

Rethinking Access to Justice

by James J. Sandman



Access to justice is a national value, captured in the first line of the Constitution and in the closing words of the Pledge of Allegiance. For millions of low-income Americans who cannot afford a lawyer, however, it is an unfulfilled promise.

The need for civil legal aid by the poor now stands at an all-time high, with nearly 65 million people—21 percent of the population—financially eligible for assistance at legal aid programs funded by the Legal Services Corporation (LSC). That is a 30 percent increase over 2007, the last year before the recession began.

But funding for legal aid has remained stagnant in absolute dollars since 2007 and has

declined in inflation-adjusted dollars. In fact, in inflation-adjusted dollars spent per eligible person, LSC funding is today at an all-time low. State funding varies widely across the country, and many alternative sources of revenue, such as foundation grants, have significant limitations on their use. Studies consistently show that only 20 percent of the civil legal needs of low-income people are met, and state courts across the country are today overwhelmed with unrepresented litigants.

To address this situation, we must overcome two challenges. The first is the invisibility of the issue—the widespread ignorance of the magnitude of the justice gap in the United States today. The second is a service-delivery model that leaves too many people with no assistance of any kind.

Those who care about this issue must carry the message beyond the access-to-justice community to new audiences, particularly opinion makers and opinion leaders, and also find people

outside the legal aid world to make the case—including corporate general counsel, chief executive officers, and those foundation leaders who understand the issue and fund legal aid.

And the case for legal aid needs to be made in terms that those outside that community can understand, stressing the importance of fairness in our justice system, a value that recent research shows resonates deeply with the public. The arguments should be illustrated with compelling stories and make the business case for legal aid as well.

There is good news in the quest to raise the visibility of the need for civil legal aid. Voices for Civil Justice¹ is a new organization devoted to raising and expanding public awareness of the importance of civil legal aid in helping people protect their livelihoods, their health, and their families.

To overcome the second challenge, we need to change our delivery system. It is not realistic to try to provide full representation in every case, and pursuing that goal at the expense of other alternatives is letting the perfect be the enemy of the good. The fact is that some assistance—including referrals to court-based resource centers or online self-help resources—is better than no assistance.

Although the report focused on the use of technology, this goal represents a much-needed rethinking of the traditional service-delivery model and points to a future where *no one will get nothing*, which is what happens all too often today.

This is a realistic but still inspiring goal for access to justice in the world we live in today.

Endnotes:

- 1 <http://voicesforciviljustice.org/>
- 2 <http://www.lsc.gov/media/in-the-spotlight/report-summit-use-technology-expand-access-justice>



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Late last year, LSC released a report² addressing this issue following a technology summit that it convened “to explore the potential of technology to move the United States toward *providing some form of effective assistance to 100 percent of persons otherwise unable to afford an attorney for dealing with essential civil legal needs.*”

