

Documenting the Justice Gap In America

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Documenting the Justice Gap In America

*The Current Unmet Civil Legal Needs of
Low-Income Americans*

Legal Services Corporation
Washington, DC

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Preface

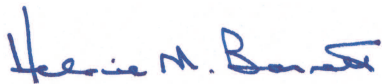
The first edition of LSC's groundbreaking report, *Documenting the Justice Gap: The Current Unmet Civil Legal Needs of Low-Income Americans*, was completed in September 2005. The second edition, issued in June 2007, is virtually the same. The only substantive changes are the addition of this Preface and the updated list of the Board of Directors on the inside back cover.

The Justice Gap Report documents that nationwide, for every person helped by LSC-funded programs, another is turned away. Fifty percent of those actually seeking help are turned away for one primary reason: lack of resources. If anything, this finding is an understatement. Many who are eligible for help never seek it—they do not know they have a legal problem, do not know help is available, or do not know where to go for help.

Since the release of the Justice Gap Report, Hurricane Katrina has significantly increased the need for civil legal aid as well as the number of people eligible to receive it. In addition, the most recent legal needs studies—conducted in Utah and Wisconsin—documented an unmet need of 80 percent or more, which is consistent with the nine state legal needs studies conducted since 2000 that are cited in the Justice Gap Report. Other recent data show that 99 percent of defendants in housing eviction cases in New Jersey and Washington, DC, go to court without a lawyer.

These findings have had an impact. In 2007, for the first time in four years, LSC received a modest budget increase. The Justice Gap Report was cited repeatedly during debate on the floor of the U.S. House of Representatives, in a letter to the House Appropriations Committee signed by 163 representatives, in a letter to the Senate Appropriations Committee signed by 54 Senators, and in a letter to Congress signed by the general counsels of some 60 corporations.

Our nation promises justice for all, not just for those who can afford to pay for it. The ideal may never be fully realized, but America can come closer to it. As Judge Learned Hand said, "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."



Helaine M. Barnett
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Washington, DC
June 2007

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“Equal justice under law is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

—U.S. Supreme Court Justice Lewis Powell, Jr.

Congress, in creating the Legal Services Corporation (LSC) in 1974, determined that there is need to provide equal access to the system of justice in our nation for those who would be otherwise unable to afford adequate legal counsel. Congress explicitly recognized in the LSC Act that, “providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice, assist in improving opportunities for low-income persons,” and “has reaffirmed faith in our government of laws.”

The goal of providing equal access to justice for those who cannot afford to pay an attorney remains the reason for LSC’s existence and the benchmark for its efforts. In developing the budget mark it submits to Congress, therefore, LSC has a duty to assess what has been accomplished in meeting the need, what still needs to be achieved, and the role that federal funding should play in doing so.

This report uses a variety of approaches to document the civil legal needs of low-income individuals and families and to quantify *necessary access to civil legal assistance*—that is, the level of assistance that would be required across the nation to respond appropriately to those needs. The civil legal needs of low-income people involve essential human needs, such as protection from abusive relationships, safe and habitable housing, access to necessary health care, disability payments to help lead independent lives, family law issues including child support and custody actions, and relief from financial exploitation. The difference between the current level of legal assistance and the level which is necessary to meet the needs of low-income Americans is the “Justice Gap.”

Historical Background

When LSC was created in 1974, the nation’s legal aid system was a patchwork of programs focused primarily on urban areas. Many regions were not served at all: a 1980 LSC study of the funding levels of local programs in relation to the population they served found that over 40 percent of the nation’s poor people lived in areas not served by legal services programs and many of the remainder had only token access.

On the basis of the study, LSC identified as its initial goal the provision of at least a minimum level of access to legal aid in every county in the nation.¹ Federal funding at the “minimum access” level was not seen as sufficient in itself, but rather as a preliminary foundation upon which other resources (state, local and private) could be built. Once “minimum access” had been achieved, additional steps toward meeting the ultimate goal of responding fully to the civil legal needs of low-income people could be identified and pursued.

Congress heeded LSC’s request for “minimum access” funding, enabling the Corporation to increase funding levels in comparatively under-funded areas and to fund new programs in previously

¹ “Minimum access” was defined as two lawyers, with appropriate support, per 10,000 low-income people. Thus, “minimum access” was not the same as “necessary access” as used in this report.

unserved areas, mostly in the South and Southwest. The “minimum access” funding level was achieved throughout the nation in FY 1981, with an appropriation of \$321,300,000. However, “minimum access” funding lasted for only one fiscal year. For FY 1982, Congress reduced funding for the Corporation by 25 percent, to \$241,000,000. Federal funding has never again reached the “minimum access” level. Adjusted for inflation, the FY 1981 level remains the high-water mark for LSC funding. In 2005 dollars, the 1981 level of \$321,300,000 would be \$687,063,000—more than twice the current appropriation level.² Over the same period of time, the poverty population that is eligible for legal services³ has increased from 43,748,000 in 1981 to 49,666,000 in 2004, an increase of approximately 14 percent.

Over the past two decades, with federal funding falling far short of the inflation-adjusted level achieved in 1981, LSC and other entities committed to equal justice have undertaken a variety of different approaches to assess the civil legal needs of low-income people and what it would take to provide necessary access to civil legal assistance.⁴

A major step was the Comprehensive Legal Needs Study funded by the American Bar Association and released in 1994. Conducted by the Institute for Survey Research at Temple University and based on well-established, rigorous social science methodology, the study was based upon more than 3,000 interviews with a randomly selected sample of low- and moderate-income Americans.

The ABA study documented the existence of a major gap between the civil legal needs of low-income people and the legal help they received. Among its findings were the following:

- Nationally, on the average, low-income households experienced approximately one civil legal need per year.
- Only a small portion of these legal needs resulted in legal help of any type. Help was received from a legal aid provider or the private bar for roughly one in five of all problems identified.

The ABA study remains the most recent *national* study of the legal needs of low-income Americans and the extent to which they are or are not met.⁵

Background of this Report

Much has changed in the delivery of legal services in the past decade. State bars and state courts have become increasingly involved in supporting civil legal assistance. Interest on Lawyers Trust Accounts (IOLTA) has expanded and survived constitutional challenges. Non-LSC funded providers have come into existence. Documentation of the level of non-federal funding has increased. These changes suggest that it is time for a new effort to assess how we as a nation are faring in our efforts to provide necessary access to civil legal assistance, what it would take to achieve that goal, and the role of federal funding.

² Bureau of Labor Statistics, Consumer Price Index, All Items.

³ Generally, this includes households with income at, or below, 125 percent of the official government poverty level. These figures are subject to change annually.

⁴ This report deals exclusively with civil legal needs. All references to “legal needs” should be considered to be limited to civil needs, even where this is not expressly stated.

⁵ Around the time of the ABA study, a number of states conducted their own legal needs studies using the same methodology. While findings varied from state to state, all documented a similar gap between legal needs and help received. In recent years, another group of state studies has been conducted: nine such studies were released in the period of 2000-2005. These will be discussed in detail below. A complete list of state studies, as well as all of the more recent studies themselves, is available online at: www.ATJsupport.org in the Access to Justice Document Library.

At the September 2004 LSC Board meeting in Helena, Montana, the Board asked LSC staff to attempt to document the extent to which the need for LSC-funded services is not currently being met in light of the impact of other available resources, such as pro bono, non-LSC providers, and state and private funding. They asked that this information be provided to them in time for the Board's consideration of the 2007 budget request to Congress.

Because both the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID), and the National Legal Aid and Defender Association (NLADA) have traditionally provided their own recommendations on LSC funding, and because both entities had independently undertaken efforts to develop new data on the unmet legal needs of low-income people, LSC President Helaine M. Barnett invited representatives of SCLAID and NLADA, as well as other members of the legal services community with expertise in documenting legal needs, to collaborate with LSC in developing this data. For the past year, LSC has convened a Justice Gap Committee that includes, in addition to LSC staff, Terry Brooks, Legal Counsel to SCLAID; Bob Echols, Director, Access to Justice Support Project and consultant to SCLAID; Don Saunders, NLADA Civil Director; De Miller, Executive Director of Legal Services of New Jersey; and Bill Whitehurst, Chair of SCLAID. This report was prepared by LSC staff in collaboration with the Justice Gap Committee.

Methodologies for Documenting Current Need

At its initial meetings, the Justice Gap Committee reviewed the possible methodologies for measuring and documenting unmet civil legal needs and quantifying necessary access to civil legal assistance as accurately and completely as possible. New methodologies were considered, as well as those that have been used in the past. The strengths and limitations of each possible methodology were assessed.

Among the first questions raised by the group was whether a new national survey to update the ABA's 1994 study should be conducted. The committee concluded that a new survey was not necessary.⁶ Rather, the consensus of the group was that the question could best be illuminated by using a number of different methodologies, each of which has particular strengths and provides a different perspective. Together, they offer a broad picture of the justice gap between the civil legal needs of low-income people and the percentage of those needs for which legal help was received.

The committee used three different methodologies for documenting the justice gap:

- **Methodology #1: *Unable to Serve:*** *National count of people seeking legal help from LSC-funded providers who are denied services because programs lack sufficient resources.* LSC asked its grantee programs to document the number of people seeking assistance from the program who could not be served due to insufficient program resources. Each LSC-funded program in the nation collected this data over a two-month period in spring 2005.
- **Methodology #2: *Continuing Documentation of Unmet Legal Needs:*** *Analysis and comparison of recent state legal needs studies.* Since 2000, legal needs studies were conducted in nine states using similar methodologies. For this report, the methodologies and findings of the nine recent state studies were compared to one another to draw currently valid, nationally applicable conclusions from them.

⁶ Moreover, a new survey would take several years to plan and implement and would likely cost well in excess of \$1 million.

■ **Methodology #3: Attorneys Per Capita:** *National count of legal aid attorneys; comparison of ratio of legal aid attorneys to low-income population and ratio of private attorneys providing personal civil legal services to general population.* ABA and LSC staff conducted a count of the number of legal aid attorneys in the nation. The count included attorneys in all programs providing civil legal help to low-income people, not just those in LSC programs. The ratio of legal aid attorneys to low-income people was compared to the ratio of private attorneys to the general population.

In addition, the committee also developed a proposed new methodology for documenting the justice gap, based on statistics from courts and administrative agencies. A template (see Appendix E) was developed for collecting data from state courts and agencies about particular categories of cases typically involving low-income people and the percentage of litigants who are low-income and unrepresented. LSC conducted a pilot project involving four states to test the feasibility of collecting the information set out in the template. To date, the pilot states have been able to provide only isolated bits of data. Nevertheless, this method offers a model that state and national entities may be able to use for systematic collection of data about the extent to which low-income people are represented in state agency and court proceedings. This approach should be considered in future efforts.

Principal Findings on Current Legal Needs and the Justice Gap

Taken together, these different methodologies confirm the existence of a major gap between the legal needs of low-income people and the legal help that they receive.

- For every client served by an LSC-funded program, at least one person who sought help was turned down because of insufficient resources.
- Only a very small percentage of the legal problems experienced by low-income people (one in five or less) are addressed with the assistance of either a private attorney (pro bono or paid) or a legal aid lawyer.
- Despite the changes in legal aid delivery over the last decade, a majority of legal aid lawyers still work in LSC-funded programs. The per capita ratio of legal aid attorneys funded by all sources to the low-income population is a tiny fraction of the ratio of private attorneys providing personal civil legal services to the general population.

Eliminating the Justice Gap: Providing Necessary Access to Civil Legal Assistance

The enormity of the justice gap documented in this report means that eliminating the gap will require a sustained, long-term effort involving a partnership of federal and state governments, the private bar, and concerned public and private parties. A key first step is to quantify what it would take to provide necessary access to civil legal assistance. This report concludes that doing so will require increasing our nation's capacity to provide civil legal assistance to *five times* the current capacity. While the Legal Services Corporation cannot accomplish this alone, it is incumbent on LSC to lead the way by drawing attention to the justice gap, identifying the goal of eliminating it, and beginning to move toward it in firm, measured strides.

Methodology #1: Unable to Serve

Count of People Seeking Assistance from LSC-Funded Programs Who the Programs Cannot Serve Due to Lack of Resources

As a first step toward documenting the justice gap, LSC collected data on the number of people currently seeking help from LSC-funded legal aid programs who cannot be served due to insufficient program resources.

The strength of this data is that it documents the number of real people with real problems who sought unsuccessfully to get help. Data was obtained from every state in the country.

This count indicates that roughly *one million cases* per year are being rejected because programs lack sufficient resources to handle them. This figure does not include the many people who do not reach an LSC-funded program to ask for help, for whatever reason.

Comparison of this data to statistics on cases handled in 2004 indicates that *for every client served by an LSC-funded program, at least one person seeking help will be turned down.*

Methodology

LSC asked its grantee programs to collect data on numbers of people who could not be served during a two-month period, from Monday, March 14, through Friday, May 13, 2005. This period was selected to obtain as representative a sample as possible, given necessary preparation time and LSC's commitment to respond to the Board by September 2005.

Programs were asked to count the number of people who came to the program seeking help for problems within LSC's statutory mandate and were denied services because the program lacked sufficient resources. (The count did not include people who were denied services because they were financially or otherwise ineligible, because services were prohibited by LSC restrictions, or because their case was determined to have insufficient legal merit to proceed.) Cases in which a program made a referral to another program with an expectation that the other program would provide substantial representation were not included in the count, nor were cases where pro bono service was provided through an LSC-funded program's Private Attorney Involvement requirement.

To assist grantees in this endeavor and to ensure that the survey data received was assessed consistently, LSC provided grantees with instructions for completing the survey and defined the data to be captured in the survey (see Appendix A). LSC supplemented the survey instructions with a service bureau to respond to grantee inquiries, posted responses to frequently asked questions on the LSC website, and designed an automated application to assist grantees in capturing the survey data.

It is important to keep in mind that the data yielded by this methodology is *under-inclusive* in several ways:

- Data was collected from only LSC-funded programs. The count does not include people who may have sought help unsuccessfully from other programs. This limitation is particularly significant in a few states and programs where LSC grantees do not perform the intake function and as a consequence were unable to count the number of persons who were turned down for service.⁷

⁷ For example, in New Mexico the LSC-funded program does not do intake at all; rather, a statewide hotline, not funded by LSC, refers cases to the program. In a number of places, other organizations do intake and do not send cases to the LSC-funded program when they know the program is not able to handle them.

- The count does not include people who received some service, but not the level of service that they actually needed. LSC programs frequently provide advice and counsel to people when they cannot provide full representation. These cases do not appear as denials of service because the client has actually received a service (advice and/or counsel).⁸
- More broadly, the methodology does not capture people with serious legal needs who did not contact any legal aid provider for a variety of possible reasons (data documenting the frequency of these reasons for not seeking legal help appears below, under Methodology #2):
 - People who need legal help frequently do not know about the availability of civil legal assistance or their potential eligibility for legal services.
 - People who need legal help and know that they meet the eligibility requirements for free legal services may not seek help from the program because they believe (often correctly) that the program will not be able to assist them.⁹
 - Other barriers, such as geographical distance and isolation, low literacy, physical or mental disability, limited English proficiency, culture and ethnic background, and apprehension about the courts and the legal system, also pose impediments.

Conversely, there is one way in which this data may be slightly over-inclusive, in that eligibility for LSC services was documented in most, but not all, cases. Eligibility was established for all cases in which the intake process was completed. People who were determined to be ineligible were not included in the count. However, the count does include some applicants for whom eligibility information was not collected because, before doing screening, the program ascertained and informed the applicant that the type of case presented was not within the program's case-handling priorities. (For example, if the program does not handle uncontested divorces, and this was the nature of the applicant's problem, frequently no application would be taken). LSC staff, with concurrence of the Justice Gap Committee, felt it inappropriate to seek to determine eligibility when it was clear at the outset that the applicant's case would not be accepted, and did not ask programs to go on to ascertain eligibility under these circumstances.

Nevertheless, it is likely that *even in these instances, almost all applicants were in fact eligible for service*. Programs report that it is their experience that an overwhelming majority of those who contact legal services offices are eligible for their services. It is therefore unlikely that the failure to establish eligibility for all cases resulted in inclusion of a substantial number of ineligible clients. Moreover, LSC staff and the other members of the Committee are confident that any over-counting because of the inclusion of ineligible people is far outweighed by under-counting due to the exclusion of people who sought help unsuccessfully from non-LSC funded programs.

⁸ As part of the research for this report, LSC grantees were asked to capture the number of clients that they assisted in a limited fashion where full extended representation would have been more likely to enable the client to obtain a satisfactory outcome. LSC grantees counted 76,000 such cases in the two-month period. This figure does not include cases where the programs judged that the advice and brief service provided was sufficient to resolve the problem presented. Programs estimated that, during the two-month study period, 54,000 cases were resolved in this manner.

⁹ Legal aid providers observe that calls for assistance involving particular problem types tend to rise when the program is providing services in this area and to fall when intake is limited or closed in this area. A number of factors are probably involved in this phenomenon: for example, social services agencies and community workers are not making referrals; people are being told by others in the community that the program will not be able to help; and conversely, people are *not* hearing from others that they have obtained help from the program for a similar problem.

Overall, this data provides *specific* and *understated* documentation of the extent of unmet need: specific in that it documents legal problems for which people have actually sought help; understated because it fails to include many other people with real legal problems who also need assistance, but did not contact an LSC-funded program.

Findings

To obtain an annualized figure, the data from the two-month survey was multiplied times six as a projection for an entire year.¹⁰ The annualized figures for different case types are reported below in Table 1. For comparison, the number of cases in which service was *provided* by LSC-funded programs in 2004 is also set out.

Table 1: Unable to Serve

Type of Legal Problem Categories	Unable to Serve Twelve Month Projections	Calendar Year 2004 Cases Closed
Consumer	129,798	107,040
Education	12,234	6,830
Employment	46,122	18,986
Family	504,312	383,484
Juvenile	15,804	8,291
Health	24,660	27,780
Housing	143,904	218,688
Income	59,634	113,252
Individual	34,998	12,267
Miscellaneous	114,372	44,449
Total	1,085,838	901,067

The table shows that there will be roughly one million people seeking legal help in 2005 that LSC programs will be unable to serve at all. In comparison, slightly under a million people were served by LSC-funded programs in 2004. This shows that *for every client served by an LSC-funded program, at least one eligible person seeking help will be turned down.*

¹⁰ The hypothesis that this two-month count is approximately equal to one-sixth of a year's intake was tested by asking 10 percent of LSC grantee programs to compare their 2004 April and May intake numbers with their total intake for 2004. The 2004 April and May intake for these programs yielded a count of 19,926 cases. A 12-month extrapolation from this figure would be 119,556 cases. The combined full-year 2004 totals for these programs was 119,166, almost identical to the extrapolation. This confirms that the sample period in 2005 is likely to reflect accurately one-sixth of a full-year total.

Conclusion

This methodology indicates that roughly *one-half* of the people who seek help from LSC-funded legal aid providers are being denied service because of insufficient program resources. *One million cases a year* must be rejected for this reason.

Because this figure does not include people seeking help from non-LSC funded programs, people who cannot be served fully, and people who for whatever reason are not seeking help from any legal aid program, it represents only a fraction of the level of unmet need. The methodology reported in the next section provides information about the size of this larger group of people with legal needs.

Methodology #2: Continuing Documentation of Legal Needs

Analysis and Comparison of Recent State Legal Needs Studies

Over the past five years (2000-2005), studies in nine states have examined the kinds of legal problems experienced by low-income residents and what they do about them: Oregon (2000), Vermont (2001), New Jersey (2002), Connecticut (2003), Massachusetts (2003), Washington (2003), Tennessee (2004), Illinois (2005) and Montana (2005).¹¹

The nine recent state studies were all conducted by independent social science entities, based on rigorous social science survey standards. For this report, the methodologies and findings of the nine studies were compared to one another to determine the extent to which it is possible to draw nationally applicable conclusions from them. The findings were also compared to those in the 1994 ABA study to assess the continuing validity of the 1994 findings.

Analysis of the nine recent state studies shows that their findings are broadly consistent with one another. This consistency of findings from state to state (and researcher to researcher) reinforces their validity and indicates that they are likely to be predictive of needs at the national level.

Key points of comparison are as follows. (Each is described in more detail in a subsequent section.)

- The nine state studies found that low-income households experience a per-household average of legal needs ranging up to more than three legal needs per year.
- All nine recent state studies found that only a very small percentage of the legal problems experienced by low-income people (fewer than one in five) is addressed with the assistance of a private or legal aid lawyer.
- Taken together, the recent state studies indicate that a large percentage of low-income people experiencing a problem with a legal dimension do not understand that there may be a legal solution.
- The recent state studies show that a majority of low-income people either do not know about the availability of free legal services or do not understand that they are financially eligible for them.
- Finally, analysis of these studies shows that even if the problems considered are limited to those considered to be “very important” by the household experiencing them and understood by the household to call for legal help, a large majority of the problems are not addressed with the help of a lawyer.

Comparison of the recent state study findings to those in the 1994 ABA study confirms the continuing validity of the ABA study and indicates that, if anything, the ABA study actually *underrepresents* the current level of need.

¹¹ A number of states conducted legal needs studies in the early 1990s, up through 1996. Between 1996 and 2000 there were no state studies that examined the kinds of legal problems experienced by low-income residents of the state and what they do about them. All of these studies are available online at: www.ATJsupport.org in the Access to Justice Document Library.

Methodology

Table 2 shows the studies considered in this report.

Table 2: State Legal Needs Studies Conducted Since 2000

State	Released	Sponsor/Funder	Survey/Analysis By
Oregon	2000	Oregon State Bar Judicial Department Office of the Governor	Sociology Department, Portland State University/ D. Michael Dale
Vermont	2001	Committee on Equal Access to Justice	ORC Macro
New Jersey	2002	Legal Services of New Jersey	Schulman, Ronca, & Bucuvalas, Inc./ Poverty Research Institute of Legal Services of New Jersey
Massachusetts	2003	Massachusetts Legal Assistance Corporation	Schulman, Ronca, & Bucuvalas, Inc.
Connecticut	2003	Connecticut Bar Foundation	Institute for Survey and Research, University of Connecticut
Washington	2003	Supreme Court Civil Equal Justice Funding Task Force	Social and Economic Research Center, Washington State University/ Sociology Department, Portland State University/ D. Michael Dale
Tennessee	2004	Tennessee Alliance for Legal Services	Office of Research and Public Service, University of Tennessee College of Social Work
Illinois	2005	Chicago Bar Association Illinois State Bar Association Chicago Bar Foundation Illinois Bar Foundation Lawyers Trust Fund of Illinois	Metro Chicago Information Center
Montana	2005	Montana State Bar Equal Justice Task Force	Sociology Department, Portland State University/ D. Michael Dale

All nine recent state studies used a fundamentally similar methodology, based on the well-established social science survey methodology used in the ABA study. In each, a statistically valid sample of low-income households was identified either through a random telephone survey or, in three states, according to an alternative “cluster sampling” methodology (for a description of this methodology, see Appendix B). In an interview (by telephone, in the states using a random telephone survey; in person, in the states using the “cluster sampling” methodology), respondents were presented with descriptions of various circumstances constituting potential legal problems and asked whether anyone in their household had experienced these circumstances during the

preceding year. A panel of attorneys ensured that the situations described to the respondents contained a legal issue and met a threshold of seriousness. When respondents reported having experienced such circumstances, follow-up questions were asked about what the household did (or did not do) about the situation and what contacts, if any, they had with the civil justice system.

As shown above in Table 2, the sponsors and funders of the studies were different in each state and the surveys on which they were based were conducted or overseen by a variety of different independent academic or private surveys groups. The survey questionnaires varied somewhat to reflect local circumstances and concerns. Other details of the methodology also varied somewhat (see Appendix B). However, in all nine states, the survey samples were broadly representative of low-income people in the state and the majority of the questions asked were the same.

Findings: Legal Needs

The nine recent studies found that on the average low-income households experienced from just over one to three or more legal needs per year, as shown in Table 3.¹²

Table 3: Legal Needs

State	Average number of legal needs in preceding year per low-income <i>household</i>
Oregon	3.2
Vermont	1.1
Connecticut	2.7
Washington	2.9
Massachusetts	2.4
Tennessee	3.3
Illinois	1.7
Montana	3.5
State	Average number of <i>new</i> legal needs in preceding year per low-income <i>individual</i>
New Jersey	1.8

Findings: Importance of Problems

Several of the recent state studies also collected data about the respondent's assessment of the seriousness of the problem involved and/or the respondent's understanding of whether a lawyer was necessary to resolve it, yielding data about percentages of the most immediate, serious problems.

- **Montana:** Respondents characterized 53 percent of the problems identified as “extremely important” and 91 percent as “important.”
- **New Jersey:** 84 percent of people with a legal problem thought the problem was highly serious and important. 52 percent thought that they needed a lawyer to help with the problem.
- **Washington:** Respondents characterized 56 percent of their legal problems as “extremely important” and 93 percent as “important.” In addition, the report of the Washington State

¹² The studies found that most problems were experienced in the areas of housing (such as evictions, foreclosure, and unsafe housing conditions), consumer (such as debt collection, bankruptcy, and consumer scams), and family (such as divorce, domestic violence, child custody and support), as well as employment, government benefits, health care, and regional and community problems. Although the distribution of problem types varied somewhat from state to state, the same basic types of problems appeared in all nine states.

Supreme Court Task Force on Civil Equal Justice Funding, based on data from the study, concluded that “140,000 low-income households will experience a legal problem each year that they understand has a legal dimension and requires some level of assistance.” This is roughly 50 percent of the total number of households with legal problems.

Findings: Legal Help Sought/Received

All nine recent state studies found a similarly large gap between the level of legal needs reported by low-income households and the percentage of those needs for which legal help was received or sought.

The various studies report their findings on this fundamental issue in somewhat different ways, as shown in Table 4. Differences include the following:

- Whether the figure given is for legal help received or legal help sought.
- Whether the figure is reported by percentage of problems or percentage of individuals or households.
- What is included in the definition of “legal help.”¹³

Several other factors lead to differences in the way that the studies express this finding. For example, the Tennessee study reported only action with regard to the one problem identified by the respondent as the “biggest” of the problems they experienced.

Consequently, the percentages shown cannot all be compared directly to one another (i.e. they are “apples and oranges”). However, the gap between the overall level of needs identified and the percentage of those for which legal help was received or sought is similarly large in each instance.

Table 4: Legal Help Received/Sought as a Percentage of Legal Need

State	Received legal help (by percentage of problems experienced by household)
Oregon	18.1 percent of problems, help received from private bar or legal aid attorney
Washington	12 percent of problems, help received from private bar or legal aid attorney
Montana	16.4 percent of problems, help received from private bar or legal aid attorney
Vermont	9 percent of problems, help received from private bar, legal aid, courts, or other legal source
Illinois	16.4 percent of problems, legal assistance received
New Jersey	<i>Received legal help (by percentage of individuals with problems)</i> 16 percent of individuals with problems received legal help
Connecticut	<i>Sought legal help (by percentage of problems experienced by household)</i> 10 percent of problems, help sought from private bar, legal aid, family/friend, other
New Jersey	<i>Sought legal help (by percentage of problems experienced by individual)</i> 11 percent of problems, legal help sought
Massachusetts	<i>Sought legal help (by percentage of households with problems)</i> 16.4 percent of households (no more than; could be less) with a legal need sought legal help from private bar or legal aid
Tennessee	29.2 percent of households that identified their <i>biggest</i> legal problem sought legal help from private bar or legal aid

¹³ Specifically, five of the studies report the percentage of problems for which legal help was *received*. Three studies report only whether legal aid was *sought*. The New Jersey study reports *both* the percentage of individual respondents with a problem who received legal help and the percentage of problems for which legal help was sought.

Overall, what these studies demonstrate is that only a very small percentage of the legal problems experienced by low-income people (less than one in five) are addressed with the assistance of a private or legal aid lawyer.

Comparison of Recent Findings on Unmet Need to 1994 ABA Study

With one exception, all of the recent state studies found a level of need substantially *higher* than the level found in the 1994 ABA study. The ABA study found an annual average of 1.1 needs per low-income household, while the recent state studies range up to more than three legal needs per household per year, as shown in Table 3.¹⁴ The ABA study thus represents the *lowest* figure available for estimating the number of legal needs experienced by low-income Americans.¹⁵

Similarly, the state studies taken together indicate that a *lower* percentage of these needs are being met than was found in the ABA study. The ABA study found that roughly one out of every five of the legal needs of low-income people was addressed with the assistance of a private attorney or legal aid lawyer. In the state studies, as shown in Table 4, the comparable figures were lower. Again, the ABA study represents the most conservative figure for estimating the level of unmet needs in the country.

There are over 19 million low-income households in the U.S.¹⁶ Using the average level of need found in the ABA study (1.1 per household), this means that *low-income people experience* at least *20 million legal problems per year*. The state studies indicate that the true number may be well *in excess of* 20 million. The findings of the ABA study suggest that 20 percent, or four million problems, are addressed with legal help. The recent state studies suggest that a *lower* percentage is receiving help. Thus each year, at least 16 million legal problems experienced by low-income people—and probably more—are addressed without any legal help whatsoever.

Findings: Why People Did Not Seek Help

Seven of the state studies explored the reasons why so many people with a legal need did not seek legal help, but instead either did nothing or sought to resolve the problem on their own. Key reasons emerging from these studies are as follows:

- ***Lack of understanding that the problem has a legal dimension and potential solution.***

The predominant reasons given by respondents were a sense that getting a lawyer would not help and that it would cost too much. Many responded that “there was nothing to be done” or that “it was not a legal problem, just the way things are.” For detailed findings, see Appendix C.

- ***Low awareness of legal aid for civil matters.*** Many respondents gave as their reason for not seeking legal help that they were unable to afford a lawyer, even though most respondent households were financially eligible for free legal assistance under LSC guidelines. Most of

¹⁴ The Vermont study found a level equal to that in the ABA study, substantially lower than any other state. The lower rate in the Vermont study may be associated with the fact that it used an abbreviated questionnaire and interview format.

¹⁵ One recent state study found that the legal needs of low-income people in the state had actually *increased* over the preceding decade. The 2003 Massachusetts study documented a higher level of legal needs than had been found in a 1993 state study using a similar methodology. The study concluded that these differences were not attributable to methodology, but rather indicated an increase in needs since 1993.

¹⁶ Source: U.S. Census Bureau; see http://pubdb3.census.gov/macro/032004/pov/new01_125_01.htm; Last revised: July 9, 2004.

the studies specifically asked the respondent whether they knew of a place that provides free legal services and whether they would be eligible for free services. All of these states found low awareness on the part of the respondents that they might be eligible for free legal assistance. The lowest percentages of people knowing about free legal aid were in Tennessee (21 percent), Illinois (23 percent), and New Jersey (26 percent). For detailed findings, see Appendix D.

The above figures indicate that in most instances, the reason that respondents did not seek legal help is *not* that they felt the problem was unimportant. Again, these findings demonstrate the current validity of the ABA study, which also explored the reasons why so many households with a legal need did not seek legal help. There, the predominant reasons given by respondents were a sense that getting a lawyer would not help and that it would cost too much. A majority of respondents did not know of the availability of free legal assistance and understand that they were eligible.

Conclusion

Each of these recent state legal needs studies provides a full picture of the civil legal needs of low-income people in the state. They look beyond the legal aid office to consider legal services provided to low-income people from *all* sources, including pro bono attorneys and private attorneys charging full or reduced fees.

Together, these studies indicate that *only a very small percentage of the civil legal problems experienced by low-income people (one in five or less) are addressed with the assistance of either a private (pro bono or paid) or a legal aid lawyer*. The justice gap identified in the ABA study continues to exist at the same order of magnitude documented in 1994, or at even a higher level—if anything, the recent studies indicate that the findings of the ABA study are *understated* as a measure of current need.

Methodology #3: Attorneys Per Capita

Legal Aid Lawyers Compared to Private Lawyers

Yet another perspective on the justice gap is provided by data on the numbers of legal aid attorneys serving the nation's low-income people. For this report, ABA and LSC staff collected data on the number of legal aid attorneys in the country in 2002. A count was sought of *all* legal aid attorneys, not just those in LSC programs.

The count shows that despite the expansion of non-LSC funded programs in the past decade, a substantial majority of attorneys serving the poor still work in LSC-funded programs: there were 3,845 lawyers in LSC-funded programs (this figure includes all lawyers in the program, including those funded with state, private and other funds) and an estimated 2,736 in programs that do not receive LSC funding. The LSC-funded network thus remains the primary source of civil legal aid for low-income Americans.

The number of legal aid attorneys available to serve the poor provides a simple demonstration of the justice gap when compared to the number of attorneys serving the general public. The number of attorneys in private practice can be presumed to reflect a market response to the legal needs of the U.S. population. Nationally, there are *more than ten times* the number of private attorneys providing personal civil legal services to the general public as there are legal aid attorneys serving the poor. While there is only one legal aid lawyer (including all sources of funding) per 6,861 low-income people in the country, there is one lawyer providing personal civil legal services for every 525 people in the general population.

Methodology

ABA and LSC staff collected data on the number of legal aid attorneys in the country in 2002. (The year 2002 was chosen to provide a closer comparison to ABA data on attorneys serving the general population; see below). "Legal aid attorneys" were not limited to those in LSC-funded programs; rather, the number of full-time-equivalent attorneys working in all programs providing free civil legal services to low-income people was sought. Reports from LSC-funded programs (not limited to federally-funded attorneys) were used as a starting point. Additional information was sought from state IOLTA programs or other contacts in each state, with special priority given to states with substantial non-LSC funding. For states where it was not possible to obtain actual attorney counts, ABA staff made projections based on resource data from the ABA Project to Expand Resources for Legal Services (PERLS). The ratio of legal aid attorneys to low-income people was calculated from census data, using 125 percent of the federal poverty guidelines as a definition of low-income.

For comparison, ABA figures for the number of private attorneys practicing in the United States were obtained for the year 2000, the most recent year for which these are available. Excluded were members of the judiciary (federal, state, local); government attorneys (federal, state, local); legal aid lawyers and public defenders; lawyers in education; retired and inactive lawyers. This yielded a count of 765,000 attorneys in private practice.

A rough estimate of the number of attorneys providing personal services to the general population was made based on information from the American Bar Foundation, which reported that 70 percent of private attorneys are solo practitioners or in small firms (ten attorneys or fewer).¹⁷ These attorneys are likely to specialize in meeting the ordinary needs of private individuals and families.

¹⁷ American Bar Foundation, *Lawyer Statistical Report* (2000).

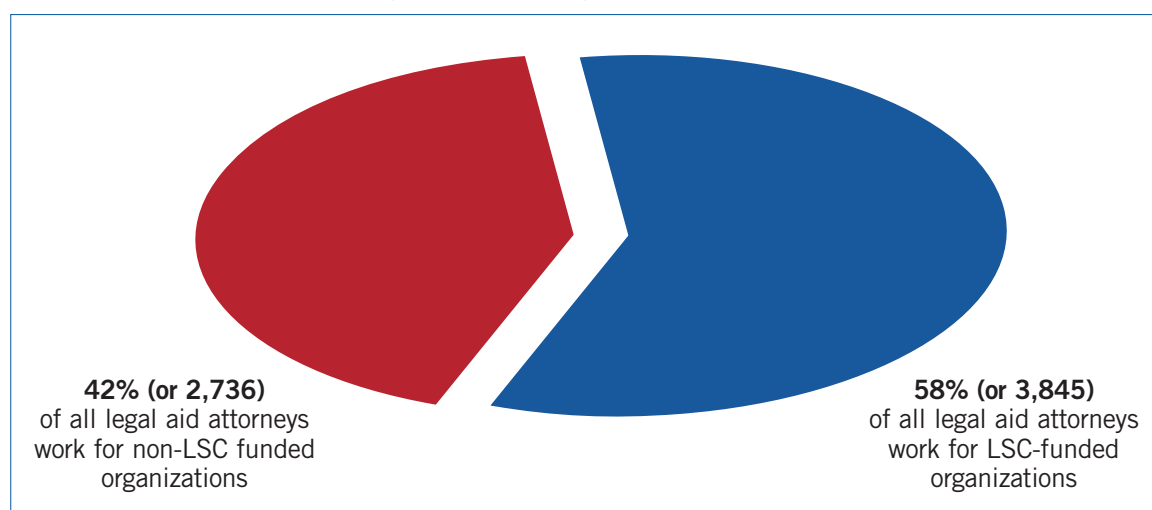
While some of these solo practitioners and small firm attorneys provide criminal defense or services falling outside the area of personal services, this is offset by the many attorneys in larger firms who do provide personal services. This analysis indicates that there are roughly 536,000 attorneys in the U.S. providing personal civil legal services to the general population.

The attorney figures were compared to the population of the United States from the 2000 census to obtain the ratio of private attorneys per capita in the general population.

Findings

As shown in Table 5, close to 60 percent of all legal aid attorneys work in LSC-funded programs. The LSC network thus remains the primary source of civil legal aid for low-income Americans.

Table 5: Total Number of Legal Aid Attorneys – 6,581 / Calendar Year 2002



Comparing the estimated number of legal aid attorneys in the nation in 2002 (6,581) to the number of people at 125 percent of poverty or lower found in the 2000 U.S. census (45,187,635) yields a ratio of one attorney per 6,861 low-income people.¹⁸

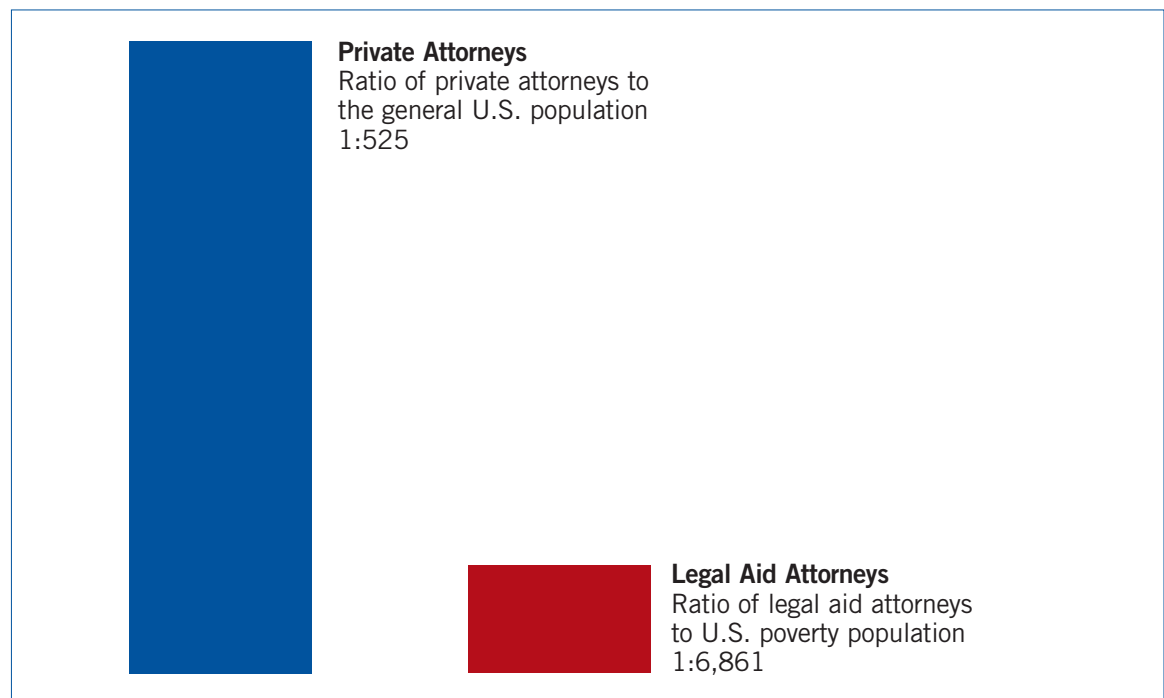
In contrast, nationally, as calculated above, there were roughly 536,000 attorneys providing personal civil legal services to a U.S. population numbering 281,421,906 in 2000. This yields a ratio of one attorney per 525 people—more than ten-times the ratio of legal aid attorneys to the population they serve.¹⁹ The difference between the level of resources available to the general population and those available to the low-income population is enormous.²⁰

¹⁸ As noted above, the year 2002 was chosen so that the result could be compared more closely to ABA data on attorneys serving the general population. However, it should be noted that 2002 represents a recent high point of the number of attorneys in LSC-funded programs. In 2004, the number had fallen to 3,657, while the rate of poverty is increasing.

¹⁹ If all 765,000 attorneys in private practice are considered, not just those providing personal services, the ratio becomes 1:368.

²⁰ The data yielded by Methodology #3 does not capture the pro bono contribution of private attorneys. However, pro bono services are taken into consideration in the other two methodologies used in this report. Methodology #1, the count of “unable to serve” cases, considers pro bono cases provided through programs’ Private Attorney Involvement requirement. Roughly 10 percent of all cases closed by LSC-funded programs are provided by pro bono attorneys. Methodology #2, the comparison of state legal needs studies, takes into consideration legal help provided by *all* attorneys including legal aid and private, pro bono and paid.

Table 6: Comparison of Private Attorneys to the General Population with Legal Aid Attorneys to the Low-Income Population



The 1994 ABA study found that the legal needs experienced by low-income people do not differ substantially from those experienced by middle-income people (people falling into the middle 60 percent of U.S. incomes).²¹ Yet the resources available to serve low-income people represent only a small fraction of those available to the general public.

Conclusion

Despite the expansion of non-LSC funded programs in the past decade, a substantial majority of attorneys serving the poor still work in LSC-funded programs. The LSC network thus remains the primary source of civil legal aid for low-income Americans.

Nationally, on the average, every legal aid attorney (including those funded by *all* sources) serves 6,861 people. In comparison, there is one private attorney providing personal legal services for every 525 people in the general population. This figure can be presumed to represent the response of the market to the personal civil legal needs of the general population.

While the legal needs experienced by low-income people do not differ substantially from those experienced by middle-income people, the resources available to serve low-income people represent only a small fraction of those available to the general public.

²¹ Of the nine state studies, only the Washington state study sampled people who could be considered moderate-income for comparative purposes. That study included a sample of people with incomes of 200-400 percent of the federal poverty level (“high moderate”). It found that the percentage of people with one legal problem was essentially the same in this group, a “low-moderate” income group (125-200 percent of poverty) and the low-income group, although low-income people were more likely to have multiple problems. Several other states included people in the 125-200 percent of poverty range for comparative purposes (see Appendix B).

Conclusion: Providing Necessary Access to Civil Legal Assistance

The research and analysis in this report reveal a very serious shortage of civil legal assistance—an urgent justice gap—in the United States. Under its authorizing statute, the Legal Services Corporation has a responsibility to communicate to Congress what is required to ensure that economical and effective legal assistance is provided across the nation: *necessary access to civil legal assistance*.

To secure necessary access there must be a partnership of federal and state governments, the private bar, and concerned private parties. Government unquestionably must bear the laboring oar in this effort, consistent with its role in maintaining the formal civil justice system and providing an orderly forum for the resolution of disputes and an avenue to equal justice for all. LSC serves as the primary conduit for the federal government's share. It establishes the federal funding baseline, supporting and ensuring a backbone of civil legal assistance throughout the country.

In light of the compelling evidence in this report, LSC must move forward firmly and expeditiously to close this justice gap. A key first step is to indicate the overall level of funding and support required for necessary access, as well as the requisite federal share of that amount. The federal contribution, as noted earlier, has lagged badly over the past two decades. Compared to its high water mark of \$321,300,000 in FY 1981—\$687,063,000 adjusted for inflation—the FY 2005 appropriation of \$330,803,705 represents only 49 percent of the earlier amount. By contrast, the contributions from state government, the private bar and other partners to LSC-funded programs have increased approximately three and half times over the same period.²² Notwithstanding this strong support in a significant number of states, the real dollar decline in the federal contribution means that in large portions of the country the justice gap is wider than it was twenty-five years ago.

The data in this report broadly outline the cost of necessary access.

- The research continues to demonstrate that many who need the help of lawyers do not seek it, for a variety of reasons. Even for this very-reduced group who *do* seek assistance, this report reveals that only half of those who get so far as to seek help from an LSC-funded provider will actually receive assistance, and a significant part of the time it will be less assistance than they need.
- The recent state legal needs studies confirm earlier research and reveal that conservatively less than one in five—20 percent—of those requiring civil legal assistance actually receive it.
- Nationally, on the average, every legal aid attorney (including those funded by *all* sources) serves 6,861 people. In comparison, there is one private attorney providing personal services for every 525 people in the general population.

While the available attorney comparison suggests there may be a much deeper problem, the more conservative “one-in-five-receive-help” data from the scientific legal needs studies appears to be the

²² In 2004, LSC-funded programs reported a total of \$352,308,000 in funding from other sources. In 1981, LSC-funded programs reported a total of \$48,144,000 in funding from other sources. Adjusted for inflation, the 1981 figure would represent \$100,048,000 in 2004 dollars. Thus contributions from other sources to LSC-funded programs have increased by approximately three and a half times over this period. The changes in funding in non-LSC funded programs over this period cannot be documented because, prior to the creation of the Project to Expand Resources for Legal Services (PERLS), there was no systematic national collection of this data.

best benchmark to gauge the current size of the justice gap, and suggest what necessary access will require. Assuming that the other partners at least maintain their proportionate levels of effort as the nation moves toward necessary access,²³ the one-in-five measure suggests that the *federal baseline share* must be at least five times greater than it is now, or \$1.6 billion. It is essential that LSC move toward the necessary access level in firm, measured strides, designed to reach it (adjusted for inflation) and close the justice gap as quickly as possible. As an initial critical step, there must at least be enough funding to serve all of those *currently* requesting help from LSC grantees.

The information in this report confirms what anecdotal evidence, smaller studies of limited geographical areas like cities, and legal aid workers have all been suggesting for years: the majority of low-income people with civil legal problems currently do not have and cannot get legal assistance. A nation committed to disposition of legal grievances through lawful means cannot blindly turn away from this situation. By statute and broader imperative, it must fall to the Legal Services Corporation to lead the way in eliminating the justice gap.

²³ This assumption may or may not be borne out; if it is not, appropriate adjustments can be made in future years.

Appendix A

MEMORANDUM

TO: All LSC Grantees

FROM: Helaine M. Barnett

DATE: February 15, 2005

SUBJECT: Measuring the Number of Potential Clients that we are Unable to Serve

As you may know, at the September 2004 LSC Board meeting in Helena, Montana, the LSC Board of Directors asked LSC staff to attempt to document the extent to which needs for services are not being met and to provide this information to them in one year – in time for the Board’s approval of the 2007 budget request to Congress. Since then, we have been working with a committee consisting of LSC staff members; Terry Brooks, Legal Counsel to the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID); Bob Echols, ABA consultant; Don Saunders, Civil Director of the National Legal Aid and Defender Association (NLADA); De Miller, Executive Director of Legal Services of New Jersey; and Bill Whitehurst, Chair of SCLAID, to develop measures of need to compare with measures of services.

One way to measure unmet need is to count the number of people that come to LSC programs that the programs are unable to serve, or unable to serve fully. This method has the advantage of measuring actual potential clients, rather than theoretical numbers of legal issues based on surveys. Therefore, we are asking you to make a count, for two months – from Monday March 14th through Friday May 13th – of those who come to your program with legal problems that the program is unable to serve or unable to serve fully. We recognize that many programs are providing mechanisms to provide applicants they are not able to serve fully with some assistance such as advice or pro se guidance. While these are often helpful, it is also often clear that more assistance would have been appropriate if available. We are therefore asking you to count not only those who were turned away and not provided any services, but also those who were provided some, but not full service. “Unable to serve” includes those who were rejected at intake even though eligible for LSC services; “unable to serve fully” consists of those who received some services, but not full extended representation when such would have been helpful.

We are seeking these data in order to provide LSC with estimates of legal needs that grantees cannot address because they lack sufficient resources. We recognize that

this method is imperfect and has limitations. It does not measure all of the unmet need. Some people with legal needs don't contact legal services offices either because they are not aware of legal services or because they think that the program can't or won't help them because of the program's priorities or limited resources. Some may not know that the problem they are facing has a legal remedy. Still others call legal services, but drop off of the line after being on hold for some time. Our analysis of the data will mention these sources of undercount. We will also attempt to supplement this study by other sources of information that reflect legal needs.

We have attached a form and instructions. This form was reviewed by a number of executive directors whose programs serve a variety of different localities; most of their suggested changes are reflected in this instrument.

For guidance on how to utilize your case management system to collect this information at time of intake, please see the appendix. Please send us your data on the attached form by June 1, 2005.

Thank you for your participation in this important endeavor.

Attachments

Program: _____

RNO #: _____

Time period: March 14 through May 13, 2005

	A. Unable to Serve (includes certain referrals. See FN 3)	B. Unable to Serve Fully (includes certain referrals. See FN 3)	C. Total A & B	D. Advice/ brief service cases that resolve the matter <i>(If available)</i>	E. Extended Service Cases Accepted
Consumer					
Education					
Employment					
Family					
Juvenile					
Health					
Housing					
Income					
Individual					
Miscellaneous ¹					
TOTAL					

Instructions:

- The matrix above can be used by those answering intake calls and by those providing advice and brief service to count those who the program was unable to serve or unable to serve fully. This includes cases that are not within the program's case handling guidelines. (e.g. program does not handle uncontested divorces.) If this information cannot be collected directly on the case management system, the matrix can be used for counting hash marks and aggregated onto one form. LSC is only asking for one form that would aggregate all the totals collected throughout the program for the period of March 14 through May 13, 2005.
- **A. Unable to Serve.** Where an applicant is rejected at intake, count the applicant as "unable to serve" when:
 - The applicant is eligible for LSC funded representation, **OR** eligibility information was not collected because the program does not handle the type of case presented² **AND**
 - The case presented was within LSC's case closing substantive areas and not barred by LSC regulations, **AND**
 - The case is not being referred to an organization that will provide full representation for the client³

¹ Please include on this line all "other" cases that are not barred by LSC regulations.

² In some instances a program might make the decision to not handle a case based on the type of case it is before eligibility screening is undertaken. In these instances, count the case as "unable to serve." The reporting of statistics will make note of the fact that the number of applicants who were rejected at intake includes some who were not screened for eligibility.

- **B. Unable to Serve Fully.** Where a client receives something other than full extended representation to the conclusion of the case, count the client as “unable to serve fully” where the three criteria listed above are met, and
 - The case would have been appropriate for full representation given sufficient funding. The factors for the reviewing supervisor to consider in making that determination are:
 - The client appears to have a viable, non-frivolous case, and
 - The nature of the case and the forum are such as to suggest that the client would be assisted by further representation.
- **C. Total of A and B.** This total is the number of eligible applicants who contacted the program that the program could have served – or served more fully -- if not for resource limitations.
- **D. Advice/Brief Service Cases that Resolve the Request for Assistance. (If Available).** This column is asking for the number of brief service cases that you didn’t include in “B” above – those where, in your judgment at the time, the matter was resolved by brief service.⁴ We know that some programs collect this information and others do not. If you collect or are able to produce this number without significant additional work, please do so.
- **E. Extended Service Cases.** In this column, please note the number of extended service cases the program accepted in each of these subject matter categories during the same two month period.

³ No program can ever be sure that another program will accept a case. We are asking that you not count as “unable to serve” those cases that you expect will receive extended representation from another program. If, for example, you are referring a case to a legal services program or a private bar involvement program that routinely handles eviction cases of the type presented by the applicant, don’t count that case as “unable to serve.” If, however, the organization you are referring the case to may or may not take the case, count it as “unable to serve” or “unable to serve fully,” depending on whether advice and brief service was given. In reporting on the results, LSC will make it clear that the possibility that some applicants may receive services is a source of possible over-count.

⁴ A client’s case is “resolved” when s/he is provided advice that concludes the case. For example, if a client calls regarding a divorce and does not meet a jurisdictional residency requirement and is so advised and needs no further service regarding the presenting problem, his/her case has been resolved. Pro se assistance may resolve a case when, after receipt of the assistance, the client could reasonably be expected to pursue the case without further legal assistance.

Appendix B

Table: Methodological Differences in State Legal Needs Studies

	Sample Size (low-income)	Primary survey type	Phone interviews supplemented with in-person?	Definition of low-income (as percentage of poverty)	Household or individual
Oregon	1,011	cluster sampling	n/a	125	household
Vermont	436	phone	yes, but results not incorporated with phone survey figure	187.5	household
New Jersey	1,013	phone	no	200	individual
Massachusetts	1,800 200	phone	yes	125	household
Connecticut	400	phone	no	125	household
Washington	1,333	cluster sampling	n/a	125	household
	427 ⁵	phone		125	
Tennessee	824	phone	yes	125	household
Illinois	1,645	phone	no	150	household
Montana	860	cluster sampling	n/a	125	household

Explanation of Survey Types

- **Random telephone survey:** This methodology employs Random Digit Dialing (RDD) to place telephone calls. Parties who agree to participate in the survey are asked questions about their income to determine if they are low-income. Low-income respondents are interviewed. The sample will not reflect the responses of low-income people who do not have telephones or are not willing to respond to questions by telephone. The telephone survey is often supplemented by in-person interviews with low-income people likely to be in these categories.
- **“Cluster sampling” survey:** This methodology uses census data and other sources of information to identify the principal sub-populations of low-income people in the state according to demographic categories and characteristics (e.g., immigrants, homeless people, senior citizens, disabled people, African-Americans, Native Americans, Latinos, migrants, etc.). A sufficient number of people within each cluster group is interviewed to ensure reasonable levels of reliability. Within cluster groups, interviewees are selected as randomly as possible. Interviews are generally conducted in person. In addition to the cluster groups, other respondents in the general low-income population are also surveyed. The results from the various cluster groups are weighted to reflect their proportion of the low-income population as a whole. The survey is deemed to achieve maximum reliability at about 1500 interviews.

⁵ The Washington study was based primarily on in-person interviews. However, a telephone sample was conducted for comparative purposes. In addition to the 427 low-income respondents, the telephone survey also included 383 respondents with incomes between 200 and 400 percent of poverty, to compare the responses of the low-income group to those with a slightly higher income level.

Appendix C

Table: Reasons Given for Not Getting an Attorney⁶	
Oregon	Reason for not getting a lawyer's help, by percentage of respondents with a problem who did not seek legal assistance: • Nothing can be done: 17 • Not a legal problem: 12 • Nowhere to get help: 12 • Too much hassle: 12 • Worried about cost • Afraid/intimidated 11 • Turned to other help: 7
New Jersey	Reason for not getting a lawyer's help, by percentage of respondents who perceived a need for legal help but did not seek it: • Could not afford: 56 • "Other reasons included the belief that the problem was not important enough to pursue, the fear of retaliation, and the belief that nothing could be done." No further breakdown given.
Connecticut	Reasons for not seeking legal assistance <i>from legal aid program</i> , by percentage of problems: • Did not know legal aid was available: 30 • Legal aid does not help with this problem: 10
Washington	Reason for not getting an attorney, as a percentage of households with a legal problem (more than one reason could be cited): • Thought nothing could be done: 27.9 • Didn't know who could help: 24.1 • Worried about cost: 22 • Not a legal problem just the way things are: 21 • Afraid or intimidated: 10 • Turned to someone else: 7.8
Massachusetts	Main reason did nothing, by percentage of all legal encounters for which households took no action: • Not a problem, just the way things are: 30 • Nothing could be done: 18 • Did not know who could help: 8
Tennessee	Reason for not taking action to resolve their most difficult legal problem, by percentage of households reporting no action: • Just the way things are: 17.6 • Nothing can be done: 16.8 • Didn't know where to go: 12 • Too much hassle: 12
Illinois	Reason for not having a lawyer, by percentage of household experiencing at least one problem: • Thought they could handle it on their own: 33 • Hiring a lawyer would be too expensive: 26 • A lawyer would not help resolve the situation: 9
Montana	Montana: Reasons for not seeking legal help, by percentage of respondents with a problem who did not seek legal assistance: • Thought nothing could be done: 19 • Did not see problem as legal: 23 • Didn't know who could help: 20 • Worried about cost: 19 • Too much hassle: 16 • Afraid: 10 • Didn't want public dispute: 9

⁶ For some states, additional reasons with very small percentages are omitted in table.

Appendix D

Table: Awareness of Free Legal Aid/Lawyer Referral (bold figures are most closely comparable)	
New Jersey	26 percent were aware of free legal services 8 percent were aware of lawyer referral services
Washington	40.8 percent were aware of free legal services
Tennessee	21.2 percent know of a place that gives free legal help 29 percent know of any place that helps you find a lawyer
Illinois	23 percent were aware of the availability of free legal assistance
Montana	48.5 percent were aware of free legal services 53.6 percent believe they are eligible for free legal services
Oregon	47 percent <i>not</i> aware of lawyer referral 39 percent <i>not</i> aware of legal aid 37 percent said <i>not</i> eligible for or didn't know if eligible for legal aid.
Connecticut	For 30 percent of cases, the reason that respondent gave for not taking action was that they did <i>not</i> know that legal aid was available (this figure is not comparable to others because it is linked to the problem and other options were given)

Appendix E

Self-Represented By Necessity Collection of Information on Unrepresented Low-Income Persons in Civil Cases

Overview

The purpose of this effort is to collect information that exists on the numbers of low-income persons who were in court or administrative proceedings in a recent twelve month period without legal representation. This is part of an overall effort that the Legal Services Corporation is engaging in together with the ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association that seeks to provide relevant and reliable information on the “Justice Gap” – the extent to which low-income persons do not have access to needed legal assistance. No information is more relevant to this inquiry than the count of actual low-income persons in civil tribunals without representation.

The attached chart lists major categories of civil cases that low-income persons frequently encounter. For each, it asks for the number of cases in the state, and, of those, the number who are low-income and the number who are unrepresented. Ideally, the information would be the number of low-income persons who are unrepresented for each category of case. For some types of cases, courts or administrative agencies might have that information; in many, the requested information may simply not be available.

Instructions for Use of the Data Collection Chart

The following instructions reflect the spirit of our data collection effort – while we would like data that conforms to our request, we realize that it may not be available. Please give us what is available and please explain – on a page attached to the form – the ways in which the data you provide differs from that which is requested.

Type of Cases. In crafting this listing of cases, we are striving for generic terms that might fit the information available in most states. If the terms or the breadth that we use does not fit the state’s structure or available data, feel free to modify as appropriate. For example, if the state has a Spouse Abuse rather than broader Domestic Violence action, feel free to report on that. Also, if you have data for some part of a category or for a larger category than asked for, feel free to report on the data that you have. For example, if custody and support are not disaggregated, report what you have and then explain what you have provided.

Twelve Month Period. Rather than specifying a particular 12-month period, we are leaving it flexible to take advantage of whatever information might be available. If shorter or longer periods are all that is available, we would appreciate the data that you have.

Total Cases. Please indicate the total number of cases for each substantive area that you define and for which you have data available. Statewide data is sought. If there is data for subdivisions of the state, but not for the whole state, please provide that data and specify the area covered.

Low-income Parties/Unrepresented Parties. As noted above, some courts and administrative agencies may have data on low-income parties and on unrepresented parties. We are guessing that it would be rare that that data is combined – low-income *and* unrepresented. Whatever information you have for either category (low-income and unrepresented) would be appreciated.

Courts and other governmental agencies use many tests of “low-income.” While LSC’s eligibility guidelines are 125% of poverty, it is important to us to have any available data on the number of persons who meet some measure of “low-income.” Where it is possible to define what measure of poverty or low-income status is used, please do so.

To the extent that there is information about the instances of unrepresented parties, but not information about low-income status, we will need to fashion hypotheses about the incidence of low-income people among participants/litigants for the particular type of matter or, impute the general incidence of poverty in the state’s population as a whole.

In some cases, there may be more than one unrepresented party. If that data is available, count it as two instances of unrepresented parties.

In some instances, there may not be information on low-income persons and/or unrepresented persons in the time period specified, but there may have been a study done for that court for a different time period. If such is available, we would appreciate that information.

The assumption is that persons who are low-income and unrepresented are unrepresented not by choice, but by necessity. Should there be information about low-income parties who refused representation that was offered, please don't count those as unrepresented.

In those rare instances where there is information about persons who are both low-income and unrepresented, please give us that combined information and don't answer the separate inquiries "low-income" and "unrepresented."

Data Collection Chart

Type of Cases	For 12- Month Period / / to / /	Total Cases	# or % Who are Low- Income	# or % Who are Unrepresented
<u>Housing:</u>				
- Tenancy filings – evictions; security deposits; forcible entry and detainer; illegal lockouts (1)				
- Mortgage foreclosures (1)				
- Housing Authority grievance proceedings (4) – individual housing authorities				
- Rent control proceedings (3) – municipalities				
<u>Consumer:</u>				
- Small claims filings (1)				
- Bankruptcy filings (4)				
- General civil filings ¹				
<u>Family:</u>				
- Dissolution filings (1)				
- Custody (1)				
- Support (1)				
- Domestic violence/harassment (1)				
- Paternity (1)				
- Guardianships ²				
- Termination of parental rights (1) or (2)				
- Commitment proceedings (1) or (3)				
- Foster care placements (2) or (1)				
<u>Other Civil Litigation:</u>				
- Employment matters not included under (5) below				
- Civil rights matters (non-prisoner) not included under (5) below				
<u>Administrative Proceedings Relating to Governmental benefits, services, and rights:</u>				
- Fair hearings:				
• Food Stamps (2)				
• TANF (2)				
• General Assistance (where applicable) (3)				
• Medicaid (2)				
• SSI/SSD applications (2)				
• State disability claims (2)				
• Medicare (2)				
- Unemployment hearings (2)				
- Workers comp (if no statutory fee) (2)				
- Child welfare open case (unduplicated)				

- Child Placement Review Board proceedings (or analogous body) (2)				
- Non-criminal vehicle proceedings (1) or (3)				
- Employment licensing proceedings (2)				
- Education proceedings:				
• Suspensions and expulsions (2) or (3)				
• Classifications (special education) (2) or (3)				
• Other hearings involving students (2) or (3)				
- Labor claims:				
• FLSA and wage and hour (2)				
• FMLA claims (2)				
- Administrative civil rights proceedings				

Additional Comments:

Key for likely information sources:

1. State court system (if not centralized, this may need to be gathered at the country level)
2. Responsible federal or state government agency
3. County or local governments
4. Federal court system
5. Other entities (specified)

¹ Here levels of available sub-detail will vary widely; we ask that you provide the greatest level of detail available (1).

² These may take multiple forms, including kinship guardianships for foster children (1).



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