

# THE JUSTICE GAP

**Access to Justice Committee  
Discusses Current Situation and  
Strategies to Narrow the Gap**

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and  
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The fundamental principle that everyone is entitled to equal access to justice is “a bedrock value of a society based on the rule of law.”<sup>1</sup> The Louisiana State Bar Association (LSBA) has long recognized this right<sup>2</sup> and the importance of the efforts of organizations providing for the civil legal needs of the poor or near poor of this state. In 1997, in light of mounting concern that “equal justice” was not a reality for many of our citizens, the LSBA<sup>3</sup> created an Access to Justice Program with the purpose of assuring “that every Louisiana citizen has access to competent civil legal representation by promoting and supporting a broad based and effective justice community through collaboration among all stakeholders in our civil justice system.”<sup>4</sup>

Since the formation of the Access to Justice Committee, Chair Marta-Ann Schnabel has led the committee for most of its existence and promoted subcommittees to focus on access issues, supported the Gap Assessment Subcommittee in its endeavors (discussed below) and kept access to justice issues in front of association leadership and members. This commitment has been reflected in various LSBA activities since 1997, including the Association leadership’s annual participation at the American Bar Association’s Day on Capitol Hill in Washington, D.C., which promotes the need for increased funding for legal services for the poor.

Despite the LSBA’s concern and support, however, lack of access to justice in Louisiana remains a critical issue, and one which today is best characterized as a “justice gap.” Many of our citizens who live at or below the poverty line are unable to obtain legal representation when “seeking the ‘essentials of life’ — a roof over their heads, family stability, personal safety free from domestic violence, access to health care and education, or subsistence income and benefits.”<sup>5</sup>

Most troubling is the fact that Louisiana has the third highest poverty rate in the United States,<sup>6</sup> and, thus, many of its citizens are *de facto* denied access to justice. The demographics of poverty reveal the true faces of citizens who are shut out of the legal system because they

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—Hon. Jonathan Lippman  
*Chief Judge of the State of New York and  
Chief Judge of the Court of Appeals*

do not have access to legal representation: single-parent families with children (46 percent), children (28 percent), the elderly (20 percent) and hardworking families who simply do not earn enough (36.3 percent), among others.<sup>7</sup>

For those living in poverty in Louisiana, access to the courts is difficult and solely dependent on the availability of scarce legal resources such as the federally funded Legal Services Corp.,<sup>8</sup> a few non-profits and law school clinics. The state of Louisiana provides no statewide funding of civil legal services for the poor despite the fact that it is a societal problem and all but three other states<sup>9</sup> view it as their obligation to address through state funding. The state of New York, for example, appropriated \$14.044 million for civil legal services as well as an additional \$40 million through the judiciary’s budget in 2013 alone.<sup>10</sup>

In 2005, and again in 2009, the Legal Services Corp. began to make public estimates of the numbers of those living in poverty whose legal needs could not be met by non-profit legal providers.<sup>11</sup> Not surprisingly, only 20 percent of citizens

who made it to the application stage were able to obtain legal assistance, while 80 percent were left to fend for themselves due to a lack of funding and resources, including inadequate numbers of legal staff. Consequently, in 2009, greatly troubled by the growing “justice gap” and the state’s willful failure to provide necessary funds, then-LSBA President Kim M. Boyle undertook a public and active campaign to inform and persuade state legislators to fund civil legal services to the very poor in Louisiana.

Along with those efforts, the Access to Justice Committee commissioned a new “Gap” Subcommittee with the express purpose of exploring ways of obtaining state funding to narrow the widening “justice gap.” The subcommittee, thereafter, commissioned an Economic Impact Study to determine what effect, if any, state funding of legal services had on Louisiana’s economy.<sup>12</sup> The idea was that the state’s leaders, sensitive to economic issues, would be interested in investing in the civil legal needs of the very poor because, in doing so, they would create a positive economic impact for Louisiana. This course of action was adopted after much discussion and research of other state’s responses<sup>13</sup> to this issue. The Legislature, however, was uninterested in and unmoved by the study.

Notwithstanding the regrettable failure of the Legislature to financially address this critical need, the details of the economic impact study remained cogent and relevant to the issue of access to justice. Notably, the study estimated the economic impact to range from \$70 million to \$107 million in total economic transactions, with estimated personal earnings of \$21.6 million to \$33.2 million, and state and local tax collections from \$2.9 million to \$4.4 million. The study commented that this input of dollars into the Louisiana economy could create and support between 851 and 1,309 net new jobs in 2010. Although, admittedly, legal assistance to the poor and low-income individuals accomplishes the important purpose of providing access to justice, not spurring economic activity, the study aptly noted that:

... [T]here are economic effects when individuals are required to miss work to resolve issues, when individuals receive payments for which they are legally eligible, or when an individual gets other legal issues resolved. This net new spending in the state serves as a stimulus for economic activities throughout the community. Moreover, a national group like the LSC [the Louisiana Legal Services Corp.] impacts the state economy as an employer through the sponsorship of agencies that provide access to legal services.<sup>14</sup>

Moreover, the study also framed the issue of civil legal services most appropriately and importantly as impacting quality of life when it concluded that:

[T]here are many other outcomes of cases that may not result in a monetary benefit, but will result in an outcome that improves the quality of life for the individual and household. This report focused on the monetary benefits related to the cases involving the legal services programs in Louisiana, but in no way was this an attempt to minimize other legal outcomes that add to the overall quality of life for a client.<sup>15</sup>

Quality of life is not a luxury, just as “[a]ccess to justice is not a luxury, affordable only in good times . . . The rule of law itself loses its meaning when legal protection is available only to those who can afford it”<sup>16</sup> and when its most vulnerable citizens are deprived of the opportunity to achieve some measure of comfort in society.

## Our Justice Gap

The Economic Impact Study was an eye-opener in other ways as well, particularly in its use of statistics related to specific unmet legal needs. These needs, as reported by the Legal Services Corp.’s local programs, included family law, housing and foreclosure, consumer issues and income maintenance, in that

order of frequency. As it became clear that the study’s focus on a positive economic impact on the state’s economy did not motivate legislators to fund civil legal services for the needy, the Gap Subcommittee quickly refocused its work on exploring specific unmet legal needs independently of the data used in the study. In 2011, the subcommittee conducted its first ever informal survey of unmet needs, resulting in sufficiently noteworthy data to suggest a more targeted and refined survey; a second survey, conducted in 2013, was redesigned to improve the quality and quantity of information, and included information relating to types of cases, issues, calls per week, seasonal or regional frequency, and available resources, among others.

The 2013 survey highlighted unmet legal needs in these areas:

► **Family law.** Uncontested divorces with custody and community property were the highest number of calls, with an average of 160 calls per week. Contested custody and community property ranked next, followed by successions, wills and other property issues. To a lesser extent, calls were made concerning community property issues for domestic violence victims, representation of children in custody proceedings, need for custody judgments for nonparents to enroll children in school and to attend to their needs, and affordable curators to represent absentee defendants in domestic proceedings.

► **Consumer issues.** Foreclosure, loans, credit card debt, and bankruptcy and consumer debt collection suits had an average of 73 calls per week, with a smaller number dealing with real estate and contractor fraud or poor workmanship issues.

► **Housing and landlord-tenant issues.** With an average of 65 calls per week, the highest number of calls came from tenants requesting legal assistance to recover security deposit refunds withheld by landlords, followed by queries on maintenance, eviction and other housing problems.

To a lesser degree, but still significant, there were unmet needs in the areas of **employment** (unpaid wages and unemployment compensation); **governmental issues** (immigration, citizenship and code enforcement); **public benefits and health**

(Social Security, supplemental security income, Medicaid and private insurance coverage); and **disability** (physical and educational disabilities).

These results were similar in both the 2011 and 2013 surveys and follow a consistent pattern, although additional troubling issues were reported in 2013 indicating further limits in access to justice. In particular, the survey found that the high cost or upfront requirement of court costs, or related case fees, also limited citizens’ access to the courts. Costs most often viewed as limiting included court costs for filing contempt or modification of child support proceedings, followed by court filing fees in general. Other costs mentioned were curator fees in domestic and other pauper cases, posting bond in eviction suspensive appeals, expungement fees, and issues related to *in forma pauperis* forms; court interpreter services and costs, as well as increased demand for Spanish-speaking staff to handle assessment of legal problems, including the requirement of upfront payment of interpreter services, were issues as well. The survey also indicated issues related to the inability of residents to navigate the legal aspects of the educational and disability systems for special needs children and citizens.

Not so surprisingly, the survey confirmed that access to justice is also elusive, if not altogether out of reach for citizens who do not qualify for free legal services, but whose income is otherwise insufficient to retain private counsel.

## Current Strategies

Undeniably, increasing numbers of citizens are either unable to access courts at all in matters impacting essential human needs, or otherwise end up in court unrepresented because legal services were unattainable due to lack of means.<sup>17</sup> Solutions are not easy, nor can a single strategy provide crucial relief. Nevertheless, the Access to Justice Committee and its various subcommittees continue to discuss and explore appropriate short- and long-term solutions and, to date, have promoted the following short-term strategies, consistent with national trends:

► **Assessment** of unmet legal needs on an ongoing basis through its Gap Assessment Subcommittee to understand and quantify the nature and impact of such needs.

► **Prioritization** of unmet needs through its Policy Committee to facilitate the crafting of possible solutions and the identification and mobilization of appropriate resources.

► **Education** initiatives in targeted areas benefitting our most vulnerable citizens.

► **Self-representation** opportunities through direct involvement<sup>18</sup> in establishing and developing Self-Help Centers in courts whose judiciary recognized the increased need to provide their self-represented litigants with assistance in navigating the process; developing partnerships with pro bono volunteers and law students to staff and maintain such centers; creating and developing websites to provide appropriate legal information to self-represented litigants; and coordinating a project with the Louisiana Supreme Court Library and libraries across the state to seek information and suggestions designed to help citizens obtain legal information.

► **Partnerships** designed to support the initiatives of the committee, be it to provide needed research and guidance or to implement possible solutions through intervention and/or direct services. Immediate past partnerships have included Louisiana Appleseed, the Louisiana Civil Justice Center,<sup>19</sup> law schools and individual bar members.

## Conclusion

The need for substantial increased funding for civil legal services for the poor and low-income individuals is unquestionable. The Access to Justice Committee will continue to explore solutions in this regard, particularly because the state of Louisiana has abdicated its responsibility in the face of great need and dire consequences to its most vulnerable citizens. Solutions require the shared vision of the LSBA membership, the judiciary, the Legislature, the executive branch, and corporate and private citizens alike. We invite members to remain informed on this issue and to provide input to the committee on this important and critical effort.

## FOOTNOTES

1. Chief Judge Jonathan Lippman, "New York's Template to Address the Crisis in Civil Legal Services," 7 Harv. L. & Pol'y Rev. 13, 19 (2012).

2. Article I, Section 22 of the Louisiana Constitution reads: "All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."

3. The program was implemented by then-LSBA President David F. Bienvenu.

4. The Access to Justice Program is a joint effort of the Louisiana Bar Foundation, the Louisiana State Bar Association and the Louisiana Legal Services Program. The program provides institutional support to all legal services providers involved with the Bar's Access to Justice Committee. "The Bar's Access to Justice Committee works to assure that every Louisiana citizen has access to competent civil legal representation by promoting and supporting a broad based and effective justice community through collaboration between the LSBA, the LBF, Louisiana Law Schools, private practitioners, local bar associations, pro bono programs and legal aid providers." See, [www.lsba.org/ATJ/ATJProgramInfo.aspx](http://www.lsba.org/ATJ/ATJProgramInfo.aspx).

5. 7 Harv. L. & Pol'y Rev. 13, 20.

6. Louisiana's current poverty rate is 19.9 percent, although it has remained relatively the same since 2000. See, [www.nola.com/politics/index.ssf/2013/09/louisiana\\_has\\_high\\_poverty\\_rate.html](http://www.nola.com/politics/index.ssf/2013/09/louisiana_has_high_poverty_rate.html).

7. [www.spotlightonpoverty.org/map-detail.aspx?state=Louisiana](http://www.spotlightonpoverty.org/map-detail.aspx?state=Louisiana).

8. The Legal Services Corp. is a 501(c)3 nonprofit corporation established in 1974 by the United States Congress. It now has three programs in Louisiana: Acadiana Legal Service Corp., Legal Services of North Louisiana and Southeast Louisiana Legal Services. The latter now provides legal services previously rendered by Capital Area Legal Services.

9. The three other states which do not fund civil legal services for the poor are Florida, Idaho and Wisconsin.

10. [www.empirejustice.org/policy-advocacy/legislative-updates/cls-dv-budget-update-2013.html](http://www.empirejustice.org/policy-advocacy/legislative-updates/cls-dv-budget-update-2013.html).

11. Documenting the Justice Gap in America, the Current Unmet Civil Legal Needs of Low-Income Americans, Report of the Legal Services Corp., September 2005, and the Updated Report of the Legal Services Corp., September 2009.

12. The Economic Impact Study, titled "Legal Services Programs in Louisiana: Their Economic Impact on the State of Louisiana," was conducted in 2010 by Prof. James A. Richardson, Harris J. and Marie P. Chustz Endowed Professorship, E.J. Ourso College of Business, Louisiana State University. The study was expressly commissioned by the Louisiana State Bar Association. <http://files.lsba.org/documents/ATJ/LegalServicesProgramsImpactStudy.pdf>.

13. Similar studies were conducted in other states including California, New York, Pennsylvania

and Texas.

14. Richardson, p. 2.

15. Richardson, p. 6.

16. 7 Harv. L. & Pol'y Rev. 13, 19 (2012).

17. Chief Judge Jonathan Lippman acknowledged the special place judges hold as witnesses to "the ways in which the lack of civil legal aid can prove devastating to the lives of our fellow citizens and their families . . . [and the fact that] judges cannot stand passively by and consider litigants as faceless numbers on crowded court dockets without regard to whether they are represented, without regard to whether they are able to protect their rights, and without regard to whether justice is really and truly being done." 7 Harv. L. & Pol'y Rev. 13, 20 (2012).

18. In April 2012, with the approval of the LSBA's Board of Governors, the Access to Justice Program created a position dedicated to the issues attendant for self-represented litigants.

19. The Louisiana Civil Justice Center, a civil legal services hotline, came about as a result of Hurricane Katrina and currently provides intake for those unable to access legal services as a result of financial hardship. For more information, go to [www.laciviljustice.org](http://www.laciviljustice.org).

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