

## EXECUTIVE SUMMARY

In 2005 a broad access to justice agenda is stalled. Federal funding for the Legal Services Corporation is stagnant. While funding has increased at the state and local levels, there is little coordination of resources and growing disparity among states. The reality now is much the same as it was when the federal legal services program was founded forty years ago: the vast majority of low- and moderate-income households make do without decent quality legal advice and assistance when they need it.

The Bellow-Sacks Access to Civil Legal Services Project seeks to change this stark reality by renewing an agenda to make legal assistance widely and effectively available for all whom the market does not serve.

We do not suggest that a full-access system should subsidize assistance on every matter. However, a full-access system should, at a minimum, guarantee all Americans access to legal advice and assistance equivalent to what a person of reasonable means would purchase to secure legal benefits and entitlements or to protect and enhance relationships, assets and income.

To achieve full access, we must focus attention and efforts on practical matters of institution building, strong management and outcome effectiveness. We must also challenge the longstanding assumptions about universal access that have created obstacles to innovation and reform. For example, we must let go of notions that universal access is compromised if cost-constrained, no matter how large the resource base, or that expanding access is exclusively about increasing advocacy services.

Over the last four years, Project staff and fellows assessed the current

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status of legal services in the United States. We also investigated service innovations and best practices from the bench, the bar, the academy and legal aid programs, which are compiled in the paper *Project Findings: The Emerging Mixed-Model Delivery System*. In the process, we discovered that organizations, institutions and individuals across the country are working energetically and imaginatively to develop new approaches to improve access to legal advice and assistance.

In this paper we recommend a broad policy agenda that draws on innovations in legal services underway in the United States and in countries with legal systems and populations similar to our own. We also argue that these proposals meet the long-term interests of the bench, the bar, law schools, funders, consumers and existing and new providers of legal services. Finally, we recommend approaches for testing and refining the proposed full-access delivery system.

### **A Policy Framework for Full Access to Legal Services**

Achieving a full-access legal services system requires policies that are comprehensive, practical, flexible and client-centered. To help identify the scope and function of a full-access delivery system, we propose the following foundational principles. These policies emphasize the need to bring the increasingly diverse funder and private sectors into a cohesive system that assures accountability and quality while addressing the significant challenge of managing a complex delivery system.

#### *Scope and Coverage of a Full-Access Legal Services System*

- An expanded delivery system should serve moderate- as well as low-income people.
- The types of legal needs for which assistance will be provided should be defined as a matter of policy. Specific service priorities, within broad categories, should be determined locally.

- Consumers will be entitled to advice and assistance, but an attorney's services should be available only when lawyers provide the highest-quality and most cost-effective response.

#### *Consumer Assurances and Responsibilities*

- Consumers should have a choice of providers appropriate to meet covered needs.
- An expanded delivery system should be consumer-driven, client-centered and holistic.
- An expanded delivery system should protect representation of unpopular claims and insulate funders from the appearance of interference with service to individual clients.
- Consumers should be responsible for copayments for many services as well as reimbursement of out-of-pocket costs related to service.

#### *Provider Diversity and Innovation*

- Courts and administrative agencies should reform their rules and processes and provide information and assistance in order to reduce, wherever possible, the need for full-service attorneys.
- The private bar should be the first resource for low- and moderate-income people with legal needs.
- Private attorneys should have opportunities to provide service, on a paid basis, when they are a cost-effective and high-quality option.
- Paralegals should provide service in all areas permitted under existing rules. Policymakers and bar leaders should support expanded paralegal practice with appropriate quality assurances and consumer protections.
- Technology should be fully deployed to deliver assistance directly to consumers and as an integral part of the infrastructure of a full-access delivery system.

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### *Assuring Quality and Managing a Complex Delivery System*

- State Access to Justice Committees should coordinate diverse funding and provider resources.
- An expanded delivery system should require that all providers have strong accountability and quality assurance programs.
- There should be an independent, objective policy research and analysis capacity to assess innovations and gauge the performance of the delivery system.
- The costs of increased access to legal advice and assistance will be controlled by strong management, provider accountability and maximizing the income from services rendered.

## THE SERVICE PYRAMID

The delivery system we propose is structured as a service pyramid that integrates a variety of delivery approaches into one complex, mixed-model system. The base of the pyramid represents the lower-cost services provided through high-volume information services, education and other general responses to client needs. The top levels represent more costly personalized services that would be necessary for complex, extended, lawyer-dependent cases. Intermediate levels of the service pyramid represent intervening levels of complexity and cost.

Though organized conceptually as a pyramid, the service delivery model is not intended to be executed hierarchically: consumers should not have to progress through the layers of the service pyramid to find what they need. Those seeking legal help should be assisted to easily locate the most appropriate type of service provider. This will require clearly branded and readily available access points or consumer gateways.

The costs of delivering the mixed-model system are the inverse of the service pyramid, with expert attorney services in complex cases comprising the highest cost per unit of service and web-based information having the lowest unit cost. The aggregate cost for each type of service will depend on actual usage rates. For example, we can confidently assume that a huge volume of web-based informational services will cost a fraction of the aggregate cost of expert attorney services for even a small number of complex matters.

## BUILDING A COMPLEX, MIXED-MODEL DELIVERY SYSTEM

How do we move the present system towards the complex, mixed model proposed above? There are significant barriers. The United States, unlike other countries, does not have a policymaking center or dominant funding source. Legal aid is funded at many levels from many pockets. Moreover, because policymaking is decentralized, funders primarily leave service priorities and approaches to the discretion of local providers.

To overcome these hurdles and move forward, we need a “grand bargain”—a partnership among key stakeholders—that will lead change and reform. Change will challenge the courts, the bar, law schools, legal services funders and new and longstanding providers to take a broad view of their institutional self-interests. However, we believe that these key stakeholders will shoulder short-run costs and dislocations because systemic changes of the sort we propose will ultimately meet their long-term needs and interests more effectively than the present patchwork system.

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## EXPERIMENTATION AND EVALUATION

Some of the components of the delivery system we propose are new. Design and testing of these components is an essential stage in developing the complex, mixed-model approach. We propose that one or more states and a collaboration of legal service offices function as laboratories to test key components and address management challenges of the complex, mixed-model delivery system.

## Part One

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### INTRODUCTION

*Even in establishing the neighborhood offices, the test case units, the legal education programs ... we have made a number of very narrow assumptions concerning the problems with which they deal and the scope of what needs to be done.... In my view these assumptions are in error. They will, as they are pursued, inevitably create new problems which will themselves one day have to be faced and solved ....<sup>1</sup>*

— *The Extension of Legal Services to the Poor:  
New Approaches to the Bar's Responsibility*  
Gary Bellow, September 1967

**N**early forty years ago Gary Bellow addressed these remarks to a distinguished audience on the 150th anniversary of the founding of Harvard Law School. He spoke about the task ahead if the bar and the nation were to make access to legal services universally available. Although he had just played a significant role in establishing the federal legal services program for the poor, Bellow

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chose not to celebrate that success but to highlight all that remained to be accomplished. He called for an ambitious agenda that included assuring access for the middle class as well as the poor, enlisting the private bar through judicare, group and pre-paid programs, creating a significant role for paralegals and lay advisors, and taking advantage of technology to produce more cost-effective law practice. He argued that the traditional structure and organization of the bar was inadequate to achieve universal access and suggested new roles.<sup>2</sup>

The agenda that Bellow urged in 1967 was not pursued in the decades that followed. In 2005 a broad access to justice agenda is yet to be realized. Federal funding for the Legal Services Corporation is stagnant. While funding has increased at state and local levels, there is little coordination of resources and growing disparity among states. Many low- and moderate-income people go to court without legal representation in a system designed to work only for those with lawyers.

These failures of access to legal assistance create systemic problems, but there is a human face as well. Every day, people fearful of losing their homes, livelihood or any prospect of financial stability arrive at courthouses clutching an incomprehensible legal notice. They find no one to direct them and no informative signs. If they manage to locate a clerk's office and ask for help, they're informed that clerks cannot provide legal advice. "You need a lawyer," they're told.

Nevertheless, determined individuals may find their way to a courtroom, where they wait wondering if they are in the right place or if they have missed the hearing of their case. Without warning, they hear their names called and are told to come forward to "present their case." Alone, looking up at the judge, unrepresented people begin to talk about their problems. Typically, these testimonies are cut off by



the judge. If a lawyer represents the other side, the judge will speak mainly to the lawyer using unfamiliar terms and phrases. Within a short time, the judge or clerk indicates that the hearing is over. Unrepresented people may not understand what has been decided, and if by some chance they have been successful, most won't know how to ensure enforcement of the judge's decision. In short, ordinary people who attempt to navigate a system designed for expert advisors and intermediaries quickly learn that the law does not work for them.

The Bellow-Sacks Access to Civil Legal Services Project seeks to renew an agenda to make legal assistance widely and effectively available for all whom the market does not serve.

For the past four years, Project staff and fellows have sought out innovations and innovators, held seminars, testified before a committee of the House of Representatives, hosted the bi-annual Conference of the International Legal Aid Group (ILAG), participated in other ILAG activities, attended conferences, presented papers and developed relations with policymakers and stakeholders.<sup>3</sup> A separate paper, *Project Findings: The Emerging Mixed-Model Delivery System*, sets out what we have learned in our four-year study and investigation. The *Project Findings* paper begins with an assessment of the current state of legal services in the United States. We then take a comparative look at the more developed legal services programs in other countries. Following these overviews, we report on and assess the explosion of service innovations from the bench, the bar, law school clinics and legal aid programs.

In this paper we report our findings and recommend policies to greatly expand access to civil legal services. In Part One we set out a broad policy agenda that draws on innovations in legal services un-

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derway in the United States and in countries with legal systems and populations similar to our own. All over the U.S., state and local actors are working with dedication and imagination to assure that all people get needed legal advice and assistance. Their efforts are powerful testimony to the broad support that exists for practical solutions to the problem of inadequate access to civil legal services.

In Part Two we argue that our proposals meet the long-term interests of the bench, the bar, the academy, funders, consumers and existing and new providers of legal services, and advocate for a “grand bargain” among these key stakeholders in support of overdue change and reform. We also describe the experiments, assessments and evaluations that will be necessary to test and validate the delivery system we propose.

This paper is a work in progress. We welcome comments and suggestions. The paper reflects the thinking, imagination and work of all of the participants in Bellow-Sacks Project activities, particularly Professor Philip Heymann<sup>4</sup> and Project Fellows Michael Hertz,<sup>5</sup> Bonnie Hough<sup>6</sup> and Wayne Moore.<sup>7</sup> We are also indebted to leaders of the bar and bench who spearhead efforts to make legal services more widely available and to the legal services providers who are working hard every day to deliver assistance to those in need. Thanks to Shira Shaiman for expert and intelligent editing, and to Ethan Thomas and the staff at the HLS Publications Center for superb work and good cheer under tight deadlines. Responsibility for errors rests with the authors alone.

## *Part Two*

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### A FULL-ACCESS LEGAL SERVICES SYSTEM

**T**he Bellow-Sacks Project has found wide agreement that full access to the law's benefits and protections, regardless of an individual's station or means, is essential to both our legal system and our democracy. We have also found a growing bipartisan consensus at national, state and local levels that a strong government role in assuring access to justice is good policy. Courts work better when parties are represented by attorneys or prepared with accurate information and sound advice. Timely legal assistance helps people avert crises, protect income and assets, and secure entitlements and opportunities. Other service needs, such as medical care, are enhanced when coordinated with advocacy services.<sup>8</sup> At a systemic level, resources are saved because households avoid crises and the public gains confidence in the law and its institutions.

A full-access legal services system should, at a minimum, guarantee all Americans access to civil legal advice and assistance<sup>9</sup> equivalent to what a person of reasonable means would purchase to secure legal benefits and entitlements or to protect and enhance relationships, assets and income.<sup>10</sup>

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While the private bar should be the first choice to meet legal needs, when the private bar cannot provide good-quality, affordable legal services for low- and moderate-income people, we must mobilize government, charitable and private resources to assure that every American confronted with an important legal problem has access to advice and assistance. However, this does not mean that a full-access system should assume responsibility for subsidizing assistance on every conceivable legal matter. For example, when effective non-legal alternatives are available or if the stakes are, in relative terms, very small, subsidized assistance may not be warranted.<sup>11</sup>

The full-access system that we propose emphasizes:

- Planning and preventive law services to minimize litigation and avert household crises
- Strong management and accountability to assure that services are high-quality and cost-effective
- Reforms in courts and administrative agencies to reduce the cost of and, to the extent possible, the need for expert legal assistance
- Private bar innovations that increase the affordability of good-quality legal services

The patchwork of local offices that has evolved over the last forty years reaches only a fraction of the poor and does little to address the needs of moderate-income Americans. Funding is grossly inadequate and is driven by formulas that do not encourage or reward innovation and efficiency. The resulting delay, confusion and injustice are obvious to litigants, courts and ordinary Americans who must deal with the legal system if they wish to order their affairs, protect themselves or obtain the benefits that the law guarantees. Repeated claims for more resources for the existing network of state and federally funded legal aid offices have had marginal success at best. Clearly, we

who support universal access must do more than turn up the volume on our appeals for more money for the existing program.

To achieve full access, we must first re-imagine an access to justice agenda that, while inspired by ideals, is focused on practical matters of institution building, strong management and outcome effectiveness. Fortunately, this work is already underway. We see the seeds of an agenda to expand access in the lively array of service innovations that the bar, courts and legal aid offices have generated all over the country. These innovations, which are described in greater detail in *Project Findings*, include:

- Court-funded and directed programs to assist self-represented litigants
- Simplification of procedures and forms to reduce or eliminate the need for expert lawyers
- Pro bono innovations such as “lawyer of the day” programs in courts that are heavily used by low- and moderate-income people
- Web-based legal information and access tools
- Private bar initiatives such as less-than-full service representation or “unbundled legal services”
- Employer-provided and privately marketed pre-paid and legal insurance programs that cover many basic legal needs
- Collaboration among legal and non-legal service providers, particularly efforts to provide legal services in conjunction with primary care medical services
- Service efforts as part of the professional development of students in law school clinical programs and in the post-graduate years immediately after law school

The importance of these innovations cannot be overstated. They bring to the table new stakeholders who serve people not reached by

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the traditional legal services offices, and new resources—tens of millions of dollars to date.

We can also learn a great deal from the policymakers and analysts in legal aid programs in other countries. These programs aim to produce diverse, well-managed and strongly evidence-based delivery systems. In the United States, a diverse delivery system is evolving de facto but we lack the policy and attention to performance data that characterize the best programs in peer countries. Our challenge is to imagine the infrastructure, institution and system building that will knit the existing staffed programs and new service providers into an effective whole—a genuine system that will make the best use of all available resources.

If we hope to build a more comprehensive, efficient and high-quality delivery system we must first critically examine some common assumptions about the access to justice problem. We begin this examination in Part A. In Part B we propose inter-related policies to frame and define a full-access legal services system. In Part C we describe the full-access system as a service pyramid in which the base represents the most cost-effective, straightforward, lay- and technology-dominant responses to legal needs, and the higher levels of the pyramid represent more complex, lawyer-intensive responses.

## A. RE-IMAGINING THE ACCESS TO JUSTICE AGENDA

Envisioning a new access to justice agenda in the United States requires us to challenge some commonly held views about the nature of the access problem. Free of these constricting and untenable assump-

tions, we will be in a position to design a functional system that affords Americans full access to legal advice and assistance. Specifically, we challenge the following five truisms:

***Assumption 1: Money Alone Will Produce Access***

We have been too quick to assume that all we need is money to solve the access problem. No doubt we need more resources, but we cannot insist on universal access at any cost regardless of the size of the ultimate bill. We cannot view concerns with cost constraints or cost effectiveness as antithetical to access ideals. Rather, we should embrace the concept of assuring value for every dollar spent as a core principle, and view *how much we have* as no more important than *how we use what we have*.

***Assumption 2: Money Is the Only Barrier to Access***

From the perspective of consumers of legal services,<sup>12</sup> common sense as well as international and U.S. studies tell us that people face many non-financial barriers in accessing legal services.<sup>13</sup> These barriers range from language and mobility problems to a shortage of lawyers, for pay or otherwise, in many rural areas. Other subtle but nonetheless significant barriers exist as well. These include consumer doubt that legal help would “make a difference,” concerns about losing control over a problem, lack of understanding of how to use legal services, unwillingness to assert claims in an adversarial way and mistrust of lawyers and the legal system.<sup>14</sup> Money alone will not address these barriers. We must invest in understanding how ordinary Americans recognize and deal with legal problems, what types of help they find most useful, including less adversarial help, and we must design gateways to legal assistance that consumers recognize and find easy to use.

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*Assumption 3: All Legal Needs Are Equal*

We often do not differentiate among legal needs. It has become conventional in the United States to conduct studies to demonstrate the extent of unmet needs experienced by low- and moderate-income Americans.<sup>15</sup> These studies usually take the broadest possible approach to defining legal problems and show that two-thirds or more of people with needs do not get legal help of any kind. The result is a chasm of undifferentiated, unmet legal need with no suggestions, other than infusions of vast amounts of money, for how to begin to close such a daunting gap.

We should not treat all legal needs as equivalent. Instead, we can and should identify types of problems, or clusters of problems, where legal help demonstrably protects and enhances the real-world situation of those served. These priority areas would define the coverage of the system. In these covered areas, which might differ among states or regions, assistance would be available to everyone who is eligible. As resources expand and service delivery approaches become more efficient, the coverage of the system could be expanded.

*Assumption 4: Lawyers Will Provide Most of the Service*

Lawyers must abandon the assumption that they will be the primary source of advice and assistance in a bigger legal services system. Providing an experienced attorney for every client who is not served by the market is unrealistic.<sup>16</sup> If attorneys were fairly compensated the costs would be enormous. Nor would such a “lawyered-up” society be in our interest. Skilled attorneys will always be needed to represent clients on legally complex problems, but many straightforward matters can be addressed by law students or recent graduates. Moreover, other matters might not require the services of an attorney at all.



Technology, knowledgeable lay advisors, paraprofessionals and consumer self-help tools will all play a part in a cost- and quality-effective system.

Sectors of the bar may resist encroachments on their monopoly, claiming not guild but quality and client protection concerns. The response is that a well-designed, client-centered and quality-assured system will address these concerns whether the service provider is a lawyer or a lay advisor. Far-sighted lawyers recognize that solving the access problem will help to preserve the bar's autonomy and protect its interests more effectively than aggressively policing non-lawyer services.

*Assumption 5: The Access Problem Can Be Solved Solely by Providing Consumers with More Assistance*

We will not solve the access problem by focusing exclusively on getting help to consumers while ignoring the ways in which legal rules, procedures, courts and agencies make resolving legal problems unnecessarily complex, time-consuming and opaque. Simplifying, explaining, and de-mystifying legal processes may turn out to be one of the most cost- and outcome-effective strategies for increasing access to justice.

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## SUMMARY

To infuse fresh thinking into a full-access legal services agenda, we must let go of notions that:

- Universal access is compromised if cost-constrained—no matter how large the resource base.
- The only significant barrier to universal access is lack of money—neither non-monetary barriers to consumers nor provider efficiencies are of consequence.
- All legal needs are of equal significance and therefore have equal claim on public resources—no matter the common sense differences in import and impact for consumers.
- Services delivered by lawyers are, by definition, superior to other sources of assistance—no matter the evidence to the contrary.
- Expanding access is exclusively about increasing advocacy services—no matter the extent to which courts and legal processes are mired in unnecessarily complex language and baroque processes that inhibit rather than promote equity and fairness.

## B. A POLICY FRAMEWORK FOR FULL ACCESS TO LEGAL SERVICES

We propose a policy agenda that is comprehensive, practical and flexible. We call for better coordination among providers, more integration with courts and stronger management and accountability at federal, state and local levels. We believe that by deploying existing resources more effectively we can expand access in the short term.<sup>17</sup> As we make the delivery system more accountable, efficient and transparent—and as we demonstrate that we have wrung out every bit of quality service from the existing resource base—we will gain the broad support that will eventually generate resources from legislatures and private funders to build a full-access delivery system.

Our goal here is to set out foundational principles and to identify the scope, essential functions and distinct features of a full-access delivery system. The policies we propose are achievable. They are practical and client-centered. While we emphasize cost effectiveness and efficiency in service delivery, we also emphasize high-quality outcomes. Finally, we propose a diverse delivery system that will match Americans' great diversity of legal needs.

Many of these policy recommendations have been proposed by earlier reformers.<sup>18</sup> What is new is our focus on bringing the increasingly diverse funder and provider sectors into a genuine system that assures accountability, transparency and consumer-driven priorities while defining consumer responsibilities and attending to the significant challenge of managing a complex delivery system.

This policy agenda is neither exhaustive nor a blueprint for implementation. For example, we propose a system that serves low- and moderate-income people, but we do not attempt to define eligibility levels. We propose a variety of services but do not specify any particular mix. These more specific policies should reflect and respond to the demographics of eligible populations, configurations of the bench and bar and the particularities of local laws and procedures.

Finally, the policies we propose are inter-dependent. If we hope to achieve a functioning full-access system, we must be prepared to move forward on multiple fronts at the same time.

### *1. The Scope and Coverage of a Full-Access Legal Services System*

We begin with policies that define the scope and coverage of a full-access legal services system. These include: Who will be entitled to

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assistance? What will be the scope of entitlement to assistance? Will consumers be entitled to assistance from an attorney?

**Who will be entitled to assistance?**

An expanded delivery system should serve low- and moderate-income people.

The 1994 ABA Comprehensive Civil Legal Needs Study showed that moderate-income people have legal needs and access problems similar to those of low-income people.<sup>19</sup> Not only are the legal needs of moderate-income people similar in nature to those of poorer households and individuals, but moderate-income people may also be similarly vulnerable. Domestic violence doesn't disappear above the poverty line. Job loss, marital break-up or a family member's illness can generate a downward spiral that tumbles a household into poverty or dependency on public assistance.<sup>20</sup> Preventive legal counseling, advice and planning may help people protect themselves in hard times. Greater equity of access also has the potential to increase consumer support for the program.

For these reasons, we believe that a full-access system should serve moderate- as well as low-income people. We do not propose specific eligibility criteria, but it is likely that individuals and households with income as high as three or even four times the poverty level<sup>21</sup> will need some subsidy to obtain decent legal assistance. In high cost-of-living areas, the eligibility level might be higher.

In some peer nations more than 40% of the population is eligible for government-subsidized legal assistance. In the United States, there are already many examples of legal services efforts that reach moder-

ate- as well as low-income people. For example, many AARP legal service programs serve a mixed-income population, as do legal services funded by the federal Older Americans Act, the Violence Against Women Act and the Ryan White/Living Legacy Act (assistance for households and individuals impacted by AIDS and HIV). Some law school clinics, such as Harvard Law School's Legal Services Center, serve mixed-income populations as do some pro bono and volunteer lawyer programs.

**What types of legal problems will be covered or given priority?**

The types of legal needs for which assistance will be provided should be defined as a matter of policy. Specific service priorities, within broad categories, should be determined locally.

While we do not specify the types of legal problems on which consumers will be entitled to assistance, we recognize that defining the coverage of a full access system is an essential task, one that should reflect local social, economic and demographic considerations. Setting substantive priorities is necessary because consumers' legal needs are elastic. Almost any problem can be dealt with legally, but resorting to the law is sometimes an implausible or ineffective option. For example, a tenant could sue a noisy neighbor for interference with quiet enjoyment, but a more effective response might be to talk to the neighbor, complain to the landlord or call the police. As indicated earlier, full access does not and should not mean that everyone who is financially eligible is entitled to subsidized assistance on any problem.

Coverage for broad categories of legal matters should be determined as a matter of policy. Domestic relations matters, the largest single category of service in the programs of both the United States and

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peer nations, would surely be an important area of coverage. Coverage would also be likely to include assistance relating to: maintaining a secure residence, whether rented or owned; employment and educational opportunities; health, disability, pension and other benefits both private and public; and protecting and enhancing assets. Other substantive areas may be significant depending on the age, health status and economic circumstances of local populations.

Coverage policies should be informed by periodic surveys of consumer needs and preferences.<sup>22</sup> The Legal Services Research Centre, part of the Legal Services Commission of the United Kingdom, has developed state-of-the-art surveys of legal needs and of the public's perceptions and use of legal services. These studies inform funder-driven service priorities developed in collaboration with community partners. See *Project Findings* for more information on these impressive efforts.

**Will consumers be entitled to assistance from an attorney?**

Consumers will be entitled to advice and assistance, but an attorney's services would be available only when lawyers provide the highest-quality and most cost-effective response.

An expanded system will entitle eligible clients to legal advice and assistance but not necessarily to the services of an attorney. Because client needs vary greatly, services should vary accordingly. A comprehensive system will offer advice; web-based information and document preparation; assistance in self-representation; lay/paralegal advisors; “unbundled” (less than full) representation from attorneys; mediation, collaborative lawyering and other ADR services; and representation by law students, recent graduates and experienced lawyers. The goal of the system will be to match clients' needs to the most

cost-effective intervention that meets that need. The types of service available to an individual will depend on the nature of the legal problem and the capacity and circumstances of the applicant. Therefore, one of the system's crucial functions will be to assess requests for service and make referrals to appropriate providers.

Diversity of providers, to a greater or lesser extent, already exists in most areas of the country. Many legal aid offices employ paralegal or other non-lawyer advocates. AARP has pioneered the use of lay volunteers as “navigators” to assist clients using computer information programs. Non-lawyers often provide mediation and alternative dispute resolution services. Unbundled legal services have been pioneered in the private sector, aided in several states by court and ethics rule changes.

## *2. Consumer Assurances and Responsibilities*

A second set of policies addresses the consumer/client perspective. Will consumers have choice of provider? Will service be driven by consumers' practical, real-world needs? How will the delivery system assure independent, client-centered representation for unpopular or controversial claims? Will clients be responsible for copayments or other contributions toward the cost of services?

### **Will consumers of legal services have choice of provider?**

Consumers should have a choice among providers appropriate to meet covered needs.

A reformed delivery system should afford consumers choice of provider, even though choice has not been greatly valued in U.S. legal services. Because resources have been scarce, most eligible people

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cannot find assistance, let alone have a choice of providers. Funders and providers have favored the practice of defining service areas and then funding a single provider in each area, resulting in the availability of only one source of assistance. However, why should we assume that people seeking legal services value choice of provider any less than when they seek other types of services such as medical care? While we can't avoid geographic differences—geographic areas with too few lawyers or advocates of any kind will remain—a significantly expanded delivery system should make it possible to offer most consumers some choice of provider.

**Will legal services be driven by consumer needs and preferences?**

An expanded delivery system should be consumer-driven, consumer-centered and holistic.

“Client-centered” service speaks to a general value that must be translated into practical actions. Similarly “holistic” service might have a number of meanings. Here we take these terms to mean, at one level, paying attention to a client’s unique, real-world situation and recognizing that many clients will have multiple, inter-related needs which all require attention. While legal assistance alone can benefit a client, it is often the case that other services are crucial to remedy problems. Therefore, client-centered, holistic advocacy also means that legal advocates should cooperate with other service providers when this benefits a client. The British call this approach “joined up” legal services. In the United States, over thirty projects in hospitals and clinics offer legal assistance to patients. Both medical and legal providers support these projects because they find that their patients/clients benefit from coordinated service.<sup>23</sup>



A client-centered system will afford easy access to advice and assistance, and will routinely survey client satisfaction with services they receive. Funders and providers should be evaluated on issues of importance to consumers such as multi-lingual provider capacity; attention to special needs of clients (disabilities, remote locations, literacy levels); opportunities for client choice of provider; convenient office hours and minimal waiting time for appointments. Service quality rankings of providers might be developed and made available to consumers similar to the publicly available ratings of HMOs in medicine.

**How will the delivery system guarantee loyal, independent assistance for clients with unpopular or controversial claims?**

An expanded delivery system should protect representation of unpopular claims and insulate funders from any appearance of interference with service to individual clients.

Experience demonstrates the difficulty of obtaining government funding for representation that involves controversial issues. A mature bar and legal services system will recognize the necessity of assuring independent and zealous counsel even for unpopular claims. A well-designed delivery system will provide government funders with sufficient distance to ensure insulation of controversial matters from improper pressures or interference. Approaches might involve private or foundation funding, or pro bono resources for controversial cases; bar leadership to educate the public about the importance of independent representation of unpopular claims; and structures involving respected bar and community leaders (e.g., subcommittees of governing boards, panels of law school legal profession experts, program ad-

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visory committees) to insulate controversial matters from improper outside influence. While the vast majority of cases in a client-centered delivery system will involve law enforcement and implementation of existing policies, careful planning will be needed to assure that when controversial matters arise they are handled consistent with the client's best interest and with professional norms of independence, competence and client loyalty.

**Will consumers be asked to contribute to the costs of assistance they receive?**

Consumers should be responsible for copayments for many services and for reimbursement of out-of-pocket costs related to service.

A legal services system that reaches moderate- as well as low-income people ought to seek copayments from those who receive assistance beyond information, advice or referral. Although consumers may not be able to afford market-rate legal services, many will be able to pay a share of service costs. Requiring payment will benefit many aspects of the delivery system. Clients who pay for assistance may feel more autonomous and thus more entitled to courteous, diligent and good-quality service from their provider. Affordable copayments may also play a constructive role in helping individual consumers assess the importance of obtaining legal advice and assistance, while providers who are compensated will have incentives to be more efficient and productive in order to increase program resources.

Copayments might vary based on income. Depending on their ability to pay, clients who receive extended services should be responsible for full or partial reimbursement of out-of-pocket costs of service—these

include fees for service of process, subpoena costs, etc. Even poor clients could make copayments and be able to afford to reimburse out-of-pocket costs if their legal representation wins funds from which these payments can be made (e.g., back awards in benefits cases). Certain exceptions to copayments also should be made: for example, in the case of clients needing to obtain an emergency protection order from domestic violence, and in other similar emergencies or crises. In such situations, policymakers might decide to remove every barrier to access and offer fully subsidized service.

There is program experience with client copayments in the United States and abroad. A few private bar pro bono or “low-bono” projects ask clients to pay modest fees. Harvard Law School’s Legal Services Center has instituted client copayments. The Legal Services Commission in the United Kingdom has a client copayment feature as do many group and pre-paid programs in the United States.

### *3. Provider Diversity and Innovation*

The third set of policies considers current and new opportunities for provider diversity and service innovations. Not-for-profit offices, with full-time staff, have been the dominant provider in the U.S. legal services system. In an expanded system, these offices will continue to be mainstays of service, but they will share their role with a more diverse provider sector. To what extent can courts and agencies increase access by reforming and simplifying their practices and procedures? What role should the private bar play in delivering service to low and moderate-income people? What services can paralegals provide? Will introduction of technology create efficiencies and improve service quality?

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**How can courts and agencies become active partners in access to justice efforts?**

Courts and administrative agencies should reform their rules and processes and provide information and assistance in order to reduce, wherever possible, the need for full-service attorneys.

Costs of legal services are reduced when courts and agencies simplify forms and procedures and provide clear information and assistance to make it easy for consumers to proceed without lawyers or with less-than-full representation. Therefore, courts and agencies should reform their rules and practices to reduce costs to consumers who have lawyers and to make it possible for people with straightforward matters to appear pro se. This might involve evening sittings, special pro se sessions, training for judges, changes in courtroom processes and the creation of court-based assistance centers. Streamlining may also support the provision and use of unbundled legal services. In the same vein, courts should continue to emphasize ADR and other alternatives to litigation-intensive approaches to resolving disputes.

A few courts have reconceived their roles and become actively involved in improving access to their processes. The California court system, for example, is a national leader and supports an extensive system of court-based assistance centers for pro se litigants. Additionally, California and other states have made great strides in making courts more user-friendly by producing understandable, easy-to-use forms and scheduling sessions at convenient times.

Some consumers prefer to play an active role, up to and including representing themselves at a hearing, because they are more likely to understand the issues they confront and to make well-informed

choices and decisions. With assistance, many consumers will be able to successfully resolve their cases in court or before agencies. But this should not mean that moderate- and low-income consumers should be guided toward *pro se* representation as a matter of course. In some instances today consumers are directed to self-help not because it is a good choice but because nothing else is available. It is important that only those consumers with appropriate cases proceed without representation. More adversarial matters, particularly against a represented opponent, may not be appropriate for self-help.

**What role should the private bar play in delivering legal advice and assistance to low- and moderate-income people?**

The private bar should be the first resource for low- and moderate-income people with legal needs.

Organized *pro bono publico* contributions by the private bar have a proven track record and ought to continue.<sup>24</sup> However, reliance on *pro bono* services alone has limits. Furthermore, it is only one way the private bar provides assistance. By far, the private bar's greatest contribution to meeting the legal needs of low- and moderate-income people is representing them on a fee-for-service basis. The ABA legal needs study documented that the private bar represents *three times* as many poor clients as the staffed legal aid offices funded by government and private charities.<sup>25</sup>

We know little about the scope and quality of service provided or about the actual practices, efficiencies, pricing and routines of lawyers in small and medium firms. Therefore it is difficult to assess whether the fee-for-service sector might become a more significant and effective provider of assistance. What we do know from anecdotal reports

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is that many lawyers in solo and small firm practices offer reduced fee or “low bono” service to clients who cannot afford market rates<sup>26</sup> and that many idealistic law graduates look for ways to include low- and moderate-income clients in sustainable community law practices. We also know that the private bar has produced important innovations such as unbundled legal services that are accessible to low- and moderate-income clients.

It is noteworthy and puzzling that public policymakers and legal services advocates have focused almost exclusively on the staffed, not-for-profit legal aid offices and paid little attention to the dominant role of the private bar in serving low- and moderate-income people, except when the private bar provides pro bono services.

In the long run, a full-access system will benefit by recognizing the important contributions of the private bar and by making investments to enhance the capacity of private providers to offer quality service to low- and moderate-income consumers. Policymakers and bar leaders should evaluate the extent to which investments in the efficiency and capacity of the private bar will improve its ability to provide good-quality, affordable legal assistance to low- and moderate-income people. Private sector innovations such as unbundled legal services and collaborative lawyering should be encouraged and objectively evaluated for cost and quality effectiveness. Technology will likely play an important role, but strong case and law office management as well as improved professional development for lawyers may be needed.

An expanded delivery system might develop internships or clerkships to train law students and recent law school graduates in best practices for cost- and quality-effective service delivery. One innovative pro-

gram, the Law School Consortium Project, supports law schools that offer law practice management courses as well as ongoing, practical support for graduates who are committed to affordable fee-for-service practice for low- and moderate-income clients. The Consortium and similar efforts could provide training and materials—such as office and case management systems, software and best practice guides—in return for reduced-fee service to eligible clients or participation in judicare components of an expanded system (see below). Finally, there may be opportunities for lawyers in legal aid offices to develop areas of practice to the point that they are remunerative for private practitioners.<sup>27</sup>

**Should the private bar participate, on a paid basis, in providing legal services to people who cannot afford market-rate assistance?**

Private attorneys should have opportunities to provide service, on a paid basis, when they offer a cost-effective and high-quality option.

As we learn more about and invest in the capacity of the private bar to serve low- and moderate-income people, policymakers and program managers will likely find it beneficial to purchase services, in a judicare or similar model, from private providers with demonstrated expertise. Because the capacity of the private bar to provide both cost- and quality-effective services will differ regionally, the optimum role of the private bar will most likely vary among states or areas within a state.

In the past, judicare has had significant opposition in the U.S. because its proponents were often hostile to the staffed delivery model. The Legal Services Corporation funded a few judicare programs thirty years ago, some of which continue today.<sup>28</sup> With increasing bipartisan

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legislative support for legal services, there is renewed interest in roles for the private bar. Peer nations developed their legal aid systems mainly on a *judicare* basis, and in the process have learned a great deal about the strengths and weaknesses of service models where private attorneys are paid per case, or via a contract for services. We should take advantage of this experience in designing this feature of an expanded American delivery system.

**What services can paralegals provide?**

Paralegals should provide service in all areas permitted under existing rules. Policymakers and bar leaders should support expanded paralegal practice with appropriate quality assurances and consumer protections.

While paralegals have scope to practice in a few states, law has not elaborated the paraprofessional roles with training, admission, continuing education and re-certification standards, that exist in medicine. However, a number of agencies, such as the Social Security Administration, permit paralegal and lay advocates to appear on behalf of claimants. Some agencies have procedures and standards for certifying lay advocates while others do not. The experience of medicine and the few states that permit some paralegal practice suggest that this can be a cost- and quality-effective approach. A major study on cost and quality from Britain also indicates that lay advocates can provide high-quality service.<sup>29</sup>

Policymakers should consider greatly expanding paralegal practice, with appropriate assurances of quality and consumer protection. For example, paralegals might be certified to appear before any administrative agency that adjudicates claims of low- and moderate-income people or in specific court proceedings such as simple divorces,



change of name, guardianship proceedings and child support enforcement—the types of court hearings where some consumers could proceed pro se but others might want or need some experienced representation. Finally, policymakers should consider experiments with free-standing, specialized, fee-for-service paralegal practice, subject to training and certification requirements to protect consumers.

**How can technology improve access?**

Technology should be fully developed and deployed to deliver assistance directly to consumers and as an integral part of the infrastructure of a full-access delivery system.

Technology is already integrated into service delivery: many legal aid and private sector websites offer information and advice; attorneys market their services online; self-help software is available to consumers; and clients in remote areas can be reached via video conferencing. Additionally, courts have experimented with kiosks that lead parties through the preparation of standard pleadings and documents to assist people appearing pro se. While some technology-based services are high-quality, for example, the for-profit Nolo Press and the not-for-profit ProBonoNet and its LawHelp consumer websites, others are of dubious value. There is little doubt, however, that web-based services have become a permanent feature in the access to justice landscape.

The expanded legal services infrastructure will depend on state-of-the-art technology to efficiently deliver high-quality services. Technology has steep initial costs, both to build the infrastructure and to educate the user, but once a good system is functioning marginal costs are low and benefits—speed and efficiency in managing case flow, freeing time for client contact, etc.—accrue exponentially. For

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example, online case management and file systems save time and are capable of producing the data necessary to gauge program performance. The coordination of services that is essential in an expanded, more diverse delivery system is inconceivable without technological developments and web connections (see Part Two below).

#### *4. Assuring Quality and Managing a Complex Delivery System*

The fourth and final set of policies focuses on the challenges of quality and program management. In the United States, we already have a diverse delivery system with many funders and providers. But the current system's lack of coordination means that we are not making the most effective use of all existing resources. At the state and local levels, the not-for-profits that dominate the provider sector may choose to cooperate with one another, but funders do not require collaboration. If a coordinated delivery system offers potential gains in both quality and productivity, as we suggest, it will be necessary to deal with the challenges of managing and rationalizing a complex, diverse system. Where will responsibility for coordination and management of the system lie? How will quality be assured and system performance assessed? How will providers maximize the efficiency of their operations? How will costs be controlled?

**Who will coordinate and manage a complex, diverse delivery system?**

State Access to Justice Committees should coordinate diverse funding and provider resources.

While funding for the Legal Services Corporation has stagnated, there has been a dramatic increase in funding from other sources. This increase has obvious benefits, but resource and provider diversity also

brings new challenges. In the United States we see a growing disparity between the least- and best-funded states, and little or no coordination to assure the highest and best use of all available resources. Field leaders often claim that the high percentage of Legal Services Corporation funds that are distributed to grantees is evidence of administrative efficiency. This is certainly true for the Legal Services Corporation, which operates with low central management and administrative costs. But the sum of management and administrative costs for a system where every not-for-profit provider, regardless of size, has a board, director, receptionist, purchasing arrangements, etc., clearly shows that uncoordinated service delivery results in an overinvestment in management and administration.

There is no obvious or easy solution to these problems, but the recent emergence of state Access to Justice Committees and similar coordinative bodies suggests a promising approach. The strongest Access to Justice Committees gain credibility from the imprimatur of the highest court in their state, which establishes the commission. Core functions of Access to Justice Committees include: bringing all stakeholders to the table; assessing statewide needs and access issues; planning for the highest and best use of all existing resources and advocating at the state level for increased funding.

Even though Access to Justice Committees typically have no formal authority to allocate resources or influence the priorities and performance of individual providers, they can be effective when knowledgeable and respected members and staff operate with integrity and transparency. In the long run, such bodies should have broad, general authority over resources, system design and operation at the state level.

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**How will policymakers and program managers assure high quality and efficient delivery of services?**

An expanded delivery system should require that all providers have strong accountability and quality assurance programs.

A full-access, diverse delivery system with many service approaches and providers will present challenges in assuring quality and accountability. Providers should be more accountable to consumers and funders. This will involve transparent performance measures; incentives for providers to meet ambitious goals; quality ratings that are available to consumers; regular client satisfaction surveys and strong governing boards that set high expectations, monitor accomplishments and encourage service innovations. Funders should assure that grantee managers, particularly executive directors and chief financial officers, have access to consultant and other management services to assist them to expertly manage their programs.

The present system has only rudimentary provisions to assure quality and assess cost effectiveness, even though making the best use of available funds enhances the likelihood of maintaining and increasing resources. However, there is a growing focus on quality assurance and efficient service delivery. Several legal aid programs have initiated internal performance standards. Former legal aid lawyers have developed consulting services focused on quality and program performance.<sup>30</sup> Law school clinical programs, such as the East Bay Community Law Center affiliated with Boalt Hall Law School<sup>31</sup> and the Legal Services Center at Harvard Law School,<sup>32</sup> are involved in significant quality assurance projects. The experience of these efforts should be a resource to funders, policymakers and managers as they develop better approaches for assessing the performance of

many types of providers. Additionally, parallel efforts in the medical and other professions should be studied for best practices and approaches.

**How will a delivery system with many types of providers measure its overall performance and compare the effectiveness of diverse approaches to service delivery?**

There should be an independent, objective policy research and analysis capacity to assess innovations and gauge the performance of the delivery system.

A complex legal services delivery system committed to quality and cost effectiveness must have the capacity to experiment and innovate. To do this, the system needs the resources and ability to: conduct comparative assessments; obtain knowledge of consumer needs, preferences and patterns of problem solving; identify indicators of quality; and develop and refine an outcome reporting system. Policy analysts and researchers cannot, and ought not, decide policy, but they can and should play a critical role in identifying valid indicators of program performance and in assuring that policies will be evidence-based—meaning, based on accurate descriptions and information about how a system is working.

Currently, the Legal Services Corporation does not have the capacity to conduct policy research and there are few academics involved in legal service delivery policy research. To the extent that managers of legal aid programs collect and analyze data, the results are not public and there are no cross-program comparisons. The state court system and affiliated institutions have some capacity for assessment and research of service delivery models.<sup>33</sup> We can learn from the excellent policy analysis and research capacity in other countries. The

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Legal Services Commission of the United Kingdom supports a Legal Services Research Centre with in-house capacity as well as the ability to contract with academics and others to carry out policy-related research and assessments.<sup>34</sup> With the exception of the United States, all of the countries associated with the International Legal Aid Group (ILAG) have policy analysis and research capacity. We must develop a similar capacity here in the U.S.

Harvard Law School's Legal Services Center has engaged in service delivery experiments, collects consistent data<sup>35</sup> and is developing a program of objective study and assessment of its service projects. Other law school clinics have similar interests and a few have undertaken empirical studies. However, these local efforts depend on program initiative and resources. What is needed is a credible, national effort that sets basic standards for data collection and sponsors and funds research and analysis that will inform service policies, directions and priorities.

**How will the costs of an expanded entitlement to legal advice and assistance be controlled?**

The costs of increased access to legal advice and assistance will be controlled by strong management, provider accountability and maximizing the income from services rendered.

A new, open-ended entitlement program has little chance of receiving legislative support. Nor is it reasonable to pursue policies that privilege legal help over medical, educational and other essential services and programs.<sup>36</sup> Therefore, the costs of a full-access system must be controlled. Many of the policies set out above are intended to achieve cost-effective services. Early intervention will help consumers avoid crises, thereby reducing costs. Holding providers accountable

to funders and policymakers for productivity, efficiency and quality should produce more service for dollars spent. Subsidizing only the lowest-cost intervention that effectively meets client needs has cost control implications as well. Competitive bidding on service contracts, with controls to assure quality, and consumer choice of providers will produce incentives for providers to deliver the best, most cost-effective and consumer-friendly services. Greater coordination among service providers will reduce administrative costs and create opportunities for economies of scale in the purchasing of goods and services, human resource functions, employee benefits programs, professional development and training, information technology infrastructure and the like.

Client copayments will generate revenue streams and will provide incentives for provider productivity. Service providers should also aggressively pursue recovery of costs and, where authorized by statute or rule, payment of attorney fees from opponents. Present statutes restrict LSC-funded programs from pursuing attorney fees from opponents although programs are permitted to recover out-of-pocket costs they have advanced for client work.<sup>37</sup> These restrictions on LSC grantees should be repealed. When the Congress or state legislators enact statutes that provide for fee shifting as part of an enforcement mechanism, legal services should support this legislative intent and seek fees whenever appropriate.

Government expenditures on legal services will, in all likelihood, continue to be capped or constrained by formula even if the total amount of support increases significantly. Good data on usage rates and sophisticated understandings of consumer needs and preferences will lead to accurate estimates of annual costs. Initially, service entitlements may cover only the highest-priority services, expanding to the next priority levels as programs become more efficient and as

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funding increases. When Great Britain experienced the spiraling costs of its demand-led system, policymakers introduced reforms in program design and management that maintained, and in some instances expanded, service entitlements while bringing program operations within budget targets.

## SUMMARY

The policies we propose address issues of eligibility, entitlement, service priorities, who will provide service, system management and accountability, quality assurance and cost containment. On these issues, we support policies that:

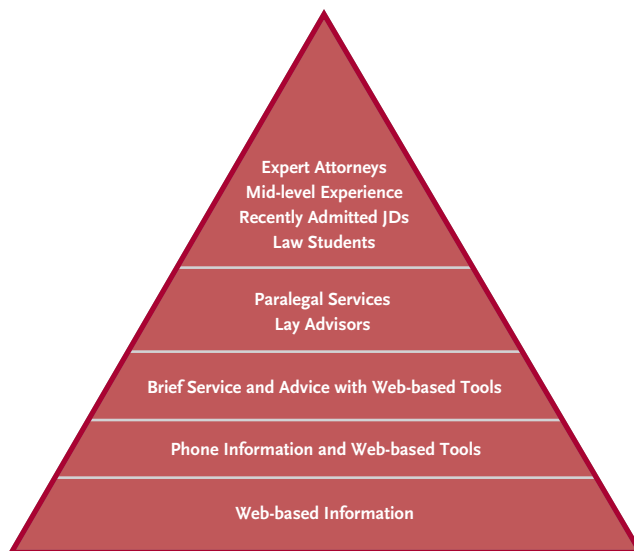
- Expand eligibility to include moderate-income and poor people
- Create an entitlement to legal assistance, though not necessarily to assistance from an attorney
- Define and prioritize, as a matter of policy, the services people are entitled to receive
- Protect client interests while asking clients to contribute to costs of assistance
- Offer many types of services, from a variety of providers, to match the diversity of people's legal needs
- Support investments to increase the capacity of the private bar to effectively reach low- and moderate-income clients with affordable service
- Contract with the private bar to provide services when this is a cost- and quality-effective option
- Coordinate and manage services at the state level through court-established Access to Justice Committees
- Insist on accountability, transparency and performance data from all providers
- Reward efficiency and innovation
- Control overall program costs



## C. CONCEPTUALIZING A COMPLEX, MIXED-MODEL DELIVERY SYSTEM: THE SERVICE PYRAMID

A greatly expanded delivery system, built on the policies set out above, can be conceptualized as a pyramid that integrates a variety of delivery approaches into one complex, mixed-model system. The base of the pyramid represents the lowest-cost services for high-volume information, education and less personally tailored responses to client needs. The top levels represent the more costly services that would be necessary for complex, extended lawyer-dependent cases. Intermediate levels of the service pyramid represent intervening levels of complexity and cost. In operation, the mixed-model delivery system will have many more components than in the diagram below, which shows only some types of services for illustrative purposes.<sup>38</sup>

**Figure 1. The Service Pyramid**



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The concept of a service pyramid that layers multiple delivery approaches into a genuine delivery system has a number of appeals. First, a complex delivery model brings in new stakeholders whose energy and resources will help revitalize existing legal aid programs. Second, the model reinforces the fact that one type of provider cannot effectively meet the full range of people's greatly varied legal needs. Third, the service pyramid reminds us that a main goal of the delivery system is to respond to requests for assistance at the appropriate level, one that is only as complex or expensive as necessary to meet a consumer's need.

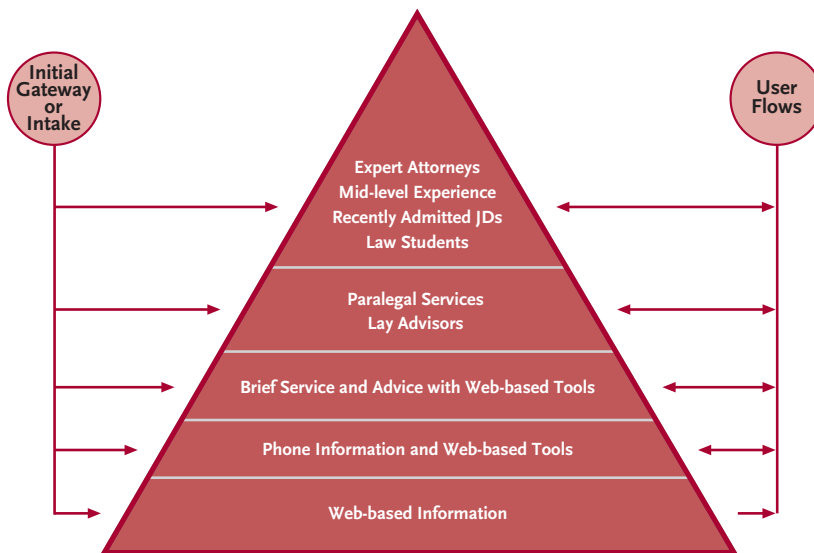
### *1. Responding to People Who Need Help*

This model does not suggest that consumers must progress through the service layers to find appropriate help. Those seeking legal assistance should be guided to the most appropriate type of service provider for their specific needs. This will require clearly branded and readily available access points or consumer gateways. The gateways will function to solicit inquiries from the public, provide a preliminary assessment of eligibility and direct consumers to appropriate providers. Whenever possible, consumers should have a choice of provider. Each gateway would have instant, online access to current information on all service providers including their service specialties, capacity for new clients, wait times for service and access or appointment procedures. The gateways should have a uniform well-recognized brand identity and a strong service ethos in order to garner public awareness and confidence.

Purely informational needs should be met immediately at the gateway. Skilled advisors would be available on hotlines to give advice and conduct more complex assessments. Depending on their needs, those seeking help might be referred to a specialized lawyer, law school

clinic, paralegal service, court-based pro se assistance center or other appropriate service provider. If we add the crucial gateway function to the service pyramid diagram and add vectors to represent the possible flows of consumers from the gateways, we get a more complex model as illustrated in Figure 2.

**Figure 2. The Service Pyramid with Gateways and User Flows**



## *2. Early Intervention and Preventive Law*

The complex image of the service pyramid (Figure 2) reveals important dynamics of a mixed-model delivery system. One dynamic is the benefit of early intervention or “preventive law” approaches designed to reach clients when a problem is in a lower level of the pyramid—i.e., before a crisis develops that requires a high-level, costly response. For example, it is easier to aid a client with debt problems than to

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intervene when foreclosure on their home is imminent. Another dynamic involves transforming needs from high complexity/cost to lower complexity/cost matters by simplifying and clarifying legal procedures and communications to the greatest extent possible.

One of the chief goals of a complex, mixed-model system is to increase the number of matters that are successfully resolved in the lower-cost areas of the service pyramid. This will require public education, outreach and marketing, similar to a public health model where costs of cure are reduced by extensive prevention, early diagnosis and prompt treatment.

### *3. Consumer Usage Patterns*

It is important to keep in mind that the service pyramid represents a range of available services. It does not represent actual consumer usage patterns, which can only be determined from experience. To obtain this information, it is crucial that the delivery system in every state or region keep good data on the types of services consumers actually require to meet their legal needs. This data will serve as a baseline for measuring the program's capacity to increase both the efficiency and quality of client services.

### *4. Variations in Cost of Service*

A pyramid showing the *cost* per unit of service would be the reverse of the service pyramid. Expert attorney services in complex cases would comprise the highest cost per unit of service, while web-based information would have the lowest. While it is possible to make a reasonable estimate of the average unit cost for each type of service offered, the aggregate cost for each type of service will depend on actual usage rates. For example, the aggregate annual costs of expert attorney assistance in complex matters will equal the number of cases

multiplied by the average cost per case. We can confidently assume that a huge volume of web-based informational service will cost a fraction of the aggregate cost of expert attorney services for even a small number of complex matters.<sup>39</sup> In addition, the actual cost configurations for different types of services will vary by type of legal problem, region, demographics, local rule structure and other factors.

### *5. Variety of Provider*

To take advantage of competition and maximize consumer choice, an optimized mixed-model system should offer a variety of providers within each level of the service pyramid. For example, staffed programs may be the most cost-effective way to maintain high-level expertise in public-benefit practice, but there will be cases when private attorneys—for instance, specializing in disability work—should also be available as a high-quality, cost-effective choice for consumers. Similarly, many people with family law problems may be efficiently served through contracts with private attorney specialists. Nevertheless, the system might maintain expert, staffed, family law programs as a benchmark and as a choice that consumers may prefer. It is unlikely that one mode of service delivery will prove optimum on both cost and quality criteria, even for similar problems. Urban and rural contexts, the structure of the local bar and consumer demographics and characteristics (income, language ability, health, prior experience with the legal system) will result in different optimal service configurations in different areas.

### *6. International Experience*

The mixed-model service pyramid concept owes a great debt to the research and ground-level experience of the large legal service programs in other countries. Most of these programs are moving towards what their policymakers describe as a “complex, planned, mixed-model delivery system.”<sup>40</sup> In fact, Britain and Canada visualize

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the complex, mixed model as a “service triangle” similar to the service pyramid schema originally developed by legal services programs in Washington State. The British and Canadian programs are of particular interest because their legal systems and need configurations are more like our own. Their legal aid programs have invested in extensive legal needs surveys, investigated typical consumer approaches to dealing with legal problems and comparatively assessed different modes of service delivery. This research, data and practical experience will be a significant resource to U.S. policymakers as we build a mixed-model system suited to our particular needs.

## SUMMARY

In the United States, a complex, mixed-model approach to legal services is emerging out of the ground-level response to compelling unmet legal needs. Because the current mixed model evolved without a deliberate plan or policy it suffers the following problems:

- It is confusing, if not impossible, for clients to navigate
- It is inefficient to the extent that it offers limited assistance to people with complex problems while experienced attorneys may end up with simple cases
- It is incapable of achieving economies of scale in purchasing, management, administration and support services
- Many areas of the country do not offer a wide range of service options
- Service innovations exist in some areas of the country but are absent in others
- Because state and local funding has accrued unevenly, there are growing disparities in resources and capacity among states

While we embrace the array of service innovations that have emerged in the United States, it is essential that we build an infrastructure to coordinate and add to what are now disparate parts.

## *Part Three*

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### NEXT STEPS: BUILDING A COMPLEX, MIXED-MODEL LEGAL SERVICES DELIVERY SYSTEM

*Stripped of pretension and reduced to practicality ... we are committed to a continuing effort to generate alternative methods ... and to evaluate remorselessly our fondest pet notions. To the extent we succeed, the result should be management always receptive to argument in favor of change and never willing to be caught in an act of bureaucratic mulishness.<sup>41</sup>*

*—The Legal Profession and Social Change:  
The Challenge to the Law Schools  
Frank Michelman, September 1967*

**H**ow do we move the present system towards the complex, mixed model? We must contend with significant barriers. Unlike other countries, the United States does not have a policymaking center or a dominant funder—legal aid is funded at many levels from many pockets. For the most part, service priorities

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and approaches are left to local providers, and only a few states are making serious efforts to coordinate services. Furthermore, the sector funded federally by the Legal Services Corporation, and at the state level from the Interest on Lawyers Trust Account (IOLTA), has a strong sense of ownership of the existing system and, for historical reasons, suspicion of external initiatives, leadership and accountability.

In the face of these obstacles, there are strong currents moving in the direction of change and reform. Stakeholders in the legal system, as well as the general public, recognize that the present system simply does not work. Only a fraction of those in need are served, inefficiencies abound, courts and agencies function poorly as unrepresented claimants flood dockets, and the public increasingly doubts that law offers them any real help.

Fortunately, frustration with the shortcomings of the status quo has produced effort and experimentation rather than resignation. The explosion of innovation in service delivery and the influx of new providers and funders described in *Project Findings* are a testament to the determined efforts of the bench, the bar and state legislatures to solve the access problem. These efforts are also evidence of the increasing willingness to experiment and incorporate new approaches. It is in this climate of change that we see the potential for an alliance among key stakeholders to lead a reform agenda.

In Part A we discuss the common interests and values of key stakeholders to whom we look to lead a reform agenda. In Part B we identify the features and functions of the complex, mixed-model system that require study and experimentation before moving to broad implementation. Finally, in Part C we propose an approach to testing and refining essential features and functions of the mixed-model approach.



## A. MANAGEMENT AND LEADERSHIP CHALLENGES: THE POTENTIAL FOR A “GRAND BARGAIN” AMONG SIX KEY STAKEHOLDERS

Moving from an uncoordinated system comprising disparate parts to a cohesive full-access system requires a “grand bargain,” a partnership, of key stakeholders who will boldly lead change and reform. To realize expanded access there must be a concerted effort to knit together local innovators with traditional staffed programs in order to build a new infrastructure that will: (1) effectively coordinate services; (2) improve performance and accountability; (3) demonstrate the important practical benefits of widely available advice and assistance; (4) assure both quality of service and cost-effectiveness and (5) generate sufficient resources from Congress, state legislatures, foundations, charities, the bar and the corporate/business sector to fund a full-access system.

Change will require persuasion and direction from funders as well as modest but well-placed incentives—such as public recognition, financial support to plan and carry out restructuring, pools of competitive grants and rewards for improved performance. Also, change will challenge the courts, the bar, the academy, legal services funders and new and long-standing providers to question old roles and assumptions and to take a broad view of their institutional self-interest. We believe that key stakeholders will shoulder short-run costs and dislocations because systemic changes of the sort we propose will better meet their long-term needs and interests. These core needs and interests, which we outline below, suggest a practical and realistic basis for a grand bargain among essential parties in support of a full-access agenda.

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### *1. State Courts*

State courts are inundated by parties appearing ill-prepared, without counsel, or lacking any notion of what to do or say. The result is delay, strain on clerk's offices, harried judges, confused, dissatisfied claimants and disruption of the orderly administration of justice. These negative results erode public confidence and threaten the legitimacy of the courts. In the system we propose, parties either will be equipped to represent themselves or will get appropriate help from legal experts, including attorney representation. This will improve court administration and increase public support. In states where courts have become active partners in assuring effective access, they have found resources for legal assistance within their own budgets and have been influential supporters of increased funding for legal services from state legislatures.

### *2. The Private Bar*

The private bar will be asked to accept that many services can and will be capably provided by non-lawyers. At the same time, there will be opportunities for unbundled as well as full-representation services that are compensated or provided pro bono. New opportunities and incentives will be generated to improve both the quality and cost-effectiveness of small firm practices, thereby increasing their capacity to serve low- and moderate-income clients with minimal or no subsidies. These changes have the potential to produce strong support for an access-to-justice agenda at all levels of the organized bar.

### *3. Existing Staffed Providers*

Existing staffed providers, the legal aid lawyers who have vigorously defended the federal legal services program and creatively sought increases in funding at the state and local levels, will continue to have a central role. They also will be asked to make room for, and to partner

with, many new providers. Though some may resist change, the deep commitment to making legal services widely available will inspire most legal aid attorneys to support an agenda that has a realistic possibility of substantially increasing access.

We already see positive signs of change and potential support among staffed providers. All over the country, program managers and staff are experimenting with new service approaches—hotlines, self-help clinics and technology-dominant service modes. A growing number of programs are taking the quality issue seriously and systematically collect outcome data. Some program directors are coming to see that contracting with the private bar for specific services is both cost- and quality-effective.

#### *4. Law Schools*

Law schools and their national organization, the Association of American Law Schools (AALS), strongly support expanded access to legal services. Law Schools have initiated loan forgiveness programs and offered specialized career services to assist students who want to practice in legal services and community law offices. Through the clinics that they fund, many law schools also have become providers of legal services. However, law schools can and should do more. Law schools are ideally situated to undertake a meaningful and sustained empirical research program to study legal services delivery and management and to produce data and analysis useful to legal services policy makers and providers. Such a program would enhance the core research and teaching missions of law schools, increase constructive collaboration between the academy and the practicing bar, offer law students opportunities to work with faculty on research relevant to important legal services policy debates, and produce better understandings within law schools of the challenges of preparing their graduates to represent legal aid clients and manage first-rate legal services offices.

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### *5. Funders*

The Congress, state legislatures, foundations, and corporate and private donors will be asked to provide substantially more resources. In return they will get better accountability, strong quality controls, assurance of value for dollar spent, cost controls, better distribution of services and contributions from clients to costs of service. Less tangibly though equally significant, by assuring broad and equitable access to law's benefits, funders will strengthen the legitimacy of the legal system and bolster the public's respect for and confidence in the law.

### *6. Consumers of Legal Services*

Those who need but are unable to obtain legal services will benefit the most from an expanded, more efficient and effective delivery system. Consumers of legal services will be directed to providers who can deal effectively with their legal needs. Moreover, they will have a reasonable choice of providers, and opportunities to evaluate the services they receive. Consumers will be asked to contribute to the costs of many services but copayments and reimbursements of costs will be affordable. Consumers may also be asked to represent themselves in straightforward matters, but they will have access to the information and advice they need to proceed confidently with less-than-full representation.

While the potential for a grand bargain among key stakeholders is real, presently there is little more than a nascent institutional framework for collaboration. At the state level, we see the emergence of Access to Justice Committees as the most promising locus for a partnership among stakeholders. Eventually, these Committees should have coordinative authority for all providers and responsi-

bility for institution building, assessing overall system performance (including the quality and efficiency of services provided) and maintaining sufficient resources to meet the covered needs of eligible consumers. However, national collaboration and coordination is also necessary to begin addressing the disparity in funding among states, the result of uneven growth of state and local resources. Congress and all federal agencies that fund civil legal assistance, particularly the Legal Services Corporation, have a stake in defining an appropriate federal role and assuring that every state has the basic infrastructure upon which to build programs tailored to local needs and circumstances.

## **B. DESIGN AND OPERATIONAL CHALLENGES**

A much larger and more efficient delivery system will require skilled management and coordination, performance standards, monitoring and data collection to assess performance, and objective comparison of different approaches to service delivery. At the present time, there is no baseline data against which to measure the gains of a coordinated, mixed-model system. Many models of service delivery are in operation but there is virtually no rigorous analysis of either conventional staffed programs or innovative service operations. The complex, mixed-model delivery system must demonstrate its capacity to collect baseline data and resolve key design and operational challenges. Because some of the components and features of the delivery system we propose are new, design and testing of these components is an essential stage in developing the complex, mixed-model approach.

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## *1. Designing and Testing New Components and Functions*

**a. Initial Assessments and Referrals.** We must design gateways to the service system that:

- Identify and respond to emergencies
- Incorporate the most effective approaches to preliminary response and assessment of consumer requests for assistance
- Identify the most appropriate providers
- Connect consumers to those providers in a seamless way

Designing and testing the preliminary assessment and routing components are critical tasks. We must develop ways to stay abreast of consumers' experiences navigating the system, particularly the ease with which they find appropriate help and their satisfaction with the help they receive. Because we can anticipate that some referrals won't be effective, we must build the ability to promptly re-route clients to more appropriate providers. To better serve clients with multiple problems that require coordinated services, we might support relationships between consumers and particular providers so that access for subsequent problems will be easier than first contact with the delivery system. Finally, the cost effectiveness of the system will be directly affected by the accuracy of matching consumer needs to the most cost-effective provider.

**b. Coordination of Services.** Service providers should be connected to consumer contact points—the system gateways—as well as linked to other providers so potential clients can be quickly directed to an appropriate resource. Over time, gaps in service capacity will need to be closed. Once in contact with a provider, other legal needs beyond the presenting problem may arise. If the original provider cannot meet the newly recognized need, it will be necessary to link to another provider.

**c. Development of a Technology Infrastructure.** Technology will be a crucial component of a much larger, mixed-model system. While technology always involves significant initial costs—planning, software and hardware acquisition—the investment should reap immense productivity and functional benefits. Before rolling out a large-scale technology strategy, it makes sense to develop systems in one or more states first (see Part C below) to resolve design and implementation issues and assess the costs and benefits of different approaches. The greatest challenge to a technology infrastructure will be in creating an online, fully coordinated assessment and referral network. The technical capability for this infrastructure is available, and a few examples of web-based client-provider matching services exist, but there is no experience with service coordination on the scale we contemplate. Also, case management and reporting tools should be available online to minimize the transaction costs of provider case documentation and data reporting.

**d. Getting to Scale.** We have no experience with meeting need in any one substantive area—with getting to scale. We may find efficiencies if every consumer gets appropriate assistance, but we won't know actual savings until a full-scale system is in operation. Initially, we need localized, carefully designed and well-monitored experience with meeting needs as a basis for gauging the costs and efficiencies of getting to scale for larger populations.<sup>42</sup>

## *2. Management and Performance Challenges*

**a. Skilled Management.** Professionals and professional service organizations are often suspicious of management and managers. Professional culture too often reinforces notions of the professional's omni-

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competence and overvalues professional autonomy. The fact is that many professionals already work within large organizations or firms, and fewer practitioners are able to maintain solo practices. Effective management is essential for every service provider in the service pyramid. Managers of service organizations should be able to:

- Institute strong quality assurance systems
- Link the program they manage to the larger provider network
- Continually look for ways to improve the efficiency of their operations
- Assure development, recruitment and retention of staff appropriate for the type of service provided
- Inculcate a culture of flexibility and openness to change

The Management Information Exchange has built an impressive network of LSC/IOLTA program managers, and its periodical *MIE* contains articles from a broad range of providers, often from outside the LSC/IOLTA network. An expanded system should build on this effort, recruit and retain outstanding program managers and disseminate best management practices.

**b. Obtaining Data on Program Performance.** Technology will facilitate the collection of performance data. The challenge will be to determine the indicators and decide how much data should be collected. On the one hand, too little data can hinder cross-comparisons and prevent sufficient differentiation among providers. On the other, too much data can overburden both providers and funders and undermine efforts to identify key performance indicators because too many indicators, both important and relatively minor, are available. Baseline data should be comparable across programs and organized in ways that permit reference to existing government databases.



**c. Objective, Credible Cost and Quality Comparisons.** In a diverse delivery model, qualitative and quantitative evaluation of delivery approaches is both more challenging and more important. Work in other countries and in a number of U.S. programs suggests that a system-wide approach to cost and quality assessments is possible. Effective methodologies will require objective, independent experts. The development of common standards for baseline outcomes and performance data is essential to cost and quality comparisons and to overall quality assurance efforts. The introduction of online case management and file-keeping systems will make it much easier to report aggregate, anonymous data to funders and system managers and coordinators.

**d. Quality Assurance for All System Components.** The need for strong quality assurance for all components of a complex, mixed-model delivery system is widely accepted. The difficulties lie in developing practical and workable approaches to continually improve both the quality of service to consumers and the efficiency and cost-effectiveness of service operations. To assist the development of these approaches, we should draw from the growing literature from business schools and management consultants relevant to professional service and not-for-profit operations. We can also learn from the experience and institutional structures in medicine—the not-for-profit Institute for Healthcare Improvement that focuses exclusively on improving quality and efficiency of care, and the federal Agency for Healthcare Research and Quality.<sup>43</sup> The quality issues in legal services delivery are challenging, but not nearly as complex as delivery issues in medicine.

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## C. PILOT PROJECTS

The above is a tall order. How do we get started? Because there is much to learn about key system components and functions, we propose a period of experimentation and evaluation to test the complex mixed-model approach, solve design problems and identify best approaches and practices. More ambitious testing and experimentation should take place in a few states willing to function as laboratories for a coordinated delivery system. We also propose that a number of services centers become laboratories for service delivery research and assessment.

### *1. State Pilot Projects*

If two or three states were to undertake coordination of service along the lines suggested here, we would learn a great deal about implementing and managing a complex mixed-model approach. These states could serve as laboratories for the study of key components, identification of problems and development of best practices. Pilot project states should have an effective Access to Justice Committee; involvement of all key stakeholders (e.g., the courts, LSC/IOLTA programs, law schools, the private bar and consumer groups); some diversity of providers; a strong pro bono culture; interest in meeting the needs of moderate- and low-income people; willingness to keep baseline performance data; willingness to develop system-wide quality assurance systems; commitment to transparent study of efforts and results; and willingness to assist other states involved in similar transitions to a complex, mixed-model service delivery system.

### *2. Service Delivery Pilot Projects*

Studies should also begin in a network of service centers. Service delivery pilot projects would systematically experiment with different

approaches and comparatively study their cost- and quality-effectiveness. Pilot projects might include study of court-based self-help centers; experiments with client copayments; development of outcome and quality indicators for different types of cases; design and implementation of client-satisfaction surveys; approaches to assessing the aggregate impact of targeted service efforts; and collaborations with private bar providers. The service pilot projects would report the results of their work and studies in periodicals that reach legal services funders and providers.

### *3. Pilot Project Colloquia*

The Bellow-Sacks Project will periodically host colloquia on topics that are useful to pilot project participants. Colloquia might involve inviting policy researchers and legal services managers and providers who have relevant expertise and experience. Colloquia would also be a forum for sharing work in progress and preliminary findings, discussing common problems and refining plausible solutions. The Colloquia might generate ideas for new projects and research tasks that could be worked on by law or public policy students. The general purpose of the Colloquia will be to capture lessons learned and to make sure that all participants benefit from the work and thinking of pilot project participants.

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## CONCLUSION

The access to civil justice movement is at a critical point in time. We are at a moment of consensus about the value of investing to make legal services more widely available. At the same time, service delivery experiments are increasing: the bar, legal aid leaders and the courts are thinking imaginatively about the role that each can play in promoting access. We must leverage this momentum to create a transitional action agenda aimed at mobilizing consumer and legal activists to promote full-access policies and seek funding for innovation and field testing of the system components proposed above. Based on what we learn and the steps we take during this transition period, we can begin building a nation-wide, diverse, well-coordinated, cost-effective delivery system capable of reaching all Americans in need of good quality legal advice and assistance.

If we make the right decisions today, we will be able to look back and recognize this period as the time when the phrase “Equal Justice Under Law” inscribed on the Supreme Court became a daily reality for all—when those with legal problems can approach the legal system, confident that they will be heard and that law can work for them.

## ENDNOTES

- <sup>1</sup> Arthur E. Sutherland, ed., *The Path of the Law from 1967: Harvard Law School Ses-  
quicentennial Papers*, 115–116.
- <sup>2</sup> *Id.* at 117–121.
- <sup>3</sup> Project working papers and a report on activities are available on the Bellow-  
Sacks Access to Civil Legal Services Project website at [www.law.harvard.edu/  
academics/clinical/bellow-sacks](http://www.law.harvard.edu/academics/clinical/bellow-sacks). The site may also be accessed from [www.  
garybellow.org](http://www.garybellow.org).
- <sup>4</sup> James Barr Ames Professor of Law, Harvard Law School; Professor, Kennedy  
School of Government and policy advisor to the Bellow-Sacks Access to Civil Le-  
gal Services Project.
- <sup>5</sup> Founder and Director, ProBonoNet.
- <sup>6</sup> Supervising attorney, Administrative Office of the California Center for Families,  
Children & the Courts.
- <sup>7</sup> Senior advisor to AARP Director of Advocacy Planning; former Director of  
AARP Legal Advocacy Group and former Executive Director of AARP Legal  
Counsel for the Elderly.
- <sup>8</sup> Barry Zuckerman, et al., “Why Pediatricians Need Lawyers to Keep Children  
Healthy,” 114 *Pediatrics* 224 (Sept. 2004).
- <sup>9</sup> We use “legal services” to include a wide range of services—everything from web-  
based information to expert lawyering, regardless of whether those services are  
provided by legal aid programs, courts, the private bar or lay advisors.
- <sup>10</sup> Law reform, legislative change and other efforts that focus on substantive law and  
fairer procedures will continue to be important. We support government and  
other support for legal work for low- and moderate-income people in these are-  
nas, but we focus on the dimension of access that enables ordinary people to take  
advantage of the legal remedies, procedures, entitlements and protections that are  
already in place. For a thoughtful discussion see Gary Blasi, “How Much Access?  
How Much Justice?,” 73 *Fordham L. Rev.* 865 (2004).
- <sup>11</sup> The significance of the stakes in a legal matter should be judged relative to the  
means and circumstances of the claimant. For example, for very poor households  
small increments in income or benefits may be of greater importance than much  
larger sums for well-off households.
- <sup>12</sup> We use “consumers” to mean the population that may, from time to time, have  
need for legal assistance. We intentionally invoke notions of delivery policies that  
are consumer-centered and driven. We use “client” only when we mean a recipi-  
ent of professional services from an attorney or other qualified expert.
- <sup>13</sup> Pascoe Pleasence, et al., *Causes of Action: Civil Law and Social Justice* (2004); Ha-  
zel Genn, et al., *Paths to Justice Scotland: What People in Scotland Think and Do  
About Going to Law* (Hart Pub. 2001); William L. Felstiner, et al., “The Emergence  
and Transformation of Disputes: Naming, Blaming and Claiming...” 15 *Law &*

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*Society Rev.* 631 (1981); Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (CSLS 1990).

- <sup>14</sup> See *id.*, Felstiner, et al., and Marc Galanter, “Beyond the Litigation Panic,” in Walter Olson, ed., *New Directions in Liability Law* (Academy of Political Science 1988).
- <sup>15</sup> See the American Bar Association, “Agenda for Access: The American People and Civil Justice—Final Report on the Implications of the Comprehensive Legal Needs Study” (1996). States also undertake legal-needs studies, see, for example, “The Massachusetts Legal Needs Survey: Findings from a Survey of Legal Needs of Low-Income Households in Massachusetts” (2003).
- <sup>16</sup> Gary Bellow suggested in 1967 that “...the problem is not just a problem of resources. The profession, as it is currently constituted, will never be able to cope with the need.... If all the attorneys in the United States did only Legal Aid work, the resources would still be inadequate.” See *supra* note 1, at 119–120.
- <sup>17</sup> The assertion that we can get more service from existing resources suggests that there are efficiency and productivity issues in the existing delivery efforts. We believe that there is good reason for concern, and discuss this issue in more detail in our findings on the status of U.S. legal services in the *Project Findings* report. There is virtually no useful data on the productivity of any LSC grantee or of most state-funded grantees.
- <sup>18</sup> We draw on the ideas and experience of legal services leaders in Washington State who have initiated coordination of services and reforms along the lines we propose. For a general discussion see Deborah L. Rhode, *Access to Justice* (Oxford University Press 2004), and the Colloquium on her book in the *Fordham L. Rev.*, vol. 73, no. 3. Also, see James L. Baillee, “The Role of the Private Bar in a Model System for the Delivery of Legal Services,” 26 *Hamline J. of Pub. Law & Policy* 195 (2005) for far-sighted proposals for reform, and Douglas J. Besharov, ed., *Legal Services for the Poor: Time for Reform* (AEI Press 1990). Besharov urges such reforms as client copayments, periodic competition for grants, simplifying legal procedures, support for self-help and routine collection of data on services provided by grantees. He also recommends that the LSC support the capacity of market providers to effectively serve the poor and experiment with modes of service provision in addition to the staffed model. Our policy proposals incorporate all of these reforms.
- <sup>19</sup> ABA “Agenda for Access,” *supra* note 15, at 17.
- <sup>20</sup> See Elizabeth Warren and Amelia Warren Tyagi, *The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke* (Basic Books 2004).
- <sup>21</sup> In 2004, four times the poverty level was approximately \$50,000 annual income for a four-person household. A better policy may be to tie eligibility for legal assistance to area median income, as in subsidized housing programs. This will take into account the significant differences in cost of living in different areas of the country.

- <sup>22</sup> Legal needs studies were pioneered in the U.S. but are used in all countries with large legal aid programs. Policy researchers are careful about "... identifying problems that appear solvable through the use of legal services with no presumption about obligations to deliver such services," Jon Johnson, "Legal Needs Studied in a Market Context" in Francis Regan, et al., *The Transformation of Legal Aid: Comparative and Historical Studies* 205, 211 (Oxford University Press 1999). Recent work by the Legal Research Centre of the British Legal Services Commission defines the current state of the art, not only in broad-based surveys of justiciable problems but also in terms of research that informs delivery policy for specific demographic subgroups. See, e.g., Hazel Genn, et al., *Paths to Justice Scotland: What People in Scotland Think and Do About Going to Law* (Hart Pub. 2001); Pascoe Plaesence, et al., "Local Legal Need," Legal Services Research Centre Research Paper 7, (January 2001); Pleasence, et al., *Causes of Action: Civil Law and Social Justice* (Legal Services Commission 2004); Richard Moorhead, et al., *The Advice Needs of Lone Parents* (Cardiff University 2004).
- <sup>23</sup> Paul Tremblay, et al., "The Lawyer Is In: Why Some Doctors Are Prescribing Legal Remedies for Their Patients, and How the Legal Profession Can Support This Effort," 12 *B. U. Public Interest L. J.* 505 (Spring/Summer 2003); Patti L. Culross, "Health Care System Responses to Children Exposed to Domestic Violence," in *The Future of Children: Domestic Violence and Children*, Vol. 9, No. 3 (Winter 1999).
- <sup>24</sup> We found evidence of large-firm pro bono focused on "signature" and high-profile projects that involve complex issues as well as matters that are controversial for government funders. For example, some large firms represent immigrant children being held in INS facilities. Firms have also assisted in post-conviction death penalty cases.
- <sup>25</sup> ABA, "Agenda for Access" *supra* note 15, page 26.
- <sup>26</sup> Crystal MacKellar, "Pro Bono Publico: Private Attorney's Delivery of Free Legal Services to the Poor," 2003, third-year paper in conjunction with Delivery of Legal Services course at Harvard Law School, available on the Bellow-Sacks website at <http://www.law.harvard.edu/academics/clinical/bellow-sacks>.
- <sup>27</sup> For example, Gary Bellow and Jeanne Charn, through the Harvard Law School clinical program, invested the research and resources to develop a case theory and to bring early tort cases for asymptomatic lead paint poisoning in Massachusetts. Once the possibility of successful outcomes was demonstrated, private lawyers emerged to take these cases.
- <sup>28</sup> Judicare programs remain active in Wisconsin and northern Minnesota. See James L. Baillee, "The Role of the Private Bar in a Model System for the Delivery of Legal Services," 26 *Hamline J. of Law and Pub. Pol.* 195, 2005.
- <sup>29</sup> Richard Moorhead, et al., *Quality and Cost: Final Report on the Contracting of Civil, Non-Family Advice and Assistance Pilot* (TSO 2001).
- <sup>30</sup> The Resource Center for Great Programs, Inc., <http://www.greatprograms.org>.
- <sup>31</sup> Jeffrey Selbin and Mary Louise Frampton, "Bellow Scholar Program Proposal," document on file with Jeanne Charn.

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- <sup>32</sup> Jeanne Charn, “Time for a Quality Agenda in Legal Services,” *MIE* (Fall 2004); Jeanne Charn and Randi Youells, “The Quality Matrix,” *Equal Justice Magazine* (2003).
- <sup>33</sup> The National Center for State Courts and the Stetson Justice Institute (SJI) have small but effective research capacity. SJI recently funded a multi-state evaluation of court-based pro se centers. See, e.g., a report on the Maryland pro se effort at [http://www.courts.state.md.us/family/evaluations\\_mdsummary.pdf](http://www.courts.state.md.us/family/evaluations_mdsummary.pdf).
- <sup>34</sup> See the Legal Services Research Centre at <http://www.lsrc.org.uk> and the website of the University of London’s Institute for Advanced Legal Studies at <http://www.ials.sas.ac.uk>.
- <sup>35</sup> See the website for the Resource Center for Great Programs at <http://www.great-programs.org>. The website has a link to ten case studies on quality efforts in legal services, including a study of the Hale and Dorr Legal Services Center at Harvard Law School.
- <sup>36</sup> See Richard Moorhead and Pascoe Plaesence, eds., “Introduction,” in *After Universalism: Reengineering Access to Justice* (Blackwell 2003).
- <sup>37</sup> 45 CFR Part 1642, sec. 1642.3.
- <sup>38</sup> Our concept of the service pyramid comes from the experience of Washington State. John McKay, a bar leader from Washington who served as president of LSC from 1996 to 2001, introduced the concept and imagery at the national level. Simultaneously, the legal aid programs in Britain and Canada were evolving a complex mixed-model approach that was visualized as a “service triangle.” See Ab Currie, “Legal Aid Delivery Models in Canada: Past Experience and Future Development,” *University of British Columbia L. Rev.* (2000).
- <sup>39</sup> Angela Longo, “Big Case Management” ILAG 2003, [www.ilagnet.org](http://www.ilagnet.org). Similarly, in medicine, serious chronic illnesses consume a disproportionate amount of annual health care expenditures.
- <sup>40</sup> Alan Paterson, Remarks, LSRC International Research Conference, Cambridge University, Cambridge, England (March 2004).
- <sup>41</sup> See Sutherland, *The Path of the Law*, *supra* note 1, at 125–138.
- <sup>42</sup> Josh Humi, “Protecting the Poor: A Cost Effective Model” Delivery of Legal Services course paper, spring 2005, on file with the authors; Jeanne Charn, “Preventing Foreclosure: Thinking Locally, Investing in Enforcement, Playing for Outcomes” discussion paper for the Legal Services Research Center’s International Research Conference, March 2004, Cambridge, England, on file with the authors.
- <sup>43</sup> See the Institute for Healthcare Improvement’s website at <http://www.ihl.org> and the Agency for Healthcare Policy Research’s website at <http://www.ahcpr.gov>.