

CIVIL LEGAL AID IN THE UNITED STATES

AN UPDATE FOR 2015

ALAN W. HOUSEMAN, PRESIDENT

CONSORTIUM FOR THE NATIONAL EQUAL JUSTICE LIBRARY

May 14, 2015

The National Report for the United States (US) consists of two parts: Part I is an update to previous national reports covering the period from June of 2013 through April of 2015. Part II is a longer Background Part that includes details about the US system.

PART I – AN UPDATE

Civil legal aid in the United States is provided by a large number of separate and independent primarily staff-based service providers funded by a variety of sources. The civil legal aid system is very fragmented and very unequal in funding both across states and within states. Current overall funding is approximately \$1.39 billion. The largest element of the civil legal aid system is comprised of the 134 programs that are funded and monitored by the Legal Services Corporation (LSC). LSC is also the largest single funder, but overall, more funds come from states and IOLTA programs than LSC. In addition, there are a variety of other sources, including local governments, other federal government sources, the private bar, United Way, and private foundations.

OVERVIEW

Funding for LSC has gone up slightly this year over the last two years, but LSC continues to face funding reductions and even another existential threat to its existence. LSC funding reached a high of \$420 million in 2010 but has now been reduced to \$375 million in 2015. The Congresses elected in 2010, 2012 and most recently in 2014 have significantly changed the possibilities for increased funding and major new advances. On the other hand, state funding has improved. At the state level, more state funds are available for civil legal aid at the beginning of 2015. This is because state budgets have recovered from the great recession although IOLTA revenues continue to be lower than 7 years ago because of interest rates reductions by the Federal Reserve and the substantial slowdown in housing purchases and other business activity.

President Obama is fully committed to expanding civil legal aid on a federal level and his administration is sympathetic to rebuilding the civil legal aid delivery system and its long

neglected infrastructure. The Obama Administration continues to submit budget proposals that include increases in funding for the Legal Services Corporation (LSC) and the elimination of several key restrictions on what LSC-funded programs can do. The board appointed by President Obama and the new LSC President remain. In addition, the initiative on Access to Justice (ATJ) at the Department of Justice continues. Both in 2014 and in 2015, the White House also held conferences on LSC at which the Attorney General among others spoke. LSC also held a three day 40th Anniversary Celebration in September of 2014 which included talks by the Vice President, Hillary Clinton, two Supreme Court Justices, and two Senators.

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

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

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

The United States has made considerable progress in meeting the first of these two objectives (See Part II at pages 30-31). However, progress has been slow in meeting the second. In most areas of the United States, there is not enough funding or pro bono assistance available to provide low-income persons who need it with legal advice, brief service, and most particularly extended representation. As a result, many low-income persons who are eligible for civil legal assistance are unable to obtain it.

LEGAL SERVICES CORPORATION

In 1974, Congress passed and the President signed the Legal Services Corporation Act. LSC is not a federal agency, nor a government controlled corporation, but a nonprofit corporation established with the powers of a District of Columbia corporation and those provided by the LSC Act. The President of the United States appoints a bipartisan eleven-member board that must be confirmed by the Senate. Board members serve in a volunteer capacity. Unlike many federal agencies or government corporations, the LSC president administers the Corporation, making all grants and contracts. LSC funds 134 grantees that operate local, regional or statewide civil legal assistance programs. Generally, one field program provides legal services in a designated geographic area. In addition, LSC, with Congressional approval, has earmarked funds for migrant and Native American grants for specialized programs that deliver services to these populations. All legal services programs are private, nonprofit entities, independent of LSC.

Funding

Currently for 2015, LSC is funded at \$375 million. It was funded at \$365 million in 2014. It was funded at \$420 million in 2010, the highest funding ever received. Beginning in 2012, Congress, over the objections of LSC and the Administration, reduced funding significantly to \$348 million. See page 38 for details about LSC funding over the years. If LSC funding would have kept up with inflation since its peak in 1980, today LSC would be funded at \$871 million.

LSC has requested \$486.9 million for 2016. The Administration has indicated its support for increased funding for LSC when it recommended that Congress appropriate \$452 million for LSC for FY 2016. This is an increase of \$22 million over its FY 2015 request and a \$77 million increase over current funding. Technically, LSC submits its budget directly to Congress. The LSC Budget is not a part of the Administration's budget and LSC does not go through all of the steps and review of other federal Departments and Agencies that are part of the President's budget. However, the President's recommendation is often very important to the Congress. Thus, President Obama's recommendation of \$452 million signals a high level of support for LSC by the Administration and in many respects frames the playing field for Congressional action. The Administration also recommends eliminating the current prohibition on class action lawsuits and limiting the 1996 restrictions only to LSC funds (i.e., getting rid of the non-LSC funds restriction).

The fight over the very survival of LSC may hit up again in 2015. The House Budget Resolution (H Con Res 27) proposes to eliminate LSC and argues that it is the duty of state and local governments to provide civil legal aid and not the duty of the federal government.

Clients Served

According to 2013 data reported to LSC (the last available data), LSC programs provided services in 758,689 cases. The majority of services provided were counsel and advice (60.4%) and brief service (16.1%). Cases involving an administrative agency decision were 3.4% and court decisions were 12.9%. The largest category of cases was family law cases (32.9%) following by housing (27.4%), income maintenance (12.1%) and consumer (11.0%).

Eligibility

LSC-funded programs may only use LSC funds to provide legal assistance to clients who meet specific financial eligibility guidelines. The basic rule is that LSC programs serve clients at or under 125% of the Poverty Guidelines, or \$30,313 for a family of 4. LSC programs set their own asset ceilings for individual clients. LSC-funded programs are also permitted to provide legal assistance to organizations of low-income persons, such as welfare rights or tenant organizations. LSC funded programs cannot serve all aliens nor most prisoners.

Regulations and Restrictions

Congress had added no new restrictions in LSC funded programs. No states added new restrictions on their funding. The current restrictions are described in Part II at page 34.

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

Technology Initiatives

The 2013 ILAG report described the technology summit that LSC had convened. In December of 2014, LSC issued its report on the summit.¹ LSC set as its mission statement to provide some form of assistance to 100% of persons otherwise unable to afford an attorney for dealing with essential legal needs. This involved five main areas:

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

To carry this vision out, LSC funded:

- Triage pilots in New Mexico, Montana and Maine.
- The LawHelp Interactive document assembly project (described at page 20).
- Mobile-friendly website redesigns in Louisiana, text messaging reminders in Virginia and redesign of A2J Author tool for mobile use.

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

2014 TIG Grants: On October 17 2014, LSC released the list of 38 projects nationwide that will receive Technology Initiative Grant (TIG) funding. The grants will support a variety of initiatives, including user-friendly online tools for women veterans, mobile delivery of legal

¹ <http://tig.lsc.gov/resources/grantee-resources/report-summit-use-technology-expand-access-justice>

services for clients using text messaging, and videoconferencing technology that reaches low-income clients in rural areas. Since its start in 2000, LSC's TIG program has funded 570 technology projects totaling more than \$46 million. With this funding, legal aid organizations have built a network of websites serving both attorneys and clients nationwide, developed easy-to-use online forms, incorporated video technology into service delivery, and enhanced support for pro bono lawyers.

2015 TIG Conference: LSC held its annual Technology Initiative Grants (TIG) Conference on January 14 - 16, 2015 in San Antonio, TX. This year's conference drew over 290 attendees from 42 states, one territory, and four countries. The 2015 conference broke TIG's attendance record, set last year, with a 37% increase in attendance. The conference once again brought together LSC grantees and members of the technology community to explore effective uses of technology in legal aid and to cultivate project ideas that could lead to successful TIG applications. See Roger Smith summary in the ILAG Newsletter for a longer description.

Outcome and Performance Measures

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

In 2012, LSC applied for and received a grant of \$276,000 from the Public Welfare Foundation (PWF) to conduct a project designed to improve LSC's data collection and reporting mechanisms and to educate LSC grantees about collection, analysis, and use of data. The data collection and analysis project has three major objectives:

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

Working with a data collection consulting firm and an Advisory Committee of legal aid directors, LSC staff and others (the author is a member), the project will soon finalize an extensive toolkit to work with LSC program case management systems to produce outcome and other relevant data to help programs measure outcomes and performance.

White House Conferences

Since the last National Report, there were two White House Conferences on Access to Justice.

The first included United States Solicitor General Donald Verrilli, Associate Attorney General Tony West, White House Counsel Kathryn Ruemmler, and other leaders of the legal community gathered in Washington, DC on April 8 for the "White House Forum on Increasing Access to Justice," the third such event LSC has co-hosted with the White House. Tina Tchen, Chief of Staff to the First Lady; James Silkenat, ABA President; and Glenn Rawdon, LSC Program Counsel, also spoke at the event. There was also a panel discussion on Public-Private Partnerships which featured three LSC program directors, the General Counsels of Merck Sharp & Dohme and 3M Company and pro bono counsels at DLA Piper and Lowenstein Sandler.

The fourth White House Forum on Increasing Access to Justice on April 14, 2015 featured Attorney General Eric Holder, the President of the American Bar Association, the White House Counsel and three panel presentations. The first on the importance of access to justice to the judiciary featured Chief Justices of Texas, New York, California, Florida, Kentucky, Tennessee and the United States Court of Appeals of the Seventh Circuit and a federal judge from the Eastern District of Michigan. The second panel focused on technology innovations in access to justice and consisted of presentations by five innovators including two legal aid leaders, a law student, a technology consultant and a project manager of Michigan Legal Help Program. The third panel consisted of seven business leaders and focused the perspective of the business community on Access to Justice. The panelists were General Counsel and Vice Presidents of Hewlett-Packard, General Electric, Alcoa, Home Depot, Yum Brands, 3M and CBS. Professor David Wilkins of Harvard Law School ended the conference.

LSC 40th Anniversary Event

LSC marked its 40th anniversary with a conference that brought together a wide range of legal, government, business, academic, and philanthropic leaders to shine a light on the challenges and opportunities facing civil legal aid in America. LSC hosted the conference September 14-16 at the Omni Shoreham Hotel in Washington, DC. Vice President Joe Biden, former Secretary of State and former LSC Board Chair Hillary Clinton, U.S. Supreme Court Justices Elena Kagan and Antonin Scalia, U.S. Attorney General Eric Holder, and Senators Ben Cardin and Tim Kaine joined more than 100 speakers at the conference.

In addition to speeches, the conference featured a dozen panel discussions on a wide variety of topics, including "Expanding and Diversifying Sources of Funding," "Stimulating Innovation to Increase Access to Justice," "The Impact of Pro Bono Lawyers on the Justice Gap," and "The Importance of Access to Justice and the Rule of Law to American Business." The participation of CEOs such as David Rubenstein of the Carlyle Group, Ken Frazier of Merck, and Arne Sorenson of Marriott International provided new perspectives on the importance of access to justice.

Pro Bono Innovation Fund

At the LSC 40th Anniversary celebration, LSC President Jim Sandman presented the first Pro Bono Innovation Fund grants to 11 LSC grantee executive directors. These competitive grants

support projects that develop replicable innovations in pro bono services for low-income clients. Some of the pro bono projects will use emerging technology to reach rural populations. Others will provide training, materials, and support for pro bono lawyers. All the projects seek to engage and recruit pro bono lawyers and other volunteers to leverage LSC's federal funding and increase the resources available to low-income clients. The creation of the fund was recommended by LSC's Pro Bono Task Force, and Congress allocated \$2.5 million in the FY2014 budget to fund the program.

OTHER CIVIL LEGAL AID DEVELOPMENTS

Funding

While LSC remains the single largest funder, funding for civil legal aid is from a variety of sources with state sources being the largest. It is not accurate to say that civil legal aid funding is down, even though LSC funds have been reduced since their high in 2010. The funding in 2013 is set out below.

General Revenue and Filing Fees	\$265,396,000
IOLTA	\$74,497,000
Other Public Funds	\$322,771,000
Legal Community/Bar	\$95,793,000
CY Press	\$63,086,000
Foundation/Corporation Grants	\$130,541,000
Other Strategies (United Way, Attys Fees)	\$111,521,000
Legal Services Corporation	\$322,049,000

Even though IOLTA funds are down from their peak in 2006, state funds continue to grow. In 2014, state legislative funding increased in fourteen states for a total increase of \$25,000,000.

Pro Bono

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

While there is no reliable data about how much pro bono activity is actually going on, we do have some data about who is participating and what they are doing. The American Bar Association's Standing Committee on Pro Bono and Public Services issued a report—Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers (March 2013)—which reports on a 2012 survey completed by 2876 lawyers throughout the country in private practice, corporate counsel offices, government, and academic settings.² The study found that 63% of respondents worked on matters that address the everyday legal problems of people in poverty and 36% of the lawyers who responded met the ABA's aspirational goal of providing at least 50 hours of free pro bono services to persons of limited means.

The Legal Services Corporation has been a leader in encouraging pro bono. Since 1981, LSC-funded programs have had to provide a portion of their funding for private attorney involvement. Currently, each LSC-funded provider must expend 12.5% of its LSC funding for private attorney involvement.³ Of the 758,689 cases closed by LSC program in 2013, the most recent figures available, 96,427 were done by private attorneys. Of these cases, 79,517 were done by pro bono attorneys and 16,910 by contract or Judicare attorneys.

Medical Legal Partnerships

Medical-legal Partnerships (MLP) integrate lawyers into the health care setting to help patients navigate the complex legal systems that often hold solutions to many social determinants of health. MLPs are active in 262 hospitals in 38 states. Over half of LSC-funded civil legal aid programs have a medical-legal partnership. MLPs assist low-income and other vulnerable patients with receipt of public benefits, food security concerns, disability issues, housing problems, special education advocacy, employment instability, immigration issues, family law issues and other problems that affect individual and community health and require legal remedies. MLPs also train clinicians and other healthcare team members in the social determinants of health and work to identify both health-harming civil legal needs and their related policy solutions.

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

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

²

http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lc_pb_Supporting_Justice_III_final.authcheckdam.pdf

³ The requirement is imposed by LSC through its regulatory authority. See 45 CFR 1614.

A series of studies have shown the significant impact of MLPs. A recent comprehensive review of the literature on medical-legal partnerships has found that MLP programs have significant anti-poverty effects.⁴

ACCESS TO JUSTICE DEVELOPMENTS

Chief Justice Lippman of the New York Court of Appeals (highest court in NY State) has been a leader in attempting to improve access to justice in NY and around the country. Under his leadership, over \$150 million has been invested in civil legal aid programs in NY over the last 4 years. This year in his report State of the Judiciary 2015)⁵ he set out a clarion call about access to justice that is worth including in this report:

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

Department of Justice Access to Justice Initiative

Since its launch in 2010, the Access to Justice Initiative (ATJ) has worked to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. The Initiative's staff works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance, and to improve the justice delivery systems that serve people who are unable to afford lawyers. The Attorney General appointed Lisa Foster as the new director in 2014. Lisa has served as a California Superior Court Judge, a legal aid lawyer, law professor, private lawyer and judicial fellow.

One of the most effective ongoing initiatives involves the Legal Aid Interagency Roundtable or “LAIR” which was conceived of and staffed by ATJ. The LAIR, which includes 17 participating

⁴ Tishra Beeson et al, “Making the Case for Medical-Legal Partnerships: A Review of the Evidence,” February 2013 National Center for Medical-Legal Partnership, Department of Health Policy, School of Public Health and Health Services, George Washington University February 2013, available at: <http://legalaiddresearch.files.wordpress.com/2013/04/medical-legal-partnership-literature-review-february-2013.pdf>.

⁵ <http://www.nycourts.gov/ctapps/news/SOJ-2015.pdf>

federal agencies, works to raise awareness about the profound impact legal aid programs can have in advancing federal efforts to promote access to health and housing, education and employment, family stability and community well-being. The goal is to maximize federal program effectiveness by integrating legal aid providers as partners, grantees or sub-grantees in federal safety-net programs when doing so can improve outcomes. A sampling of LAIR activities include:

- Preventing homelessness among veterans. Working with ATJ, VA's Supportive Services for Veterans Families program staff conducted outreach to grantees and legal aid programs about the importance of providing legal aid to preventing veteran's homelessness. More recently, the Department of Labor added language about legal assistance in their Homeless Female Veterans and Veterans with Families Program.
- Ensuring access to healthcare. As millions of Americans become eligible for new, affordable health insurance options, HHS Center for Medicare and Medicaid Services (CMS) has taken several steps that recognize legal aid programs' extensive experience explaining government programs and helping eligible people successfully secure benefits, including participating in a National Legal Aid & Defender Association teleconference to deepen outreach to the legal aid community about the HHS Connecting Kids to Coverage grant and posting a fact sheet outlining Ten Ways Legal Aid can Promote New Health Insurance Opportunities.
- Providing citizenship assistance. ATJ worked with U.S. Citizenship and Immigration Services staff to expand outreach about a Department of Homeland Security (DHS) grant opportunity designed to promote immigrant civic integration and prepare permanent residents for citizenship, including a NLADA-hosted conference call. Recognizing the role legal services can play in meeting the grant's objectives, DHS for the first time allowed nonprofit legal aid organizations to apply directly for funding.
- Helping people with criminal records reenter communities successfully. To maximize the effectiveness of job training programs, many Department of Labor reentry focused grant solicitations added language allowing funds for legal services that help remove barriers to employment. These legal services can include expungement and correcting mistakes on criminal records, securing an occupational or driver's license, creating and/or modifying child support orders, advising youth about laws governing disclosure requirements to a prospective employer or college, and other services that help youth and adults become more competitive candidates for employment. Similarly, the Justice Department's Second Chance Act grant programs designed to help communities develop and implement comprehensive and collaborative strategies that address offender reentry and recidivism reduction, inform applicants that funds can be used for legal services that further grant goals.

- Supporting Medical-Legal Partnerships for veterans and tribes. Working with colleagues at the U.S. Department of Veterans Affairs and the Office of Tribal Justice Support at the U.S. Department of the Interior, the Initiative encouraged the development of Medical-Legal Partnerships, to enable vulnerable populations to receive legal assistance at the same time that medical problems are being addressed, so that their overall wellbeing and security may be strengthened. By the end of FY13, there were 41 free legal clinics operating in 39 VA medical facilities nationwide, a more than 100% growth rate over FY12. VA now tracks the growth of these clinics and provides legal and other technical guidance to the local VA staff coordinating these clinics.
- Protecting consumers. Consumer Financial Protection Bureau (CFPB) Director Rich Cordray introduced a webinar developed to make sure legal aid lawyers -- often the front lines of defense for victims of consumer scammers -- know what federal tools are available to protect people from abusive practices. CFPB is also developing a legal aid specific version of Your Money, Your Goals: A Financial Empowerment Toolkit for Social Services Programs, containing information and hands-on tools for front-line staff to help clients identify financial challenges and goals, and access consumer protections.

New Initiatives: For FY 2016, the President's Budget requests \$5.0 million for a Civil Legal Aid Competitive Grant Program. This program, which would be administered by the Bureau of Justice Assistance (BJA) in collaboration with ATJ, would provide funding, training, and technical assistance to incentivize civil legal aid planning processes and system improvements, supporting innovative efforts to improve and expand civil legal assistance services at the state, local, and tribal levels. While this new initiative would be a very positive step forward to improving state systems of the delivery of civil legal aid, it is going to be difficult to get the funding requested because of limited appropriations that may be made available for new initiatives.

Commission on the Future of Legal Services

The American Bar Association Commission on the Future of Legal Services is conducting a comprehensive examination of issues related to the delivery of, and the public's access to, legal services in the United States. The Commission has created six working groups to study these developments and draft recommendations and related work product for the Commission's consideration and possible approval:

- Data on Legal Services Delivery. This working group will assess the availability of current, reliable data on the delivery of legal services, such as data on the public's legal needs, the extent to which those needs are being addressed, and the ways in which legal and law-related services are being delivered; identify areas where additional data would be useful; and make existing data more readily accessible to practitioners, regulators, and the public.
- Dispute Resolution. This working group will assess developments, and recommend innovations, in: (a) court processes, such as streamlined procedures for more efficient dispute resolution, the creation of family, drug and other specialized courts, the availability of online filing and video appearances, and the effective and efficient use of interpreters; (b) delivery mechanisms, including kiosks and court information centers; (c) criminal justice, such as veterans' courts and cross-innovations in dispute resolution

between civil and criminal courts; (d) alternative dispute resolution, including online dispute resolution services; and (e) administrative and related tribunals.

- Preventive Law, Transactions, and Other Law-Related Counseling. This working group will assess developments, and recommend innovations, in delivering legal and law-related services that do not involve courts or other forms of dispute resolution, such as contract drafting, wills, trademarks, and incorporation of businesses.
- Regulatory Opportunities. This working group will study existing regulatory innovations, such as [Alternative Business Structures](#) in countries outside of the U.S. and Washington State's [Limited License Legal Technicians](#), as well as related developments, including the recently-released [Canadian Bar Association's Legal Futures Initiative](#) report. The working group will then recommend regulatory innovations that improve the delivery of, and the public's access to, competent and affordable legal services.
- Blue Sky. This working group will propose innovations that do not necessarily fit within the other working groups, but could improve how legal services are delivered and accessed, such as innovations developed in other professions to improve effectiveness and efficiency.
- Access Solutions for the Underserved. This working group will assess developments and recommend innovations, in facilitating access to legal services for underserved communities. This group is chaired by Jim Sandman, President of LSC and includes Ron Staudt who has participated in past ILAG conferences. The group has met several times and has begun to develop its final recommendations. Specifically, this group is exploring:

Facilitating access.

- How can we better facilitate access to civil and criminal legal services for underserved communities?
- What services are most needed by those who are underserved?
- What barriers prevent them from accessing such services?
- What existing models or innovations have had the greatest impact on expanding access to legal services?
- What further innovations might help to expand access to legal services?
- How can the profession help to educate the underserved about their legal needs and ways to address those needs?

Facilitating delivery by small law practices. How can small law practices (e.g., solo practitioners, lawyers in rural communities, small firm lawyers, etc.) sustainably represent those who do not have access to legal services?

- What specific tools or innovations can lawyers leverage to reach this goal?
- What kind of new training might lawyers need to meet this goal?

State Access to Justice Commissions

The evolving effort to create in every state a comprehensive, integrated statewide delivery system, often called a state justice community, continues. These delivery systems include LSC and non-LSC providers, pro bono programs and initiatives, other service providers including human service providers, pro se initiatives, law school clinics, and key elements of the private

bar and the state judicial system. In theory, these state justice communities seek to ensure easy points of entry for all low-income clients, ensure coordination among all institutional and individual providers and partners, allocate resources among providers to ensure that representation can occur in all forums for all low-income persons, and provide access to a range of services for all eligible clients no matter where they live, the language they speak, or the ethnic or cultural group of which they are a member.

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

In a few states, Access to Justice Commissions have existed for a decade or more, including the Washington State Access to Justice Board, the California Access to Justice Commission, and Maine's Justice Action Group. Currently, 38 states have active Access to Justice Commissions and new commissions are on the drawing boards in more states.

While there are many activities of state Access to Justice Commissions on which I could report, one of the most innovative is in Massachusetts. The Massachusetts ATJ Commission issued with the state's Governor a document [*Best Practices for State Agencies to Enhance State Administrative Justice*](#). The full text is reproduced below:

Recognizing that administrative justice is a vital component of ensuring the overall access to justice, state agencies that provide public benefits shall adhere to the following best practices:

- If a benefits application lacks information necessary for the agency to make a proper determination of benefits to which the applicant might be entitled, the agency shall provide each applicant with a reasonable opportunity to obtain such information;
- If a benefits application contains inconsistent information that hinders the agency's ability to make a proper determination of benefits to which the applicant might be entitled, the agency shall provide each applicant with a reasonable opportunity to correct such inconsistencies before the application is denied;
- If the agency denies an application for benefits, the agency shall provide the applicant with timely notice in writing of such denial, which shall include the basis for the denial and a description of the administrative process to appeal the agency's determination;
- If the agency terminates or suspends benefits for any reason, the agency shall, before such termination or suspension is effective, inform the impacted beneficiary in writing of the reason(s) for the proposed action and provide the beneficiary an opportunity to respond. Once the termination or suspension of benefits becomes an agency

determination, the beneficiary shall be provided a description of the administrative process to appeal the determination;

- Any communication between the agency and an applicant for benefits or current beneficiary shall be done in a clear manner and in a language understandable to the applicant or beneficiary, all in compliance with Executive Office for Administration and Finance Bulletin 16;
- Any applicant or beneficiary may bring a representative to assist them during any review hearing and that representative need not be an attorney;
- Agencies shall take any and all steps to ensure that their “client services” or “problem resolution” offices act in accordance with these practices;
- The Executive Office for Administration and Finance, in collaboration with the Governor’s Office of Legal Counsel, shall ensure compliance with these practices. Client services and problem resolution offices:
 - Shall make available to beneficiaries or applicants a list of these best practices;
 - Shall make available to beneficiaries or applicants a list of pro bono legal service providers and bar programs in the surrounding area;
 - Shall distribute their office contact information to key legal services and social services agencies and providers;
 - Shall have the authority to take all steps necessary to ensure compliance with the best practices for state agencies;
 - Shall monitor both individual and systemic problems (i.e., problems that affect individual beneficiaries and thematic problems that affect many beneficiaries) and report such problems inconsistent with the best practices directly to agency leadership.

Finally, the ABA Resource Center on Access to Justice released in August of 2014 **The Framework for Outcome Evaluations** a specialized tool offering ATJ Commissions a means by which to assess the impact of their work.⁶ This was written with the help of John Tull a former participant in ILAG. The Framework was presented based on the conviction that an ATJ Commission can profit from a purposeful assessment of whether its projects have accomplished what the Commission intended.

Civil Right to Counsel

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

However, state courts and state statutes or court rules have provided the right to counsel in several categories of cases including termination of parental rights, adoption, and other areas. In 2014, the ABA completed the [ABA Directory of Law Governing Appointment of Counsel in State Civil Proceedings](#). This project, done in collaboration with the National Coalition for a Civil Right to Counsel (NCCRC) over the course of several years, transformed the NCCRC’s

6

http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_comm_outcome_evals_framework.authcheckdam.pdf

research memos on the right to counsel in each state into a format suitable for state trial court judges. Each state's entry is organized by subject matter, and within that, by the source of law that requires, permits, or does not permit appointment of counsel.

Litigation: There are a number of cases raising the right to counsel in ongoing litigation involving, for example: right to counsel for children going through immigration proceedings; right to counsel in adoption cases (Montana); right to counsel of foster child in dependency proceeding (Washington); right to counsel in Colorado for the termination of parental rights of a nonconsenting parent that arises within a relinquishment proceeding initiated by the other parent. The Supreme Judicial Court of Massachusetts unanimously ruled in [Guardianship of V.V.](#) that parents have a state constitutional due process right to counsel in proceedings to establish guardianships of their children.

New Initiatives: Both the Obama Administration and a number of other local cities are seeking to or already providing access to legal representation and services to unaccompanied unauthorized immigrant children. See Fact Sheet: Expanding Access to Legal Representation, White House (October 22, 2014) <http://tcenews.calendow.org/releases/white-house-fact-sheet:-expanding-access-to-legal-representation-for-unaccompanied-minors-from-central-america>

New York City is moving forward on a right to counsel in landlord tenant proceeds. Mayor [Bill de Blasio](#) recommended in his preliminary budget proposal spending \$36 million on free legal services in housing court, which would bring the city's total spending on civil legal services up to about \$50 million. A majority of City Council members have signed onto a bill requiring free counsel for indigent defendants in eviction cases. If passed, it would be the first such mandate in the country. A separate bill would establish the Mayor's Office of Civil Justice to oversee the city's civil legal services.

In his 2015 State of the Judiciary report⁷, Chief Justice Lippman called upon the legislature to a civil Gideon resolution.

“In civil matters involving the essentials of life — the roof over one’s head, family safety and security, subsistence income —there is no such right to counsel. Therefore, I call on the Legislature today to pass a joint resolution that makes it unmistakably clear as a matter of policy and principle that low-income New Yorkers facing legal matters concerning the necessities of life are entitled to effective legal assistance in civil proceedings. This would be the first statement of its kind by a legislative body in our country—it would be the ultimate manifestation of what is commonly known as Civil Gideon, the civil counterpart to the right to legal representation in criminal cases. “This proposed joint resolution that I am submitting to the Legislature would announce— loudly and clearly — New York’s commitment to what we all believe is a given in the year 2015: that New Yorkers living in poverty or with limited or modest means must have effective legal assistance in crucial civil matters relating to their wellbeing, their

⁷ <http://www.nycourts.gov/ctapps/news/SOJ-2015.pdf>

livelihoods, and their families. Our society will and should be judged by how we treat the most vulnerable among us. We ask the Legislature to make a bold statement to show our conviction and resolve in insisting on equal justice for all New York.”

DC Civil Gideon and Housing Project: The lack of safe, decent, and affordable housing is one of the most urgent challenges facing low-income District residents. The central waiting list for public and subsidized housing maintained by the D.C. Housing Authority numbered more than 70,000 households when DCHA closed the list to new applicants nearly a year ago. Shelters have swelled beyond capacity. Homeless families may wait 10 years or more to receive a housing subsidy; poor families who are not homeless will most likely never be able to access a coveted subsidy.

Members of the legal services community, the D.C. Access to Justice Commission and the D.C. Bar Pro Bono Program have started the process of designing a two-fold project that will be a model for the nation. First, the private bar and legal services community will collaborate to bring substantially more justice now to those who are homeless or in danger of losing their homes. A key first component of the project is to institute a Civil Gideon initiative in Landlord-Tenant Court to dramatically increase the number of litigants who have counsel when they are in danger of losing their homes. The project will match every litigant living in public or subsidized housing, or who has a housing subsidy, and does not already have counsel, with counsel.

Second, the legal services community, the D.C. Bar Pro Bono Program and other housing advocacy partners will collaborate on a larger project to revamp substantially the broken shelter and emergency housing system, focus efforts to preserve existing affordable housing and increase production of affordable housing, litigate to enforce fair housing laws, and advocate for policy changes to ensure that every District resident has a safe and affordable place to call home.

Pilot Projects: Many believe that pilot projects are a useful way to proceed to build support for a civil right to counsel. The most significant and ongoing pilot is in California. Under a 2009 law, the California Judicial Council oversees ten pilot projects in seven counties for appointment of counsel in civil cases including housing, domestic violence, child custody, and probate guardianship. The projects started in fiscal year 2011-2012 and will be authorized for a three-year period subject to renewal. Total funding is expected to be approximately \$8 million per year, funded by a \$10 increase on certain court services. In September 2010, then-Chief Justice Ron George appointed a 16-member committee to oversee implementation of the program, chaired by retired Court of Appeal Justice Earl Johnson, Jr. Seven projects were funded initially in San Francisco, Bakersfield, San Diego, Santa Barbara, Northern California, and Los Angeles (2 projects).⁸ Evaluation of the pilots was designed with a national advisory committee. The legislation also requires data collection and evaluation of both the civil representation and court-innovation components in order to provide a basis to revise and extend the legislation. The

⁸ For a thorough discussion of the pilots see Clare Pastore, “California’s Sargent Shriver Civil Counsel Act Tests Impact of More Assistance for Low-Income Litigants,” 47 Clearinghouse Review 97 (July-August 2013).

evaluations are in progress. The Judicial Council will report its findings and recommendations to the Governor and the Legislature on or before January 31, 2016.⁹

Other Developments: In November 2013, the California State Bar Board of Trustees approved the creation and appointment of the Civil Justice Strategies Task Force (CJTF) as a special committee of the board. The Preliminary Recommendations included: Civil Gideon: recommend that the State Bar support efforts to secure universal representation starting with the following four areas: Landlord / Tenant, Family, Domestic Violence, Immigration; and recommend that State Bar help to market what's working in the pilot projects, publicly support them, and help to scale them.

Studies: A recent article A National Study of Access to Counsel in Immigration Court by Ingrid Early and Steven Shafer in 164 University of Pennsylvania Law Review 201 presents the results of the first national study of access to counsel in United States immigration courts. Drawing on an extensive data sample of over 1.2 million deportation cases decided between 2007 and 2012, they found that only 37% of immigrants overall, and a mere 14% of detained immigrants, secured representation. Nationwide, only 2% of removal respondents obtained pro bono representation from nonprofit organizations, law school clinics, or large law firm volunteer programs. Barriers to accessing counsel were particularly acute in immigration courts located in rural areas and small cities, where almost one-third of detained cases were adjudicated. Moreover, they found that immigrants with attorneys in immigration court do better: after controlling for numerous case and respondent characteristics that could affect case outcomes, our regression analysis reveals that the odds are 15 times greater that an immigrant with representation, as compared to one without, sought relief, and 5.5 times greater that they obtained relief from removal. In addition, they showed that involvement of counsel was associated with certain gains in court efficiency: represented respondents did not use valuable court and detention time to seek counsel, they were more likely to be released from custody, and, once released, were more likely to appear at their future deportation hearings.

Self-Help Litigants and Pro Se Developments

A significant development in civil legal aid in the United States is the rapid expansion of efforts to help people who are attempting to represent themselves in courts. These are described as “pro se,” “self-help,” or “self-represented” litigants. Historically, parties in high-volume courts such as traffic, housing, and small claims courts consisted primarily of pro se litigants. However, more recently, pro se litigants have also begun to dominate family law dockets across the country. There are also significant increases in pro se representation in probate and other civil matters as well. Over the last twelve years, the Self-Represented Litigation (SRL) Network, which brings together courts, bar and access to justice organizations in support of innovations in services for the self-represented, has undertaken a number of activities to ensure the justice system works for all including those forced to go to court on their own.

⁹ For a description of the process by which the legislation was adopted and the actual framework established by the legislation see Kevin G. Baker and Julia R. Wilson, *Stepping Across the Threshold: Assembly Bill 590 Boosts Legislative Strategies for Expanding Access to Civil Counsel*, 43 CLEARINGHOUSE REVIEW 550 (March-April 2010).

Recent developments include:

AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE SELF-REPRESENTED LITIGANTS: A White Paper by the ABA Standing Committee on the Delivery of Legal Services (August 2014).¹⁰ This White paper provides policy-makers with information and analysis on the ways in which various states are formulating or amending rules of professional conduct, rules of procedure and other rules and laws to enable lawyers to provide a limited scope of representation to clients who would otherwise proceed on a pro se basis, and to regulate that representation. Specific policies cover: defining the scope of representation; clarifying communications between counsel and parties; creating parameters for the lawyer's role in document preparation, including disclosure of the lawyer's assistance; governing the entry of appearances and withdrawals for limited scope representation; and excusing conflicts checks for some limited scope services. In addition, the white paper concludes with two appendices. Appendix A provides policy-makers with a worksheet focused on the decisions that need to be addressed to enable lawyers to provide assistance to self-represented litigants. Appendix B includes the specific rules that are discussed throughout the paper.

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

Remote Services Study: A State Justice Institute (SJI) supported national study of how remote services (phone, internet, video, mobile etc.) are used in delivering self-help. The project studies services in 8 sites: Alaska, Utah, Montana, California (2 sites), Idaho, Minnesota and Maryland, and runs from March 2013 – April 2015. The project is studying methods to assist SRLs by Internet, telephone, co-browsing, text messaging or other remote technologies. The project will produce a resource guide analyzing the alternatives available for use by all jurisdictions wishing to maximize the availability of these forms of SRL assistance.

The ABA Standing Committee on the Delivery of Legal Services published in August of 2014: ***The Self-Help Center Census: A National Survey***¹¹ Of the 500 self-help centers around the country, 222 responded to an online survey, the reports of which are reported in this Self-Help Center Census. Key findings included:

- Nearly 3.7 million people are served by self-help centers annually.

¹⁰ See

http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.authcheckdam.pdf

¹¹

http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_self_help_center_census.authcheckdam.pdf

- The vast majority of self-help centers are staffed by five or fewer full-time equivalents and about half of the centers reported relying on a range of volunteers including attorneys, paralegals, students, and community members.
- Self-help centers tend to rely most heavily on court, state and county funding, but also supplement such funding with a number of other sources including bar associations; grants; city, county and federal funding; private donations and self-generated income, for example, from workshops.
- Most self-help centers provide some type of in-person services, document assistance and web-based information. Less commonly provided services include in-person workshops, interactive web-based forms, web or videoconferencing workshops, video or online tutorials, email or online responses, and referrals to pro bono attorneys and attorneys providing unbundled services
- Self-help centers tend to focus on services for persons of limited resources.
- Most respondents reported being able to assist most of their customers, but a subset of their customers' legal needs was too complicated and/or their case types were not served by the center.
- Most respondents indicated that they believed their customers would benefit from limited scope representation, though only 38% of the centers provide information about such services and only 15% indicate that their community has a limited scope lawyer referral service panel

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

Michigan Legal Help Evaluation Report: In January of 2015, Bridgeport Consulting released: Michigan Legal Help Evaluation Report: An examination of the efficacy of the Michigan Legal Help website in helping self-represented litigants successfully navigate the divorce process. The Michigan Legal Help Program (MLHP) consists of two components: an interactive statewide website and affiliated Self-Help Centers that provide legal information assistance to individuals representing themselves in simple civil legal matters in Michigan. The Michigan Legal Help website (MLH)¹² has many tools for visitors, including the collection of interactive online “interviews” that use litigants’ answers to simple questions to populate State Court-approved forms necessary to process a legal matter from start to finish. The website launched in September 2012, and the first four Self-Help Centers opened that fall. An additional 3 local MLHP Self-Help Centers opened thereafter. In 2014, the Michigan Legal Help Program received a Technology Initiative Grant (TIG) from the Legal Services Corporation to support an evaluation of the website’s efficacy in assisting self-represented litigants to resolve divorce.

¹² <http://www.michiganlegalhelp.org/>

The evaluators discovered these key findings:

- 74% of litigants using the MLH website obtain a judgment of divorce, **a rate virtually equal to** that of other self-represented litigants and attorney represented litigants.
- In Michigan in 2013, **48%** of divorce cases were filed by **self-represented plaintiffs** and **68%** of cases had **one or more self-represented** litigants. **42%** of divorce cases had **no attorney involvement** at all.
- Self-represented litigants **conclude the divorce process in less time** than attorney-represented litigants, with MLH litigants concluding slightly more quickly than other self-represented litigants. This finding is true even when controlling for other factors, such as complexity.

The fundamental conclusion appears to be that the self-represented individuals pursuing divorces in Michigan using the Michigan Legal Help website fare at least as well as attorney-represented litigants and litigants using other self-represented materials in obtaining judgments in a timely fashion.

Document Assembly

To respond to the crisis of litigants representing themselves, legal aid programs, self-help centers, courts and others are using online document-assembly software to help litigants complete legal forms easily and in a manner acceptable to the courts. Document assembly software asks questions and then puts the answers to these questions into the appropriate places on forms. The software also often provides an easy way to integrate definitions and explanations of basic legal terms and concepts.

LawHelp Interactive (or LHI and formerly known as NPADO) is a web site that lets people create legal documents. [LawHelp Interactive](#) was developed to make implementing document assembly initiatives easier and less costly for legal aid organizations as well as pro bono and court-based access-to-justice programs. Participating programs use [HotDocs Corporation's, HotDocs Professional](#), and optionally the [Center for Access to Justice and Technology's A2J Author](#), to create online forms and documents. Templates are uploaded to the LawHelp Interactive server and made available to advocates, pro bono volunteers, and self-represented litigants through legal aid and court websites.

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

aid programs and courts to collaborate. Together, they could create tools to improve access to justice and to increase court efficiency.

In 2014, approximately three quarters of state websites support by LSC used LHI, HotDocs and A2j Author. There were 922,377 interviews generated by A2j Author and HotDocs and 509,598 documents created from those interviews for use in courts. The other interviews were used for intake, referral and triage.

Court-Based Document Assembly Developments

Over the past few years, the New York State (NYS) court system has been working to build Internet-based document assembly programs using available technology specifically designed to address the barriers to justice that litigants face when they create their court papers. The NYS court system has been extremely successful with its programs, known as DIY (Do-It- Yourself) Forms, which create court papers and instructions for unrepresented litigants employing A2J Author and HotDocs software. A2J Author software was specially designed to make Internet-based document assembly of court forms more widely accessible to unrepresented litigants. In 2012, twenty-five percent of the court forms generated by litigants using A2J Author programs were attributable to NYS court system's document assembly programs. In 2012, over 100,000 court documents were assembled from the twenty-four programs used in different case types in different courts throughout the state. Completed programs are hosted on Pro Bono Net's national online document assembly project, LawHelp Interactive (LHI). In addition to New York, only the California, Arkansas, Minnesota, and New Mexico state court systems presently contract with Pro Bono Net to utilize LHI on their own. The majority of document assembly programs hosted on LHI are produced by legal service organizations. Over forty territories produce A2J Author programs, some in partnership with state courts. Yet the most successful authors of A2J Author programs on LHI are the New York and California court systems. For a thorough discussion of the New York program, see Rochelle Klempner, "The Case for Court-Based Document Assembly Programs: A Review of New York State Court System's "DIY" Forms." http://www.nycourts.gov/ip/ny2j/pdfs/RochelleKlempner_Court-BasedDIYForms.pdf

California has not yet developed the Do-it-Yourself forms for general use as New York has done. Instead, California uses HotDocs currently to assist self-help centers in completing documents more quickly for litigants. Los Angeles uses HotDocs in 100 workshops per month and over 5,000 people are assisted with the use of those programs. The legal aid program does about 1/3 of the conservatorships in Los Angeles using the program.

California is modifying the program for more DIY usage - so Riverside and San Bernadino have it on their public website for litigants to use on their own. They have added an e-delivery feature so that the completed forms can be sent automatically to the court. California still encourages people to do them at community agency, shelter or other location where they get more assistance in determining if this is the right course of action and other services, but California is redesigning the program to make it more appropriate for stand-alone use.

California has done HotDocs forms packages for all the major types of cases that SRLs handle in California. California is building document assembly programs directly into the case

management system that is being adopted by many courts. Massachusetts is in the process of doing this now.

Voices for Civil Justice (Voices)

Voices is a new national nonprofit communications hub that raises awareness of civil legal aid. It is directed by Martha Bergmark, former Executive Vice President and President of LSC and former participant in ILAG. It was launched in late 2013. Because the public is not aware of civil legal aid, Voices seeks to deliver three things: (1) increased visibility for civil legal aid in the national media; (2) increased capacity for media advocacy across the civil legal aid sector; and (3) a new and strengthened “brand” of civil legal aid.

Voices brings journalists and the public fresh, previously untold stories about this growing, underreported crisis of access to justice. By casting a constant spotlight in the media on the work of civil legal aid, Voices for Civil Justice aims to strengthen the brand identity of this growing and diversified sector; garner deeper recognition by key audiences including policy makers, opinion leaders and donors; and ultimately help increase resources for civil legal aid.

As a nonpartisan communications hub advancing fairness in America’s legal system, Voices provides a dedicated, collective capacity for the civil legal aid sector, complementing the communications work of the sector’s key national organizations such as the Legal Services Corporation, National Legal Aid & Defender Association, American Bar Association and National Center for State Courts.

The key results Voices seeks to achieve over the next two years are 1) measurably improved quantity and quality of media coverage of civil legal aid, as gauged against a baseline media analysis conducted in January 2014, and 2) measurable improvements in communications capacity within the sector, as gauged against a baseline assessment now under way. In the longer term, Voices seeks to strengthen and broaden the brand identity of civil legal aid and to establish, via a drumbeat of media coverage, a comprehensive narrative of what civil legal aid is and why it matters. Ultimately, the measure of success will be the growth of resources and support for civil legal aid. For more information, see <http://voicesforciviljustice.org/>

Justice Index

In 2014, the National Center for Access to Justice at Cardozo Law School (NCAJ), www.ncforaj.org, launched the Justice Index, www.justiceindex.org. The Justice Index is the online resource that increases access to justice by researching and posting contemporaneous data on the presence and absence of best practices for assuring access to justice in the 50 states, the District of Columbia, and, this year, Puerto Rico. The Justice Index gathers data and ranks states based on their adoption of best practices for access to justice in four categories: (1) number of civil legal aid lawyers, (2) systems for self-represented litigants, (3) systems for people with limited English proficiency, and (4) systems for people with disabilities. In March of 2015, NCAJ launched its 2015 research initiative to update the Justice Index. NCAJ is updating and expanding the criteria by which access to justice is measured. This includes examining practices related to people with mental disabilities, options for waiving court filing fees for indigent

people, access to simple court forms in diverse matters and systems for tracking implementation of civil rights.

Limited Scope Representation

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

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

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

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

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

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

A recent study by Jim Greiner and Molly Jennings, "The Evolution of Unbundling in Litigation Matters: Three Case Studies" reported in the *Denver University Law Review*¹³ describes the history of unbundling and then reviews what happened in Colorado, Massachusetts and Alabama. This review showed that unbundled representation had been practiced by legal aid programs and in some cases by pro bono attorneys years before any movement toward unbundling began. The authors also concluded that: "no one we interviewed knew whether unbundling worked...no one could point to (nor did our independent research unearth) a credible study or evaluation purporting to assess the effect of a statewide movement or of an individual program that offered unbundled representation...no one knows whether the changes states made

¹³ www.denverlawreview.org/storage/print_vol_89_4/Greiner_Unbundling...

to their ethical and other rules have resulted in a greater availability and usage of unbundled services.”

Non-Lawyer Advocates

Two recent developments would expand use of non-lawyer advocates. Washington State created a new Limited License Legal Technician (LLLT) certification that allows certified persons to provide a range of legal services with areas defined by a 13 member Limited License Legal Technical Board. These technicians would be allowed to set up legal practices, establish fees, operate independently and provide individualized information regarding court procedures, reviewing documents and completing forms, performing legal research, drafting letters and pleadings, advising clients as to necessary documents and explaining how such documents or pleading may affect the client’s case. However, the technicians could not represent a client in legal negotiations, in court, in formal administrative proceedings or in other formal dispute resolution process unless specifically permitted.¹⁴ Technicians must complete an associate level college degree, 45 credit hours in an ABA approved program and training in a practice area. They must also pass a core education exam, professional responsibility exam and a practice area exam. Finally, they must obtain 3,000 hours of substantive law-related experience, supervised by a lawyer and within 3 years before or after passing the examination. The only practice area now available is family law including child support modification, dissolution and separation, domestic violence, parenting and support actions, paternity and relocation. Washington may expand in the future to Immigration, Landlord/tenant or elder. The first class of 15 matriculated this winter.

New York is conducting a pilot program to permit trained non-lawyers to provide out-of-court assistance in housing and consumer credit. The New York State Court Navigator Program was begun in March 2014 following Chief Judge Jonathan Lippman’s announcement of the program in his February 2014 State of the Judiciary address. The Navigator Program was created by the Chief Judge’s Committee on Nonlawyers and the Justice Gap in response to the need for assistance for the more than 2 million New York-ers each year who are unable to find lawyers as they navigate a complex system to deal with their legal problems. The program provides trained nonlawyers in Housing Court in Brooklyn and in a Civil Court consumer debt part in the Bronx. A preliminary [Navigator Report](#) was issued in December of 2014. The Navigator program will be the subject of a specific independent and comprehensive social science inquiry in 2015.

The role of the Navigators includes the provision of the following types of assistance, free of charge, to litigants:

- Preliminary discussions with litigants to listen and explain the process
- Review of the papers litigants have received and assembled to explain their relevance to the process
- Provision of information to litigants about appropriate or available court services (including interpreters)

¹⁴ See Brooks Holland, “The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice,” 82 SUPRA 75 (2013).

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

This report concludes that the Navigator Program “provides valued practical assistance to litigants and to judges. In addition, in cases in which a Navigator was involved, respondents raised additional and more specific defenses and, overall, obtained decisions that produced a better financial result for respondents... Our initial assessment is that the Navigator program is a valuable innovative addition to the state court system.”

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

Finally, the California Civil Justice Strategies Task Force preliminary recommendations included:

Limited License Legal Technicians: The State Bar should study the design of a pilot program, in one subject matter area, and, with input from the Supreme Court, address how the governance, oversight, and “licensing” would be handled. It is important to allow the time for the Court to have input at the early stages, rather than after design is complete.

Navigators: A program should be designed to be piloted in one or more self-help centers, to provide volunteer assistance to self-represented litigants in attending hearings. Permission should be requested to have the navigator sit at counsel table with the litigant, but not to address the court. Based on experience in other jurisdictions, the focus should be on this as a volunteer program, not as a for-profit method of assistance.

New Lawyer Initiatives

The ABA Task Force on the Legal Access Job Corps recently invited state and local bar associations, bar foundations, law schools, courts, government agencies, and other similar organizations to apply for an ABA catalyst grant available to support the implementation of

innovative programs to enlist recently-admitted lawyers in providing legal services to persons of modest means. A number of programs have been developed in various locations to utilize recently-admitted lawyers in better serving the legal needs of poor and moderate income persons. The Task Force seeks to foster further innovative initiatives that achieve similar objectives.

Law Schools

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

Under the leadership of Chief Justice Lippman, New York became the first state in the nation to promulgate a rule requiring law students to complete 50 hours of pro bono service before gaining admission to the New York bar. Chief Justice Lippman stated in the Brennan Lecture at NYU Law School: “Performing 50 hours of legal service at the dawn of their legal careers helps to imbue new lawyers with life-long habits, and performing legal work for the poor will give these young people a window into the real world, building empathy and understanding for the less fortunate.”¹⁵ New Jersey, California, and Montana among others are considering similar rules to the one developed in New York.

New York's new Pro Bono Scholars Program, introduced in New York in February of 2014 gives law students an incentive to devote their last semester of law school to pro bono work, making a significant contribution to addressing the access to justice gap. During the second semester of their third year, Pro Bono Scholars will do fulltime legal work for the poor under the supervision of a legal service provider, law firm, or corporation in partnership with their law school. In return, Pro Bono Scholars will be permitted, for the first time, to sit for the February bar exam while they're in their third year of law school. Until now, law students in New York could first take the bar exam in July after graduation and in the normal course would not be admitted until the following calendar year. With the Pro Bono Scholars program, law students will be able to radically accelerate the pace by which they enter the legal field as licensed attorneys, being admitted essentially upon graduation.

New York's Poverty Justice Solutions is a new program that is designed to extend the reach of the Pro Bono Scholars program. Each year, Poverty Justice Solutions will take 20 exceptional Pro Bono Scholars and place them after graduation and admission in two-year fellowships with civil legal service providers in New York. These attorneys will work at different agencies but they will all be dedicated to the same goal: helping low-income New Yorkers preserve their housing and preventing homelessness. It is estimated that Poverty Justice Solutions will enable civil legal service providers to handle 4,000 additional matters each year — a significant

¹⁵ See <http://ncforaj.org/wp-content/uploads/2014/03/CJ-Lippman-Brennan-3-11-14.pdf>

contribution to closing the justice gap. The first Poverty Justice Solutions attorneys will be selected in the spring of 2015 and will begin work following their graduation in June. The program is a public-private partnership involving the Robin Hood Foundation, the Center for Court Innovation, the New York City Human Resources Administration, and civil legal service providers in New York City.

Delivery Research

There is a growing recognition in the US that our system should have an ongoing and institutionalized capacity to conduct research on how to improve the delivery of civil legal aid and conduct and evaluate demonstration projects testing new ideas and innovations for possible replication across the system.¹⁶ The United States had such a component, the Research Institute, during the first era of the Legal Services Corporation from 1976 – 1981. During the funding and political crisis of 1981, the Research Institute was closed. Since then, only a limited amount of legal services delivery research has been undertaken. It is not yet clear that the US will be able to find funding for such an entity, particularly in these hard economic times with deficit reduction at the heart of the federal agenda. LSC is trying to raise private funding for such an endeavor. The President’s budget request includes \$2.7 million for civil legal research to be managed by the National Institute of Justice in cooperation with Department of Justice's Access to Justice Office. This would be the first time that the federal government invested in delivery research on civil legal aid since the demise in 1981 of the Research Institute at LSC. NLADA received funding for and has developed a resource library of prior and ongoing delivery research. See www.legalaidresearch.org.

Two recent studies involving ILAG member Rebecca Sandefur have added to our knowledge about civil legal aid. The first, released in August of 2014, focused on the civil justice experiences of the US public: ***ACCESSING JUSTICE IN THE CONTEMPORARY USA: Findings from the Community Needs and Services study.***¹⁷ This study was conducted in a middle-sized city located in the Midwest and similar in characteristics to other Midwestern cities in demographics and poverty. The study found “widespread incidence of events and situations that have civil legal aspects, raise civil legal issues and are potentially actionable under civil law. Most are handled outside the context of the formal justice system. These events are common and can be severe in their impacts. People experiencing these situations typically do not receive assistance from lawyers or other formal third parties.” While cost is a factor in people not seeking assistance from third parties, the study found that people do not seek assistance because “they do not understand these situations to be legal” and they do not “think of courts or of attorneys as always appropriate providers of remedy.” These findings are similar to the findings of the legal need study done by the American Bar Association and reported in 1994 (***Report on***

¹⁶ How an Evidence-Based Delivery System Can Improve Legal Aid for Low- and Moderate-Income Americans by Jeffrey Selbin, Josh Rosenthal, and Jeanne Charn (Center for American Progress) June 2011 <http://www.americanprogress.org/issues/open-government/report/2011/06/22/9707/access-to-evidence/> See also, Laura K. Abel, *Evidence Based Access to Justice*, University of Pennsylvania Journal of Law and Social Change, Volume 13 No.3, (2009-2010) at p. 295 and *Designing Access: Using Institutional Design to Improve Decision Making About the Distribution of Free Civil Legal Aid*, 7 Harvard Law & Policy Review 61 (2013).

¹⁷ See

http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf

the Legal Needs of the Low-and Moderate-Income Public). The study calls for a broad conversation about access to justice that looks not just at costs of services and lack of funds but also “must explore the perspectives of the public.”

The second is *PATHA TO JUSTICE: A Past, present and future roadmap* (August 2013) which Becky co-authored with Pascoe Pleasence and Nigel J. Balmer. This review of 26 legal needs studies did include the 1994 ABA study (referenced above) but did not include the 30 or more state legal needs studies that have been done since the ABA study. This report focused primarily on the 24 studies that followed the tradition on *Paths to Justice* (Glenn 1999). It explored methodological issues, brought together findings, assessed the impact of, and provided guidance and resources for future legal needs studies, particularly those in the Glenn tradition. Consistent with the US studies, the review found that consumer and money problems were among the categories of problems that were most often reported. The review also found (also similar to the US studies) that law was “very much on the periphery of most experiences of justiciable issues” (legal needs in US terminology) “and a powerful case for developing related policy from the client, rather than the service deliverer perspective.” The review found that the legal needs studies influenced policy in three groups: “policies designed to argue for and prioritize spending, policies aimed at redesigning existing services and policies dictating the direction or development of new services.” While noting the impact of these studies on legal aid and access to justice policy and the substantial evidence base of the client perspective of justiciable problem experience, the authors call for future research to build on this experience and improve the methodology for future legal needs surveys.

In 2014, Elisa Minoff and I completed **Research Project on Anti-Poverty Effects of Civil Legal Aid in the United States** which reviewed research that involves civil legal aid to learn how and under what circumstances civil legal aid successfully reduces poverty. We evaluated the extant literature on legal services and considered studies, data sets, and reports that provide some information about the economic benefits of civil legal aid. We concluded that there is little rigorous research that has actually attempted to document the effect of civil legal assistance on impoverished clients and communities. There is little quantitative research on civil legal aid and anti-poverty, and even less qualitative research. In order to understand how civil legal aid ameliorates poverty, we need to know not only how clients fare in court (their case outcomes) but also how they fare in life after their cases close (their personal outcomes). But, as scholars have routinely observed, very few studies and little data actually documents the experiences of legal services’ clients after their cases have been closed. We called for more quantitative research such as more data on client outcomes, not just case outcomes; more qualitative research such as a comprehensive survey of, and a report about, the current work in civil legal aid that has an anti-poverty effects; and more research on the cost savings approach including studies on “social return on investment” (SROI) and the economic benefits of civil legal aid.

CONCLUSION

The trends in US civil legal aid over the last fourteen years continued through 2015. We saw increases in state funding as well as from other funding sources. The decreases in IOLTA funding have slowed although IOLTA funding remains lower than before the Great Recession. There are more Access to Justice Commissions and increased attention to civil legal aid at the state level. The notion of a right to counsel in civil matters has gained renewed attention. Yet,

the basic civil legal aid system has not closed the “justice gap.” Efforts to expand access through technology and self-help representation activities continued and have expanded, but the fundamental problem remains: there are not enough actual staff lawyers, paralegals, lay advocates, law students and private attorneys available to meet the huge needs of low-income persons for advice, brief service and full representation. With the Obama Administration came the possibility that there would be increased efforts to expand the civil legal aid system to address significantly more of the legal needs of low-income persons in the United States through increased federal funding and supportive reauthorization legislation and an effort to rebuild the legal aid infrastructure. The Congresses elected in 2010, 2012 and most recently in 2014 have significantly changed the possibilities for increased funding and major new advances. Instead we are focused on preventing funding reductions and limiting federal funding for civil legal aid. However, it is too early to tell what will happen during the remainder of 2015 and 2016 to federal funding for, and new initiatives around, civil legal aid.

PART II BACKGROUND

CURRENT LEGAL AID SYSTEM

Civil legal aid in the United States is provided by a large number of separate and independent staff-based service providers funded by a variety of sources.¹⁸ The current overall funding is approximately \$1.39 billion.¹⁹ The largest element of the civil legal aid system is comprised of the 134 programs that are funded and monitored by LSC. LSC is also the largest single funder, but overall, far more funds come from states and IOLTA programs than LSC.²⁰ In addition, there are a variety of other sources, including local governments, other federal government sources, the private bar, United Way, and private foundations.

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

These staff-based providers are supplemented by approximately 900 pro bono programs, which exist in every state and virtually every locale.²¹ These pro bono programs are either components of bar associations, component units of legal aid staff programs, or independent nonprofit entities with staff that refers cases to lawyers on the pro bono panels. Law school clinical programs and self-help programs also supplement the staff delivery system. There remain a very few “judicare” programs directly funded by either LSC or other funders; indeed, LSC funds only one small judicare program, which now has staff attorneys and paralegals who deliver legal assistance in some cases.²² It is very rare that a funder will directly fund, by contract or otherwise, individual lawyers or law firms. However, some staff attorney programs have created judicare components or contracted with individual lawyers and law firms, who are paid by the staff program to provide legal assistance to certain groups of clients.

¹⁸ We do not know the exact number of civil legal aid programs. Previously I identified approximately 500 civil legal aid programs around the country. If we also include the 160 programs affiliated with the Catholic Legal Immigration Network (www.cliniclegal.org) and the law school clinical programs operated by the 204 law schools, then we reach a total of 864. This figure excludes the 900 pro bono programs identified by the American Bar Association.

¹⁹ The data on funding comes from the ABA Resource Center for Access to Justice Initiatives, a project of the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants.

²⁰ IOLTA stands for “Interest on Lawyer Trust Account.” IOLTA programs capture pooled interest on small amounts or short-term deposits of client trust funds used for court fees, settlement payments, or similar client needs that had previously been held only in non-interest-bearing accounts.

²¹ This estimate comes from Steve Scudder, Committee Counsel, ABA Standing Committee on Pro Bono and Public Service; Directory of Pro Bono Programs, <http://www.abanet.org/legalservices/probono/directory.html#>.

²² The LSC funded judicare program is Wisconsin Judicare, Inc., in Wausau, Wisconsin.

The United States system also includes approximately thirty-eight state advocacy and support organizations that advocate before state legislative and administrative bodies on policy issues affecting low-income persons.²³ Some of these also provide training and technical support to local legal aid advocates on key substantive issues.²⁴ Moreover, more than 30 entities are engaged in advocacy on behalf of low-income persons at the federal level. Fifteen of these were formerly funded by LSC and were part of the national support network; others never were funded by LSC.²⁵

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

Over the last twenty years, the civil legal aid system has begun in earnest to utilize innovations in technology to improve and expand access to the civil justice system. As a result, low-income persons have access to information about legal rights and responsibilities and about the options and services available to solve their legal problems, protect their legal rights, and promote their legal interests. Technological innovation in virtually all states has led to the creation of Web sites that offer community legal education information, pro se legal assistance, and other information about the courts and social services. Most legal aid programs now have Web sites with over 300 sites.²⁶ All states have a statewide website, most of which also contain information useful both to advocates and clients. Most of these statewide web sites were made possible by the Technology Initiative Grants program of LSC. All of these state sites can be accessed through www.lawhelp.org. Half of the sites are hosted on one platform operated by Pro Bono net. Dozens of national sites provide substantive legal information to advocates; other national sites support delivery, management, and technology functions. Many program, statewide, and national websites are using cutting-edge software and offering extensive functionality. I-CAN projects in many states use kiosks with touch-screen computers that allow clients to produce court-ready pleadings and access to other services, such as help with filing for the Earned Income Tax Credit.

²³ Alan W. Houseman, *Civil Legal Aid in the United States: An Overview of the Program and Developments in 2005*, at 4 (July 2005), available at http://www.clasp.org/publications/us_overview_program_2005.pdf [hereinafter *Overview*]; Alan W. Houseman, *The Missing Link of State Justice Communities: The Capacity in Each State for State Level Advocacy, Coordination and Support*, Project for the Future of Equal Justice and the Center for Law and Social Policy (Nov. 2001), available at http://www.clasp.org/publications/missing_link.pdf [hereinafter *Missing Link*].

²⁴ *Overview*, *supra* note 8, at 4; *Missing Link*, *supra* note 8.

²⁵ The number of national support and advocacy centers is based on my own calculation. Pine Tree Legal Assistance lists twenty-four national advocacy centers (www.ptla.org/ptlasite/links/support.htm) and the Sargent Shriver National Center on Poverty Law lists six additional centers not on the Pine Tree web site listing on the inside back cover of the *Clearinghouse Review*.

²⁶ Pine Tree Legal Assistance lists 232 legal services sites on its webpage, <http://www.ptla.org/ptlasite/links/services.htm>.

Video conferencing is being used in Montana and other states to connect clients in remote locations with local courthouses and legal services attorneys.

Finally, increasing numbers of legal aid programs across the country, in partnership with the courts and legal community, are using document assembly applications, most notably HotDocs and A2j Author to expand and make more efficient the provision of legal services to clients. These projects generally focus on the use of document assembly for pro se resources used by the public and automated documents used by legal aid staff to more efficiently represent their clients. Many of these projects nationally are coordinated through Law Help Interactive, which is a project of Pro Bono Net.²⁷

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

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

A critical part of expanding access has focused on a range of limited legal assistance initiatives to provide less than extended representation to clients who either do not need such extended representation in order to solve their legal problems or live in areas without direct access to lawyers or entities available to provide extended representation. Many legal aid programs now operate legal hotlines, which enable low-income persons who believe they have a legal problem to speak by telephone to a skilled attorney or paralegal and receive advice and brief service. Legal hotlines may provide answers to clients’ legal questions, analysis of clients’ legal problems, and advice on solving those problems so that the client can resolve the problem with the information from phone consultation. Hotlines may also perform brief services when those are likely to solve the problem and make referrals if further legal assistance is necessary. Hotlines now operate in over 92 programs in forty-five states, Puerto Rico, and the District of Columbia.²⁸ Some hotlines focus on particular client groups, such as the elderly. Others serve the low-income population in general. Finally, more and more states have a central phone

²⁷ <cid:part1.01080802.04000605@iowalaw.org><http://www.probono.net/>

²⁸ The data reported here is available in the State-By-State Legal Hotline Directory available on the website for the Technical Support for Legal Hotlines Project, sponsored by the Administration on Aging and the AARP Foundation, at www.legalhotlines.org.

number (or several regional phone numbers) that clients can call to be referred to the appropriate program or to obtain brief advice about their legal problems.

Legal Services Corporation

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

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

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

LSC funds 134 grantees that operate local, regional or statewide civil legal assistance programs. Generally, one field program provides legal services in a designated geographic area. In addition, LSC, with Congressional approval, has earmarked funds for migrant and Native American grants for specialized programs that deliver services to these populations. All legal services programs are private, nonprofit entities, independent of LSC. All LSC grantees are governed by boards which consist of 60% attorneys and one-third eligible clients. By LSC regulation, all programs must expend 12.5% of their basic LSC grant on the involvement of private attorneys in the delivery of legal services.

ELIGIBILITY AND RESTRICTIONS

Eligibility

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

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

financial guidelines, but they may not serve aliens who do not meet the alien eligibility guidelines.

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

LSC-funded programs may only use LSC funds to provide legal assistance to clients who meet specific financial eligibility guidelines. The basic rule is that LSC programs serve clients at or under 125% of the Poverty Guidelines,²⁹ or \$30,313 for a family of 4.

LSC programs set their own asset ceilings for individual clients. These asset ceilings may be waived under certain circumstances. LSC programs may serve individuals who meet the asset ceilings and whose income is below 125% of the current official Federal Poverty Guidelines (poverty guidelines), which are revised annually by the U.S. government. In addition, under certain circumstances LSC programs may serve individuals who meet the asset guidelines and whose income exceeds 125% of the poverty guidelines. LSC programs may serve, without regard to income, those individuals who are seeking to maintain benefits provided by governmental programs for low-income individuals or families or whose income is primarily devoted to medical or nursing home expenses. LSC programs may also serve individuals whose income does not exceed 200% of the poverty guidelines if they are seeking to maintain or obtain certain governmental benefits or if the program has determined that they should be financially eligible based on certain other specified factors.³⁰

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

LSC-funded programs are permitted to serve financially eligible individuals who are U.S. citizens or who are members of specified categories of aliens.³¹ LSC programs cannot assist undocumented aliens; aliens seeking asylum, refugee status, or conditional entrant status; or other categories of aliens who are legally in the U.S., including students and tourists.

²⁹ This figure represents 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services under guidance from the Office of Management and Budget (in the Executive Office of the President). The poverty guidelines are income thresholds that were established in the 1963 and updated by a cost of living index each year. The research underlying the original thresholds was based on food expenditures by low-income families in 1955. Calculations at the time showed the families then spent about a third of their income on food. The low-income food budget was multiplied by three to come up with the poverty line. There has been much controversy about the adequacy of the poverty guidelines, but they have not been changed and remain the basis for eligibility and income distribution for many federal programs.

³⁰ See 45 CFR 1611.

³¹ 45 CFR 1626

Furthermore, LSC programs are not permitted to provide certain services to prisoners. Specifically, LSC programs cannot participate in civil litigation on behalf of a person incarcerated in a federal, state or local prison or participate in administrative proceedings challenging the conditions of incarceration.³² Also, LSC programs are not permitted to represent persons convicted of or charged with drug crimes in public housing evictions when the evictions are based on threats to the health or safety of public housing residents or employees.³³

Unlike civil legal aid plans in most developed countries, neither LSC nor most state funders impose a formal “merit” test on applicants for service and representation.³⁴ Nor is there a “significance test” required by LSC or state funders.³⁵ Programs may impose their own criteria for service, such as only providing advice and brief service in certain kinds of cases or providing assistance only in particular categories of cases or with regard to specific issues. But the decision to limit service is a program-by-program decision and not a decision made by LSC or most other major institutional funders, such as state IOLTA programs. Some other funders limit the use of their resources to certain clients or types of cases, such as domestic violence victims.

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

Restrictions

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

However, there are some government and private funding sources that limit their funding to specific types of clients (e.g., aliens) or specific types of cases (e.g., domestic violence). Civil

³² 45 CFR 1637

³³ 45 CFR 1633

³⁴ A merit test requires some degree of possible success, such as the reasonable likelihood, reasonable probability, or reasonable possibility of success.

³⁵ A significance test usually is expressed as a significant or substantial interest and sometimes measured against a hypothetical “modest income litigant” and whether such a person would hire a lawyer in a particular case.

legal aid programs can decide whether or not to seek this funding, and many do. It is the program itself that decides internally whether to seek such funding.

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

In other words, all of a LSC grantee's funds, from whatever source, are restricted.³⁶ Nevertheless, the restrictions do not cover most of the work that LSC programs can do on behalf of the low-income community, and LSC-funded programs can continue to provide representation in over 95% of the cases they were able to undertake prior to the imposition of the 1996 restrictions.

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

THE JUSTICE GAP

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

This “justice gap” demonstrated by the Legal Services Corporation (LSC) is entitled, “*Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*,”³⁷ which examined the adequacy of available funding to meet the legal needs of the low-income population in the United States. The study was updated in 2009, employing the same methodology to document the continued need for civil legal aid among low-income Americans.³⁸ The studies revealed three main commonalities. First, both studies showed that for every client who received service from an LSC grantee, one eligible applicant was turned away.

³⁶ For a more detailed discussion of the restrictions, see Alan W. Houseman, *Restrictions By Funders and the Ethical Practice of Law*, 67 *Fordham L. Rev.* 2187 at 2189-2190 (1999). See also Rebekah Diller and Emily Savner, *A Call to End Federal Restrictions on Legal Aid for the Poor*, Brennan Center for Justice (June 2009).

³⁷ See generally LEGAL SERVICES CORP., *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* (Sept. 2005), available at http://www.lsc.gov/press/documents/LSC%20Justice%20Gap_FINAL_1001.pdf.

³⁸ See generally LEGAL SERVICES CORP., *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* (Sept. 2009), available at http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf [hereinafter HOUSEMAN, JUSTICE GAP].

In other words, 50 percent of potential clients that request assistance are turned away due to lack of resources on the part of the program. Second, the studies each looked at a number of individual state studies addressing the civil legal problems faced by states' respective low-income residents conducted over the last nine years. Seven of the state studies validated the findings of the national study conducted by the American Bar Association (ABA) in 1994, which demonstrated that less than 20 percent of the legal needs of low-income Americans were being met. Finally, the studies identified the number of legal aid lawyers in both LSC and non-LSC funded programs, and compared that number to the total number of attorneys providing personal legal services to the general population. The study determined that, at best, there is one legal aid attorney for every 6,415 low-income persons. In contrast, the ratio of attorneys delivering personal legal services to the *general* population is approximately one for every 429 persons, or fourteen times more.

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

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

A significant gap in the civil legal aid system in the United States, and particularly in the many states with limited non-LSC resources, is the lack of providers that can (1) serve prisoners, aliens, and others who cannot be represented by LSC funded providers; (2) bring class actions and effectively; and (3) engage in advocacy in all relevant forums, including legislative and administrative rule-making and policy-making forums. In large parts of the country such providers do not exist, or, if they exist, they are small, under-funded, and not able to meet the need that exists. This problem is, in part, a result of the restrictions imposed on LSC-funded entities by the 1996 appropriation riders.³⁹

A final component of the "justice gap" is the lack of statewide support and coordinated advocacy. Historically, LSC and some IOLTA funders have sought to ensure coordination and support for all legal providers and their partners, along with a central focus on statewide issues of importance to low-income persons, including representation before legislative and administrative bodies. The loss of over \$10 million in state support funding as a result of the Congressional

³⁹ Some have turned to the courts to address this fundamental challenge, initially culminating in the United States Supreme Court decision in *Velazquez v. LSC*, which struck down one part of the restriction that prohibited representation of clients in welfare cases where a challenge to a welfare law or regulation was necessary. 531 U.S. 533 (2001). The remaining 1995 restrictions were upheld. Three other cases unsuccessfully challenged LSC rules on "program integrity." The "program integrity" provision requires that LSC programs "have objective integrity and independence from any organization that engages in restricted activities." 45 C.F.R. §1610.8 (2005). The regulation sets out criteria by which LSC will measure compliance. It was these criteria and their implementation that were challenged.

funding decision made in 1996 has taken a large toll on the state support structure that was previously in place.⁴⁰ Many of the state support units and the regional training centers that were part of larger programs have been eliminated. In a number of states, there has been no state-level policy advocacy, no significant training of staff, no information sharing about new developments, no litigation support, and no effective coordination among providers. Several new entities have been created to carry on state level advocacy, particularly policy advocacy. However, virtually all of these new entities are severely under-funded and under-staffed. Several of the remaining freestanding state support programs have survived, but, with a few exceptions, they have not made up the loss of LSC funds.⁴¹

FUNDING

Where We Are Today

As noted above, the United States civil legal aid system is not funded by one principal source. There was over \$1.39 billion in the civil legal assistance system as of the beginning of 2013.

State General Revenue and Filing Fees:	\$265,396,000
IOLTA	\$74,497,000
Other Public Funds	\$322,771,000
Legal Community/Bar	\$95,793,000
CY Press	\$63,086,000
Foundation/Corporation Grants	\$130,541,000
Other Strategies (United Way, Attys Fees)	\$111,521,000
Legal Services Corporation	\$322,049,000

While LSC funds are distributed according to the 2010 census data on individuals living below the poverty line, the other funding sources are not distributed equally among states. There is a significant difference in funding among the states. In fact the highest funded state is funded at 10 times the lowest funded state. The lowest-funded states are in the South and Rocky Mountain states, and the highest-funded states are in the Northeast, Mid-Atlantic, Midwest, and West.

While non-LSC funding sources have been steadily increasing overall, LSC funding has not kept pace. LSC funding today purchases less than half of what it did in 1980, the time when LSC funding provided what was called “minimum access” or an amount that could support two lawyers for each 10,000 poor people in a geographic area. Since 1980, LSC has been unable to convince Congress to appropriate sufficient funding to maintain the level of access achieved

⁴⁰ *Missing Link*, *supra* note 8, at 6.

⁴¹ A few states – including California, Florida, Massachusetts, New Jersey, New York, Ohio, Vermont, Washington, Michigan – have preserved and/or strengthened the capacity for state-level advocacy, coordination, and information dissemination; increased training; and developed very comprehensive state support systems.

then. LSC has lost considerable ground because of three significant budget reductions (in 1982, 1996 and 2012) and the inability to keep with up inflation. The following chart presents a few funding comparisons:

LSC FUNDING COMPARED TO INFLATION

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

2005	330,804,705	704,055,010	-53.0%
2007	348,500,000	733,178,279	-52.5%
2008	350,490,000	739,072,032	-52.6%
2009	390,000,000	752,938,299	-48.2%
2010	420,000,000	767,497,879	-45.3%
2011	404,200,000	783,790,743	-51.6%
2012	348,000,000	801,123,576	-56.6%
2013	341,500,000	835,585,677	-59.1%
2014	365,000,000	861,902,912	-57.7%
2015	375,000,000	871,304,722	-57%

, In 2011 and 2012, LSC surveyed its 134 grantees about the impact of funding cuts. The survey included questions on staff reductions, furloughs, salary freezes, benefit reductions, and office

closures. With 97% of grantees reporting, it was clear that most grantees are experiencing financial distress, including office closures, staff reductions, and decreased client services.

Highlights of the results include:

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

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

As many commentators have pointed out, the United States system is funded far below the level of funding provided by most of the other Western, developed nations.⁴² Even though the US is far behind virtually all developed countries with regard to civil legal aid funding, it is important to recognize that, over the last decade, the U.S. system has grown from approximately \$800 million to over \$1.34 billion (including the District of Columbia, Puerto Rico, and the territories).

Future Funding

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

- federal government;
- state and local governmental funds;

⁴² 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. 883 (2001).

- IOLTA funds;
- private bar contributions; and
- other private sources, such as foundations and United Way Campaigns.

1. Federal Funding through LSC

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

Supporters of increased federal funding will have to overcome significant political barriers to substantially increase federal funding for civil legal assistance. On the one hand, although LSC leadership has made substantial progress in developing a much stronger bipartisan consensus in favor of funding for LSC,⁴³ the political leadership, particularly in the Congress, remains divided about whether there should continue to be a federal program and its scope. On the other hand, the Obama Administration is strongly supportive of LSC and is seeking increased funding and removal of restrictions on activities as a key part of its civil rights agenda.

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

2. State IOLTA and Governmental Sources

Since 1982, funding from state and local governments has increased from a few million dollars to over \$500 or more million.⁴⁴ Until recently, this increase has been primarily through IOLTA programs, which have now been implemented in every state.⁴⁵ But funding from court fees and

⁴³ John McKay *Federally Funded Legal Services: A New Vision of Equal Justice Under Law*, 68 TENN. L. REV. 101, 110-11 (Fall 2000).

⁴⁴ The exact amount of state funding for civil legal assistance has not been fully documented, because much of this funding has gone to non-LSC funded programs, which, unlike LSC-funded programs, do not have to report to any central funding source.

⁴⁵ In 2003, the United States Supreme Court upheld the constitutionality of the IOLTA program in a narrow 5-4 decision, *Brown v. Legal Foundation of Washington*. 538 U.S. 216 (2003). The Court held that although the IOLTA program does involve a taking of private property – interest in escrow accounts that was owned by the

general state revenue has now overtaken IOLTA funding in many states. Because of decreases in interest rates and the slowdown in economic activity as a result of the recession, IOLTA funds were reduced sharply between 2008 and 2015, and funding in 2016 is likely to continue at a low level. With the prospect of significant state budget deficits, state appropriations for legal services may also be reduced in the future.

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

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

3. Right to Counsel in Civil Cases at State Expense

In the United States, there is no general right to state-funded counsel in civil proceedings. The United States Constitution does not provide an explicit right to state-funded counsel in civil proceedings, although the Fourteenth Amendment does prohibit a State from depriving “any person of life, liberty, or property, without due process of law” or denying “to any person within its jurisdiction the equal protection of the laws.” Unlike *Gideon v. Wainwright*,⁴⁶ in which the United States Supreme Court held that there must be counsel in criminal cases in which the defendant faces imprisonment or loss of physical liberty, the Court refused to find a constitutional right to counsel in civil cases when first faced with the issue in 1981. In *Lassiter v. Department of Social Services*,⁴⁷ the Supreme Court held in a 5-4 ruling that the due process clause of the federal constitution did not provide for the guaranteed appointment of counsel for indigent parents facing the termination of parental rights. Rather, “the decision whether due

depositors – for a legitimate public use, there was no violation of the Just Compensation Clause of the Constitution because the owner did not have a pecuniary loss.

⁴⁶ 372 U.S. 335 (1963).

⁴⁷ 452 U.S. 18 (1981).

process calls for the appointment of counsel for indigent parents in termination proceedings is to be answered in the first instance by the trial court, subject, of course, to appellate review.”⁴⁸

This basic framework was continued in 2011 when the Supreme Court decided *Turner v. Rogers*, 131 S.Ct.2507 (2011) which held that a parent jailed for civil contempt due to failure to pay child support is not categorically entitled to counsel when (1) the state provides other procedural safeguards; (2) the contemnor’s opponent is neither the state nor represented by counsel; and (3) the matter is not “unusually complex.” The court also determined that there is not a presumption in favor of counsel when physical liberty is at stake. However, the Court did hold that the state must provide four safeguards to ensure due process. These were: (1) notice to the defendant that his “ability to Pay” is a critical issue in the contempt proceeding; (2) the use of a form to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status; and (4) an express finding by the court that the defendant has the ability to pay.

This decision has been viewed in very different perspectives. Some viewed the decision as a terrible loss with few redeeming qualities. For example, Professor Gene Nichol, the keynote speaker at a 2011 conference sponsored by the National Coalition for the Civil Right to Counsel⁴⁹ said of *Turner*: “*Turner v. Rogers* is not a lodestar or watershed of progress...it did not impose a requirement of meaningful and effective opportunity to be heard...” On the other hand many access to justice proponents found in *Turner* “a new day for judges and the self-represented,” and a “watershed for the right to counsel and self-representation.”⁵⁰ As Russell Engler states in a thorough discussion of this issue, “while the decision represents a civil-right-to-counsel ‘loss’, it might well represent an access-to-justice ‘win.’”⁵¹

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

⁴⁸ *Lassiter*, 452 U.S. at 32.

⁴⁹ The National Coalition for the Civil Right to Counsel is a coalition of over 240 participants from 35 states and is housed at the Public Justice Center in Maryland.

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

⁵¹ . See “*Turner v. Rogers* and the Essential Role of the Courts in Delivering Access to Justice,” 7 *Harvard Law & Policy Review* 31 (2013). See also Benjamin Barton & Stephanos Bibas, “Triaging Appointed-Counsel Funding and Pro Se Access to Justice,” 160 *U. Pa. L. Rev.* 967 (2012); John Pollock & Michael Greco, “Response, It’s Not Triage if the Patient Bleeds Out,” 161 *U. Pa. L. Rev. PENumbra* 40 (2012) and John Pollock, “The Case Against Case-by-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases.” 61 *Drake L. Rev.* 763 (2013).

In limited categories of cases, some state legislatures have enacted statutes requiring state-funded counsel to be appointed for one or more parties,⁵² and the highest courts in some states have judicially decided that state-funded counsel should be provided as of right to some parties.⁵³ These state-funded counsel provisions or court rulings are generally in the family law area and civil commitment. There are a few federal statutory requirements for appointment of counsel in civil cases, but these are very limited.

Thus, in the vast majority of civil cases, there is no constitutional or statutory right to state-funded counsel. Based on the usual caseloads of most general civil legal aid providers, it would be fair to conclude that there is no statutory right to counsel in over 98 percent of the cases that would directly involve low-income persons as defendants or plaintiffs.⁵⁴

Most commentators do not believe that there will be any significant right-to-counsel developments at the federal level because of the current make-up of the United States Supreme Court. Instead, most action that is occurring is focused at the state level in a few states. Major initiatives have been underway in several states to litigate a constitutional right to civil counsel at state expense.⁵⁵ So far, there have not been any recent state court decisions expanding the right to counsel in civil cases beyond the family law areas described above.

In addition to litigation in the courts, there are significant efforts to develop more expansive state/statutes that provide for the right to counsel in civil cases at state expense in situations that go far beyond the few areas that now provide for such counsel.⁵⁶ In 2010, the Maryland Access to Commission published *Implementing a Civil Right to Counsel in Maryland*. In the first part of the document, the Commission articulates how a civil right to counsel in basic human needs cases might be implemented should a right be established by case law or legislation. In the

⁵² Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 CLEARINGHOUSE REVIEW 245 (July-Aug. 2006).

⁵³ A thorough exploration of state cases since *Lassiter* is found in the article by Clare Pastore, *Life after Lassiter: An Overview of State-Court Right-to-Counsel Decisions*. 40 CLEARINGHOUSE REVIEW 186 (July-Aug. 2006). See also 92 A.L.R.5th 379 (2001 & Supp. 2006) (providing detailed analysis of state court cases involving termination of parental rights and the developments subsequent to *Lassiter*); Bruce A. Boyer, *Justice, Access to the Courts, and the Right to Free Counsel for Indigent Parents: The Continuing Scourge of Lassiter v. Department of Social Services of Durham*, 36 LOY. U. CHI. L.J. 363, 367 (2005) (noting that forty states now provide free counsel for parents in state-initiated termination-of-parental rights actions, up from thirty-three at the time of the *Lassiter* decision); Rosalie R. Young, *The Right to Appointed Counsel in Termination of Parental Rights Proceedings: The States' Response to Lassiter*, 14 Touro L. Rev. 247 (1997) (particularly note Tables I and II at pp. 276, 277).

⁵⁴ Data from the Legal Services Corporation tracks the number and type of cases that LSC-funded programs bring. According to 2007 data, for example, LSC-funded programs provided some kind of legal assistance in 906,507 cases. They provided legal assistance in only 2,167 termination of parental rights cases, or .24% of the total cases, and in 787 mental health cases, or .09% of the cases brought. Even assuming there is a statutory or constitutional right to civil counsel in all of these cases, then LSC-funded entities handled only .3% of the total cases, or less than one percent. Even if we assume in some other categories of cases there is a statutory right to counsel, it is doubtful that the total number of cases would reach one percent. Most state funders do not require collection of this level of case-type data. When non-LSC funded programs have collected similar data, the percentages have historically tracked the data for LSC-funded programs.

⁵⁵ See 40 CLEARINGHOUSE REVIEW (July-Aug. 2006) (discussing various theories and state initiatives throughout the volume).

⁵⁶ Clare Pastore, *The California Model Statute Task Force*, 40 CLEARINGHOUSE REVIEW 176 (July-Aug. 2006); Russell Engler, *Toward a Context-Based Civil Right to Counsel Through "Access to Justice" Initiatives*, 40 CLEARINGHOUSE REVIEW 196 (July-Aug. 2006).

second section, the Commission tries to answer the difficult question of “how much might it cost?” In 2013, a Maryland bill to create a statewide task force to explore civil right to counsel issues was signed into law. The Maryland Access to Justice Commission will provide staff for the task force which is to report to the Governors, the Chief Judge of the Court of Appeals, and the presiding offices of the legislature by October 1, 2014.

In several states, advocates have turned to setting pilot projects that provide counsel in a category or categories of cases:

Massachusetts began pilot projects in 2009. The two Massachusetts pilot projects are explored the impact of full representation in eviction cases. The pilots grow out of the work of the Boston Bar Association’s Task Force on Expanding the Civil Right to Counsel, as described in its report: *Gideon’s New Trumpet: Expanding the Civil Right to Counsel in Massachusetts*.⁵⁷ The pilot projects tested the theory that an expanded civil right to counsel should target the cases in which counsel is most likely to affect the outcome. Representation was focused on scenarios identified through a survey of housing experts in the state: 1) where the eviction was tied to a mental disability; 2) where it involves criminal conduct, and 3) where a viable defense exists and listed factors reveal a power imbalance likely to deprive a tenant of an affordable apartment. One pilot project was situated in a specialized housing court and another in a generalized district court, since evictions occur in both types of courts. In addition to randomized studies,⁵⁸ the Task Force supplemented the statistical analysis with other evaluation tools, including follow-up interviews with clients, project attorneys, Court clerks, judges, and homeless shelter providers, to better understand the impact of representation on outcomes and on the tenants’ lives.

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

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

⁵⁷ See http://www.bostonbar.org/prs/nr_0809/GideonsNewTrumpet.pdf.

⁵⁸ See Dr. James Greiner, Cassandra Wolos Pattanayak and Jonathan Hennessy, “The Limits of Unbundled Legal Assistance: A Randomized Study in Massachusetts District Court and Prospects for the Future,” 126 *Harvard Law Review* 903 (February 2013).

average for possession rates for tenants generally, confirming the importance of representation in Northeast as well as Quincy.

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

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

Recent law review articles about the right to counsel in civil cases include: Lauren Sudeall Lucas, “Deconstructing the Right to Counsel” in *Advance*, The Journal of American Constitution Society Issue Briefs; Pamela Cardullo Ortiz, [*How a Civil Right to Counsel Can Help Dismantle Poverty in America’s Inner Cities*](#), 25 *Stanford Law & Policy Review* 163 (2014); Access to Justice Journal, Vol. 1. No.1. Fall 2013, Charlotte School of Law. Jason Parkin, *Due Process Disaggregation*, 90 *Notre Dame L. Rev.* 283 (Nov. 2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2554599; Louis S. Rulli, *Roadblocks to Access to Justice: Reforming Ethical Rules to Meet the Special Needs of Low-Income Clients*, 17 *U. Pa. J. L. & Soc. Change* 347 (2014), available at <http://scholarship.law.upenn.edu/jlasc/vol17/iss4/1/>; Anna Blackburne-Rigsby, *Ensuring Access to Justice for All: Addressing the "Justice Gap" Through Renewed Emphasis on Attorney Professionalism and Ethical Obligations in the Classroom and Beyond*, 27 *Geo. J. Legal Ethics* 1187 (Fall 2014), available at <http://static.squarespace.com/static/54256658e4b0b6739e3d79f4/t/5436996ee4b00a9987e68fd6/1412864366440/Judge+Blackburne-Rigsby+GJLE+Article+-+Ensuring+Access+to+Justice+for+All.pdf>; Columbia Law School Human Rights Clinic, *Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases*, 64 *Syracuse L. Rev.* 409 (2014); Martha Davis, *Race and Civil Counsel in the United States: A Human Rights Report*, 64 *Syracuse L. Rev.* 447 (2014); Stan Keillor, James H. Cohen, and Mercy Changwasha, *The Inevitable, if Untrumpeted, March Toward “Civil Gideon”*, 64 *Syracuse L. Rev.* 469 (2014); Mary Helen McNeal, *Civil Right to Counsel: The Continuing Evolution of a Movement*, 64 *Syracuse L. Rev.* 357 (2014); *Transcript: Why We Need a Right to Counsel In Civil Matters Where Basic Human Needs Are At Stake*, 64 *Syracuse L. Rev.* 369 (2014); *Transcript: Gideon v. Wainwright Fifty Years Later: The Need for a Right to Counsel in Civil Matters*, 64 *Syracuse L. Rev.* 391 (2014)

PRO BONO

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

While there is no reliable data about how much pro bono activity is actually going on, we do have some data about who is participating and what they are doing. The American Bar Association's Standing Committee on Pro Bono and Public Services recently issued a new report—Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers (March 2013)—which reports on a 2012 survey completed by 2876 lawyers throughout the country in private practice, corporate counsel offices, government, and academic settings.⁵⁹ This report is based on a new survey similar to the ones done by the ABA in 2004 and 2008 and on which I reported in previous Updates. The new study focused directly on what lawyers did for persons of limited means and for organizations that address the needs of persons of limited means. The study found that 63% of respondents worked on matters that address the everyday legal problems of people in poverty and 36% of the lawyers who responded met the ABA's aspirational goal of providing at least 50 hours of free pro bono services to persons of limited means.

We also know much about various steps to increase pro bono including the ABA Annual Pro Bono week, various state and local bar efforts to increase and reward pro bono efforts, and various initiatives outlined below that LSC has taken. However, we do not know: the quality of pro bono services; how priorities are set within the pro bono systems; the relationships between nonprofit providers and law firms who provide assistance pro bono including which cases are referred and why; how pro bono is marketed; and how law firms makes decisions about which cases they take and the relationship to this pro bono effort and community need.⁶⁰

The Legal Services Corporation has been a leader in encouraging pro bono. Since 1981, LSC-funded programs have had to provide a portion of their funding for private attorney involvement. Currently, each LSC-funded provider must expend 12.5% of its LSC funding for private attorney involvement.⁶¹

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

Pro bono work is an aspirational ethical goal in the U.S. It is included in Rule 6.1 of the ABA Model Rules of Professional Conduct and has been adopted by most states in their state ethical rules. Although Rule 6.1 is not mandatory but aspirational, a few states have required that all members of the Bar report annually on their pro bono activity. According to a survey put

⁵⁹

http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lc_pb_Supporting_Justice_III_final.authcheckdam.pdf

⁶⁰ For a thoughtful discussion about what we know and don't know about pro bono, see Scott I. Cummings and Rebecca L. Sandefur, "Beyond the Numbers: What We Know – and Should Know – about American Pro Bono," 7 *Harvard Law & Policy Review* 83 (2013).

⁶¹ The requirement is imposed by LSC through its regulatory authority. See 45 CFR 1614.

together by the ABA Standing Committee on Pro Bono and Public Service, only 6 states have adopted mandatory reporting requirements and eleven have voluntary reporting. Seven permit attorneys who take pro bono cases to earn credit toward mandatory legal education requirements.

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

Finally, the Pro Bono Institute's Law Firm Pro Bono Project created a challenge to large firms around the country to contribute 3 to 5% of their total billable hours to the provision of pro bono legal services. Today, 140 law firms are signatories to that challenge.⁶² The Pro Bono Institute also has a challenge for corporate in-house counsel to increase the number of significant pro bono activities among lawyers who work on legal matters directly for corporations. The Corporate Pro Bono Challenge is a simple, voluntary statement of commitment to pro bono service by corporate legal departments, their lawyers, and staff. The goal is for one-half of the legal staff to support and participate in pro bono services.⁶³ There are now over 114 signatories to the corporate pro bono challenge.

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

SELF-HELP LITIGANTS AND PRO SE DEVELOPMENTS

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

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

⁶² Information is available from the Pro Bono Institute. See www.probonoinst.org.

⁶³ <http://www.probonoinst.org/>

- New York: 2.3 million self-represented in civil justice system; 90 percent in housing matters; 97% in child support matters.
- Connecticut: 85% self represented in family cases; 28% of all civil cases
- Wisconsin: 70% in family cases
- Massachusetts: 92% in housing masters
- Maryland: 70% in civil cases
- Oregon: 65% in family cases
- Texas: 21.6% of family cases

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

Over the last ten years, the Self-Represented Litigation (SRL) Network, which brings together courts, bar and access to justice organizations in support of innovations in services for the self-represented, has undertaken a number of activities to ensure the justice system works for all including those forced to go to court on their own. For example, the Network developed a judicial curriculum and leadership package which includes PowerPoint slides, detailed faculty notes, an Activity Handbook, which describes activities that help participants to understand underlying issues and begin the planning process, and a Resource Handbook. The judicial curriculum was launched at Harvard Law School in late 2007. Teams from 30 states, the District of Columbia, and four territories consisting of 150 participants including five chief justices, attended the conference. The Network also developed Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes and Issues for Exploration which includes 41 Best Practices.⁶⁴ More information about the Self-Help Litigation Network and self-help programs can be found at www.SelfHelpSupport.org, an online resource where pro se and self-help programs can access and share the resources they need to maximize their effectiveness.⁶⁵

The network convener, Richard Zorza, has also written about the entire access to justice system and has recently laid out a challenging thesis about what he deems an emerging consensus among courts, bar, and legal aid: “court simplification and services; bar flexibility; legal aid efficiency and availability; and systems of triage and assignment.” See Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, JUDICARE, Volume 94, Number 4 (January-February 2011) at 156. See also, Richard Zorza, “A new Day for Judges and the Self-Represented: The Implications of Turner v. Rogers, Judge Journal. Vol. 50, NO. 4

⁶⁴ See http://www.ncsconline.org/WC/Publications/KIS_ProSeBestPracticesSRLN.pdf.

⁶⁵ This site was initially funded by the State Justice Institute, hosted on Pro Bono Net, and maintained by the National Center for State Courts. It has approximately 4,000 participants and 2000 documents in its library. An interesting effort to change how courts operate is found in a book by Richard Zorza, *The Self-Help Friendly Court*, National Center for State Courts (2002).

Fall 2011 at 16; “Turner v. Rogers: The Implications for Access to Justice Strategies” *Judicare*, Vol. 95, No.6, May-June 2012 at 255; “The Access to Justice ‘Sorting Hat’: Towards a System of Triage and Intake that Maximizes Access and Outcomes,” 89 *Denver University Law Review* 859 (2012); and *The Sustainable 21st Century Law Library: Vision, Deployment and Assessment for Access to Justice* (April 2012).

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

The most effective and comprehensive efforts have been in California under the guidance of Bonnie Hough who supervises the Equal Access Program—Center for Families, Children, and the Courts, California Administrative Office of the Courts, San Francisco. The Judicial Council’s efforts and vision were formally established and defined in February 2004 the Judicial Council of California adopted its *Statewide Action Plan for Serving Self-Represented Litigants*, a comprehensive action plan aimed at addressing the legal needs of the growing numbers of self-represented Californians, while improving court efficiency and effectiveness. The action plan placed at its core court-based, staffed self-help centers, recognizing that these centers, supervised by an attorney, are the optimum way to increase meaningful access to the courts by self-represented litigants throughout the state. Self-help centers provide court users information about the applicable laws and court processes, procedures, and operations. They have significantly enhanced access and fairness. The plan also recognized that partnerships among the courts, legal services programs, pro bono programs, local bar associations, public law libraries, law schools, social services agencies, and other agencies are critical to providing the comprehensive range of services required. The plan recommended that court-based self-help centers serve as focal points for collaboration between these entities. This effort has proved to be effective and cost efficient. A recent study done for the Center for Families, Children and the Court, Administrative Office of the Court, found that up to \$3 in court sending were saved by expenditures on self-represented services.⁶⁶

Many U.S. civil legal aid programs are devoting substantial time and resources to address the issue of assistance to pro se litigants. Many legal aid programs throughout the country operate self-help programs independently or in conjunction with courts. We do not have accurate data on how many such programs exist, but we do know that they cover a wide range of services. A 2005 directory listed over 413 separate self-help assistance programs sponsored through legal aid programs with pro se initiatives.⁶⁷ Some programs provide only access to information about the law, legal rights, and the legal process in written form, on the Internet, on videotape, through seminars, or through in-person assistance. Other programs actually provide legal advice and often provide also legal assistance in drafting documents and advice about how to pursue cases.

⁶⁶ See John Greacen, *The Benefits and Costs of Programs to Assist Self-Represented Litigants Results from Limited Data Gathering Conducted by Six Trial Courts in California’s San Joaquin Valley*, May, 2009 . www.courtinfo.ca.gov.

⁶⁷ *Pro Se Legal Services Directory*, AARP Legal Advocacy Group (September 2005).

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

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

ENSURING QUALITY

In the United States efforts are made to ensure the quality of civil legal services, through the use of case management systems, the establishment of standards and performance criteria, and the use of peer review onsite examination of the overall effectiveness of programs—based on the standards and performance criteria. Generally, outcome measures have not been used extensively, although five state IOLTA/state funding programs require their grantees to report on outcome measures.⁶⁸

In 2006, the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) revised the ABA Standards for Provision of Civil Legal Aid.⁶⁹ These revised Standards were presented to and adopted by the ABA House of Delegates at its August 2006 meeting. The revised Standards, for the first time, provide guidance on limited representation, legal advice, brief service, support for pro se activities, and the provision of legal information. The revised Standards also include new standards for diversity, cultural competence, and language competency.

LSC has also completed a revision of the LSC Performance Criteria,⁷⁰ which were originally developed in 1992 as a tool to evaluate LSC programs through a peer review system. These criteria have been the framework for much of the program evaluation that has gone on in civil legal aid, both by LSC and by peer reviews conducted by others for the program. Some IOLTA and state funders also use staff and peers from programs to monitor and evaluate their grantees, based on the Standards and Criteria. All LSC-funded providers are required to utilize case management systems, and many non-LSC providers utilize similar systems.

Many civil legal aid programs have developed their own evaluation systems, which are designed to help individual programs perform better and to better market what they accomplish to state appropriators, funders, the public, and the press. Some programs have developed rigorous

⁶⁸ New York, Maryland, Virginia, Texas, and Arizona measure specific outcomes that could be achieved for clients in specific substantive areas, such as housing, and which focus primarily on the immediate result of a particular case or activity (such as “prevented an eviction”). These systems do not capture information on what ultimately happened to the client. All of these states use the information collected to report to their state legislatures and the public about what the grantees have accomplished with IOLTA and state funding.

⁶⁹ www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2006.pdf

⁷⁰ <http://www.lsc.gov/pdfs/LSCPerformanceCriteriaReferencingABASStandards.pdf>

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

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

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

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

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