



## **CIVIL LEGAL AID IN THE UNITED STATES AN UPDATE FOR 2013**

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The United States is facing a crisis of funding at both the federal and state levels. As a result of substantial reductions in domestic discretionary spending because of the Budget Control Act of 2011 and sequestration, and the prospect of even more reductions in 2014, we anticipate that the LSC appropriations may go down even below where we currently are in 2013. At the state level, fewer state funds are available for civil legal aid than at the beginning of 2013. This is because the state budget problems continue to persist, although not as severely as they did during the past 3 years. IOLTA revenues are also on a downward trend because of interest rates reductions by the Federal Reserve and the substantial slowdown in housing purchases and other business activity.

However, there is a President who is fully committed to expanding civil legal aid on a federal level and an administration sympathetic to rebuilding the civil legal aid delivery system and its long-neglected infrastructure. The Obama Administration continues to submit budget proposals that include increases in funding for the Legal Services Corporation (LSC) and eliminating several key restrictions on what LSC-funded programs can do. The board appointed by President Obama and the new LSC President remain. In addition, the initiative on Access to Justice (ATJ) at the Department of Justice continues. Both in 2012 and in 2013, the White House also held conferences on LSC at which the President (2012) and the Vice-President (2013) spoke as did the Attorney General.

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

An integrated and comprehensive civil legal assistance system should have the capacity to: (1) educate and inform low-income persons of their legal rights and responsibilities and the options and services available to solve their legal problems; and (2) ensure that all low-income

persons, including individuals and groups who are politically or socially disfavored, have meaningful access to high-quality legal assistance providers when they require legal advice and representation.

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

## I. CURRENT LEGAL AID SYSTEM

**Overview:** Civil legal aid in the United States is provided by a large number of separate and independent staff-based service providers funded by a variety of sources.<sup>1</sup> The current overall funding is approximately \$1.34 billion.<sup>2</sup> The largest element of the civil legal aid system is comprised of the 134 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>3</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 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>4</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>5</sup> It is very rare that a funder will directly fund, by contract

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<sup>1</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>2</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>3</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>4</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>5</sup> The LSC funded judicare program is Wisconsin Judicare, Inc., in Wausau, Wisconsin.

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

The United States system also includes approximately 38 state advocacy and support organizations that advocate before state legislative and administrative bodies on policy issues affecting low-income persons.<sup>6</sup> Some of these also provide training and technical support to local legal aid advocates on key substantive issues.<sup>7</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>8</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. Since the last update, 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 12 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>9</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 be accessed through [www.lawhelp.org](http://www.lawhelp.org). Half of the sites are hosted on one platform operated by Pro

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<sup>6</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>7</sup> *Overview*, *supra* note 8, at 4; *Missing Link*, *supra* note 8.

<sup>8</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>9</sup> Pine Tree Legal Assistance lists 232 legal services sites on its webpage, <http://www.ptla.org/ptlasite/links/services.htm>.

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, to expand and make more efficient the provision of legal services to clients. These projects generally focus on the use of document assembly for pro se resources used by the public and automated documents used by legal aid staff to more efficiently represent their clients. Many of these projects nationally are coordinated through National Public Automated Documents Online (NPADO), which is a project of Pro Bono Net.<sup>10</sup>

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 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 clients 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 45 states, Puerto Rico, and the District of Columbia.<sup>11</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

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<sup>10</sup> <[cid:part1.01080802.04000605@iowalaw.org](mailto:cid:part1.01080802.04000605@iowalaw.org)><http://www.probono.net/>

<sup>11</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).

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 neither 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 134 grantees that operate local, regional or statewide civil legal assistance programs. Generally, one field program provides legal services in a designated geographic area. In addition, LSC, with Congressional approval, has earmarked funds for migrant and Native American grants for specialized programs that deliver services to these populations. All legal services programs are private, nonprofit entities, independent of LSC. All LSC grantees are governed by boards which consist of 60 percent attorneys and one-third eligible clients. By LSC regulation, all programs must expend 12.5 percent of their basic LSC grant on the involvement of private attorneys in the delivery of legal services.

**Clients Served:** We do not have national data on the number of clients serviced by the overall system of civil legal aid, the types of cases that are handled and the services provided do not exist. The only national data is from the 134 LSC funded programs. According to 2012 data reported to LSC (the last available data), LSC programs provided services in 809,830 cases. The majority of services provided were counsel and advice (61.0 percent) and brief service (16.2 percent). Cases involving an administrative agency decision were 3.7 percent and court decisions were 14 percent. The largest category of cases was family law cases (34.3 percent) following by housing (26.1 percent), income maintenance (12.1 percent) and consumer (11.2 percent).<sup>12</sup>

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<sup>12</sup> See **Legal Services Corporation Fact Book 2012** (July 2013).

## II. 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>13</sup> or \$29,438 for a family of 4.

LSC programs set their own asset ceilings for individual clients. These asset ceilings may be waived under certain circumstances. LSC programs may serve individuals who meet the asset ceilings and whose income is below 125% of the current official Federal Poverty Guidelines (poverty guidelines), which are revised annually by the U.S. government. In addition, under certain circumstances LSC programs may serve individuals who meet the asset guidelines and whose income exceeds 125% of the poverty guidelines. LSC programs may serve, without regard to income, those individuals who are seeking to maintain benefits provided by governmental programs for low-income individuals or families or whose income is primarily devoted to medical or nursing home expenses. LSC programs may also serve individuals whose income does not exceed 200 percent 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>14</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

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<sup>13</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.

<sup>14</sup> See 45 CFR 1611.

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>15</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 participating in administrative proceedings challenging the conditions of incarceration.<sup>16</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>17</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>18</sup> Nor is there a “significance test” required by LSC or state funders.<sup>19</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 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

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<sup>15</sup> 45 CFR 1626

<sup>16</sup> 45 CFR 1637

<sup>17</sup> 45 CFR 1633

<sup>18</sup> A merit test requires some degree of possible success, such as the reasonable likelihood, reasonable probability, or reasonable possibility of success.

<sup>19</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.

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>20</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 provide representation in over 95 percent of the cases they were able to undertake prior to the imposition of the 1996 restrictions.

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

### **III. THE JUSTICE GAP**

Through the innovative technologies described above, the civil legal aid system has made continuing progress in expanding access to legal information in most areas of the United States. However, there is not enough funding available to provide all low-income persons who need 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.

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<sup>20</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).

This “justice gap” is demonstrated by the Legal Services Corporation (LSC) in a study titled, “*Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*,”<sup>21</sup> which examines 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>22</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 who request assistance are turned away due to lack of resources on the part of the program. Second, the studies each looked at a number of individual state studies addressing the civil legal problems faced by states’ respective low-income residents conducted over the last nine years. Seven of the state studies validated the findings of the national study conducted by the American Bar Association (ABA) in 1994, which demonstrated that less than 20 percent of the legal needs of low-income Americans were being met. Finally, the studies identified the number of legal aid lawyers in both LSC and non-LSC funded programs, and compared that number to the total number of attorneys providing personal legal services to the general population. The study determined that, at best, there is one legal aid attorney for every 6,415 low-income persons. In contrast, the ratio of attorneys delivering personal legal services to the *general* population is approximately one for every 429 persons, or fourteen times more.

The Justice Gap study formed the basis of the funding requests that LSC has made to Congress. The funding request for FY 2013 was \$470,000,000 and for 2014 is \$486,000,000. The Congress appropriated \$350,129,760 million for FY 2013 but this was reduced by the automatic sequester to approximately \$341,500,000. The President recommended \$430 million for FY 2013 and 2014.

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

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

A significant gap in the civil legal aid system in the United States, and particularly in the many states with limited non-LSC resources, is the lack of providers that can (1) serve prisoners,

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<sup>21</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>22</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].

aliens, and others who cannot be represented by LSC funded providers; (2) bring class actions and effectively and strategically use attorneys’ fees statutes; and (3) engage in advocacy in all relevant forums, including legislative and administrative rule-making and policy-making forums. In large parts of the country, such providers do not exist, or, if they exist, they are small, under-funded, and not able to meet the need that exists. This problem is, in part, a result of the restrictions imposed on LSC-funded entities by the 1996 appropriation riders.<sup>23</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>24</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 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>25</sup>

#### IV. FUNDING

##### A. *Where We Are Today*

As noted above, the United States civil legal aid system is not funded by one principal source. There was over \$1.34 billion in the civil legal assistance system as of the beginning of 2013.

State General Revenue and Filing Fees:	\$229,740,000
IOLTA	\$115,590,000
Other Public Funds	\$309,243,000
Legal Community/Bar	\$85,542,000
CY Press	\$15,951,000
Foundation/Corporation Grants	\$122,426,000

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<sup>23</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>24</sup> *Missing Link*, *supra* note 8, at 6.

<sup>25</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.

Other Strategies (United Way, Attys Fees)	\$110,719,000
Legal Services Corporation	\$352,651,313

While LSC funds are distributed according to the 2010 census data on individuals living below the poverty line (\$10.21 per poor person in 2012), 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

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

<b>2010</b>	<b>420,000,000</b>	<b>767,497,879</b>	<b>-45.3%</b>
<b>2011</b>	<b>404,200,000</b>	<b>783,790,743</b>	<b>-51.6%</b>
<b>2012</b>	<b>348,000,000</b>	<b>801,123,576</b>	<b>-56.6%</b>
<b>2013</b>	<b>341,500,000</b>	<b>835,585,677</b>	<b>-59.1%</b>

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 percent 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 percent 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 whom (45.8 percent) were attorneys.
- Fifty-six percent of the responding grantees projected budget deficits for 2012 in the amount of \$22 million.
- More than 54 percent of grantees expected to freeze salaries in 2012 and anticipated reducing employee benefits.
- Seventy-two percent of grantees anticipated making significant changes in client services in 2012 as a result of funding cuts.

Over the last 25 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>26</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

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<sup>26</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. 583 (2001).

\$800 million to over \$1.34 billion (including the District of Columbia, Puerto Rico, and the territories).

## B. *Future Funding*

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

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

### 1. **Federal Funding through LSC**

Even though 41 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 2 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, LSC leadership has made substantial progress in developing a much stronger bipartisan consensus in favor of funding for LSC,<sup>27</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.

During the last three years, LSC has faced amendments during debate on appropriations for LSC to eliminate all funding for LSC grantees. Although the amendments were defeated on a bipartisan vote, the Congress ultimately reduced LSC appropriations from \$420 million in 2010 to \$341,500,000 in 2013. While we are confident that the Senate and President Obama will prevent LSC from being eliminated entirely, there remains a real possibility that funding could be reduced again. LSC will continue to face a genuine existential threat because numerous conservative think tanks such as the Heritage Foundation have long called for the elimination of LSC, and at least one of the various reports on deficit reduction (e.g. The Debt Reduction Task Force of the Bipartisan Policy Center chaired by Senator Pete Domenici and Alice Rivlin) included LSC in the lists of programs that could be terminated.

### 2. **State IOLTA and Governmental Sources**

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<sup>27</sup> John McKay *Federally Funded Legal Services: A New Vision of Equal Justice Under Law*, 68 TENN. L. REV. 101, 110-11 (Fall 2000).

Since 1982, funding from state and local governments has increased from a few million dollars to over \$500 or more million.<sup>28</sup> Until recently, this increase has been primarily through IOLTA programs, which have now been implemented in every state.<sup>29</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 2012, and funding in 2013 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 IOLTA funding. Forty-four states (have adopted mandatory IOLTA and are no longer permitting lawyers to opt out. Thirty-two states have adopted “comparability” provisions which require that financial institutions pay IOLTA accounts no less than the interest rate generally available to non-IOLTA depositors at the same institution. A few states have pursued strategies that designate what “reasonable fees” can be charged by the financial institution to the IOLTA account, making impermissible other fees that should be borne by the lawyer or law firm maintaining the account. Some have prohibited “negative netting” which is the practice of using earnings from one IOLTA account to pay fees on another IOLTA account. Finally, some states have established Honor Rolls or Prime Partner Programs under which banks that agree to pay a higher rate on IOLTA accounts receive recognition by the IOLTA program.

Within the last 10 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 2012, results were very mixed. There were a few states with major increases or decreases, and many states with less severe reductions. In virtually all circumstances, any increases in state funding helped to offset losses from other funding sources, rather than increase services. Overall, there was a net funding increase of approximately \$22,000,000. A few states increased state funding temporarily to compensate for significant IOLTA losses. Funding in most states that use court fees and fines rather than appropriations as the funding mechanism for legal services remained level, but there were some significant changes in a few states.

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

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<sup>28</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>29</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.

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>30</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>31</sup> the Supreme Court held in a five-to-four 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>32</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 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.

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<sup>30</sup> 372 U.S. 335 (1963).

<sup>31</sup> 452 U.S. 18 (1981).

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

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>33</sup> said of *Turner v. Rogers*: “*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>34</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>35</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>36</sup> and the highest courts in some states have judicially decided that state-funded counsel should be provided as a right to some parties.<sup>37</sup> These state-funded counsel provisions or court rulings are generally in the family law area and civil commitment. There are a few federal statutory requirements for appointment of counsel in civil cases, but these are very limited.

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<sup>33</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>34</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>35</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>36</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>37</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 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).

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>38</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>39</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>40</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.

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>41</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

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<sup>38</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 percent 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 percent 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>39</sup> See 40 CLEARINGHOUSE REVIEW (July-Aug. 2006) (discussing various theories and state initiatives throughout the volume).

<sup>40</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).

<sup>41</sup> See [http://www.bostonbar.org/prs/nr\\_0809/GideonsNewTrumpet.pdf](http://www.bostonbar.org/prs/nr_0809/GideonsNewTrumpet.pdf).

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>42</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.

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

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<sup>42</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).

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.

**California:** Under a 2009 law, the California Judicial Council oversees 10 pilot projects in 7 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 will be authorized for a three-year period subject to renewal. Total funding is expected to be approximately \$9.5 million per year, funded by a \$10 increase on certain court services. In September 2010, then-Chief Justice Ron George appointed a 16-member committee to oversee implementation of the program, chaired by retired Court of Appeal Justice Earl Johnson, Jr. Seven projects were funded initially in San Francisco, Bakersfield, San Diego, Santa Barbara, Northern California, and Los Angeles (two projects).<sup>43</sup> Evaluation of the pilots is being 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. The Judicial Council will report its findings and recommendations to the Governor and the Legislature on or before January 31, 2016.<sup>44</sup>

Several other pilot projects are underway but none as broad as the Massachusetts and California pilots. An **Iowa** Legal Aid pilot is looking at the effects of full civil legal assistance on women experiencing domestic violence. The types of cases are divorce, custody, child support and civil protective orders. The study is measuring whether receiving legal representation enhanced client safety, psychological well-being, positive functioning and longer-term economic self-sufficiency. The study is not randomized.

Two pilots are being considered in **New York**. The first, based on a study that found that lawyers made an enormous difference in NY immigrant courts in deportation proceedings would use the pilot strategy to create a new system to deliver legal services in deportation cases. The other project, run by the Vera Institute of Justice, would generate data on the costs, benefits, and efficiencies of providing legal representation to people in immigration detention.

## V. FUTURE DEVELOPMENTS AFFECTING LSC

First, the Administration has indicated its support for increased funding for LSC when it recommended that Congress appropriate \$430 million for LSC for FY 2014. 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. Thus, President Obama's recommendation of \$430 million

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<sup>43</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).

<sup>44</sup> For a description of the process by which the legislation was adopted and the actual framework established by the legislation see Kevin G. Baker and Julia R. Wilson, *Stepping Across the Threshold: Assembly Bill 590 Boosts Legislative Strategies for Expanding Access to Civil Counsel*, 43 CLEARINGHOUSE REVIEW 550 (March-April 2010).

signals a high level of support for LSC by the Administration and in many respects frames the playing field for Congressional action.

Second, the LSC Board created ad *Special Task Force on Fiscal Oversight* to study how fiscal oversight of grantees is currently performed by the Corporation and to report to the Board its findings and recommendations. The Task Force was comprised of two LSC Board members, Victor Maddox and Robert Grey, and persons from outside the Corporation and the Board. It included three senior executives of Fortune 500 corporations, six leaders of national foundations, two experienced accounting executives, and two former inspectors' general. The Board accepted and adopted the findings and recommendations of the Task Force in January 2012. The recommendations include creating a risk-based, integrated approach to financial oversight and consolidating management's three, separate oversight offices into one office called the Office of Grantee Assessment (OGA). LSC's new Vice President for Grants Management is overseeing the implementation of the Task Force recommendations.

Third, the LSC Board has created a Legal Services Corporation Pro Bono Task Force, comprised of judges, corporate general counsel, bar leaders, technology experts, leaders of organized pro bono programs, law firm leaders, government lawyers, law school deans, and the heads of legal aid organizations, to consider how to increase pro bono contributions to civil legal aid. The Task Force divided into working groups and spent months conducting interviews, identifying effective practices, and sharing ideas before reporting its findings and recommendations to the LSC Board of Directors. The Task Force released its report at the U.S. Capitol on October 2, 2012. Congressman Frank Wolf, Chairman of the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, gave opening remarks.

Fourth, in 2012, the LSC Board adopted a five-year (2012-2016) strategic plan.<sup>45</sup> The plan establishes three major goals and identifies specific implementation initiatives.

**Goal No. 1:** Maximize the availability, quality, and effectiveness of the civil legal services that LSC grantees provide to eligible low-income individuals.

**Goal No. 2:** Become a leading voice for access to justice and quality legal assistance in the United States.

**Goal No. 3:** Achieve the highest standards of fiscal responsibility, both for LSC and its grantees.

Fifth, 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. In 2012, LSC applied for and received a grant of \$276,000 from the Public Welfare Foundation (PWF) to conduct an 18-month project designed to improve LSC's data collection and reporting

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<sup>45</sup> See: [http://www.lsc.gov/sites/default/files/LSC/lscgov4/LSC\\_Strategic\\_Plan\\_2012-2016--Adopted\\_Oct\\_2012.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/LSC_Strategic_Plan_2012-2016--Adopted_Oct_2012.pdf)

mechanisms and to educate LSC grantees about collection, analysis, and use of data. The project closely relates to the first goal of LSC’s strategic plan—to maximize the availability, quality, and effectiveness of LSC-funded legal aid programs.

The data collection and analysis project has three major objectives:

- Develop and implement an improved system for collecting and analyzing data from LSC grantees, so that LSC can obtain a fuller picture of grantees’ operations, accomplishments, and limitations;
- Develop tools and resources that enhance LSC grantees’ ability to collect and use data to design, assess, and improve their delivery strategies and program operations, and to demonstrate the need for and effect of the services they provide clients throughout the country; and
- Provide training and technical assistance that fosters LSC grantees’ effective use of the tools and resources developed.

Using PWF funds, LSC retained a data collection consulting firm to assist with the project and expects it to be completed in Fall 2014. An Advisory Committee of legal aid directors, LSC staff and others was also created and meets periodically. In the fall of 2013 and after a series of consultations among key stakeholders within civil legal aid, the project issued a detailed survey of LSC grantees which has now been completed.

Sixth, in June, 2012 and January, 2013 LSC convened a two-part Summit on the Use of Technology to **Expand Access to Justice**. The Summit brought together selected technology experts, academics, private practitioners, and representatives of legal services programs, courts, and governmental and business entities to explore the potential of technology to move the United States toward providing some form of effective assistance to 100 percent of persons with essential civil legal needs and unable to afford an attorney.<sup>46</sup>

Summit participants agreed on the following focus areas for the next five years:

- Document Assembly: improving automated form creation for self-represented individuals;
- Expert Systems: developing intelligent tools that guide clients and advocates through the steps needed for complex legal procedures;
- Remote Services Delivery: using technology to overcome physical barriers (e.g. distance in rural states, or disability) to seeking representation;
- Mobile Technology: delivery of assistance and services using smartphones and tablets; and
- Triage: further automating the complex processes of matching clients to resource

Finally, the LSC Board’s Institutional Advancement Committee, working with a new Director of Development at LSC, is seeking funds for LSC’s 40th Anniversary Celebration in 2014. This is being considered as a weekend event with panel presentations and a conference that would bring together the executive directors of LSC’s grantees, providing an opportunity to highlight the work being accomplished in the field. The weekend celebration might also include a dinner with

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<sup>46</sup> A number of papers from the conference were reproduced in 26 Harvard Journal of Law & Technology 263 (2012) and additional papers are available there as well in their Occasional Paper Series.

a keynote speaker and an awards ceremony. The weekend celebration could provide a platform to launch LSC's 40th anniversary campaign to raise money for the purpose of funding (1) a prestigious, national fellowship program aimed at recent law school graduates to foster a lifelong commitment to legal services and, if feasible, senior or emeritus lawyers, (2) research, (3) a Pro Bono Innovation Fund to encourage and replicate innovations in pro bono; (4) an outreach project to better educate and increase public awareness of the significance and value of civil legal services, and effectively promote the work of LSC and its grantees; and (5) other projects (e.g., expanding TIG, assisting grantees with capacity building), as well as introducing members of the honorary support auxiliary group and/or the alumni group, who will play a role in supporting LSC's development efforts.

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

In 2010, the Department of Justice hired Larry Tribe, Constitutional Law Professor at Harvard, to head up a new initiative at the DOJ to expand access to justice. Though Professor Tribe decided to return to Harvard for medical reasons, the initiative goes on and has undertaken a variety of activities in both the civil and indigent defense arenas. Following is a description of some of the recent activities taken from several reports by the initiative:<sup>47</sup>

First, the Access to Justice Initiative (ATJ) has led an effort to expand Access to Justice Commissions including a speech by Larry Tribe at the Annual Conference of Chief Justices in July of 2010. That led to a joint resolution of the Conference of Chief Justices and Conference of State Court Administrators in support of state Access to Justice Commissions and has raised the visibility of the state Access to Justice commission model around the country. The resolution states that the CCJ and COSCA support the aspirational goal that every state and United States territory has an active Access to Justice commission or comparable body. ATJ staff have provided technical assistance to more than a dozen states considering creation of new Commissions. Staff also worked with the ABA Resource Center for Access to Justice Initiatives and the Public Welfare Foundation to develop a national strategy for establishing and strengthening Commissions, and now serve on a new national ABA Access to Justice Expansion Project Advisory Committee.

Second, the ATJ initiative has led efforts to remove artificial and enormously counterproductive obstacles to pro bono representation for limited purposes (unbundled representation), relaxing conflict rules for pro bono attorneys, permitting pro bono lawyers licensed in jurisdictions other than the state to practice and more meaningful self-representation beyond technology and form simplification such as clear rules that govern how court staff and non-lawyers may guide prospective litigants through the process of filling out self-help forms. The Initiative participated in the American Bar Association and Legal Services Corporation pro bono efforts and served on the LSC Pro Bono Task Force.

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<sup>47</sup> See "The Access to Justice Initiative of the U. S Department of Justice (June 2012 and (March 2013) <http://www.justice.gov/atj/accomplishments.pdf>

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Third, ATJ advanced Federal Objectives through Partnerships with Legal Aid Providers by creating and staffing the Legal Aid Interagency Roundtable which includes 18 participating agencies and seeks 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, and to remove unintended barriers that prevent legal aid providers from participating as partners, grantees or sub-grantees in federal safety-net programs. Examples include: DOL's Employment and Training Administration (ETA) added optional legal services to more than \$80 million in ETA grant solicitations for job-training programs; DOJ's Bureau of Justice Assistance added language to many Second Chance Act solicitations; and the U.S. Department of Veterans Affairs and the Office of Tribal Justice Support at the U.S. Department of the Interior encouraged the development of Medical-Legal Partnerships, to enable vulnerable populations to receive legal assistance at the same time that medical problems are being addressed.

Fourth, ATJ helped preserve and increase Civil Legal Aid Funding by drafting a **Guide to the AmeriCorps VISTA Program for Legal Services Organizations** intended to introduce VISTA to legal services organizations, demonstrate how VISTA can work effectively in the context of legal services, and provide specific guidance for legal services organizations interested in sponsoring a VISTA project at their site.

Fifth, ATJ undertook a number of initiatives to improve access. It provided recommendations and guidance to the Department of Commerce with respect to their Broadband Technology Opportunities Program (BTOP), which administered grants to expand broadband access and adoption in communities across the country; it worked with DOJ's Office of Legislative Affairs to secure the Department's support for legislation to continue full FDIC protection for IOLTA accounts, and with Congressional leadership and staff to successfully adopt the legislative fix; it helped improve Access to Legal Services in High-stakes Civil Proceedings by hosting several national-level convenings and briefings on effective foreclosure mediation strategies, and has published two white papers: "Emerging Strategies for Effective Foreclosure Mediation Programs," and "Foreclosure Mediation: Emerging Research and Evaluation Practices." The Initiative, along with HUD's Housing Counseling Program, also hosted a briefing call for State Attorneys General to discuss the presence of and need for foreclosure mediation, legal assistance, and housing counseling resources in their states, and how settlement funds might support these activities.

In addition, ATJ collaborated with the Office of Child Support at the Department of Health and Human Services (HHS) to disseminate and support best practices with respect to access to legal services and self-help assistance for low-income individuals in child support proceedings. These efforts were highlighted at an event co-hosted by HHS and the Initiative in late June 2012 including the author and Richard Zorza. ATJ also worked with other components within DOJ, the New York City Bar, law schools throughout the New York region, the private bar, and advocacy organizations to help make sure that potential claimants for the 9/11 Victim Compensation Fund, including first responders and those who participated in the cleanup, could easily understand their rights and secure needed assistance. ATJ worked with the Associate Attorney General's office to be sure that those affected by the BP oil spill received clear explanations of the legal right to compensation and that the Gulf Coast Claims Facility (GCCF)

provided for free legal assistance to individuals and businesses submitting claims to the GCCF. ATJ also worked with the Department's Elder Justice Initiative and Office for Victims of Crime to develop training materials for civil legal aid providers to assist them in recognizing the signs of elder abuse and the appropriate legal remedies. ATJ has actively supported efforts to ensure that foreign parents of abducted children, regardless of their income, have access to legal services in the United States in cases brought under the Hague Convention on Civil Aspects of International Child Abduction. In December 2011, LSC, in consultation with the Department of State and the Initiative, developed guidance clarifying that LSC grantees have the authority to represent indigent foreign nationals in these cases brought in United States courts for the return of, or access to, their children.

Sixth, ATJ has expanded research on the Delivery of Civil Legal Aid by collaborating with the Stanford Center on the Legal Profession, the Harvard Program on the Legal Profession, and the American Bar Foundation on a March 2010 roundtable forum about enhancing the role of legal scholars and teachers in closing the justice gap in America. A top recommendation of the participating academics and practitioners included exploring opportunities to create an independent structure to produce research about legal aid, the dimensions and drivers of unmet needs, and the relative effectiveness of different delivery models. The Initiative then hosted a series of meetings leading to a successful National Science Foundation grant application by the American Bar Foundation for a December 2012 workshop to develop a broad research agenda and plan for a sustainable infrastructure to support the research.

Seventh, the ATJ supported Access to Counsel in Immigration Proceedings by participating in an inter-agency working group with other DOJ components, the Federal Trade Commission, and the Department of Homeland Security to address the unauthorized practice of law in the immigration; worked with HHS Division of Children Services to enhance opportunities for unaccompanied immigrant children in federal custody to obtain legal representation in immigration proceedings; and assisted the Department of Homeland Security secure local legal service organizations who attended the agency's "DACA Days" event in Bakersfield, California.

Eight, ATJ promoted innovative Justice Solutions through Collaboration with the White House by organizing a White House "Champions of Change" event on October 13, 2011, to honor and recognize the work of legal leaders from communities large and small who are dedicating their professional lives to closing the justice gap in America. Sixteen leaders from across the country were recognized for their work in public interest law and providing legal services to people throughout the country who could not afford them. In addition, ATJ and Attorney General Eric Holder co-hosted a Middle Class Task Force event on November 19, 2010, at the White House with Vice President Joe Biden and announced a series of steps designed to help middle class and low-income families secure their legal rights. Also working with the White House and the Office of the Vice President, ATJ helped launch the Access to Justice for Victims of Domestic Violence Project, an effort to create a pool of lawyers with expertise in providing comprehensive legal representation to domestic violence victims.

Ninth, ATJ promoted innovative justice solutions through multi-agency collaboration with the Federal Interagency Reentry Council, established by Attorney General Eric Holder in

January 2011. ATJ leads the Council's Subcommittee on Employment Barriers, which is tasked with reducing barriers to employment for those involved with the criminal justice system, and has also been working to increase support for legal services that help remove employment, housing and other barriers to the population exiting incarceration or supervision. To that end, the Initiative has partnered with the Legal Services Corporation, DOL, DOJ and the VA to add legal services to grants serving youth and adults with criminal records and other significant barriers to employment. ATJ also convened a summit with the U.S. Interagency Council on Homelessness supported by HUD, which brought together stakeholders from around the country, including local officials, law enforcement, business representatives, and advocates to discuss constructive alternatives to the criminalization of homelessness, including alternative justice system strategies. A related report, "Searching out Solutions: Constructive Alternatives to Criminalization," further explores themes raised at the summit was published in May 2012. The Initiative recently led the Justice Department's efforts in producing a new guide, "Reducing Homeless Populations' Involvement in the Criminal Justice System," intended to generate greater awareness in the field among law enforcement, courts, prosecutors, defenders, state and local legislators, advocates, social service providers, and the homeless about U.S. Department of Justice resources available to serve homeless people, and those at risk of homelessness, who are involved in the criminal justice system.

## **VII. WHITE HOUSE CONFERENCES**

Recently, two White House forums were held to highlight the work of civil legal aid and the importance of legal aid and the rule of law to the fabric of American democracy. The first on April 17, 2012 included an appearance by President Barack Obama, who promised legal aid supporters in attendance that his administration would be a "fierce defender and advocate on your behalf." The President stressed the role that legal aid attorneys played in ensuring that everyone in America is playing by the same rules in tough economic times. He congratulated those throughout the legal aid community who "helped to answer the call" by ensuring that more people are able to stay in their homes, avoid domestic violence and have access in general to the nation's system of justice.

The forum was kicked off by remarks from Eric Holder, Attorney General of the United States. Attorney General Holder was followed by a panel discussion moderated by LSC president Jim Sandman, wherein six project directors from LSC-funded programs across the nation talked about challenges they face in times of extraordinarily scarce resources, but also about creative steps they were taking to address a growing client need. Harold Koh, U.S. Department of State Legal Advisor, next addressed the forum with a thoughtful talk stressing the importance to American credibility abroad when discussing rule of law initiatives of a domestic civil justice system that provides similar access to justice for people living in poverty.

A final panel, moderated by LSC vice-chair Martha Minow, included Mississippi Supreme Court Justice Jess Dickinson, former Attorney General and Pennsylvania Governor Richard Thornburgh, Illinois attorney general Lisa Madigan, White House counsel Kathryn Ruemmler, Deputy Chief of Staff to the President Mark Childress, Department of Veterans' Affairs General Counsel Will Gunn, and President of the American Bar Association Bill

Robinson. Panelists discussed the importance of civil legal assistance from the perspective of the federal and state governments, the judiciary and the private bar and the need for all stakeholders in the system to collaborate to increase the availability of services to the poor.

The second forum was held on April 16, 2013, and featured remarks from: Vice-President Joseph Biden; Attorney General Eric Holder, Senior Advisor to the President Valerie Jarrett; and LSC Board Chair John Levi. The event was well attended with numerous judges, legal aid attorneys, pro bono attorneys and equal justice advocates present.

The forum featured two panels. The first panel, entitled Discussion on Pro Bono's role in Access to Justice, moderated by LSC Board Vice-Chair Martha Minow, The other panel, a Discussion on Technology's Role in Access to Justice, was moderated by LSC President Jim Sandman. A reception followed the forum with remarks from LSC President Jim Sandman and Steve Croley, Deputy Counselor to the President.

## VIII. SUPPLEMENTS TO THE STAFF ATTORNEY SYSTEM

### PRO BONO

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

While there is no reliable data about how much pro bono activity is actually going on, 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>48</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 percent of respondents worked on matters that address the everyday legal problems of people in poverty and 36 percent 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 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

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<sup>48</sup>[http://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_Supporting\\_Justice\\_III\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf)

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>49</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 percent of its LSC funding for private attorney involvement.<sup>50</sup> Of the 882,740 cases closed by LSC program in 2011, the most recent figures available, 102,655 were done by private attorneys. Of these cases, 79,578 were done by pro bono attorneys and 23,077 by contract or judicare attorneys.

As noted previously, the Legal Services Corporation Pro Bono Task Force released its report in October of 2012 and recommendations:<sup>51</sup>

- LSC should serve as an information clearinghouse and source of coordination and technical assistance for pro bono.
  - Develop a comprehensive pro bono toolkit, which includes noteworthy practices in pro bono and provides high-level, web-based training to its grantees' pro bono managers and program directors.
  - Create a professional association specifically for pro bono managers at LSC grantees, bringing them together for training, relationship-building, and support.
  - Recommend that Congress create a Pro Bono Innovation/Incubation Fund, modeled on the successful Technology Initiative Grant (TIG) program, and aimed at encouraging innovations and best practices in pro bono.
- LSC's board should review certain aspects of LSC's Private Attorney Involvement (PAI) Regulation. Potential changes to the regulation should focus on providing greater flexibility in how the regulation governs: (a) resources spent supervising and training law students, law graduates, deferred associates, and others, especially in "incubator" programs; (b) resources invested to enhance screening, advice, and referral programs, even when those programs do not result in cases for LSC grantees, but where they support pro bono programs; and (c) the application of LSC case-handling requirements to PAI matters.
- LSC should partner with other stakeholders to launch a public relations campaign on the importance of legal services and pro bono. LSC should work with law schools and law firms to create a new civil legal services fellowship program for recent graduates designed to bridge the gap between firms and legal services organizations. It also should consider the feasibility of a similar program for senior or emeritus lawyers.

The task force also requested that bar leaders and the judiciary:

- Use their influence, consistent with applicable judicial conduct rules, to recruit new pro bono lawyers, especially in rural areas and among solo practitioners, to draw attention to the crisis in legal services, and to advocate for additional funding at the state and federal levels.

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<sup>49</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>50</sup> The requirement is imposed by LSC through its regulatory authority. See 45 CFR 1614.

<sup>51</sup> See [http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF\\_%20Report\\_FINAL.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf)

- Amend attorney practice, judicial ethics, and continuing legal education (CLE) rules to support pro bono by, for example, providing CLE credit for pro bono (as is already done in some states), permitting judges to ethically advocate for pro bono involvement, allowing private lawyers to take on limited-representation matters, relaxing certain conflict of interest rules, and allowing certain lawyers (e.g., government, in-house, and emeritus attorneys) to provide pro bono support in jurisdictions other than where they are barred.

Finally, the task force asked the legal profession as a whole, as well as state and federal policymakers, to:

- Recognize the importance of providing every American with access to our justice system, the role that pro bono lawyers can play in offering that access, and at the same time, the cost of developing and maintaining effective pro bono programs. LSC and its grantees should receive sufficient funding to carry out this important aspect of their mission.

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 six states have adopted mandatory reporting requirements and eleven have voluntary reporting. Seven permit attorneys who take pro bono cases to earn credit toward mandatory legal education requirements.

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

Finally, the Pro Bono Institute's Law Firm Pro Bono Project created a challenge to large firms around the country to contribute 3 to 5 percent of their total billable hours to the provision of pro bono legal services. Today, 140 law firms are signatories to that challenge.<sup>52</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.

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<sup>52</sup> Information is available from the Pro Bono Institute. See [www.probonoinst.org](http://www.probonoinst.org).

The goal is for one-half of the legal staff to support and participate in pro bono services.<sup>53</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.

## IX. 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 percent of the clients served.

The most recent development is the requirement enacted by New York effective January 1, 2013 applicants to the bar would be required to contribute fifth hours of participation in law-related pro bono work before they were admitted to practice in NY. Other states including New Jersey and California are also beginning to explore this idea.<sup>54</sup>

## X. 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 state data illustrates the scope of the problem:

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<sup>53</sup> <http://www.probonoinst.org/>

<sup>54</sup> See Chief Judge Jonathan Lippman, “New York’s Template To Address the Crisis in Civil Legal Services,” 7 *Harvard Law & Policy Review* 26 (2013) and **New York’s 50 Hour Preadmission Pro Bono Rule: Weighing the Potential Pros and Cons**, ABA Standing Committee on Pro Bono and Public Service (October 2013).

New York: 2.3 million self-represented in civil justice system; 90 percent in housing matters; 97 percent in child support matters.  
Connecticut: 85 percent self-represented in family cases; 28 percent of all civil cases  
Wisconsin: 70 percent in family cases  
Massachusetts: 92 percent in housing masters  
Maryland: 70 percent in civil cases  
Oregon: 65 percent in family cases  
Texas: 21.6 percent 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 10 years, the Self-Represented Litigation Network, which brings together courts, bar and access to justice organizations in support of innovations in services for the self-represented, has undertaken a number of activities to ensure the justice system works for all including those forced to go to court on their own. For example, the Network developed a judicial curriculum and leadership package which includes PowerPoint slides, detailed faculty notes, an Activity Handbook, which describes activities that help participants to understand underlying issues and begin the planning process, and a Resource Handbook. The judicial curriculum was launched at Harvard Law School in late 2007. Teams from 30 states, the District of Columbia, and 4 territories consisting of 150 participants including 5 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>55</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>56</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>55</sup> See [http://www.ncsconline.org/WC/Publications/KIS\\_ProSeBestPracticesSRLN.pdf](http://www.ncsconline.org/WC/Publications/KIS_ProSeBestPracticesSRLN.pdf).

<sup>56</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. The American Bar Association Standing Committee on the Delivery of Legal Services Pro Se/Unbundling Resource Center list 76 self-service centers in 49 states. These vary widely, however. Some routinely include broad ranges of information resources and many provide training for judges in how best to facilitate access for the self-represented. Some courts provide electronic document-assembly services, while others provide clinics and individual informational services. These services have been facilitated by guidelines, protocols, and codes of ethics governing the appropriate role of court staff in provision information assistance.

The most effective and comprehensive efforts have been in California under the guidance of Bonnie Hough who supervises the Equal Access Program—Center for Families, Children, and the Courts, California Administrative Office of the Courts, San Francisco. The Judicial Council's efforts and vision were formally established and defined in February 2004 the Judicial Council of California adopted its *Statewide Action 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>57</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>58</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>57</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>58</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.

## XI. 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>59</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>60</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>61</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 their clients. The programs have used a

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<sup>59</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>60</sup> [www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2006.pdf](http://www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2006.pdf)

<sup>61</sup> <http://www.lsc.gov/pdfs/LSCPerformanceCriteriaReferencingABASStandards.pdf>

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

Furthermore, we 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 18 month 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 four programs. NLADA also set up two new active committees: Measuring Outcomes Advisory Committee and the Research Advisory Committee. Both committees began meeting in 2012.

## **XII. NEW DELIVERY APPROACHES**

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

### **Unbundling – Limited Scope Representation**

In February of 2013, the House of Delegates of the American Bar Association adopted the following Resolution:

RESOLVED, That the American Bar Association encourages practitioners, when appropriate, to consider limiting the scope of their representation, including the unbundling of legal services as a means of increasing access to legal services.

FURTHER RESOLVED, That the American Bar Association encourages and supports the efforts of national, state, tribal, local and territorial bar associations, the judiciary and court administrations, and CLE providers to take measures to assure that practitioners who limit the scope of their representation do so with full understanding and recognition of their professional obligations.

FURTHER RESOLVED, That the American Bar Association encourages and supports the efforts of national, state, tribal, local and territorial bar associations, the judiciary and court administrations, and those providing legal services to increase public awareness of the availability of limited scope representation as an option to help meet the legal needs of the public.

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.

Anecdotal information and some research suggest that there are wide variations from state to state about the usage of limited scope representation. A 2009 California survey of primarily domestic relations lawyers found that half prepared documents without appearing as counsel on the case. Half reviewed documents prepared by the clients. Forty percent coached clients to prepare for hearings and the same percentage made limited scope appearances. Only a quarter of the respondents did not unbundle their services. On the other hand, a former president of the Montana State Bar reported that limiting the scope of representation by drafting pleadings has not caught on in Washington and he doubts that it would in Montana.

Although Rule 1.2(c) was adopted in 2002 and has been broadly embraced by the states since then, public opinion research demonstrates that a substantial portion of the public is unaware of the option to limit the scope of representation. In 2010, the Standing Committee on the Delivery of Legal Services commissioned Harris Interactive to conduct a national public opinion survey examining aspects of how people find legal services:

Six percent—just over one out of twenty—of the survey respondents reported that they were very familiar with unbundled legal services. An additional 5 percent reported they were familiar with it. Eighteen percent reported they were somewhat familiar and 70 percent indicated they were not at all familiar with unbundled legal services.

The level of familiarity with unbundling was uniform across the age and economic cohorts, with one exception. Those with household annual incomes less than \$15,000 per year reported that they were somewhat familiar with unbundling at a rate substantially higher than the respondents as a whole (32 percent compared to 18 percent).

The survey then probed the extent to which people were interested in the concept of limited scope representation for their legal matters. Respondents were asked: “If you had a personal legal matter to deal with, how likely would you be to talk to a lawyer about the possibility of unbundled legal services?” About a third of the respondents reported they were very likely to do so and another third reported they were somewhat likely to explore this option.

Finally, the survey asked people whether it was important to them if a lawyer they were considering using offered an unbundling option. Sixty-two percent of the respondents indicated it was somewhat or very important that their potential lawyer offer this option. Four out of five respondents with incomes of less than \$15,000 per year believed it was somewhat or very important for their lawyer to offer unbundling as an option.

### **Medical-legal Partnerships (MLP)**

MLPs integrate lawyers into the health care setting to help patients navigate the complex legal systems that often hold solutions to many social determinants of health—income supports for hungry families, utility shut-off protection during cold winter months, and mold removal from the home of asthmatics.

Doctors and lawyers are now partnered at over 190 hospitals and health centers in 40 states nationwide, in Pediatrics, Family Medicine, Internal Medicine, Oncology, and Geriatrics. This new health care team addresses families' unmet basic needs—for food, housing, income, education and stability—needs that families report to their doctors, but that have legal remedies. MLPs rely on legal aid agencies for case-handling and expertise and receive *pro bono* assistance from dozens of law firms across the U.S. Over 100 civil legal aid programs and over half of LSC-funded legal services programs have an active medical-legal partnership program. In addition, 45 private law firms are providing *pro bono* assistance for MLP programs, over 44 law schools are engaged in MLP activities; and more than 20 post-graduate law fellows have been funded to work in medical-legal partnerships.<sup>62</sup>

A National Center for Medical-Legal Partnership supports local programs in their efforts to reorient legal interventions into the health care setting for early detection, prevention and efficiency in legal matters in order to maximally impact health and legal outcomes of patients, their families and the community. In 2008, the ABA established a national support center to assist medical-legal partnerships in securing *pro bono* participation, promoting best practices related to MLP-*pro bono* practice, and ensuring quality service delivery.<sup>63</sup>

## **A2J Author**

A more recent technology innovation grew out of work done in 1999 and 2000 by Ronald Staudt and colleagues at the Center for Access to Justice and Technology at Chicago-Kent College of Law. In 2004, Chicago-Kent College of law joined with the Center for Computer-Assisted Legal Instruction to build Access to Justice Author ("A2J Author"), which was designed as a "tool to build tools." This technology uses HotDocs Online software to assist self-represented litigants in a web mediated process to assess eligibility, gather pertinent information to prepare a set of simple court forms, and then deliver those forms ready to be signed and filed. A2J Author is equipped with "just in time" help tools, including the ability to speak each word of the interview to the user in English or Spanish. The user can be directed to other websites to obtain explanations of technical terms.<sup>64</sup>

Several states are pioneering the use of A2JAuthor. Idaho developed a strong A2J Author partnership between the state supreme court and the statewide legal aid society and launched its A2J Author project in 2005. In the three years between launch and October 2008, more than 72,000 A2J Guided Interviews were used by public customers of the Idaho legal aid website. Of these interviews, 35,800 resulted in the completion of customized forms for filing in the court system in Idaho.

In Illinois a coordinated statewide legal aid website, Illinois Legal Aid Online, functioned as a service platform to deliver A2J Guided Interviews and automated documents to low-income people. Illinois Legal Aid Online hosts dozens of Guided Interviews created with A2J Author to

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<sup>62</sup> See [www.medical-legalpartnership.org](http://www.medical-legalpartnership.org)

<sup>63</sup> See [www.medlegalprobono.org](http://www.medlegalprobono.org)

<sup>64</sup> The information provided in the text is taken by permission of the author Ronald W. Staudt from an article to be published in the Loyola of Los Angeles Law Review entitled "All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice."

help low-income Illinois customers prepare simple court forms, letters to creditors, notices to landlords, and other documents that trigger official action or protect legal rights. In 2008, customers of the Illinois Legal Aid Online public site completed more than 13,000 A2J Guided Interviews.

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

### **Brief Services Unit**

AARP Legal Counsel for the Elderly, the initiator of legal hotlines, also operates a Brief Services Unit (BSU) which is staffed by two full-time attorneys. They have five to ten trained volunteers who assist with interviewing and follow-up casework volunteering on average one day a week. The volunteers are a mix of five retired volunteers and a few law student volunteers. Cases, which are scheduled for them by the hotline attorneys who are located next door, involve more in-depth work than the hotline can handle efficiently. The BSU cases involve minimal court work and are on the order of 250+ cases in a year. BSU cases typically involve fact investigation, letter writing, informal negotiation, document drafting and occasional representation at a conference or hearing. Substantive areas run the gamut: consumer fraud and abuse; identity theft; grandparent subsidy and custody work; debt collection defense; procurement of public benefits (food stamps, Medicaid/DC Alliance, QMB, rental and utility assistance, SSI/Social Security, TANF, Veterans pension); landlord/tenant matters (rent recalculation, reasonable accommodation requests and security deposit refunds); deed transfer and probate matters; tax deed foreclosure prevention; tax assistance; student loan discharge cases; and employment matters (pension, unemployment compensation, wage claim and Workers Compensation cases). A significant number of more involved cases they develop and place with the pro bono unit. The BSU has been in operation since about 2001.

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

Other programs are beginning to take up brief service units including Neighborhood Legal Services in the District of Columbia.

### **Non-lawyer Advocates**

Non-lawyers have historically played a significant role in advancing access to justice. Community organizations involved with housing and public benefits have assisted low-income people with back-up from legal aid programs. Non-lawyer advocates can participate in administrative hearing involving public benefits such as food stamps, Medicaid, cash assistance, unemployment insurance and others. Non-lawyers have provided assistance in housing and foreclosure matters and domestic violence. Accredited non-lawyer advocates can provide representation in administrative proceedings before the US Citizenship and Immigration Services and the Executive Office of Immigration Review.

Two recent developments would expand such use of non-lawyer advocates. New York is considering a pilot program to permit trained non-lawyers to provide out-of-court assistance in housing, consumer credit and possibly foreclosure.<sup>65</sup> Washington State created a new Limited License Legal Technician certification that allows certified persons to provide a range of legal services with areas defined by a Limited License Legal Technical Board. These technicians would be allowed to 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>66</sup>

### ***XIII. 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>67</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 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

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<sup>65</sup> See The Task Force to Expand Access to Civil Legal Services in New York: Report to the Chief Judge of the State of New York (November 2012) at page 36.

<sup>66</sup> See Brooks Holland, "The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice," 82 SUPRA 75 (2013).

<sup>67</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).

at the heart of the federal agenda, but LSC is trying to raise private funding for such an endeavor as reported previously.

Previously, I reported on *Randomized Evaluation in Legal Assistance: Report of a First Study, A Critical Review of the Literature, and Prospects for the Future* by D. James Greiner (Harvard Law) and Cassandra Wolos Pattanayak, (Harvard University) that was published under a slightly different title (*Randomized Evaluation in Legal Assistance; What Difference Does Representation (Offer and Actual Use) Make?* 121 *Yale L. J.* 2118 (2012) and *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, by Jessica K. Steinberg of George Washington University Law School. I also discussed Wayne Moore's book, **Delivering Legal Services to Low-Income People**.<sup>68</sup> Since then, Jim Greiner has written at least two other articles that reflect his delivery research: *The Evolution of Unbundling in Litigation Matter: Three Case Studies and a Literature Reviews*, 89 *University of Denver Law Review* (2012) and *The Limits of Unbundles Legal Assistance: A Randomized Study in Massachusetts District Court and Prospects for the Future*," 126 *Harvard Law Review* 903 (February 2013).

As noted above, NLADA received funding for and has developed a resource library of prior and ongoing delivery research. See [www.legalaidresearch.org](http://www.legalaidresearch.org). NLADA has also convened a Research Advisory Group and developed a draft "NLADA's Core Principles Of Importance To The Civil Legal Aid Community: To Provide Guidance to Research Efforts Conducted about Civil Legal Aid."

At NLADA's Annual Conference, held in Chicago from December 6-8, 2012, a group of researchers and civil legal aid providers gathered to start the process of developing a shared, common plan regarding conducting research on civil legal aid. This meeting was organized by Rebecca Sandefur and convened by the American Bar Foundation with funding from the National Science Foundation. At two workshop sessions held at NLADA's Conference, a poster session and Town Hall, researchers, academics and civil legal aid leaders met each other, shared areas of mutual interest and aired some of the concerns and/or hesitations about engaging in research projects. At a day-long meeting the following day, a select group of those present during the Town Hall delved deeper to identify research topics of interest, to determine next steps to support the interests of researchers in conducting this research, and to plan for opportunities for civil legal aid leaders to inform researchers about the values of, work done by and interests of civil legal aid providers. At the conclusion of the all-day meeting, three priorities were set to continue the work started that day:

1. Developing an on-line space to share information, ideas, research and data; to connect researchers and field professionals with shared interests; to disseminate research findings, best practices, and other resources to support research and practice.
2. Developing opportunities for field professionals with research needs to connect with researchers.
3. Developing opportunities for continued in-person collaboration on moving research forward, including a National Science Foundation Research Coordination Network grant application, and identifying other opportunities, as well.

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<sup>68</sup> Available at <https://www.createspace.com/3466223>

Also, in March of 2013, the National Science Foundation issued a Dear Colleague Letter on Stimulating Research Related to the Use and Functioning of Civil Justice System.

#### **XIV. STATE JUSTICE COMMUNITIES**

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

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

In a few states, Access to Justice Commissions have existed for a decade or more, including the Washington State Access to Justice Board, the California Access to Justice Commission, and Maine's Justice Action Group. Currently, 27 states have active Access to Justice Commissions and new commissions are on the drawing boards in 7 more states.

With funding from the Public Welfare Foundation and the Kresge Foundation, the ABA Access to Justice Commission Expansion Project awarded grants in 2012 and 2013 to expand access to Justice Commissions in 11 states: Arizona, Ohio, Oklahoma, Pennsylvania, Rhode Island, Illinois, Indiana, Montana, New Hampshire, Virginia and the Virgin Islands. They also awarded seven Innovation grants to encourage existing Access to Justice Commission to develop and test innovative new projects replicable in other states: Alabama (web-based delivery of pro bono services for self-represented litigants); Colorado (limited scope representation); Hawaii (language access and eliminating implicit cultural bias); Maine (public libraries as point of access for legal aid); Massachusetts (fundraising outside the legal community); Mississippi (delivery partnerships with health care, social services and other new partners); and Washington preserving access for low-income people as courts implement e-filing).

## CONCLUSION

The trends in US civil legal aid over the last 12 years continued through 2013. We saw increases in state funding as well as from other funding sources. However, we saw decreases in both IOLTA funding in 2012 and there are likely more to come in 2013. 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 new Congress has significantly changed the possibilities for increased funding and major new advances into a discussion of funding reductions and limiting federal funding for civil legal aid. However, it is too early to tell what will happen during the remainder of 2013 and 2014 to federal funding for and new initiatives around civil legal aid.