

AMERICAN ACADEMY
OF ARTS & SCIENCES

The background features a large, dark silhouette of a scale. Two yellow pans are suspended from the top. The lower pan contains silhouettes of several people of various colors (green, purple, blue). On the right side, a person in a blue silhouette is climbing a yellow ladder. The overall background is a textured blue.

Civil Justice for All

A Report and Recommendations from the
Making Justice Accessible Initiative

A REPORT AND RECOMMENDATIONS FROM THE
MAKING JUSTICE ACCESSIBLE INITIATIVE

Civil Justice for All

AMERICAN ACADEMY OF ARTS & SCIENCES
Cambridge, Massachusetts

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ISBN: 0-87724-136-8

This publication is available online at www.amacad.org/project/making-justice-accessible.

Suggested citation: American Academy of Arts and Sciences, *Civil Justice for All* (Cambridge, Mass.: American Academy of Arts and Sciences, 2020).

PHOTO CREDIT

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From the President

C*ivil Justice for All*, a report of the American Academy’s Making Justice Accessible project, provides a national overview of the crisis in legal services by focusing on four common categories of civil legal problems: family, healthcare, housing, and veterans affairs. By addressing these issues within the larger context of American civil justice, this report advances a set of clear, national recommendations for closing the gap between the supply and the demand for legal assistance for low-income Americans.

The Academy conceived this project in November 2015 during a two-day conference at its headquarters in Cambridge, Massachusetts. The conference brought together federal and state judges, lawyers, legal scholars, legal-aid providers, officials from each level of government, and business leaders concerned about the state of legal services for poor and low-income Americans. They gathered to explore the scope and consequences of inadequate access to civil justice for Americans who most need it.

Three related efforts grew out of the conference:

- The Winter 2019 issue of the Academy’s journal *Dædalus* on “Access to Justice”;
- A forthcoming report about data collection in civil justice; and
- The project that produced this report, *Making Justice Accessible: Designing Legal Services for the 21st Century*.

The cochairs of this effort are Kenneth C. Frazier, chairman and CEO of Merck; John G. Levi, chairman of the Legal Services Corporation and a partner at the law firm of Sidley Austin LLP; and Martha L. Minow, the 300th Anniversary University Professor at Harvard University and former dean of Harvard Law School. They formed five subcommittees, covering four substantive areas of law—*family* (cochaired by Tonya Brito and Lance Liebman); *health* (cochaired by John Levi and Allison Rice); *housing* (cochaired by Colleen Cotter and Diane P. Wood); and *veterans* (cochaired by Nan Heald and Martha Minow)—plus *innovation* affecting each of those areas (cochaired by Elizabeth Chambliss and Andrew Perlman).

Each subcommittee met at least three times by teleconference. Focusing on issues and priorities established by the committees, a team from the law firm of WilmerHale undertook a pro bono project for the Academy, conducting 35 interviews under the masterful supervision of Lincoln Caplan, a senior research scholar at Yale Law School and a member of the veterans committee. Caplan conducted additional interviews with executive directors of legal services organizations

across the country, public officials, and other experts on access to civil justice and had primary responsibility for drafting this report. His contributions to this report were indispensable.

This report is therefore the product of a project undertaken with great care and dedication by a large and diverse group of practitioners, scholars, and advocates (for a full list of subcommittee participants, see page 40). The Academy is particularly grateful to the chairs—Ken Frazier, John Levi, and Martha Minow—whose passion and leadership carried the project from the initial meetings in Cambridge, in 2015, through several years of deliberation, to this report, which appears at such a critical moment in the history of American civil justice.

Very special thanks to David M. Rubenstein, cofounder and coexecutive chairman of the Carlyle Group, who funded this project as an expression of his abiding faith in the future of American institutions.

John Tessitore, a senior program advisor at the Academy, shepherded the project over five years, with the assistance of creative and talented colleagues, Julian Kronick and Natalia Carbullido.

The Academy's publications team—Scott Raymond, Heather Struntz, and Peter Walton (with editorial assistance from Christopher Davey), led by Phyllis Bendell—edited and published this report with rigor and craftsmanship.

The team of lawyers from the law firm of WilmerHale played an essential role in this project: Associates Michael S. Crafts and Rieko H. Shepherd in the Boston office and Mandy Fatemi and Aleksandr Sverdlik in Washington, D.C., as well as Nicole Callan, a senior associate in the Washington, D.C., office, Heather S. Nyong'o, a partner in the San Francisco office, and Christopher J. Herrling, the firm's pro bono counsel.

At Harvard Law School, Mackenzie Arnold, Yoseph Desta, Hannah Kannegieter, Deanna Krokos, Joshua Mathew, Rose Schaefer, and William Wright contributed to the project as research assistants, and Stacy Livingston helped edit the report and recommendations.

Thanks as well to Rochael Soper Adranly and her colleagues at IDEO for counsel about how to frame this document.

As this report makes clear, "Equal justice is a right, not a privilege." For too long, the civil justice gap—the difference between the number of Americans who need civil legal assistance and the very few who receive help of any kind—has been allowed to widen. We hope that this report helps to close the gap, so that every American, irrespective of income, will have access to legal advice and assistance when they need it most.

Sincerely,

David W. Oxtoby

President, American Academy of Arts and Sciences

Executive Summary:

Access to Civil Justice for All Should Be an Urgent Priority

For millions of Americans, especially those living in poverty, hardship can take many forms: homelessness, unemployment, wage theft, burdensome debt, interrupted healthcare. Some are the results of unlawful practices, such as when landlords violate renters' agreements or when lenders set onerous terms for loan repayments. Others can be the result of simple mistakes, oversights, and omissions: the challenges of navigating large bureaucracies like the courts or the U.S. Department of Veterans Affairs, or of filling out complicated and unfamiliar forms.

The legal protections intended to safeguard against these problems are often difficult to exercise, or hidden to anyone who does not have legal training or skills.

Lawyers are licensed to help their clients identify options for redress, including but not limited to litigation. They assist in negotiating disputes, interpreting contracts, and claiming healthcare benefits. Just as important, they provide expert advice that can help their clients achieve positive results without spending unnecessary time, money, and effort in court proceedings.¹

Unfortunately, the Americans who most need legal assistance often do not receive it. Many cannot afford a lawyer. Some do not recognize that the challenges they face can be solved through an exercise of the law. While federal law provides a right to counsel for felony cases, juvenile delinquency cases, and all criminal cases involving jail or incarceration, the right to counsel in civil cases such as it exists is reliant on each state's law, which is significantly

more limited and varies from state to state. Many do not even know where to turn.

The result of this state of affairs is known as the civil justice gap: the great difference between the number of Americans who need civil legal assistance and the very few who receive help of any kind. According to one recent study, low-income Americans received adequate legal attention in only 14 percent of the problems they reported.²

The civil justice gap reinforces the inequalities that already undermine our society. At-risk populations—by income, race, gender, and education level—cannot receive justice if they cannot access even basic legal advice. The outcomes—evictions, family separations, job loss, and other hardships—are often catastrophic.

Despite the severity of its consequences, the civil justice gap remains nearly invisible, ignored, in part, because it is so complicated to solve. As shorthand, we often refer to the

EXECUTIVE SUMMARY

courts, lawyers, and others who help administer civil justice as a “civil justice system.” But there is no civil justice system. Instead, many vigorous yet uncoordinated institutions, organizations, and efforts are distributed unequally around the United States. These groups, which include underfunded and overworked legal aid programs in every state, work tirelessly to help the least fortunate among us, often succeeding against great odds.³

But access to legal services—the very basis of equal justice in America—should not be a matter of geography, timing, or luck. Equal justice is a right, not a privilege.

Individuals and families should receive the government benefits to which they are entitled. Tenants should be able to assert their

disruption of their economic stability should be able to use the law to protect themselves, steady their lives, and improve their prospects.

The COVID-19 pandemic has exposed many of the weaknesses in American civil society, from the real costs of income inequality, to the imbalances in our healthcare system, to the consequences of the digital divide. None of these challenges were new when the shutdown began in March 2020, but all were brought into stark relief. Many of these challenges will persist long after the crisis is over, as expectations about the role of government change, as people adjust to new ways of living, and as systems adjust to the new realities of distance work, distance education, and a greater variety of alternatives to the way things were done before the pandemic.



The civil justice gap reinforces the inequalities that already undermine our society. At-risk populations—by income, race, gender, and education level—cannot receive justice if they cannot access even basic legal advice. The outcomes—evictions, family separations, job loss, and other hardships—are often catastrophic.

rights under the law when they are not able to pay their rent. Victims of domestic violence should be able to obtain protective orders to shield themselves and their children from physical harm and mental anguish. People struggling economically should be relieved from debt when interest rates are exorbitant. And individuals and families facing a

The American justice system was among the earliest institutions to be affected by the pandemic, as courts turned away all but emergency cases, transformed themselves into online platforms seemingly overnight, and suspended normal decisions like evictions until after the crisis passes. These responses, though necessary, created massive case backlogs

Access to legal services—the very basis of equal justice in America—should not be a matter of geography, timing, or luck. Equal justice is a right, not a privilege.



and delayed important decisions in people's lives. They also made it difficult for poor and low-income individuals in particular to obtain the rights and benefits to which they are entitled by law, exacerbating inequalities in the justice system that are already decades old.

In the first days and weeks, the pandemic caused a giant wave of novel justice problems related to healthcare. An even bigger wave soon followed as millions of people lost their jobs and ran out of money, defaulted on loans and other debts, and had to apply for government benefits such as unemployment. Some leaders of America's legal services organizations regard the devastating, far-reaching consequences of the crisis as their biggest test ever.⁴

Even before COVID-19, civil justice organizations could not meet the enormous need for legal assistance among poor and low-income Americans. A 2017 study by NORC at the University of Chicago, funded by the Legal Services Corporation (LSC), found that 86 percent of civil legal problems reported by poor and low-income Americans received inadequate or no legal attention.⁵ Poor and low-income people facing problems with employment, housing, consumer debt, insurance, family matters, and other issues were often left at the mercy of overburdened court systems and poorly resourced government agencies. Even those discouraging numbers understate the supply and demand problem, however. The

NORC study counted only problems for which poor and low-income individuals *sought help*. For a variety of reasons, poor and low-income Americans tried to find legal assistance for no more than 20 percent of the civil legal problems they faced.⁶

The civil justice gap also affects tens of millions of people who are neither poor nor low-income. The gap, as usually measured, applies to people who are eligible to receive free legal services from organizations that receive federal funding. The cutoff for federally funded legal services is income at or below 125 percent of the federal poverty levels set by Congress each year for individuals and families. (For 2020, the level was set at \$15,950 for an individual and \$32,750 for a family of four, with another \$4,480 for each additional family member.)⁷ But that low cap for eligibility is itself a barrier to justice. Many people who earn far more than 125 percent of the poverty level cannot afford lawyers and do not qualify for free legal services from organizations receiving federal funding.

Some legal services organizations provide free representation to people who are in households with more than three times as much income: that is, to people or families at or below 400 percent of federal poverty levels. Before the pandemic, that threshold covered about 130 million, or two out of every five, people in the United States.⁸ As a result of the pandemic,

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tens of millions more Americans are eligible for free legal services. But additional tens of millions are *not* eligible. Not poor enough to receive free legal services, but suddenly unable to afford a lawyer, they may face an even higher barrier to justice than people with lower incomes.

For many, the present state of inequality in America means that access to civil justice is their last chance to avoid catastrophe. But the nation's failure to provide equal access, and the resulting civil justice gap, has not held the public's attention. While the movement to reform America's criminal justice system is ongoing, inspiring, and influential, no parallel movement exists to reform American civil justice. That needs to change.

So, too, does the public's understanding of the stakes. Civil justice is not widely seen as a matter of civil rights, but it should be. Many kinds of civil justice problems disproportionately affect racial minorities—for example, discrimination in housing and employment, as well as in immigration-related issues. In 2019, organizations funded by LSC served almost 750,000 people; 58.7 percent were people of color, including 28.3 percent who were Black. (In the overall U.S. population, however, people of color comprise only 39.9 percent, with Blacks accounting for 13.4 percent.)⁹ The protests that followed the killing of George Floyd in May 2020 highlighted other kinds of inequality and exposed racial disparities exacerbated by the pandemic: higher rates of unemployment, increased fatality to COVID-19, and greater vulnerability to eviction, among others. All of these subjects are covered under civil law.

A silver lining of the pandemic is the resilience and ingenuity shown by service providers. Just

as healthcare professionals and teachers have deployed digital tools in telemedicine and remote education, courts and legal services offices have found new ways to reach people in need. Their shifts to an efficient use of technology prove that significant change can happen quickly. They mark clear paths toward better and more accessible civil justice and remind us that crisis brings opportunity—to see the world more clearly, to find new solutions to our problems, and to put those ideas into practice.

In 2015, the American Academy of Arts and Sciences initiated a series of activities that led to this report and its recommendations for closing the gap between the supply and the demand for legal services. The Academy began this effort long before COVID-19 or the George Floyd protests provided such grim context, and recent events have only amplified the urgency of a crisis a half-century or more in the making. This report calls for the legal profession, the courts, law schools, tech professionals, and partners from many other fields and disciplines to coordinate their efforts to provide necessary legal assistance to many more people in need. Past efforts to improve access to justice offer strong evidence that such an effort would have a profound effect on American society—measured in financial savings, greater trust in law and social institutions, and the safety and security of families and communities.

The project's seven recommendations are:

1 First, and above all, *dedicate a consequential infusion of financial and human resources to closing the civil justice gap, and seek a significant shift in mindset—extending beyond lawyers the duty and capacity to assist those with legal need—to make genuine strides toward “justice for all”;*

2 Second, *increase the number of legal services lawyers who focus on the needs of low-income Americans;*

3 Third, *increase the number of lawyers providing pro bono and other volunteer assistance, to supplement the corps of legal services lawyers;*

4 Fourth, *bring many new advocates—service providers who are not lawyers—into the effort to solve civil justice problems;*

5 Fifth, *foster greater collaboration among legal services providers and other trusted professionals—such as doctors, nurses, and social workers;*

6 Sixth, *expand efforts to make legal systems easier to understand and use through the simplification of language, forms, and procedures and the wider use of technology; and*

7 Seventh, *create a national team, or even a new national organization, to coordinate the efforts listed above, collect much-needed data on the state of civil justice, and help identify and publicize effective innovations that improve access.*

With targeted investment and improved coordination, many more individuals and families in need would be able to navigate

courts and administrative agencies, obtain assistance in advocacy, and receive the legal assistance that is now out of their reach. These investments should be in lawyers but also, crucially, in other problem-solvers who can help to address civil justice challenges. They should support a wide variety of collaborations, including frontline protectors in American life—doctors, nurses, and medical technicians; social workers and other social services providers; librarians and teachers; and many more. And they should be directed to make legal systems easier to understand and use, through the digitization and simplification of forms and procedures, the creation of online forums for resolving disputes, and other innovations.

Although many more lawyers are needed to serve America's poor and low-income people, this is not just a call for more access to lawyers. It is a call for individuals and families to receive the benefits they are owed and to be able to assert the rights to which they are entitled. It is a call for access to fair procedures and equal opportunity for all to receive impartial judgment. And it is a call to fulfill the promise of a nation dedicated to the rule of law, for the young and the old, the rural and the urban, the well-established and the newly arrived, the fortunate and the indigent.

With targeted investment and improved coordination, many more individuals and families in need would be able to navigate courts and administrative agencies, obtain assistance in advocacy, and receive the legal assistance that is now out of their reach.



Why a Major Initiative for Access to Civil Justice Is Needed Now

American courts and administrative agencies are established to uphold the rule of law, protect rights, ensure benefits to individuals and families, and enable communities to thrive. But courts and agencies too often fail poor and low-income individuals and families. These failures violate bedrock commitments of the nation—especially the promise of equal justice carved into the west pediment of the United States Supreme Court, spoken in the oath sworn by federal and state court justices, and recited by schoolchildren in the Pledge of Allegiance.¹⁰

A sturdy rule of law, applying to everyone equally, strengthens the nation in every way. It supports trust in government; a climate for business growth and fairness for workers; the nurturance of families; choice and safety for consumers—as well as the security of the most vulnerable. It reduces the risks of unrest and promotes confidence in institutions and society. It strengthens what is best about America and mitigates what is worst.

The accessibility of legal assistance is perhaps the most essential factor to the proper functioning of civil law. For example, one study showed that, when veterans were helped by lawyers, their success in receiving the benefits owed to them was 144 percent higher than when they filed claims without help.¹¹ Legal assistance, by improving the accuracy and completeness of applications and making the review process more accurate and efficient, also eases the administrative burden on state governments.

Legal assistance also protects public money. Over the last decade, many states, bar associations, and legal services organizations have documented the social, economic, and community dividends of providing legal services such as direct representation and access to legal advice. States saved costs, communities became safer, and courts and agencies did their work more effectively.

- In 2017, New York State reported that its expenditure of \$462.6 million on civil legal services helped poor and low-income residents obtain \$1.08 billion in Medicaid, Social Security Disability, and other federal benefits, as well as awards of \$58.6 million in civil cases. The state estimated that it saved \$724.3 million by keeping people in their homes (reducing demand on shelters) and by preventing domestic violence and avoiding medical costs. It concluded that, through the obtained federal benefits alone, the total return on its investment in legal



A Well-Documented Need for Advocates: The Local Right-to-Legal-Assistance Movement

The Bronx is the poorest of New York City's five boroughs—and includes the poorest congressional district in the United States.¹² About 80 percent of its residents live in rental housing. In 2010, when law professor Russell Engler assessed the Bronx Housing Court, he described its courtrooms as “eviction mills” created “to work in a landlord’s favor.”¹³

A report produced by the New Settlement Apartments’ Community Action for Safe Apartments (CASA) found that, of the 2,000 or so tenants who went to the Bronx courthouse each day, some 80 percent did not have a lawyer or other advocate. Many did not know where in the building they should go when summoned to a hearing, or that they had to check in with the court clerk or receive a calendar number that the court would then use to track their case.

In half the disputes, lawyers for landlords tried to resolve matters before the cases arrived in court by encouraging tenants to agree to stipulations. Most tenants who were offered stipulations did not have a hand in writing them. Many did not understand the deals that the stipulations set out. A report by CASA states that most tenants did not “talk to a judge or court attorney” until after they had signed their agreements, “when information about their rights as tenants” became irrelevant. The report concludes, “Our research and findings suggest that Housing Court does not currently operate as a place where tenants

can access justice, but rather as a place where tenants are brought to court and evicted at a disturbing and unprecedented rate.”¹⁴

As a result, in 2013, CASA recommended “legislation giving all tenants the right to a court-appointed attorney if they cannot afford one themselves.”¹⁵ In 2017, after a city-wide political effort, the New York City Council passed a bill for Provision of Legal Services in Eviction Proceedings. It committed \$155 million to be spent over five years to fulfill the right to counsel for people with income at or below 200 percent of the federal poverty level.

The new law rested on two premises. First, in New York City at the time, about 90 percent of landlords in eviction proceedings had lawyers, compared to only about 1 percent of tenants, and parties without lawyers generally fared much worse. Second, the cost savings for the city—for example, from money not spent on homeless shelters for families able to remain in an apartment—were likely to be greater than the cost of providing counsel.

Newark, Philadelphia, Cleveland, and San Francisco have since passed similar right-to-counsel laws covering eviction cases for poor and low-income people. Connecticut, Massachusetts, and Minnesota are considering similar laws. Advocates for a general civil right to counsel requirement regard this groundswell of local laws providing a right to legal assistance in eviction cases as a precedent for other areas of civil law as well.

WHY A MAJOR INITIATIVE IS NEEDED NOW

services was \$3.3 billion, or about \$7.21 for every \$1 spent.¹⁶

- The California bar reported that in 2017, 95 nonprofit legal services providers received \$37 million in grants, which supported efforts that recovered \$134 million for clients and prevented the loss of an additional \$43 million in benefits. The providers helped keep 4,895 families in their homes, avoiding \$19.6 million in costs for clients, and helped obtain 4,874 restraining orders to protect survivors of domestic violence. In addition, 231 orders obtained after hearings saved \$2.9–\$3.9 million in state Medi-Cal costs.¹⁷
- Vermont estimated the economic return on its \$6 million investment in legal services in 2017 to be \$66.4 million, a return of \$11 on every \$1 spent.¹⁸

clients obtain \$36.3 million in Social Security benefits.²⁰ Programs provided by similar organizations in Tennessee helped secure \$1.3 million in cost savings by reducing the need for emergency homeless beds.²¹ And in 2015, civil legal-aid recipients in Maine spent fewer nights in the state’s emergency and homeless shelters, which saved an estimated \$2.6 million.²²

These data reveal a simple truth: legal aid serves the country. The benefits far outweigh the costs when people who are struggling can pay their bills, avoid foreclosure or eviction, prevent domestic violence, prevent foster care placements for their children, and obtain healthcare and social services that improve their lives.

Since lawyers are so important to the proper functioning of the law, many observers advo-

A sturdy rule of law, applying to everyone equally, strengthens the nation in every way. It supports trust in government; a climate for business growth and fairness for workers; the nurturance of families; choice and safety for consumers—as well as the security of the most vulnerable.



These studies confirm earlier reports. In 2014, for example, a task force of the Boston Bar Association found that every dollar spent on legal assistance for poor and low-income individuals returned \$1–\$5 to the Commonwealth in savings due to reduced demands on foster care, emergency housing, emergency healthcare, and other social services.¹⁹ Civil legal-aid service providers in Georgia helped their

cate for a right to counsel for poor and low-income people in civil cases where basic human needs are at stake. A right in such cases would be similar to the right to a lawyer in criminal proceedings in which the defendant faces the prospect of time behind bars (as guaranteed in the Supreme Court’s 1963 decision in *Gideon v. Wainwright*). This report takes no position on proposals for a civil right to

Legal resources must be integrated with health systems, libraries, and social services. Helpers beyond lawyers—other professionals, volunteers, and civil justice advocates—must be recognized and encouraged as vital partners and contributors.



counsel.²³ It makes recommendations within existing law, identifying reforms that are consistent with but do not require such a right. Most civil matters, while crucial to daily life and existence, have not been deemed fundamental by the Supreme Court.²⁴ And even though parental rights have been deemed fundamental under federal due process, the right to counsel in such matters is treated as a discretionary issue under federal law.²⁵ However, all states guarantee a right to counsel for certain types of civil cases, although it varies from state to state as to which areas are covered.²⁶ Additionally, state and local governments have undertaken other efforts to provide assistance by civil justice advocates whenever people who qualify for it ask for it.²⁷ Even where civil right to counsel applies, some work is usually needed to maximize its impact as well as address matters or individuals not covered by its scope. Therefore, even if civil right to counsel were announced as a right, plenty of work would still need to be done of the sort explored in this report: promoting effective models for lawyers and nonlawyers, developing technological aid, and simplifying the law so self-help is more feasible in civil matters.

And given the massive scope of the civil justice gap—and the tremendous variety of cases that fall within it—lawyers cannot be the only remedy. A coordinated response must include a shift in scope and strategy beyond

the expansion of professional legal services. The systems that stand between individuals and their legal needs must be revised so that individuals can navigate them on their own. Legal resources must be integrated with health systems, libraries, and social services. Helpers beyond lawyers—other professionals, volunteers, and civil justice advocates—must be recognized and encouraged as vital partners and contributors. Failing to make these more ambitious changes will continue to consign large numbers of people to hunger, homelessness, violence, unnecessary illness, and other forms of severe and avoidable suffering.

Change requires careful thought. Change is often difficult. But as American Bar Association (ABA) President Judy Perry Martinez wrote in 2020, “given the dire circumstances that the public faces when trying to protect their basic rights, doing nothing poses an even greater risk to our system of justice and the rule of law.”²⁸

Major Recommendations

1. Dedicate a consequential infusion of financial and human resources to closing the civil justice gap, and seek a significant shift in mindset—extending beyond lawyers the duty and capacity to assist those with legal need—to make genuine strides toward “justice for all.”

This is the primary, overarching goal of the report. The number of lawyers devoting their time and talents to the needs of low-income people, through full-time or pro bono work, must multiply by a dramatic factor. But because lawyers alone will not be able to solve the crisis in civil justice, they should not be the only professionals allowed to provide information, assistance, and advocacy. With appropriate training and support, people without law degrees can help to assist tens of thousands of people facing eviction, food insecurity, job loss, domestic violence, and other serious problems. Collaborations across law, medicine, social work, and new technologies hold great promise and must not be held back due to outdated and otherwise faulty bar restrictions. The chronic failures to make justice accessible to all are severely heightened by COVID-19, and the nation can no longer treat the civil justice crisis as the concern of lawyers alone. It will take money, creativity, and effort from across society to ensure justice and legal rights.

2. Increase the number of legal services lawyers who focus on the needs of low-income Americans.

Lawyers are critical to the proper functioning of the law and must continue to play a vital role, even an expanded role, in providing access to civil justice.

The most important and effective lawyers engaging in this effort are full-time legal services lawyers. They identify the people who are most in need of legal services, provide those services full time, and train and mentor pro bono volunteers to amplify their efforts. Recruiting more legal aid lawyers will be an essential part of the effort to close the civil justice gap in the United States, as Helen Hershkoff and Stephen Loffredo argue in *Getting By: Economic Rights and Legal Protections for People with Low Income*.²⁹

For almost 50 years, the federal government has recognized the importance of legal aid lawyers to a functioning civil society. The first sustained investments in the field were made during the 1960s, when Lyndon Johnson’s War on Poverty produced the Office of Economic Opportunity and its legal services program.³⁰ In 1974, Congress established the Legal Services Corporation (LSC) as an independent, nonprofit organization with a bipartisan board of directors, funded largely by the federal government and authorized to award grants to organizations providing legal aid to poor and low-income individuals and families.

Although LSC remains the largest funder of civil legal aid in the country, federal support of legal services has diminished. In 1980, LSC's 325 grantees had 6,200 full- and part-time lawyers, or about one for every 36,500 people.³¹ In 2018, LSC had 132 grantees with 5,345 full- and part-time lawyers, or about one for every 61,200 people.³² To restore the earlier ratio, the United States would need about 9,000 legal services lawyers, representing a 50 percent increase from the number who served in 2018. That is not necessarily the right measure for how many legal aid lawyers the country needs, but it is an indication of how stretched and overworked the field has become.

To increase the number of lawyers providing civil legal services, the nation needs to invest more money in legal services organizations. Today, the federal contribution is less than half what it was during the War on Poverty. LSC's fiscal year (FY) 2020 budget is \$440 million, less than half of the organization's inflation-adjusted FY1980 budget. Factoring in population growth—from 226.5 million in 1980 to 331 million today—the federal money spent today per person on LSC is less than one-third what it was 40 years ago.

LSC grantees, measured by staff size and overall funding, likely represent 60–65 percent of the market. The remaining 35–40 percent includes some of the biggest legal-aid programs in the country: for example, Greater Boston Legal Services, the Legal Aid Society of New York, Community Legal Services in Philadelphia, and the Legal Aid Society of Washington, D.C. Aggregate funds to all of these entities—from federal and state governments, philanthropies, and other sources—were modestly higher before the pandemic than they were 40 years ago. Still, in 2017, total funding for civil legal aid (including LSC's budget of \$385

million) was estimated at \$1.58 billion—about 0.5 percent of the total that federal, state, and local governments spent on criminal justice.³³ This public and private investment is woefully inadequate to the challenges ahead.

Worse, as a result of the pandemic, funding from state governments, philanthropies, and other sources is likely to shrink. One example is the threat to the trust accounts lawyers hold for clients, known by the acronym IOLTA (Interest on Lawyers Trust Accounts). In each state, the District of Columbia, and the Virgin Islands, the interest on IOLTA accounts is pooled to provide funding for civil legal-aid organizations.³⁴ When interest rates plunge—as during the Federal Reserve's response to COVID-19—this significant source of funding for legal services shrinks or dries up. The federal government is unlikely to fill the gap. In 2020, Congress gave LSC an additional \$50 million as part of pandemic stimulus funding, and as of June 1, 2020, the House had proposed a second \$50 million tranche of emergency funding. But even \$100 million would cover only about one-third of the predicted funding losses due to the pandemic.³⁵

At a time when low-income Americans will need even more legal assistance than before—to help address the wave of evictions, domestic issues, healthcare disputes, and other COVID-related problems—the necessary investment in legal aid lawyers appears to be shrinking. This trend cannot continue. Funders who have a long history of supporting legal aid, and those who are new to the field, need to step forward now to sustain and expand the pool of experts in civil legal justice and to encourage and empower more lawyers to focus on the problems of the needy.

MAJOR RECOMMENDATIONS

3. Increase the number of lawyers providing pro bono and other volunteer assistance, to supplement the corps of legal services lawyers.

In their 2011 report *Access across America* for the American Bar Foundation, Rebecca L. Sandefur and Aaron C. Smyth describe “a great diversity of delivery models for civil legal assistance.”³⁶ They collected information about eleven ways that civil legal aid is delivered, from legal services organizations to court websites providing information about how people can access and use the courts. Prominent among the examples are programs for pro bono lawyers and other kinds of pro bono efforts, such as courthouse lawyer-for-a-day programs.

lawyering, as is the minimum requirement at some large law firms. Many should be able to commit to 50 hours per year—one week of work—as the ABA’s model rules of professional responsibility urge.³⁷ Some states already make pro bono work a prerequisite for the bar, while acknowledging variations in kind and scale of practice. But the highest court in every state should carry out the recruitment campaign to which the Conference of Chief Justices has committed them. The courts should promote the mission of increasing and improving civil equal justice and help lawyers fulfill a duty they undertake when they are sworn in as members of the bar and officers of the state court system. In addition to helping people in need, pro bono work is good citizenship and an ethical responsibility of the profession.³⁸

Pro bono and other volunteer programs represent a critical bridge between people in need and the legal profession.



Experts emphasize that the United States cannot “pro bono its way out” of the nation’s civil justice problem. The need is too great, and pro bono efforts can be inefficient, requiring the diversion of expert legal services lawyers away from lawyering and toward the supervision and training of lawyers working outside their specialties. Nevertheless, efficient and effective pro bono programs play a significant role in helping meet demand, and more such programs will be a necessary component of any coordinated effort to close the justice gap.

Every lawyer should have a goal of 20 hours per year—two and a half days of work—of volunteer

One option for increasing the number of volunteer lawyers is to design programs in which they provide one-time or one-step help for clients—often called “unbundled legal services.” For example, a lawyer in a private firm or a government agency may not have the time or flexibility to represent a client in every step of an eviction proceeding but may have the time to commit a half-day every two weeks to help tenants trying to hold on to their apartments. Another option is to offer low bono, as well as pro bono, services; that is, charging a reduced fee to take on cases for poor and low-income people in crisis. These alternatives are particularly important for the vast majority of lawyers



Collaboration between Corporate and Legal Services Lawyers: **Her Justice in New York City**

In 1993, the Network for Women’s Services (NWS) was founded in a sublet off Broadway in Manhattan. Its goal was to meet the needs of poor and low-income women in family and divorce proceedings by enlisting lawyers experienced in such cases to train and mentor volunteers from corporate law firms. It served 70 clients its first year.

In 1996, the organization hired its first staff lawyer and started a clinic on how to combat sexual harassment. In 2001, it became InMotion, a name chosen “to symbolize the journeys both clients and their attorneys took together,” according to a history of the organization.³⁹ In 2003, it served more than 5,000 clients. In 2012, it changed names again, this time to Her Justice, emphasizing the organization’s roots in “empowerment for women through the use of law.”⁴⁰ It now serves poor and low-income women who live in any borough of New York City and have problems involving family, divorce, or immigration law.

Her Justice has seen great success in leveraging its staff lawyers—14 in 2018—to train and mentor more than 2,000 volunteer lawyers, whom the staff screens and selects. In 2018, the organization’s 2,089 volunteer lawyers represented 8,650 women and children, donating work hours valued at around \$42 million.

The organization is also distinguished by its reliance on data, which it collects during the intake process, to understand the demographics and needs of clients and how they change over time:

- 80 percent of its clients are women of color (55 percent Hispanic, 25 percent Black);

- 75 percent are survivors of domestic violence;
- 69 percent are mothers;
- 53 percent were born outside the United States;
- 40 percent speak only a language other than English and must have an interpreter to communicate with the legal system;
- 30 percent live in Queens, one of the most ethnically diverse counties in the United States, where half the residents are immigrants; and
- 22 percent live in the Bronx, the city’s poorest borough.

Over time, Her Justice noticed that low-income women in New York City are often held responsible for debt incurred during marriage and are thus left economically insecure after a divorce. Sometimes in abusive relationships one spouse is forced by the other to take on personal debt. And even if a divorce divides responsibility for debt acquired in a marriage, a bank, car dealership, or other creditor can sue the individual whose name is on the contract for the full amount. Her Justice therefore established the Marital Debt Project, which represents women in divorces and against their creditors so that they can become economically secure by the end of their marriage.



Engaging More Lawyers in Providing Civil Justice: Unbundled Lawyering in Milwaukee

In 1968, people in Milwaukee, Wisconsin, formed two community-oriented law firms—Freedom Through Equality and Milwaukee Legal Services—to represent low-income clients and to challenge aspects of the systems of law and government that keep clients and others from achieving self-sufficiency. The firms later merged to create what is now Legal Action Wisconsin.

Since 2017, Legal Action Wisconsin has supported an Eviction Defense Project that provides free, unbundled legal aid to tenants facing eviction. The project calls its unbundled representation “a lawyer-for-the-day pro bono opportunity.” Several lawyers might be involved in a single client’s case, each lawyer working on one step of a multi-step process. Their participation might involve giving brief legal advice, assisting with a settlement, drafting a document, or representing a client in court. In this way, pro bono lawyers who lack the flexibility and time to represent a client for the duration of a matter can still offer help.

In his landmark study of eviction in Milwaukee, Matthew Desmond found that

among the city’s renters, one out of five Black women had been evicted, compared to one out of 15 White women.⁴¹ “Poor black men are locked up,” Desmond said; “poor black women are locked out.”⁴² The effects are extreme: eviction is “a common yet consequential event that pushes families deeper below the poverty line.”⁴³ The rate of eviction in Milwaukee is twice the national average.

As a group, the project’s clients fare notably better than tenants in Milwaukee’s trial court who lack lawyers. The project’s clients tend to hold on to their apartments, and the records of their eviction cases are more frequently sealed.

Legal Action Wisconsin has also been responsible for a series of state-level reforms, including the establishment of a right to counsel for defendants in paternity lawsuits; laws making it a crime to interfere with the custody of a child; procedures for expulsion and suspension hearings for students; revision of wage garnishment laws; and the creation of a statutory defense to eviction for tenants who have applied for but not yet received emergency public assistance.

(about three-quarters of the profession) who work in firms of five or fewer lawyers and have difficulty committing to extended periods of pro bono activity.

Legal services organizations serving poor rural areas, whether in West Virginia, Montana, or Alaska, face special difficulties in attracting, hiring, and retaining lawyers. They also struggle to help people across a wide geographic area. Lawyers from densely populated areas, especially the major cities, can provide much-needed help by offering pro bono services through videoconferencing and other digital means. They might also experiment with a visiting program modeled after the Doctors Without Borders medical-emergency program, including lawyers-on-wheels efforts in which lawyers work from cars turned into mobile law offices.

To do this work effectively, lawyers should be allowed to practice in states other than where they are enrolled in the bar. Good models for effectively changing these rules already exist.

The need for such change is enormous. Pro bono and other volunteer programs represent a critical bridge between people in need and the legal profession. Expansion and proliferation of these programs are among the best opportunities for improving access within the existing structure of the law.

4. Bring many new advocates—service providers who are not lawyers—into the effort to solve civil justice problems.

Lawyers remain the essential partners in any effort to improve civil justice. But they are not, and cannot be, the sole providers of legal or law-related services. The need is too great to rely exclusively on bar-enrolled lawyers to handle every legal matter. And civil justice advocates of many kinds have already proven their abilities to deliver valuable services, sometimes at strikingly lower costs than lawyers.

The legal establishment has taken notice. In 2016, the Commission on the Future of Legal Services of the ABA endorsed the expanded

Lawyers remain the essential partners in any effort to improve civil justice. But they are not, and cannot be, the sole providers of legal or law-related services.



Out-of-state lawyers were permitted to practice in Louisiana, on an emergency basis, after Hurricane Katrina, and the state of Arizona passed a “universal recognition” law in 2019. Both initiatives made it easier for lawyers to cross state borders to provide assistance and are useful models for other states to follow.

use of trained, supervised individuals without formal legal education to help people who would otherwise receive no legal assistance.⁴⁴ The Conference of Chief Justices, the Conference of State Court Administrators, and the National Center for State Courts have issued similar endorsements.⁴⁵ The field is changing,



Force Multipliers of Civil Justice: Civil Justice Advocates in Alaska

In 2019, Alaska Legal Services (ALS) helped people in 197 of the state's 331 communities.

Alaskans who seek out the services of organizations like ALS often do so because they need help getting food stamps through the federal government's main program to combat hunger, known as the Supplemental Nutrition Assistance Program (SNAP). About one in nine Alaskans qualifies for this aid, which the state administers on behalf of the federal government. Alaskans getting SNAP benefits can buy milk, bread, fruits and vegetables, meat, fish, and poultry, as well as seeds and plants to grow food. If they live in isolated communities (only 10 percent of all communities are connected by roads to the rest of the state), they can use SNAP to buy fishing gear and guns to catch or kill food themselves. In 2019, households got an average of \$410 a month—households with children received an average of \$687 a month.

Alaskans can apply for SNAP benefits in person at a state office or over the phone, but most apply by mail, email, or online. The system is notably inefficient. The state's responses are considered delayed for about 30 percent of the applications. When the state rejects applications, its reasons for denial turn out to be incorrect about 40 percent of the time. Many people who are denied SNAP benefits qualify for them. Only about 70 percent of Alaskans eligible for the program took part in it in 2016, according to the Center on Budget and Policy Priorities. Almost 90 percent of Alaskans who receive SNAP benefits live in households with incomes at or below the poverty line—and five in ten are at or below *half* the poverty line.

In 2019, ALS, through Alaska Pacific University, launched an online, self-paced training course, expected to take about three hours, to train SNAP advocates: generally young Alaskans, many of them members of Indigenous tribes. The goal is to provide them with knowledge and skills they can use to help speed up the SNAP application process and increase the percentage of successful applications. SNAP advocacy requires knowledge about the program and how it works, as well as skill in dealing with applicants and with the state government, but does not require a law degree. The ALS program, which was designed to avoid running afoul of the state's rules against the unauthorized practice of law, equips advocates to provide information to potential SNAP applicants but not to provide legal advice or counsel.

ALS assigns potential SNAP applicants—whom it identifies through tribal community centers, medical-legal partnerships, and other gathering points—to advocates who have completed the advocacy program and are supervised by a legal services lawyer.

The training program offers five modules, of which SNAP advocacy is the first. The others train advocates on will drafting, protection against unfair debt collection, bankruptcy, and the Indian Child Welfare Act. Advocates who complete the last module are equipped to deal with the welfare act for the more than 230 recognized Alaskan tribes. They are expected to navigate the complicated federal statute that establishes standards for the placement of tribal children in foster or adoptive homes and seeks to prevent the breakup of tribal families.

and a large cohort of young Americans, including those recruited and placed by the innovative new program Partners for Justice, is eager to help.⁴⁶

Some nonlawyer advocates already perform well-defined roles in civil justice. *Legal technicians*, employing skills that paralegals have long used in law offices, help clients fill out forms and understand legal procedures, though they cannot represent clients in court. *Court navigators* are laypeople who volunteer their time to assist in court and agency procedures. They provide practical information, help litigants access and complete court-required simplified forms, attend settlement negotiations, and accompany unrepresented litigants into the courtroom. In New York City courts, if judges ask factual questions, navigators are authorized to respond. In 2013, in a report called *Narrowing the “Justice Gap,”* the New York City Bar recounted many valuable legal services that civil justice advocates were already providing in limited circumstances: in court proceedings dealing with landlord-tenant matters like evictions, foreclosures, consumer credit, and family matters, as well as in Native American tribal courts; and in administrative proceedings concerning Social Security benefits, immigration, unemployment insurance, and workers’ compensation.⁴⁷

Rebecca L. Sandefur and Thomas M. Clarke evaluated Washington State’s program for legal technicians and New York City’s program for court navigators and found both to be successful.⁴⁸ They described the legal technician program as “an innovative way to extend affordable legal services to a potentially large segment of the public that cannot afford traditional lawyers” and concluded that the court navigator program “can result in financial savings to society as well as a reduction in the

hardships experienced by unrepresented litigants in civil cases.”⁴⁹ The program had high success rates in eviction cases, for example, at half the cost of legal-aid lawyers.⁵⁰

These successes indicate a way forward for many who cannot find an affordable lawyer, as well as for legal aid agencies struggling to meet the demands on their services. In the absence of nonlawyer advocates, the pool of legal experts is too small to serve even a small fraction of potential clients. In Cook County, Illinois, where Chicago is located, approximately 30,000 evictions are filed each year.⁵¹ Legal Aid Chicago, the Midwest’s largest legal services organization, represented 415 tenants in 2018, winning 96 percent of the cases. That is also the organization’s average annual success rate in eviction cases—a superb record. Yet Legal Aid Chicago helped less than 1.5 percent of those threatened with eviction. And while the organization’s lawyers are not the only ones to represent tenants in the city, tens of thousands lack representation each year. Civil justice advocates can help address that large need.

State laws against unauthorized legal practice are the main obstacles to the recruitment, training, and engagement of many more civil justice advocates. Although the rules are intended to maintain standards of legal practice, they have the effect of restricting access to civil justice for people who need important assistance, including work that lawyers generally choose not to do. Most evidence suggests these laws are overly broad in protecting lawyers and blocking other kinds of civil justice advocates from taking on roles they are capable of performing.

The ABA has encouraged broader thinking and innovation to address the civil justice gap, including Model Regulatory Objectives directed

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at state authorities, since the highest court in each state is responsible for making regulations for legal practice. Still, lawyers in many states are actively maintaining or even strengthening regulatory obstacles. As David F. Levi, Dana Remus, and Abigail Frisch wrote in *Dædalus* in 2019, “There is no question that the profession is falling short in the provision of legal services to poor and low-income people, and that it can no longer maintain a monopoly over work that it has long failed to perform.”⁵²

The legal scholar Elizabeth Chambliss has proposed a concrete yet simple solution to this problem, one that would remove any risk of unauthorized legal practice through the establishment of new categories of licensing for the most widely useful kinds of civil justice advocates. In this model, the licensing of legal technicians and court navigators would resemble certification processes for nurse practitioners and physician assistants in healthcare. Efforts to authorize and develop training for other legal services professionals besides lawyers are underway in the states of Arizona and New York.⁵³ A California task force on reform similarly opened avenues for civil justice advocates to work in access-to-justice efforts, and the trustees of the state bar voted to move forward with that effort.⁵⁴ And the state of Utah, led by the Utah Supreme Court, launched a “regulatory sandboxes” program at the request of the state bar association. Each “sandbox” is a focused experiment that allows participants to create new legal services products—for example, apps for handheld digital devices—based on market demand. Sandbox programs will gather data about the use of any new product: the extent of the demand, the effectiveness of the product, the risks of using it, and whether to encourage its continued use. The state and the legal profession in Utah are undertaking other focused experimental reforms as well, including revisions

to state restrictions on legal representation by civil justice advocates.⁵⁵ Work by these and other states points to genuine prospects for significant and meaningful reform.⁵⁶

Another major idea that bar leaders, scholars, and others are considering is adoption of the model used in the United Kingdom to regulate the practice of law. The British model “reserves” activities for lawyers (the right to appear before a court, to conduct litigation, to administer oaths, and three other basic “reservations”), while allowing people who are not lawyers to engage in other activities commonly associated with the legal profession: providing legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes; and engaging in any activity that does not fall within one of the six reserved legal activity categories. The United States should continue to explore this model.

Real change will likely depend on a combination of these innovations to increase the number of experts and advocates able and authorized to help low-income Americans pursue civil justice.

5. Foster greater collaboration among legal services providers and other trusted professionals—such as doctors, nurses, and social workers.

As the field of civil justice expands beyond lawyers to help provide more assistance to people in need, it should also build more systematic collaborations with trusted professionals from other fields. Such partnerships—for example, between lawyers and medical professionals—are among the most important innovations in civil justice in the last two decades. They help identify problems that clients are not aware of or do not realize have a legal dimension, such



Collaboration at Its Most Promising in Civil Justice: A Medical-Legal Partnership in Indianapolis

In 2017, Community Hospital East, in Indianapolis, formed a medical-legal partnership with Indiana Legal Services, the largest provider of free civil legal aid in the state. The partnership's mission is to improve health outcomes for patients by providing legal services that address the social determinants of health—unmet obligations for child support, for instance, or a notice of eviction.

To be represented by the nonprofit group, a patient must be referred by a doctor, nurse, case manager, resource coordinator, social worker, or other member of the patient's treatment team. The partnership has trained these health professionals to look for signs that patients might have legal problems affecting their health.

Initially, the partnership focused on patients being treated for mental health issues, who may have great difficulty navigating legal challenges, like pressure to provide child support, efforts to expunge criminal records, or problems related to housing. Legal aid seems to work best for this population as a value-added service accompanying medical, counseling, and related services. Outcomes of the partnership were excellent. In 2018, it completed about 220 intakes for legal help at the hospital and received more than 400 legal referrals.

This collaboration is among the most promising innovations in legal and wrap-around services in the state, in part because of its potential reach.

Community Hospital, in Indianapolis, opened in 1956 with 300 beds and 111 employees. It grew into today's Community Health Network, which encompasses ten hospitals

(including the original) and employs 2,500 doctors and a total of 16,000 caregivers. The network focuses on output: numbers served annually (618,000 patients in 2018, 274,000 of them in emergency room visits); accessibility to the community (in more than 200 sites of care, including in small clinics, public schools, city kiosks, and Walgreens); and the overall well-being of its members, in addition to their physical and mental health.

Poor nutrition and insufficient food significantly affect health and well-being. In Indiana, one in eight people struggles to get enough food; in the area the network serves, it is about one in six. Community Health Network runs a community farm and a food pantry called the Community Cupboard, which, in 2018, served 63,000 individuals and 16,000 households, providing fresh vegetables and prepackaged meal kits.

Community Hospital, now Community Hospital East, has applied a range of innovations to address community needs. Its Baby and Me Tobacco-Free program helps pregnant women and new mothers quit smoking. A branch of the nationally successful Nurse Family Partnership connects each mother-to-be in the program with a registered nurse who provides prenatal care and makes home visits through the child's second birthday, with goals of increasing the rate of breastfeeding and reducing drug addiction and child mistreatment.

Each of these programs offers an opportunity to identify people who have legal as well as health needs, an opportunity to pursue holistic healthcare and community legal practice.

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as illnesses related to substandard living conditions. They connect clients to legal professionals. And they accelerate the process of finding a legal remedy. They also provide a blueprint for a redesign of many legal services organizations' programs.

The most successful and established of these collaborations is the medical-legal partnership, which grew out of a pilot project at Boston Medical Center in the early 1990s. That project was based on two related premises: 1) that complex nonmedical problems like housing, education, and economic stability are of-

veterans' medical centers, community clinics, tribal clinics, behavioral health clinics, and substance abuse treatment centers.⁵⁸ In 2019, these partnerships helped more than 75,000 patients resolve legal issues impeding their health and trained more than 11,000 health-care providers to better understand and screen patients for health-related social needs.⁵⁹ The growth and success of these partnerships remain largely below the radar of the American public, but they are exciting advances that promise similar growth and success if applied on a much wider scale, and they should be publicized and promoted enthusiastically.



Medical-legal partnerships represent a significant step toward a holistic approach to civil justice, a version of the “community legal practice” to which legal services lawyers have aspired since the 1960s.

ten (as much as 40 percent of the time) contributing factors to adverse health outcomes and disparities; and 2) that such problems have remedies in civil law.⁵⁷ In these partnerships, hospital and clinic intake teams can be trained to recognize problems in a patient's case history (such as an injury from domestic violence or asthma caused by mold in an apartment) and refer patients to lawyers or other civil justice problem solvers. As a result, legal solutions become part of healthcare solutions, and the efforts of legal partners are integral to those of medical partners.

As of May 2020, nearly 450 medical-legal partnerships had been established in the United States, in general hospitals, children's hospitals,

Medical-legal partnerships promote a broader understanding of health, one that encompasses not just illness and wellness but their social determinants—the external conditions that make health better or worse. Domestic violence is a paradigmatic social determinant affecting health. Violence causes physical and psychological harm, traumatizes children and keeps them from school, and can prevent victims from functioning well at work and at home. Uninhabitable housing is another paradigmatic determinant: moldy housing can trigger asthma, impair students' ability to complete schoolwork, and undermine economic well-being.

Medical-legal partnerships represent a significant step toward a holistic approach to

civil justice, a version of the “community legal practice” to which legal services lawyers have aspired since the 1960s. But they are only one model of a connecting partnership between trusted professionals and legal experts. Many other direct-service fields—workforce development, housing and family services, educational institutions, veterans organizations—offer similar opportunities, and each would be a valued partner in the effort to close the civil justice gap. In addition, collaborative work, between lawyers and social workers, for example, can help equip individuals with greater capacity to ask the right questions in pursuit of social services and benefits and then more effectively advocate for themselves.⁶⁰

6. Expand efforts to make legal systems easier to understand and use through the simplification of language, forms, and procedures, and the wider use of technology.

The current court systems in the United States were created by lawyers for lawyers, based on the mistaken assumption that everyone who appears in court will be represented by a lawyer. In a 2015 study of ten urban areas, the National Center for State Courts reported that at least one party in 76 percent of all civil matters had no lawyer and thus represented themselves. That is, in three out of every four cases, not just those involving poor and low-income people, a litigant had no lawyer while in court. The odds of success in such cases decline as a result.⁶¹

A major reason for the low rate of success among self-represented litigants is the complexity of the legal process. Over time, the systems that lawyers created, for themselves, have become too complicated for many people to navigate on their own. Simplification is therefore an essential need of American civil

justice. But this is not just a matter of tweaking, streamlining, or automating existing forms and procedures. Simplification should proceed on the assumption that most people pursuing matters in court are not lawyers and do not have lawyers representing them, and it should follow the Conference of Chief Justices’ recommendations for court organization. In addition, it should include the translation into plainer language of the way the law is described and enforced and a substantial revision of forms, procedures, and other barriers to entry to courts and other tribunals.⁶²

Innovations in technology have already led to some needed simplification. For example, digital information kiosks and online dispute resolution have proven to be valuable tools for the provision of civil justice services. The former lets potential litigants access information more easily. The latter allows parties to resolve part or all of their disputes online, at a time and from a place that is comfortable for them. Dozens more innovations of this kind are in development or already in use, including advice portals, chatbots, and web-based legal resources stationed in public libraries, all designed with the needs and expectations of users in mind.⁶³

Legal tech is a booming field and an important opportunity for entrepreneurs. This market for technical innovation is driven by corporations and corporate law firms with resources, not by low-income individuals or the courts and agencies responsible for their issues. Fortunately, academic and nonprofit institutions have shown the power technological innovation can have when designed even for those without resources. For almost a decade, Georgetown Law School’s Technology, Innovation, and Law Practice course has paired law students with nonprofit organizations to make



The Crucial Role of Communication in Family Court Cases: **Interpreters in State Courts**

For the past decade, a growing number of states have concentrated on addressing the challenge of providing foreign-language interpreters in court proceedings for people with limited proficiency in English. From 1990 to 2013, this population in the United States grew from 14 million to 25.1 million, or from 5.6 percent to 7.9 percent of the total population.⁶⁴ In 2013, people in the United States used at least 350 languages, including 150 Native North American languages spoken by more than 350,000 people.⁶⁵

In 2010, the Justice Department told chief justices and administrators that state courts receiving federal financial support must provide language interpreting services to anyone with a court proceeding and limited English proficiency. The policy reflected holdings in some state and federal courts.⁶⁶

The California court system directed that every state court should provide free language interpreting for litigants who do not speak English. It created a set of priorities that determines what kinds of cases should get interpreters first when there are not enough resources to provide them in all cases. At the top of the list are domestic violence, elder abuse, and civil harassment cases. Most of the priorities involve family matters, like termination of parental rights, conservatorships and guardianships, and similar life-altering interests.

California's example is significant because the state has the largest court system in the United States, resolving about 4.8 million matters a year in its trial courts. Since 1950, the state's population has almost quadrupled, to close to 40 million people, and has

become far more diverse. No ethnic group makes up a majority in the state, and citizens speak more than 250 languages and dialects. About 40 percent of Californians speak a language other than English at home. And 7 million people, or 17.7 percent of the state's population, have limited English proficiency.

The Judicial Council of California reported in 2015 that Spanish-English translation accounted for 72 percent of all interpreting in the courts.⁶⁷ But Californians with state court cases also spoke Cantonese (the dialect of Chinese in Hong Kong and southern China) and Tagalog (spoken in the Philippines). Some parts of the state saw a concentrated need for interpreters in Arabic, Armenian, and Punjabi (spoken mainly in India and Pakistan). Throughout the state, a dozen other languages, ranging from Farsi to Vietnamese, were needed often enough to be included in the list of languages requiring regular interpreting.

In 2015, just nine of the state's 58 trial courts provided interpreters in cases considered critical, including disputes about domestic violence, child custody, elder abuse, and evictions. Parents in family court, for example, sometimes had to rely on their children to translate for them, and tenants in eviction hearings sometimes had to rely on the landlord who was the opposing party. By 2019, 51 trial courts provided the service in all priority areas, including conservatorship, parental rights, and other civil areas.

Other states have also continued to strengthen the interpreting services they provide in courts. Texas set up a remote

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apps designed to help users navigate the justice system, find legal resources, and apply for legal aid. In April 2020, the school held its first Iron Tech Lawyer Invitational for student teams from law schools and engineering and business programs. It was a showcase for legal tech and data analysis tools created to help improve access to civil justice. The winner was the University of Hong Kong, which

As the United States and other nations develop these tools, organizations providing access to civil justice must reckon with and address a substantial digital divide between the poor and the well-off. In 2019, almost 20 percent of people whose income was \$30,000 or less said they never used the Internet, compared to about 2 percent of those whose income was more than \$75,000.⁷² In 2018, only half the people who

Over time, the systems that lawyers created, for themselves, have become too complicated for many people to navigate on their own. Simplification is therefore an essential need of American civil justice.



had worked with the city’s Neighborhood and Worker’s Service Center. The winning app uses data from Hong Kong’s judiciary and large-scale nonprofit organizations to analyze likely outcomes in employment cases in which employees seek compensation for injuries.

made \$30,000 or less had Internet access at home.⁷³ Also in 2018, about one in four people in rural areas, where people tend to be poorer than other Americans, said that getting access to the Internet was a major problem; in urban areas the rate was about one in seven, and in the suburbs it was one in 11.⁷⁴

Interpreters in State Courts, continued from previous page

interpreter service in 2014 and has translated court documents into the most requested languages (Spanish, Portuguese, Haitian, Khmer, and Vietnamese).⁶⁸ New Mexicans who visit the state courts’ website may encounter a multilingual avatar named Clara, who provides legal forms and basic information in Navajo, Spanish, and English.⁶⁹

In Nebraska, the Midwestern state with the fastest-growing population of non-English speakers, the Nebraska Supreme

Court partnered with Northeast Community College to train and certify interpreters for free as part of the Adult Education Department.⁷⁰ At a meeting about the program in 2019, Julie Clark, the college’s coordinator of adult education, said that the program “channels the wonderful intellectual skill of knowing multiple languages with a meaningful economic outcome, while also serving the needs of the many individuals who are finding their way through the justice system.”⁷¹



Using Technology to Help Veterans Help Themselves: StatesideLegal.org

In 2009, Pine Tree Legal Assistance created a website to help veterans in Maine. The website was built with help from the Arkansas Legal Services Partnership and a team of advisors that included the Judge Advocate General Corps, military legal assistance lawyers, private lawyers, and veterans. The site was launched at the White House as StatesideLegal (<https://statesidelegal.org/>) in 2010. It now serves veterans, service members, and their families around the country.

StatesideLegal provides information and resources for people with military experience and their families who want to claim employment, military, or Social Security benefits; need assistance in housing in disputes that threaten eviction or foreclosure; and aid in contests over child support and custody, guardianship, and divorce.

Often, veterans (like others in need) do not know that their problems have legal components, so the main challenge of StatesideLegal is reaching potential beneficiaries who may not visit the site on their own. Nevertheless, the website is a measurable success. It is now national in scope, with information and resources for people throughout the country. In 2019, it had 490,000 unique visitors and 1.15 million page views.

Pine Tree Legal Assistance was founded in 1966. Until a decade ago, the organization did not ask existing or prospective clients about their status as veterans or active service members. It began asking only when it realized that a notable share of its clients with debt problems were veterans.

Initially, Pine Tree thought the problem was limited to home foreclosures, because many veterans could not pay their mortgages. It soon realized that the problem was debt in general, especially consumer debt. Predatory businesses like car dealerships, often located on roads leading to military bases, take advantage of the young people in the military, who may lack financial savvy and take on loans they cannot afford. Debt is a special problem for active service members because it affects their ability to be promoted. Pine Tree learned about the relevant federal statutes intended to protect service members from unfair lending practices and trained staff to provide specific counsel to service members and veterans. With StatesideLegal, Pine Tree is helping empower veterans, service members, and their families to advocate for themselves—or, if they wish, to ask Pine Tree or another legal services organization for assistance.

Even as the country slowly overcomes these barriers, the potential remains for wider, more effective use of technology to increase access to civil justice. Technology also presents a new and important opportunity to collect, share, and analyze data about the workings of the courts and other aspects of civil justice. Due to the decentralized character of American civil law, such data have been difficult to gather, whether at the federal, state, or local levels. But digital innovations, with built-in evaluation features, can help invigorate critical aspects of data collection—to examine and understand the ecology of civil justice institutions and organizations, to analyze the obstacles or aids to access, and to find new ways for the disparate actors (courts and judges, lawyers and advocates, litigants) to work together more effectively.

The goal of every innovation in civil justice, including data collection, should be to improve the access and user experience of everyday litigants, regardless of whether they consult lawyers. While expert assistance is crucial in many legal matters, ordinary people should be able to understand their options, follow standard procedures, track their own interests, and exercise basic rights with confidence that the law can work for them.

7. Create a national team, or even a new national organization, to coordinate the efforts listed above, collect much-needed data on the state of civil justice,

and help identify and publicize effective innovations that improve access.

In the United States, almost all cases involving civil justice issues are heard in one of the 52 independent court systems (including those of the District of Columbia and Puerto Rico). Each system has its own distinct culture and set of challenges, so no single organization can issue edicts to improve and increase civil justice throughout the nation. In addition, the needs and resources in one state or region are different from the needs and resources of another. For good reason, courts in Boston operate differently from courts in Charlotte or Omaha. Yet state and local efforts to close the justice gap, in the absence of national coordination, have set their sights too low and often fail to take advantage of lessons learned and best practices elsewhere in the country.

A central missing ingredient is focused, dedicated, and independent leadership—to help document and understand the fundamentals of the problem, to provide guidance and coordinate the allocation of resources, and to encourage productive partnerships and other forms of collaboration. This report's final recommendation is for the creation of a national team, or even a new national organization, to pursue funding and coordinate essential efforts to improve and increase access to civil justice—to advance the first six recommendations of this report

The goal of every innovation in civil justice, including data collection, should be to improve the access and user experience of everyday litigants.



MAJOR RECOMMENDATIONS

and support even more ambitious solutions in the future.

The effort might be called the Civil Justice 250 Initiative, in anticipation of America's 250th anniversary on July 4, 2026. The goal should be to provide civil justice for all poor, low-income, and middle-income Americans who need it, which is likely over 100 million people each year.⁷⁵ The American constitutional system owes that much to everyone.

No single group of people wakes up each day with this as their mission. National organizations that are playing important roles in delivering or supporting valuable legal services are stretched to capacity.⁷⁶ And due to the limits of their missions and other restrictions, they are not able to provide the kinds of leadership needed to address the long-standing, en-

and extensive studies about the policies and practices that work best in solving civil justice problems are notably lacking. Also lacking, according to Carlos Manjarrez, chief data officer of the LSC, are data and studies about civil justice case types (such as housing and family) showing the racial and ethnic backgrounds of affected people.⁷⁷ The interdisciplinary field of study examining the access problem is relatively new and has yet to answer basic questions whose answers will shape effective solutions. No one knows, for example, how many people in the United States face a civil justice problem every year. However, there are a couple of standout candidates for early reform.

First is the need to reform the state court systems, which decide almost all of the hundred million or so legal disputes each year involving



Civil justice must be fairer, more open, and more accessible, whether in a rural, urban, or suburban area, no matter which state.

trenched obstacles to civil justice in the United States. It is time for businesspeople, computer scientists, designers, judges, lawyers, legal services providers, and others to join in a deliberate way to address this long-standing American crisis. The team could be a collaborative yet independently driven effort among organizations that already work on civil justice issues, a completely new effort or organization, or some combination of the two.

This recommendation is conceptual rather than concrete because, as of now, rich data

civil justice. It is time to rethink the design of those systems from the ground up, employing principles that make the interests of users—individuals and families, small businesses and others—the primary concern. The mosaic of efforts in each state and locality—courts; legal services organizations; volunteer, or pro bono, efforts by lawyers; and other facets—must be much more visible, accessible, and capable of serving many more people. Civil justice must be fairer, more open, and more accessible, whether in a rural, urban, or suburban area, no matter which state.

The mosaic of efforts in each state and locality—courts; legal services organizations; volunteer, or pro bono, efforts by lawyers; and other facets—must be much more visible, accessible, and capable of serving many more people.



The second candidate for early reform is the financing of legal services and civil justice advocates. Again, the example of the medical-legal partnership is instructive.

In general, the trend in healthcare reform has been to shift away from fee-for-service models, which provide no incentive to improve efficiency and effectiveness, toward models that do provide such incentives. Some of the new payment models give providers and payers incentives to reduce costs and improve quality. These include so-called capitated payments, which set a monthly amount for a patient's care and reward positive outcomes and improvements in service quality. Because social and legal inequities that harm health also impact cost, outcomes, and quality, the healthcare system has increasingly recognized the importance of incorporating legal specialists into healthcare teams to manage costs and improve outcomes for patients.

Legal interventions that address the social determinants of health are a form of value-oriented service. The legal portion of a medical-legal partnership will cost much less than many aspects of the medical part. Improved outcomes from legal interventions make support for the legal part a good investment for funders on the medical side.

Total spending for healthcare in the United States is more than two thousand times the total funding for civil legal services. In 2017, the former was around \$3.5 trillion, and the latter was about \$1.58 billion.⁷⁸ Directing a relatively small portion of healthcare spending toward solving problems caused or aggravated by social determinants of health would help reduce overall healthcare costs significantly, according to studies of the benefits and savings realized by state legal services.

Redirecting some portion of healthcare budgets toward civil legal services would also help redress the current imbalance in funding for medical-legal partnerships: the money comes especially from the legal side of those partnerships. To make this happen, existing partnerships need to improve their data collection and evaluation so they can document the value of legal interventions in improving health outcomes and reducing costs.

One hundred million dollars would be a tiny percentage of total healthcare spending: less than 0.003 percent. Yet, if targeted for medical-legal partnerships, that amount would be a notable increase: about 6 percent of the 2017 total for civil legal services, not including existing funding for such partnerships. Even \$1 billion would still be a small percentage of the total healthcare budget: less than

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0.03 percent. Yet, if targeted for medical-legal partnerships, the increase would be huge: about 60 percent of the 2017 total for civil legal services (again, not including existing funding for such partnerships).

Other mechanisms for funding legal services could include social impact bonds, paying back investors through savings in costs from preventive services, or integration into other financing systems, like those of Medicaid, the U.S. Department of Housing and Urban Development, and the U.S. Department of Veterans Affairs (VA). With the prospect of cost savings already documented in many studies, the financial markets could also prove to be a mechanism for expanding the means of paying for expanded civil legal services. As of 2019,

Thus there are many new and promising ways to secure funding to improve civil justice. The challenge now is to raise the money, distribute it, and put it to work as efficiently as possible, in ways that help the greatest number of people. This challenge should be a primary focus of Civil Justice 250.

If a new organization is needed, it must be independent. When an improvement in justice requires an increase in the number of lawyers, the organization's endorsement should offer reassurance that it is not a self-serving proposal of the legal profession. When an improvement calls for an increase in civil justice problem solvers who are not lawyers, the organization should have independence from the legal profession to say so without hesitation.



The nation should meet the challenge of providing impartial justice with a process that is, itself, impartial and focused on the people in the greatest need: the low-income Americans who struggle too often to exercise even their most basic rights.

26 social impact bonds had been issued in the United States. Social Finance, Inc., works with governments, nonprofit organizations, foundations, impact investors, and financial institutions to create innovative financing solutions that improve social outcomes. It has helped develop financial instruments in healthcare, criminal justice, education, the environment, and other areas. In partnership with the Kresge and Open Society Foundations, it found that this approach could have significant potential in the field of civil justice.

The nation should meet the challenge of providing impartial justice with a process that is, itself, impartial and focused on the people in the greatest need: the low-income Americans who struggle too often to exercise even their most basic rights.

Conclusion

What will happen if American leaders do not make the provision of civil justice a national priority?

Ongoing research and uncoordinated innovation will have positive effects on the civil justice gap. But the crisis will persist. LSC and its partner organizations—the ABA, the American Bar Foundation, and many others—will continue to do essential and exemplary work. Yet the sheer size of the problem of civil justice will continue to threaten and undermine the promise of equal justice in America.

People at the bottom of the socioeconomic ladder will suffer the gravest consequences of this failure: family separations, poor health outcomes, substandard housing and evictions, homelessness, and veterans living on dangerous city streets and in downtrodden rural corners, feeling betrayed and abandoned by the nation they defended.

To right the many wrongs apparent in the system of civil justice, the nation must do what this report calls for:

- Dedicate a consequential infusion of financial and human resources to closing the civil justice gap, and seek a significant shift in mindset—extending beyond lawyers the duty and capacity to assist those with legal need—to make genuine strides toward “justice for all”;
- Increase the number of legal services lawyers who focus on the needs of low-income Americans;
- Increase the number of lawyers providing pro bono and other volunteer assistance, to supplement the corps of legal services lawyers;
- Bring many new advocates—service providers who are not lawyers—into the effort to solve civil justice problems;
- Foster greater collaboration among legal services providers and other trusted professionals—such as doctors, nurses, and social workers;
- Expand efforts to make legal systems easier to understand and use through the simplification of language, forms, and procedures, and the wider use of technology; and
- Create a national team, or even a new national organization, to coordinate the efforts listed above, collect much-needed data on the state of civil justice, and help identify and publicize effective innovations that improve access.

In the absence of these initiatives, the nation will continue to fall well short of the great promise enshrined in the Constitution’s pledge to “establish Justice.”

Recommendations by Challenge Area

LSC is the largest funder in the United States of civil justice aid for poor and low-income people. But grantees of LSC—132 organizations, with more than 850 offices—make up only about 25 percent of the 500-plus organizations providing civil justice aid in the country. The accounts that follow, based on LSC data, are intended to be instructive, not comprehensive.



BACKGROUND

In 2018, family and housing issues constituted six out of every ten problems (31 percent and 29 percent, respectively) addressed by the legal services organizations funded by LSC. Those organizations assisted some 1.8 million people. Three-fourths of the clients were women.

The most common and pressing family issues are child support, child custody, and protection from abusive relationships, most often violence and sexual assault by an adult against another adult or a child, but sometimes psychological or financial abuse of vulnerable adults as well.

The most common remedies in cases involving abusive relationships are restraining orders against abusers and filings for legal separation, divorce, or annulment. Child support involves one or both parents making payments to help meet the housing, medical, and other material needs of their children. Child custody

encompasses the responsibilities of parents or guardians for the physical well-being and legal interests of children.

The government is often a party in such cases, acting in its own interest to divert money for child support toward repayment of welfare and other social benefits already provided. The government can also garnish wages, take away driver's licenses, and use other tools to pressure and punish people struggling to fulfill their family commitments.

One benefit of increased legal aid for parents and guardians would be to offset the strong advantage the government has over poor and low-income individuals in family cases.

RECOMMENDATIONS

Lawyers: Improvements and Increases in Services

The unbundling of legal services in family matters, following a model more commonly used in housing matters, will increase the number of lawyers who can take on clients with family issues. The needs of clients must be calibrated

so they receive full representation when necessary and receive unbundled services only when those will suffice. But increased representation of parents or caretakers with child custody and other issues—fathers as well as mothers and children—will increase fairness in family cases. In Washington, D.C., for example, through the Child Support Community Legal Services Project, lawyers provide legal counseling and coaching to people representing themselves, as well as same-day representation or full representation in cases requiring such services.

Civil Justice Advocates: Increases in Services

Specially trained paralegals, court navigators, legal technicians, and other kinds of civil justice advocates who are not lawyers can increase and improve access to civil justice in all kinds of family matters. These advocates can complement lawyers' efforts, leaving lawyers free to address complex family problems that civil justice advocates lack the training or experience to handle.

Collaboration in Solving Civil Legal and Justice Problems

Families facing legal proceedings involving child support, child custody, and other matters often face health challenges, mental health issues, housing crises, a lack of employment opportunities, and related problems. Lawyers and civil justice advocates can often best help their clients in collaboration with other professionals, including social workers, nurses, doctors, and others who provide individual, family, and group support.

Medical-legal partnerships represent the most promising model of collaboration, one that

legal services and related organizations should replicate in programs focusing on family problem-solving as well as housing and veterans' issues. Sometimes called wrap-around services (because the related services “wrap around” a predominant service like health-care), these collaborative efforts can help address the cascade of related crises that a family, health, housing, or veteran's issue can cause, and the web of issues that people with civil justice problems usually face.

Simplification

One out of seven adults living in the United States is functionally illiterate, and nearly one out of three can read and understand only common phrases. This population segment is disproportionately poor and often comprises the same people who are in greatest need of civil justice services. For them, the typically lengthy forms and procedures for legal separations, divorces, and annulments are cumbersome and written in off-putting legalese. The forms and procedures that many courts use for child-support and child-custody issues, and for probating wills and other documents, are similarly opaque. Most of these forms and procedures should be shortened and simplified. Where court systems have no forms at all, they must create plain, transparent forms with such litigants in mind.

Technology: Improvement of Information

Courts and legal aid organizations have begun creating self-help centers and kiosks that offer accurate, well-organized information about common family issues. Such centers should be placed in family and other local courts, public libraries, local schools, community centers, and other accessible venues.

RECOMMENDATIONS BY CHALLENGE AREA



HEALTH

BACKGROUND

The incidence of health-related problems varies by the type of poor and low-income household—from about 50 percent where people with a disability live; to about 40 percent in rural areas or in households where veterans live; to about 30 percent where seniors (that is, people 65 or older) live. By one measure, 40 percent of all poor and low-income households experience health-related problems every year, though only about 10 percent seek legal help to solve their problems. The relatively high incidence of socially determined health issues suggests that legal help could make a notable difference in addressing more health-related problems.

Health issues often create or exacerbate housing, employment, and family problems that have civil legal dimensions. The opposite is also true: legal problems—eviction, domestic violence, consumer debt, and more—often lead to health problems.

In 2018, health issues represented only 4 percent of the problems addressed in cases completed by LSC grantees, including problems related to Medicare, private insurance, and long-term healthcare facilities. Still, the opioid crisis of the past several decades has underscored the widespread effects of health issues, including addiction.

Health issues often require cooperation among first responders, health professionals, and social service providers, as well as lawyers and problem solvers who work with them. Legal services lawyers, for example, often must work

with healthcare providers, drug treatment centers, and social workers to ensure that pregnant women who use opioids are able to access treatment, as laws in many states mandate.

RECOMMENDATIONS

A Broader Definition of Health

Medical-legal partnerships promote a broader definition of health, one that encompasses its social determinants: that is, the conditions that contribute positively or negatively to health outcomes.

Collaboration in Solving Civil Justice Problems

The medical-legal partnership represents a significant step toward the holistic practice of medicine, once a source of pride among family doctors. As important, this kind of partnership represents a substantial step toward a holistic approach to civil justice practice, something legal services lawyers in the 1960s aspired to provide, calling it community legal practice.

The growth and success of these partnerships remain largely below the radar of the American public, but they are exciting advances that promise similar growth and success if applied on a much wider scale, and they should be publicized and promoted enthusiastically.

Expanding Sources of Revenue through Forms of Collaboration

LSC provides, on average, about one-third of its grantees' funding, so these organizations are resourceful about finding and attracting other funding from state, county, and local governments and from philanthropic



Expanding the Competency of the Civil Justice System: **Colorado Cross-Disability Coalition**

The Colorado Cross-Disability Coalition was founded in 1990 to advocate for the civil and human rights of people with disabilities. Its work has prompted improvements in access for people with disabilities at the state capitol, at the state’s Red Rocks Amphitheatre, and on the buses, rail cars, and light-rail cars in Denver, Boulder, and other cities. The organization’s motto—“Nothing about us, without us”—means that, when the government and private organizations make policies affecting people with disabilities, those very people should be directly involved in shaping the policies.

People with disabilities use a disproportionate share of the Medicaid budget. When their prevention needs are not met—for example, when people using inadequate wheelchairs develop pressure sores, ulcers, and sepsis—costs can skyrocket. An important way for people with disabilities to receive assistance is to have access to lawyers, like those at the coalition, who are Medicaid

experts and can help their clients persuade Medicaid to spend money to prevent problems and thus realize savings later on, in the form of fewer hospital visits for preventable conditions.

The coalition’s work has led to reforms in many systems: instead of treating disabilities as bars to employment, for example, Medicaid Buy-in allows people with disabilities to work and get paid for it, while retaining Medicaid payments they need to afford medical support.

Although the coalition focuses on advocacy and system reform, it helps solve individual problems as well. In personal injury cases, lawyers commonly describe disabilities in tragic terms. But the coalition understands that most people with disabilities do not view their lives as tragic. They simply need the snow to be shoveled from a public walkway or assistance finding a sign-language interpreter for a court proceeding. For them, a just world is an accessible world.

RECOMMENDATIONS BY CHALLENGE AREA

and private sources. An increasing number of players in the healthcare system recognize that medical-legal partnerships help solve problems that are social determinants of health and, thus, that those partnerships should be funded through the healthcare delivery and payment system. Sources range from insurance companies to Medicaid to tribal funds.



HOUSING

BACKGROUND

Rental housing problems affect about one-third of poor and low-income households, and civil problems related to home ownership affect about one in seven poor and low-income homeowners.

Missed mortgage payments and foreclosures are the most common home-ownership problems. Eviction is the overwhelming rental-housing problem. Other important issues include landlords who fail to provide basic services or repairs; disputes with landlords or government agencies about rules or terms of a lease; sexual or other harassment; and unsanitary, unsafe, even uninhabitable housing.

Many tenants who lack representation do not understand how to use the legal system to enforce their rights (or sometimes are not aware of their rights or the consequences of default). Actions that seem reasonable to a tenant, like withholding rent because of a landlord's failure to make necessary repairs, can put the tenant in jeopardy of eviction.

In many jurisdictions, 90 percent of tenants lack legal representation, 90 percent of

landlords have legal counsel, and the disparity heavily affects the outcome of eviction proceedings. In New York State, for example, the Office of Civil Justice found that tenants without representation were evicted almost half the time. Since the passage of a right to counsel in New York City, filings for eviction and evictions have dropped substantially, and tenants with a lawyer have held on to their homes 84 percent of the time.⁷⁹

RECOMMENDATIONS

Lawyers: Improvements and Increases in Services

Since 2010, the availability of unbundled, or limited, legal services in housing matters has increased the number of lawyers who can take on low-income clients with those issues. If an eviction process is unbundled, so that a client is represented by a different lawyer at each step, the client's chance of keeping an apartment notably increases compared to similar situations in which clients have no legal representation. Good training coupled with professional skill and dedication allows a series of lawyers to achieve the same positive outcome for a client that a single lawyer could achieve with the time and flexibility to handle the case from start to finish.

Civil Justice Advocates: Increases in Services

Specially trained paralegals, tenant advocates, court navigators, housing navigators, limited legal technicians, and other kinds of civil justice advocates who are not lawyers can increase and improve access to civil justice in all kinds of housing matters. They can complement lawyers' efforts, leaving lawyers free to address complex family problems that civil



Simplifying Forms, Procedures, and Civil Justice: Massachusetts Housing Court

The Massachusetts Housing Court is a department of the state's trial courts. It hears cases involving the health, safety, or welfare of occupants or owners of residential housing: evictions, small claims, and civil actions involving personal injury, property damage, breach of contract, discrimination, and other claims.⁸⁰ The court also enforces housing codes and hears appeals of local zoning board decisions affecting residential housing.

The first housing court in Massachusetts was started in 1971 in Boston; it continues to hear more than 150 new eviction cases each week. The Boston court grew into a housing court system covering about 70 percent of the state. Still, many cities and towns in the state, including Chelsea, Somerville, and Medford north of Boston, had no access to a housing court. So, in 2017, Massachusetts expanded the housing court's jurisdiction to cover the other 30 percent of the state. The court is led by a chief justice and deputy court administrator. As of May 2020, it had 14 judges, including its chief justice, covering the state's 14 counties, arranged into six geographic districts, plus two "recall justices" who had reached the mandatory retirement age of 70 but had been recalled to service by the chief justice of the state court system.

The statewide housing court resulted from a 2016 study and action plan called the Massachusetts Justice for All project, which focused on four areas of concern: housing; consumer debt; family law; and the state "ecosystem" or infrastructure of resources available to poor and low-income people who could not afford a lawyer.

A working group, after finding themes common to each of these areas, advanced ideas to simplify the state's system of justice, including the creation of "multi-door courthouse approaches" to legal disputes. In housing cases, for instance, either party can move a matter started in another state court to the housing court by filing a simple form.

In 2017, fewer than 7 percent of tenants in the Massachusetts Housing Court facing eviction had representation. Many were poor and low-income people of color who often had additional barriers like limited proficiency in English or mental health problems. By contrast, 67 percent of landlords had legal counsel. A report about the Massachusetts Justice for All project found, "Where housing cases pit an unrepresented tenant against a represented landlord, the result is a persistent power imbalance that prevents equal access to justice."⁸¹

Ultimately, the report recommended changes to most aspects of housing procedure, from the precourt to postcourt stages. For example, the eviction process at the time the report was written began with a landlord serving a tenant with a "Notice to Quit." The report recommended that it be renamed "Notice of Intent to Begin Court Case to Evict." The change was meant to eliminate misleading language suggesting that tenants had to leave their home when they received the notice, and to communicate that the notice began a legal dispute in which the tenant could engage and, potentially, win.

RECOMMENDATIONS BY CHALLENGE AREA

justice advocates lack the training or experience to handle.



VETERANS

BACKGROUND

Veterans make up a relatively small and shrinking segment of the American population. There were about 20 million veterans in 2018, comprising about 8 percent of the adult population. By 2037 that number will fall to 13.6 million, or about 7 percent of the population. Even though their numbers are small, far too many veterans are vulnerable.

Almost two out of five veterans have a disability, compared to one out of five nonveterans. Veterans' disabilities include post-traumatic stress disorder, heavy scarring from burns or wounds, hearing loss, badly injured knees, and debilitating neck or back problems.

Many veterans with low income face the same severe challenges as nonveterans: family issues (especially those related to child custody); housing problems (particularly eviction, foreclosure, and homelessness); employment matters; driver's license restoration; and health challenges of all kinds, including mental illness.

But veterans also face serious problems that nonveterans do not, such as struggles to obtain health benefits and other veterans services they are due from the government, or to upgrade the status of their military discharges—problems often exacerbated by challenges like mental illness and homelessness.

RECOMMENDATIONS

Civil Justice Advocates: Increases in Services

VA has long allowed, and helped train, civil justice advocates to work with veterans who are trying to receive or regain benefits. VA and other organizations should expand the accreditation of legal services providers who help veterans obtain VA benefits, including representatives of veterans' service organizations and claims agents who are not lawyers.

Many other civil justice advocates can help as well. Public librarians can help veterans and their family members access information about the range of legal issues veterans contend with. Public colleges and universities, working with groups like Student Veterans of America, can develop sources of information, including information kiosks in college and university libraries and student centers, to provide guidance to veterans about the issues they contend with. And referral networks that serve veterans can do an even better job of providing support. In some Starbucks locations, veterans and lawyers hold "Military Mondays" to provide other veterans with legal information and other services.

Collaboration in Solving Civil Justice Problems

As of 2019, 30 or so medical-legal partnerships had been established at VA hospitals and other facilities. VA could further speed the expansion of these cost-effective partnerships by identifying new candidates. The National Center for Medical-Legal Partnership developed a *VA Medical-Legal Partnership Readiness Guide* as a basis for expanding the number of partnerships in the VA system.⁸²



Standing Up for Veterans for the Past 40 Years: National Veterans Legal Services

The National Veterans Legal Services program, a nonprofit organization founded in 1981 and based in Washington, D.C., views its mission as helping the United States live up to its promises to veterans. It is the pre-eminent legal-aid program serving military members and veterans.

Some of veterans' unmet legal needs—such as those involving family and housing—are similar to the needs of many poor and low-income nonveteran Americans. Some are unique to veterans, such as those involving veterans' benefits and the nature of their discharge from military service.

The organization has helped obtain \$5.2 billion in benefits for its clients. It helps secure lifetime disability benefits for veterans of wartime service in Afghanistan and Iraq who were discharged because of post-traumatic stress disorder without a disability rating that would have qualified them for benefits. It helps veterans of the Vietnam War or their survivors receive disability or death benefits for injuries related to their service, including exposure to Agent Orange. And it provides free legal advice, counsel, and representation to veterans, service members, and their families, making claims to the Department of Veterans Affairs or appeals to the United States Court of Appeals for Veterans Claims. The program has a success rate of better than 90 percent in the court.

Federal laws governing veterans' benefits and military discharges are often so complicated that only an expert can guide veterans through the thicket of challenges. For example, veterans and active military are covered by different disability benefits systems. Coverage

varies along many dimensions, including types of benefits, types of claims, and criteria for eligibility. Dealing with the systems is particularly confusing when benefits overlap.

Only federal laws govern challenges to the systems, so only national efforts—federal legislation, executive-branch regulation, national class-action lawsuits—can address the legal issues that affect veterans. National organizations with specialized knowledge about veterans' affairs, such as the National Veterans Legal Services program, are the most effective advocates for solving problems that affect only veterans.

From the time states established homes for veterans after the Civil War, the ethos of veterans' support was that it would not be adversarial. That ethos governed the Veterans Bureau at its founding in 1921, consolidating in one agency all federal programs supporting veterans.

A benefit of the nonadversarial approach is that civil justice advocates other than lawyers, like members of the American Legion, have been allowed to advocate for veterans, often very effectively. But lawyers have long found it difficult to represent veterans in a nonadversarial system, and federal law prohibited lawyers from charging to represent veterans seeking to get VA benefits or appeal a VA denial of benefits.

In 2006, Congress repealed that law, in recognition of the need for much wider representation of veterans, including by lawyers. With 25 years of experience in the field, the National Veterans Legal Services provided a model for the future of veterans law.

RECOMMENDATIONS BY CHALLENGE AREA

In 2019, 140 legal clinics were colocated at VA facilities. Although some were part of medical-legal partnerships, most were not. As they increase the number of medical-legal partnerships, VA and legal services organizations should increase the number of legal clinics at VA's 1,243 healthcare facilities, which include 170 VA medical centers and 1,063 outpatient clinics.

As part of this effort, VA should also expand its program for Supportive Services for Veteran Families—the only VA program allowed to fund legal services—by funding more legal services organizations through formal agreements and through other arrangements.

The U.S. Court of Appeals for Veterans Claims was founded in 1988. Four years later, after the court realized that 80 percent of the veterans litigants had no legal representation, the Veterans Pro Bono Consortium was founded. The consortium won the opportunity to provide pro bono representation, and its approach might prove viable in other areas, such as efforts to obtain upgrades of discharges from a military service branch.⁸³ In addition, the consortium has developed successful methods for training pro bono lawyers to handle cases, to refer cases to the organization, and to provide ongoing mentorship.

Expanding the number of law school clinics serving veterans, including veterans whose income disqualifies them from LSC-funded aid, would also improve veterans' access to collaborative forms of assistance. For example, Yale Law School and other law schools with strong veterans' clinics are strengthening their commitments to medical-legal partnerships. And the Veterans Legal Clinic at the Legal Services Center of Harvard Law School created a website that includes an online calculator to help

veterans in Massachusetts determine whether they are eligible for benefits they are not receiving.⁸⁴

Technology: Expanded Use

VA, veterans' service organizations, state governments, and other supporters of veterans should make much wider use of digital communications and social media to describe the legal needs of veterans, successful efforts to address them, and the legal rights that legal services organizations and other providers of civil justice can help veterans fulfill. Organizations like the International Refugee Assistance Project and the Asylum Seeker Advocacy Project, which serve traumatized clients, provide models of legal representation for remote communities. Their rules and accreditation policies for lawyers who want to serve veterans' communities are similar to those of VA.

A model of successful online communication is StatesideLegal.org, officially launched in 2010 as the first national website focused on helping veterans and military families; it is owned and operated by Pine Tree Legal Assistance in Maine.

Some VA medical-legal partnerships use VA's "telehealth" system to connect legal services providers by phone or videoconference with veterans in rural areas, who receive online healthcare consultations at community-based outpatient centers. This approach is valuable in all rural areas but especially in parts of states where limited broadband service means veterans are unable to access online civil justice resources from home.

Prevention Models

VA's Homeless Programs Office has a veterans' Justice Outreach program working on criminal justice issues, which can also help incarcerated veterans qualify for VA healthcare and disability benefits, facilitating community reintegration upon release.

Veterans' Treatment Courts, using volunteer veteran mentors, have been successful in keeping veterans with addiction problems from relapsing. As of June 2018, 314 specialists were working in 551 treatment courts and other court programs focused on veterans. VA should also contribute to the development of civil analogues to treatment courts.

Community organizations should partner with officers of the Judge Advocate General's Corps, the branch of the military concerned with military justice and military law, to provide guidance to members of the military—before they separate from military service—about common civil justice needs they might have as veterans.

This report's final recommendation is for the creation of a national team, or even a new national organization, to pursue funding and coordinate essential efforts to improve and increase access to civil justice and support even more ambitious solutions in the future.



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Endnotes

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From the Making Justice Accessible Initiative

“Access to Justice,” the Winter 2019 issue of *Dædalus*

Guest editors: **Lincoln Caplan** (Yale Law School), **Lance Liebman** (Columbia Law School) & **Rebecca L. Sandefur** (Arizona State University; American Bar Foundation)

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Participatory Design for Innovation in Access to Justice

Margaret Hagan (Stanford Legal Design Lab)

Simplified Courts Can’t Solve Inequality

Colleen F. Shanahan (Columbia Law School) & Anna E. Carpenter (University of Utah S.J. Quinney College of Law)

Corporate Support for Legal Services

Jo-Ann Wallace (National Legal Aid and Defender Association)

Justice & the Capability to Function in Society

Pascoe Pleasence (University College London) & Nigel J. Balmer (University College London)

Why Big Business Should Support Legal Aid

Kenneth C. Frazier (Merck & Co.)

Executive Branch Support for Civil Legal Aid

Karen A. Lash (American University)

Why Judges Support Civil Legal Aid

Fern A. Fisher (Maurice A. Deane School of Law at Hofstra University)

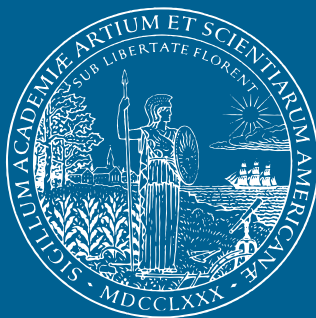
Lawyers, the Legal Profession & Access to Justice in the United States: A Brief History

Robert W. Gordon (Stanford Law School)

The Twilight Zone

Nathan L. Hecht (Supreme Court of Texas)

Available online at <https://www.amacad.org/daedalus/access-to-justice>.



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