

# Civil Legal Services Delivery In the District of Columbia

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A Report by the District of Columbia Bar Foundation

September 2003

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September 23, 2003

### I. Overview

This year the District of Columbia Bar Foundation celebrates its 25th anniversary. As we look back, we are extremely proud of the accomplishments of both the Bar Foundation and its grantees.

Every year, legal services providers and *pro bono* attorney volunteers serve tens of thousands of low-income District of Columbia residents, win significant legal and legislative victories, and work hard to ensure that the promise of “equal justice under the law” is more than an empty slogan. In 2003, the Bar Foundation made grants totaling \$1 million toward this goal. Over the past 25 years, the Bar Foundation has awarded total grants in excess of \$11.6 million to 44 programs to support the delivery of civil legal services here in the District. The Bar Foundation obtains its resources primarily from two separate streams of funding: law firm contributions and revenue from the Interest on Lawyers’ Trust Accounts (IOLTA) program that was established by the District of Columbia Court of Appeals in 1985.

The Bar Foundation’s primary mission is to provide access to justice for the District’s neediest residents by funding and supporting the work of legal services organizations in the District. As we undertake our ongoing efforts to raise more funding to support legal services providers, we believe we also have a responsibility to view the broader picture to see how the Bar Foundation can best accomplish its mission.

Today, as the Bar Foundation celebrates a quarter century of accomplishments, we also recognize that the goal of equal justice for everyone in our community is far from being realized. In fact, although some have estimated that only 10% of the need

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The D.C. Bar Foundation is extraordinarily grateful to **Julia Gordon** who did the research and a great deal of the writing in connection with this report. Until March 2003, Ms. Gordon was a senior staff attorney at the Center for Law and Social Policy (CLASP), where she worked on the Project for the Future of Equal Justice, a joint venture with the National Legal Aid & Defender Association that supported the creation of robust state justice communities nationwide. Prior to her work at CLASP, Ms. Gordon served as the deputy director of Equal Justice Works, and as a litigator at the D.C. law firm of Wilmer, Cutler & Pickering, where she also managed the firm’s extensive *pro bono* program. Ms. Gordon graduated from Harvard/Radcliffe College in 1985 and from Harvard Law School in 1992.

for civil legal assistance is being met, the actual number is likely even smaller.<sup>1</sup> The local organizations that provide legal services struggle daily to serve too many clients with far too few resources. Furthermore, there are numerous areas of law in which it is still exceedingly difficult, if not impossible, for clients to obtain representation if they cannot afford an attorney at market rates.

The Bar Foundation believes that serving such a small proportion of the community's legal needs is unacceptable. An anti-hunger program would not be content with feeding only 10% of the hungry. A program to save abused and neglected children would not accept only rescuing one out of every ten kids. Yet while our community would not ration food or safety, we have tolerated a system in which justice is rationed every day.

For this reason, the Bar Foundation has marked our anniversary by commissioning the following report on the state of the legal services delivery system in the District of Columbia. This report derives its information from a variety of sources. Research included an extensive written survey administered to legal services providers and law school clinics in the District; a series of in-depth interviews with legal services directors and staff;<sup>2</sup> a review of numerous data sources on poverty and its dimensions in our city; and an examination of national trends in legal services delivery.

We recommend in this report that the legal community in the District, including the judiciary, the private bar, and the legal services providers, join with community leaders in a concerted effort to enhance dramatically the ability of our neediest citizens to gain access to justice. It is clear that small, discrete initiatives will not produce the kind of change that is needed. Rather, the legal community must develop a bold and comprehensive plan to ensure that all people in our city have access to a full range of legal services and expertise. It is vital that there be a commitment to implementing and sustaining this effort, so that the promise of equal access to justice becomes a reality for all of our residents.

## **II. Background: Poverty in the District of Columbia**

More than 20% of Washington, D.C. residents live in poverty – an increase of 14% from a decade ago. One in three children under the age of 18 lives in poverty, and the highest rate of poverty is among children under five years old. Black, Hispanic, and

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<sup>1</sup> Consortium on Legal Services and the Public, American Bar Association, "Legal Needs and Civil Justice" A Survey of Americans" (1994); Cunningham, Lynn, "Legal Needs for the Low Income in Washington, D.C., 1999," 5 UNIVERSITY OF THE DISTRICT OF COLUMBIA LAW REVIEW, p.21 (Fall 2000).

<sup>2</sup> The legal services directors and staff interviewed for this project were given assurances of confidentiality, and therefore we do not identify the source of quotations or comments. The primary author of this report placed the reports in context and added some information from her own experience, particularly regarding the national legal services community, but all opinions expressed on local issues are those of the provider community.

Asian children are much more likely to be poor than white children. In the past decade, the District of Columbia's poverty has become even more concentrated, with more than 126,000 people living in census tracts with at least 30% poor residents and almost one in four District residents living in tracts with more than 40% poverty. About a third of all households in high poverty areas are families with children headed by a single parent.<sup>3</sup> Moreover, years of budget cuts in human services have severely limited the District government's ability to coordinate and provide basic services to city residents.

Below are some examples of how poverty and inadequate government services manifest themselves in different issue areas.

### **A. Jobs, Food and Income**

- Only 60% of the District of Columbia's working-age men and 53% of working-age women had jobs in 2002, with the rates falling to 44% of men and 41% of women living in the District's high-poverty neighborhoods.<sup>4</sup>
- An unemployed worker in the District can receive only half of his/her previous wages, capped at \$309 per week in unemployment compensation, for a period not to exceed six months, which is the equivalent of \$16,000 per year.<sup>5</sup>
- In the District of Columbia, Temporary Assistance for Needy Families (TANF) provides a single mother with two children only \$379 per month, or \$4,548 a year. This amount is significantly lower than the federal poverty guideline of \$15,260 for the same family, and dramatically lower than the estimated "self-sufficiency" standard for this family of approximately \$50,000.<sup>6</sup>
- The average monthly participation of people in the District's Food Stamp program in 2002 was 74,271 people, and almost 50,000 children received a free or reduced-price school lunch (nearly three-quarters of all public school students). Almost 10% of all households qualified as "food insecure," meaning that, due to their economic situation, they run out of food, feed their children unbalanced diets, and/or skip meals so that their children can eat.<sup>7</sup>

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<sup>3</sup> All numbers in this paragraph are from Fannie Mae Foundation, "The Poorest Become Poorer: A Report on Patterns of Concentrated Neighborhood Poverty in Washington, D.C. (excerpted findings)," (2003), pp. 1-3 [hereinafter "Fannie Mae"]. Numbers are derived from the results of the 2000 census.

<sup>4</sup> Fannie Mae, p. 3.

<sup>5</sup> D.C. Employment Justice Center

<sup>6</sup> Wider Opportunities for Women, "Self-Sufficiency Standard Report for Washington, D.C. Metropolitan Area (District of Columbia, Suburban Maryland, and Northern Virginia)" (1999), p. 7.

<sup>7</sup> Food Research and Action Center, "State of the States 2003", D.C. section.

- The District of Columbia's Emergency Assistance program was abolished in 1996 because of the city's financial crisis. When it existed, more than \$5 million in local funds helped over 11,600 residents weather crises with short-term assistance for rent, mortgage payments, utilities, food, and clothing. Since that program's demise, less than \$370,000 in federal funds has been available for emergency assistance, supplemented by a small amount of private funds, all of which are exhausted by early in the year.<sup>8</sup>
- Thirty-seven percent of the District of Columbia's adult population does not have the literacy skills required to fill out a benefits application or locate an intersection on a map, yet only 9% of jobs in the District are appropriate for people of that literacy level. The District's mismatch between literacy level and skills required by the local economy is the greatest in the nation.

## **B. Housing**

- In the 1990s, the District of Columbia lost over 16,000 rental housing units. Additional losses of affordable housing are anticipated as contracts for thousands of units in SECTION 8 projects expire without being renewed in the near future.<sup>9</sup>
- Approximately 26,000 people are on the D.C. Housing Authority's wait list for SECTION 8 housing subsidies, and 18,000 are on the wait list for public housing.<sup>10</sup> The wait takes many years.
- The average cost of obtaining a modest rental unit in the District of Columbia is more than \$1,000 per month for a two-bedroom apartment.<sup>11</sup>
- The demand for family shelter in D.C. has increased by more than 150% since 1999, with 2,613 families applying for emergency shelter in 2002. At least 300 of those families are still on the waiting list for shelter as of June 2003. They face an average wait of six months.<sup>12</sup>

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<sup>8</sup> From on-line data published by the Emergency Food and Shelter Board National Program, <http://www.efsp.unitedway.org/>.

<sup>9</sup> Information from the Washington Legal Clinic for the Homeless.

<sup>10</sup> Reba Anderson-Graham, District of Columbia Housing Authority, June 24, 2003.

<sup>11</sup> For the year 2003, the Fair Market Rent (FMR) for an efficiency in Washington, D.C. is \$865 a month. The FMR for a 1-bedroom apartment is \$984; 2-bedroom \$1154; 3-bedroom \$1285; and 4-bedroom \$1897. Department of Housing and Urban Development, Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2003, available at <http://www.huduser.org/datasets/fmr/FY2003F.pdf>.

<sup>12</sup> Cornell Chappelle, The Community Partnership for the Prevention of Homelessness, June 24, 2003; Downtown D.C. Homeless Services, <http://www.downtownDC.org/DevInit/Homeless/services.html>.

### **C. Children's Issues**

- At the present time, some 31,500 children are eligible for subsidized child care, yet the city will serve less than 40% of those eligible in FY 2004, in part as a result of a \$6 million budget cut to child care funds over the past year.<sup>13</sup>
- Only one-third of the District's children now live with both parents in those parents' own household. Forty percent live with a single mother, and nearly 20% live with grandparents or other relatives.<sup>14</sup>
- In 2000, child support was collected in only 12% of the city's 128,000 child support cases. Only 637 child support cases were brought in court in 2001, declining for the seventh straight year from a high of 2,562 in 1994.<sup>15</sup>
- The Child and Family Services Agency/court monitor's baseline report shows that there is no case plan for children in foster care in 70% of the cases reviewed; there are no current treatment plans for children in kinship and family services in 73% of the cases reviewed; and social worker visits during the first eight weeks of foster care placement occurred less than weekly in 58% of the cases.<sup>16</sup>

### **D. Health Care**

- More than 55,000 individuals living at or below 200% of the poverty level in the District are uninsured.<sup>17</sup>
- For more than 15 years, there have been no significant and comprehensive steps taken to reduce the high and increasing rates of asthma, HIV infection, high blood pressure, diabetes, dental cavities, or addiction among District residents. These rates are among the highest in the nation, and the illnesses are concentrated in lower-income, minority communities.<sup>18</sup>
- In FY 2003, only 161 slots in treatment programs were available for teens needing substance abuse treatment. Although the program has more than doubled the number of substance abuse slots in the past year, there are more

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<sup>13</sup> D.C. Action for Children, "What's in it for Kids? FY 2004."

<sup>14</sup> D.C. Kids Count Collaborative, "Every Kid Counts in the District of Columbia" (2002) [hereinafter "Kids Count"], p. 23.

<sup>15</sup> Kids Count, p. 25.

<sup>16</sup> D.C. Action for Children, "What's in it for Kids? FY 2004."

<sup>17</sup> Lurie, Nicole, and Stoto, Michael, "Uninsured in the District of Columbia," RAND Corporation (October 2003).

<sup>18</sup> Information provided by the D.C. Primary Care Association.

than 8,000 adolescents in need of these services, leaving the vast majority untreated.<sup>19</sup>

Lawyers can make a significant contribution to solving many of these problems. Lawyers can help people obtain health care, food, shelter, public benefits, and child support payments. They can fight discrimination, prevent illegal evictions, help ensure that children grow up in safe and nurturing homes, protect battered women from their assailants, promote fairness in the workplace, thwart the efforts of predatory lenders and other unscrupulous business interests that target poor people, and help realize the right of children to a good education.

The legal community can also work to alter the conditions from which these problems arise. Effective legal advocacy can help increase the supply of affordable housing, move people from welfare to work, support the development of vibrant and economically viable communities within the city, and provide children with the resources they need to become stable and productive adults. Lawyers also serve as a key enforcement mechanism for any governmental initiative – legislative or regulatory – intended to alleviate the problems caused by poverty. Good policies are often thwarted in practice by underfunded and/or poorly run agencies and by undertrained staff people; the legal community and our judicial system can ensure that the intentions of legislators and rulemakers are properly carried out in the field. And when statutes or regulations are unjust, lawyers can advocate changes to the rules.

### **III. The Legal Services Delivery System in the District of Columbia**

In the District of Columbia, the provision of legal services to low-income people is conducted substantially by approximately 25 small-to-medium-size nonprofit organizations that exclusively provide some kind of legal services to indigent people.<sup>20</sup> While some programs do not screen for financial eligibility, most do, and eligibility generally requires the client to be living on less than a specified percentage of the federal poverty guidelines.<sup>21</sup> The work of these organizations is supplemented by law school clinical programs, lawyers who provide legal assistance to clients at larger social services agencies, and *pro bono* assistance from the District's many lawyers and law firms. Most of the freestanding legal services providers are specialized, providing

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<sup>19</sup> Centers for Disease Control (2002).

<sup>20</sup> Determining which organizations to "count" as legal services providers is not without complication. The District of Columbia Bar Foundation currently provides support to 23 organizations, but there are other organizations that might be considered legal services providers, including law school clinics (the Bar Foundation supports two out of about 20), the local agency for Protection & Advocacy, and legal services provided at larger agencies without formal legal clinics.

<sup>21</sup> LSC funded organizations, including the Neighborhood Legal Services Program, can only see clients under 125% of poverty. Many other organizations in D.C. will see clients up to 200% of poverty. However, even these more liberal guidelines exclude many people who certainly cannot afford legal representation at market rates, leaving a large gap of lower-to-middle income clients who are not served at all.

assistance either on specific subject areas or to discrete populations (such as seniors or victims of domestic violence). Even “general services” programs provide the vast majority of their assistance to clients who fall within certain priority areas of legal need.

### **A. History of Legal Services in the District of Columbia**

Legal services programs employing full-time poverty lawyers first emerged in New York City in the late nineteenth century. At that time, many immigration organizations (generally specialized by country or region of origin) had arisen to serve the needs of immigrants seeking to establish a foothold in the New World, and some of those needs were legal in nature. One such organization, which served German immigrants, concluded that it would be more efficient and effective to employ full-time lawyers with a specialty in legal areas related to poor immigrants rather than to rely on *pro bono* or fee-based legal representation by private sector attorneys who often found themselves well out of their substantive area of expertise. That realization led to the creation of the Legal Aid Society of New York in 1876, which was funded and supported largely by the private bar.

Over the next 75 years, most of the nation’s major cities, including the District of Columbia, created similar legal aid organizations. The Legal Aid Society of the District of Columbia was our city’s first legal services provider. Originally founded as a part of the Community Chest in 1932, it became an independent organization two years later.

In the 1960s, as the country changed politically, activists increasingly began to see the law as a tool for systemic change to benefit poor and minority communities. A new legal services movement emerged, closely allied with the civil rights movement, which prioritized law reform over individual casework.

Not surprisingly, this movement was particularly robust in the District, where lawyers in 1964 founded one of the first legal services programs oriented toward law reform, the Neighborhood Legal Services Program (NLSP). NLSP received its first federal funding in 1969 from the Office of Economic Opportunity. In 1974, after legislation was enacted establishing the national Legal Services Corporation (LSC) as a funding mechanism for legal services, NLSP applied for and received LSC funding.

Throughout the 1970s, the Legal Aid Society continued to help individuals solve legal problems through a delivery model that relied on *pro bono* representation and charitable giving. NLSP, fueled by the civil rights movement and the national “War on Poverty,” had a neighborhood-based and sometimes confrontational orientation, focusing on staff-driven law reform cases and eschewing the participation of *pro bono* attorneys. Today, both organizations continue to play an important role in serving the neediest residents of the District.

Over the past three decades, for a variety of reasons, the District of Columbia has seen the proliferation of numerous new legal services programs, often specialized

as to subject matter or population. According to respondents, several factors appear to have contributed to the relatively unique phenomenon of numerous small programs serving the same small geographic area.<sup>22</sup> One reason is that other organizations wanted to avoid the political restrictions on LSC funding. Another reason is that, due to lack of resources and other concerns, NLSP and the Legal Aid Society have primarily served a relatively narrow range of legal needs, focusing mainly on landlord-tenant cases, family law, and public benefits. While their missions have shifted somewhat over time in response to legal and political developments, neither Legal Aid nor NLSP has provided a natural place for incubating new projects, addressing new needs, or serving emerging populations.

In other cases, respondents explained that new legal services organizations were created because they were an adjunct to a larger program serving other client needs in a more holistic environment, or because the founders wished to create a program that did not seem to fit into the existing legal services model. In some cases, it is difficult to reconstruct why a separate freestanding program was created rather than placing the new project within the context of an existing larger program.

## **B. Overview of Providers**

The following are the legal services providers that currently comprise the bulk of the civil legal services system in the District of Columbia:<sup>23</sup>

- ✓ Archdiocesan Legal Network (ALN) at Catholic Charities
- ✓ Asian Pacific American Legal Resource Center
- ✓ AYUDA, Inc.
- ✓ Bread for the City Legal Clinic
- ✓ Capitol Area Immigrants' Rights (CAIR) Coalition
- ✓ Catholic Charities Immigration Services
- ✓ Central American Resource Center (CARECEN)
- ✓ Children's Law Center
- ✓ D.C. Bar Pro Bono Program

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<sup>22</sup> Most states and cities have a single large program that is dominant, supplemented by smaller specialty programs. These dominant programs almost exclusively are those that were or still are funded by LSC. Since the cuts and restrictions of 1996, many jurisdictions now have two dominant programs (one funded by LSC and one funded by other sources), but no other jurisdiction has a configuration of numerous programs similar in size comparable to that here in the District of Columbia.

<sup>23</sup> Several other organizations provide limited legal assistance in a very specific area and/or to a narrow population, such as the Children's Rights Council, Community Tax Aid, Consortium for Child Welfare, Washington Area Lawyers for the Arts, D.C. Coalition Against Domestic Violence, Our Place D.C., and D.C. Association for Retarded Citizens. In addition, there are numerous national public interest law organizations that occasionally represent District residents, particularly in civil rights-related cases, as well as local programs that work on good government issues not necessarily focused on poor people. The focus of this report is on the larger programs that have at least one full-time staff attorney and that work primarily on poverty-related issues.

- ✓ D.C. Employment Justice Center
- ✓ D.C. Law Students in Court Program
- ✓ D.C. Prisoners' Legal Services Project
- ✓ Innocence Project of the National Capital Region
- ✓ Lawyers Committee for Human Rights
- ✓ Lawyers for Children America
- ✓ Legal Aid Society of the District of Columbia
- ✓ Legal Counsel for the Elderly, Inc.
- ✓ Neighborhood Legal Services Program (NLSP)
- ✓ Public Defender Service for the District of Columbia – Civil Division
- ✓ University Legal Services (Protection & Advocacy)
- ✓ Washington Lawyers' Committee for Civil Rights & Urban Affairs
- ✓ Washington Legal Clinic for the Homeless
- ✓ Whitman-Walker Clinic Legal Services Program
- ✓ Women Empowered Against Violence (WEAVE)

### **C. Substantive Areas and Populations Addressed**

As noted previously, many organizations address only a few issues or a specific population. The 21 legal services organizations that completed surveys or provided other information reported working in the following areas.<sup>24</sup> While statistical problems prevent an exact determination of which cases are handled most frequently, the list below reflects the approximate frequency from top (most frequent) to bottom (least frequent), with a significant drop-off after public benefits:

- Housing, including access to public housing, landlord-tenant/ eviction prevention, shelter
- Family law, including custody, child support, visitation, and domestic violence, some divorce
- Immigration/ asylum
- Public benefits, especially Temporary Assistance to Needy Families (TANF), Social Security benefits
- Employment discrimination
- Abuse and neglect
- Disability/ workers compensation

<sup>24</sup> Completed surveys were received from the American Civil Liberties Union of the National Capital Area; the Asian Pacific American Legal Resource Center; Ayuda, Inc.; Bread for the City; the Capital Area Immigrants' Rights (CAIR) Coalition; the Central American Resource Center (CARECEN); the D.C. Bar Pro Bono Program; the D.C. Employment Justice Center; the D.C. Prisoners' Legal Services Project; the Innocence Project of the National Capital Region; Law Students in Court Program; Lawyers for Children America; the Legal Aid Society of the District of Columbia; Legal Counsel for the Elderly, Inc.; the Neighborhood Legal Services Program; Our Place, D.C.; the Washington Legal Clinic for the Homeless; and Women Empowered Against Violence, Inc. (WEAVE). Some written information was also received from the Archdiocesan Legal Network, the Children's Law Center, and Whitman Walker Clinic Legal Services Program.

- Consumer, including some predatory lending and bankruptcy
- Wage and hour issues
- Wills
- Family issues/ Family and Medical Leave Act
- Prison issues/ Eighth Amendment
- ADA/ Rehabilitation Act
- Adoption from foster care
- Health insurance
- Criminal record expungement
- Special education

Specific populations served by one or more programs include:

- Prisoners/ ex-offenders
- Seniors
- Victims of domestic violence
- Latinos
- Asian Pacific Americans
- Homeless people
- People with HIV
- Children
- People with disabilities
- Immigrants

Both of the foregoing lists, however, paint a potentially misleading picture of the resources available to an indigent D.C. resident needing legal assistance. Every organization in the District of Columbia network turns away far more clients than it accepts. As one director put it, “We turn away people in every category.” While not all programs count the number of people seeking their assistance, information received from those programs that do track that information indicates that providers are contacted by more than 50,000 people a year (many likely contact more than one program, so the number of people actually seeking legal assistance is presumably somewhat lower). Again, although the data is limited, it appears that the programs are only able to provide any assistance beyond a simple referral to fewer than half of the people who call.

Moreover, even clients who do receive some assistance often receive brief information or legal advice rather than an attorney to work with them more fully to solve their legal problems. The number of clients receiving more extended assistance, either by a staff attorney or by a *pro bono* attorney, is extremely small relative to the need.

#### **D. Recent Accomplishments**

Over the years, D.C.’s legal services providers have served hundreds of thousands of D.C. residents. In this past year alone, program staff reached out to tens

of thousands of residents through community education programs, walk-in clinics, and Web sites, while also reaching thousands of potential volunteer attorneys through *pro bono* training programs and intensive one-on-one mentoring. They provided information, legal advice, brief services, and/or extended representation to more than 20,000 people.<sup>25</sup>

Although a program-by-program summary of highlights would be far too long for this report, some representative accomplishments over the past year include:

- ✓ Obtained an injunction for repairs to a home that had lacked heat and hot water for almost two years. The family had been sued for eviction when they withheld rent to try to obtain repairs. The repairs have now been made and the Court has ordered the landlord to ensure that the utilities are maintained.
- ✓ Traveled to detention centers in four rural Virginia jails where D.C. area immigrants are being held to provide instruction about their rights and to find them representation.
- ✓ Created the new Domestic Violence Satellite Intake Center at Greater Southeast Community Hospital, which provides a place where victims can access legal advice, the courts, the police, the U.S. Attorney's Office, and other social services. An advocate is stationed at the unit to meet immediately with every woman who comes in seeking support and protection. The new center has served nearly 400 women so far.
- ✓ Filed a class action suit against the D.C. government that forced the government to change its practices regarding the termination of workers' compensation benefits to D.C. government workers. Injured workers will now receive better notice of intent to terminate and an opportunity to dispute the termination prior to the benefits actually ending.
- ✓ Filed an appeal in the case of Morris Arthur v. D.C. Government, et al., challenging the D.C. Superior Court's policy of keeping the interest on client funds paid into the court registry rather than returning the interest to the client.
- ✓ Organized a multidisciplinary training for the new D.C. Family Court, which provided over 300 judges, attorneys, and social workers with information on integrating services for families.

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<sup>25</sup> Because each provider has its own system of characterizing and counting cases, it is not possible to determine precisely how many District residents are receiving services and what level of services they are receiving. These numbers are approximations based on survey responses and year-end reports to the Bar Foundation.

- ✓ Assisted hundreds of El Salvadoran nationals in obtaining a one-year extension of their Temporary Protected Status after the Attorney General announced the availability of such an extension.
- ✓ Played a lead role in obtaining continued funding for Interim Disability Assistance (IDA) program, which was threatened by D.C.'s budget cuts.
- ✓ Obtained asylum for a woman from Tanzania who escaped after her husband tried to force her to undergo female genital mutilation. Her husband, who comes from a powerful family in the country, had beaten her when she refused to submit. Her church and the police both had refused to help her, claiming that they would not get involved in a "domestic" problem.
- ✓ Forced the District to expand hypothermia shelter and services to comply with the law.
- ✓ Served as an on-site resource for tenants at D.C. Superior Court Landlord Tenant Division, providing hundreds of tenants with advice and counsel.
- ✓ Launched a partnership with Children's National Medical Center wherein the hospital refers to legal counsel patients whose health is compromised by a problem with legal or community dimensions.
- ✓ Helped hundreds of Asian-language-speaking clients gain entry into the legal services system and interpreted on their behalf to help them with their cases.
- ✓ Required the D.C. Department of Corrections to provide interpreters for deaf inmates, along with access to TTY's, visual alarms for emergencies, and closed caption television.
- ✓ Released a comprehensive set of reports analyzing the civil rights barriers faced by Latinos in D.C.
- ✓ Expanded the work of the "Alternatives to Landlord and Tenant Court for the Elderly" project by persuading the D.C. Superior Court to accept the project as an alternative to eviction actions against elderly persons. This project works with housing managers to identify older people in danger of losing their apartments so that problems can be solved before an eviction takes place.
- ✓ Worked with the D.C. City Council to reestablish the Child Support Guidelines Commission in an effort to spur reform of the District's seriously underperforming child support agency.
- ✓ Visited prisons across the country where D.C. prisoners are incarcerated to gain a greater understanding of the specific problems that D.C. prisoners face in the

federal prison system and to demonstrate a presence as a watchdog even far away from the District itself.

### **E. Substantive Area Gaps in Client Service**

In researching this report, we placed a high priority on assessing the substantive area gaps in the current system.<sup>26</sup> In interviews with providers, respondents across the board provided remarkably similar responses to questions on this subject.<sup>27</sup>

First, every respondent identified the need for additional affordable housing as the single biggest challenge facing poor people in the District of Columbia and as the greatest need presented to legal services providers. From immigrants to children to people with mental illness, most clients have problems with housing, as the need for appropriate and affordable housing far outstrips the supply. Even programs that do not formally work on housing issues report spending time helping clients find appropriate housing or remain in the housing they already have. Moreover, although many programs will handle eviction cases, no one handles affirmative housing cases, and only one program surveyed has done more than a minimal amount of work on predatory lending or other issues facing homeowners. There is also relatively little transactional representation or organizing support for tenant organizations.

Second, most respondents identified a major need for substantially greater family law resources. While many programs handle some aspects of family law, there are gaping holes in the system around various permutations of different problems. No current program will represent the respondent in a protective order case, unless it is through *pro bono* assistance. Rarely will any program handle divorces that involve property issues; in fact, there is very little assistance available for any divorces at all (the most commonly provided form of divorce assistance is in divorces involving domestic violence). As for *pro bono* attorneys, they are often reluctant to become involved in family law cases, particularly custody cases, which tend to take a long time and involve difficult emotional issues.

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<sup>26</sup> In 1997, the D.C. Bar Pro Bono Program undertook similar research on substantive gaps using similar methodologies. An interim report on their findings was released at the time, although a final study was not issued. Not surprisingly, the answers were very similar to those documented here. Since 1997, only one of the gaps identified had been addressed. (The need for assistance with employment issues has been addressed by the creation of the D.C. Employment Justice Center.) The remainder of the gaps remains unaddressed.

<sup>27</sup> As described below, the two subject areas mentioned most frequently were housing and family law. We note that it is possible that these topics were mentioned most frequently because these are the areas in which most programs already practice and as to which the attorneys involved would be most familiar with the lack of services in that area.

Beyond housing and family law, other substantive gaps identified by a significant number of respondents included the following. Again, these are listed in order of the approximate severity of the need and/or the lack of current resources.

- Probate/ wills/ estates
- Consumer law, including credit/ collections, bankruptcy, predatory lending, student loans, insurance, identity theft, banking
- Health care
- Mental illness
- Education generally, including special education
- Child care issues
- Income maintenance
- Community economic development
- Collateral consequences of criminal offenses, including deportation
- Transportation
- Immigration, workers rights, access to services, especially for non-Latino language or ethnic minorities

It bears emphasis that no respondents believed there to be substantive law duplication in the system. In other words, there is no issue area that is “overserved.” While various providers acknowledged that there may currently be some inefficiencies inherent in the system because of the substantial number of providers, none of the respondents was of the view that the large number of providers has resulted in the provision of any services that do not badly need to be offered.

## **F. Gaps in Types of Services Provided to Clients**

In addition to identifying substantive areas that require additional resources, respondents also expressed concern that providers were using only a narrow range of legal strategies, focusing mainly on providing individual assistance to clients for problems that are already emergencies.

We interviewed directors and staff about the distribution of their program’s work between individual casework and more systemic types of advocacy (defined broadly). Most said that while they wish they were doing more systemic work, their programs are too overwhelmed with cases for individuals to focus on other types of work, and in some cases respondents said that their staff attorneys do not have experience doing systemic work. The programs that do significant amounts of systemic advocacy are able to do so because they have defined those activities as part of their core organizational mission and because they have staff whose job descriptions require them to devote either full

time or a significant portion of their time to these activities.<sup>28</sup> Programs that do systemic work report that their choices of priorities generally are dictated by the trends they see in their individual casework.

Below is a listing of types of legal strategies respondents thought it would be helpful to pursue. These are listed according to importance and/or paucity of work already being done in this area. The most important/pressing needs are listed first.

- Better language access (not really a legal strategy, but an enormous need)
- Affirmative litigation and appellate work
- Preventive work/ community education
- Transactional work/ community economic development
- Administrative advocacy
- Legislative advocacy
- Unbundled legal services<sup>29</sup>

### **G. How Clients Locate and Obtain Assistance**

Most legal services providers report that their clients find them through word of mouth (particularly referral by former clients); referrals from the District of Columbia Bar's information phone line; notices or referrals from courts, government agencies, and schools; referrals from nonprofit social services or health services providers; and referrals from other legal services providers. Legal programs that are part of larger organizations obtain many of their clients through the other units of their organization. A few programs do significant amounts of outreach in community locations such as shelters, public housing, schools, hospitals, and other institutions. Most providers also do some outreach through advertising, leafleting, and participation in community fairs, and many also appear on public access cable television through the University of the District of Columbia David A. Clarke School of Law's "Sound Advice" show.

Respondents universally expressed the view that it is often hard for District residents to find their way to the right provider. Clients are frequently referred from one provider to another, and it is not uncommon for a caller to explain that he or she has already called four other places that same day. There is little coordination among the providers in terms of how clients find their way through the system. Each provider has a slightly different system for intake and different intake hours. When programs receive calls or visits from people whom they cannot help, they refer these people to other providers (both legal and nonlegal), but most programs simply give the person

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<sup>28</sup> Examples include the Washington Legal Clinic for the Homeless, the D.C. Employment Justice Center, and Legal Counsel for the Elderly.

<sup>29</sup> "Unbundled legal services" is a term of art that refers to a situation where an attorney assists a client with discrete tasks but without taking on full representation duties, e.g., drafting a brief on behalf of a client but not accompanying the client to court. This "unbundling" can help extend limited resources and save money.

additional phone numbers, without really knowing whether the agencies to which they have referred them will be able to provide assistance.<sup>30</sup>

Currently, the majority of legal services offices are located downtown rather than in the neighborhoods where most of the District's low-income residents live. The courts are also located downtown. To come into these offices and to go to court, District residents without Metro access sometimes must take as many as two or three buses. Some respondents noted that they believe it is important to try to provide better access to residents closer to their homes. They also noted as a very positive development the new Bread for the City office in Southeast, which is hosting clinics run by several other organizations, but added that more access in the underserved parts of the city remains an important priority.<sup>31</sup>

## **H. Provider Staffing and Infrastructure**

Because of a lack of financial resources, legal services providers in the District struggle with their organizational infrastructures. Technology tends to lag well behind that used by the private sector and government, particularly in the areas of computerized legal research and sophisticated case management systems.<sup>32</sup> While some providers benefit from donated space provided by law firms, offices are generally crowded and have sub-par workspace; while providers try to make their client waiting areas and interview rooms as welcoming as possible, it is a struggle. Attorneys share offices or cubicles, presenting privacy and confidentiality challenges, and space to store and organize files is at a premium. A few offices present fire code hazards.

In terms of overall program management, the press of time and limited resources is also clear. Most programs do not engage in any kind of regular planning activities. While many have undergone formal strategic planning processes sometime in the past five years, these processes are generally one-shot projects, often facilitated by an outside consultant. Without clear annual goals and objectives, formal evaluation of program performance is also quite difficult and only one respondent reported engaging in such an evaluation. Moreover, the data collection system at most programs is inadequate to gather more than the most basic data on cases handled. Only one respondent reported tracking case outcomes in a way that produces easily accessible

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<sup>30</sup> At several programs, an intake worker or attorney will assist the person with the referral (*i.e.*, they will place the call themselves and try to get a commitment from the next provider to assist the client) if he or she recognizes that the person may have a hard time doing this for themselves or if the person has a particularly compelling problem.

<sup>31</sup> At one time, NLSP had several neighborhood offices. Budget cuts, however, have compelled NLSP to close all but one of these offices.

<sup>32</sup> Over the past year, a number of programs have acquired computerized case management systems, although many are still struggling to work out bugs. Other programs are still relying on pastiches of off-the-shelf databases, spreadsheets, and word processing documents to track clients and perform conflicts checks. In a few cases, certain aspects of conflicts checks are still being done by hand, if at all.

information, and only a few programs have even considered tracking outcomes. Many directors explain that they are unsure how they would even define outcomes, let alone track them.

Another problem is inadequate staffing, both nonlegal and legal. Attorney time is spent on administrative matters that could be handled by someone without a law degree. Almost every respondent identified more administrative staff as a priority, along with other nonattorney staff such as accountants, development professionals, investigators, and communications specialists. Similarly, while many programs find it extremely effective to employ social workers, outreach workers, and organizers, they find it hard to commit to these types of positions because of the constant need for more legal staff.<sup>33</sup>

As for legal staffing, it is hard to find the resources to make a commitment to a new attorney. Retention is also a significant problem. Most respondents blame the retention problem on low salaries; the average starting salary is approximately \$35,000, and the average salary for an executive director is approximately \$67,000.<sup>34</sup> Not only are salaries grossly disproportionate with those found in the private sector, but they are also far lower than government salaries for comparable positions,<sup>35</sup> and even significantly lower than the salaries at the many national public interest law organizations located in the District.

According to respondents, retention problems divert scarce resources from client services to personnel searches and training of new staff, deprive the provider of a cadre of experienced managers and advocates, and hamper attempts to build long-term relationships with other organizations and to gain the type of extensive experience with

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<sup>33</sup> Programs that do employ non-legal professionals believe that they are adding an important dimension to their program. Furthermore, staff attorneys agree that social workers and other non-legal professionals who work with the community can perform extremely important services for clients not only at a lower cost than lawyers, but often with more appropriate training. Many legal services attorneys spend considerable time on activities that might most accurately be defined as social work, and most do not have professional training in this area. Similarly, professional organizers are able to work with the community to bring a new dimension of advocacy into the picture, increasing client empowerment and helping to ensure that problems get handled on a more systemic level.

<sup>34</sup> These averages were computed using survey results from 15 programs. The difference between a high and low starting salary was about \$15,000, while the difference between a high and low director's salary was closer to \$60,000 or more.

<sup>35</sup> For example, attorneys at the Public Defender Service, which is the criminal law equivalent to legal services, essentially earn on the GS scale (commensurate with the local US attorneys), with entering attorneys earning between \$51,000 and \$69,000, and managers earning upwards of \$100,000.

local judges and administrative agencies that can make a significant difference for an attorney's work.<sup>36</sup>

Finally, although most staff attorneys frequently provide training to volunteer attorneys, they receive little systematic training to help them improve their own skills. Most programs do provide some kind of in-house training for new staff upon their arrival. In terms of outside training, however, only a handful of programs have a budget line item devoted to sending staff to training that goes beyond an initial introduction to the subject. While every provider reports the need and desire to find more training opportunities for their attorneys and other staff, most suffer from a lack of both time and financial resources to do so.

Furthermore, respondents see a training problem even when time and finances are not the issue: they report that very few useful and appropriate training opportunities exist for legal services providers in the District, with the exception of the occasional national conference that happens to be held here in any given year. There are no locally produced advanced trainings on poverty law topics. (The vast majority of states hold at least one training conference a year for their legal services attorneys, but such a conference has not been held here in the District.) Moreover, although local CLE courses are plentiful and some law firms have generously agreed to open slots in their own training programs for legal services attorneys, the attorneys report that these courses are generally not on point for the type of casework that they do, do not use examples or hypotheticals related to poverty work, and assume that work is done under conditions of financial and administrative support quite different than is the case in legal services offices.

## I. System Funding

The District of Columbia legal services system is almost entirely privately funded, with the exception of NLSP, which receives approximately \$900,000 from the federal Legal Services Corporation, and a few programs that receive funding from other government sources such as the Ryan White Act. A rough estimate of the total budget of all organizations with legal services staff (the full budget of free-standing providers and the legal services budget of those affiliated with larger social services organizations) is approximately \$15 million.<sup>37</sup> Most of this money (as well as in-kind donations) comes from private contributions, both from law firms and foundations.

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<sup>36</sup> In the District of Columbia, in contrast to most other states, it is quite common for attorneys with only a couple of years of experience to become supervisors of entry-level attorneys. While many District of Columbia legal services attorneys are quite talented, no program can achieve excellence without a solid core of experienced advocates both taking on more challenging cases and training less experienced staff.

<sup>37</sup> This number is only an estimate. Some organizations include a monetary value for *pro bono* time as part of their budget, while others do not. This number does not include law school clinical budgets.

It is difficult to place a value on the *pro bono* time contributed by attorneys and other legal professionals in the District of Columbia. While many legal services programs place a value on that time for the purposes of their budget or audit, they generally use the cost attributed to the time based on the firms' own billable rates.<sup>38</sup> A budget reflecting the billable hour value for donated hours that is many times the size of the rest of the provider's entire budget can be misleading, as the provider's staff attorneys may actually handle the majority of cases themselves and work the great majority of the hours that the program devotes to legal services.

## **J. Partnerships and Community Involvement**

Providers are increasingly partnering with other organizations, both legal and nonlegal, and becoming more engaged in the D.C. community at large. Every provider interviewed had developed at least one partnership with another organization that went beyond simple coordination of services. For providers that reach clients by going to sites out in the community to shelters, hospitals, etc., such partnerships are a critical part of their core work. Also, providers that are part of a larger organization, such as the legal clinics at Bread for the City and Whitman Walker Clinic, are essentially engaged in a major, ongoing partnership that requires attention on almost a daily basis.

There are some significant individual partnership projects that recently have been initiated, such as the partnership between the D.C. Bar Pro Bono Program and NLSP to build the client Web site LawHelp; several partnerships to ensure that Asian-language-speaking clients with domestic violence problems receive appropriate assistance, including one between the Asian Pacific American Legal Resource Center and the Archdiocesan Legal Network that focuses on providing *pro bono* counsel<sup>39</sup> and another among Ayuda, the Asian Pacific Islander DV Project, and Boat People to train police and the Department of Human Services in cultural sensitivity; the Alternatives Project, which is a collaboration between Legal Counsel for the Elderly, Emmaeus Services for the Aging, IONA, United Planning Organization, and the Urban League that attempts to prevent evictions of elderly residents before they happen; and a collaboration between the D.C. Rape Crisis Center and WEAVE to do outreach to teens. In addition, Bread for the City makes its office space available for clinics run by the D.C. Bar Pro Bono Program and the D.C. Employment Justice Center. Some providers also are involved in advocacy coalitions, such as the Fair Budget Coalition, AFFIRM, the Language Access Coalition, the Affordable Housing Alliance, the Coalition of Housing and Homelessness Organizations, and the IDA Coalition.

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<sup>38</sup> According to our surveys and interviews, some providers place a monetary value on *pro bono* time while others do not, often because they are counseled to do so by their auditors. Of those who do place a value on the time, all but one uses the firms' own billable estimates to compute a value.

<sup>39</sup> APALRC is also partnering with the Maryland Legal Aid Bureau and Legal Services of Northern Virginia to do intake for their Asian-language-speaking clients and to provide interpretation for those whose cases are accepted for representation.

## **K. Role of the Courts**

Providers report that the D.C. Superior Court is a very difficult place for them and their clients to navigate. Obtaining services for a disabled client or a client who does not speak English can be particularly challenging. Moreover, many respondents felt frustrated by the treatment they and their clients receive from the Court's staff. Also, while most agreed that the changes currently being made to Landlord-Tenant Court are useful, respondents generally do not think these modest improvements will make the court a fair place for tenants, the vast majority of whom continue to be unrepresented.

Respondents made a number of suggestions for improvements that they would like to see made by the Superior Court. A top priority that was identified was for the court to provide significantly better interpretation services for clients who do not speak English (with respondents noting that any *pro se* assistance provided would be meaningless for people unless it was provided in their own language). Another priority identified was for appointed counsel to be paid fairly and on a timely basis. A third priority was for the court to offer more information to *pro se* litigants and to switch to more user-friendly forms. Several respondents suggested that the Superior Court hire *pro se* law clerks along the model of the District of Columbia federal courts, and that these positions should be staffed by public-interest-oriented people. Finally, many respondents emphasized the importance of having the judges meet with the legal services community much more frequently in order to understand better the needs of the clients and the role of the advocates.

## **L. Role of the District of Columbia Bar**

Respondents uniformly expressed a belief that the District of Columbia Bar is a critical organization for supporting legal services. Several respondents expressed their view that all attorneys are dependent on the proper functioning of the justice system for their own legitimacy, and that it should be in the interest of all lawyers to ensure continued public support for the system.

It is recognized that that the Bar is constrained by membership referenda adopted a number of years ago that restrict what the Bar is able to do and what it can support financially.<sup>40</sup> As a result, respondents focused their suggestions for the Bar on its ability to provide leadership in the community. Respondents made a number of suggestions for future work. First, they expressed the hope that the Bar use its “bully pulpit” to emphasize and inculcate the value of financial giving by lawyers to legal service organizations in addition to the value of *pro bono* work. Second, they would like to see the Bar even more involved in helping to improve the court system, particularly in terms of raising the awareness of judges about the legal needs of the indigent. Third, they would like to see the Bar advocate on behalf of more overall resources for the legal

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<sup>40</sup> Several respondents expressed the hope that the referendum prohibiting the D.C. Bar from using member dues for advocacy purposes would be revisited.

services community. Fourth, they would like to see the Bar address the issue of loan forgiveness programs for legal services attorneys, both by local schools and by local organizations.

While all respondents expressed great appreciation for the tremendous commitment of the lawyers in the District to *pro bono* work, and while they all recognize a positive correlation between *pro bono* participation and financial donations, there are mixed views on the relative efficiency of relying on *pro bono* attorneys on an ever-increasing basis. Some programs rely heavily on volunteers, particularly those programs that provide a significant amount of brief advice, and can still make good use of more such assistance. A number of staff attorneys, however, said that they spend as much if not more time mentoring *pro bono* attorneys through cases than it would take them to do the cases themselves. As one person put it, “*Pro bono* only works well as an adjunct to robust staff programs.” Respondents expressed the desire for a better system of deciding what is best handled by staff attorneys and what is best handled *pro bono*. They also wanted better understanding of their central role in supporting *pro bono* services and the need to ensure that the providers were strong and sophisticated enough to support a *pro bono* community; as one respondent put it, the Bar should support “the professionalization of legal services.”

#### **M. Role of the District of Columbia Government**

Most respondents believe that the District of Columbia government should be much more committed to providing legal services for low-income people. At the same time, they expressed some wariness of government involvement in the provision of legal services. Some respondents would like a District budget appropriation, as long as the money is given to an independent organization for distribution, while others are concerned that taking money from the government could compromise their ability to sue District agencies. Concerns about problems arising from governmental bureaucracy were also expressed. Several respondents suggested that the District government could provide legal services programs with free office space in unused government properties.

In substantive areas, it was noted that the District of Columbia, unlike most other jurisdictions, does not have any kind of “office for new D.C. residents” or any support for violence against women initiatives. One respondent referenced a program in New York City that pays providers to prevent evictions in order to save the city money on homeless shelters.

#### **N. Ways to Improve the Civil Legal Assistance System**

All those interviewed had numerous ideas for priorities in improving the civil legal assistance system. These are outlined below, with the ones listed first being the ones that were mentioned most frequently.

- Bring more money, partners and other resources into the system.

- Enhance collaboration and system-wide planning.
- Reduce client “bounce” through better coordination, better referrals, and maybe even a centralized intake and/or hotline system.
- Develop strategies to improve language access.
- Provide more and better training for staff and higher standard of quality for legal services practice.
- Offer better staff salaries to increase retention and the ability to hire experienced laterals.
- Place more emphasis on strengthening staff programs as well as increasing *pro bono* work by the private bar and government attorneys.
- Strengthen organizational infrastructure and technology.
- Educate and empower clients through self-help materials, organizing, and systemic work.
- Create a true full-service legal services system in terms of substantive areas and legal strategies.
- Do more intake closer to where clients live.
- Demand more responsiveness from courts and agencies as well as better laws.
- Develop closer relationships with social services community.
- Examine whether the fragmented legal services community makes sense.
- Maintain a regular presence at Landlord-Tenant Court.
- Provide cross training for civil legal assistance providers and public defenders.
- Find and reach “invisible” communities that are not accessing services.
- Engage in more holistic lawyering.<sup>41</sup>
- Look at the broader justice issues facing clients.
- Circulate news of important legal developments throughout the community.

## **O. Potential Citywide Projects**

Respondents expressed enthusiasm for the Bar Foundation’s interest in the overall legal services delivery system, and they believe that a great deal of significant work could be done at a citywide level. While only a few respondents are very familiar with what is happening in other states regarding access to justice, those who have that familiarity expressed a strong desire to see a similar kind of concerted access to justice initiative take place in the District of Columbia.

During the interviews, directors and staff were asked to speculate about projects that would have a particularly useful impact on their programs and could most efficiently or effectively be conducted on a citywide basis rather than by individual providers. The replies are ranked with the most frequent replies first.

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<sup>41</sup> The term “holistic” is used several times in this report. While those in the private bar may be less familiar with this term, and while it may seem vague to some, the national legal services community has consciously chosen this term to refer to a type of practice in which legal professionals collaborate with other types of health and social service professionals to provide a full continuum of services to poor clients.

- Provide training for legal services attorneys, including an annual conference.
- Help raise funds in ways that individual providers cannot, such as lobbying for filing fees or state money, raising consciousness of local foundations, and tapping corporate support.
- Provide office space for providers.
- Develop a shared IT capacity, including bulk purchase of hardware and software, contracts with Lexis/Westlaw, and shared support such as a D.C. legal services technology circuit rider.
- Encourage financial support as well as *pro bono* support from individual private attorneys.
- Help providers to engage in citywide strategic planning and system improvement.
- Create traditional state support functions such as a training unit and litigation support unit.
- Provide technical assistance and support on basic organizational and management issues.
- Employ an advocate who would monitor legislative developments on behalf of all the providers and who could help coordinate joint advocacy strategies.
- Sponsor an executive director/management peer support group.

#### **IV. The National Legal Services Picture**

Just as the District of Columbia legal services system has changed and evolved over the past 75 years, so has the national system. From a series of legal aid offices funded by the private bar before the sixties, to a system dominated by federal funding from the Legal Services Corporation since 1974, the national system is now a hybrid of LSC-funded providers, non-LSC funded providers, *pro bono* programs, law school clinics, and holistic programs. Today, only about a third of the total funding for legal services comes from the federal government. About another 15% comes from state IOLTA funds, while the rest comes from state appropriations, court filing fees, private foundations, and other private donations.

As the system has become increasingly fragmented, national legal services organizations such as LSC, the American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA), and the Center for Law and Social Policy (CLASP) have shifted focus from preserving increasingly restricted federal dollars to promoting integrated, comprehensive civil legal assistance systems organized on a statewide basis. The creation of strong state justice communities has become the central focus of both work and fundraising in most states.

In part, this state-based emphasis has been motivated by the reduction in LSC funding and the imposition of the new LSC restrictions, including the new restriction on

the use of non-LSC funds.<sup>42</sup> In part, it has been motivated by welfare reform and other legislative changes that have pushed important government programs down to the state level (so-called “devolution”). But, just as important, key leaders in the civil justice system have begun to recognize that to expand the availability of civil legal assistance in the future, state leaders must seek to increase and appropriately allocate resources derived from within a state, including private and public funding, as well as seek additional resources from other federal funding sources and from regional and national foundations.

### **A. State Access to Justice Commissions**

To grow and improve civil legal assistance, state leaders across the country have begun to take a new approach to the system, developing partnerships and access to justice campaigns that go far beyond the legal services providers themselves. The main focus of these partnerships is to create a group of people charged with overall responsibility for improving access to justice in their state. These entities ensure that the issue does not get lost among the dozens of other priorities faced by the system’s stakeholders and the state and also ensure that plans to achieve access to justice are implemented and sustained. They also generally recognize the importance of paid staff for moving processes along.

Over a dozen states already have an active Access to Justice Commission – a formal state-level body dedicated to expanding and improving civil legal assistance in the state, composed of appointed representatives of the bar, the judiciary, and providers. Typically these bodies were created by state Supreme Court rule. Many additional states have an active committee of their state bar or bar association that is charged with a broad access to justice function and that includes representatives of the judiciary, providers, and other stakeholders, in addition to bar leaders. Fewer than ten states currently have no formal access to justice structure of any kind. The District of Columbia falls into this category.

For most states, the key to achieving success has not been the nomenclature or the source of the initial leadership that created the impetus for the process, but rather that a group of leaders with connections to different stakeholder institutions and constituencies received a formal charge to focus on increasing access to justice. Leaders seeking access to justice around the nation agree that the support and

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<sup>42</sup> Although LSC has labored under legislative restrictions on its work for many years, such as restrictions on involvement in abortion or redistricting cases, the series of restrictions imposed on LSC by Congress in 1996 had the greatest impact. They include prohibitions on filing class action lawsuits, on obtaining statutory attorney’s fees, on representing prisoners and certain categories of immigrants, on engaging in legislative advocacy except by invitation of the legislature, and on challenging welfare reform (this last restriction was invalidated several years later). Moreover, the restrictions also include a provision that any provider accepting any LSC funds at all could not pursue the prohibited activities even using funds from another source.

leadership of the judiciary has been particularly instrumental in making progress on access to justice issues.<sup>43</sup>

For many states, the definition of “success” has included a significantly increased financial commitment to equal justice. State funding is the third largest funding source for civil legal aid. About half of all states have some kind of court filing fee, the proceeds of which are devoted to legal services. Slightly more than half have some kind of state appropriation for legal services. In 2000, state funding totaled approximately \$105 million. This included approximately \$37 million from court fees and fines in 20 states, and \$68 million from direct state appropriations in 26 states. Since these statistics were gathered, about eight additional states have succeeded either in obtaining a state appropriation or creating a filing fee program.

There are a number of national organizations that have played a role in supporting the development of state justice communities, including NLADA, CLASP, and the ABA. There are two ABA projects aimed specifically at tracking state activity in these areas – Project to Expand Resources for Legal Services (PERLS), which tracks funding developments on a state-by-state basis; and SPAN: Access to Justice Programs, a joint project with NLADA, which tracks access to justice activities.<sup>44</sup> In addition, the Project for the Future of Equal Justice (a joint venture between NLADA and CLASP), has produced two important publications – one laying out the framework for an effective state justice community,<sup>45</sup> and the other examining the importance of statewide advocacy work.<sup>46</sup>

## **B. State Support Organizations**

In many states, a powerful force for increasing access to justice is a statewide organization that provides substantive support to legal services and *pro bono* attorneys in the state. These organizations, sometimes called back-up centers or support centers, were originally funded by LSC. After LSC defunded them in 1996, some closed their doors, but many remained open through aggressive fundraising to replace the LSC grant.

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<sup>43</sup> For more lessons from other states, see “Twelve Lessons from Successful State Access to Justice Efforts” at [http://www.nlada.org/DMS/Documents/1018712627.59/doc\\_lessons%20from%20successful%20%20ATJ%20efforts%203-11-03.doc](http://www.nlada.org/DMS/Documents/1018712627.59/doc_lessons%20from%20successful%20%20ATJ%20efforts%203-11-03.doc).

<sup>44</sup> A variety of SPAN resources can be found at [http://www.nlada.org/Civil/Civil\\_SPAN/Civil\\_SPAN\\_Home](http://www.nlada.org/Civil/Civil_SPAN/Civil_SPAN_Home).

<sup>45</sup> Project for the Future of Equal Justice, “Comprehensive, Integrated Statewide System for the Provision of Civil Legal Assistance to Low Income Persons to Secure Equal Justice for All” (Center for Law and Social Policy, July 8, 1998) at <http://www.nlada.org/DMS/Documents/1004385499.88/discussdraft.wpd>.

<sup>46</sup> “The Missing Link in State Justice Communities: The Capacity in Each State for State Level Advocacy, Coordination and Support” at [http://www.nlada.org/Civil/Civil\\_EJN/missing\\_link](http://www.nlada.org/Civil/Civil_EJN/missing_link).

The structure and mission of these organizations differ widely. Some provide extensive substantive law support to attorneys working in the field, taking a leadership role in creating and facilitating strategies for change in particular issue areas. Most provide some leadership in obtaining state and local financial support for legal services programs; coordinate statewide training (including an annual conference) for legal services staff; serve as a clearinghouse of information; maintain statewide advocate and client Web sites; and convene various statewide casehandler groups and other task forces.

In terms of structure, some of these organizations are freestanding nonprofits, while others are a separate division of an existing legal services program. Some are entirely funded by foundation and other donations, while some obtain funding through membership dues paid by the state's legal services providers. Some have independent boards of directors, while others are governed by the directors of the state's legal services providers.<sup>47</sup>

These organizations have made a significant contribution to equal justice both in substantive legal areas and through helping to strengthen and support the legal services providers themselves.

## **V. Recommendation**

The findings of this report demonstrate the urgent need for a new and vigorous approach to addressing the legal needs of the indigent of the District of Columbia. While dedicated legal services staff attorneys and *pro bono* volunteers are accomplishing great things every day on behalf of their clients, too few people are being provided far too narrow a range of legal services.

To this end, the Bar Foundation recommends that the courts, the bar, the legal services providers, legal services funders, and members of the community being served work together to develop a sustained and comprehensive approach to bring us closer to the vital goal of equal access to justice for the indigent in our community. This effort should draw on the experience, expertise, and influence of all with a commitment to equal access to justice, and should assess what it will require, in terms of funding, organization, and staffing, to act on that commitment.

For its part, the Bar Foundation is committed to lending its support and energies to developing this sustained and comprehensive approach. With the active involvement of all members of the legal community working together, our mission of equal access to justice can become a reality for all of our citizens.

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<sup>47</sup> More information about state support can be found in the publication entitled, "[The Missing Link in State Justice Communities: The Capacity in Each State for State Level Advocacy, Coordination and Support](http://www.nlada.org/Civil/Civil_EJN/missing_link)," which is located at [http://www.nlada.org/Civil/Civil\\_EJN/missing\\_link](http://www.nlada.org/Civil/Civil_EJN/missing_link).