

THE FUTURE OF CIVIL LEGAL AID IN THE UNITED STATES

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Civil legal aid in the United States is undergoing major change and transformation. In the last 10 years, there have been new innovations in how providers intake clients and deliver legal assistance, increased involvement of legal aid providers in addressing the problems of self-help participants in the judicial system, and a range of creative uses of the Internet to provide legal information and coordinate advocacy. Funding has expanded for the overall legal aid system, although virtually all of the additional funds coming from state government and private sources. Moreover, many states are attempting to create comprehensive, integrated, statewide systems of delivery. Nevertheless, the United States has a very long way to go in order to enable low-income persons to access a system of civil legal assistance that will address their legal needs effectively. It must significantly increase funding and develop effective state justice systems across the country.

A BRIEF HISTORY OF CIVIL LEGAL AID

Civil legal assistance for poor people in the United States began in New York City in 1876 with the founding of the predecessor to the Legal Aid Society of New York.¹ In 1965, the federal government first made funds available for legal services through the Office of Economic Opportunity (OEO) and started the “legal services program.” The OEO legal services program was designed to mobilize lawyers to address the causes and effects of poverty.

OEO funded full-service local providers, each serving one geographic area, which were to ensure that all clients and client groups had access to the legal system. OEO assumed that each legal services program would be a self-sufficient provider, and that all advocacy—including major litigation and holistic advocacy—would be done by the program, using social workers and others. OEO developed a unique infrastructure that uses national and state advocacy and training programs and a national clearinghouse to provide leadership and support on substantive poverty law issues. It also undertook test case litigation and representation before state and federal legislative and administrative bodies.

¹ A much more detailed discussion of the history of civil legal aid is found in Alan W. Houseman & Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*, Center for Law and Social Policy (2003).

In 1974, Congress passed the Legal Services Corporation (LSC) Act, and in 1975, LSC took over the OEO programs, leaving the delivery and support structure fundamentally unchanged. While the Statement of Findings in the LSC Act said that LSC was set up “to continue the vital legal services program,” it also explicitly changed the goals of the program. Instead of addressing the causes and effects of poverty, LSC was established to ensure “equal access to our system of justice for individuals who seek redress of grievances” and “to provide high-quality legal assistance to those who were otherwise unable to afford legal counsel.” LSC strengthened existing providers, retained and strengthened the support structure, and expanded the program to reach every county in the country.

Even though there were experiments dealing with delivery of services—for example, hotlines for the elderly funded by government and private interests—the structure of the federal legal services program remained essentially unchanged until 1996. At that point, Congress reduced overall funding by one-third, entirely de-funded the support system, and imposed new and unprecedented restrictions.

Under these relatively new restrictions, LSC programs are generally precluded from 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 cannot claim, collect, or retain attorneys’ fees from adverse parties on cases initiated after April 25, 1996, even when the fees are otherwise permitted by statute. Moreover, LSC programs can no longer advocate for or against state or federal welfare reform laws, although they are now allowed to challenge welfare laws in court.² LSC programs are prohibited from representation in redistricting cases, participating in any litigation with regard to abortion, representing certain aliens, participating in litigation on behalf of a person incarcerated in a federal, state or local prison, including pre-trial detainees. LSC programs cannot represent persons charged with or convicted of drug crimes in public housing evictions when the evictions are based on alleged threats to health or safety of public housing residents or employees.

In addition, LSC programs must identify potential client plaintiffs by name and obtain a written statement of facts from any plaintiff client before they can engage in pre-complaint settlement negotiations or file suit on the client’s behalf. LSC programs cannot conduct training programs to advocate particular public policies or political activities and cannot do training on prohibited cases or advocacy activities (e.g., lobbying, rulemaking, attorneys’ fees).³

² See *Legal Services Corp. v. Velazquez*, 531 U.S. 533 (2001).

³ 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, 2189-2190 (1999).

Although there had been some restrictions on what LSC-funded legal services programs could do, particularly with LSC funds, the new restrictions prohibited LSC grantees from using funds available from non-LSC sources to undertake 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.

In response to the imposition of these restrictions and funding reductions, a number of LSC providers—including the three LSC providers in Connecticut—gave up LSC funds. Connecticut created a new program to receive LSC funds; the state's three other programs rely on non-LSC funds. Across the country, the non-LSC-funded delivery system expanded.

At the same time, many state support entities were eliminated because there was no longer earmarked funding, and, in order to survive, national support entities had to rely on private funding, often from major national foundations. New intake systems, such as hotlines, developed throughout the country (including in Connecticut). New approaches evolved to assist self-represented litigants, often in conjunction with the courts, but including many civil legal aid providers. And most fundamentally, a technology revolution in U.S. civil legal aid that was initially fostered by the Project for the Future of Equal Justice⁴ and, since 2000, stimulated by LSC through its innovative Technology Initiative Grant (TIG) program to improve and expand access to justice through the use of technology.

OVERVIEW OF THE CURRENT U.S. CIVIL LEGAL AID SYSTEM

The U.S. civil legal aid “system” consists of a range of different types of service providers funded by a number of sources. One system is funded and somewhat driven by LSC. As noted above, legal services organizations that receive money from LSC must restrict the legal aid they provide. Another system is totally independent of LSC but a critical part of the overall delivery system in each state. A final system is both totally independent of LSC and not effectively integrated into the delivery system in the states. The way these three systems provide services on the ground differs widely among states.

We do not know the exact number of civil legal aid staff attorney programs. As of January 2005, LSC-funded programs numbered 140, of which 136 serve all types of clients within a service delivery area, and four are stand-alone Native American programs serving only Native American clients. This is in contrast to the 325 LSC-funded programs in 1995.

However, there are many more legal services providers than these LSC-funded providers. The following chart explains the legal aid landscape.

⁴ See Julie Gordon, *Equal Justice and the Digital Revolution: Using Technology to Meet the Legal Needs of Low-Income People*, Center for Law and Social Policy and National Legal Aid and Defender Association (2003).

**TOTAL NUMBER OF PROGRAMS
(EXCLUDING PRO BONO)**

LSC	140
NON-LSC	750

FULL-SERVICE PROVIDERS

LSC	133
NON-LSC	65

PRO BONO PROGRAMS FOR THE POOR

BAR OR FREE-STANDING LAW FIRM	900 250
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OTHER ADVOCACY ORGANIZATIONS

STATE ADVOCACY	38
NATIONAL ADVOCACY	30

While many of the non-LSC-funded programs (and some LSC-funded programs) are not full-services providers—they may focus on one major legal matter, such as employment or domestic violence, or deliver only one type of service, such as a hotline or support to self-represented litigants—a number of non-LSC-funded providers are full-service, serving a city, region, or state. Today, in 16 states and over 25 large or medium-size cities, instead of one full-service provider funded by LSC, there are two direct, full-service providers operating in the same geographic areas—one LSC-funded and one non-LSC-funded.

In addition to staff attorney programs providing direct legal assistance, a number of pro bono programs are operated by civil legal aid providers, bar associations, or independent programs. The American Bar Association Center for Pro Bono has estimated that these pro bono programs number over 900. Today, over 150,000 private attorneys are registered to participate in pro bono efforts with LSC-funded programs and 45,000 are actually participating.⁵ In addition, over 250 major law firms have pro bono programs that provide significant service to low-income clients.

The U.S. system also includes a number of state advocacy organizations that advocate before state legislative and administrative bodies on policy issues affecting low-income persons. Some of these also provide training and support to local legal aid advocates on key substantive issues. A 2001 study conducted by the Project for the Future of Equal Justice identified non-LSC-funded entities

⁵ Legal Services Corporation, Background Information and Talking Points, Promoting Pro Bono (1999).

engaged in state advocacy in over 38 states.⁶ Moreover, more than 30 entities are engaged in advocacy on behalf of low-income persons at the federal level. Some of these were formerly funded by LSC as part of the national support network, and some were never funded by LSC.

Funding. The U.S. civil legal aid system is not funded by one principal source. Although LSC is the largest single source of funding, it does not provide funding for most of the system. According to information provided by the American Bar Association’s Project to Expand Resources for Legal Services, Standing Committee on Legal Aid and Indigent Defendants, the total amount of legal aid funding in the 50 states at the beginning of 2005 is \$956,344,038. This total does not take into account funding in the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Micronesia, and other territories and countries that receive LSC funding. Nor does this figure take into account the amount of pro bono time contributed, the funding for many of the state advocacy entities, or the funding for the national advocacy programs. Broken down by funding source for the 50 states, the relative amounts are:

LSC	\$ 295,145,168
Other public	\$ 199,974,500
State government	\$ 71,350,000
IOLTA	\$ 113,905,000
Foundations	\$ 74,536,000
Private lawyer contributions	\$ 37,420,600
Court filing fees/fines	\$ 68,649,500
Other	\$ 132,783,870

Including LSC funding for the District of Columbia, Puerto Rico, and the territories adds another \$21,649,832. In addition, the District of Columbia has substantial non-LSC funds of approximately \$5,092,000. Taking into account other possible funding, the total U.S. funding for civil legal assistance is over \$1 billion.

While LSC funds are distributed to states according to the 2000 census data on individuals living below the poverty line, non-LSC funds are generated within states and are at substantially different levels depending on the state. Taking into account the funding differences among states based on funding per capita for poor persons from all sources:

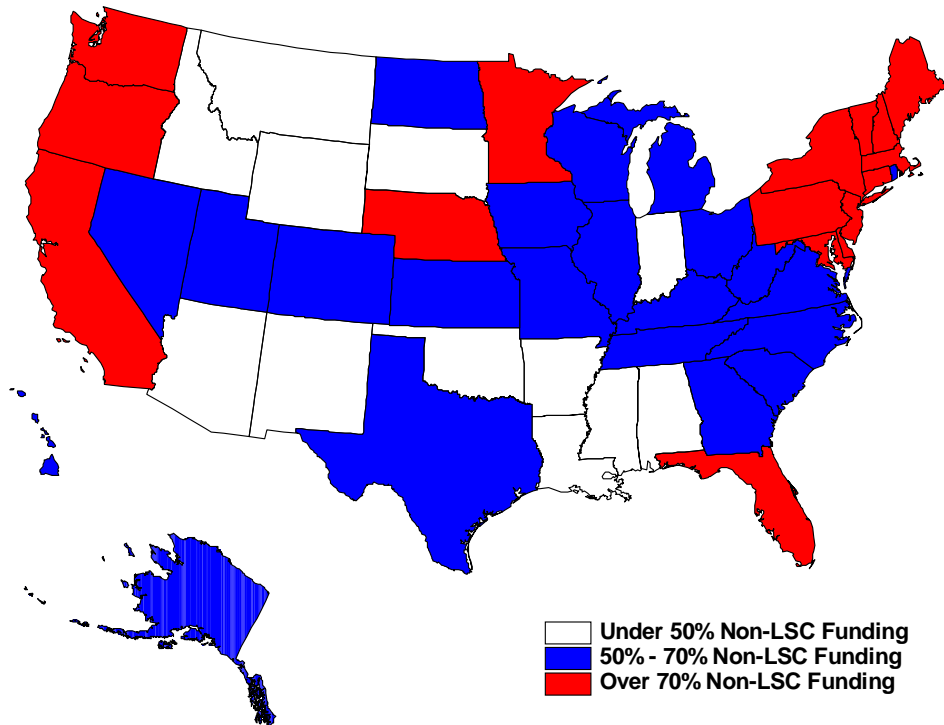
- 7 states have funding exceeding \$50 per poor person
- 8 states have funding between \$30 and \$49 dollars per poor person
- 14 states have funding between \$20 and \$29 dollars per poor person

⁶ See 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, (November 2001). Some of the state entities are formerly LSC-funded state support centers, although there are only 12 of those still in existence.

- 21 states have funding less than \$20 per poor person.

Dollars per poor person ranged from a low of about \$9 to a high of over \$60. (The average is about \$28; the median is about \$23.) 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.

Another way of looking at this data is that in 37 states and DC, non-LSC funds are greater than LSC funds.



While non-LSC funding sources have been steadily increasing overall, LSC funding has not kept pace with its purchasing power. It is less than half of what it was in 1980, when LSC funding provided “minimum access” or two lawyers for each 10,000 poor people in a geographic area. To keep up with inflation, LSC funding would need to be \$704,055,000 (in 2005 dollars). Instead, LSC is funded at \$330,803,705—47 percent of what it would have been had it just kept up with inflation.

LSC FUNDING AT A GLANCE

Year	Actual LSC funds	Funding Level to Keep Up with Inflation
1980 (Minimum Access)	300,000,000	300,000,000
1985	305,000,000	391,586,611
1990	316,525,000	475,649,712
1995	400,000,000	554,737,587
2000	303,841,000	626,878,350
2005	330,803,705	704,055,000

As many commentators have pointed out, the U.S. system is funded at levels far below those provided by most other Western, developed nations.⁷ Even so, it is important to recognize that over the last decade, the U.S. system has grown from approximately \$700 million to over \$1 billion (including DC, Puerto Rico, and the territories).

State Justice Communities. Perhaps the most far-reaching but evolving change has been the effort to create in each state comprehensive, integrated statewide delivery systems, which are often called state justice communities. These include LSC and non-LSC providers, pro bono programs and initiatives, other service providers (including human service providers), and key elements of the private bar and the state judicial system. In theory, these state justice communities seek to create a single point of entry for all clients, integrate 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 regardless of where they live, the language they speak, or the ethnic or cultural group of which they are a member.

⁷ See Earl Johnson, *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 *Fordham Int'l L.J.* 83 (2001); Alan W. Houseman, *Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward*, 29 *Fordham Urban L. J.* 1213, 1226-1227 (February 2002).

In addition, there has been a steady expansion of leadership at the state level.

- 18 states now have formal Access to Justice Commissions, many of which are appointed by state Supreme Courts.
- 18 additional states have committees of the state bar association charged with ensuring access to justice within the state.
- 9 states have other Access to Justice entities, such as the Maryland Legal Services Corporation or Legal Services of New Jersey.
- The other 5 states—including Connecticut—have more informal coordination efforts.

PROGRESS TOWARD ACHIEVING ACCESS THROUGH INNOVATIONS

A national civil legal assistance system should have the capacity to:

- Educate and inform low-income persons of their legal rights and responsibilities
- Inform low-income persons about the options and services available to solve their legal problems, protect their legal rights, and promote their legal interests
- Ensure that all low-income persons, including individuals and groups who are politically or socially disfavored or have distinct and disproportionately experienced legal needs, have meaningful access to high-quality legal assistance providers when they have chosen options that require legal advice and representation.

The U.S. has made considerable progress in meeting the first two of these three objectives. Access to information has been substantially increased by the use of innovative technology, as well as some increase in funding for civil legal assistance. 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. I-CAN projects in several states offer a touch-screen computer in a kiosk that provides clients with 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. 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 who live in areas without access to entities available to provide extended representation.

Legal Hotlines. Many legal aid programs and a number of states including Connecticut 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. Legal hotlines may provide answers to clients' legal questions, analysis of clients' legal problems, and advice on solving those problems so that the case can be resolved with the phone consultation or soon thereafter. Hotlines may also perform brief services when they are likely to solve the problem, and make referrals if further legal assistance is necessary.

Since 1996, there has been enormous growth in legal hotlines—hotlines are now being used in over 148 programs in 49 states, Puerto Rico, and the District of Columbia. There are 54 state hotlines in 38 states, 14 regional hotlines, and 10 local hotlines. Some focus on particular client groups, such as the elderly or low-income populations. In 2005:

- 72 were senior legal hotlines
- 102 focus on all client groups but limit their representation to low-income persons
- 39 have been developed for special targeting efforts, including housing, consumer protection, and child support.⁸

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. Historically, high-volume courts such as traffic, housing, and small claims courts consisted primarily of pro se litigants. However, more recently, pro se representatives now dominate domestic relations courts in many jurisdictions. There may even be an increase in pro se representation in other civil matters as well, but the amount of pro se representation in other civil matters differs among the states.

Many U.S. civil legal aid programs are devoting substantial time and resources to address this issue. Legal aid programs throughout the country operate over 415 self-help programs independently or in conjunction with courts.⁹

⁸ The data reported here are 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.

⁹ *Pro Se Legal Services Directory*, AARP Legal Advocacy Group (September 1999).

CHALLENGES IN ACHIEVING FULL REPRESENTATION AND ENSURING STATEWIDE COORDINATION AND SUPPORT

While the U.S. civil legal aid system has made continuing progress in expanding access and thus meeting two of the three fundamental objectives of a civil legal aid system, progress has been slow in meeting the third: ensuring that all low-income persons, including individuals and groups who are politically or socially disfavored or have distinct and disproportionately experienced legal needs, have meaningful access to a full range of high-quality legal assistance providers when they have chosen options that require legal advice and representation.

In most areas of the United States, there is not enough funding available to provide low-income persons who need it with extended representation by a lawyer or paralegal. As a result, many low-income persons who are eligible for civil legal assistance are unable to obtain it.

LSC just completed a study, *Documenting the Justice Gap in America* (hereafter *Justice Gap*),¹⁰ which used three different methodologies to examine whether there was adequate funding to meet the legal needs of the low-income population. First, LSC asked its grantees to document over a two-month period—from March 14, 2005 to May 13, 2005—the potential clients that came to their offices whom the programs could not serve due to lack of resources. The LSC “unable to serve” study established that for every client who receives service, one applicant was turned away, indicating that 50 percent of the potential clients requesting assistance from an LSC grantee were turned away for lack of resources on the part of the program.

Second, the LSC *Justice Gap* study carefully analyzed the nine studies undertaken over the last five years in individual states about the civil legal problems faced by their low-income residents, examining them for nationally applicable conclusions as well as comparing the results to the 1994 national study on the subject. These states included Illinois and Montana (2005), Oregon (2000), Vermont (2001), New Jersey (2002), Connecticut (2003), Massachusetts (2003), Washington (2003), and Tennessee (2004). All nine of these state studies were based on the methodology of the *Comprehensive Legal Needs Study* conducted by the American Bar Association in 1993 (released in 1994), which remains the most recent *national* study of the legal needs of low-income Americans.¹¹

¹⁰ Legal Services Corporation, *Documenting the Justice Gap in America: A Report of the Legal Services Corporation*, September 2005.

¹¹ The ABA study was based on roughly 1,800 random telephone interviews with low-income Americans, conducted during the spring and summer of 1993. Respondents were asked about a set of circumstances that anyone in their household might have experienced during the preceding year. A panel of attorneys ensured that the situations described to the respondents contained a legal issue and met a threshold of seriousness. When respondents reported such circumstances, follow-up questions asked what the household did (or did not do) about the situation and what contacts, if any, it had with the civil justice system. The nine state studies all used a survey

The nine state studies validated the findings of the ABA study.

- All nine state studies found levels of legal need equal to or higher than the level in the ABA study. The state studies found a per-household average ranging up to more than three legal needs per year; the ABA study found one legal need for year per-household.
- Like the ABA study, all nine state studies found that the combined efforts of the private bar and publicly funded legal services providers serve only a small portion of legal needs reported by low-income households. The comparable findings in the recent state studies were even lower than those in the ABA study, which found that help was received for only 21 percent of all problems identified.

In short, the nine state studies demonstrated that less than 20 percent of the legal needs of low-income Americans were being met. Eight of the nine studies found an unmet legal need greater than the 80 percent figure determined by the ABA in their 1994 national survey.

Finally, the LSC Justice Gap study totaled the number of legal aid lawyers in both LSC and non-LSC funded programs, and compared that to the total number of attorneys providing civil legal assistance to the general population in this country. In adding up the number of legal aid attorneys serving the poor and comparing that to the LSC-eligible population, it was determined that there is one legal aid attorney for 6,861 low-income persons. By contrast, the ratio of attorneys delivering civil legal assistance to the general population is approximately one for every 525 persons, or thirteen times more.

The study concluded: “It is clear from this research that at least 80 percent of the civil legal needs of low-income Americans are not being met. Moreover, 50 percent of the eligible people seeking assistance from LSC-funded programs in areas in which the programs provide service are being turned away for lack of program resources.”¹²

Thus, the major problem in achieving meaningful access to a full range of high-quality legal assistance providers is the lack of providers with sufficient funding to provide the extended representation necessary to meet the need.

questionnaire based upon the questionnaire used in the ABA study. Although each state modified the questionnaire somewhat to reflect local circumstances and concerns, the general approach used and the majority of the questions asked were the same as in the ABA study.

¹² See the Executive Summary of the study: Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans –Overview, Legal Services Corporation, September 2005.

THE FUTURE OF CIVIL LEGAL AID: WHERE DO WE GO FROM HERE?

Funding. Without increased funding, the civil legal assistance community cannot achieve increased access for low-income persons nor implement the civil legal assistance system for the future. Future funding for civil legal assistance will come from five sources:

- state and local governmental funds;
- Interest on Lawyer's Trust Accounts (IOLTA) funds;
- private bar contributions;
- private sources such as foundations and United Way Campaigns; and,
- federal government.

Since 1982, funding from state and local governments has increased from a few million dollars then to over \$370 million today and is increasing each year. Until recently, this increase has been primarily through IOLTA funding. Within the last seven years, substantial new state funding has come from general state or local governmental appropriations, filing fee surcharges, state abandoned property funds, punitive damage awards, and other governmental initiatives. For example, in 2005 funding from state appropriations is more than \$82.6 million and from court fees and fines is more than \$80.7 million, for a total of over \$163 million. This amount is a 17 percent increase over 2004 state legislative funding for civil legal aid.¹³ In addition, there have been substantial increases in funding from private sources, including foundation and corporate gifts, United Way funding, special events, funding from religious institutions, fee-for-service projects, lawyer fund drives, attorney registration fee increase or dues assessment, dues check-off or add-ons, bar association appropriations, funds from *cy pres* awards, and from awards from attorneys' fees pursuant to fee-shifting statutes.

Supporters of increased federal funding will have to overcome significant political barriers to substantially (as opposed to incrementally) increase federal funding for civil legal assistance. Although LSC leadership has made substantial progress in developing a much stronger bipartisan consensus in favor of funding for LSC, U.S. political leadership remains divided about whether there should be a federally funded program, and, if so, whether it should be through the federal LSC program or via a block grant program administered by the states.

In addition, there are substantial efforts to reduce U.S. domestic discretionary spending over the next five years in order to address the substantial federal budget deficit that has resulted primarily from the tax reductions and the increased spending on defense and homeland security. In May, the Congress passed its budget resolution, which would reduce domestic discretionary spending by more than \$200 billion over the next five years. The budget directives are playing out now during the appropriations process. These cuts

¹³ See American Bar Association, *Legal Services Now*, October 19, 2005, Issue # 50.

would grow deeper over time and are projected to affect all domestic discretionary spending, including LSC funds and other federal funds available for civil legal aid.

The President's budget proposal for FY 2006 illustrates how the federal budget issues impacts civil legal aid. The Administration has proposed to cut funding for LSC by 5 percent. This would reduce funding available to the national legal aid program to \$318.2 million, an amount less than the \$321 million LSC received in 1980. This year, FY 2005, LSC lost funding from an appropriate level of \$335.3 million in FY 2004 to an appropriate level of \$330.8 million in FY 2005.

The Board of Directors of LSC has requested \$363.8 million for FY 2006. The House adopted an appropriation of \$330.8 million. The Senate agreed to a level of \$358 million. The conference committee, however, only recommended the House level of \$330.8 million. This amount may be reduced even further if across-the-board decreases are imposed on all or most domestic discretionary programs. .

The LSC Justice Gap study and related initiatives may provide a new basis for a more persuasive case to Congress on the need for increased LSC funding. However, substantial growth in federal funding, as well as state and local governmental funding, is not likely to occur until there is much greater support for civil legal aid among the general public (as distinguished from the organized bar). The central challenge to supporters of civil legal aid is to develop effective strategies that garner broad-based public support.

State Justice Communities. The broad-based initiative to create comprehensive, integrated state systems of civil legal aid will continue. The ABA and its current President Michael Greco are initiating a major effort to expand state access to justice commissions and improve state justice communities. President Greco has appointed a Presidential Task Force on Access to Justice, which is charged with increasing state access to justice commissions and developing an ABA policy on what states should seek to achieve in their civil legal aid systems. The Task Force is will likely create a set of principles or characteristics that should be developed in each state.

These initiatives are trying to establish state civil legal aid systems that provide a full-range of high-quality, coordinated, and uniformly available civil legal services to low-income and vulnerable populations in sufficient quantity to meet their civil legal needs. To reach this goal, state civil legal aid systems will have to meet at least nine criteria:

1. **The program systematically ensures the capacity to provide a full range of civil legal assistance services to all clients** regardless of their location or the forum within which their legal problem is best resolved. For example, the system should enable low-income persons and groups to address some

legal problems without legal representation, receive advice and brief services in appropriate situations, and receive representation from an attorney or paralegal when necessary. In addition, the system should provide representation when the legal issues affect a substantial number of poor people and before legislative and administrative bodies in the policy making process.

2. **The system serves all segments of low-income and vulnerable households**, including those constituencies with distinct, unique or disproportionately experienced legal needs. This includes migrant farm workers, Native Americans, people with limited English-speaking abilities, people with physical or mental disabilities, those who are incarcerated or institutionalized, and numerous others.
3. **The system makes legal services uniformly available throughout the state** so that the likelihood of obtaining civil legal services is the same without regard to where in the state the “low-income or vulnerable person” resides.
4. **The system provides high-quality civil legal aid services** through providers that have the substantive expertise, institutional presence, experience, and case management and other systems necessary to provide legal assistance consistent with state standards of practice and with national standards of provider performance.¹⁴ In addition, programs have the capacity and flexibility to identify, reallocate resources and staff, and respond effectively and efficiently to new and emerging legal trends and changes in the nature of the legal problems of low-income persons. Such use and invest in existing and innovative technologies and linkages among providers and advocates to provide information to low-income and vulnerable populations and to deliver high-quality legal assistance. Each state should have internal systems for periodic evaluation and peer review of legal and management staff, and ongoing review of staff activities and legal work in order to measure whether providers are achieving individual client objects as well as results and outcomes for clients generally. Finally, high-quality legal aid programs seek new and innovative approaches to delivering legal services and addressing the legal needs of low-income and vulnerable communities.
5. **The system is coordinated and planned at the state level**, allowing state programs to work together in a coordinated and collaborative manner to ensure a full range of legal assistance options to all low-income persons in all civil justice forums. The organized bar, judiciary and law schools participate with providers and other appropriate stakeholders in ongoing, coordinated efforts to plan and support the system and expand access to civil justice.

¹⁴ There are two sets of national standards, the ABA Standards for Providers of Civil Legal Services to the Poor (originally developed in 1986 and now under revision) and the LSC Performance Criteria (developed in 1963 and also under revision).

6. **Funding for the system is maximized through resource development efforts that are coordinated at the state level** and that explore all potential sources. For example, providers within states and state access to justice organizations would coordinate state-level resource development such as unified private campaigns and other fundraising initiatives, where most effective; unified approaches to major potential state public sources; unified liaison with and maintenance of existing statewide sources; coordinated efforts to develop local and regional funding sources; and coordinated communication, public relations, media and related activities.
7. **The organized bar, the courts, and legal aid providers work together to integrate the private bar and the resources of the legal profession to address the legal needs of the state's low-income community** and to maximize pro bono services by private attorneys for this population.
8. **The system ensures statewide coordination and support for all legal aid providers and an efficient, state-of-the-art statewide information dissemination network.** This includes effective monitoring, analysis, and timely distribution of information regarding all relevant legal developments to all individual and institutional providers and others participating in the statewide system. In addition, there should be regular statewide communication among, attorneys, paralegals, and lay advocates—including private attorneys and law firms, attorneys working for governmental entities, corporations, labor unions, and human services providers—to discuss common issues, client constituencies, and advocacy strategies. The state should identify and promote systemic "best practices" in areas such as intake, needs assessment, priority setting, case management, and advocacy. There should be a system to coordinate advocacy in all state level legal forums on matters of consequence to low-income people, including amicus work. In addition, there should be coordinated statewide education and training activities to help all individual and institutional providers develop expertise in the major areas of legal services practice, get updated on new developments and trends in law and policy affecting low-income persons, and maximize professional staff development and access to the latest strategies, tools, skills, and techniques of advocacy.
9. **The judiciary of each state engages in efforts to ensure that the courts are accessible and responsive to the needs of the state's low-income and vulnerable populations;** this is done in collaboration with other stakeholders as appropriate.

National Coalition for Right to Counsel in Civil Cases. Within the last two years, a National Right to Counsel Coalition has formed and is now working in a number of states to obtain court rulings and statutory changes to advance the right to counsel in civil cases. Both federal and state developments were significantly stalled by the 1981 Supreme Court decision in *Lassiter v. Dept. of*

*Social Services*¹⁵ which held that there is a presumption against appointing counsel in civil cases where no threat of incarceration exists and this presumption can only be overcome in exceptional circumstances.

This National Coalition has focused primarily on creating the right to counsel in cases in state courts including Maryland, Washington State, Wisconsin, New York, and elsewhere. In 2003, Maryland's highest court declined by one vote to reach the civil right to counsel issue in *Frase v. Barnhart*¹⁶. In addition, there are new efforts to create a statutory right to counsel in some civil cases. For example, in California, the "Model Statute" Project is drafting a model statute that creates and defines the scope of a statutory entitlement to equal justice, including a right to counsel in appropriate circumstances. A similar effort is underway in Massachusetts.

The American Bar Association is taking a new look at the civil right to counsel, as well. In April, the Standing Committee on Legal Aid and Indigent Defendants created a new subcommittee to examine the scope of the right to counsel and to determine what the ABA could do to further the development of such a right. In addition, ABA President Michael Greco is leading a national effort on the civil right to counsel as one of the main messages of his Presidency. He has already begun to talk about this topic. His new Presidential Task Force on Access to Justice will also focus on expanding the right to counsel in civil cases.

Other Developments Affecting Civil Legal Aid. There are many other developments affecting civil legal aid that focus not just on broad national delivery issues but on how programs respond to changing client legal problems. Client legal problems are changing as U.S. social programs evolve, or to be more precise, devolve from the federal to state levels, and legal protections and entitlements are being eliminated or modified. For example, more client legal problems involve employment and consumer issues than previously. In addition, the demographics of low-income clients differ in significant ways from those who have been historically assisted by legal aid providers. The vast majority of families below 125 percent of poverty have at least one employed parent. (Financial eligibility is measured by reference to 125 percent of the official poverty line by most legal aid programs). Many more immigrants and many more people with limited English proficiency are seeking legal aid,¹⁷ Finally, courts—particularly federal courts—are continuing to impose a host of restrictions, denying access to increasing numbers of litigants and refusing to consider legal issues under a variety of gate-keeping doctrines.¹⁸ These and many other

¹⁵ *Lassiter v. Dept. of Social Services*, 452 U.S. 18 (1981)

¹⁶ *Frase v. Barnhart* 379 M.D. 100 (2003).

¹⁷ See Alan W. Houseman, *Who are our Clients? What are the Emerging Legal Problems? What Do These Implicate for State Justice Communities?* prepared for the LSC Client Conference in April of 2001 and reprinted in the *Management Information Exchange Journal* (Summer 2001).

¹⁸ See Gill Deford, Jane Perkins, Gary Smith and Matthew Diller, *Federal Court Access Issues in the U.S. Supreme Court's 2003-2004 Term*, 38 *Clearinghouse Rev.* 464 (November-December,

developments related to the legal aid system are helping shape the civil legal aid system today and for the future.

CONCLUSION

Civil legal assistance in the United States has, over the last 40 years, developed from a haphazard program with limited, largely private funding into a significant \$1 billion institution. However, funding remains totally inadequate to address the legal needs of the poor. Moreover, few states have implemented an effective and efficient state integrated and comprehensive system of delivery. It will take both significant increases in funding and the development of effective state justice systems in order to have a civil legal aid system that meets one of the key purposes of the LSC Act, to provide assistance to those “unable to afford adequate legal counsel.”

2004); Jane Perkins, *Using Section 1983 to Enforce Federal Laws*, 38 Clearinghouse Review 720 (March-April, 2005).