

# **AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE**

## **Final Report on the Implications of the Comprehensive Legal Needs Study**

### ***Forward & Executive Summary***

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# FOREWORD

In 1989 the ABA's Consortium on Legal Services and the Public and the Law School of Tulane University held a "National Conference on Access to Justice in the 1990s." Among the more important recommendations of the conferees was that "a sophisticated national survey-one that accurately reflects the complexity of legal needs and the levels of intervention necessary-is essential to developing sound policies and resource allocation principles, as well as to planning and reevaluating the current delivery systems for low- and moderate-income clients."

That recommendation resulted in the Comprehensive Legal Needs Study (CLNS). Its purposes were to learn about the legal needs of Americans, what they do about those needs and how satisfied they are with the outcomes. The study was based on more than 3,000 interviews conducted with low- and moderate-income Americans during the spring and summer of 1993.

The study's findings sounded an alarm that our civil justice system is fundamentally disconnected from the lives of millions of Americans, a conclusion reinforced by the current legal services funding crisis. A policy development committee with wide-ranging expertise took on the task of setting priorities among many possible policy initiatives for the legal profession to consider in its quest to improve access to justice for low- and moderate-income Americans.

*Agenda for Access* is the final report of that effort. It suggests methods by which our justice system can both use existing resources more effectively and be simplified to improve access, while at the same time acknowledging that additional resources will be required. It is our hope that the ideas contained in this report will serve as a springboard for experimentation with creative alternatives that hold promise for improving access.

*Agenda for Access* is the product of the work of many dedicated volunteers. We are indebted to our colleagues who persisted in the effort to sift through the study's data and thoughtfully consider steps that might be taken to ensure access to justice for all citizens.

I am personally grateful to my family and my law firm for their encouragement and support of my participation in this important effort.

Llewelyn G. Pritchard, Chair  
Comprehensive Legal Needs  
Study Advisory Group

Seattle, Washington  
May 1996

# Executive Summary

## ***Background***

*Agenda for Access: The American People and Civil Justice* builds on earlier reports on the American Bar Association's Comprehensive Legal Needs Study (CLNS). The CLNS is the first national survey in more than 20 years to explore the number and kinds of legal problems the American people face and what they do about them.

Given the amount of information gathered in the CLNS, the ABA wanted to examine fully the survey's findings to understand the larger messages of the study. Further analyses of the database were conducted. Public hearings were held about the meaning of the study's findings.

Drawing on this material, the Policy Development Committee of the CLNS and the Consortium on Legal Services and the Public have considered both the implications of the Comprehensive Legal Needs Study and what steps the legal profession should take to make the most of this important source of fresh information. Their work is the subject of this report.

## ***Major Findings and Conclusions***

Five findings of the CLNS are of particular consequence:

1. **Most people facing situations that have a legal dimension do not turn to the civil justice system for help.**
  - Each year about half of all low- and moderate-income households in the United States face a serious situation that raises a civil legal issue.
  - But neither low-income nor moderate-income households bring the overwhelming proportion of such situations to any part of the justice system.
  - Most often the reasons people give for staying away from the justice system are doubts that it would help, concern about cost, a sense the problem was not serious enough, or a desire to handle matters on their own.
2. **Even counting the efforts many people make to handle problems on their own or to get help from outside the legal system, substantial proportions of low- and moderate-income households still may need legal help. Meanwhile, over the last twenty years, legal services to individuals and households have declined as a proportion of all legal services provided by the civil justice system.**
3. **The kinds of legal problems reported by low- and moderate-income**

**households are more alike than different. They are about bread and butter issues that come up in everyday life.**

- The legal needs of low-income households cannot be seen as distinct from those of moderate-income households.
- Most common among both low- and moderate-income households are personal financial and consumer problems, housing and property issues, family and domestic matters, and community concerns.

**4. Especially disadvantaged when it comes to needed legal help are households just above and just below the line that determines eligibility for publicly-funded legal services.**

- Households with incomes just below the line that qualifies them for publicly-funded legal services report more legal needs than those with even lower incomes. In particular, they face issues of economic advancement including personal finances, housing and property, and employment. Timely legal assistance can increase their chances of becoming self-sufficient.
- Households with incomes just above the eligibility line for publicly-funded legal services are uniquely disadvantaged. They do not qualify for subsidized legal services and yet seldom are able to afford help from the private bar.

**5. Even with their combined efforts, the private bar and publicly-funded legal services programs now serve only a small portion of legal needs reported by low-income households.**

### ***The Challenge***

Taken together, these findings and conclusions sound an alarm that the civil justice system of the United States is fundamentally disconnected from the lives of millions of Americans. It must do more to address the personal legal needs of the American people if the nation is to make good on its commitment to equal justice. More specifically:

- The justice system must use its existing resources more effectively.
- Additional resources will be required if people are to have equal access to justice, especially low-income households, many of which now are effectively shut out of the justice system.
- Greater simplicity in the civil justice system is needed for people trying to resolve certain matters on their own either within the justice system or outside it.

### ***The Agenda for Access***

Since the CLNS is based on the reports of actual households and their experience with legal problems, it provides a unique vantage point from which to consider initiatives and ideas about ways to improve access to justice.

Though some of these initiatives may be familiar, the Comprehensive Legal Needs Study brings new authority to them and underscores their urgency. The study also shows clearly where new efforts are needed.

Eleven steps have been identified that will make the civil justice system more responsive to the public as it wrestles with legal problems. These steps constitute an "Agenda for Access."

- 1. Increase the flexibility of the civil justice system, thereby expanding the options available to people seeking help with a legal problem.**
  - Encourage the delivery of legal services on a task-by-task basis so that informed consumers can make choices about the services to be provided.
  - Find new ways for lawyers to work with nonlegal third parties and expand roles for paralegals.
  - Make the courts more approachable and simplify forms and procedures.
  - Remove selected issues from the courts entirely and allow them to be handled through administrative procedures or directly by the involved parties.
  - Increase the use of alternative dispute resolution.
  - Experiment with alternative fee arrangements.
- 2. Develop better ways for people to obtain information about their options when facing a legal situation. Ensure that people are able to get referrals to appropriate resources.**
  - Support community-wide centers for information and referral to all types of legal and social services.
  - Use new information technologies wherever possible.
  - Provide easy-to-understand information for the public at courthouses, libraries, and municipal buildings.
- 3. Make the practice of personal services law more attractive within the legal profession.**
  - Inform lawyers of areas of law where people most often experience legal problems, especially those not being served by the justice system.
  - Encourage mentoring of attorneys new to personal services law.
  - Develop new approaches to billing for value rather than time.
- 4. Increase *pro bono* services by the private bar to low-income individuals and households.**
  - Find ways for private bar and legal services lawyers to "partner" in providing services and draw more effectively on the specialized competence of members of the private bar.
  - Develop roles for private attorneys in public education and

preventive law programs.

- Encourage private lawyers to assist nonprofit and community organizations.
- Expand the use of mechanisms, such as bar association *pro bono* clinics, that use volunteer time most efficiently.
- Encourage law firms to count *pro bono* time as billable, thereby making contribution of services more attractive to private lawyers who must meet billable hour requirements in order to advance professionally.

**5. Increase the availability of affordable legal services to less affluent moderate-income individuals and households.**

- Experiment with sliding fees and services to groups at discounted rates.
- Expand privately subsidized legal services programs.

**6. Affirm the crucial role of public funding for legal services that provide access to justice for low-income persons.**

- Call attention to the scale of unmet legal needs.
- Seek broad recognition that the private bar and legal services programs together cannot fill the need given current resources.
- Highlight the diversity of the legal problems of low-income households and the potential importance of legal assistance to a household's self-sufficiency.

**7. Encourage legal services programs serving low-income persons to retain as much flexibility as possible in deciding which cases to accept.**

- Programs should seek out and use empirical information in setting program priorities.
- To avoid slighting the legal problems of those just below 125 percent of poverty, legal services programs should avoid use of an eligibility threshold lower than 125 percent of poverty when deciding which cases to take on.

**8. Expand the tracking and dissemination of information about innovations in the delivery of legal services.**

- Expand efforts to spread the word about innovations.
- Make it possible for people knowledgeable about successful programs to provide technical assistance as other localities attempt to establish comparable programs.

**9. Evaluate programs that may be strong candidates for adoption by others.**

- Assess aspects of on-going programs that might be tried in new settings.
- Build into new programs the capacity to evaluate their

effectiveness.

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- 10. **Draw on the experience with the Comprehensive Legal Needs Study to improve the methodology of legal needs surveys and identify important topics for further study.**
  - Ensure it is not another 20 years until the next national legal needs study is conducted.
  - Think through related research bearing on issues of access to justice.
- 11. **The American Bar Association should take concrete steps to implement this Agenda and work in concert with others outside the Association to improve access to justice.**

### ***About the Comprehensive Legal Needs Study***

The Comprehensive Legal Needs Study is based on more than 3,000 interviews conducted with low- and moderate-income American households during the spring and summer of 1993.

The dividing line between the low- and moderate-income samples was eligibility for publicly-funded legal services. Excluded from the survey were households in the top fifth of the income distribution, that is, households with incomes of \$60,000 or more.

Respondents were asked about sets of circumstances anyone in their household may have experienced during 1992. A panel of attorneys ensured that the situations described to respondents contained a legal issue and met a threshold of seriousness. When respondents reported such circumstances, follow-up questions asked what the household did (or did not do) about the situation and what contacts, if any, it had with the civil justice system.