</sup>

## FUNDING

### Where We Are Today

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

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

While LSC funds are distributed according to the 2010 census data on individuals living below the poverty line, the other funding sources are not distributed equally among states. There is a significant difference in funding among the states. In 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 three significant budget reductions (in 1982, 1996 and 2012) and the inability to keep with up inflation. The following chart presents a few funding comparisons:

### LSC FUNDING COMPARED TO INFLATION

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<sup>71</sup> A few states – including California, Florida, Massachusetts, New Jersey, New York, Ohio, Vermont, Washington, Michigan – have preserved and/or strengthened the capacity for state-level advocacy, coordination, and information dissemination; increased training; and developed very comprehensive state support systems.



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

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

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

Highlights of the results include:

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

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

As many commentators have pointed out, the United States system is funded far below the level of funding provided by most of the other Western, developed nations.<sup>72</sup> Even though the US is far behind virtually all developed countries with regard to civil legal aid funding, it is important to recognize that, over the last decade, the U.S. system has grown from approximately \$800 million to over \$1.34 billion (including the District of Columbia, Puerto Rico, and the territories).

## **Future Funding**

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

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

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<sup>72</sup> See Earl Johnson, *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 *FORDHAM INT'L L. J.* 83 (2001).

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

## 1. Federal Funding through LSC

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

Supporters of increased federal funding will have to overcome significant political barriers to substantially increase federal funding for civil legal assistance. On the one hand, although LSC leadership has made substantial progress in developing a much stronger bipartisan consensus in favor of funding for LSC,<sup>73</sup> 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.

## 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.<sup>74</sup> Until recently, this increase has been primarily through IOLTA programs, which have now been implemented in every state.<sup>75</sup> But funding from court fees and general state revenue has now overtaken IOLTA funding in many states. Because of decreases in interest rates and the slowdown in economic activity as a result of the recession, IOLTA funds were reduced sharply between 2008 and 2015, and funding in 2016 is likely to continue at a low level. With the prospect of significant state budget deficits, state appropriations for legal services may also be reduced in the future.

IOLTA programs have developed a number of strategies to increase IOTA funding. Forty-four states (have adopted mandatory IOLTA and are no longer permitting lawyers to opt out. Thirty two states have adopted “comparability” provisions which require that financial institutions pay IOLTA accounts no less than the interest rate generally

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<sup>73</sup> John McKay *Federally Funded Legal Services: A New Vision of Equal Justice Under Law*, 68 TENN. L. REV. 101, 110-11 (Fall 2000).

<sup>74</sup> 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.

<sup>75</sup> 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.

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 ten years, substantial new state funding has come from general state or local governmental appropriations, as well as efforts such as filing fee surcharges, state abandoned property funds, and other governmental initiatives. Obtaining (and retaining) state appropriations and filing fee/fine surcharges to fund civil legal aid has become more difficult as the country’s economic problems have continued. In response, bench and bar leaders, working closely with their legal aid providers, are redoubling their efforts to maintain and increase revenue. In 2014, results were positive with an increase of over \$25,000,000 in funding. Funding in most states that use court fees and fines rather than appropriations as the funding mechanism for legal services remained level, but there were some significant changes in a few states.

### **3. Right to Counsel in Civil Cases at State Expense**

In the United States, there is no general right to state-funded counsel in civil proceedings. The United States Constitution does not provide an explicit right to state-funded counsel in civil proceedings, although the Fourteenth Amendment does prohibit a State from depriving “any person of life, liberty, or property, without due process of law” or denying “to any person within its jurisdiction the equal protection of the laws.” Unlike *Gideon v. Wainwright*,<sup>76</sup> 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*,<sup>77</sup> 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.”<sup>78</sup>

This basic framework was continued in 2011 when the Supreme Court decided *Turner v. Rogers*, 131 S.Ct.2507 (2011) which held that a parent jailed for civil contempt due to failure to pay child support is not categorically entitled to counsel when (1) the state provides other procedural safeguards; (2) the contemnor’s opponent is neither the state nor represented by counsel; and (3) the matter is not “unusually complex.” The court also determined that there is not a presumption in favor of counsel when physical liberty

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<sup>76</sup> 372 U.S. 335 (1963).

<sup>77</sup> 452 U.S. 18 (1981).

<sup>78</sup> *Lassiter*, 452 U.S. at 32.

is at stake. However, the Court did hold that the state must provide four safeguards to ensure due process. These were: (1) notice to the defendant that his “ability to Pay” is a critical issue in the contempt proceeding; (2) the use of a form to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status; and (4) an express finding by the court that the defendant has the ability to pay.

This decision has been viewed in very different perspectives. Some viewed the decision as a terrible loss with few redeeming qualities. For example, Professor Gene Nichol, the keynote speaker at a 2011 conference sponsored by the National Coalition for the Civil Right to Counsel<sup>79</sup> said of Turner: “Turner v. Rogers is not a lodestar or watershed of progress...it did not impose a requirement of meaningful and effective opportunity to be heard...” On the other hand many access to justice proponents found in Turner “a new day for judges and the self-represented,” and a “watershed for the right to counsel and self-representation.”<sup>80</sup> As Russell Engler states in a thorough discussion of this issue, “while the decision represents a civil-right-to-counsel ‘loss’, it might well represent an access-to-justice ‘win.’”<sup>81</sup>

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

In limited categories of cases, some state legislatures have enacted statutes requiring state-funded counsel to be appointed for one or more parties,<sup>82</sup> and the highest courts in some states have judicially decided that state-funded counsel should be provided as of right to some parties.<sup>83</sup> These state-funded counsel provisions or court rulings are

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<sup>79</sup> The National Coalition for the Civil Right to Counsel is a coalition of over 240 participants from 35 states and is housed at the Public Justice Center in Maryland.

<sup>80</sup> Richard Zorza has written numerous articles laying out a detailed set of best practices for judges in light of Turner. See, e.g., Richard Zorza, “A new Day for Judges and the Self-Represented: The Implications of Turner v. Rogers,” *Judge Journal*, Vol 50, No. 4 Fall 2011 at 16 and “Turner v. Rogers: The Implications for Access to Justice Strategies” *Judicare*, Vol. 95, No.6, May-June 2012 at 255.

<sup>81</sup> . See “*Turner v. Rogers* and the Essential Role of the Courts in Delivering Access to Justice,” 7 *Harvard Law & Policy Review* 31 (2013). See also Benjamin Barton & Stephanos Bibas, “Triaging Appointed-Counsel Funding and Pro Se Access to Justice,” 160 *U. Pa. L. Rev.* 967 (2012); John Pollock & Michael Greco, “Response, It’s Not Triage if the Patient Bleeds Out,” 161 *U. Pa. L. Rev.* PENumbra 40 (2012) and John Pollock, “The Case Against Case-by-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases.” 61 *Drake L. Rev.* 763 (2013).

<sup>82</sup> Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 *CLEARINGHOUSE REVIEW* 245 (July-Aug. 2006).

<sup>83</sup> 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

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.<sup>84</sup>

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.<sup>85</sup> 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.<sup>86</sup> In 2010, the Maryland Access to Commission published *Implementing a Civil Right to Counsel in Maryland*. In the first part of the document, the Commission articulates how a civil right to counsel in basic human needs cases might be implemented should a right be established by case law or legislation. In the second section, the Commission tries to answer the difficult question of “how much might it cost?” In 2013, a Maryland bill to create a statewide task force to explore civil right to counsel issues was signed into law. The Maryland Access to Justice Commission will provide staff for the task force which is to report to the Governors, the Chief Judge of the Court of Appeals, and the presiding offices of the legislature by October 1, 2014.

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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).

<sup>84</sup> 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.

<sup>85</sup> See 40 CLEARINGHOUSE REVIEW (July-Aug. 2006) (discussing various theories and state initiatives throughout the volume).

<sup>86</sup> 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).

In several 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 explored the impact of full representation in eviction cases. The pilots grow out of the work of the Boston Bar Association's Task Force on Expanding the Civil Right to Counsel, as described in its report: *Gideon's New Trumpet: Expanding the Civil Right to Counsel in Massachusetts*.<sup>87</sup> The pilot projects tested the theory that an expanded civil right to counsel should target the cases in which counsel is most likely to affect the outcome. Representation was focused on scenarios identified through a survey of housing experts in the state: 1) where the eviction was tied to a mental disability; 2) where it involves criminal conduct, and 3) where a viable defense exists and listed factors reveal a power imbalance likely to deprive a tenant of an affordable apartment. One pilot project was situated in a specialized housing court and another in a generalized district court, since evictions occur in both types of courts. In addition to randomized studies,<sup>88</sup> the Task Force supplemented the statistical analysis with other evaluation tools, including follow-up interviews with clients, project attorneys, Court clerks, judges, and homeless shelter providers, to better understand the impact of representation on outcomes and on the tenants' lives.

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

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

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<sup>87</sup> See [http://www.bostonbar.org/prs/nr\\_0809/GideonsNewTrumpet.pdf](http://www.bostonbar.org/prs/nr_0809/GideonsNewTrumpet.pdf).

<sup>88</sup> See Dr. James Greiner, Cassandra Wolos Pattanayak and Jonathan Hennessy, "The Limits of Unbundled Legal Assistance: A Randomized Study in Massachusetts District Court and Prospects for the Future," 126 *Harvard Law Review* 903 (February 2013).



The Report concluded: “The findings of both pilot studies confirm that extensive assistance from lawyers is essential to helping tenants preserve their housing and avoid the potential for homelessness, including all of the far-reaching tangible and intangible costs to tenants and society generally that are associated with homelessness... Based on all of the available data, the Task Force concludes that expanding the right to counsel, including full representation as of right, makes an enormous difference in the types of eviction cases identified by the targeted representation model in both the District Court and the Housing Court.”

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

## **PRO BONO**

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

While there is no reliable data about how much pro bono activity is actually going on, we do have some data about who is participating and what they are doing. The American Bar Association’s Standing Committee on Pro Bono and Public Services recently issued a new report—Supporting Justice III: A Report on the Pro Bono Work of America’s Lawyers (March 2013)—which reports on a 2012 survey completed by 2876 lawyers throughout the country in private practice, corporate counsel offices, government, and academic settings.<sup>89</sup> This report is based on a new survey similar to the ones done by the ABA in 2004 and 2008 and on which I reported in previous Updates. The new study focused directly on what lawyers did for persons of limited means and for organizations that address the needs of persons of limited means. The study found that 63% of respondents worked on matters that address the everyday legal problems of people in poverty and 36% of the lawyers who responded met the ABA’s aspirational goal of providing at least 50 hours of free pro bono services to persons of limited means.

We also know much about various steps to increase pro bono including the ABA Annual Pro Bono week, various state and local bar efforts to increase and reward pro bono efforts, and various initiatives outlined below that LSC has taken. However, we do not

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[http://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/lc\\_pb\\_Supporting\\_Justice\\_III\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lc_pb_Supporting_Justice_III_final.authcheckdam.pdf)

know: the quality of pro bono services; how priorities are set within the pro bono systems; the relationships between nonprofit providers and law firms who provide assistance pro bono including which cases are referred and why; how pro bono is marketed; and how law firms makes decisions about which cases they take and the relationship to this pro bono effort and community need.<sup>90</sup>

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.<sup>91</sup> LSC did adopt a new Private Attorney Involvement regulation (45 CFR 1614 (November 14, 2014) which expanded whom could be counted as private attorneys, made the uses of the 12.5% funding more flexible and updated the regulation to address the delivery system in 2014 and not the system of 1985 when he regulation was developed. The new regulation grew out of the Legal Services Corporation, *Report of the Pro Bono Task Force* at 2, October 2012, available at <http://lri.lsc.gov/legal-representation/private-attorney-involvement/resources> which had recommended that “LSC Should Revise Its Private Attorney Involvement (PAI) Regulation to Encourage Pro Bono.”

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

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

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

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<sup>90</sup> For a thoughtful discussion about what we know and don't know about pro bono, see Scott I, Cummings and Rebecca L. Sandefur, “Beyond the Numbers: What We Know – and Should Know – about American Pro Bono,” 7 *Harvard Law & Policy Review* 83 (2013).

<sup>91</sup> The requirement is imposed by LSC through its regulatory authority. See 45 CFR 1614.

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, 140 law firms are signatories to that challenge.<sup>92</sup> The Pro Bono Institute also has a challenge for corporate in-house counsel to increase the number of significant pro bono activities among lawyers who work on legal matters directly for corporations. The Corporate Pro Bono Challenge is a simple, voluntary statement of commitment to pro bono service by corporate legal departments, their lawyers, and staff. The goal is for one-half of the legal staff to support and participate in pro bono services.<sup>93</sup> There are now over 114 signatories to the corporate pro bono challenge.

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

## **SELF-HELP LITIGANTS AND PRO SE DEVELOPMENTS**

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

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

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

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<sup>92</sup> Information is available from the Pro Bono Institute. See [www.probonoinst.org](http://www.probonoinst.org).

<sup>93</sup> <http://www.probonoinst.org/>

- Oregon: 65% in family cases
- Texas: 21.6% of family cases

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

Over the last ten years, the Self-Represented Litigation (SRL) Network, which brings together courts, bar and access to justice organizations in support of innovations in services for the self-represented, has undertaken a number of activities to ensure the justice system works for all including those forced to go to court on their own. For example, the Network developed a judicial curriculum and leadership package which includes PowerPoint slides, detailed faculty notes, an Activity Handbook, which describes activities that help participants to understand underlying issues and begin the planning process, and a Resource Handbook. The judicial curriculum was launched at Harvard Law School in late 2007. Teams from 30 states, the District of Columbia, and four territories consisting of 150 participants including five chief justices, attended the conference. The Network also developed Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes and Issues for Exploration which includes 41 Best Practices.<sup>94</sup> More information about the Self-Help Litigation Network and self-help programs can be found at [www.SelfHelpSupport.org](http://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.<sup>95</sup>

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

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<sup>94</sup> See [http://www.ncsconline.org/WC/Publications/KIS\\_ProSeBestPracticesSRLN.pdf](http://www.ncsconline.org/WC/Publications/KIS_ProSeBestPracticesSRLN.pdf).

<sup>95</sup> 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).

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

The most effective and comprehensive efforts have been in California under the guidance of Bonnie Hough who supervises the Equal Access Program—Center for Families, Children, and the Courts, California Administrative Office of the Courts, San Francisco. The Judicial Council's efforts and vision were formally established and defined in February 2004 the Judicial Council of California adopted its *Statewide Action Plan for Serving Self-Represented Litigants*, a comprehensive action plan aimed at addressing the legal needs of the growing numbers of self-represented Californians, while improving court efficiency and effectiveness. The action plan placed at its core court-based, staffed self-help centers, recognizing that these centers, supervised by an attorney, are the optimum way to increase meaningful access to the courts by self-represented litigants throughout the state. Self-help centers provide court users information about the applicable laws and court processes, procedures, and operations. They have significantly enhanced access and fairness. The plan also recognized that partnerships among the courts, legal services programs, pro bono programs, local bar associations, public law libraries, law schools, social services agencies, and other agencies are critical to providing the comprehensive range of services required. The plan recommended that court-based self-help centers serve as focal points for collaboration between these entities. This effort has proved to be effective and cost efficient. A recent study done for the Center for Families, Children and the Court, Administrative Office of the Court, found that up to \$3 in court sending were saved by expenditures on self-represented services.<sup>96</sup>

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.<sup>97</sup> Some programs provide only access to information about the law, legal rights, and the legal process in written form, on the Internet, on videotape, through seminars, or through in-person assistance. Other programs actually provide legal advice and often provide also legal assistance in drafting documents and advice about how to pursue cases. Often, programs provide both written and Internet-accessible forms for use by persons without legal training; some also provide assistance in completing the forms.

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<sup>96</sup> 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](http://www.courtinfo.ca.gov).

<sup>97</sup> *Pro Se Legal Services Directory*, AARP Legal Advocacy Group (September 2005).

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, expungement 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.

## **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.<sup>98</sup>

In 2006, the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) revised the ABA Standards for Provision of Civil Legal Aid.<sup>99</sup> These revised Standards were presented to and adopted by the ABA House of Delegates at its August 2006 meeting. The revised Standards, for the first time, provide guidance on limited representation, legal advice, brief service, support for pro se activities, and the provision of legal information. The revised Standards also include new standards for diversity, cultural competence, and language competency.

LSC has also completed a revision of the LSC Performance Criteria,<sup>100</sup> 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

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<sup>98</sup> 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.

<sup>99</sup> [www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2006.pdf](http://www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2006.pdf)

<sup>100</sup> <http://www.lsc.gov/pdfs/LSCPerformanceCriteriaReferencingABAStandards.pdf>

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.”

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

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

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

Finally, NLADA hired a Director of Quality and Program Enhancement and established a staffed initiative to direct its on-going efforts to support and improve the quality and impact of civil legal aid programs. First, to make existing research easily accessible and understandable to busy administrators and lawyers within civil legal aid programs, NLADA created a blog-database – [www.legalaidresearch.org](http://www.legalaidresearch.org) - that captures the information about successful evidence-based practices and the results of research and posts those findings in an easily accessible web-based format. A second initiative (Strategic Advocacy for Lasting Results or SALR) provides direct assistance to member programs to help strengthen the quality and impact of services to clients and low-income communities. Since it began, SALR has visited and provided reports to 4

programs. NLADA also set up two new active committees: Measuring Outcomes Advisory Committee and the Research Advisory Committee.