

“Thou Shalt Not Ration Justice”

– Hon. Learned Hand

Taking Stock of the Civil Legal Aid Movement in 2015: the Year the Pieces Came Together to Increase Access to Justice in the United States

David Udell, Executive Director, December 31, 2015

Across the United States and around the world people seek civil access to justice to resolve problems that threaten their homes, jobs, savings, custody of their children, even their physical safety and lives. They seek it also to resolve pressing challenges in their communities that may concern the stability of neighborhoods, the availability of medical care, the reliability of public benefits and, sometimes, even the quality of the justice system, itself.

What is access to justice? At a minimum, it means that people can learn about their rights and then protect them before a neutral decisionmaker who is authorized to determine the facts, apply the fair rule of law, and enforce the result. www.ncforaj.org. Viewed through the human rights prism, access to justice is “the right of all persons to fair and equal access to independent and effective judicial and adjudicatory mechanisms, free from discrimination of any kind.” *Special Rapporteur on Extreme Poverty and Human Rights, Extreme Poverty and Human Rights*, ¶ 11, Human Rights Council, U.N Doc. A/67/278 (Aug. 9, 2012), <http://www.ohchr.org/Documents/Issues/Poverty/A-67-278.pdf>.

In a year in which the crisis in access to civil justice in the United States was increasingly recognized by the media alongside headlines about the troubling failings of our criminal justice system, see Voices for Civil Justice, <http://voicesforciviljustice.org/press-clips/> (gathering civil access to justice coverage), the civil legal aid reform movement was strengthened by two meta-declarations widely expected to restructure the field and change people’s lives. The United Nations adopted “Global Goal 16” calling on all countries – including the United States – to use data indexing to increase access to justice to help end extreme poverty by 2030. <http://www.globalgoals.org/global-goals/peace-and-justice/>. And, the Chief Justices and Chief Court Administrators of the American state courts issued a Resolution calling for “100 percent access to effective assistance for essential civil legal needs.” http://www.ncsc.org/~media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All_final.ashx.

With their call for data on best practices, these meta-declarations will be implemented in 2016, while dozens more initiatives (including NCAJ’s own Justice Index, www.justiceindex.org) will help to guide the civil legal aid movement at the national level and advance it in the states. To take stock of the movement in 2015, project its course in 2016, and provide links to its key resources, we offer the following outline of leading civil legal aid reform initiatives in the United States.

I. Models for Civil Legal Aid

1. *Civil Right to Counsel Movement* – States guarantee a right to counsel for a few types of civil cases (for example, in state actions to terminate a parent’s rights or to initiate an involuntary commitment), but generally not for cases involving basic human needs, such as housing, domestic violence, medical care, and public assistance. The National Coalition for a Civil Right to Counsel (NCCRC), operating in 38 states, guides a national movement and supports local initiatives (litigation, legislation, court rules reform, public education) to establish a civil right to counsel for low-income people. www.civilrighttocounsel.org. NCCRC maintains an interactive map of civil rights to counsel in the states, and a bibliography of articles. It helped create the 2006 ABA Resolution encouraging states to provide a civil right to counsel in cases involving basic human needs, and it helped develop the ABA’s *Directory of Law Governing Appointment of Counsel in State Civil Proceedings*.
http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_s_claid_judges_manual_prefatory_info.authcheckdam.pdf.
2. *Legal Education Reform, including Pro Bono, Incubator Programs, and Fellowships* – Legal education is in flux. Law schools are increasing support for students and faculty in pro bono initiatives and are teaching students about “the justice gap.” The ABA accreditation standards now require schools to offer experiential education credits and explicitly encourage schools to provide opportunities to students to perform at least 50 hours of pro bono service by graduation. http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_chapter_3.authcheckdam.pdf. New York requires 50 hours of pro bono service as a pre-requisite to admission to the State bar, <https://www.nycourts.gov/attorneys/probono/baradmissionreqs.shtml>. Schools are supporting graduates in new public interest fellowships, and many are running “incubator programs” that help graduates with new law practices providing “low bono” services. http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main.html. Some states are experimenting with early administration of bar exams to students who qualify as Pro Bono Scholars by fulfilling pro bono service commitments in the third year. <http://www.nycourts.gov/attorneys/probonoscholars/index.shtml>.
3. *Lay Advocates Movement and the Legal Empowerment Movement, including Navigators, Legal Hand Volunteers, Court Advocates, Community Paralegals, and LLTs* – Bar associations, courts, task forces, academics, NGOs, and for profit companies are urging and testing new roles that involve differing levels of training and supervision, specified categories of services, that are set both in and beyond the courtroom, in nonprofit and for profit employment settings, as an exception to traditional “unauthorized practice laws” that forbid nonlawyers from practicing law. In New York, “navigators” provide moral and informational support in court hallways and courtrooms, <http://www.courts.state.ny.us/courts/nyc/rap.shtml>, “Legal Hand trained community volunteers” provide guidance under attorney supervision in poor communities, <http://www.courtinnovation.org/legal-hand>, and “court advocates” are the subject of model legislation that would place supervised nonlawyers in advocacy roles in eviction and debt collection courtrooms. <http://accesstojustice.net/2015/03/31/steps-in-new-york-underline-speed-of-acceptance-of-roles-beyond-lawyers/>. Washington State authorized “limited licensed legal

technicians” to provide designated services outside of courtrooms, <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians>. Social workers, case workers, mental health workers, homeless outreach workers, also have roles responding to otherwise unmet legal needs. Namati and Open Society Justice Initiative are defining and supporting a global “legal empowerment movement” that relies on “community paralegals” to enable people to protect their individual and communal rights and interests. <http://namati.org/about/our-mission/>.

4. *The Legal Services Corporation (LSC), National Legal Aid & Defender Association (NLADA), American Bar Association (ABA) and the Movement to Provide Free Legal Assistance and Representation* – Civil legal aid providers and services take many forms, and are continuing to evolve:
 - *LSC* – LSC remains the primary source of funding for civil legal aid programs located across the country, www.lsc.gov, and pursues new initiatives to strengthen service, measure outcomes, <http://clo.lsc.gov/home/>, encourage communications, increase pro bono partnerships, encourage non-LSC fundraising, fund and support new technologies, <http://tig.lsc.gov/>, and more.
 - *Non-LSC programs* – Non-LSC programs appear to be expanding in number, size, funding, scope of coverage and the nature of services they provide. See Justice Index, <http://www.justiceindex.org/findings/attorney-access/> (attorney access page, showing overall count of civil legal aid attorneys, in both LSC and non-LSC programs).
 - *Civil legal aid providers, NLADA and the ABA* – Civil legal aid providers operate on numerous levels: providing people with information, advice, brief service, and traditional legal representation; using new technologies to expand their reach to new communities; partnering with courts and the bar to carry out services and coordinate pro bono services; carrying out research to determine what approaches work best; providing policy knowledge to communities, courts, officials, social service agencies and law schools; and sometimes advocating for law and policy reform on behalf of communities. NLADA, representing the legal aid provider community, has pioneered access to justice at the national, state and local level, including through the development of national standards for legal representation, groundbreaking legal legislation and support for important institutions including the Legal Services Corporation. www.nlada.org. The American Bar Association supports civil legal aid in many ways, including on matters involving policy and funding, and maintains a Resource Center for Access to Justice Initiatives, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html. See also Standing Committee on Legal Aid & Indigent Defense (SCLAID), http://www.americanbar.org/groups/legal_aid_indigent_defendants.html.
 - *Immigrant services* – Immigrant Justice Corps, <http://justicecorps.org/our-story/>, in New York City, is a new model of legal assistance and representation for immigrants facing detention and deportation, and is being replicated in other cities.

- *Holistic models* – Some organizations combine civil legal aid with indigent defense services to resolve civil and criminal legal problems, improve lives and reduce engagement with the criminal justice system. See Community Oriented Defender Network, <http://www.nlada100years.org/member-resources/defender-resources/community-oriented-defender-cod-network> and Bronx Defenders, <http://www.bronxdefenders.org/who-we-are/> .

5. *Medical Legal Partnership Movement, Library Initiatives and Legal Aid in Other New Settings* – Civil legal aid is increasingly available in new and diverse settings where advocates help to solve people’s pressing legal problems. Some legal aid programs partner with clinics and hospitals to help resolve problems that lead to illness. See National Center for Medical Legal Partnerships, <http://medical-legalpartnership.org/>. In libraries, people obtain help and access to new technologies to prepare, defend and advance legal claims. www.aallnet.org/mm/Publications/products/atjwhitepaper.pdf. Civil legal aid is present in community colleges, veterans service agencies, homeless outreach centers, nursing homes, schools, diverse social services agencies.

6. *Pro Bono Models* – Courts, law firms, corporations and other stakeholders are testing new models of pro bono service that include engaging senior attorneys in new roles, enlisting “lawyers for a day”, using high school and college students as volunteers in courts, experimenting with “unbundled” legal assistance, linking law firms to specific legal aid programs, building specific subject matter expertise in specific law firms, and more. See e.g., <http://www.nycourts.gov/attorneys/probono/index.shtml>. The ABA, http://www.americanbar.org/groups/probono_public_service.html, and the Pro Bono Institute, <http://www.probonoinst.org/>, with state bar associations, courts, and other stakeholders, are helping to advance these efforts. The Association of Pro Bono Coordinators, APBCO, supports strategic initiatives that increase the impact of pro bono. <http://www.apbco.org/impact/>

7. *Court-based Civil Legal Aid Movement and the Self Represented Litigation Network* – Recognizing “the promise of equal justice is not realized”, Chief Justices and Chief Court Administrators in the state courts are providing leadership to achieve the “aspirational goal of 100 percent access to effective assistance for essential civil legal needs”, http://www.ncsc.org/~/media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All_final.ashx. The Self Represented Litigation Network, www.srln.org, and the National Center for State Courts through its Center on Court Access to Justice for All www.ncsc.org/atj (and its many other initiatives, see, e.g., Court Statistics Project, <http://www.courtstatistics.org>) are carrying out research and reform initiatives. NCAJ’s Justice Index, www.justiceindex.org, promotes adoption of best practices to assist self represented litigants, people with limited English proficiency, and people with disabilities. Some models for increasing access to justice in the states (some of which are tracked in the Justice Index) include:

- expanding traditional civil legal aid and civil rights to counsel
- designating an official to be responsible for innovation to assist self-represented litigants
- providing “self help centers” in courthouses
- authorizing proactive roles for judges and court clerks
- authorizing “unbundled legal services”

- developing automated court forms, and using new do-it-yourself software to let people produce pleadings
- requiring creditors to attest that claims for recovery of debt are factually based, timely, and served properly before cases go forward. <https://www.nycourts.gov/rules/CCR/>
- requiring state agencies to adopt best practices for administrative justice, <http://www.mass.gov/anf/best-practices-to-enhance-state-administrative-justice.html>.

8. *Technology* – New technologies are re-shaping and expanding access to justice. LSC’s Technology Initiative Grant Program (TIG), <http://tig.lsc.gov/>, makes grants to legal aid recipient programs to increase access to justice through the use of technology, often through partnerships with courts, social services organizations and other stakeholders, including in projects that promote e-filing systems, expand availability of do-it-yourself pleading software, coordinate client intake. Pro Bono Net, www.probono.net, www.lawhelp.org, promotes the use of technology and collaboration among courts, legal services providers and other community partners to support effective state justice networks, increase the efficiency of traditional service models, enable self-help and promote innovation in service delivery. Pro Bono Net’s www.lawhelpinteractive.org, and the Center for Access to Justice and Technology’s A2J Author, www.a2jauthor.org, are making it easier for people to produce their own pleadings (on the model of Turbotax software). Legal Zoom, Rocket Lawyer, We the People and other for-profit companies are selling self-help services, including on-line services. Research initiatives are needed to evaluate the various new programs, and comparisons between court-provided services, non-profit provided services, and for-profit services have generally not yet been carried out to gauge relative value. See generally, <http://www.theatlantic.com/business/archive/2014/05/is-there-such-a-thing-as-an-affordable-lawyer/371746/>.

II. **Neutral Decisionmakers**

9. *Fair Courts Movement* – In *Goldberg v. Kelly*, 397 U.S. 234 (1970), the Supreme Court observed that a neutral decisionmaker is an element of due process and of access to justice. The “fair courts movement” promotes the integrity of judicial selection processes, generally favoring appointment over election, but working in all selection settings to preserve judicial neutrality and to reduce the influence of money on judges. The fair courts movement supports improved recusal mechanisms, greater diversity on the bench, and ideological independence. See, for example, Justice at Stake, www.justiceatstake.org; Brennan Center for Justice, [https://www.brennancenter.org/issues/fair-courts](http://www.brennancenter.org/issues/fair-courts); Lambda, <http://www.lambdalegal.org/issues/fair-courts-project>. Some advocates have questioned models that reduce fairness and/or the perception of fairness of judges, such as judicial imposition and collection of excessive court fees. <http://www.brennancenter.org/criminal-justice-debt>.

III. **Indexing, Research & the Global Access to Justice Movement**

10. *Indexing, Including Post-2015 Sustainable Development Goal 16, and the Global Movement for Access to Justice* – The civil legal aid movement to increase access to justice in the U.S. is

increasingly intertwined with, and advanced by, the global access to justice movement, which creates opportunities for research, broadened alliances, and innovations in advocacy:

- *Indexing* - In the U.S., the Justice Index, www.justiceindex.org, created by the National Center for Access to Justice, www.ncforaj.org, is using indicators and data to track and promote the adoption of best practices for access to justice in the states, creating incentives for state officials to adopt those practices, and providing a platform for officials and advocates to urge their adoption. United Nations “Global Goal 16” calls on all countries, including the United States, to use indexing and data to measure and expand access to justice. See <http://www.globalgoals.org/global-goals/peace-and-justice/> and http://www.un.org/disabilities/documents/reports/SG_Synthesis_Report_Road_to_Dignity_by_2030.pdf. The World Justice Project’s Rule of Law Index tracks access to justice in major cities in nations around the world. <http://worldjusticeproject.org/rule-of-law-index>.
- *Networking* - The International Legal Aid Group (ILAG) is a network of legal aid specialists including chief executives and managers from legal aid commissions, high ranking civil servants and leading academics in over two dozen countries, with the mission of improving evidence-based policy-making in the field of poverty legal services through discussion and dialogue relating to international developments in policy and research. <http://www.internationallegalaidgroup.org>. The Organization for Economic Co-operation and Development (OECD) is also supporting the exchange of “good practices” among its member countries and partners. <http://www.oecd.org/gov/oecd-expert-roundtable-equal-access-to-justice.htm>. Namati is working globally to promote legal empowerment of disenfranchised communities by increasing access to justice. www.namati.org.
- *Human Rights* - The Columbia Law School Human Rights Institute’s Human Rights in the US Project builds the capacity of U.S. lawyers, policymakers and advocates to incorporate a human rights framework into domestic social justice advocacy efforts, including by building networks, facilitating trainings, conducting educational outreach, and promoting coordination among progressive public policy and advocacy groups. <http://web.law.columbia.edu/human-rights-institute/human-rights-us>. See also, the Human Rights at Home blog, http://lawprofessors.typepad.com/human_rights/.

11. *Research* – Research on access to justice is supported and carried out in diverse settings, including universities, law schools, government agencies and institutes, the American Bar Foundation, <http://www.americanbarfoundation.org/faculty/profile/31>, Legal Services Corporation (www.lsc.gov), National Center for State Courts, www.ncsc.org, the National Coalition for a Civil Right to Counsel (www.civilrighttocounsel.org) the National Center for Access to Justice (www.ncforaj.org), the Self Represented Litigants Network (www.srln.org). The National Legal Aid and Defender Association (NLADA) maintains a web site posting civil justice system research studies, <http://legalaidresearch.org>. The National Science Foundation is funding new research on the civil justice system. <http://www.nsf.gov/pubs/2013/nsf13076/nsf13076.jsp>. The Office for Access to Justice in the U.S. Department of Justice has convened researchers in the field. <http://www.justice.gov/atj>.

IV. Communication

12. *Communication* – Voices for Civil Justice, as the national communications hub for civil legal aid, pursues the mission of raising visibility in the media of the vital role of civil legal aid in ensuring fairness for all in the justice system. With its extensive, nationwide network of spokespersons and experts, it brings to media outlets the fresh, untold stories that convey what civil legal aid is and why it matters. Its searchable database of news stories, broadcast clips, op-eds, and letters to the editor is a rich resource for advocates seeking to make the case – on social media platforms as well as in the traditional media – that fulfilling America’s promise of justice *for all* requires increased funding for this under-resourced sector. <http://voicesforciviljustice.org/>. Richard Zorza’s Access to Justice Blog, www.accesstojustice.net, is another source of information to stakeholders and the public, as is NCAJ’s blog, at www.ncforaj.org, and the ABA’s access to justice newsletter, at http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/news.html. Court systems and civil legal aid programs increasingly are also building their own communications capacities and functions.

V. Coordination and Funding

13. *LSC, Access to Justice Commissions, Interest on Lawyers Accounts & Other Initiatives that Coordinate and Help to Fund Civil Legal Aid* – In virtually all settings, civil legal aid programs lack resources to respond adequately to people’s needs. LSC remains the largest single source of support for civil legal aid in the United States, distributing federal dollars to locally incorporated LSC-recipient programs across the country. www.lsc.gov. Access to Justice Commissions, now present in 37 states, carry out multiple functions, including supporting fundraising. http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html. Interest on Lawyers Trust Accounts, are an important source of revenue. <http://www.iolta.org/about-naip>. “Raising the Bar” Campaigns increase law firm support. <http://www.dcaccesstojustice.org/raising-the-bar>. State and local government, and private philanthropy, provide new revenue for civil legal aid, including filing fees, and cy pres awards. See http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_slaid_atj_state_rule_policy_matrix_sept_2014.authcheckdam.pdf. Other national organizations (including, for example, the ABA, NCAJ, NCSC, NLADA, VCJ) are helping to lead and support civil legal aid initiatives.

14. *Federal Leadership Initiatives, including the Office for Access to Justice, the Legal Aid Interagency Roundtable (LAIR), and the Access to Civil Legal Services Caucus* – US DOJ’s Office for Access to Justice conceived of and is staffing “LAIR”, <http://www.justice.gov/atj/legalaid>, now formally established by Presidential Memo, <https://www.whitehouse.gov/the-press-office/2015/09/24/presidential-memorandum-establishment-white-house-legal-aid-interagency>. LAIR recognizes that federal agencies can be effective in accomplishing their goals by assuring that the people they are trying to help have

access to legal solutions. LAIR includes a process of identifying federal agencies that have grantmaking capacity and a mission-driven interest in supporting civil legal aid services. President Obama formally charged LAIR with responsibility for implementing in the US the UN's Post-2015 Sustainable Development Goals, including Goal 16, which calls on all countries to assure access to justice. <https://www.whitehouse.gov/the-press-office/2015/09/24/presidential-memorandum-establishment-white-house-legal-aid-interagency>. LAIR is one of many initiatives of the *Office for Access to Justice*, which “works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers.” <http://www.justice.gov/atj>. In December 2015, Congressman Joe Kennedy III (D-MA4) and Congresswoman Susan Brooks (R-IN5) launched the Access to Civil Legal Services Caucus which will focus on expanding access to legal representation for low-income families. <https://kennedy.house.gov/media/press-releases/kennedy-brooks-launch-congressional-access-to-civil-legal-services-caucus>.

15. *Philanthropy & Civil Legal Aid* – Charitable foundations recognize (in much the same way that the UN has recognized in Global Goal 16 and that the federal government has recognized in the LAIR presidential initiative) that they can be effective in accomplishing anti-poverty goals when civil legal aid is made available to the people they are trying to help. Civil legal aid can help to keep families together, prevent domestic violence, reduce substance abuse problems, preserve housing, resolve problems of hunger, secure inheritance rights, promote health care, and reduce contacts with the criminal justice system. In *Natural Allies: Philanthropy and Civil Legal Aid*, the Public Welfare Foundation has explained that “Investing to help low-income people solve their legal problems is smart, results-oriented philanthropy.” <http://www.publicwelfare.org/wp-content/uploads/2014/10/NaturalAllies.pdf>.

This Outline is a Project of the National Center for Access to Justice.

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