

State Legal Needs Studies Point to “Justice Gap”

Recent studies validate findings of 1993 ABA study regarding lack of access by low-income people

by Robert Echols

Recently completed state legal needs studies in Illinois and Montana have joined the growing collection of studies conducted since 2000. Other states that have completed studies are Oregon (2000), Vermont (2001), New Jersey (2002), Connecticut (2003), Massachusetts (2003), Washington (2003), and Tennessee (2004).

All nine of these state studies were based on the methodology of the Comprehensive Legal Needs Study conducted by the ABA in 1993 (released in 1994), which remains the most recent *national* study of the legal needs of low-income Americans.

Among the major findings of the ABA study were the following:

- Nationally, on average, low-income households experience approximately one legal need per year
- The combined efforts of the private bar and publicly funded legal services providers serve only a small portion of these legal needs; help was received from a legal aid provider or the private bar for only 21 percent of all problems identified

Analysis of the nine state studies indicates that these findings are still valid today, and if anything, they actually under-represent the level of need:

- All nine state studies found levels of legal need equal to or higher than the level in the ABA study. The state studies found a per-household average ranging up to more than three legal needs per year.

- Like the ABA study, all nine state studies found that the combined efforts of the private bar and publicly-funded legal services providers serve only a small portion of legal needs reported by low-income households. The comparable findings in the recent state studies were even lower than those in the ABA study.

Methodology

The state studies all used a survey questionnaire based on the questionnaire used in the ABA study. Although each state modified the questionnaire somewhat to reflect local circumstances and concerns, the general approach used and the majority of the questions asked were the same as in the ABA study.

The ABA study was based on roughly 1800 random telephone interviews with low-income Americans conducted during the spring and summer of 1993. (For

comparative purposes, a group of moderate-income people was surveyed as well; however, their responses were not included in the findings discussed here.) Respondents were asked about a set of circumstances that anyone in their household might have experienced during the preceding year. A panel of attorneys ensured that the situations described to the respondents contained a legal issue and met a threshold of seriousness. When respondents reported such circumstances, follow-up questions asked what the house-hold did or did not do about the situation and what contacts, if any, it had with the civil justice system.

Overall level of need

Eight of the nine state studies show a level of need substantially higher than the ABA study. One (Vermont) shows a level roughly equal to that in the ABA study.

Table 1 (on left) sets out the findings of ABA study and the nine recent state studies on the average level of need reported by the respondents to the survey.

Types of problems

The ABA study found that the problems facing respondents most frequently involved housing (such as evictions, foreclosure, and unsafe housing conditions) and personal finance and consumer issues (such as debt collection, bankruptcy, and consumer scams), followed by regional and community problems (such as inadequate police and municipal services) and family matters (such as

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Table 1: Legal Needs

Study	Average number of legal needs in preceding year per low-income household
ABA	1.1
Oregon	3.2
Vermont	1.1
Connecticut	2.7
Washington	2.9
Massachusetts	2.4
Tennessee	3.3
Illinois	1.7
Montana	3.5
	Average number of new legal needs in preceding year per low-income individual
New Jersey	1.8

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divorce, domestic violence, child custody and support). Other major problems areas were employment-related issues, personal injury, government benefits, and health care. The recent state studies found problems falling into the same categories, although the reported frequency of the different problem areas varied somewhat from state to state.

Legal help received/sought

Like the ABA study, all nine studies show that only a small portion of the legal needs identified in the survey were met by the private bar or legal aid programs. The state studies report this information in different ways. Five studies reported the percentage of problems for which legal help was received, as the ABA study did. The New Jersey study reports both the percentage of individual respondents with a problem who received

legal help, and the percentage of problems for which legal help was sought. The other three studies report only whether legal aid was sought.

There are several other differences among the studies in how this issue is defined (for example, whether “legal help” is limited to help from a lawyer, or also includes others such as court personnel). Consequently, not all these findings can be compared directly to one another in strictly quantitative terms. However, meaningful comparisons can be made regarding the relative share of problems for which legal help was sought or received. In all nine studies, this figure was very low in relation to the overall level of need. **Table 2 (below)** sets out these findings, using the terminology employed in each respective report.

Why help not sought

The ABA study also explored the reasons why so many households with a legal need did not seek legal

help, but instead either did nothing or sought to resolve the problem on their own. The predominant reasons given by respondents were notions that getting a lawyer would not help and that it would cost too much. A majority of respondents did not know about the availability of free legal assistance or understand that they were eligible.

Seven of the state studies asked people who had experienced a legal problem but who had not sought legal help to give their reasons for not doing so. These studies confirm that a large percentage of low-income people with a legal problem are not aware that their problem has a legal dimension and potential solution. As in the ABA study, many respond that “there was nothing to be done” or that “it was not a legal problem, just the way things are.”

In addition, many respondents stated that they were unable to afford a lawyer. Most of the studies also asked the respondent whether

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Table 2: Legal Help Received/Sought as a Percentage of Legal Need

Study	Received legal help (by percentage of problems)
ABA	21 percent of problems, help received from private bar or legal aid attorney
Oregon	18.1 percent of problems, help received from private bar or legal aid attorney
Washington	12 percent of problems, help received from private or legal aid attorney
Montana	16.4 percent of problems, help received from private bar or legal aid attorney
Vermont	9 percent of problems, help received from private bar, legal aid, courts, or other legal source
Illinois	16.4 percent of problems, legal assistance received
	Received legal help (by percentage of individuals with problems)
New Jersey	16 percent of individuals with problems legal help received legal help
	Sought legal help (by percentage of problems)
Connecticut	10 percent of problems, help sought from private bar, legal aid, family/friend, other
New Jersey	11 percent of problems, legal help sought
	Sought legal help (by percentage of households with problems)
Massachusetts	16.6 percent of households (no more than; could be less) with a legal need sought legal help from private bar or legal aid
Tennessee	29.2 percent of households that identified their biggest legal problem sought legal help from private bar or legal aid

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they knew of a place that provides free legal services and whether they knew they would be eligible for free services. All of these states found low awareness among respondents about their eligibility for free legal assistance. The lowest percentages of respondents who knew about free legal aid were in New Jersey (26 percent) Tennessee (21 percent), and Illinois (23 percent).

Importance of needs

The ABA study did not ask respondents to characterize the importance of the particular problems they experienced. In contrast, several of the recent state studies did ask respondents to rank the importance of the legal needs they experienced in some way and/or to identify those needs for which they thought they needed a lawyer's help. Although the results are not all directly comparable to one another (because the questions asked differed from state to state), these studies indicate that

respondents considered the legal needs covered by these questionnaires to be of real importance:

- Montana: Respondents characterized 53 percent of the problems identified as "extremely important" and 91 percent as "important"
- New Jersey: 84 percent of people with a legal problem thought the problem was highly serious and important, and 52 percent thought that they needed a lawyer to help with the problem
- Washington: Respondents characterized 56 percent of their legal problems as "extremely important" and 93 percent as "important"¹

These findings indicate that for most of those with legal needs who did not seek help, the reason was *not* that they regarded the problem as unimportant. Rather, many did not understand that their problem had a potential legal solution, and many others did not know that they were eligible for free legal assistance.

Conclusion

The nine state legal needs studies

released 2000-2005 indicate that the findings of the 1993 ABA study concerning the gap between the legal needs experienced by low-income people and the services they receive from private attorneys and legal aid programs remain valid today. Indeed, the state studies suggest that the rate of legal problems and the size of the "justice gap" are actually *larger* than found by the ABA study.

Endnotes

¹ In addition, the report of the Washington State Supreme Court Task Force on Civil Equal Justice Funding, based on data from the study, concludes that "140,000 low-income households will experience a legal problem each year that they understand has a legal dimension and requires some level of assistance." This is roughly 50 percent of the total number of households with legal problems.

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Mollohan of West Virginia is the ranking member. In the Senate, the subcommittee with jurisdiction over funding for LSC will be the

Subcommittee on Commerce, Justice, and Science, which has gained jurisdiction over NASA and other science programs. It is chaired by Sen. Richard Shelby of Alabama, with Sen. Barbara Mikulski of Maryland serving as

the ranking member. The impact of these changes is yet to be seen, but some observers have expressed concerns that NASA will receive a disproportionate share of attention and funding under this arrangement.

2005 Harrison Tweed Award Winners Announced

2005 ABA/NLADA Harrison Tweed Award recipients will be the Cleveland (Ohio) Bar Association, the Lafayette Parish Bar Association and the New York State Bar Association. The Cleveland Bar Association is being recognized for its multi-faceted approach to nurturing greater pro bono contributions from lawyers in that city. The Lafayette Parish Bar Association in Louisiana will receive the award for its exceptional

fundraising efforts on behalf of the legal aid program that serves the parish. The New York State Bar Association will be recognized for its work in developing comprehensive standards for the performance of indigent defense counsel in the state. Each honoree will receive the award at the annual luncheon of the National Conference of Bar Presidents during the 2005 ABA Annual Meeting in Chicago.