CIVIL LEGAL AID IN THE UNITED STATES: RECENT DEVELOPMENTS AND LONG-TERM DIRECTIONS

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Civil legal aid in the United States is undergoing major change and transformation. Changes are occurring in both the system funded by the Legal Services Corporation (LSC) and the "system" funded exclusively by non-LSC sources. We are seeing 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 and websites to provide legal information and coordinate advocacy. Funding is expanding for the overall legal aid system, with the bulk of the additional funds coming from state government and private sources. Moreover, there are relatively fundamental changes occurring in the overall delivery system as the effort continues to create in each state a comprehensive, integrated, statewide system of delivery. These evolving state justice communities include a range of providers, many of which do not receive LSC funds, such as law schools, the private bar, and human services organizations. Moreover, many of these state justice communities are no longer controlled by civil legal aid professionals but are increasingly in the hands of a much broader group of stakeholders within the civil justice system.

These changes are not occurring in a vacuum. State court systems, for example, are continuing to struggle with the large number of litigants who are not represented by a lawyer and are beginning to develop innovative and systematic approaches to addressing this problem. 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. And the demographics of low-income clients differ in significant ways from those who have been historically assisted by legal aid providers.[1] 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. These and many other developments outside of, but related to, the legal aid system are helping shape the legal aid system of today and that of the future.

However, two changes have not occurred in the U.S. system, which have occurred in Europe and other developed countries. First, the United States has not established a right to counsel in most civil cases. Second, the United States has not embraced nor suggested changes to our existing system that would increase the involvement of paid private lawyers in the delivery of civil legal assistance to low-income persons. Instead,

the United States continues its reliance on pro bono attorneys to supplement the staff attorney system.

This report will describe some of the major developments occurring in the U.S. civil legal aid system and highlight some of the new thinking that is emerging in the United States about civil legal aid. This report seeks to complement the papers being produced by the Legal Services Corporation and by other participants at this conference but will not go into some details that will likely be covered by those papers. This report should be read in conjunction with several attachments: (1) a paper on the Hotline Outcome Assessment Study written by my colleagues Julia Gordon and Bob Echols and that has been previously published in a journal for program managers; (2) two papers by Wayne Moore reporting on his innovative work on brief services and a new delivery model; (3) a recent short history of civil legal aid that CLASP is about to publish; and (4) an outline of a state integrated comprehensive delivery system that was prepared several years ago for the Project for the Future of Equal Justice.

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. The system is really two or perhaps three different systems. One system is funded and driven by LSC. One 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.

We do not know the exact number of civil legal aid staff attorney programs. As of January 2003, LSC-funded programs numbered 160, of which 156 serve all types of clients within a service delivery area, and four are stand-alone Native American programs serving only Native American clients.[2] This is in contrast to the 325 LSC funded programs in 1995. But there are many more legal services providers than these LSC-funded providers. The civil program membership of the National Legal Aid and Defender Association (NLADA) numbers over 450 programs, which includes most, but not all, of the LSC-funded providers. Some of these are small programs serving one or two neighborhoods or a particular client group within a city. Others may focus only on one major type of legal matter, such as employment or domestic violence. However, a number of these non-LSC-funded providers are full-service providers, serving a city, regional area, or state. Today, in 16 states and over 20 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. This is due to service restrictions placed on LSC-funded providers.

In addition to staff attorney programs providing direct legal assistance, there are a number of pro bono programs operated by civil legal aid providers, bar associations, or independent programs. Some have estimated that these pro bono programs number over 600. Today, over 150,000 private attorneys are registered to participate in pro

bono efforts with LSC-funded programs and 45,000 are actually participating.[3] In addition, there are over 155 major law firms with pro bono programs that provide 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 recent study conducted by the Project for the Future of Equal Justice (and available in hard copy at the conference) identified non-LSC-funded entities engaged in state advocacy in over 35 states.[4] Moreover, there are more than 20 entities that are engaged in advocacy on behalf of low-income persons at the federal level. Some of these were formerly funded by LSC and were part of the national support network and some of these (like CLASP) were never funded by LSC but were connected to the national support network.

The U.S. civil legal aid system is not funded by one principal source. Although LSC is the largest single source of funding, it is not a source of funding for most of the system. According to information provided by Meredith McBurney, a consultant for the Project to Expand Resources for Legal Services, Standing Committee on Legal Aid and Indigent Defendants, American Bar Association, the total amount of legal aid funding in the 50 states and the District of Columbia at the beginning of 2003 is $906,951,143. This total does not take into account funding in 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 and DC, the relative amounts are:

LSC	$ 298,757,693
Other Federal	$ 78,107,750
State/Local Government	$ 226,714,150
IOLTA	$ 133,228,000
Foundations	$ 61,220,600
Private Lawyer Contributions	$ 38,986,450
United Ways	$ 22,793,000
Other	$ 47,143,500

While LSC funds are distributed according to the 2000 census data on individuals living below the poverty line, the other funding sources are not distributed equally among states. A chart that will be distributed at the conference will display the funding differences among states. In 34 states and DC, non-LSC funds are greater than LSC funds. 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. For example, the amount of funding per capita from all sources, based on the 2000 census poverty population, shows the following wide variations:

Alabama	$10.25
Mississippi	$11.34
Arizona	$12.18
Idaho	$13.84
California	$30.36
Washington	$31.25
New York	$41.10
Vermont	$45.38
Massachusetts	$56.48
New Jersey	$57.57
Minnesota	$60.75

While non-LSC funding sources have been steadily increasing overall, LSC funding has not kept pace and its purchasing power. It is less than half of what it was in 1981, the time when LSC funding provided what LSC called "minimum access," or two lawyers for each 10,000 poor people in a geographic area. LSC has been unable to obtain sufficient funding to maintain the level of access achieved then. In addition, it has lost considerable ground because of two significant budget reductions (of 1982 and 1996) and the inability to keep with up inflation even when funding was increasing. The following chart presents a few funding comparisons:[5]

Grant Year	Annual LSC Appropriation in Actual Dollars	Annual LSC Appropriation in 2001 Dollars	Percentage Change From 1980 (Using 2001 Dollars)
1980	300,000.000	646,238,000	0.0%
1981	321,300,000	627,401,000	-2.9%
1982	241,000,000	443,290,000	-31.4%
1990	316,525,000	429,864,000	-33.5%
1995	400,000,000	465,879,000	-27.9%
1996	278,000,000	314,500,000	-51.3%
2002	329,274,000	329,274,000	-47.0%

As many commentators, including Earl Johnson, have pointed out, the U.S. system is funded far below the level of funding that is provided by most of the other Western developed nations. [6] For example, in the United States, the per capita government expenditures for civil legal assistance is $2.25, while the equivalent figure for England is $32, $12 for New Zealand, and $11.40 for Ontario. As the chart below indicates, we are far below comparable Western industrialized countries in the provision of civil legal assistance:[7]

Nation	Government's Civil Legal Aid Investment per $10,000 of GNP (in U.S. Dollars)	Government's Public Social Expenditures per $1,000,000 of GDP (in U.S. Dollars)
United States	$0.70	$16.03
Germany	$1.90	$26.56
France	$1.90	$29.64
Australia	$2.75	$18.09
Canada	Quebec: $3.50 Ontario: $3.60 British Columbia: $4.00	$16.95
Netherlands	$4.20	$25.10
New Zealand	$20.70	$5.10
United Kingdom	$12.00	$21.59

However, as the chart also shows, the United States has a far lower social welfare system than these countries.

Even so, it is important to recognize that over the last decade, the U.S. system has grown from approximately $400 million to over $926 million (including Puerto Rico and the territories).

HOW DID WE GET HERE

The companion piece to this article—*Securing Equal Justice for All: A Brief History of Civil Legal Aid in the United States*—sets out the history of civil legal aid in the United States.

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. 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, that were to ensure access of all clients and client groups to the legal system. OEO assumed that each legal services program would be a self-sufficient provider—all advocacy would be done by the program, including major litigation and holistic advocacy, using social workers and others. OEO also developed a unique infrastructure that, through national and state support and training programs and a national clearinghouse, provided leadership and support on substantive poverty law issues, as well as undertook litigation and representation before state and federal legislative and administrative bodies.

In 1974, Congress passed the Legal Services Corporation Act, and in 1975, LSC took over programs started in OEO. The delivery and support structure put in place by OEO was carried over fundamentally unchanged by the Legal Services Corporation when it began to function in 1975. While 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. LSC was 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.

Even though there were experiments dealing with delivery of services (e.g., hotlines for the elderly funded primarily through Office of Aging of the Department of Health and Human Services and by AARP), the structure of the federal legal services program remained essentially unchanged until 1996. At that point, Congress reduced overall funding by one-third, entirely defunded the support system and imposed new and unprecedented restrictions. 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. All of a LSC grantee's funds, from whatever source, are restricted.

In response, a number of LSC providers gave up LSC funds and expanded the non-LSC-funded delivery system. Moreover, many state support entities were eliminated, and, in order to survive, national support entities had to rely on private funding, often from major national foundations. In addition, we saw new intake systems, such as hotlines, developing throughout the country and expanded use of the Internet and web to provide information and coordinate advocacy. We also saw new approaches to assist self-represented litigants, often in conjunction with the courts, but including many civil legal aid providers. And most fundamentally, we saw a technology revolution in U.S. civil legal aid.

Now the United States is in the midst of an even larger change. LSC, state IOLTA entities, NLADA, and the ABA are working to create in each state comprehensive, integrated statewide delivery systems, called state justice communities. 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 seek to 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. The state planning initiative will result in a fundamental change in how legal aid has been organized in this country. Instead of a group of individual programs who are self-sufficient and funded by LSC, IOLTA, and/or other funding sources, each state is now attempting to develop a statewide system that includes 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. The focus is no longer on what an individual program can do but on what a state system

should be. The legal aid system is no longer primarily and federal-local system but a state system with a variety of funders.

Moreover, in a majority of states, the new statewide system is being led by state access to justice commissions that involve the courts, the bar, and providers working together in some formal way to expand and improve civil legal aid. Over half of the access-to-justice entities have formal status independent of a single institution, another 10-12 are part of the hstate bar, and several others are part of the court system. In addition, in about 20 states, the state Supreme Court has been formally involved in the access to justice commission efforts in some concrete way, such as creating the commission, serving on one, and/or participating in meetings.[8] In short, how the civil legal aid system develops is no longer solely or primarily in the hands of civil legal aid professionals but is now in the hands of a much broader group of people within the justice system.

THE FUTURE

State Justice Communities

One of the most significant developments in U.S. civil legal aid has been the effort begun in 1995, but substantially changed and increased in intensity in 1998, to create state justice communities—comprehensive, integrated statewide systems of delivery in each state. This has been driven by a comprehensive state planning effort that LSC has required all of its programs to do, which has been supported by NLADA, the ABA, CLASP, IOLTA programs, and many others. LSC required its programs to develop comprehensive plans to coordinate and integrate their work in seven areas: expanding client access and efficiency in delivery of high-quality legal assistance; using technology to expand access and enhance services; promoting client self-help and preventive legal education and advice; coordinating legal work and training; collaborating with the private bar and other local organizations; expanding resources to promote legal services; and designing system configurations that enhance client services, reduce barriers, and operate efficiently and effectively. The Project for the Future of Equal Justice also produced a detailed blueprint of what a comprehensive integrated state system should be (see attachment). These new state systems are designed to (1) increase awareness of rights, options, and services; (2) achieve access to civil legal assistance; and (3) provide a full range of civil legal assistance and related services.

One consequence of this state planning effort has been the reduction in the number of LSC grantees by over 100 since 1998, resulting in what LSC hopes is a more streamlined system. While a number of states have taken major steps toward this new integrated system, many are only just beginning to develop such systems. A few large states, including California, Pennsylvania, and New York are developing regional integration.[9] An example of how this state planning effort has resulted in an increased focus on access to justice can be found in a report on the California experience by the California Commission on Access to Justice, co-chaired by Earl Johnson.[10] The report details how California obtained significant state funding for the first time, involved the

judiciary through the Chief Justice and the Judicial Council, created a broad-based Commission on Access to Justice, and developed a range of innovative delivery systems (some of which will be discussed below and others at our conference) to address the civil legal problems of low-income Californians.

This planning effort is continuing both at the national and state levels. For example, LSC is developing a State Justice Communities Planning Initiative Evaluation Instrument designed to assess the vibrancy of each state legal services delivery system, establish benchmarks against which further progress can be measured, and begin to gather data to allow comparisons of state justice communities. The instrument is being pre-tested and the evaluation process is being refined for implementation later this year.

In past reports to ILAG[11] and in several law review articles,[12] I have extensively discussed state planning and outlined a comprehensive, integrated statewide delivery system that provides a framework for understanding what the United States is attempting to develop. Similar articles have been written by Randi Youells, Vice-President of LSC and a participant in this and the last ILAG conference.[13] The remainder of this report will focus on a few key components of this new system and, in particular, on new research and reports about such a system and some newly emerging ideas of how the new system should be structured at the local level. The emerging U.S. civil legal aid system has been very much affected by the technological revolution as a number of papers for this conference will suggest, and my report begins with an overview of technology in civil legal aid.

The Technology Revolution

The impact of technology on civil legal aid programs in the U.S. has been substantial. A recent publication by my colleague at CLASP—*Equal Justice and the Digital Revolution: Using Technology to Meet the Legal Needs of Low-Income* People—discusses the changes that have occurred.[14] In the past 10 years, our society has experienced a "digital revolution," the implications of which are as stunning as those of the industrial revolution, yet are even more remarkable because these changes are happening in a fraction of the time.[15] Beginning with the affordable personal computer and taking a giant leap forward with the creation of the Internet and the web browser, this revolution has changed how we work, play, communicate, learn, and obtain goods and services.

In the mid-1990s, organizations providing civil legal assistance to low-income people were beginning to use new technologies on an increasingly regular basis. All but a few programs were using word processing systems for text documents, and most offices had local area networks (LANs) in place. Most programs were using accounting software to keep their books. Some programs were using computerized case management systems, largely oriented toward keeping case statistics for funders. Several programs and regions also were beginning to experiment with more

sophisticated telephone systems for intake and providing brief advice and assistance by phone.

At the same time, comparatively few programs had their own websites, and only a handful of sites went beyond serving as a "virtual business card" with contact information to include significant amounts of legal or practice information for staff and/or clients. Fewer than half of all advocates were making full use of outside e-mail, computerized legal research tools, and Internet research tools, often accessing the web from home due to a lack of access at the office.

Today, in 2003, almost every legal services advocate has desktop access to the Internet and e-mail and uses those resources daily. In most places, advocates are able to use fee-based computerized legal research tools such as Lexis and Westlaw. Virtually all staffed legal aid programs use a computerized case management system, often one that can be accessed in real-time from every office in the program, and some from remote locations. Increasingly, case management systems work with document assembly software that can automatically generate routine correspondence and pleadings.

Most programs now have a website, with over 100 sites offering information useful to advocates, clients, or both. Seventy percent of states have a statewide website, most of which also contain information useful both to advocates and clients, and many other states are currently building such sites.[16] Dozens of national sites provide substantive legal information to advocates, and other national sites support delivery, management, and technology functions. Many program, statewide, and national websites are using cutting-edge software and offering extensive functionality.

In addition, more and more states have a central phone number (or several regional phone numbers) clients can call to be referred to the appropriate program or to obtain brief advice about their legal problems. A number of programs are using videoconferencing software either for advocate interaction or to deliver services to clients who cannot come into the office. Technologists in the community also are working on "interoperability standards" that will allow users to search information across different web platforms.

Today, unlike a few years ago, most members of the community agree that technology cannot be separated from an organization's core mission. All staff need the necessary skills to operate any computer or telephone functions that relate to their job duties. Costs for computers, networking, and bandwidth are ongoing operational costs, neither a one-time capital investment nor a separate project unto themselves. Managers and advocates can integrate computer and telephone functionalities into their overall advocacy toolbox to use in representing clients or solving problems in their client communities.

LSC, the community's largest funder, is at the forefront of promoting advanced technologies. Since 2000, LSC has administered a Technology Initiative Grant (TIG) Program, which made 141 grants during 2000-2002 for work in five broad areas: (1) developing statewide websites; (2) piloting technologies to improve pro se representation; (3) improving intake and referral systems; (4) identifying and providing technological infrastructures integral to the implementation of pro se and client service systems; and (5) developing and supporting training and technical assistance capacities for TIG projects. Congressional appropriations for TIG funding were $4.25 in FY2000, $7 million in FY 2001, $4.5 million in FY 2002, and $3.4 million in FY 2003.[17]

An example of an innovative program using this new technology is Pro Bono Net, which will be discussed in more detail in other papers and during the ILAG conference.
Pro Bono Net is an organization that specializes in creating websites to support pro bono and legal aid advocates and their clients. Pro Bono Net supports two different types of web templates:

- www.probono.net provides online tools to support both full-time poverty law advocates and pro bono attorneys. Password-protected practice areas organized by legal topics allow users to share information online. The tools on this platform include online libraries of training materials, model pleadings and links, a current news page, a training and events calendar, postings of new cases for volunteers, and member-driven e-mail lists.

- www.lawhelp.org provides information oriented toward the general public and people searching for assistance with a legal problem. The resources on this site include referrals to legal aid and public interest law offices, community legal education, pro se materials, and links to social service support.

Private attorneys can use www.probono.net to find pro bono cases and to find background information and sample documents to help them provide better legal representation once they have taken a case.

Legal Hotlines

Many legal aid programs and a number of states 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 those are likely to solve the problem, and make referrals if further legal assistance is necessary.

Since 1996, there has been a huge growth in legal hotlines. Hotlines are now being used in 165 programs in 48 states, Puerto Rico, and Legal Counsel for the Elderly in the District of Columbia.[18] Some focus on particular client groups, such as the elderly. In 2003, there were 66 senior legal hotlines in 40 states, Puerto Rico, and the District of

Columbia. Others (106 as of April 2003) focus on all client groups but limit their representation to low-income persons. Thirty-two have been developed for special targeting efforts, such as housing, consumer protection, child support, and the like. There are 44 state hotlines in 40 states (and more are being developed), 59 regional hotlines, and 51 local hotlines. There is overlapping funding for these various hotlines. LSC provides funds for 102, IOLTA for 28, the U.S. Administration on Aging for 56, state government for 11, and other private funders for 48.

The Project for the Future of Equal Justice undertook a study of the effectiveness of centralized telephone legal advice, brief service, and referral systems in the delivery of civil legal assistance. Phase I of the study, completed in March 2000, used existing data to compare "before" and "after" caseload statistics in programs that had adopted a hotline system and to determine the effect of the hotline system on the number of clients served and the levels of brief and extended services. The study concluded that hotlines can be effective (i.e., the capacity to provide brief service can be increased without reducing capacity to provide extended services) but success is not guaranteed. It also found that the managers of all those hotlines perceived that they expanded the program's overall capacity, productivity, and accessibility.[19]

Phase II was a test phase and Phase III looked at the outcomes of cases in which the hotline had provided legal information, advice, referral, or brief services. In Phase III, the researchers conducted a full-scale survey of hotline clients to answer a variety of questions about the different legal outcomes and the characteristics of clients who experience successful and unsuccessful results. The researchers surveyed slightly more than 2,000 clients, approximately 400 each from five geographically and demographically diverse hotlines.[20] In a follow-up telephone call three to six months after clients called the hotline, they were asked to describe in their own words what had happened in their case and to respond to a variety of questions about their experience with the hotline and their circumstances. Demographic data about the clients was obtained from the hotline case record and supplemented by information obtained during the interview.

In addition to the subjective responses of the clients, two attorneys with legal services experience reviewed each completed interview form along with the client's original case record from the hotline. On the basis of this review, they made an assessment of the outcome of the case, whether that outcome could be classified as favorable or unfavorable, and the role that the hotline had played in helping the client respond to his or her problem. Finally, the Center for Policy Research analyzed the resulting data sets to produce profiles of clients across the five sites and to identify outcome patterns, with special attention to the client, case, and advice characteristics of cases with favorable and unfavorable outcome patterns.

The attachments to this report include a *Summary of the Findings of Phase III* and *Recommendations and Thoughts From the Managers of the Hotline Outcomes Assessment Study Project*, a detailed discussion of the findings by the two attorneys—Julia Gordon and Bob Echols—who provided the assessments of the case outcomes.

Because this research is the first significant delivery research done in the United States since the late 1970s and because of the interest in hotlines by many members of ILAG, I have chosen to provide you with these two documents so that you can read for yourselves the study results and the analysis of those results by my two colleagues. Here, I will only highlight a few points about the study taken from the article by Julia Gordon of CLASP and Bob Echols.

Legal Problem Areas. Family, housing, and consumer cases made up the overwhelming majority of the cases at all five sites. Family cases were by far the most common, comprising roughly 40 percent of the sample overall. Housing and consumer cases made up about 20 percent each of the overall sample; the remaining 20 percent of the cases were a mixed bag of government benefits, employment issues, problems arising from car accidents, and others.

Types of Hotline Services. The Study provided extensive information on the types of services provided to clients by hotlines, as set out in the case files.

- In roughly one third of the cases (36 percent), the hotline advised the clients how to represent themselves in a court proceeding, either affirmatively or in response to an action initiated by another party.
- In about one quarter of the cases (23 percent), the client was given advice on how to deal with a private party, such as a landlord, creditor, or ex-partner or spouse.
- In 10 percent of the cases, the client was advised how to deal with a government agency, either with regard to benefits or an investigation or enforcement action.
- Just fewer than 10 percent of the callers needed information only at the time of the call and were not given any additional instructions.
- One quarter of the cases (25 percent) involved referrals to another source of legal assistance (a lawyer referral service, another provider, a clinic, a court facilitator).
- Approximately one sixth of the cases (16 percent) involved referrals to social service agencies.
- In only 4 percent of the cases, the hotline performed a brief service (wrote a letter or made a phone call for the client or assisted in filling out a form).

Client Assessments. The Study reports outcomes in three different ways. One key outcome measure is the client response to the fixed-choice question, “Is your legal problem solved?” The responses broke down as follows:

Yes, completely	29%	**39%**
Yes, somewhat	10%	
Too soon to tell	8%	**12%**
Dropped it	4%	
No, not really	12%	**49%**
No, not at all	37%	

What happened? For each case, the two attorneys reviewed the case record and interview form, which included a verbatim transcription of the client's answer to the question, "In your own words, what would you say happened with your legal problem?" The results of this inquiry were as follows:

Needed info only	9%
Acted successfully	25%
Acted unsuccessfully	17%
Has not acted	21%
Pending	19%
Can't determine	9%

Excluding the pending and indeterminate cases, the same chart looks as follows:

Needed info only	13%	**48%**
Acted successfully	35%	
Acted unsuccessfully	23%	**23%**
Has not acted	29%	**29%**

Favorable/Unfavorable Assessment. The two attorneys also assessed these factual outcomes as either favorable or unfavorable, based on what the clients had been seeking when they called the hotline. The primary purpose of this level of analysis was to identify those cases with clear results, either favorable or unfavorable, that we could use to analyze the success of hotlines in various case types and for various types of clients. The results of this analysis were as follows:

Favorable	**52%**
Unfavorable	**48%**

For the cases that they deemed unfavorable, they also attempted to determine why the outcome was unfavorable:

- In 37 percent of the unfavorable cases, the client had not understood the advice or information.
- In 24 percent, the client had not acted out of fear, discouragement, lack of time or initiative, etc.
- In 13 percent, the client had been advised to obtain a private attorney and reported that they could not afford one or could not find one willing to take the case.
- In 17 percent, the client followed the hotline's advice and did not prevail.
- In 9 percent, there was some other reason for categorizing the outcome as unfavorable.

In short, the outcome results show that hotlines work well for some clients, enabling them to handle their legal problems to their satisfaction. However, for an equally large

group of clients, they are not effective, at least as they currently operate. Several additional observations about the study help put the work of hotlines into a broader delivery perspective.

A key finding of the Study is that most clients who do not obtain a favorable resolution of their problem had either not understood the hotline's advice correctly or had not followed it out of fear, discouragement, lack of initiative, lack of time, or a similar reason. Very few clients both understood and acted on the hotline's advice and still failed to resolve their problem. In addition, the Study shows that clients who reported receiving follow-up calls from the hotline (which were generally made by the hotline to obtain or provide additional information from or to the client, rather than simply to "check in") were more likely to be successful.

The Study also found that certain demographic categories of clients were much less likely to obtain favorable outcomes than others. Non-English speakers and those who report no income performed significantly worse than other demographic sub-groups. Similarly, clients who, when asked a specific question in the interview, reported having a less than 8th grade education or having problems with transportation, reading or comprehending English, scheduling (work, daycare, or other), stress or fear, or other personal factors affecting their ability to resolve their problems, were less likely to obtain a successful outcome.

The study also made an important observation about brief services. While the number of cases in the Study in which the hotline performed brief services on behalf of the client was small (only 4 percent of the whole), these cases were significantly more likely to have a favorable result. Moreover, the subjective impression of these cases by the two attorneys was that the ultimate result for clients who received brief services often was better than what the client could have accomplished on her own or, in a few cases, better than what the client had hoped for when calling the hotline.

The Study showed that certain types of hotline cases and services are more likely to result in successful outcomes. The most striking differences depended on who the opposing party was: cases in with the hotline provided advice on dealing directly with a landlord, creditor, ex-spouse or partner, or other private party, were much more likely to have a successful outcome than cases in which clients were advised about representing themselves in court or representing themselves or otherwise dealing with a government agency.

These differences were reflected in substantive case types, although none of the differences rose to the level of statistical significance. Consumer cases were most likely to be successful, while family cases had a lower level of success. (The results for housing cases were equivocal, in that they showed a high success rate, but the two attorneys believe that the sample was under-inclusive of people who had had an unsuccessful outcome and moved and could not be reached for an interview).

Brief Services Unit and Restructured Delivery System

A new approach that is being tested by AARP/Legal Counsel for the Elderly in Washington D.C. is the Brief Services Unit, a unit that would be devoted solely to providing brief services to clients that require more than phone contact but do not require the services of an attorney or paralegal for more extensive or systemic representation. This unit would do active intake, including periodic clinics in low-income neighborhoods. Non-attorney volunteers and paralegals would staff the Brief Services Unit with back-up support from attorneys housed in a central office and reachable by the Internet and phones. A wide range of services would be provided using a specially designed website. The paralegal and volunteers would navigate the website for the client and print out self-help information, which the paralegal could then explain to the client. The paralegal would be in contact with the central office staff when necessary to identify the client's legal issues and the website information that pertains to the legal issues. In addition, the website contains a document generator that allows the paralegal to prepare a wide range of legal documents and letters such as small claims complaints and letters to creditors advising that a client is judgment proof. Drafts of these documents are e-mailed to the central office for review and modification, and then e-mailed back to the branch office for the client's signature. The paralegal could also connect the client to the program's hotline if legal advice is required or to the intake unit via videoconferencing if full service is needed. Combined with more efficient hotlines and legal advice lines, the Brief Services Unit would allow programs to maximize efficiency and to better focus their resources on extended service cases and systemic advocacy.[21]

The Brief Services Unit would also follow-up on hotline cases that required services, as well as with cases closed by outreach or a pro se project. This would address one of the chief concerns raised in the Hotline Outcome Assessment Study described above. When a case is closed by hotlines, outreach, or pro se projects and action by the client is critical to the resolution of the matter, the case is transferred to the Brief Services Unit, which follows up with the client to determine whether the matter is resolved. If not, the Brief Services Unit can reopen and handle the case.

The Brief Services Unit is a key component of a new delivery system also being developed and tested in the District of Columbia by Wayne Moore and the AARP/Legal Counsel for the Elderly. Under this new system, clients would be matched to the least expensive delivery system that can resolve their case effectively and efficiently. As initially conceived, the delivery systems include community legal education outreach staff, legal hotlines, pro se workshops, volunteer lawyers' projects providing pro bono assistance, staff paralegals and attorneys providing extensive representation, and, finally, systemic advocacy provided by highly specialized attorneys. Under this system, the intake worker would send all clients to a hotline except those clients that clearly need more extensive representation. The hotline would provide advice and possibly refer the client to a brief services unit. Clients capable of resolving their own matters with a little help would be scheduled for a pro se workshop. All others would be referred

to the volunteer lawyer's project. Only those clients that cannot be handled by anyone else would be referred to the staff attorneys and paralegals.[22]

This innovative approach effectively turns the existing staff delivery system upside down. Instead of adding hotlines, brief services units, and pro bono programs onto the staff-based system, the new system would put the staff attorney units at the end of the process when no other unit can provide the level of representation that is needed. To illustrate the impact, pro bono units of programs often depend on program staff to refer cases to them and pro bono lawyers often receive cases that are not ideal for them. The use of the Brief Services Unit in this new structure allows this flow to be reversed so that the pro bono program gets the initial pick at the cases and the program staff receive those that cannot be referred. Moreover, the pro bono unit only refers extended service cases to pro bono lawyers because all brief services cases are resolved by the Brief Services Unit.[23]

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. Many U.S. civil legal aid programs are devoting substantial time and resources to efforts to address this issue, and most state courts systems are engaged in significant activities because of the large numbers of pro se litigants in their courts. A paper and presentation by Bonnie Hough will provide an example of a comprehensive state effort to address this problem.[24] All I will do here is provide a brief overview and highlight some of the legal aid program initiatives.

The United States does not have national data on self-help litigants. We do not know how many self-represented litigants appear in state and federal courts and on what types of matters, what impact self representation has had on the courts, the impact of self-help programs on the courts and on the litigants, and whether self-represented litigants who receive assistance are more likely to obtain a favorable court outcome. However, there have been a number of studies of specific courts in a number of states that have provided some information about these issues. A recent survey of the studies on self-represented litigants drew a number of conclusions that provide a framework for understanding what we know and do not know.[25] Some key findings were:

- Large numbers of self-represented litigants appear in domestic relations and domestic violence matters in many states. However, it is not clear that the percentage of cases in which they appear continue to increase. Nor does it appear that people appear to represent themselves in significant numbers in other types of general jurisdiction court cases. There is reason to believe that some of the more serious problems facing unrepresented people arise in the limited jurisdiction courts, such as landlord-tenant matters, where people have appeared without lawyers for years.

- What little empirical evidence exists suggests that some hearings and trials take longer when self-represented litigants are involved. Many take less. However, it also suggests that cases with self-represented litigants are far less likely to require hearings or trials than cases with lawyers, and that they proceed through the court much faster.
- Large numbers of people come to self-help programs and use their services. Most self-help programs serve only a fraction of self-represented litigants in their jurisdiction.
- There is some evidence—particularly in landlord-tenant and domestic violence cases—that self-help services give litigants a more realistic understanding of their legal situation and cause them to have more realistic expectations concerning the likely outcome of their case in court.
- There is no evidence that assisted litigants get their cases resolved more quickly or with fewer procedural steps than those self-represented litigants who do not get assistance. However, there is some evidence that self-represented litigants who have received assistance are better prepared in court, more self-confident, and better able to present their cases.
- There is little evidence on whether self-represented litigants who receive assistance are more likely to obtain a favorable court outcome.

Legal aid programs throughout the country operate self-help programs either 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 1999 directory listed over 300 legal aid programs with pro se initiatives.[26] 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, and through in-person assistance. Other programs do provide legal advice and often provide legal assistance in drafting documents and advice about how to pursue cases. Often, programs provide forms drafted for use by persons without legal training, both written and automated, including forms accessible through the Internet, and assistance in completing the forms.

An example of a highly innovative collaborative program is I-CAN!. The Legal Aid Society of Orange County (LASOC) and the Superior Court of Orange County, California, have joined together to implement an innovative solution using technology to overcome the procedural hurdles in the legal process. I-CAN!, the Interactive Community Assistance Network, is a free kiosk and web-based legal services system that educates users about the law, provides court tours, and steps them through completing and filing court forms.

Kiosks and workstations featuring I-CAN! are located at courthouses, legal aid offices, and community centers where lower-income people already go to initiate legal proceedings. This technology solution improves access to the judicial system by allowing litigants representing themselves to file more complete pleadings and helps prepare them for their court appearances.

I-CAN! generates the original forms to be filed with the court, as well as an additional copy for the user. It also generates a missing information page to remind users to fill in blank fields and an instruction page with general information about filing and serving the pleadings.

In addition to I-CAN, LSC has funded a number of pro se self-help projects including:[27]

- A project with DNA-People's Legal Services (the Navajo nation's legal aid program) to provide community legal education, pro se, and related information to a culturally diverse client population residing in remote, rural areas.
- A project in Montana to use videoconferencing to provide court assistance to pro se litigants in remote areas of the state.
- A project in Ohio to use a web-based court preparation and tutorial system to increase pro se resources for domestic violence victims.
- A project in Maryland to develop a web-based pro se litigant support system that will be at the state's court-funded assisted pro se programs and under which pro se litigants will access their own personal web pages and be able to maintain their own resource files.

LSC is also participating in the Self-Help Practitioners Resource Center, which is a national collaboration with the American Judicature Society, the California Administrative Office of the Courts, the National Center for State Courts, Pro Bono Net, the State Justice Institute, and Zorza Associates. Though it is still under construction, it will be located at www.probono.net/selfhjelp and provides resource materials for self-help program managers.

Ethical Developments

Two new ethical rules and a modification of an existing rule, that were adopted by ABA as part of its Ethics 2000 review of model ethical rules, encouraged and permitted the growth of hotlines and other limited legal assistance programs. The most significant addition was a new rule that specifically stated that lawyers could provide short-term limited legal assistance to clients, through a program sponsored by a court, bar association, or other nonprofit organization, without being subject to conflict of interest rules, including the rule imputing a conflict from one attorney to another in a law firm. The official comment to the rule expressly discussed "legal-advice hotlines, advice-only clinics or pr se counseling programs."[28] In addition, the rule on scope of representation was modified to make clear that the scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. However, the limitation must be reasonable under the circumstances. The official comment to the rule expressly states that a "lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation."[29]

The second new rule laid out the duties of a lawyer to a prospective client where there is no established lawyer-client relationship. This rule is intended to protect the communications between a prospective client and the lawyer under the confidentiality rules. It also provides guidance for addressing the potential conflicts of interest that may arise when the prospective client provides information to the lawyer that could be harmful to an existing client.[30] These circumstances often arise in hotlines conducted by civil legal aid lawyers.

States are now beginning to enact similar limited legal assistance rules. Recently, Maine, Washington, Colorado, Wyoming, and California have developed new ethical rules on unbundling of legal services. Often these rules go further than the ABA Model Rules, including those in Maine, Washington, Colorado, and California. For example, California recently enacted a new rule, effective on July 1, 2003, that permits an attorney to assist in the preparation of family law pleadings without disclosure if he or she is not the attorney of record. However, under the California rule, an attorney proving limited-scope representation must disclose his or her involvement if the litigant is requesting attorney fees to pay for those services, so that the court and opposing counsel can determine the appropriate fees. The California rule also provides procedures for counsel to be relieved of continuing representation upon completion of limited-scope representation and for objection from the client if he or she does not believe the attorney has completed the work they mutually agreed the attorney would do.[31]

OTHER DEVELOPMENTS AFFECTING CIVIL LEGAL AID

Pro Bono

The United States continues to expand pro bono efforts to engage more private attorneys and provide increasing levels of service. The Ethics 2000 Commission did not modify the pro bono rule to make it mandatory, as some on the Commission had proposed. Nor did the ABA require mandatory reporting, as a few states are doing. Many states, including, most recently, Colorado, Maryland, Washington, and Wyoming, have modified their Rules of Professional Conduct to promote pro bono service. In a number of states, including Arizona, California, Illinois, Indiana, Maine, Massachusetts, Maryland, Ohio, and Pennsylvania, the state supreme courts or chief justices have recently launched an initiative to promote pro bono service. Leaders in Ohio convened a statewide Pro Bono Conclave in December 2002 to plan a statewide coordinated pro bono campaign. In New York, the Deputy Chief Administrative Judge for Justice Initiatives convened four pro bono convocations across the state to develop a concrete plan for increasing pro bono. In Colorado, in conjunction with the creation of the new Access to Justice Commission, each judicial district will develop a committee to address access-to-justice issues, with a primary focus on pro bono representation. The Colorado Supreme Court will encourage local judges to participate on the judicial district committees.

Loan Repayment Assistance Programs

Many states are exploring or developing loan repayment assistance programs for public service attorneys. In Florida, Nebraska, and Rhode Island, legislation is pending to establish a state-funded program. The Texas Access to Justice Commission has implemented an interim, privately funded program. In 2002, the Florida and Maine Bar Foundations also implemented privately funded programs, while New York, Washington, and other states have launched efforts to promote the development of statewide programs.

Needs Studies

In 2002 and early 2003, Massachusetts, Missouri, New Jersey, and Washington completed legal needs studies. Studies are currently underway and likely to be completed soon in Connecticut, Montana, and Wyoming. Several other states, including New York, Tennessee, and Texas, are planning new studies. Indiana, Oregon and Vermont completed studies in 1999-2001. All current studies and information about pending studies are available on the SPAN Web site at www.nlada.org/Civil.

Law Schools

Law schools have also been engaged in a new focus on equal justice. In December 1999, the American Association of Law Schools (AALS) created the an equal justice project—Pursing Equal Justice: Law Schools and the Provision of Legal Services—to explore the roles that legal education can play in confronting the severe maldistribution of legal resources adversely affecting low-income persons, persons in capital cases, immigrants, and others. The centerpiece of the Project was a series of 19 Equal Justice Colloquia convened at law schools across the United States during the 2000-2001 academic year. These colloquia drew more than 2,000 attendees. This was followed by a Plenary Session at the 2001 AALS Annual Meeting. The results of this effort are catalogued in an AALS report in March of 2002, *AALS Equal Justice Project: Pursuing Equal Justice: Law Schools and the Provision of legal Services.* The report recommended a number of steps in two broad areas. First, to enhance AALS's commitments to promote equal justice activities through legal education, the report recommended: the establishment of equal justice fellows in the AALS national office; the creation of a permanent section within the AALS; the incorporation of equal justice issues in AALS professional development programs; and the development of incentives for law schools to promote equal justice teaching, scholarship, and service. Second, to promote equal justice work, the report recommended: creating national, regional, statewide, or citywide consortia to promote equal justice reform; encouraging law schools to prepare reports detailing the status of equal justice in each state; providing cutting-edge information and training to equal justice communities; promoting curriculum development to focus on equal justice; and expanding efforts to enable students to develop careers serving under-served clients.

ENSURING STATEWIDE COORDINATION AND SUPPORT FOR PROVIDERS OF CIVIL LEGAL ASSISTANCE

An integrated, comprehensive state system of civil legal assistance requires a systematic effort to ensure coordination and support for all legal providers and their partners and a central focus on statewide issues of importance to low-income persons, including representation before legislative and administrative bodies. This will require a system to coordinate advocacy in all state level legal forums on matters of consequence to low-income people.

The loss of over $10 million in state support funding as a result of the Congressional funding decision made in 1995 has taken a large toll on the state support structure that was previously in place. Many of the state support units and the regional training centers that were part of larger programs have been eliminated. A number of new entities that are generally severely under-funded and under-staffed have developed to carry on state level advocacy, particularly policy advocacy.[32] Most of the remaining freestanding state support programs have survived, although with a few exceptions, they have not made up the loss of LSC funds.[33]

In 2001, the Project for the Future of Equal Justice completed a study of state advocacy and support.[34] The survey revealed that since the demise of LSC funding:

(1) A few states have preserved and/or strengthened the capacity for state level advocacy, coordination, and information dissemination; increased training, and developed very comprehensive state support systems that carry out virtually all of the activities inquired about in the questionnaire.

(2) 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.

(3) In a number of states, some state support activities have been undertaken by new entities or carried on by former LSC-funded entities. What activities are provided vary widely and there is no generalization that can be made from the information we collected. In some states an existing entity continued but at lower funding. In other states, a new entity was created to replace an existing entity or to work alongside an existing entity. In still other states, entire new ways of providing state level advocacy, coordination, and support have emerged.

Since the study was completed an important new state legal advocacy entity, the Mississippi Center for Justice, has been created and funded. Headed by Martha Bergmark, the Center will work closely with civil rights and legal services organizations, community groups, private lawyers, and others in the state to recreate a capacity for systematic advocacy on behalf of low-income residents of Mississippi. In several other states without effective state level advocacy entities, Access to Justice leaders are, for the first time, working to develop the capacity for systematic advocacy.

Rebuilding a state support system will require new funds, contributions from existing providers of civil legal assistance and, in many states, substantial restructuring of the state justice legal services delivery system. However, over the last several years, there has been significant progress in developing effective state support systems in a number of states. In addition to coordination of advocacy, these new state support systems have undertaking the following activities.

Information dissemination

A critical role of state support efforts involves information dissemination. Several states are carrying out 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.

Several states have also created and maintained an efficient state-of-the-art statewide information dissemination network that includes at least five elements. First is statewide e-mail access for institutional providers of civil legal assistance, such as legal services programs, pro bono programs, law school clinical and related programs, specialized legal advocacy programs, and staff working in community-based organizations. Second is a statewide civil legal assistance website and other methods of communication to provide up-to-date information about state legislative, regulatory, and policy developments affecting low-income persons as well as other information relevant to the delivery of civil legal assistance. With the help of the LSC Technology Initiative Grants, most states should have a strong statewide web presence by 2003. Third, states have established statewide electronic library of briefs, forms, best practices, and proprietary texts and client information materials, which are accessible by all institutional providers and private attorneys providing civil legal assistance. Fourth, some states have developed a coordinated statewide research strategy integrating Internet usage, online services, proprietary sources, and other resources. Finally, a few states have developed a coordinated data management systems to facilitate information sharing and case file transfers.

In addition, many states are convening regular statewide meetings of, or communications 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, problems, subject areas, client constituencies, advocacy techniques, and strategies to make the most effective and efficient use of resources.

Coordinated statewide education and training activities

A number of states have made education and training activities available for all individual and institutional providers within the state to develop expertise in all major areas of legal services practice within a state; to update advocates on new developments and emerging trends in law and policy affecting low income persons; to

ensure the use of new strategies, tools, skills, and techniques of advocacy; to develop managers and new leaders, and to maximize opportunities for professional staff development for all experience levels of staff.

A few states are experimenting with innovative training activities that are carried out both at the workplace and outside of the workplace to ensure maximum efficiency and effectiveness. State support entities in a few states are also providing assistance to local providers to ensure development of appropriate local training and education activities and materials. Some states are coordinating with continuing legal education programs offered by state or local bar associations or other entities. Finally, there is a growing recognition among legal providers that they must provide opportunities for staff to participate in national and regional training and collaborations where relevant to civil legal assistance activities of the state.

Coordinated statewide civil legal assistance liaison

A number of states are coordinating statewide civil legal assistance liaison with all major institutions affecting or serving low-income people in legal matters, including state, local, and federal courts; administrative agencies; legislative bodies; alternative dispute resolution bodies; and other public or private entities providing legal information, advice, or representation.

FUNDING

While civil legal assistance in the United States has continued and evolved in the face of reduced federal funding, without additional 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;
- 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 a few million dollars to over $360 million.[35] Until recently, this increase has been primarily through IOLTA funding that has now been implemented in every state. The U.S. Supreme Court recently upheld the constitutionality of the IOLTA program in a narrow 5-4 decision, *Brown v. Legal Foundation of Washington,* 123 S. Ct. 1406 (March 26, 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 have a pecuniary loss. Now that this significant threat is over for

the time being, we are likely to see new initiatives to expand revenue from IOLTA programs in many states, although it is not yet clear whether they will be successful in raising additional IOLTA funds. These new initiatives are counterbalanced by the decreasing funds from IOLTA programs because of lower interest rates.

Within the last five 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. In addition, there has 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.[36]

For example, during 2002, the Florida legislature enacted its first-ever appropriation for legal services. It provided $2 million for legal aid in family law cases, including related problems involving juvenile law, government benefits, domestic violence, elder and child abuse, and immigration. In Virginia, the legislature increased the court filing fee add-on from $2 to $3, generating increased funding of almost $1 million annually. In Pennsylvania, the state legislature approved a $10 filing fee surcharge to be allocated to court improvement and legal services. In the early years, the court will get more of the funds for one-time technology improvements. The legal aid share begins at $1 and will rise to $2 over a four-year period. It is estimated that legal aid programs will receive $3.8 million in year one; $5.7 million in years two and three; and $7.6 million in years four and five. Despite serious budget problems in the state, civil legal assistance programs in Pennsylvania also received $2 million in one-time money for "systems improvement." In Nebraska, the legislature increased the existing filing fee surcharge for legal services, a measure that will increase funding from this source from $750,000 to an estimated $1.5 million annually.

During 2003, even though the dismal economy and the resulting budgetary constraints faced by state legislatures has led to concerns and a focus on maintaining current funding levels, leaders in some states are mounting strong campaigns to obtain or increase their state funding. In Missouri, Oregon, and Washington, efforts are underway to seek increases in filing fee surcharges. In Delaware, Florida, Louisiana, Maryland, and Texas, advocates are working to obtain or increase state appropriations. Utah achieved a significant early victory in February in which the state legislature approved $100,000 in general funds annually to the Community Legal Center to provide assistance in family law and domestic violence cases. Another major early victory took place in Kentucky, in March, when the state legislature voted to increase the state's current filing fee surcharge to fund legal aid, a measure projected to increase funding from this source from $1.3 million to approximately $2.6 million annually. The victory is particularly significant in view of Kentucky's serious state budget crisis.

Even though 34 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 also be essential for two reasons. First, civil legal services is a federal responsibility and LSC continues to be the primary single funder and standard setter. Second, there are many parts of the country—the South, Southwest, and Rocky Mountain states—that have not yet developed sufficient non-LSC funds to operate civil legal assistance, including pro bono programs, without federal support. Abandoning a federal commitment to civil legal assistance would mean that in many states—and thus in the nation as a whole—the principle of equal justice would be a fiction.

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,[37] the political leadership of the U.S. remains divided about whether there should be a federal program, and, if there should be one, how it should be structured. Moreover, there is a new Board of Directors of the Legal Services Corporation, which includes several members who may be hostile to LSC and federal government funding for civil legal aid. For example, the new Vice Chair of the Board is a leader in the conservative Federalist Society. Her confirmation was held up in Congress and she only joined the board because of a recess appointment made by the President.

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). In 2002, LSC did obtain a small increase in funding of $9,500,000. This happened in response to a major lobbying effort to assist the LSC-funded programs in 26 states and Puerto Rico that faced losses in LSC funds because of funding redistribution among the states due to adjustments required by law that were based on the results of the 2000 census. However, the political reality is that LSC is not likely to obtain significant funding increases during the current Congress.

In recognition of this political reality, the Project for the Future of Equal Justice has begun a new resource development initiative whose ultimate objective is to build a base of stronger public support through an aggressive media campaign that will be carried out on the local and state level by those concerned with improving civil legal assistance to low-income persons. Based on the findings from a series of focus groups and a national poll on civil legal assistance, the Project and its consultants are developing a series of media efforts for use by state and local groups that will begin to be used shortly. For example, the Project has been working with Access to Justice leaders in three pilot states, Iowa, Pennsylvania, and Texas, to develop a statewide communications plan to increase the visibility of civil legal assistance and educate opinion leaders about its importance. Several other states, including California and Maine, are working with prominent local public relations firms to develop their own state campaigns, building on the research and message materials prepared by the Project.

There are also new efforts to create a right to counsel in civil cases. While it is unlikely that such a right will emerge at the federal level because of the current and likely future make-up of the U.S. Supreme Court, there are some new emerging efforts in Washington and Maryland, among other states, to develop a civil right to counsel at the state level through state court litigation. In Maryland, a former state Attorney General is representing the defendant in *Frase v. Barnhart* now pending before the Maryland Court of Appeals (the highest court in Maryland). This case raises the issue of an indigent defendant's right to counsel in a contested child custody matter under the Maryland Declaration of Rights, the Maryland constitution. The case will be heard before the Maryland Court of Appeals this September with briefs due May 28, 2003. The Maryland State Bar Association (MSBA) will be participating in this case as amicus curiae, with separate amicus briefs to be filed by the Legal Aid Bureau (joined by other providers) and the University of Baltimore Family Law Clinic.

In Washington state, the Northwest Justice Project and a private law firm are attempting to establish a right to civil counsel in *Smith v. City of Moses Lake*. In this case, a 79-year-old mentally ill man whose only income was Social Security disability benefits was civilly prosecuted by a city in order to remove him from and demolish his home. The plaintiff is asserting that the failure to provide civil counsel in this case violates: (1) the federal constitutional provisions on due process; (2) the state constitution which requires appointment of counsel when a fundamental liberty interest is at stake; and (3) the Washington law against discrimination on the grounds that counsel should have been appointed as a reasonable accommodation of the man's disabling mental illness. The case is pending in the Washington Court of Appeals.

In time, these and other new efforts now beginning will increase support for civil legal aid. [38]

CONCLUSION

Civil legal assistance in the United States has, over the last 37 years, developed from a haphazard program with limited, virtually all private funding into a significant $926 million institution. The legal aid program has a long history of effective representation of low-income persons and has achieved a number of significant results for them from the courts, administrative agencies, and legislative bodies. These accomplishments do not suggest that the civil legal assistance system should remain static. On the contrary, considerable change is needed. The civil legal assistance community has begun a long overdue transformation of its structure and work into a new and more effective civil legal assistance system. Even if Congress had not imposed restrictions or reduced funding in 1996, the legal services community needed to create in each state a comprehensive, integrated statewide system of civil legal assistance. This fundamental restructuring was necessary in order to obtain critical new funding, to achieve increased access for low-income people, and to improve the quality and effectiveness of the providers of civil

legal assistance. It was also necessary in order to build a much broader base of public support for civil legal assistance.

Moreover, even if LSC funding for support had continued, the civil legal assistance community needed to reshape and revitalize the system of support, coordination, and advocacy at the state, regional, and national levels. That community needed a new system that would ensure that low-income persons were represented in all relevant forums where decisions affecting their lives are made, that advocacy was effectively coordinated within and among states, and that all advocates participating in the system had access to information, training, and the assistance they need to provide high-quality and effective legal advice and representation to the poor.

The directions for the future are clear. The civil legal assistance community must develop a much stronger base of public support for civil legal aid within the general public and among key leaders in local communities. Moreover, that community must continue to move forward to create an integrated, comprehensive statewide system. States that have not begun serious efforts to change and create this new system must begin to do so. And the civil legal assistance community must continue and substantially increase its efforts to create a new and more effective system of advocacy, coordination, and support at the state and national level.

The overarching goal has been and will continue to be equal justice for all. While the United States has a long distance to go to reach that goal, it is moving down the path that will some day achieve lead to the achievement of that goal.

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Endnotes

[1]See Houseman, A., "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 Summer 2001 Issue of the *Management Information Exchange Journal.*

[2] This information was provided by Reginald Haley of LSC.

[3] Legal Services Corporation, *Background Information and Talking Points, Promoting Pro Bono* (1999).

[4] 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.

[5] Aaron Bergmark prepared this chart for NLADA and CLASP.

[6] 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).

[7] This chart was prepared for CLASP by Nora S. Houseman based on data from Earl Johnson (note 6) and information provided by the Organization for Economic Cooperation and Development.

[8] State-level partnerships among the bar, the courts, legal services providers, and other stakeholders to improve and expand access to civil justice are flourishing across the country. Over a dozen states have an active Access to Justice Commission or a similar entity—a formal state-level body dedicated to expanding and improving civil legal assistance in the state, composed of appointed representatives of the bar, the judiciary, and providers. Some include other stakeholders as well: legislators, state officials, clients, business and labor leaders, and representatives of law schools, community agencies, and faith-based organizations. Typically these bodies were created by state Supreme Court rule.

At least a dozen states have a committee of the state bar or bar association that is charged with a broad Access to Justice function and that includes representatives of the judiciary, providers, and other stakeholders, in addition to bar leaders. Another group of states have a structure of active committees or other entities made up of representatives of the bar, the judiciary, providers, and other stakeholders dedicated to implementing recommendations from a formal Access to Justice Commission or similar body that ceased to exist with the issuance of its report. In some states, the leading role in expanding access to justice is played by a state planning steering committee made up of representatives of legal aid providers, the state bar or bar association, the state bar foundation, and other key stakeholders. Some groups of this type have focused their efforts to date primarily on program configuration issues, but are now poised to take on a broader access to justice function. Some are fully integrated with the activities of a separate Access to Justice Commission or similar body. Others collaborate on a less formal basis with state bar committees and the like.

In several states a state funding entity or the state bar foundation plays a leading role in planning and coordinating access to justice efforts. The boards of such entities frequently include representatives appointed by the same institutions that would appoint the members of an Access to Justice Commission, such as the state Supreme Court, the state legislature, and the state bar or bar association.

Fewer than 10 states do not have a formal access to justice structure of some kind. These include a few states with a high level of resources for civil legal assistance where the access to justice function is carried out effectively through an informal structure.

Whether or not a formal access to justice structure exists, virtually every state has initiatives under way involving partnerships among the bar, the courts, legal services providers, and other stakeholders. Many have already achieved successes in improving and expanding access to civil justice. Others have just been launched.

[9] A detailed report on state planning from the LSC perspective is *Building State Justice Communities: A State Planning Report from the Legal Services Corporation* (March 2001) available on the LSC web site.

[10] *The Path to Equal Justice: A Five-Year Status Report on Access to Justice in California* (California Commission on Access to Justice, October 2002).

[11] See *Recent Developments in Civil Legal Aid in the United States*, (May 1999 and 2001).

[12] See Houseman, A., "Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward," *Fordham Urban Law Journal*, Vol. XXIX, p. 1213, (February 2002); "Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All," *Yale Law and Policy Review*, Vol. 17, p. 369 (1998).

[13] See, e.g., *Presentation of Randi Youells, LSC Vice President for Programs for the Ontario Legal Aid Speaker Series*, Legal Services Corporation, (September 12, 2002), available on the LSC website.

[14] *Equal Justice and the Digital Revolution* was published by the Project for the Future of Equal Justice in 2002 and will be available at the ILAG conference.

[15] See John Tull, "Technology and the Future of Legal Services," *MIE Journal* (Summer 2000).

[16] According to Glenn Rawdon of the LSC Technology Initiative Grant program 47 states and territories have a statewide website under development.

[17] A detailed description of these grants and the lessons learned can be found in a publication prepared by Bristow Hardin, a consultant to the Legal Services Corporation, Using Technology Innovations to Strengthen the Delivery Systems of State Justice Communities, (2002), available on the LSC website.
[18] 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.

[19] The complete Hotline Outcomes Assessment Study can be downloaded from the websites of NLADA (www.nlada.org, click on Civil Resources and Project for the Future of Equal Justice, or go directly to www.nlada.org/Civil/Civil_EJN) and CLASP (www.clasp.org, under publications). The Study was conducted by an independent research firm, the Center for Policy Research, located in Denver, Colorado. It was commissioned by the Project for the Future of Equal Justice and funded by the Open Society Institute.
[20] The five sites were the Center for Arkansas Legal Services; the Legal Aid Society of Orange County; Coordinated Advice and Referral Program for Legal Services (CARPLS), Chicago; the Legal Aid and Defender Association of Detroit; and Coordinated Legal Education, Advice and Referral (CLEAR), Washington State. The clients had all consented to participate in the Study.
[21] Attached are two articles by Wayne Moore which more fully explain the Brief Services Unit and report on the results of the first year of its operation.
[22] See Wayne Moore, *The Future of the Delivery of Legal Services to Low-Income People,* XVII *Management Information Exchange Journal* 6 (Summer 2002).
[23] See Attachment Three for more elaborate discussion of this innovation.
[24] A recent publication by Richard Zorza, *The Self-Help Friendly Court: Designed from the Ground Up to Work for People Without Lawyers*, National Center for State Courts, (2002), provides a guide to a fundamental redesign of courts, including every aspect from building design to judicial training to technology to the role of clerks. According to the introduction, the book offers "a comprehensive vision, a vision of how a courthouse, courtroom, court team, and court processes could be planned together from the ground up to provide simple, open and affordable justice to all." (p.11).
[25] John M. Graecen, *Self Represented Litigants and Court and Legal Services Reponses to Their Needs: What We Know*, paper prepared for the Center for Families, Children & the Courts, California Administrative Office of the Courts, (July 20, 2002).
[26] *Pro Se Legal Services Directory*, AARP Legal Advocacy Group (September 1999).
[27] These examples are discussed in a paper written by Bristow Hardin a consultant to LSC, *Using Technology Innovations to Strengthen the Delivery Systems of State Justice Communities: Technology Initiative Grant Program Status Report.*
[28] See Rule 6.5 of the ABA Model Rules of Professional Conduct. The rule provides as follows:

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

The official comment points out:

Legal services organizations, courts, and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist people in addressing their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are

normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[29] Rule 1.2, Scope of Representation, provides in part (c): "A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent." The quote in the text is taken from Comment (7).

[30] See Rule 1.18: Duties To Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee there from; and

(ii) written notice is promptly given to the prospective client.

[31] See California Rules of Court (effective July 1, 2003), Rule 5.170 (Nondisclosure of attorney assistance in preparation of court documents) and Rule 5.171 (application to be relieved as counsel upon completion of limited scope representation).

[32]For example the William E. Morris Institute for Justice (Arizona); Colorado Center for Law and Policy and the Colorado Fiscal Policy Institute; National Center on Poverty Law in Illinois; Project Safety Net in Kentucky; Maine Equal Justice Partners and Maine Center for Economic Policy; Legal Services Advocacy Project (Minnesota); Center for Civil Justice in Saginaw, Michigan; Nebraska Appleseed Center; New Mexico Center on Law and Poverty; North Carolina Justice and Community Development Center; Oregon Center for Public Policy; South Carolina Appleseed Legal Justice Center; and the Tennessee Justice Center.

[33]These include: Western Center for Law and Poverty; Massachusetts Law Reform; Legal Services of New Jersey; Greater Upstate Law Project; Texas Legal Services Center; Ohio State Legal Services; Florida Legal Services; and Michigan Legal Services.

[34] 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 Center for Law and Social Policy, (2001).

[35]This 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 do not have to report to any central funding source, unlike LSC-funded programs.

[36]This newly emerging system of delivery must be put into context. State funding is no more secure than federal funding and the debate over whether there should be governmental funding for civil legal assistance is not limited to Congress. Many of the same debates are occurring at the state level. For example, in 2000, 2001, and 2002, efforts were made in Virginia to impose the LSC restriction on state funds.

[37] See John McKay, "Federally Funded Legal Services: A New Vision of Equal Justice Under Law," 68 *Tenn. L. Rev*. 101, 110-111, (Fall 2000).
[38] See Belden, Russonello & Stewart. *A National Message for Civil Legal Aid*, Prepared for the Open Society Institute, (November 2000).