

New Jersey's

CIVIL LEGAL ASSISTANCE GAP

Necessary Steps to Provide Legal Representation
and Secure Equal Justice for People with Limited Means



Second
Annual Report
June 2012



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**SECOND ANNUAL REPORT
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Overview—A Promise of Equal Justice Still Unfulfilled

FROM ITS EARLIEST DAYS, American society has embraced an express commitment to equal justice for all. For those in poverty, however, the promise of equal justice remains unfulfilled. By all available measures, the great majority of lower-income people cannot afford lawyers on their own for their civil legal problems. Without such legal assistance, studies and experience confirm that those facing civil legal issues are very unlikely to secure justice.

For 45 years, New Jersey's statewide Legal Services system has constituted New Jersey's vehicle for providing civil legal assistance to those in poverty. Each year, Legal Services of New Jersey prepares a report to the three branches of New Jersey's government and the public concerning the status of this unmet need for essential legal representation—the *civil legal assistance gap*. The report does not affix blame. Rather, it presents an accounting of the civil legal assistance shortfall and indicates necessary steps on the road toward eliminating the gap.

The individual consequences of unrealized legal rights are devastating: homelessness, broken families, loss of children to foster care, arrested development of youth, hunger, unchecked domestic violence, and unaddressed health problems. The cumulative long-term social and economic consequences of these conditions are enormous, among them disruption of civil society through violence and crime, major expenditures for remediation programs, and unrealized potential of successive generations of children. Our society urges its citizenry to follow the rule of law, to direct their grievances to legal and political systems, and to refrain from taking to the streets to vindicate their rights. We must collectively recognize there is great urgency in closing this legal assistance gap.

Principal Developments in the Last Year

New Jersey's civil legal assistance gap has widened sharply in the last 12 months.

1. Increase in poverty

New Jersey's poverty rate increased by 18.4% from 2008 to 2010, the most recent year of Census data. This figure uses the yardstick of 200% of the federal poverty level, a better approximation of the real cost of living. One in four New Jerseyans now live in poverty, over 2 million. Each year, one in three of adults living in poverty have at least one civil legal problem requiring a lawyer's help.

2. Further cuts in funding and Legal Services staff and services

Funding reductions cut Legal Services' statewide staff from 490 to 415 during the past 12 months. These staff cuts in turn limited Legal Services' new cases to 56,247 in 2011, down from 62,000 in 2010 and 69,300 in 2009.

3. Significant widening of the civil legal assistance gap

In 2007, those in poverty had at least some legal assistance for just under one of every nine of their civil legal problems. Now that percentage is less than one in 10. Civil justice in New Jersey is severely limited—rationed—for those in poverty.

Special Note

Stories of Legal Services clients appear throughout this report, testament to the importance of legal representation. While the report focuses on the extent of and consequences for the *unrepresented*, moral and human considerations compel us to provide at least some legal help—even if it is only advice and referral—to those eligible applicants who seek our help. Necessarily and sadly missing are accounts from those who had no legal help at all.

Samson Carr



Samson Carr is blind and receives Supplemental Security Income (SSI) benefits, due to his disability. He lives in an apartment in Belle Meade with his wife of 37 years and his daughter. Mr. Carr's wife works part time with a local transportation company.

Since SSI is an entitlement program, all household income is taken into

account when determining the benefit level. So, when his wife received a small raise, it should have been reported to the Social Security office. Mr. Carr, believing the raise to be "rather small and insignificant," failed to do so.

The change was reported eventually, and at that point, the Social Security Administration began deducting money from his monthly check in order to recoup the overpayment. "Now it's difficult enough when you're poor, living on the margins of the poverty level, and anything at all—any disruption to your income—it just upsets everything." Their monthly income after this deduction was not enough to pay their rent, and they quickly fell behind on their payments, resulting in an eviction notice from their landlord.

Legal Services of Northwest Jersey represented Mr. Carr in his eviction case and was able to assist him in working out an arrangement with his landlord to catch up on the rent. Mr. Carr does not believe he would have been able to negotiate that settlement without the legal assistance he and his family received. "Were it not for Northwest Legal Services, we would probably be homeless at this point."

Of the experience, he says, "Oftentimes, Legal Services is the only avenue that poor people have to take to address issues of their concern. ... Simply because you are living at the poverty line, that does not mean that you should not have access to the judicial system."

I. The Need for Civil Legal Assistance

A. Baselines

MAJOR STATE and national baseline reports, both from 2009, anchor the data concerning the unmet need for legal assistance.

1. The Social Science Research in New Jersey

The most recent comprehensive portrayal of New Jersey’s civil legal assistance gap appears in *Unequal Access to Justice—Many Legal Needs, Too Little Legal Assistance*, a 2009 social science study released by Legal Services of New Jersey (“Legal Needs Study”). The study actually understates the present dimensions of the problem: it was based on a 2007 random survey (the most extensive ever done in any state), right before the Great Recession took hold in 2008. Poverty was then lower; the foreclosure epidemic had yet to set in; Legal Services’ funding level was at an historic high; and the surge in other recession-related legal problems (debt collection, mortgage foreclosures, evictions, unemployment insurance issues, family crises) was waiting in the wings. Nonetheless, the baseline pre-recession data indicated a very serious shortfall in legal assistance. The study demonstrated that on an annual basis:

- One in three people with incomes below 200% of the federal poverty level (FPL) have at least one civil legal problem requiring the help of a lawyer each year.
- Of these, only one-fifth (21.7%) had the help of a lawyer for one of those legal problems; nearly 80%—four of five—did not.
- For over 88% of such legal problems, there was no legal help at all.

Current analyses indicate that presently fewer than one in six low-income New Jerseyans can secure necessary legal help for any of their civil legal problems, and legal assistance is available for at best less than one in 10 of their total legal problems.

The combination of Legal Services’ severe loss of funding since 2008 and sharp increases in poverty and legal problems induced by the recession has made the current situation far worse than that observed in 2007. Current analyses indicate that presently *fewer than one in six* low-income New Jerseyans can secure necessary legal help for any of their civil legal problems, and legal assistance is available for at best *less than one in 10* of their total civil legal problems.

2. The National Legal Assistance Gap

Comparable evidence of a national civil “Justice Gap” has been compiled by the national Legal Services Corporation (LSC), the federally-created not-for-profit corporation which channels appropriated federal dollars to providers in all of the states and territories. A September 2009 LSC report updated its initial 2005 study (both are available at www.lsc.gov), revealing parallel legal needs studies from many states, along with data on those applicants LSC grantees were unable to serve, sharp differences between low-income people and the rest of the population with respect to available attorneys, and information on unrepresented litigants.

The civil legal assistance gap is a national phenomenon, although it appears that New Jersey’s civil legal assistance shortfall is more well-documented than most, encompassing both the largest statewide legal needs study and court-based data.

From these reports, it is clear the civil legal assistance gap is a national phenomenon, although it appears that New Jersey’s civil legal assistance shortfall is more well-documented than most, encompassing both the largest statewide legal needs study and court-based data.

B. Data from the New Jersey Courts

The social science data is corroborated by recent information from the New Jersey Administrative Office of the Courts. Civil legal problems confronting those in poverty tend to cluster in certain courts: tenancy, Small Claims, Special Civil Part, foreclosure cases in Chancery, and the Family Division. While the state court system does not determine or track the incomes of litigants, the great majority of defendants in most of these courts are lower-income, and constitute appropriate indicators of the prevalence of unrepresented people in the judicial system. The figures for the court year ending 6/30/11 remain stunning and disturbing:

- 99% of the 171,546 (164,863 in the prior year) defendants in tenancies were unrepresented (43% were defaults).
- 99% of the defendants in 376,795 Special Civil Part matters (a court of limited jurisdiction just above the Small Claims amount) were unrepresented (79% were defaults).
- 97% of the defendants in 49,198 Small Claims matters (the court with the lowest jurisdictional amount) were unrepresented.

- 17% of the defendants in general equity matters (51% of which were foreclosures) were unrepresented. The percentage of unrepresented defendants in foreclosures is far higher than this overall 20% figure, well over 90%.
- In dissolution (divorce) matters, only 27% of the cases had attorneys for the defendant. In other family matters, it was only 4%.

In administrative hearings, such as welfare “fair hearings” (reviews of denials, terminations, or other adverse actions involving welfare grants), recipients were unrepresented 95% of the time.

Well over 90% of the legal problems of lower-income people involve state law, and those that proceed to formal adjudicatory processes nearly always occur in state courts or state administrative agencies.

C. Legal Services’ Experience:

Saying No

Further corroboration of the legal assistance gap comes from the direct experience of the seven programs in the statewide Legal Services network that serves all 21 New Jersey counties. For several reasons, chief among them lack of awareness of potential sources of help, transportation difficulties, apprehension about the legal system, language and cultural barriers, lack of understanding of how to find a lawyer and proceed, disability, and a sense of futility, a majority—75% or more—of people in poverty do not seek the help of a lawyer for their legal problems.

Despite all of these impediments, however, typically more than 200,000 eligible people do seek full representation from Legal Services each year. Because of inadequate resources, *over two-thirds—the great majority with legitimate legal claims and defenses—will have to be denied that representation.*

More than 200,000 eligible people seek full representation from Legal Services each year. Because of inadequate resources, over two-thirds—the great majority with legitimate legal claims and defenses—will have to be denied that representation.

Providing Only Limited Help

Most people involved with courts and administrative agencies need the *full representation* of a lawyer through the conclusion of a proceeding to present meritorious claims and defenses. Studies and actual experience indicate that mere advice, even though important and helpful, is rarely as effective as having the continuing representation of an attorney in enabling most lower-income litigants to realize or protect the rights they have under the law.

Soaring Numbers: More Legal Problems, Many More People

The Great Recession compounded the decline of Legal Services' funding detailed in the next section. First, people who were working but already in poverty—those who lost hours, wages and even jobs—experienced a significantly higher rate of legal problems due to their sudden reduction in income. The frequency of foreclosures, evictions, and debt collection actions increased sharply, as did applications (and denials) for government benefits. Legal problems frequently accompanied the severance from previous work. The stress of deepening poverty in turn prompted family problems, increasing incidents of domestic violence, and spurred serious health issues (for which there was typically no insurance coverage). Legal Services observed sharp intake increases in the incidence of such problems, ranging from 20 to 45%.

The second blow was the rapid rise in the numbers of those eligible for Legal Services. Data just released (*Poverty Benchmarks 2012*, May 2012, www.lsnj.org/PDFs/budget/Benchmarks2012.pdf) show that the recession caused an 18.4% increase in true poverty (below 200% of the federal poverty level) from 2008 to 2010, and a significant number of these new poor lost their middle-class life and fell into poverty, further increasing Legal Services' client demand.

Scott Morrell



Scott Morrell of Alpha is 51 years old. He spent eight years in the National Guard after high school, and has spent the rest of his life working long hours at physically-demanding jobs. “You name it, I’ve done it,” he says, listing construction, quarry work, masonry, stair building, and truck

driving, to name a few.

“Basically, my body just started falling apart. Because for years, I didn’t have insurance to take care of my body.” His list of ailments is long and growing: “Neuropathy, diabetes, degenerated disk in my back. My hip’s out of whack, my knees are shot. My shoulders— both need to be operated on.”

Mr. Morrell was referred to Legal Services of New Jersey’s SSI Project for help applying for Social Security Disability, an insurance program that he had paid into throughout his working life. His claim was eventually allowed at the hearing level, after initially being denied, but it took two and a half years to do so, during which time Mr. Morrell survived on \$210 a month in General Assistance (GA) benefits. “It was very humbling to go from \$800 a week take home, to receiving less than that in a month.” He did not even purchase clothes during his time on GA, let alone much else. He lost his vehicle to repossession and was forced to move back in with his parents. “If I didn’t have my folks, I’d be out in the street.”

Mr. Morrell now receives \$1,400 a month in Social Security benefits, which allows him a bit more room to breathe, and life is becoming more manageable. Throughout it all, he says his Legal Services advocate “never gave in. He never gave up. He believed. That’s the most important [thing]. You know, most people just take the case work and they’re just like, *ok, it’s another paycheck* for them, you know *another name, another number*, whatever. But for him, it was more than that. That’s what means the most to me.”

II. The Consequences of Not Having Legal Representation

Rights Not Protected; Laws Not Enforced

THE 2009 LEGAL NEEDS Study confirmed Legal Services' experience with actual demand: The study illuminated the three largest areas of need for legal assistance involved consumer, family, and housing law. In each of these areas, as well as in the other major types of legal cases encountered by lower-income people (employment, public benefits, education, health care), important statutory and other legal rights are typically at issue. When people do not have legal assistance, meritorious claims and defenses are not presented in the great majority of cases. While the prevalence of such meritorious claims varies with the type of legal problem, a few examples based upon Legal Services' experience illustrate the pattern:

When Legal Services' civil law enforcement is crippled by a lack of resources, important statutes, regulations, and public policies are simply not given effect.

- Many foreclosures present meritorious defenses to the amount of the obligation or the foreclosure itself.
- At least one-third of evictions present meritorious defenses to the eviction itself, typically because of uninhabitable conditions, incorrect amounts stated to be due, or other facts.
- The vast majority of debt collections involve meritorious affirmative defenses or counter claims, most involving consumer rights specifically conveyed by statute.

When nearly all of these cases proceed without legal representation (many go by default), these rights are simply not vindicated. Through its work, Legal Services carries out a critical *civil law enforcement role* on behalf of society, a function that is being sharply curtailed due to lack of resources. When Legal Services' civil law enforcement is crippled by a lack of resources, important statutes, regulations, and public policies are simply not given effect.

Consequences for Individuals

Most Legal Services cases involve matters of great importance, often quite literally life or death. For example, housing cases—most notably evictions and foreclosures—result in loss of dwelling, and often homelessness, if meritorious defenses are not

presented. The ensuing disruption of a household can lead directly to family breakup and placement of children through the child welfare system. For the children, typically there are adverse health, nutrition, education, and long-term emotional consequences traceable to such housing instability and dislocation—all terribly damaging to the individuals involved.

Consequences for Society

This dislocation, disruption, and harm also extend to society generally.

Neighborhoods frequently decline if there is a high rate of families being evicted: the

Failure to invest in necessary legal representation at the front end—when the legal problem is actually being confronted—can result in the need for much larger governmental expenditures in the long run, additional costs which can extend for decades.

very stability of the area is undermined. To address this housing turmoil, extensive government expenditures for response and remediation are required. Anti-homelessness programs, special educational responses, health care for the disadvantaged, greater police protection, mental health and substance abuse programs, corrections facilities, and many other government programs have their roots in dislocations stemming from failure to enforce important legal rights.

Failure to invest in necessary legal representation at the front end—when the legal problem is actually being confronted—thus can result in the need for much larger governmental expenditures in the long run, additional costs which can extend for decades.

Impact Upon Judicial Proceedings, and Upon Justice

A July 2010 American Bar Association survey of 1,000 trial judges' views confirms the weaknesses inherent in people representing themselves without lawyers.*

Commenting on the increase of the unrepresented in their dockets, most notably in “foreclosures, domestic relations, consumer issues such as debt, and ... rental disputes,” the judges cite the following negative impacts for clients who were unrepresented:

- Failure to present necessary evidence (94%)
- Procedural errors (89%)

* *Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts, American Bar Association Coalition for Justice, July 12, 2010.*

- Ineffective witness examination (85%)
- Failure to properly object to evidence (81%)
- Ineffective argument (77%).

The report also noted lack of representation's negative impact on the courts (78%) and slowing of court procedures (90%).

Rhonda Taylor



Rhonda Taylor, of North Brunswick, has two children, ages 5 and 14. When she and her husband separated, she maintained custody of the children and child support was arranged without legal counsel. When Ms. Taylor's ex-husband filed for divorce, however, he retained a lawyer, and

made it clear that he wished to discontinue child support.

"I actually went to a private attorney first but I couldn't afford them, so I contacted Legal Services." Unfortunately, Central Jersey Legal Services (CJLS) was unable to represent Ms. Taylor due to budget constraints, but was able to refer her to Evelyn Hartmann, a private attorney in Woodbridge, who specializes in family law and has been doing *pro bono* work through CJLS for over 15 years.

"I was very nervous when I first met Miss Evelyn, but it was good. ... She was very reassuring, very comforting, that she could help me." The divorce went through, child support was ordered, and all was well until about a year later when Ms. Taylor's ex-husband decided to file for custody for his son. He argued that a father should raise his son after a certain age. He further reasoned that if they each had custody of one child, child support would be unnecessary.

"When I needed a lawyer for the second time, for a custody hearing, I didn't contact Legal Services first. I contacted Evelyn Hartmann first." They were successful in this issue as well, and Ms. Taylor is extremely grateful for the assistance she received. "I needed help from Legal Services because of my financial situation. I didn't have the means to pay for a private attorney, but I also still wanted the best care for my kids. ... It's a difficult process to go through a divorce, but when your attorney is confident enough and compassionate enough to make sure that you understand each step, it makes it easier. So I couldn't have asked for a better lawyer."

III. Legal Services' Caseload, Staffing, and Resource Situation

LEGAL SERVICES is New Jersey's statewide civil legal assistance delivery system. Consisting of a network of seven independent not-for-profit corporations, Legal Services has six regional programs with offices in each of New Jersey's 21 counties (see Appendix). The system is coordinated by a seventh, statewide program, Legal Services of New Jersey, which operates the statewide legal hotline LSNJ-LAW™ (1-888-576-5529), maintains the three statewide public websites, coordinates statewide training and technology systems and provides of counsel support for regional legal work, and runs over 15 statewide specialized representation projects. Legal Services also coordinates a statewide *pro bono* attorney program, the state's largest, to marshal volunteer lawyers for those in poverty.

At the beginning of 2008, New Jersey Legal Services' funding high water mark, it had over \$70 million and 720 staff. Since then, Interest on Lawyers Trust Accounts (IOLTA) funding, a program run under the auspices of the New Jersey Supreme Court and Legal Services' largest funding source for nearly two decades, has dropped from \$40 million to less than \$7 million annually. Since IOLTA revenue is a joint function of bank interest rates, the real estate market, and the general economy, this 83% drop is not expected to reverse in the foreseeable future. Legal Services' state appropriation (the second largest funding source) was cut from \$29.6 million in state fiscal year 2010 to just \$14.9 million in fiscal year 2012, and the outlook for 2013 is unclear. The third largest Legal Services funder, the national LSC, also has faced a series of cuts in recent years.

Overall, New Jersey Legal Services funding has been reduced from \$72 million to \$47 million, a 35% decline. As a result, Legal Services' statewide staffing has been cut from 720 in early 2008 to 490 today, with a projected loss of at least another 75 by the end of this year unless state funding is restored.

Overall, New Jersey Legal Services funding has been reduced from \$72 million to \$44.5 million, a 38% decline. As a result, Legal Services' statewide staffing has been cut from 720 in early 2008 to 415 today, more than 130 of them attorneys.

Legal Services provided representation in 69,300 new cases during 2009, but in the wake of the funding cuts that dropped from 62,000 in 2010 to 56,247 in 2011. Equally disturbing, the number of cases in which Legal Services was able to provide *full representation* to the conclusion of the case has dropped sharply during this same period, as programs sought to provide at least some limited help to as many as

People who cannot receive full representation have little chance of securing justice or protecting their rights. This sort of triage is extremely difficult when Legal Services has to deal with cases involving loss of a home, family violence, hunger, and access to critical health care.

possible. People who cannot receive full representation have little chance of securing justice or protecting their rights. This sort of triage is extremely difficult when Legal Services has to deal with cases involving loss of a home, family violence, hunger, and access to critical health care.

In addition to its direct representation, Legal Services provides assistance and information to another 1.5 million people annually through its interactive websites, and reaches at least 50,000 more through educational and self-help legal clinics, publications, community presentations, court and agency kiosks, and other outreach.

Significant strengths of New Jersey's statewide Legal Services system include:

- Very experienced core staff, gathered over decades, many of whom are the best in their practice areas in the entire state. This core staff has greatly increased efficiency and quality of results.
- Established systems for doing high volume, high quality work, maximizing the effect of scarce public and private funds.
- Establishment of excellent statewide technology systems, further expanding the effect of limited resources through highly developed interactive websites, exploration of court and community-based self-help kiosks, and statewide operational systems.
- Well-established statewide name recognition and reputation, facilitating client outreach and contacts.

Akavar Dylutra



Akavar Dylutra, of Flemington, received his bachelor's degree in 1975 and worked in media, then technology for 30 years in the corporate world. When his department was downsized, and attempts to reconnect with family resulted in emotional turmoil, problems that had been buried for years began to rise to the surface.

"I had gone through my 401K, had gone through my credit cards, and had no money left to live on. And I just said, you know, *why bother?* At that point, I had already rebuilt my life a couple a times and I just couldn't see myself doing it again. So I wound up with a couple of suicide attempts." Mr. Dylutra was referred by the hospital to the Board of Social Services, who referred him to Legal Services of New Jersey's SSI Project for help with a disability claim.

"There were several times that I almost lost the thread of my case with Legal Services because I just got too anxious to open the mail. ... Legal Services was understanding about it," he says. "I got a couple of letters saying they were going to close the case, and I finally, about two or three weeks after the suicide attempt, called and managed to put the case back together."

With the help of Legal Services, Mr. Dylutra's Social Security claim was allowed at the hearing level, and as his financial situation improves, so does his mental state. He is very active with In Our Own Voice, a program of NAMI (National Alliance on Mental Illness), through which he offers presentations about mental illness and how it has impacted his life. "In my family, the ability to appear functional was very important. ... It did not matter if I was going through hell inside; as long as I appeared to be functional, I was rewarded by not having any attention drawn to me. During my 30 years in the corporate world, this became a very important skill." Through his work with NAMI, ongoing therapy, and an intentional effort to learn to trust others, he "has gotten much better at matching the external appearance of being functional to my true internal state—[one of] growing internal happiness."

IV. Solutions: Necessary Steps to Secure Civil Justice for Those in Poverty

NO MYSTERY attends the challenge of closing the civil legal assistance gap. Rather, it requires will and perseverance. In New Jersey, all have been pursued, by Legal Services of New Jersey and its many partners. In consequence, the civil legal assistance gap is narrower than if such efforts had not been taken. But legal representation still is not prevalent for the poor, even in the most critical cases.

We summarize the key steps, and the immediate plans of Legal Services and its allies, in the quest for justice.

Step 1—Increased Funding For Legal Services' Core Staff Operations

There is no substitute for restoration of recent funding cuts, followed by paced increases to meet the actual need for representation. The legal assistance gap increased during the last year because of funding cuts and remains enormous. The great majority of those in poverty do not receive essential legal assistance. The additional measures discussed in this section are each an important part of a comprehensive strategy, but none is in any sense a replacement of the need for funding, or an answer in its own right.

In addition to expansion of services to meet true need, Legal Services must retain its highly experienced staff—and the very substantial investment in years of training and mentoring that they represent. This investment delivers results, in efficiency and quality, every day.

The subsets of poverty law consist of highly specialized and complex subjects, requiring significant knowledge and expertise. Legal Services has lost over 300 staff and 130 attorneys since 2008, when it had over \$70 million. Experienced staff provide efficient representation, train and mentor *pro bono* volunteers, achieve better results and impact in their cases, and are more efficient.

Only increased funding can enable staff retention. Only increased funding can make a meaningful dent in the enormity of the civil legal assistance gap. Only increased funding will permit *full representation* of clients in the cases that require it, and only through such full representation can justice be secured.

Only increased funding can make a meaningful dent in the enormity of the civil legal assistance gap. Only increased funding will permit full representation of clients in the cases that require it, and only through such full representation can justice be secured.

First objective: Return the Legal Services system to the current-dollars equivalent of its \$70 million 2007-2008 funding level in three years, by June 2015.

Second objective: Provide sufficient resources to fund Legal Services staffed programs to provide representation for all critical legal problems (those involving housing, food, health care, family and individual safety and stability, basic resources for life, fundamental education, and the ability to secure and maintain employment, and protect individual rights against illegal or arbitrary actions by government agencies).

Net 2011 change: Significant reversal of progress, because of major State, federal, and IOLTA funding reductions.

Step 2—Pro Bono Contributions

Pro bono and free contributions of services from private lawyers have been an important supplemental resource for Legal Services' civil legal assistance mission, both nationally and in New Jersey. At their most helpful, such efforts can include representation by a large firm in certain selected major cases, in-depth concentration by firms or corporate law departments on representing a volume of clients in a particular type of case, and representation of clients by small and sole practitioners all over the state.

As will be reviewed in a separate in-depth LSNJ report on *pro bono*, such volunteer activities traditionally are impeded by several key challenges, among them:

1. The percentage of practicing lawyers who voluntarily contribute to formal *pro bono* civil legal assistance programs for those in poverty, in New Jersey and nationally, is very low, typically well under 10%.
2. Only a small percentage of volunteers are willing to do the kind of work—*full representation* of a client to the conclusion of a case—most needed by—and not available to—those in poverty. Such representation is especially difficult to secure in litigated family matters.
3. Many large firms perceive that they have institutional and ethical conflicts with representation, especially in two areas where help is most sorely needed—foreclosure defense and consumer debt collection defense.
4. While advice clinics and other brief commitments are attractive to many volunteers because they are scheduled and time-limited, unfortunately such interventions often fail to offer clients who face multiple, concurrent, and

interconnected legal problems the kind of multi-front, in-depth, and continuing assistance they need.

5. In New Jersey, nearly half the practicing lawyers work solo, and over 60% work in either one- or two-person firms. These lawyers face particular challenges as they struggle with a much more narrow and fragile economic base.
6. Lawyers in major firms typically face billable hours requirements which make significant *pro bono* time contributions infeasible.
7. Few private and corporate lawyers practice actively in the specialized substantive legal areas most critical to people living in poverty, limiting their utility in emergent client circumstances where there is no time for a learning curve.
8. Statewide full representation of those in poverty with critical legal problems has not been prioritized as the most essential *pro bono* activity by the organized bar. Rather, a wide range of non-representational activity that can be construed as “*pro bono*” too often is accorded equal weight.
9. There is no systematic reporting or tracking of *pro bono* cases and contributions to civil legal assistance for those in poverty.

Pro bono contributions can be a key supplement to the core staff-delivered legal services, but bold steps must be taken to achieve this potential. The steps will be successful only if these barriers are addressed effectively.

First objective: Legal Services of New Jersey will issue an analysis of needed actions that directly address these most significant and actual impediments to enhanced *pro bono* activity.

Second objective: Based upon this report, Legal Services will enlist statewide partners in an effort to confront these most significant *pro bono* challenges over the next four years.

Net 2011 change: Forward progress, with LSNJ’s development of a recently launched redesigned *PROBONONJ.org*, a *Pro Bono* Web Portal for civil legal assistance volunteers.

Step 3—Continue to Use Technology To Enhance Civil Legal Representation and Assistance

Legal Services of New Jersey has designed one of the most sophisticated interactive community legal education and *pro se* assistance websites in the United States, LSNJLAW.org (relaunch of a vastly enhanced site will take place this summer); implemented during 2012 online intake for its statewide Legal Hotline, LSNJ-LAW; digitized all of the legal educational and *pro se* materials it has produced; experimented for 10 years with legal information kiosks and web interfaces in courthouses and libraries; begun to test interactive individualized web-based legal assistance, and much more.

Ever-expanding web capacities have become the principal way to reach millions of people with community legal education material, *pro se* (self-help) support, and general outreach. As Legal Services' capacity for *full representation* has diminished, these alternative approaches to reducing the harm from lack of legal assistance have assumed heightened importance, affording unrepresented litigants a better idea of what is happening to them and what they may be able to do about it.

LSNJ also maintains and coordinates Legal Services' internal operations, through a statewide computer network, telephone system, case management system, and other applications.

First objective: Launch the revised LSNJ community website and portal during the summer of 2012.

Second objective: LSNJ will develop, in consultation with the Judiciary, a five-year plan for the development and revision of a core syllabus of civil legal assistance community education and *pro se* support materials.

Net 2011 change: Significant progress through redesign of the community website and portal LSNJLAW.org, and development of new digitized *pro se* and legal educational materials.

Step 4—Simplify Court Rules and Procedures

Long a goal of legal reformers, with intermittent paroxysms such as the “delegalization” movement of the 1970s, simplification seeks to reduce dependency upon lawyers by making legal processes more accessible to the unrepresented. LSNJ and New Jersey Legal Services have long sought to make judicial and administrative processes more accessible and navigable, and have redoubled these efforts during 2012. For the next three years, LSNJ will spearhead an intensive effort to identify

areas where court and agency rules and processes can be made more comprehensibly, primarily through simplification, to those who have no or limited legal assistance and representation.

Objective: Legal Services will spearhead a four-year simplification effort in all of the major areas of law that affect lower-income people, in conjunction with other partners and in consultation with the Judiciary and key administrative agencies.

Net 2011 change: No improvement in simplification or accessibility.

Step 5—Enhance Judicial Assistance and Support for The Unrepresented

For a few years the Supreme Court’s Access and Fairness Committee has studied, emphasized, and sought to improve the court system’s response to the increased number of unrepresented litigants. While such efforts are not a substitute for expansion of full representation for the poor in civil legal matters, they are nonetheless extremely important initiatives to provide some stopgap help to the unrepresented. Vicinage court ombuds-offices are critical hubs from which to improve this activity.

LSNJ strongly supports and will continue to assist in those judicial efforts.

Objective: Collaborate with the Judiciary to enhance court assistance and support for the unrepresented, and begin to stimulate parallel efforts in key administrative agencies.

Net 2011 change: Further progress through the Supreme Court committee and Legal Services collaboration with Administrative Office of the Courts personnel and vicinage ombuds-offices.

Step 6—Continue Research Into the Importance of Legal Representation for the Poor

Further research concerning the actual impact of the presence or absence of legal assistance to low-income people, in both litigated and non-litigated contexts, is essential. It will guide deployment of scarce resources, help shape Legal Services provider case acceptance policies, and inform broader societal judgments concerning the ultimate funding requirements for essential legal assistance. Inquiry is also necessary concerning the efficacy of advice-only, limited service, legal education, *pro se* support, and all other alternative legal assistance delivery strategies.

Objective: Develop a five-year research plan which addresses all of the noted critical inquiry areas, and also encompasses an update of LSNJ's quantitative legal need.

Net 2011 change: Progress in compiling and beginning analysis of all national data and literature on these subjects.

Step 7—Continue to Consider and Define, Based Upon Research, Evidence, and Legal Precepts, Expansion of a Civil Right to Counsel for Critical Civil Legal Problems

LSNJ has participated in analysis and research for many years. The scaling back of funding for civil legal assistance has brought these issues, simmering for decades, back to the fore. As the national and New Jersey research on impacts of representation becomes more abundant, greater attention to this area is inevitable. During the next year LSNJ will produce an overview of the current status of law and research in New Jersey, in the national context, and will propose objectives for further work.

Conclusion

THE CENTURIES-OLD American promise of equal justice elevates Legal Services from being just another item on the “budget buffet” (in the words of the current LSC president) to a moral imperative. Ignoring this imperative has often tragic consequences for the individual, and very costly implications for society as a whole. Nationally and in New Jersey, the vast majority of low-income people cannot get essential civil legal assistance when they need it, and significant individual and social harm follows. Essential legal assistance is neither charity nor luxury, but a commitment of our democracy. Legal Services of New Jersey will update this civil legal assistance gap report annually, documenting our state’s and society’s progress in meeting this pledge of equal justice under law, and justice for all.

Appendix

New Jersey Legal Services Programs

Legal Services of New Jersey

100 Metroplex Drive, Suite 402

P.O. Box 1357

Edison, NJ 08818-1357

Melville D. Miller, Jr., President

www.LSNJ.org

LSNJ-LAW™ toll-free statewide legal hotline:

1-888-LSNJ-LAW (1-888-576-5529)

www.LSNJLAW.org

www.probononj.org

Central Jersey Legal Services

Covering Mercer, Middlesex, and Union counties

317 George Street, Suite 201

New Brunswick, NJ 08901

(732) 249-7600

Other offices: Perth Amboy, Trenton, Elizabeth

Director: Paul V. Mullin

Essex-Newark Legal Services

Covering Essex County

5 Commerce Street, 2nd Floor

Newark, New Jersey 07102

(973) 624-4500

Director: Felipe Chavana

Legal Services of Northwest Jersey

Covering Hunterdon, Morris, Somerset, Sussex, and Warren counties

34 West Main Street, Suite 301

Somerville, NJ 08876

(908) 231-0840

Other offices: Flemington, Morristown, Belvidere, Newton

Executive Director: Diane K. Smith

Northeast New Jersey Legal Services

Covering Bergen, Hudson, and Passaic counties

574 Summit Avenue, 3rd Floor

Jersey City, NJ 07306-2797

(201) 792-6363

Other offices: Hackensack, Paterson

Director: John H. Fitzgerald

Ocean-Monmouth Legal Services

Covering Ocean and Monmouth counties

303 West Main Street, 3rd Floor

Freehold, NJ 07728

(732) 866-0020

Other office: Toms River

Executive Director: William Rempel

South Jersey Legal Services

*Covering Atlantic, Burlington, Camden, Cape May, Cumberland,
Gloucester, and Salem counties*

745 Market Street

Camden, NJ 08102

(856) 964-2010

Other offices: Atlantic City, Cape May Court House,

Mt. Holly, Pennsville, Vineland, Woodbury

Executive Director: Douglas E. Gershuny