



AP PHOTO/GALLUP/STON



# And Justice for All

## Prioritizing Free Legal Assistance During the Great Recession

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Joy Moses July 2009



Center for American Progress



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# Executive summary

“Did you hear the one about the lawyer . . .” is a familiar beginning to jokes about a profession often labeled with negative stereotypes such as unethical, overpriced, and “ambulance chasing.” For millions of low-income families, however, lawyers are individuals who assist them in securing basic necessities such as shelter, food, education, income, and physical safety. The talents of this group of service-oriented attorneys are sorely needed during the current recession as the number of people experiencing poverty expands along with their list of legal troubles.

Families are struggling with the challenges associated with the foreclosure crisis as well as with accessing government benefits, dealing with family strife caused by stress, and consumer concerns. They need attorney representation to help deal with these concerns, but representation is not always available to low-income people due to a previously existing justice gap between the haves and the have-nots that results in a shortage of good lawyers providing free legal services to the poor.

The recession is only widening this gap as avenues that provide free legal services to the poor are facing a series of financial challenges:

- Although Congress increased funding in 2009 for the Legal Services Corporation—a federal agency that funds and monitors free civil legal services—the estimated per-person investment is only \$6.85—the lowest in the program’s more than 30-year history.
- Many states and localities are operating under deficits and are struggling to balance budgets, which limits their ability to help.
- Plummeting interest rates and shrinking amounts of available principal are reducing revenues for Interest on Lawyers Trust Account programs that make grants to legal aid providers.
- Declines in the stock market are affecting the ability of foundations and individual donors to make contributions to legal services nonprofits.

The Center for American Progress suggests the following in order to help manage this crisis:

- Congress should increase fiscal year 2010 appropriations for the Legal Services Corporation. They should match the corporation’s request for \$485.1 million or at the very least implement the House-passed figure of \$440 million. Congress should also lift current restrictions on legal services organizations when it passes appropriations legislation because the restrictions waste resources and hinder the pursuit of justice.

- Congress should pass H.R. 1728 and S. 718, which are pieces of legislation designed to expand the resources available to legal aid organizations.
- States must avoid making cuts to legal aid programs while seeking creative solutions that actually increase funding for these vital services.
- The private bar should continue to expand current efforts that are leading to increased amounts of pro bono service.

In short, closing the justice gap and ensuring low-income families can access needed resources will require substantial new commitments. At this point the federal government and the private bar may be best suited to contribute to the solution, but state and local governments, law schools, foundations, and individual donors can also play a role.

# Increased need for legal services

Helaine Barnett, the president of the Legal Services Corporation, used the succinct yet descriptive words “our challenge is large” to describe the current circumstances facing her grantees.<sup>1</sup> LSC is an entity that uses an annual congressional appropriation to provide nationwide funding to 137 legal aid programs with 920 offices that employ approximately 58 percent of attorneys working within such programs.<sup>2</sup> As a result of the recession, legal aid organizations—both those that are and aren’t funded by LSC—are seeing an increased demand for their services. For example, by the end of last year Neighborhood Legal Services in Massachusetts experienced a 35-percent increase in requests for assistance while the Legal Aid Society of Cleveland handled 22 percent more cases between 2006 and 2008.<sup>3</sup>

As unemployment and underemployment rise, incomes shrink and the number of people who qualify for free legal assistance grows. LSC currently provides services to individuals and families living at or below 125 percent of poverty (\$27,563 for a family of four).<sup>4</sup> LSC estimates that their eligible population will increase by 22 percent between 2007 and 2009 based on patterns from previous downturns.<sup>5</sup>

What’s more, recessions tend to increase the likelihood that low-income families will have certain legal needs, including those related to housing, income, and basic necessities.

**Housing.** Housing has played a central role in the current economic downturn. The foreclosure crisis resulting from subprime loans, growths in unemployment and underemployment, and other financial hardships has obviously impacted low-income homeowners. However, renters have also been affected. At the end of last year the National Low Income Housing Coalition estimated that 40 percent of those losing their homes due to foreclosures were renters, a group that is disproportionately low-income and racial minorities.<sup>6</sup> These families have a history of being unaware that their landlords are behind on mortgage payments and they have received little to no notice before having to leave their homes as a result of the owners’ foreclosures.

Prior to the current crisis, laws governing foreclosures, renters’ rights, and predatory lending practices existed at various levels of government, but the protections were by no means universal and varied greatly from jurisdiction to jurisdiction.<sup>7</sup> Since the crisis began, governments have responded with new activity—some have instituted new legal provisions while others are in the process of making even more changes. Notably, Congress recently

The provision of legal assistance to poor men, women and children is essential to ensuring equal access to justice in this country. The network of legal aid programs across the United States is the backbone that enables people, regardless of income, to be able to obtain high-quality, respectful, supportive legal advice and assistance to ensure basic human rights to housing, food, and to be free from abuse and violence in their home. Without these programs, homelessness will increase, domestic violence will not be eradicated, and the embarrassingly large percentage of children living in poverty in this country will increase exponentially.

*Don Saunders, Director of Civil Legal Services, National Legal Aid and Defender Association*

passed the Helping Families Save Their Homes Act (Public Law 111-22), which aims to prevent foreclosures and extend greater protections to renters in foreclosed properties.

Low-income families would greatly benefit from legal assistance given the immense complexity of mortgage agreements, the number of laws affecting owners and renters, and the fact that these laws are currently evolving. Legal aid attorneys understand the law and keep track of changes, which allows them to effectively 1) advise low-income homeowners and renters of their options, 2) assist them in renegotiating loans, 3) help with rental property evictions and navigating government programs that can help with emergency housing and permanent relocations, and 4) provide representation during any court or alternative dispute resolution proceedings.

**Access to government benefits.** With rising unemployment more people are in need of necessary supports such as unemployment insurance, food stamps, and health care—for example, Medicaid, the State Children’s Health Insurance Program, and COBRA. Legal services organizations assist individuals in navigating the sometimes complicated processes for obtaining these benefits while also helping to resolve any barriers affecting access.

**Family law issues.** Economic distress can result in family stressors that require legal assistance. For example, between 2007 and 2008 the National Domestic Violence Hotline reported a 21-percent increase in calls, with 54 percent of callers reporting a recent change in their family’s financial circumstances.<sup>8</sup> Legal aid organizations help victims with protection orders and custody issues.

**Consumer issues.** The recession has also increased bankruptcies, collections, repossessions, and delinquent utility bills. Legal aid attorneys can help their clients understand their legal options, negotiate payment arrangements, or pursue action against unfair practices.

**Tax credits.** Low-income families greatly benefit from the additional income made available through the Earned Income, Child, and Making Work Pay tax credits in challenging times. Expansions of these credits were included in the American Recovery and Reinvestment Act of 2009, so many families may be eligible for elevated tax refunds through 2010. Some legal services providers help low-income families understand which tax laws apply to them and/or assist with filings.

# Recession compounds previous justice gap

Prior to the beginning of the recession there was a shortage of good lawyers providing free legal services for the poor. This crisis is commonly referred to as the “justice gap,” reflecting the notion that there are disparities in one’s ability to obtain justice that are tied to income. Justice isn’t free and is often denied if an individual can’t afford a lawyer and is unable to secure the assistance of a legal aid attorney.

The gap isn’t small, either. Organizations funded by the Legal Services Corporation turn away approximately 1 million cases per year—representing 50 percent of income-eligible people seeking legal assistance—simply because they don’t have the resources to handle them.<sup>9</sup> Untold numbers of additional people don’t even make it to the doors of a LSC-funded organization, perhaps not even realizing that free legal services are available in their community or that they have a problem for which a lawyer could provide assistance. A different line of studies based on random sampling has produced some distressing results—in one state (Vermont) as little as 9 percent of the legal problems of low-income households were addressed by a lawyer, and in no state studied were more than 20 percent of legal problems addressed.<sup>10</sup>

# Funding and resource crisis

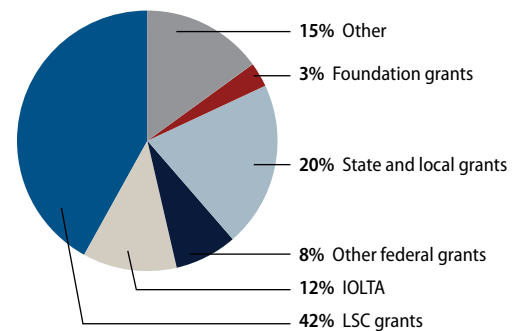
Multiple funding sources help provide free legal services to poor and low-income households, including government grants, Interest on Lawyer Trust Accounts, or IOLTA programs, foundation grants, and charitable giving.

Chart 1 demonstrates the monetary distribution for programs funded through the Legal Services Corporation. Comprehensive information about the funding of other legal aid organizations is not available, but those groups tend to rely on IOLTA, other types of government grants, and foundations. Law firms and law schools also add to legal aid organizations' efforts.

Unfortunately all of these resources and entities are facing significant challenges as a result of the recession, limiting their ability to address increased demands for services. Each is considered below and evaluated according to its current ability to generate new funds or other resources aimed at reducing the justice gap. Despite current challenges it is important to note that many dedicated individuals in all of these areas are finding ways to reduce negative outcomes and secure access to justice for as many people as possible.

**CHART 1**  
**Monetary distribution in 2007 for programs funded through the Legal Services Corporation**

Funding comes from the Legal Services Corporation but also federal, state, local, and foundation grants, among others



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## The federal government

The federal government is one source in a good position to provide new resources to help address the current crisis. It can do so by providing suitable appropriations for relevant programs, lifting restrictions on LSC organizations, and instituting new legislative solutions.

**LSC funding.** The federal government recently began increasing the Legal Services Corporation's funding levels. The fiscal year 2009 allotment is \$390 million—an 11-percent increase over the previous year.<sup>11</sup> This sum, however, is only a first step toward reversing a longstanding trend of seriously deflated investments. **In nearly 60 percent of budget cycles since 1976, LSC has experienced cuts in real dollars** (see Chart 2,

Appendix). Previous funding highs were \$750 million and \$554 million (in inflation-adjusted terms) in 1981 and 1995 respectively. Thus the value of the program’s budget is almost half of what it was nearly three decades ago.

In the current era of increasing poverty, it is also important to examine appropriations levels in relation to the number of people who qualify to receive legal services. Chart 3 demonstrates that the inflation-adjusted per person investment was \$7.04 in 2007, much lower than the \$20 and \$21 per person (in real dollars) that were spent in 1981 and 1995 respectively (see Appendix).

Unfortunately, the eligible population has been growing significantly as a result of the recession. LSC predicts a 22-percent increase between 2007 and 2009, representing more than 11 million people.<sup>12</sup> This increase dramatically affects the nation’s per person investment. Although Congress increased LSC funding in 2009 the estimated per person investment is only \$6.85—the lowest in the program’s more than 30-year history.

The House of Representatives has approved \$440 million (or a 13-percent increase) for the Legal Services Corporation in FY2010, which is slightly more than President Barack Obama’s request for \$435 million.<sup>13</sup> However, LSC has asked Congress for a little more—\$485.1 million.<sup>14</sup>

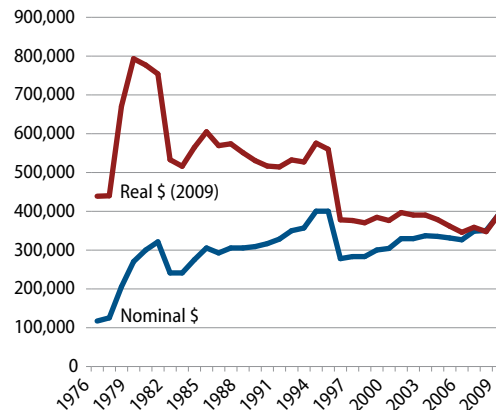
All of these sums are modest given the increased demand for services and the elevated number of people that income-qualify for free legal services. The size of the poverty population will likely remain a concern next year since the Federal Reserve has predicted continued elevated rates of unemployment in 2010, impacting poverty levels.<sup>15</sup> The LSC’s budget request would result in an approximate per person investment of \$7.82 presuming the continuation of current estimates of the eligible population, while the House’s number would allow for \$7.09 per person, which is slightly more than the nation’s 2007 investment.

**LSC restrictions.** Current LSC restrictions tied to federal funding result in costly and inefficient practices. Lawyers are not allowed to collect attorneys’ fees from opposing parties,<sup>16</sup> which is a typical practice when individuals bring valid cases and are ultimately victorious. Such fees would be beneficial additions to the frequently limited resources of these nonprofits.

Legal services organizations are also prohibited from pursuing systemic change because they are unable to bring class-action lawsuits or petition governments to make legislative or regulatory changes.<sup>17</sup> These

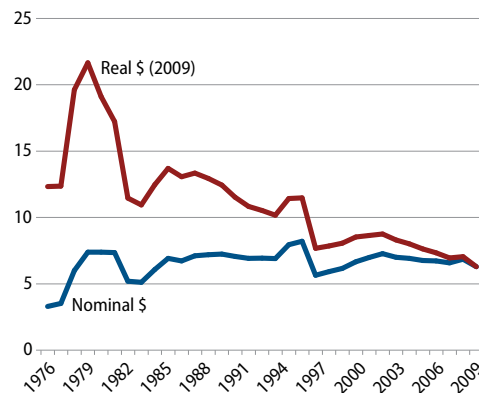
**CHART 2**  
Congressional appropriations for the Legal Services Corporation, 1976-2009

The value of the program’s budget is almost half of what it was nearly three decades ago.



**CHART 3**  
Per-person investment in the Legal Services Corporation

Congress has increased appropriations but because of increases in the eligible population per-person investments are declining.



## Understanding LSC restrictions

A sample scenario from Anywhere, USA

A legal services office in Anywhere, USA, has had multiple homeless clients enter its doors all complaining about the same problem—local school district policies that do not allow their children to enroll in school. The school district says that federal law sanctions their policy of requiring all students to provide proof of residence (a lease agreement or proof of homeownership). The legal services attorneys believe that federal law allows homeless students to enroll without these documents, so there is a disagreement between the two parties about what the law says and how it should be applied.

The legal services attorneys could pursue the following approaches to help the homeless families:

1. **Case-by-case lawsuits.** The attorneys could file litigation on behalf of each student who seeks help for this problem. Thus, if 50 children come through their doors, they file 50 cases in the local court.

2. **Class action lawsuits.** They could file one case on behalf of all current and future homeless students. The judge would read and interpret the law to determine once and for all if homeless students are able to enroll without a lease agreement. The school district policy would either be sanctioned or changed based on the judge's decision. If victorious the legal aid organization may be able to collect attorneys' fees.

3. **Petition school board.** The attorneys could go to the school board, explain the problem, and ask it to change the district's policy about documents that homeless children must provide to enroll in school.

Current LSC restrictions prevent organizations from pursuing the last two approaches, which also have the benefit of affecting all current and future homeless students. Left with the ability to only utilize the case-by-case approach, the organization wastes time and resources and is only able to help 50 students enroll in school.

avenues could prevent costly and repetitive litigation and may require less staff time, freeing up financial and human resources within organizational budgets. Further, pursuing policy change often leads to better outcomes for low-income people, at times promotes quicker resolutions to problems, and frequently benefits significant numbers of individuals who are not actually clients of the legal services organization.

LSC restrictions further hinder reductions in the justice gap by preventing participating organizations from representing particular clients, including undocumented immigrants, people in prison, and some individuals being evicted from public housing.<sup>18</sup>

Finally, an additional restriction prohibits LSC organizations from using non-LSC funds for any of the above purposes.<sup>19</sup> Those organizations receiving LSC dollars are therefore absolutely prohibited from engaging in these activities even if they were to obtain private funds for the related expenses.

**Other federal programs.** Some legal aid organizations benefit from other sources of federal funding. For example, the Violence Against Women Act provides grants for work related to domestic violence, the Older Americans Act funds legal assistance for the elderly, and AmeriCorps employs attorneys who work with law students and lawyers to provide legal services to low-income individuals and families. Thus, the funds for such programs should be appropriately increased.

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## State and local governments

Some legal aid organizations receive funds from state or local governments, many of which are under severe financial strain. The Center on Budget and Policy Priorities reports that 47 states are facing budget shortfalls this year and/or next year, with projected deficits amounting to \$350 billion to \$370 billion between 2009 and 2011.<sup>20</sup> As a result at least 36 states have imposed budget cuts that affect public services, including those benefiting low-income residents.<sup>21</sup>

Cities are also suffering because the recession is lowering their revenues.<sup>22</sup> Waning home values are lowering property tax assessments. Some communities are experiencing increased property tax defaults. Local sales tax revenues are being undermined by declines in consumer confidence and purchases. Local income taxes bring in less money as unemployment rises. In response to these circumstances 83 percent of cities have already cut expenditures and services and 80 percent expect continued cuts for the next fiscal year.<sup>23</sup>

The federal American Recovery and Reinvestment Act will go far in helping to relieve these budgetary stressors by providing about \$144 billion to state and local governments,<sup>24</sup> but it will not completely solve the crisis.

Despite current challenges it is not impossible for states and localities to increase their contributions to legal services organizations. New Jersey has been facing budget constraints, but the state provided an additional \$9.5 million to state legal services at the end of last year when it became apparent that a multimillion dollar shortfall was on the horizon.<sup>25</sup> There is also some room for creativity in finding ways to generate new revenue—Connecticut recently passed legislation that increases certain court filing fees in order to help prevent cuts to its legal aid programs.<sup>26</sup>

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## Interest on Lawyers Trust Accounts

Governments are important contributors to the budgets of legal aid organizations, but other supports such as the Interest on Lawyers Trust Accounts, or IOLTA programs, are available. In 2007 IOLTA programs provided \$212.2 million in grants to legal services groups and pro bono programs.<sup>27</sup> They account for 12 percent of the budgets of LSC-funded organizations as a whole.<sup>28</sup> However, some states and communities traditionally depended on IOLTA to a much greater degree—for example, 60 percent of the revenues for New Jersey Legal Aid programs typically came from IOLTA.<sup>29</sup> Unfortunately, the recession is severely affecting IOLTA's income.

The program—as its title implies—generates money by collecting interest on accounts held by lawyers. The accounts are used to temporarily hold money belonging to clients, including settlement checks, real estate escrows, fees paid in advance for services that have

“We first looked at what we could do immediately to try to impact our situation. And the immediate thing we could do was to cut back on our salaries and hours . . . So we are trying to hold on to the staff as best we can. And so the staff, incredibly, heroically, took a 20-percent cut in hours and pay from what weren't terrific salaries to begin with. We also restructured our health care benefits so they are less expensive while still providing quality health care. The managers in our program took a 25 percent to 35 percent cut, and so that got us part way into the deficit that we were facing. And then we went out and started trying to raise money like crazy, and we have been very active in sending out applications for money from various private sources and government sources . . .”

*Steve Eppler-Epstein, Executive Director, Connecticut Legal Services*

yet to be performed, and money for court fees. IOLTA accounts pool the money of many individual clients whose funds are either too small or held for too short a time to realize any net income for the clients. Lumping the funds of many people—each with money moving in and out of the account—generates a sizable amount of interest that is used to provide grants to legal aid organizations.

Current problems with IOLTA are rooted in the fact that the value of the accounts is tied to interest rates and principal balances. The Federal Reserve Board lowered interest rates in response to the economic downturn, which is its typical response to recessions.<sup>30</sup> Further, for some programs principal dollars are lower due to reductions in real estate transactions and other business activities involving lawyers. So many IOLTA programs have been and will be generating far less money than in previous years. For example, Connecticut's IOLTA revenue was \$21 million in 2007, but it is projected to be \$4 million in 2009.<sup>31</sup> Similarly, New Jersey's IOLTA funds dropped from \$40 million to an estimated \$25 million between 2008 and 2009.<sup>32</sup>

Some IOLTA programs had reserve funds and other structures that have helped soften the blow of declining revenues, and this has minimized changes to the amount of funding provided to legal aid organizations. Nevertheless, other programs are in critical condition and may be serving organizations that do not receive LSC funding, so recent federal efforts to assist by providing increased appropriations for LSC are not reaching these organizations.

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## Foundation grants

Foundations supporting nonprofits have also been hit by the economic crisis. According to the *The Chronicle of Philanthropy* 104 of the largest grant makers lost more than \$50 billion in assets in 2008.<sup>33</sup> This is certainly affecting grant availability. A full 62 percent of surveyed grant makers expected their giving to decline in 2009, with nearly half—48 percent—expecting a 10-percent or more dip in grant awards.<sup>34</sup> Many others are aiming to simply maintain previously existing funding levels. Foundations formed by corporations are facing distinct challenges—with the majority of these being connected to banking and financing companies, they were among the first to be hit by the economic downturn.<sup>35</sup>

Despite this grim portrait of the bigger picture, it is evident that foundations are concentrating their existing resources on low-income populations, human services, and economic development. They may be cutting grants in other areas, but 76 percent of foundations are either increasing or maintaining grants for programs targeting families affected by the downturn.<sup>36</sup> Six percent are newly working in these areas. The most popular areas to fund are food assistance, emergency housing, job training or employment, and health care assistance.

Seeking increased private foundation funding may be a possibility for some legal aid organizations as foundations seek to target their existing resources to low-income populations. Legal aid offices, however, may need a strong sales pitch to compete with the popular

choices of providing direct assistance to cover basic needs. Further, foundations typically accounted for only 3.1 percent of the budgets of LSC organizations —although potentially figuring more significantly into the budgets of legal aid organizations not receiving LSC funding.<sup>37</sup> Dramatically growing this already low percentage would likely prove challenging.

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## Individual giving

Many Americans' finances are on the decline due to increased unemployment, reduced work hours, foreclosed homes, and sagging home and stock values. Historically, individual giving has decreased by an average of 3.9 percent in inflation-adjusted terms during years marked by long recessions lasting eight months or more.<sup>38</sup> In a recent survey of nonprofits a little over a third reported decreased contributions in 2008 as compared to the previous year.<sup>39</sup> Of those experiencing declines, 63 percent reported reduced giving by individuals.<sup>40</sup>

For LSC organizations individual giving already represents a small portion of their budgets—less than 6.1 percent.<sup>41</sup> Given the strong possibility that donations are on the decline, it is unlikely that legal services groups will be able to increase personal contributions to the degree necessary to narrow the justice gap and manage recession-related needs.

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## Law firms

Law firms make significant contributions toward reducing the justice gap via direct monetary donations to nonprofits or volunteer work also known as pro bono service. However, the economy has weakened these institutions and reduced profits. As a result the list of law firms engaging in layoffs has grown significantly since the beginning of the year, with over 10,000 legal professionals—including 3,881 lawyers—and counting losing their law firm jobs.<sup>42</sup> Additionally, many students who were scheduled to begin work this fall had their job offers postponed or rescinded.

Importantly, there may be a silver lining within this dark cloud hovering over private law firms. According to the Pro Bono Institute there is a strong likelihood that pro bono activities are increasing during the economic downturn.<sup>43</sup> Some firms and nonprofits are developing new initiatives designed to find temporary full-time placements in legal aid organizations for the following groups of underutilized law firm talent:

- Attorneys who were laid off and perhaps provided with a severance package.
- Attorneys employed at firms but lacking enough paid work to fill their time.
- New associates who were scheduled to begin work in the fall but have had their start dates postponed for months or even a year or more.

These programs ensure that workers are engaged in productive activities rather than sitting on the couch at home or surfing the Internet at their desk. They also provide an opportunity to develop professional skills, with some attorneys continuing to earn income from their firm—even if it is a bit less than their original salary. Legal aid organizations benefit from increased human resources at a time when many are reducing their staffing due to budget cuts caused by reductions in IOLTA, foundation, and government funding.

## Looking back: Lessons learned from the 1980s recession

(Paul Igasaki, deputy chief executive officer, Equal Justice Works)

There are lessons to learn from the crisis that civil legal services for the poor faced in the early 1980s, the legal profession's response, and the long-term results of those efforts. I was a Reginald Heber Smith Community Law Fellow with Legal Services of Northern California in Sacramento in 1980. When President Ronald Reagan took office, eliminating the federal involvement in legal services was a priority of the administration. He attempted to eliminate the federal program. The American Bar Association, along with many state bar associations and prominent lawyers of all political parties joined in an effort to save the program.

For those of us in legal services, many of our colleagues were laid off due to budget reductions and all of us that remained absorbed sizeable caseloads. As a Reggie Fellow, my project changed radically as we tried to meet the need. At the same time, restrictions on full legal services were instituted, limiting who could get services and on the nature of the legal rights that would be protected.

To help meet the need, the organized bar, led by the ABA, the Legal Services Corporation, and the community of legal service providers committed themselves to maximizing the amount of services provided by private attorneys. There were a number of contract and other experiments, but primarily, this meant a dramatic increase in pro bono work by private lawyers. LSC required first a 10-percent portion of each local program budget to be devoted to making this happen. Later it was increased even further. I went to work at the American Bar Association first as pro bono coordinator, then as staff director of the ABA private bar involvement program. We put on conferences in each region of the country to bring together the organized bar and legal services programs.

There was distrust in the beginning. Many of the dedicated legal services lawyers, having lost colleagues, doubted that for-profit lawyers would have the sensitivity or knowledge to serve poor clients or the understanding that poverty lawyers were specialists just as they were. Some private lawyers assumed that legal services lawyers were less skilled or trained especially considering the low salaries they earned. There were efforts that did not work so well. But, over time, the number of private lawyers serving poor clients mushroomed. And as programs developed with training, supervision, and strategic matching between lawyers and clients, pro bono work increased in quality and in volume. The respect also increased over time—pro bono programs institutionalized as part of legal services offices, state or local bar associations, and as part of the larger law firms. Firms employ public interest or pro bono coordinators on their staffs and compete to show substantial contributions to their communities. The private side of the legal profession understands better than ever, due in large part to pro bono work, the complexities of the needs faced by poor clients and the tremendous gap that still remains between those needs and the resources available to meet them.

Just as the profession back then pulled together with lasting results, I hope that the current crises will also be met with long-term benefits especially for the poor, those facing discrimination, or other beneficiaries of this increase in private resources. It will require flexibility and cooperation on the part of all entities, but it does seem headed in the right direction. There might ultimately be longer-term changes in legal education and the profession generally. Perhaps the seeds of a stronger legal profession may lie in solutions explored by law schools, law firms, bar associations, the government, and public interest organizations.

It is too soon to tell how many current and former law firm attorneys will be placed in legal aid organizations. These shifts will undoubtedly be fraught with many challenges that are both logistical and cultural as many nonprofits try to absorb attorneys who may be unaccustomed to working with poverty populations and within offices with limited resources—available supervisors, office space, equipment, and training opportunities, for example—to support their work.

There are further questions about how long these attorneys will be available and their dependability, given the fact that they may be searching for new work opportunities and are not being directly paid by host organizations. Also there are important concerns about the fairness of private practice attorneys being placed in nonprofit jobs at a time when those who have a history of being dedicated to such work are losing their jobs or are being denied opportunities due to declining resources at the nonprofits. Despite these factors, the opportunity for positive outcomes should not be denied as more hands come on deck to help reduce the justice gap.

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## Law schools

Many law schools throughout the nation provide free legal services via clinical education programs. Professors teach law students practical skills and supervise their representation of real world clients. Unfortunately, these programs may also suffer during the recession as institutions have fewer dollars to grow valuable programs.

Many law schools at public universities are slashing their budgets. Since education is the largest component of state spending it is an area that is likely to face cuts as states seek to eliminate deficits.<sup>44</sup> At least 28 states have made cuts to public colleges and universities and/or increased tuition in response to reductions in state funding.<sup>45</sup> Private law schools are also being affected due to their reliance on endowments. The plunging stock market has caused endowments to lose 20 percent to 40 percent of their value.<sup>46</sup> For example, the Harvard University endowment began the year with a \$36.9 billion loss since the previous summer.<sup>47</sup>

Law schools are making hard choices in response to these changed circumstances, laying off faculty and staff, freezing pay, raising tuition, reducing course offerings, and increasing class sizes.<sup>48</sup> Thus, it may not be an opportune time for law schools to expand clinical programs that play a role in reducing the justice gap.

However, on a more positive note, a limited number of law schools are helping unemployed 2009 graduates find positive uses for their time. Institutions such as Northwestern, Columbia, Boston College, the University of Michigan, and Georgetown are connecting their students to temporary placements in nonprofit organizations, with some schools offering small stipends to help support the work or their alums. These law schools are playing a role in reducing the justice gap in encouraging unemployed graduates to offer their time.

# Recommendations

The federal government and the private bar are currently the best equipped to help reduce the recession-related growth of the justice gap, but states and localities can play a role as well. Reducing the gap will require much work.

The federal government can aid in reducing the current justice gap via the following:

- **Legal services appropriations.** Congress is currently in the process of developing its annual appropriations bills for 2010. The provisions applying to LSC should:
  - *Increase program funds.* The U.S. House of Representatives has approved \$440 million—or a 13-percent increase—for the Legal Services Corporation, which is slightly more than President Obama’s request of \$435 million. The House’s figure is a modest but respectable increase given the recession-related growth in the eligible population and current record-low per-person investments in the program. However, low-income populations would be more properly served by the \$485.1 million proposed by LSC.
  - *Eliminate LSC restrictions.* Appropriations legislation provides an opportunity to eliminate certain LSC restrictions that are not cost effective. Allowing organizations to utilize time-efficient techniques that also minimize the use of costly litigation will ultimately produce financial savings for legal services organizations and court systems. A recently passed House appropriations bill eliminates the current restriction on collecting attorneys’ fees, but more should be done. At an absolute minimum Congress should strike the restriction that prohibits LSC organizations from using non-LSC funds to engage in otherwise restricted activities.
- **Appropriations for other federal programs.** Congress should make increased investments in other federal programs that provide grants to legal aid organizations. These include AmeriCorps, the Older Americans Act, and the Violence Against Women Act, among others.
- **Fund housing-related legal assistance.** Much of the increased demand for civil legal assistance is tied to the foreclosure crisis. Congress should bolster funding for legal aid organizations to work in this area given the enormity of the problem, the complexity of the transactions, and the evolving nature of related laws in this area. The Mortgage

Reform and Anti-Predatory Lending Act (H.R. 1728) includes provisions that would do just that. It was recently passed by the House of Representatives and must still be considered by the Senate.

- **Civil Access to Justice Act (S. 718).** Congress should pass S. 718 to help advance long-term solutions. This legislation was introduced by Sen. Tom Harkin (D-IA) and would increase LSC's authorized funding level to \$750 million, eliminate the restrictions on non-LSC funds and certain restrictions on LSC funds, and provide new federal funding for law school clinical programs.

The private bar should act as follows:

- **Continue and expand pro bono and fundraising activities.** Law firm attorneys have been contributing their time to pro bono activities, with some recently taking on full-time legal aid work due to disruptions in the legal employment market. In doing so they are making valuable contributions. In conjunction with nonprofit organizations, these members of the private bar should continue to explore how they can improve and expand such services. Further, law firms and attorneys often make direct financial contributions to legal aid. They should continue to do so to the greatest extent possible.
- **Consider legal aid when steering evolutions in the world of private practice.** The private bar is experiencing major changes as a result of the recession. Law firms are reconsidering hiring practices, training structures, and salary scales, among other things. As they proceed they should give thought to how such changes could affect pro bono activity and how the changes can be used to advance the cause of reducing the justice gap.

Finally, states and localities can contribute via the following:

- **Find ways to put more funding for legal aid organizations into their budgets.** This is obviously challenging for most governments at this time, but they should be open to creative solutions such as those implemented in Connecticut—for example, making slight increases to government fees attached to the legal profession.
- **Avoid cutting current grants to legal aid organizations.**

All of the above efforts would greatly advance the goal of closing the justice gap, which is currently widening due to recession-related and preexisting causes. Various levels of government and private actors all have a part to play and should be called upon to make a contribution. We must ensure as a nation that justice and pathways out of poverty are not sacrificed during hard times, because this is when they are most needed.

# Appendix

**TABLE 1**  
**History of LSC appropriations in actual and inflation-adjusted dollars**

Year	LSC appropriation (Actual \$)	LSC appropriation (2009 \$)	Percentage change from previous year (2009 \$)
1976	116,960,000	438,323,000	—
1977	125,000,000	439,851,000	0.3%
1978	205,000,000	670,463,000	52%
1979	270,000,000	793,041,000	18%
1980	300,000,000	776,359,000	-2%
1981	321,300,000	753,730,000	-3%
1982	241,000,000	532,548,000	-29%
1983	241,000,000	515,972,000	-3%
1984	275,000,000	564,398,000	9%
1985	305,000,000	604,444,000	7%
1986	292,363,000	568,827,000	-6%
1987	305,500,000	573,458,000	1%
1988	305,500,000	550,675,000	-4%
1989	308,555,000	530,615,000	-4%
1990	316,525,000	516,418,000	-3%
1991	328,182,000	513,814,000	-1%
1992	350,000,000	531,960,000	4%
1993	357,000,000	526,828,000	-1%
1994	400,000,000	575,547,000	9%
1995	400,000,000	559,685,000	-3%
1996	278,000,000	377,825,000	-32%
1997	283,000,000	375,993,000	-0.5%
1998	283,000,000	370,227,000	-2%
1999	300,000,000	383,986,000	4%
2000	303,841,000	376,255,000	-2%
2001	329,274,000	396,467,000	5%
2002	329,300,000	390,328,000	-2%
2003	336,645,488	390,142,000	0%
2004	335,282,450	378,484,000	-3%
2005	330,803,705	361,191,000	-5%
2006	326,577,984	345,434,000	-4%
2007	348,578,000	358,494,000	4%
2008	350,490,000	347,132,000	-3%
2009	390,000,000	390,000,000	12%

TABLE 2

## Estimated amount spent per qualifying person in actual and inflation-adjusted dollars

Grant year	# of people below 125% of poverty	\$ per qualifying person (actual)	\$ per qualifying person (2009 \$)
1976	35,509,000	\$3.29	\$12.33
1977	35,659,000	\$3.51	\$12.35
1978	34,155,000	\$6.00	\$19.62
1979	36,616,000	\$7.37	\$21.65
1980	40,658,000	\$7.38	\$19.10
1981	43,748,000	\$7.34	\$17.22
1982	46,520,000	\$5.18	\$11.45
1983	47,150,000	\$5.11	\$10.94
1984	45,288,000	\$6.07	\$12.46
1985	44,166,000	\$6.91	\$13.69
1986	43,486,000	\$6.72	\$13.07
1987	43,032,000	\$7.10	\$13.33
1988	42,551,000	\$7.18	\$12.94
1989	42,653,000	\$7.23	\$12.43
1990	44,837,000	\$7.06	\$11.52
1991	47,527,000	\$6.91	\$10.82
1992	50,592,000	\$6.92	\$10.52
1993	51,801,000	\$6.89	\$10.17
1994	50,401,000	\$7.94	\$11.42
1995	48,761,000	\$8.20	\$11.47
1996	49,310,000	\$5.64	\$7.67
1997	47,853,000	\$5.91	\$7.85
1998	46,036,000	\$6.15	\$8.05
1999	45,030,000	\$6.66	\$8.52
2000	43,612,000	\$6.97	\$8.63
2001	45,320,000	\$7.27	\$8.75
2002	47,084,000	\$6.99	\$8.29
2003	48,687,000	\$6.91	\$8.01
2004	49,693,000	\$6.75	\$7.62
2005	49,327,000	\$6.71	\$7.33
2006	49,688,000	\$6.57	\$6.95
2007	50,876,000	\$6.85	\$7.04
2009	62,068,720	\$6.28	\$6.28

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