



**DOCUMENTING
THE JUSTICE GAP
IN MICHIGAN**

*Prepared by
the State Bar of Michigan in Collaboration with
Michigan's Legal Services Corporation Funded Providers*

Spring 2006

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I. Introduction

Since the creation of the Legal Services Corporation in 1974, three national studies have demonstrated that the poor are seriously underrepresented in their civil legal needs. The degree of unmet need in Michigan has never specifically been documented through a rigorous, social science methodology, but comparisons to studies throughout the country, as well as figures showing the tremendous disparity between the number of lawyers available for the general population and the lawyers available for the poor, have provided some indication that there is indeed an enormous gap here.

With the publication of results of the third national study concluded in 2005 and the availability of Michigan information used in that study, Michigan's justice gap can be measured more accurately. The assessment leads to the conclusion that the civil justice gap in Michigan is still an extremely serious matter that calls for a renewed commitment to broad resource development for Michigan civil legal aid providers.

II. National Reports

The first significant report in 1980 found that over 40 percent of the nation's poor lived in areas not served by legal services programs. Because of this, LSC identified a goal of providing at least a minimum level of access to legal aid in every county in the nation. "Minimum access" funding would not be sufficient of itself, but would be a preliminary foundation upon which other resources could be built. The minimum access funding was achieved with a FY 1981 appropriation of \$321,300,000.

In 1994, the American Bar Association released the results of the Comprehensive Legal Needs Study, conducted through a well-established, rigorous social science methodology. That study documented the existence of a major gap between the civil legal needs of low-income people and the legal help they received. Among its findings were the following:

- Nationally, on the average, low-income households experienced approximately one civil legal need per year.
- Only a small portion of these legal needs results in legal help of any type. Help was received from a legal aid provider or the private bar for roughly one in five of all problems identified.

In August 2005, the Legal Services Corporation issued *Documenting the Justice Gap in America – The Current Unmet Civil Legal Needs of Low-Income Americans*. Accompanied by an overview and a press release, the 33-page report offered current data to show that the justice gap identified in the 1994 American Bar Association study continues at the same – or higher – order of magnitude, with

¹ The information in this document is largely an abridged version of the LSC "Documenting the Justice Gap in America" report issued in September 2005. Michigan information was gathered separately and added to the national report.

help from legal aid providers or the private bar available for only one in five problems identified. Not even 80 percent of the civil legal needs of the poor are being met.

The 2005 report was based on three separate methodologies: 1) information collected by LSC grantees over a two-month period in 2005 to document the clients that came to their offices that the programs could not serve due to lack of resources; 2) an analysis of nine studies undertaken over the last five years in individual states about the civil legal problems faced by their low-income residents; and 3) the total number of legal aid lawyers compared to the total number of attorneys providing civil legal assistance to the general population in the country.

Notable findings in the report show that since the federal minimum access funding level of \$321,300,000 provided by LSC in 1981, ***if adjusted for inflation in 2005 dollars, the federal minimum access funding should be \$687,063,000 – more than twice the current appropriation level.*** Also noted is the fact that the poverty population has increased 14 percent since the 1980 appropriation. Much has changed in the delivery of civil legal services in the last decade, including the fact that state bars and state courts have become increasingly involved in supporting legal aid with both financial and other resources. In fact, contributions from state government, private bar and other partners have increased by 3 1/2 times in the same time period.

A. Unable to Serve Report

Despite the remarkable increase in support from non-federal sources, the national average shows that ***for every client served nationally in 2005 by an LSC-funded program, at least one person who sought help was turned down because of insufficient resources!*** *Documenting the Justice Gap* also notes that the data is under-inclusive because it was collected from LSC programs only; it includes people who received some but not all services needed; and it does not count people who didn't ask for help because they don't recognize their situation as a legal problem, don't know about legal aid, or have other barriers to requesting service.

How do Michigan's low-income citizens fare in the justice gap? In January 2006, Michigan's LSC-funded programs voluntarily provided their "unable to serve" reports to the Justice Initiatives Division of the State Bar of Michigan. Using the same method to calculate the unmet needs in Michigan, the figures show that ***for every four persons served in Michigan in 2005, three are turned away because of insufficient resources. Every day, 100 people with significant legal needs are denied civil legal services because of the lack of resources. The lack of legal services is particularly acute for those with housing problems, where nearly half of those who need help with eviction and foreclosure defenses, or help with obtaining repairs required by law, are denied legal services. In an even more egregious situation, only 25 percent of those with income problems are able to receive legal help, meaning that poor people are denied food stamps, health care, and cash disability and other income benefits without sufficient legal recourse.*** These figures do not even count poor persons who did not seek legal help either because they did not recognize their situation as one open to a legal solution, or were not aware that their local provider may handle that kind of case.

Michigan's legal services providers should be credited for the overall higher levels of service they are able to provide as compared to national figures. This may be attributed in

part to the service delivery innovations that came from a strong state planning process that improved technology, strengthened pro bono services, coordinated and regionally centralized intake services, and secured funding for a continued state support system. The strong delivery system may also be due to the fact that Michigan has been successful in expanding its non-federal funding through aggressive state, local, foundation and private funding efforts like that obtained through the Access to Justice Campaign. The Campaign supports over 40 civil legal service providers, only 6 of which receive federal LSC funding. Despite the significant expansion of non-LSC programs in the last several decades, the majority of legal aid lawyers still work in LSC-funded programs (nationally 58 percent), with 6,581 legal aid lawyers in the country.

B. 2000-2005 Legal Needs Studies from Nine States

Over the past five years, studies in nine states have examined the kinds of legal problems experienced by low-income residents and what they do about them: Oregon (2000), Vermont (2001), New Jersey (2002), Connecticut (2003), Massachusetts (2003), Washington (2003), Tennessee (2004), Illinois (2005), and Montana (2005). All studies were conducted with precise social science survey standards. The methodologies of the studies were compared to one another to determine the extent to which it is possible to draw nationally-applicable conclusions from them. The findings were also compared to those in the 1994 ABA study to assess the continuing validity of the 1994 findings. The consistency of findings from state to state reinforces their validity and indicates that they are likely to be predictive of needs at the national level.

Key points of comparison are:

- The nine state studies found that low-income households experience a per-household average of legal needs ranging up to more than three legal needs per year.
- All nine recent state studies found that only a very small percentage of the legal problems experienced by low-income people (fewer than one in five) is addressed with the assistance of a private or legal aid lawyer.
- Taken together, the recent state studies indicate that a large percentage of low-income people experiencing a problem with a legal dimension do not understand that there may be a legal solution.
- The recent state studies show that a majority of low-income people either do not know about the availability of free legal services or do not understand that they are financially eligible for them.
- Finally, analysis of these studies shows that even if the problems considered are limited to those considered to be “very important” by the household experiencing them and understood by the household to call for legal help, a large majority of the problems are not addressed with the help of a lawyer.

The nine recent state studies confirm that less than 20 percent of the legal needs of low-income Americans were being met. Eight of the nine studies found an unmet legal need greater than the 80 percent figure determined by the ABA in their 1994 national survey.

C. Attorneys per capita

The national study counted all legal aid lawyers (not just LSC-funded lawyers); used 125% of federal poverty guidelines as the definition of “low-income;” excluded judges,

government, legal aid/public defense, lawyers in education, retired and inactive lawyers from the total count of 765,000 lawyers in the country and estimated that 70 percent of those – 536,000 – provide personal civil legal services. The national ratio is one legal aid lawyer for 6,861 low-income persons and one private civil lawyer for 525 non-low-income people in need. The 1/525 ratio is the response of the market to the personal civil legal needs of the public. (1/6,861; 1/525)

Reducing the 31,117 lawyers practicing in Michigan in 2004 by 30 percent to replicate the national study yields 21,770 lawyers for Michigan's 9,938,444 residents, or 1 lawyer for every 456 in the general population. In 2004, Michigan State Bar Foundation records show that 189 attorneys were employed by its grantees. It is estimated that an additional 33 lawyers were employed at the ATJ programs that are not Foundation grantees. The 222 total "legal aid" lawyers in Michigan were available to provide services for 1,358,398 people living at or below 125% of the federal poverty level, showing that there was 1 legal aid lawyer for every 6,119 low-income people in Michigan. (1/6,119; 1/456)

The legal needs of the poor do not differ substantially from those of middle income, but the resources available represent only a small fraction of those available to the general public. Nationally, there are more than ten times the number of private attorneys providing personal civil legal assistance to the general public as there are legal aid attorneys serving the poor. In Michigan, that figure is worse, with nearly fifteen times the number of private attorneys providing legal help to the general public as legal aid lawyers for the poor.

III. Conclusion

Michigan programs and volunteer lawyers have done an outstanding job in using their limited resources to serve people in need. There are still, however, some difficult conclusions to be reached. There is an urgent justice gap in the United States and a similarly compelling gap in Michigan.

We have the duty to communicate to our Congressional representatives what is required of LSC funding levels to ensure that economical and effective legal assistance is provided and there is necessary access to civil legal assistance. This requires a partnership, with the government bearing "the laboring oar in this effort, consistent with its role in maintaining the formal civil justice system and providing an orderly forum for the resolution of disputes and an avenue to equal justice for all."

The federal baseline share must be at least five times greater than it is now, or \$1.6 billion. Just as the national study concluded, it will take five times the current capacity of the Michigan system in order to provide necessary access to civil legal services. This is certainly a call to continue work to increase state, local, foundation, and private support for civil legal service providers in Michigan as well.