

CIVIL LEGAL ASSISTANCE FOR THE 21ST CENTURY: ACHIEVING EQUAL JUSTICE FOR ALL

by

ALAN W. HOUSEMAN

***"I don't need your help to stay poor. I can do that by myself."
Rosita Stanley, Georgia Clients Council¹***

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***@The only thing less popular than a poor person
these days, is a poor person with a lawyer.@
Jon Asher, Director, Legal Aid Society of Metropolitan Denver²***

INTRODUCTION

The system of providing civil legal assistance to our nation's poor is in transition. How it will be structured and organized in the future are not yet clear. Now is the time to reassess the mission, purposes, objectives and structure of the national civil legal assistance system and determine how it should be changed to achieve equal justice for all.

I. TRANSITION

Just three years ago the civil legal assistance system funded by the Legal Services Corporation (LSC) consisted primarily of full-service providers, each serving one geographic area, with the responsibility and capacity to provide high-quality legal assistance in all forums and to ensure access of all clients and client groups to the legal system.³ Today, instead of one full-service provider, there are two newly organized direct

¹Ms. Stanley made this statement at the Conference on Legal Services and Poverty Advocacy funded by the Ford Foundation and conducted by the Center for Law and Social Policy in February of 1994 at Airlie House in Virginia.

²Robert Pear, *With Welfare Changes Looming, Legal Aid for Poor Grows Scarce*, NEW YORK TIMES, September 5, 1995.

³Of course, it was never the case that LSC-funded providers were the only providers who delivered civil legal assistance to the poor. In cities like Washington D.C., New York City, Chicago, Detroit and others, and in states like California, there were a number of providers, some of which were full-service providers, that were not funded by LSC. In addition, there have been pro bono

service providers each operating statewide in the same geographic areas in 16 states and two direct service providers in over 20 large or medium size cities. Moreover, because of the new restrictions on advocacy and who can be represented (described below), LSC-funded legal services programs cannot operate fully in all forums.

In addition, the network of federally funded entities that linked all of the LSC-funded providers into a single national legal services program has been substantially reduced and some components dismantled.⁴ At the state level, these have been replaced by a separate group of non-LSC funded entities engaged in state advocacy in over 25 states.⁵

While it is true that there are considerable regional variations to these patterns of new providers, and more have been created in the Northeast and West than in the South, all of these new providers exist in all regions. In addition, the number of non- SC funded providers are very likely to increase during this year in each of these categories and in every region in the country.

Another emerging pattern involves pro bono efforts. It appears that the number of independent pro bono programs⁶ are increasing while the in-house efforts are decreasing. If this trend continues, it too will reflect a changing world from that of the 1980s and 1990s where many LSC-funded programs resisted funding independent pro bono programs, but instead conducted their own in-house pro bono programs and hired as staff pro bono coordinators to refer cases to the private bar.

Moreover, many programs are developing new brief advice systems, such as telephone hot lines, and new approaches to client intake. While telephone hotlines for the elderly have been in existence for a number of years because of the efforts of the American Association of Retired Persons and its Legal Counsel for the Elderly, what is now emerging are new statewide hotlines serving all categories of the poor. Such statewide

programs, civil rights and civil liberties organizations, and other legal assistance providers that were not funded by LSC. However, within the last three years, the landscape of staff attorney providers has undergone substantial change.

⁴This network consisted of state and national support centers, a National Clearinghouse and poverty law journal, and training programs combined with a single federal source of funds, quality standards, delivery research and training.

⁵Some of the state entities are formerly LSC funded state support centers, although there are less than ten of those still in existence.

⁶Independent pro bono programs are free standing programs or programs associated with bar associations or other entities that are not direct recipients of LSC funds. In contrast, many LSC-funded programs operate their own pro bono program in-house.

hotlines have developed in seven states and plans for another ten or so are in various stages of implementation.⁷

Finally, we are beginning to see the emergence of comprehensive, integrated statewide systems of delivery with the express goal of achieving equal justice for all and that are managed by a broadly representative board, involve a single point of entry for all clients, integrate all institutional and individual providers and partners, allocate resources among providers to ensure that representation can occur in all forums for all low-income persons and seek to provide access to a range of services for all eligible clients no matter where they live, the language they speak or the ethnic or cultural group of which they are a member.⁸

II. THE CHALLENGES

The changes in the structure and organization of civil legal assistance pose fundamental challenges to achieving equal justice for all. On the one hand, this increasingly complex collection of providers could evolve either into a coordinated, integrated statewide system able to offer a full range of effective and proactive services in all forums to a substantial number of low-income persons. On the other hand, this emerging system of providers could evolve into a fragmented and uncoordinated set of organizations competing for scarce funds and providing assistance in a limited range of substantive areas and without using all techniques of advocacy.

To prevent the latter system from emerging, will require changing the mission, purposes, objectives, structure and organization of the civil legal assistance system. Leaders of civil legal assistance providers, pro bono programs, law schools, bar and judicial leaders, community organizations, private attorneys and others involved on state access to justice boards or commissions are in a position to shape the direction of the new

⁷A detailed description of five of the new statewide hotlines is provided in a recent LSC publication, INTAKE SYSTEMS REPORT: INNOVATIVE USES OF CENTRALIZED TELEPHONE INTAKE AND DELIVERY IN FIVE PROGRAMS, Legal Services Corporation, March 1988.

⁸Washington has developed such a statewide integrated system. Maine, New Hampshire, Vermont, Massachusetts, Maryland, New Jersey, Michigan, Florida and Minnesota are moving forward toward such a system.

civil legal assistance system. To do so effectively, they will have to take into account at least the following:

- ! changes in the legal system, including increased use of alternatives to litigation to settle disputes and solve problems, the diminished role of litigation in protecting and expanding the rights of low-income persons, expanding use of non-lawyers to provide legal information and resolve disputes, and the growing number of persons, rich or poor, who are utilizing the legal system through their own pro se representation;
- ! changes in the laws affecting low-income persons;
- ! the shifting paradigms about domestic social policy and the place of the poor and unpopular groups in our society. Ending poverty through cash assistance is no longer seen as a high priority governmental or societal goal; there is very little interest in lifting the poor out of poverty through public assistance or other public endeavors;
- ! the fundamental distrust of government by the general populace, particularly the Federal government and Federal programs;
- ! the need to serve more clients, more efficiently and with a wider range of available services;
- ! the need to develop new funding sources and maintain and expand existing federal, state and local governmental and private funding sources; and,
- ! the need to build widespread public and political support for legal services beyond lawyers and the justice system.

Thus, the fundamental issue for those concerned about the civil legal assistance system for the future is: **how should civil legal assistance be organized for the first decades of the 21st century in order to achieve equal justice for all?**

III. OVERVIEW OF RECOMMENDATIONS

This article argues for the development in each state of an integrated, coordinated, collaborative and comprehensive system of civil legal assistance to low-income persons which seeks to achieve equal justice for all. The state equal justice system must carry out three fundamental objectives:

1. Increase awareness of rights, options and services through coordinated, systematic and comprehensive outreach and community legal education.

2. Facilitate access to legal assistance through a coordinated system of service delivery, coordinated advice and brief services, and accessible, flexible, responsive and coordinated intake systems.
3. Provide a full range of civil legal assistance and related services to enable low-income persons to anticipate and prevent legal problems from arising, resolve their legal problems efficiently and effectively, protect their legal rights, promote their legal interests, enforce and reform laws and improve their opportunities and quality of life.

To carry out these objectives the system would utilize diverse institutional and individual providers including non-profit legal services programs, law firms, law schools, low-income advocacy organization and groups, human services, ecumenical and community institutions and governmental or quasi-governmental institutions. Representation and assistance would be undertaken by legal services staff, private attorneys working pro bono and for compensation, law students and law teachers, lawyers and others working for other government and private entities, staff assigned to, placed with or working for other community-based organizations, lay advocates and non-lawyers associated with community organizations and court personnel.

These attorneys, paralegal non-lawyers and others, with substantive support from a variety of local, state and national entities, would work throughout the state in a coordinated and collaborative manner as a community of advocates to ensure a full range of legal assistance options to all low-income persons in all civil justice forums. Legal providers would coordinate and collaborate with human services providers and community organizations to deliver holistic and interdisciplinary services. Providers and their partners would take full advantage of existing and innovative technologies and maximize the use of technology to delivery high quality legal assistance and other critical services.

Such a system would also address changing legal needs of low-income persons and their communities by developing new and innovative substantive strategies and techniques of advocacy by reconfiguring their structures and by integrating their activities and reallocating resources to carry out such strategies and techniques.

The system would also ensure statewide coordination and support for all providers of civil legal assistance, including coordination of state-level resources development and would ensure coordination among state and nationally.

PART ONE: THE CAUSES

The need to fundamentally transform and re-engineer the civil legal assistance system is a result of many factors including changes in the practice of law, new laws

affecting low-income persons and widespread recognition that changes were needed in the legal services delivery system, although the initial driving force was the reduction in LSC funds, the imposition of restriction on all funds of LSC recipients and the loss of LSC funding for key support and training components of the LSC system.

I. THE LSC SYSTEM

A. DESCRIPTION

The federal Legal Services Program began in the Office of Economic Opportunity in 1965. OEO created a unique structure, building on the civil legal aid model and on the demonstration projects at New Haven, New York, Boston and Washington, DC funded by the Ford Foundation in the early 60s.⁹

The architects of the new federal program recognized that civil legal assistance did not exist in many parts of the country and realized two fundamental propositions: First, that something new was needed—well-funded legal aid would not do.¹⁰ Second, the architects realized that the law could be used as an instrument for orderly and constructive social change as was being done by lawyers for the civil rights and civil liberties movements.¹¹

The something new for legal services involved five elements:

⁹These are described in EARL JOHNSON, JR., JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM, Chapter 2.1 pg. 21-32 (1974); JOHN A. DOOLEY and ALAN W. HOUSEMAN, LEGAL SERVICES HISTORY (hereafter LEGAL SERVICES HISTORY), pg. 2 (1985).

¹⁰The notion of something new came from a speech given by Attorney General Nicholas deB. Katzenbach at the 1964 Conference on the Extension of Legal Services to the Poor: (The problems of the poor) . . . are not new problems. It is our appreciation of them that is new. There has been long and devoted service to the legal problems of the poor by legal aid societies and public defenders in many cities. But, without disrespect to this important work, we cannot translate our new concern into successful action simply by providing more of the same. There must be new techniques, new services, and new forms of interprofessional cooperation to match our new interest. U.S. Department of Health, Education and Welfare, CONFERENCE PROCEEDINGS THE EXTENSION OF LEGAL SERVICES TO THE POOR (1964) at 11.

¹¹In the words of Clint Bamberger, the first Director of the Office of Legal Services within the Office of Economic Opportunity, legal services was designed to marshal "the forces of law and the powers of lawyers in the War on Poverty to defeat the causes and effects of poverty."

The first was the notion of responsibility to all poor people as a "client community." Legal services programs served, as a whole, the poor people who resided in their geographic service area, not just individual clients who happened to be indigent.

Second, legal services emphasized the right of clients to control decisions about the solutions pursued for their problems. Legal services was an advocate whose use was to be determined by poor people rather than an agency to give services to poor people.

The third was a commitment to redress historic inadequacies in the enforcement of legal rights of poor people caused by lack of access to the institutions that created those rights. Legal services pursued law reform, a phrase coined by Justice Johnson to create a goal for the legal services program during the early years.

The fourth element was a responsiveness to legal need rather than to demand. Probably the greatest deficiency of the legal aid societies was that they responded only to uninformed demand to those who walked into the office so that large parts of the legal needs of the poor legal services were not addressed while resources legal services were committed to the generally narrow range of legal problems that poor people recognized. Through community education, outreach efforts and physical presence in the community, legal services programs were able to assist clients to identify critical needs and fashion legal responses.

The fifth and final element was a full range of service and advocacy tools, as full a range as that offered by private attorneys for the affluent.

Unlike other legal aid systems, the US system utilized staff attorneys working for nonprofit entities, not private attorneys participating in judicare programs. OEO funded full-service providers, each serving one geographic area, which had the obligation to ensure access of all clients and client groups to the legal system. The only national earmarking of funds within the OEO Office of Legal Services was for Native Americans and migrant farmworkers, for which OEO created separate funding and a somewhat separate delivery system. Legal services also developed a unique infrastructure found nowhere else in the world that, through national and state support, training programs and a national clearinghouse, provided both leadership and support on substantive poverty law issues. State and national support centers also engaged in major litigation and undertook representation before State and Federal legislative and administrative bodies.

The structure put in place by OEO was carried over fundamentally unchanged by the Legal Services Corporation when it began to function in 1975. Moreover, LSC expanded to reach every county in the country by using the OEO model and expanded representation to Native Americans and migrant farmworkers by continuing those separately funded and structured delivery systems.

B. THE ACCOMPLISHMENTS

1. Overall Delivery Issues

Given the political environment in which LSC operates, it is quite remarkable what it has accomplished. LSC expanded civil legal aid to reach all areas of the country with some type of program. Federal funding through LSC grew to \$415 million in early 1995. Today, the LSC funding level through LSC is \$283 million and total funding for LSC-funded programs is approximately \$530 million and there is roughly another \$300 million to \$350 million provided to non-LSC funded civil programs. The staff attorney model remains the primary means of subsidized delivery of civil legal assistance, although, since 1981, there has been a substantial growth of pro bono programs and private attorney involvement in the organized delivery system. Over 130,000 lawyers provide civil representation to the poor under pro bono programs. The support structure remained in place until 1996.

2. Impact on Poverty

While the national legal services program did not end poverty, legal services representation did improve the lives of the poor and prevented other low-income persons from becoming poor.

First, legal services representation successfully created new legal rights through judicial decisions and representation before legislative and administrative bodies.

For example: legal services attorneys won landmark decisions such as ***Shapiro v. Thompson***¹² which ensured that legal welfare recipients legal services were not arbitrarily denied benefits. Perhaps the greatest victory was ***Goldberg v. Kelley***¹³, which led to the due process revolution. ***Goldberg*** required the government to follow due process when seeking to terminate benefits. A series of latter cases expanded due process to large areas of public and private spheres. ***Escalero v. New York City Housing Authority***¹⁴ required public housing authorities to provide hearings before evictions from public housing; and later decisions such as ***Fuentes v. Shevin***¹⁵ ensured that private parties must follow due process when seeking to recover possessions such as automobiles.

¹²394 U.S. 638 (1969).

¹³397 U.S. 254 (1970).

¹⁴425 F.2d 953 (2d Cir. 1970).

¹⁵407 U.S. 67 (1972).

Equally significant were judicial decisions stimulated by creative advocacy by lawyers which expanded common law theories on retaliatory evictions and implied warranty of habitability. These insured that the poor could not be evicted from housing when the landlord failed to meet statutory and common law obligations

Legal services attorneys also effectively enforced rights that were theoretically in existence but honored in the breach. Legal services representation ensured that federal law benefitting the poor was enforced on behalf of the poor. *King v. Smith*¹⁶ led to the enforcement of federal statutory law not only in the legal welfare area but, until recently, set the framework for enforcement of federal law across the board. And, more recently, legal services programs won *Sullivan v. Zebley*¹⁷, the case providing SSI benefits to hundreds of thousands of families with disabled kids.

Perhaps most important, through sustained and effective legal services representation, public and private agencies and entities dealing with the poor were fundamentally changed. Legal services representation altered the court system by simplifying court procedures and rules so that they could be understood by, and made more accessible to, the poor. Legal services representation also forced the welfare and public housing bureaucracies, schools and hospitals to act according to a set of rules and laws and to treat the poor equitably and in a manner sensitive to their needs. And legal services programs have been on the forefront of the efforts to assist women subject to domestic violence.

II. RECENT DEVELOPMENTS: CONGRESS AND LSC

For the last 30 years, the legal services program has been a national program whose principal, and in some places, sole funder was the Federal government, initially through Federal agencies and, since 1975, through the Legal Services Corporation (LSC). The structure and principal directions of the program have been set by Congressional legislation and the regulations, policies and oversight provided by LSC. While the preeminence of the LSC role began to change during the 1980s and into the 1990s, as States and other non-LSC funding sources began to provide a greater share of overall legal services resources, the program remained essentially national in scope and direction, and local program directors and staff all shared the view that the legal services program was to help people in poverty address their most pressing legal needs.

A. CONGRESS

¹⁶392 U.S. 309 (1968).

¹⁷493 U.S. 521 (1990).

Beginning in 1995, this national delivery system and its sense of shared values has been undermined by well-organized, well-financed and successful efforts by critics of legal services, many of whom do not believe in government-funded civil legal assistance. The leadership of the 104th Congress attempted to eliminate the Legal Services Corporation and federal funding for civil legal services because many key Congressional leaders do not see legal services as a federal responsibility and believe that it is infused with social activist lawyers who can effectively stop welfare and other reforms they now seek to enact.¹⁸ Congress failed to eliminate LSC only because an effective lobbying and media effort made it possible for a loose bi-partisan coalition of "moderate" Republicans and "blue dog" Democrats to come together and join with other traditional Democrats to preserve funding for the program.¹⁹ However, the moderate support from both parties that was needed to form a majority to preserve the program was premised on substantial reforms, and the national legal services program paid a huge price.²⁰ Federal funding for legal services was cut by 30% from \$415 million in FY 95 to \$283 million in FY 97 and FY 98; 12.9% of program staff left and 12.7% of legal services local offices legal services were closed.²¹ In addition, state and national institutions that made up the legal services

¹⁸See Naftali Bendavid, *As GOP Soars, Will LSC Sink?* LEGAL TIMES, December 5, 1994; William Mellor, *Want Welfare Reform? First Fight Legal Services Corporation*, WALL STREET JOURNAL, A 13, February 1, 1995; Steve Largent, *It's A Good Idea Gone Bad: Legal Services Corporation No Longer Meets Its Mandate. It Should Die*, USA TODAY, A 26, May 25, 1995; Henry Weinstein, *Great Society's Legal Aid for Poor Targeted by Budget Ax*, LOS ANGELES TIMES, A 14, December 29, 1995.

¹⁹There were considerable differences among opponents on how to kill LSC. In September 1995, the House Judiciary Committee reported out the "**Legal Aid Grant Act**" (HR 2277) which would have radically altered the current federally funded legal services program by eliminating the Legal Services Corporation and sending funds to the states for allocation under the rubric of "block grants." Over a four year period, block grant funds could be used for only a limited range of services and causes of action, subject to severe restrictions, and state legal services funds were subject to the same restrictions as those that applied to the federal funds. The House leadership, however, wanted to end legal services within two years and decided let reauthorization for the legal services program simply languish. The original House appropriation for FY 1997 included only \$141 million for LSC, putting it on a "glide path to elimination." However, the full House subsequently raised the LSC funding to \$250 million.

²⁰A prevalent rumor within the legal services community reported in a number of newspaper articles suggested that LSC had accepted the new restrictions in exchange for continued funding through some agreement bargained with the Congressional leadership. For example, Professor David Cole (Georgetown University Law Center) in *A Shackling Compromise: How the Legal Services Corp. Sold Out the Poor*, LEGAL TIMES, January 27, 1997, p. 27, These factual assertions reflect neither what happened nor the LSC role in the Congressional consideration of the FY 96 and FY 97 legislation. As Alexander Forger, President of LSC stated in his *Letter to the Editor*, LEGAL TIMES, February 3, 1997, p. 27: "The specter of our corporation sitting at the bargaining table trading off constitutional rights for life is pure fantasy. In fact, we fought both our budgetary reductions and the restrictions in the limited forums to which we were invited."

²¹LSC FACT BOOK, 1996, pg. 9

support and infrastructure lost all of their LSC funds. As a result, many of those institutions were initially in disarray and financial turmoil, although much of the infrastructure and many of these programs are still in existence because of other funding.²²

Equally significant were the restrictions in the 1996, 1997 and 1998 appropriations legislation on the work of programs that receive LSC funds.²³ No longer will programs be able to use funds available from non-LSC sources to undertake activities that are restricted with the use of LSC Funds. Under the new legislation, all of a program's funds, from whatever source, will be restricted.²⁴

With a few narrow exceptions, recipients are precluded from advocacy and representation before legislative bodies and in administrative rulemaking proceedings.²⁵ In addition, recipients cannot initiate, participate or engage in any new class actions and were required to discontinue work on pending class actions by August 1, 1996.²⁶

²² For example, key components of the infrastructure have fared as follows: Five regional training centers previously funded by LSC have been dismantled; training is being done by local and state legal services programs, NLADA and the national support centers. The National Clearinghouse has significantly downsized, but continues to produce the CLEARINGHOUSE REVIEW and serve as a clearinghouse of information on case developments and regulatory and legislative issues affecting the poor. Most of the 50 former LSC-funded state support units have lost staff and substantial resources; many are no longer in existence; some have been reorganized; others have continued with non-LSC funds. Of the former 15 national support centers, only one has gone out of existence. Most of the remaining centers remain viable and have attracted substantial foundation and other funding over the last year. Several have actually been able to obtain sufficient funding to hire new staff. However, the national support centers have not made up the \$8 million in LSC funds that was previously provided for national support.

²³ It is necessary to take whatever steps are possible to remove restrictions on which clients can be served and what legal services can be provided. It is particularly important to remove the restrictions on the non-LSC funds of LSC-funded programs because such restrictions dry up funding sources that have in the past and will in the future provide resources to serve the critical legal problems of low-income clients. On the merits, restrictions on advocacy are unnecessary to address perceived problems and without justification. The principles of equal justice do not distinguish between one group of clients and another, between the deserving and the undeserving poor, whether they be welfare recipients, aliens, prisoners or persons charged with drug offenses who reside in a public housing project. Nor should low-income persons be foreclosed from bringing class actions to vindicate their rights, claiming attorney-s fees that are available by law or seeking necessary relief that is only available from legislative or administrative bodies.

²⁴ Sec. 504 of Pub. L. 104-134, 110 Stat. 1321; 45 CFR 1610, 62 FR 27695 (May 21, 1997).

²⁵ Sec. 504(a)(2), (3), (4), (5), (6) of Pub. L. 104-134, 110 Stat. 1321; 45 CFR 1612, 62 FR 19401 (April 21, 1997).

²⁶ Sec. 504(a)(7) of Pub. L. 104-134, 110 Stat. 1321; 45 CFR 1617, 61 FR 63754 (December 2, 1996).

Recipients cannot claim, collect or retain attorneys=fees from adverse parties on cases initiated after April 25, 1996, even when the fees are otherwise permitted by statute.²⁷ Moreover, recipients can no longer challenge State or Federal welfare reform laws or formally adopted regulations.²⁸

Recipients are prohibited from representation in redistricting cases, participating in any litigation with regard to abortion,²⁹ representing certain aliens,³⁰ participating in litigation on behalf of a person incarcerated in a Federal, State or local prison, including pre-trial detainees,³¹ and representing persons convicted of, or charged with, drug crimes in public housing evictions when the evictions are based on alleged threats to health or safety of public housing residents or employees.³²

In addition, recipients have to identify potential client plaintiffs by name and obtain a written statement of facts from any plaintiff client before they can engage in precomplaint settlement negotiations or file suit on the client=s behalf.³³ Recipients cannot conduct training programs to advocate particular public policies or political activities and cannot do training on prohibited cases or advocacy activities (e.g., lobbying, rulemaking, attorneys=fees).³⁴

In the FY98 appropriations bill, three new provisions. One provided LSC with new authority to debar recipients from future grants if they were determined to have substantially violated the LSC Act or appropriation provisions or if they sued LSC because of the

²⁷Sec. 504(a)(13) of Pub. L. 104-134, 110 Stat. 1321; 45 CFR 1642, 62 FR 25862 (May 12, 1997).

²⁸Sec. 504(a)(16) of Pub. L. 104-134, 110 Stat. 1321; 45 CFR 1639, 62 FR 30763 (June 5, 1997).

²⁹Sec. 504(a)(14) of Pub. L. 104-134, 110 Stat. 1321 (June 5, 1997).

³⁰See 504(a)(11) of Pub. L. 104-14, 110 Stat. 1321; 45 CFR 1626, 62 FR 19409 (April 21, 1997).

³¹Sec 504(a)(15) of Pub. L. 104-134, 110 Stat. 1321; 45 CFR 1632, 62 FR 19421 (April 21, 1997).

³²Sec 504(a)(17) of Pub. L. 104-134, 110 Stat. 1321; 45 CFR 1633, 61 FR 63756 (December 2, 1996).

³³Sec. 504(a)(8) of Pub. L. 104-134, 110 Stat. 1321; 45 CFR 1636, 62 FR 19418 (April 21, 1997).

³⁴Sec. 504 (a)(12) of Pub. L. 104-134, 110 Stat. 1321; 45 CFR 1612.8, 62 FR 19406 (April 21, 1997).

restrictions.³⁵ Another eliminated procedural rights to a hearing before an independent hearing officer when LSC sought to terminate or deny refunding.³⁶ The other required LSC programs to disclose to LSC and the general public for cases initiated by the program the name and address of all parties, the cause of action and the case number and address of the court in which the case was filed.³⁷

The same forces which dominated the 104th Congress on the issue of legal services continue to dominate the 105th Congress. The leadership in both the House and Senate remains unequivocally opposed to a Federal legal services program. The "moderate" forces will continue to play the pivotal role. While the Administration is committed to continue to fight for modest increases in funding, it is not likely to insist upon significant changes in the types of programs that can be funded or the removal of the restrictions on recipients of those funds.³⁸ Thus, what is at stake in the 105th Congress is still the overall survival of a Federal legal services program.

B. THE RESPONSE FROM THE CIVIL LEGAL ASSISTANCE COMMUNITY

In response to these funding cuts and restrictions, fundamental changes are being made in the legal services delivery system at the State level, and many current or former LSC recipients have given up LSC funds or are heading in new directions not followed in the past.³⁹ In only a few States were the providers of civil legal assistance and the delivery system they operated unchanged. In addition, new efforts to raise public funds, such as

³⁵Section 504(a) of the FY 1998 appropriations act, Pub. L. 105-119, 111 Stat. 2440.

³⁶Section 501(b) of Pub. L. 105-119, 111 Stat. 2440, states that "1007(a)(9) and 1011 of the LSC Act shall not apply to the provision, denial, suspension, or termination of any financial assistance using funds appropriated in this Act."

³⁷Section 505(a) of Pub. L. 105 -119, 111 Stat. 2440, 45 CFR 1644, 63 FR 33251 (June 18, 1998).

³⁸The FY 99 Budget of the President proposed \$340 million for LSC, but included all of the restrictions contained in the FY98 appropriations. It did not include the Burton Amendment case disclosure requirements added in FY 98 and described above. LSC submitted a budget request for \$340 and current appropriation provisions.

³⁹By 1998, at least 35 grantees in 18 States had given up their LSC funds and continued to operate using only non-LSC funds. In ten of these States, new entities had been established to receive LSC funds. Many of these new LSC-funded entities had established extensive hot line advice, brief service and referral systems and were relying upon private attorneys and non-LSC-funded entities to provide basic legal representation. In at least 26 other States, new entities had been established to receive the non-LSC funds that had previously gone to the LSC recipients. In at least 15 States, former legal services attorneys had set up new, or moved to existing, public interest law firms devoted to serving low-income persons without direct governmental funding.

expanding IOLTA funding⁴⁰ and earmarking State general revenue appropriations and filing fee surcharges for civil legal services, are being pursued in over half of the States. Similarly, in at least 24 jurisdictions new bar initiatives, including expanding pro bono efforts, have begun. Furthermore, in a number of States new and increased efforts have been undertaken to raise private funds from local foundations, private law firms, United Way campaigns and individual contributors.⁴¹

Thus, what is emerging in many states is a new delivery system that includes both programs funded with LSC funds but restricted in its activities, as well as programs funded with substantial non-LSC funds. The non-LSC providers are free to engage in class actions, welfare reform advocacy, policy representation, and assistance to aliens and prisoners so long as their public and private funding sources permit their resources to be used for those activities. Moreover, in a number of jurisdictions, the private bar is becoming significantly more involved in delivering basic legal services as well as undertaking those activities that LSC recipients are restricted from handling.

One fundamental consequence of these developments is that state-level funding has become a primary focal point for the future of civil legal assistance. Moreover, as more programs operate without LSC funding and greater resources are provided by other funders, LSC will have far less ability to set directions for the overall civil legal assistance system.⁴² Thus, how programs are structured, how various providers are coordinated and integrated into an effective whole, and ultimately how civil legal assistance for low-income persons are provided, will be dependent as much on actions taken at the state as on the national level.⁴³

⁴⁰Interest on Lawyers Trust Accounts are programs that authorize attorneys to pool nominal or short-term client funds into checking accounts where such interest is pooled and used it to fund civil legal services programs around the State.

⁴¹See THE SPAN UPDATE: A GUIDE TO LEGAL SERVICES PLANNING, published by the American Bar Association and the National Legal Aid and Defender Association, January, 1998; A CHART OF SIGNIFICANT FUND RAISING ACTIVITIES FOR LEGAL SERVICES, American Bar Association, Standing Committee on Legal Aid and Indigent Defendants Project to Expand Resources for Legal Services, January 1998.

⁴²In many states LSC will no longer have the primary role in funding legal services. Instead, funding sources within most States will continue to grow and, in many States, will ultimately predominate. The amount of non-LSC funds varies greatly among states: 15 states in the South, Southwest and Rocky Mountain areas receive less than 30% of their total funding from non-LSC sources; 18 states have non-LSC funding of over 50% of their total funding. A few states have non-LSC funding as high as 86%.

⁴³This newly emerging system of delivery must be put into context. The increase in state funding and responsibility for civil legal assistance has not made up for the loss of \$117 million in federal funding nor has it replaced the staff who left and the offices which closed. Moreover, states with limited non-LSC funds have not been able to establish the dual delivery systems nor overcome

III. THE PROBLEMS WITHIN

Even if Congress had not reduced funding and imposed new restrictions on legal services, there were significant problems within the federal legal services program that would have required substantial changes in how both individual grantees and the civil legal assistance system as a whole operates.⁴⁴ I have detailed these problems in an earlier article, and will here only summarize the key points.⁴⁵

A. THE LACK OF VISION AND MISSION

In many states and within many civil legal assistance providers, directors, board and staff do not have a shared long-term vision of what the civil legal assistance system should be and where it should be heading. Nor have many providers, individually or collectively, developed a common sense of vision and mission with the low-income community. Underlying the lack of shared vision and mission may be more fundamental differences over basic values between staff and board members or between the providers and client groups.⁴⁶ Developing a shared vision within particular providers with any real substantive

the massive disruptions resulting from the funding reductions, office closures and restrictions on advocacy. State funding is no more secure than federal funding and the debate over whether there should be governmental funding for civil legal assistance is not limited to Congress. Many of the same debates are occurring at the state level. Finally, IOLTA funding is under constitutional attack in several states and in the federal system. See *Cone v. State Bar of Florida*, 819 F.2d 1002 (11th Cir.), cert. denied, 487 U.S. 917 (1987); *Washington Legal Foundation v. Massachusetts Bar Foundation*, 993 F.2d 962 (1st Cir. 1993); *Washington Legal Foundation v. Legal Foundation of Washington*, No. C97-0146C (W.D. Wash., Jan. 30, 1998) which upheld IOLTA programs in Florida, Massachusetts and Washington. This term, the Supreme Court decided one issue regarding the constitutionality of IOLTA holding that interest on IOLTA funds in Texas is the private property of the client. See *Phillips v. Washington Legal Foundation*, 66 U.S.L.W. 4468 (June 16, 1998)

⁴⁴Reducing funding and imposing restrictions were not the appropriate remedies for necessary changes in civil legal assistance. In fact, Congressional action has made change harder in some parts of the country, particularly those with limited non-LSC funds.

⁴⁵See, Houseman, Alan W., *Political Lessons: Legal Services for the Poor; A Commentary* 83 GEORGETOWN L. J. 1669, 1688-1704 (April 1995).

⁴⁶While most staff in civil legal assistance programs share the goal of providing high quality legal assistance for the poor, many legal services staff view legal services as a social services program that provides necessary help but has no real political content; it is a job to be done as best as one can within the "helping" framework. Others view legal services as an advocate to enhance and protect the interests of the poor; to some it represents a tool for achieving social and economic justice for poor persons; still others view legal services as a tool to empower the poor and help change their lives and the conditions under which they live and work. Even among those who see legal services in terms of empowerment and social change, there are widely divergent views about program goals and advocacy strategies. Some see the primary role of legal services

content will be difficult today, not only because of fears about going public with a genuine vision, but also because of the varying perspectives within legal services today about what the overall system is and should be. Nonetheless, having a clear mission and a shared vision among local providers staff and management and their partners would help individual providers focus their scarce resources effectively, develop appropriate strategies and delivery approaches and attract advocates with energy, commitment and competence to carry out those strategies.

B. THE PROBLEM OF BUREAUCRACY

The civil legal assistance delivery system has, in many ways, become a social services bureaucracy that shares many characteristics with other social services bureaucracies.⁴⁷ This development was inevitable in an organization as large and complex as legal services. There has been a change in culture of the legal services office from the early days of aggressive, individual lawyering and group advocacy by young law graduates who often acted with little supervision and accountability to the more complex and demanding culture of today with very structured administrative systems and considerable policy and legal constraints. The administrative and fiscal requirements on legal services programs today can sometimes result in focusing too much on internal organizational matters and too little on changing client legal needs, new and improved techniques of advocacy, new substantive strategies and innovation. The concern is that some legal services programs may have become bureaucratized to such an extent that they do too little and they cannot effectively respond to the problems of low-income persons in their service areas.⁴⁸ The civil legal assistance community needs to examine how effective programs have overcome these problems and provide the management assistance necessary to help those who still face them. Providers also need to experiment with and explore whether there are other alternative approaches and structures that are feasible that can effectively address these tendencies.⁴⁹

to lift people out of economic poverty or ameliorate the effects of poverty through promoting increased cash assistance and subsidized housing and expanded health care, child care, education and training, and the like. Others see the role as building capacities and institutions in client communities and giving people a sense of hope and control over their own lives. There are also divergent views about how best to achieve meaningful impact on the lives of the poor. Some favor policy advocacy; others favor affirmative litigation; still others see work on individual cases focused on clear targets as equally important and having significant and lasting impact.

⁴⁷Many civil legal assistance providers utilize a hierarchal authority structure, a system of rules governing positions and cases, a highly specialized division of labor, impersonal social relations and recruitment of staff to a salaried career with security of tenure on the basis of technical qualifications.

⁴⁸See Dooley, John A., *Legal Services in the 1990s*, in CIVIL JUSTICE: AN AGENDA FOR THE 1990S (American Bar Association 1991).

⁴⁹For example, the hierarchal structure of most civil legal assistance providers is premised

C. THE LACK OF COMMUNITY INVOLVEMENT AND CLIENT ENGAGEMENT

Many legal services programs and staff are isolated from the communities they are supposed to assist. Many program offices have been centralized outside of low-income neighborhoods. Many staff members and directors go to and from their offices (whether they are downtown or in a poor neighborhood) with little real involvement in community institutions or participation in community activities. Few legal services staff actually live in the communities they serve. Many do not relate to community efforts that are directed toward addressing systemic community problems. Others have not established effective working relationships with a wide variety of community groups working on issues that affect the poor. Still other staff members never venture beyond their offices; many never visit housing projects, welfare offices, nursing homes, homeless shelters, inner-city schools, churches and similar institutions. Only a few programs undertake intake at institutions serving community members, such as hospitals, welfare offices, churches and the like. Rarely do legal services programs utilize community activists in their work or hire them on their staffs.⁵⁰ Some programs do little effective community education; only a few attempt to conduct self-help initiatives outside of their offices.⁵¹

D. CONCERNS ABOUT QUALITY AND PRODUCTIVITY

Related to the concerns about bureaucracy, are concerns about the quality of lawyering going on in some programs and the productivity of some program staff. Gary Bellow first wrote about quality when he criticized the casework done by legal services advocates in the programs he observed, finding that much was of low quality and without

on the need for a Director (virtually always an attorney) with ultimate decisionmaking authority, managing attorneys in particular offices and units, and attorneys, paralegal and other support staff at varying degrees of status, control and subordination. There are other models of organization that should be tried. One is the managing structure of many private law firms, with partners and associates, a management committee and a managing partner with responsibility for overseeing the firm's operations and who serves for a limited term.

⁵⁰LSC funded programs face restrictions on the use of LSC and private funds to organize low-income persons and groups. See 45 CFR 1612.9.

⁵¹This description does not apply to all programs by any means. Some programs have kept community involvement central to their work and require staff to participate actively in community affairs. Evergreen Legal Services (which has been replaced by Columbia Legal Services and the Northwest Justice Project), for example, required that each program employee, including support staff, participate in low-income community activities. This expectation is written into job performance standards that are reviewed in depth at least once each year with every employee. Some utilize community workers as paralegal or in other capacities. California Rural Legal Assistance, for example, employs community workers to do outreach and related activities in the Farmworker communities and camps served by the program.

any effective relationship to solving community problems.⁵² Doug Besharov of the American Enterprise Institute examined some data on productivity in his book about legal services and concluded somewhat tentatively that productivity had declined by as much as 20% since the program began.⁵³ Most recently, Marc Feldman, an ex-project director and legal services attorney, has written a critique of legal services in the Georgetown University Law Journal which argues that "there are profound and pervasive shortcomings in the legal work on behalf of the poor."⁵⁴ Feldman claims that legal services programs pursue limited strategies on behalf of individual service clients; rarely employ practice protocols, peer evaluation, and management oversight; permit lawyers to function in isolation, without benefit of meaningful program support, evaluation or regulation; and fail to follow-up or enforce initial favorable results.⁵⁵

E. BARRIER TO CLIENT ACCESS TO SERVICES

There is growing recognition that the case review systems and intake procedures of many providers have created barriers between attorneys and advocates with expertise and the clients who need immediate advice, assistance or referral.⁵⁶ Legal services providers spend a great deal of time saying "no" to people with legal needs, time that might better be spent providing information and brief advice. Gary Bellow has made a similar critique in reflecting on the work of legal aid programs in other countries. He points out that the less experienced people are involved in the initial contact with clients and that using advice,

⁵²Bellow, Gary, *Turning Solutions into Problems: The Legal Aid Experience*, NLADA BRIEFCASE 106 (August 1977); Bellow, Gary and Charne, Jeanne, Feldman's *Critique of Legal Services Practice*, 83 GEORGETOWN L. J. 1633 (April 1995).

⁵³Besharov, Doug, LEGAL SERVICES FOR THE POOR: TIME FOR REFORM, pp 30 - 37 (AEI Press, 1990).

⁵⁴See Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEORGETOWN L. J. 1529 (1995).

⁵⁵All of these analyses, as well as the discussion by Feldman about the quality of legal work, are based on very few programs. No data are provided about how prevalent the practices they describe are, or whether the generalizations they make apply in most legal services programs. The fact is that we do not know what quality of lawyering is going on in most programs or the productivity of staff, either in comparison with the past or in comparison with private lawyers and other legal providers. However, there are programs that are not providing high-quality legal work and some that are not productive. Many of the specific examples that Feldman and others have offered do happen.

⁵⁶This was first highlighted by Wayne Moore of the Legal Counsel for the Elderly, a component of the American Association of Retired Persons. See Moore, Wayne, *Access to Legal Services: Intake, Diagnosis and Referral Procedures*, in CIVIL JUSTICE: AN AGENDA FOR THE 1990s, 19 (American Bar Association, 1991).

referral and limited service could be a very effective way to deliver high-quality service and provide concrete benefits to clients.⁵⁷ If these critiques are correct, programs may be providing far less service than they could and are not giving attention to how to most effectively deliver brief advice and assistance.

F. LAWYER DOMINANCE AND CLIENT SUBORDINATION

A number of scholars as well as many in legal services have been concerned with the difficulties of developing a lawyer-client relationship that is based on mutual respect and responsibility instead of lawyer domination and client subordination. One group of scholars argue that current practice excludes client voices and the power of clients to speak for themselves both in terms of client-attorney interaction and in terms of the ways pleadings are prepared and cases handled, which reflect only the lawyers perspective. These scholars also make a more fundamental critique, that "existing practice privileges lawyer views of dispute resolution technique, excludes clients' voices as irrelevant or interfering with that technique, and as a result focuses lawyer and client energies on litigation-based remedies that perpetual and reinforce client powerlessness."⁵⁸ Another group of scholars argue that legal services should build the practice around assisting the poor to organize and to form connections among clients and others.⁵⁹ Within legal services, advocates have been criticized for not giving clients sufficient information about their problems and how to address them so that clients can advocate for their own interests, whether client advocacy occurs in courts, administrative adjudicatory proceedings or other forums for resolving disputes. Even the basic interchange between lawyers and clients can involve the perception or the reality that the lawyer tells the client how to run his or her life as opposed to laying out alternatives and their consequences, leaving the decision to the client. As one client put it: "clients need help and knowledge from lawyers, but they also need the respect and freedom to make their own decisions."

G. INSULARITY, LAW STUDENTS AND THE PRIVATE BAR

⁵⁷Bellow, Gary *Legal Services in Comparative Perspective*, 5 MARYLAND J. OF CONTEMPORARY LEGAL ISSUES 37, at 371 (1994).

⁵⁸The quote is taken from Tremblay, Paul K., *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123, 128 (1992). He is discussing work by Lucie White, Tony Alfieri and Jerry Lopez. See, e.g., Alfieri, Anthony V., *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2105 (1991); White, Lucie, *Goldberg v. Kelly and the Paradox of Lawyering for the Poor*, 56 BROOKLYN LAW REV. 861 (1990); LOPEZ JERRY, *REBELLIOUS LAWYERING*, Westwood Press, 1992. See also, Cahn, Edgar, *Reinventing Poverty Law*, 103 YALE L. J. 2133 (1994) and Cahn, Jean and Cahn, Edgar, *The War on Poverty: A Civilian Perspective*, 73 YALE L. J. 1317 (1964).

⁵⁹Wexler, Steve, *Practicing Law for Poor People*, 79 YALE L. J. 1049 (May 1970); Tremblay, Paul K., *Id.* at 131 and Wexler, n.68. Alfieri, Anthony V., *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE, 659, 664 (1987-88).

Isolation from the client community and the internal focus that some providers may have is exacerbated by the insularity in which some legal assistance providers operate. These providers have remained insulated from the work of other advocacy organizations, nonprofit providers of other services and community efforts that are going on in the communities in which they work. Moreover, in many communities where there is an active law school clinical program, legal services has not sought to effectively utilize law school clinics and law students that are interested in poverty legal work. A similar resource issue involves effective utilization of private attorneys (PAI). Some LSC-funded legal assistance providers have failed to fully incorporate PAI into their existing structures and effectively utilize private attorneys for the range of legal problems they could handle. Others have been reluctant to form alliances with major law firms to handle major litigation or assist in economic development work, fearing that such alliances will deprive staff of interesting or glamorous legal work or limit the number of pro bono attorneys available for individual case work. Still others have hired weak PAI coordinators who have little respect within the program; many programs treat the PAI issue solely in terms of how to meet the LSC accounting requirements.⁶⁰ Even many of the good legal services programs do not "own" their PAI program, and have not fully incorporated them into their overall service delivery plan.

H. THE FAILURE TO USE NEW APPROACHES TO PROBLEM-SOLVING AND COMMUNITY CAPACITY BUILDING

Many civil legal assistance providers have not focused sufficient resources on self-help efforts, community legal education and economic development, and have been slow to develop effective relations with providers who use new approaches to problem solving, such as the use of alternative dispute resolution (ADR), private dispute resolution forums, and community justice centers.

I. THE UNDERUTILIZATION OF TECHNOLOGY

Many civil legal assistance providers have been slow to use new technology. Technology provides new ways to manage caseloads more efficiently; to provide support and communicate with other advocates; to develop new systems of intake, advice, brief assistance and referral through interactive computer programs and other technological advances; to educate and assist clients; and to build community and inter-connectivity within, among and between all those whose work focuses on, is related to or intersects with the equal justice needs of low-income persons. The failure to use new technology is due in part to lack of resources and concerns about how to keep up with constantly changing technology, but it is also due to a reluctance to change on the part of some program leaders.

⁶⁰45 C.F.R. 1614 requires that programs spend the equivalent of 12.5% of the LSC grant on private attorney involvement.

J. THE LACK OF EFFECTIVE PLANNING AND PRIORITY-SETTING

In many respects the providers outlined above are compounded by the difficulties which many programs have in undertaking effective planning and priority setting.⁶¹ Planning and priority setting are often not conceived as a dynamic management process that must be based on sound management theory about how to change organizations. In LSC-funded programs, priority setting is often viewed as a paper process to meet LSC requirements.⁶² However, to be successful, priority setting will require strategic thinking by the people involved and clients about the purposes of their work and the basic strategies that will be pursued. After such thinking, programs must then engage in strategic programming to ensure that the products of strategic thinking purposes and strategies have been reduced to goals and activities that are sufficiently specific to guide the day-to-day work of the program. Effective priority-setting processes are not one-time events but ongoing events that take place over time and evolve as the program faces new issues and new political, social and legal realities.

K. DEFICIENCIES IN SUPPORT

Prior to the elimination of \$25 million in LSC funding for support, which fundamentally altered the support infrastructure that had been developed in the early years of the federal program, it was clear that there were deficiencies in national and state advocacy and research capacities. The legal services system did not have sufficient capacities to identify and address new and emerging needs that do not fall within the expertise or work of existing organizations or to undertake effective thinking about new substantive developments and strategies. There was no national research capacity and no central coordination for training and technical assistance and substantial problems of communication and information sharing among and between all levels of the support structure. Similarly, many states lacked an effective capacity to undertake representation, coordination and support at the state level.

IV. CHANGES IN LEGAL NEEDS

A. DEVOLUTION

⁶¹Section 1007(a)(2)(c) of the LSC Act, 42 U.S.C. 2996(f)(a)(2)(C) and 45 C.F.R. 1620, require programs to periodically set (and annually updated) priorities in order to allocate resources and determine what clients to serve.

⁶²This focus is compounded, indeed virtually required, by the new Congressional requirements that staff must not undertake any activity except within existing priorities, unless there is an emergency case or matter. See 45 CFR 1620.

We cannot consider how civil legal assistance should be delivered in the future without also taking into account the changes in legal needs of low-income persons. Perhaps the greatest changes arise from devolution, the now-common description of the shift in responsibility from the federal to the state level for social programs. The prime example of devolution is the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).⁶³ This new law ended welfare as we know it by eliminating the federal AFDC program that provided cash assistance to low-income families with dependent children.

More specifically, under the old AFDC program, the federal government set the eligibility criteria and made the basic rules which governed the administration of the program, and then states received federal matching funding for every recipient enrolled in the program. Under the new law, the federal framework and eligibility criteria were eliminated and replaced by a block grant program known as Temporary Assistance for Needy Families (TANF).⁶⁴ This fundamental structural change gives States almost total discretion to shape their programs of cash assistance, employment and training, child care and related health care services. States can now determine who will receive assistance, what form that assistance will take and under what conditions it will be available.

Devolution also is central to changes made to the food stamp and Medicaid programs, assistance to legal immigrants, and uses of Federal child care funds.⁶⁵ In addition, both the FY 1996 and 1997 Federal budgets authorized significant new flexibility in the State and local administration of programs under the Job Training Partnership Act (JTPA); for example, localities now decide whether to transfer funds among various target groups and can seek waivers for administrative simplification.

Yet another piece of legislation expanding State flexibility became law in June of 1997. It gives States the option of retaining food stamp benefits at State cost for some or all categories of legal immigrants.⁶⁶ The legislation allows States to reimburse the U.S. Department of Agriculture for the cost of the stamps provided to those immigrants the State elects to serve. Ten States already have elected this option.

⁶³Pub. L. No. 104-193, 110 Stat. 2105.

⁶⁴42 U.S.C. ' ' 601 et seq.

⁶⁵Detailed discussion of these programs and policies is found in the January-February, 1997 and 1998 issues of THE CLEARINGHOUSE REVIEW and in publications prepared by CLASP, the Center on Budget and Policy Priorities, the Welfare Law Center, the Children's Defense Fund, the National Health Law Program, the National Center for Youth Law, the National Senior Citizens Law Center, the Food Research and Action Center, the National Immigration Law Center and numerous other national and State organizations.

⁶⁶Pub L. No. 105-18, 111 Stat. 158 (June 12, 1997).

The Balanced Budget Act of 1997 further expands the shift of authority over low-income programs to State and local governments.⁶⁷ It creates a new child health block grant.⁶⁸ An important new array of Medicaid options is also available to States.⁶⁹ For example, for the first time, States have the option to implement a presumption of eligibility of certain children and the ability to provide children continuous eligibility over the course of the year. Expanded managed care options are a part of this new package. Taken together, the child health block grant and the Medicaid managed care discretion create something akin to a block grant with substantial state discretion and limited federal protections.

In addition, the new law creates a welfare-to-work block grant program for States and cities, with grantees given substantial flexibility over program design.⁷⁰

Finally, local flexibility has increased substantially, and is about to increase more, as a result of changes already made and about to be made in Federal housing laws.⁷¹ Housing legislation which has passed the House and Senate will relax or eliminate longstanding Federal rules governing which households should be aided when housing vouchers, certificates, and public housing units become available through normal turnover or for other reasons.⁷² The legislation, which will likely be enacted in 1998, gives the nation's 3,300 local public housing authorities (PHAs) the authority to alter program admission rules and rent structures. PHAs will be able to use this flexibility to design

⁶⁷Pub L. No. 105-33, 111 Stat. 251.

⁶⁸See WHY NOT MEDICAID? USING CHILD HEALTH FUNDS TO EXPAND COVERAGE THROUGH THE MEDICAID PROGRAM, Cindy Mann, Center on Budget and Policy Priorities, November, 1997; THE BALANCED BUDGET ACT OF 1997: RESHAPING THE HEALTH SAFETY NET FOR AMERICA'S POOR, by National Health Law Program, National Senior Citizens Law Center and the National Center for Youth Law, Fall 1997, pp 39-53.

⁶⁹See OVERVIEW OF MEDICAID PROVISIONS IN THE BALANCED BUDGET ACT OF 1997, P.L. 105-33, Andy Schneider, Center on Budget and Policy Priorities, September, 1997; THE BALANCED BUDGET ACT, n. 3.

⁷⁰WELFARE-TO-WORK GRANTS AND OTHER TANF-RELATED PROVISIONS IN THE BALANCED BUDGET ACT OF 1997, by Mark Greenberg, CLASP, 1997.

⁷¹See *How the Clinton Administration and the 104th Congress Impaired Poor People's Rights to Housing*, by David Bryson, 30 CLEARINGHOUSE REVIEW 154 (March-April, 1997).

⁷²HOUSING BILLS WOULD REDUCE ASSISTANCE AVAILABLE TO POOR FAMILIES: WORKING POOR AND FAMILIES MOVING FROM WELFARE-TO-WORK WOULD BE ADVERSELY AFFECTED, Barbara Sard, Ed Lazere, Robert Greenstein and Jennifer Daskal, Center on Budget and Policy Priorities, November, 1997

innovative ways to revamp housing programs in ways that complement and support State and local efforts to move families from welfare to work. But PHAs also will be able to use their new authority to shrink housing aid for the poor over time and shift a growing proportion of rental subsidies to lower-middle-income families with incomes up to \$35,000.

B. IMPLICATIONS ON ADVOCACY RESULTING FROM DEVOLUTION

The impact on civil legal assistance of this historic shift in decision making authority over low-income programs is enormous.

At the most basic level, these social policy changes will cause increased hardship, greater homelessness and less family stability for low-income persons. Demand for civil legal assistance will escalate, not just over public benefits issues, but also because of increased evictions, heightened family violence, more repossessions, new employment issues, and greater state intervention in child welfare matters.

Moreover, policies which flow from devolution have fundamentally changed the legal structure in which many poverty law advocates have effectively functioned in the past. PRWORA, for example, eliminated many of the federal statutory and regulatory protections that had been the basis for significant welfare and other litigation prior to the enactment of PRWORA. In addition, many states have eliminated, or are proposing to eliminate, any state duty to provide income maintenance assistance, child care or other vital services. Recent Supreme Court decisions on federal private rights of action have limited opportunities to challenge state policies and practices as a violation of federal law.⁷³ Finally, States will have the discretion to make decisions that are not based on standard criteria or are not uniformly applied to all recipients.

Even more significant, since much individual representation will no longer rely upon a clear legal right that the state has violated, representation of clients will be based on fact specific situations. Lawyers, paralegal and lay advocates will seek to persuade agency officials or caseworkers that the client should be assisted, client should not be terminated, client should receive child care, the work placement is inappropriate, etc.⁷⁴

Moreover, given the fact that States will have substantial discretion and can make decisions that are not based on criteria or are not uniformly applied to all recipients,

⁷³See, **Blessing v. Freestone**, 117 S.Ct. 1353 (1997).

⁷⁴LSC- funded programs can represent clients within the administrative processes of State agencies and can seek individual relief in court even in welfare reform matters so long as they do not directly challenge existing Federal or State welfare reform laws or regulations adopted pursuant to formal notice and comment. See 45 C.F.R. 1639.

advocates will have far fewer legal handles to use in representing their clients.⁷⁵ Thus, for example, when faced with agency placement processes, legal services attorneys and paralegal will be forced to make arguments based on a client's particular situation and not on some law or agency rule, i.e., advocates will have to cut the best deal possible. On the other hand, helping clients who are unhappy with their work placements or who feel that they are being treated or sanctioned arbitrarily will likely necessitate showing that the particular placement or program in which the client is enrolled is not suitable for that client. In either case, such advocacy will require a much greater familiarity with the actual services available to participants as well as the opportunities and options that exist for those placed in work placements. And it will require more extensive factual investigation about, and presentation on, a recipient's family situation, educational background, skills and employability. In short, we are moving from a system of advocacy based on applying federal law and rules to state agency practices to a system that is fact-based and relies on effective and persuasive presentation of facts and options to agency decision makers.

Another extremely important aspect of the devolution of authority on this broad range of issues and programs is the growing extent to which States and localities will not only have new authority in designing program rules, but will also have the authority to coordinate eligibility and administration across programs. However, many State and local officials, as well as civil legal assistance programs, often work in only one of the program areas in which a set of important policy interactions is now emerging. For example, a number of issues and questions concerning the relationship between TANF and Medicaid eligibility stem from State TANF officials and welfare advocates=limited understanding of the new Medicaid eligibility rules for families with children, and health advocates=lack of familiarity with TANF.⁷⁶ Similarly, State welfare and local housing officials rarely work

⁷⁵This fundamental change does not eliminate all Federal legal protections, however. There remain a range of constitutional and statutory provisions which can be called upon by lawyers representing the poor. A recent series of articles in the 1998 January-February issue of THE CLEARINGHOUSE REVIEW lays out a number of legal strategies that can be effectively employed, including Federal race and disability discrimination statutes, minimum wage and other statutes protection employment, and Federal constitutional claims. See, e.g., *Welfare Litigation Developments Since the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, by Mary Mannix, Marc Cohon, Henry Freedman, Christopher Lamb and Jim Williams, 31 CLEARINGHOUSE REVIEW 435 (January-February, 1998); *Welfare Advocacy: Tactics for a New Era*, by Sharon Dietrich, Irv Ackelsberg, Deborah Freedman, Louise Hayes and Richard Weishaupt, 31 CLEARINGHOUSE REVIEW 419 (January-February 1998). In addition, there are a range of effective strategies that focus beyond individual representation and seek to change the way welfare agencies undertake their new responsibilities. See *Temporary Assistance for Needy Families: Assessments, Individual Responsibility Plan and Work Activities* by Wendy Pollack, 31 CLEARINGHOUSE REVIEW 401 (January-February, 1998).

⁷⁶See Claudia Schlosberg and Joel D. Ferber, *Access to Medicaid Since the Personal Responsibility and Work Opportunity Reconciliation Act*, 31 CLEARINGHOUSE REVIEW 528 (January-February 1998).

together and may also have vary limited knowledge about each other-s programs; this is also true of housing and welfare advocates.⁷⁷ Many key issues and options, however, will entail cross-program knowledge and assessment and information exchange.

An even more significant aspect of the devolution of authority is that states now can decide wider questions of social policy that for the last 60 years have primarily been addressed by federal policies and programs. States can decide:

- ! What its social policy should be.
- ! What antipoverty programs, early childhood education, housing, employment and training, health and child care should be pursued.
- ! What should be done to assist families in low-wage jobs.

This new discretion to rethink social policy at the state level presents an opportunity to consider realistic policy proposals that will answer the questions posed above and to develop long-term strategies to successfully promote such policies. Such policy advocacy will require a much more fundamental rethinking of policies and programs together with knowledge about what has and has not worked in the past.⁷⁸ For example, policy advocates working on welfare reform, will need to consider what policies should be in place to provide necessary education and training for workers with low skill levels, secure work for those able to participate in the labor force, provide necessary health and child care, encourage savings and asset accumulation, ensure economic security, secure habitable and affordable housing, prevent teenage pregnancy and promote family responsibility and stability. More than new policies approaches are necessary for policy advocacy to be successful in the new environment of devolution. The advocates will have to effectively collaborate with a broad range of community, business and civic organizations and leaders in order to develop the support necessary to successfully promote and implement innovative and workable policies.

PART TWO: THE FUTURE TRANSFORMING THE CIVIL LEGAL ASSISTANCE SYSTEM TO ACHIEVE EQUAL JUSTICE FOR ALL

⁷⁷See Barbara Sard, *Perspectives on the Future of Legal Services Housing Advocacy*, 27 HOUSING LAW BULLETIN 37, 1997.

⁷⁸Moreover, policy advocates no longer will have the luxury of opposing policy changes on either legal or moral grounds and will have limited ability to improve the lives of low-income clients affected by State decision making if they focus only on preventing State (or local) policies which harm welfare recipients.

I. CONTEXT FOR DISCUSSION

Before elaborating on the components of this new system, four contextual points need to be stressed. First, any new civil legal assistance system will not be created overnight. Nor will it or should it throw out critical elements that are essential to any system of civil legal assistance to achieve equal justice. The need for innovation and fundamental change has to build on what has worked as well as overcome barriers that stand in the way of achieving equal justice for all. The existing system has, in many places, developed skilled staff with expertise on the problems of the poor and programs with effective relationships with the bar, the low-income community and the community generally. Thus, the challenge is to innovate, transform and re-engineer the current delivery system through preserving what works while at the same time ensuring that the delivery system also promotes the necessary innovation and fundamental change. To meet the challenge will require creative, innovative and risk-taking leadership.

Second, to achieve increased access and to implement the civil legal assistance system for the future additional funding will be needed. This will have to include funding from the federal government for two reasons: first, civil legal services is and must remain a federal responsibility and the Legal Services Corporation must continue to be funded. Second, there are many parts of the country—the South, Southwest and Rocky Mountain states—that have not yet developed sufficient non-LSC funds to operate civil legal assistance including pro bono programs without federal support. Abandoning a federal commitment to civil legal assistance would mean that in many states—and thus in the nation as a whole—the principle of equal justice would be a fiction.

However, advocates seeking increased funds for civil legal assistance have to be realistic about federal funding. Not since the expansion days of the late 1970s have we achieved significant increases in federal funding and today's funding buys less service than it bought before much of the expansion occurred.⁷⁹ Even with the new directions and hopefully successful efforts of LSC's new funding initiatives, federal funding is not likely to be where substantial growth will occur.⁸⁰ In part this is because the leadership of the House and some leaders in the Senate continue to seek the total elimination of LSC funding, while other Members of Congress continue to support block grants to states. As a result, preventing further reductions is today and likely to continue to be the primary focus of the defenders of the federal legal services program at least as long as key leaders in the

⁷⁹See, LEGAL SERVICES: THE UNMET PROMISE prepared by the National Legal Aid and Defender Association and the Project Advisory Group; 1995, p. 10.

⁸⁰The LSC BUDGET REQUEST FOR FISCAL YEAR 1999 sought \$23,000,000 for targeted services on domestic violence and the unmet legal needs of children. This was a departure from past budget requests which did not seek specific funding for particular client groups, except for the earmarked funding for migrant farmworkers and Native Americans.

Congress oppose federal funding for civil legal assistance. Thus, while advocates for civil legal assistance must continue to press for increased federal funds and maintain the critical federal role in the delivery of civil legal assistance, there is no choice but to seek increased funding from state and local sources, including both governmental and private sources.

Third, there is a direct connection between obtaining increased funding and developing a new system of civil legal assistance. Stable federal funding and increased state and local funding will not materialize unless the civil legal assistance system has broad public support that reaches far beyond the organized bar.⁸¹ And that essential public support will not be possible unless legal services serves and provide concrete benefits to more clients and is perceived by the general public as central to the civil justice system. Thus, in order to secure increased funding at either the Federal or state level, legal services must change how it operates and must find ways to serve more clients, more efficiently, without sacrificing effectiveness.

Fourth, all of those engaged in the civil legal assistance system, whether as providers or partners, must recognize that the system cannot succeed unless everyone works together. Equal justice cannot be achieved unless all stakeholders maximize all their strengths and capacities and discard the past biases, particularly the *awe-they* dichotomies that have perpetuated biases about which providers do effective work and which do not. For example, staff programs must treat pro bono coordinators, pro bono programs and private lawyers delivering legal assistance as full partners and acknowledge that all providers have capacities that must be used to deliver effective legal representation to low-income persons. Similarly, private bar leaders must acknowledge the commitment, dedication and critical work of staff attorneys and paralegal and work to build a true community of advocates.

II. OBJECTIVES OF CIVIL LEGAL ASSISTANCE SYSTEM

The fundamental purpose of a state⁸² civil legal assistance system is to enable low-income persons⁸³ to address their legal problems effectively.⁸⁴ To achieve this fundamental purpose, the system must carry out three functions:

⁸¹The civil equivalent of ***Gideon v. Wainright***, 372 U.S. 335 (1963), providing a constitutional right to counsel in some or all civil cases, would ensure increased funding and provide access to civil legal assistance in some cases. So far, neither the Supreme Court nor other courts have found a general civil right to counsel. See, e.g., ***Lassiter v. Department of Social Services of Durham Cty***, 452 U.S. 18 (1981). It should be noted that indigent defense system does not fully provide equal justice or access to justice for many persons subject to the criminal justice system, even though there is a constitutional right to counsel in criminal cases.

⁸² AState@includes the District of Columbia, Puerto Rico, the US Virgin Islands and the various entities in Micronesia.

First, the system must educate and inform low-income persons of their legal rights and responsibilities. Many low-income persons do not recognize that they are in a situation that could be improved with legal assistance. The civil legal assistance system should educate and inform low-income persons within a state to enable them to:

1. recognize their legal rights and responsibilities⁸⁵ and unmet legal needs;
2. address their legal needs effectively;
3. take action to prevent legal problems from arising;
4. promote their legal interests.⁸⁶

Second, the civil system must inform low-income persons about options and services available to solve their legal problems, protect their legal rights and promote their legal interests. Even when low-income persons recognize that they have a legal need and are aware of their legal rights and responsibilities, many will not be aware of all possible methods for addressing their legal needs. Some options involve preventive steps, self-help and collective actions that do not involve the formal use of the civil justice system. Other options involve using alternative dispute resolution, negotiation and the judicial and administrative adjudicatory systems. Still other options include community economic development, other transactional assistance and representation before administrative agencies and legislative bodies. Low-income persons need to be aware of the range of options available and the pros and cons of exercising particular options so that they can choose the option that best meets their needs. Low-income

⁸³ For the purpose of this paper, low-income persons will include both individuals and groups and incorporate all constituencies of the low-income population. The term low-income persons also includes all persons unable to afford adequate legal assistance, and is not limited to those persons who are determined to be poor under some poverty standard.

⁸⁴ The term legal needs refers to situations that low income persons face that raise legal issues and for which legal information, advice, representation and assistance would be helpful. The term unmet legal needs is defined to mean legal needs for which low income people did nothing or were dissatisfied with the outcome of their own efforts or those of non-legal third parties.

⁸⁵ The phrase legal rights and responsibilities is taken from the Legal Services Corporation Act as amended. Legal rights will be used in this paper to mean the rights accorded to low income persons through statutes, regulations, constitutions and judicial decisions. Responsibilities will mean obligations imposed on low income persons by statutes, regulations, constitutions and judicial decisions.

⁸⁶ Legal interests is used in this paper to mean procedural protections, rights or entitlements that are not recognized as legal rights by statutes, regulations, constitutions or judicial decisions.

persons also need to know about all available legal assistance providers and how to access or make use of those providers.

Third, the civil legal assistance system must ensure that all low-income persons have meaningful access to a full range of high quality legal assistance programs when they have chosen options that require legal aid and assistance. Such assistance can help low-income clients anticipate and prevent legal problems from arising, solve their legal problems and protect their legal rights. Such assistance can also help promote their legal interests, oppose laws, regulations, policies and practices that operate unfairly against them, enforce and reform laws before legal problems arise, and improve their opportunities and quality of life.

In addition, access is essential for individuals and groups who are politically or socially disfavored, as well as for all constituencies with distinct and disproportionately experienced legal needs, such as Native Americans; migrant farm workers; prisoners; persons residing in institutions; immigrants; seniors; and persons with mental and physical disabilities. No individual or constituency group should be left out of the system just because others perceive those individuals or groups as undeserving. The system also must seek to eliminate barriers to access due to geographic isolation, language, disability, age, race, ethnicity and culture, inability to communicate, or inaccessibility of provider facility.

III. COMPREHENSIVE, INTEGRATED STATE SYSTEM ASSURING EQUAL JUSTICE FOR ALL

The civil legal assistance system is today state-based, even though roughly 45% of its funding comes from the Federal government. The state provides the basic legal framework in which most representation occurs. Moreover, as a result of the policies of devolution, in the future, the state will have even a larger role in determining policies affecting the poor. It is essential, therefore, to develop an integrated state system of civil legal assistance that includes an interconnected system of local and statewide providers, working together as a community of advocates to achieve equal justice for all.⁸⁷

⁸⁷In recognition and anticipation of this fundamental shift, a comprehensive State planning initiative was undertaken in 1995 to respond to the legal services crisis. The American Bar Association and the national legal services organizations encouraged State planning through a series of national and regional meetings and the provision of technical and legal assistance to ongoing State planning processes. LSC required its recipients to undertake State planning processes as well. As a result, State planning efforts were begun in virtually every State, although the breadth and quality of these efforts varied widely. NLADA and the American Bar Association created the State Planning Assistance Network (SPAN) in February of 1996. SPAN provides leadership and assistance to State planning groups in order to support and stimulate legal services planning efforts around the country. Recently, LSC issued a new statewide planning letter requiring all LSC-funded recipients to report by October 1, 1998 on how they and the other programs in their state were going to address seven issues: intake and the provision of advice and brief services; effective use of technology; increased access to self-help and prevention information; capacities for training and access to information and expert assistance; engagement of pro bono attorneys; development of additional resources; and configuration issues such as

A. CHANGES IN THE SYSTEM OF DELIVERY

To create a comprehensive, integrated state system, many states will need to reorganize their delivery structure, capacities and organizational relationships. Such re-engineering is necessary to ensure that the system achieves equal access for all low-income persons, is able to provide a full range of civil legal assistance services, ensures high quality, coordinated, efficient and effective civil legal assistance, avoids duplication of capacities and administration, and deploys resources available within the state according to the highest and best use necessary for the new system. This will require increased communications and collaborations among providers and, in some states, mergers and consolidations of existing programs. Each state should examine the current set of grantees to determine whether they can meet the objectives and capacities of an comprehensive, integrated state system. In some states, there are a number of very small programs that serve a small geographic area with a small staff and administrative structure. In other states, there may be only one or two primary providers who may be too large or too isolated from the communities they serve. Moreover, the examination should look at the specific client groups within a state and evaluate how well the programs are serving these groups. Restructuring of programs may be necessary to create a critical mass of advocates to do effective work and to ensure appropriate focus on state issues of importance to the client community.⁸⁸

mergers and consolidations within states. See **LSC Program Letter No. 98-1**, February 12, 1998. A subsequent Program Letter set out more details on what LSC was seeking, explained how the October report should be presented and clarified how the state planning process would affect LSC grant decisions for 1991 and beyond. See **LSC Program Letter 98-6, July 6, 1998, State Planning Considerations**. In addition, the Project for the Future of Equal Justice issued on July 2, 1998, **A Discussion Draft: Characteristics of a Comprehensive Integrated State System for the Provisions of Civil legal Assistance to Achieve Equal Justice for All**. This statement set out the object of a state civil legal assistance system and then describes the key characteristics of such a system.

⁸⁸Reconfiguration issues raise particularly difficult issues within the legal services delivery system and are not subject to easy generalizations about what is and is not the most appropriate configuration for any state. There are many relevant considerations that need to be evaluated before funders insist upon mergers or consolidations, such as: whether administrative costs will be saved and redirected to client services; whether client access will be increased or decreased; whether the quality of services will improve; impact upon local fundraising; effect on hiring more experienced administrators and higher quality or more innovative staff; impact on relationships with local bar association, community groups and members of Congress or state or local legislative bodies. Of overriding importance is whether the system can achieve its essential objectives and develop the necessary capacities without significant structure and organizational change. For two opposing views, see: STATEMENT BY MELVILLE D. MILLER, JR., PRESIDENT LEGAL SERVICES OF NEW JERSEY TO THE LEGAL SERVICES CORPORATION BOARD, FEBRUARY 6, 1998 (on file with the Journal) and *Innovations in Legal Services: Strategic Mergers*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. XI, No. 3 (March 1998) by Lauren Hallinan.

B. LEADERSHIP AND PLANNING

Moreover, creating an integrated comprehensive state system will surely require leaders of civil legal assistance in one part of a state to take responsibility for and provide leadership on assuring effective assistance throughout the state. The state as a whole will have to engage in ongoing planning initiatives. Yet, this notion of state responsibility and ongoing and continuous state planning is not widely accepted in part because it is new and in part because responsibility for effective legal services has fallen on funding sources, such as LSC and IOLTA.

In addition, the ongoing planning process should include, in a meaningful way, the key stakeholders, individual leaders and institutional actors within the civil justice system. These include: board and staff from civil legal assistance programs, both LSC and non-LSC funded; pro bono program leaders; key judicial personnel; law school deans, faculty and students; leaders of the organized bar; private attorneys directly involved in civil legal assistance; other civil legal providers such as civil rights or children's advocacy groups; leaders of civic, educational, labor and business communities; and, where appropriate, state and local funders.

This broadly based planning process must address in detail how it will achieve a comprehensive, integrated state system for the provision of civil legal assistance to low-income persons. The ongoing planning process should determine the purpose for, and identify the components of, the state delivery system and provide for the integration of all of the components, providers and programs into a single, coordinated system. The planning process should also develop incentives for integration and innovation and ensure that the state delivery system capitalizes on opportunities to secure new sources of funding, provide new kinds of services, form new partnerships, and serve new groups of clients.

In addition, the planning process should also consider the funding options within the state and from federal and other sources outside of the state to ensure that resources for the state system are diversified and should continually seek new and expanded funding from a variety of restricted and unrestricted sources. States vary widely in the funding that is available from non-LSC sources. Some states have not been able to generate significant non-LSC resources, and perhaps the most important step that those states can take is to develop significant non-LSC revenue sources. Other states have been able to generate and access significant non-LSC resources. Those states need to consider how to maintain, expand and strategically invest those resources and limit the restrictions imposed on those resources. Local fundraising is essential and must continue. However, civil legal assistance leaders also have to consider broader state needs and work together to raise funds to meet them.

Each state should have at least one major source of unrestricted funding, (i.e., a source of funding for civil representation of low-income persons on any legal issue, in any

forum, using any appropriate method of legal assistance). Each state should have, or should develop, a system that will attract funding from a variety of sources and expand fundraising efforts targeted at new, untried, or underutilized funding sources. Each state should also make every effort to maintain and sustain existing local, state, and federal funding sources.

In addition, the planning process should regularly and effectively identify the most critical legal problems of low-income and vulnerable persons to develop appropriate substantive strategies, allocate resources effectively, and ensure that the community of advocates is configured to provide necessary legal assistance. Ongoing strategic thinking and planning should involve all providers as well as board, management and staff members from those providers, and it should be conducted in consultation with representatives from identifiable constituencies of low-income persons and other stakeholders and institutional actors. Statewide planning and assessment of legal needs should not replace local planning and priority setting. In fact, the statewide process should take into account results from local provider priority setting and planning and vice versa. However, there will be statewide high priority needsCwhich may not be recognized or given sufficient priority by local priority setting processesCthat should be addressed in order to achieve a comprehensive, integrated statewide system of civil legal assistance.

C. OVERALL MANAGEMENT OF THE SYSTEM

In order to achieve a truly comprehensive and integrated state civil legal assistance system, the system must be managed by a broadly representative entity with overall responsibility to promote the creation and maintenance of the capacities of a comprehensive, integrated system. For such an entity to succeed, it cannot be controlled by one group of providers but must represent all of the providers and partners involved in the civil legal assistance system. It is critical that the entity be appointed by or be a part of the state civil justice system, although there are various options available to states in how they create and operate the entity.⁸⁹

The fundamental tasks of his entity is to ensure continuous planning, take responsibility for achieving all of the objectives and capacities (laid out in the sections below) within a reasonable period of time, recommend appropriate use of new funds and structure the statewide system in a manner that builds public support and best protects the integrity of its essential capacities from external political and other pressures and intrusions.

⁸⁹For example, in Washington state, the Supreme Court appointed the Washington Access to Justice Board to oversee the state system; in Michigan, the Michigan State Bar created an access to justice program; in New Jersey, Legal Services of New Jersey, which also serves as the IOLTA funder in New Jersey, has taken on the responsibility.

Specifically, state systems of civil legal assistance must not only plan and assess critical legal needs, but they must also integrate state and local decisions and make decisions about how to allocate resources and provide necessary services. Civil legal assistance resources should be deployed to avoid duplication of capacities and administration and according to the highest and best use necessary to maximize the system's ability to respond to the most critical statewide legal needs, including emerging needs as well as the greatest local and regional legal needs. The state system must also address legal needs unique to or disproportionately experienced by specific segments of the low income population and enable the use of advocacy strategies and techniques of advocacy that will result in the longest term benefits on issues of greatest significance to low income persons as identified in a legal needs assessment process.

The state system should be designed and configured to ensure reasonably equal access to civil justice. It should strategically use and integrate staff attorneys, private attorneys, specialized advocacy programs, private and nonprofit law firms, other professional disciplines, social services providers, law students, nonlawyers and low-income groups and individuals to provide maximum and effective legal assistance throughout the state. To use and integrate these range of providers, the system must secure a high degree of involvement and commitment by private attorneys, law firms, the organized bar, the judiciary and other key stakeholders and interested persons from the community at large.

In addition, the state system should It should develops new leadership and encourage innovation in delivery supported by appropriate and careful evaluation of the results. It should collect appropriate data and evaluate provider activities to measure the system's effectiveness in achieving results for clients; measure client satisfaction; measure and improve productivity and effectiveness of the various legal services providers; and informs the planning process regarding systemic issues affecting the provision of civil legal assistance within the state. And it should establish and continually revise and update minimum standards for use of technology and acquisition of software and hardware.

D. COORDINATION AMONG STATES AND NATIONALLY

The remainder of this article focuses in detail on the components of an integrated, comprehensive and collaborative statewide system of civil legal assistance to achieve equal justice for all. The focus on a state system is not meant to ignore developments in other states or nationally that affect legal services. A state-based system cannot work in isolation from other states. Providers in a state must work with providers in other states to ensure coordinated responses to common legal problems and to learn from the experiences of other states about improving the provision of civil legal assistance.

Nor can a state-based system work from an insular perspective that ignores the broader national legal services movement founded on shared values and a clearly articulated, effective purpose. Maintaining a national perspective and vision is difficult when LSC is no longer the only or necessarily the primary funding source (depending on

the State) and when the program is under constant political attack by opponents who do not accept the notion of a national legal services program. Nurturing a national movement and vision must necessarily rest with private organizations and not government funded agencies.⁹⁰ State providers must work with national entities and institutions, such as NLADA, ABA, and others, to gain a national perspective on their work, take advantage of collected resources and participate in the national efforts to achieve equal justice. Moreover, state providers must work and coordinate with national entities and organizations to ensure that the interests and legal rights of low income persons are taken into account by national bodies involved in civil justice and dispute resolution as all as the Congress, federal agencies and executive departments.

IV. THE CRITICAL ELEMENTS OF THE NEW SYSTEM

A. INCREASING AWARENESS OF RIGHTS, OPTIONS AND SERVICES

The statewide system must engage in outreach and community legal education in order to educate and inform low income persons of their legal rights and responsibilities and the options and services available to solve their legal problems, protect their legal rights and promote their legal interests.

1. Outreach

The state system must ensure that throughout the state there is an aggressive, coordinated, systematic and comprehensive outreach targeted to all segments of the low-income population within the state, including hard-to-reach groups, and groups with language or cultural barriers. Such outreach should provide information about legal rights and responsibilities of low income persons and communities as well as the options and services available from legal providers and their partners.

2. Community Legal Education

In addition, states must provide coordinated, systematic and comprehensive community legal education that is targeted at critical legal issues, provided through a variety of means and delivered in a variety of community settings. Educating low-income persons about their legal rights and changes in laws and policies that directly affect them can help potential clients understand their options and responsibilities, prevent future legal difficulties from arising and enable low income persons to seek legal assistance at a time when it can be most valuable. Such initiatives should be designed to provide education and information for low-income populations, including particular constituencies with distinct,

⁹⁰The Project on the Future of Equal Justice, the joint NLADA and CLASP project funded by the Ford Foundation and the Open Society Institute, is designed to expand and strengthen the nationwide partnership of responsibility for equal justice.

unique or disproportionately experienced legal needs as well as hard to reach groups. Care should be taken to make sure that the education and information that is culturally relevant to the various low-income populations groups within the state.

Special community education initiatives are often necessary to address specific urgent, new or emerging issues. A concrete example is the role of community legal education in welfare reform advocacy. Nonprofit human services providers report that many TANF recipients are not aware of the potential changes which TANF will bring to their lives, or, if they are aware generally, they often do not understand what options they have to seek other work placements or job training placements, obtain critical support services or use good cause or family violence exceptions from TANF requirements; many TANF recipients do not understand how they can limit the impact of time limits or the need to secure income (through child support, for example), that will enable them to survive once they reach time limits. In addition, many former AFDC or potential TANF recipients have misunderstood what is expected of them with regard to work and training, child support cooperation and the like and have given up TANF benefits when they, in fact, are eligible for them.

To reach TANF recipients and potentially eligible TANF recipients, legal services and pro bono programs need to initiate aggressive client education and outreach efforts to educate existing and potential TANF recipients about the changes that have occurred, the new requirements and possible sanctions, good cause and family violence exceptions for sanctions or child support cooperation and the range of options that are available to them, including access to support services and need to consider other income sources.⁹¹ Such efforts can help TANF recipients to make informed choices and take necessary preventive measures as they go through the assessment process, enter into personal responsibility agreements and participate in program requirements and activities. For example, low-income families with children need to know about the time limits that States have imposed and the options which exist to help them either not use up the time limit or prepare for the period after the time limits have run. It may be that such families need to be more aggressive about obtaining child support from absent parents so that they have income available after the time limits have run. Or, there may be alternative State funded programs that do not trigger Federal time limits, but which provide some cash and other assistance.

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⁹¹Without intending to provide a comprehensive list, programs that have undertaken effective outreach include: Community Legal Services in Philadelphia; Northwest Justice Project and Columbia Legal Services in Washington; Center for Civil Justice in Saginaw, Michigan; Project Dandelion of Neighborhood Legal Services in Buffalo, New York; Legal Aid Society of Metropolitan Denver; Volunteer Legal Services Program in San Francisco.

⁹²See Steve Savner and Mark Greenberg. THE NEW FRAMEWORK: ALTERNATIVE STATE FUNDING CHOICES UNDER TANF, CLASP, March, 1997. Illinois and Maine, for example, provide cash assistance with State funds to some families so that the Federal time-limit clock does not run.

Aggressive outreach and client education initiatives involve more than ad hoc meetings with clients or efforts to write clients without personal contact. These limited techniques have not been particularly effective or successful. Some programs have conducted group trainings that have had somewhat satisfactory results, but truly effective efforts will require program staff to get out of their offices and make contact with a variety of organizations and providers in order to reach clients.⁹³ In addition, programs have set up information and advice tables in welfare and other human service provider offices. Programs have also developed comprehensive sets of materials about various issues and options that have been distributed widely within the community to the various human services providers and others. Some programs developed easy to read and short newsletters and alerts that keep clients and organizations working with clients, updated on new developments and emerging options. In short, what is needed is a whole range of community legal education techniques including oral presentations, training programs, written, audio, audio-visual, and electronic materials.

The state system must also educate staff of community-based organizations, human services providers, community leaders and others involved in providing legal and other services to train them: about critical legal issues, including new and emerging issues, facing low-income persons and about the services available from legal providers in order to make appropriate and accurate referrals. State systems should also educate the general public about the legal problems of low-income persons and the services available to address them.

B. FACILITATE AND ENHANCE ACCESS TO LEGAL ASSISTANCE

Virtually every legal needs study that has been done over the last ten years tells us that the current system is meeting at most 20% of the legal needs of the population legal services are supposed to be serving. Yet, the civil legal assistance system has not made a commitment to achieve full access to civil legal assistance. To do so will involve increased financial resources to be sure. But, as the recent policy report from ABA's Comprehensive Legal Needs Study suggests, achieving access will require new methods of delivery.⁹⁴

⁹³For example, legal services and pro bono program staff have worked with head start programs; child care providers; welfare rights organizations; domestic violence shelters; homeless shelters; soup kitchens; community action agencies; mental health agencies; hospitals; migrant organizations; women's centers; public housing authorities and tenant groups; job training providers; substance abuse programs; community colleges; community collaborations; churches; schools; and social welfare agencies themselves.

⁹⁴See AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE, by Albert H. Cantril, American Bar Association, 1996. The Policy Report calls for: (1) increasing the flexibility of the civil justice system and expanding the options available for people seeking legal help, including hot lines and assistance to those proceeding pro se; (2) developing better ways for people to obtain information about their options when facing a legal situation and more effective referral systems including more legal education through pamphlets, kiosks and other new technologies ; (3)

A plan to achieve access based on what we know about addressing the legal needs of low-income persons would probably include four fundamental elements.⁹⁵

1. Coordinated system of service delivery using all individual and institutional providers

The key to achieving relatively equal access is the development of, or redeployment of existing providers into, a coordinated system of service providers which uses both institutional providers and individuals in order to ensure that services are accessible from all parts of the state, including remote rural areas and low income urban neighborhoods. The state system must identify and allocate resources and make available specialized expertise in all major substantive areas of the law affecting low income persons in order to provide an appropriate service for every major legal problem and address the highest priority legal needs of low income persons within the state. In addition, the coordinated system must provide legal information and assistance in all of the languages spoken by a significant number of low-income persons. Finally, the state system must serve all segments of low-income and vulnerable households, including those constituencies with distinct, unique or disproportionately experienced legal needs.⁹⁶

2. Centralized or coordinated advice and brief services system

Second, the state system must develop throughout the state advice and brief services system to enable low-income persons who believe they have a legal problem to speak by telephone or in person to a skilled attorney or paralegal for accurate legal advice and brief services to help resolve that problem.

increasing pro bono legal services by the private bar; (4) increasing the availability of affordable legal services to moderate-income individuals and households through sliding fees and expansion of legal services programs; (5) integrating the use of community-based dispute resolution services into the options available for low-income clients; and (6) encouraging legal services programs to retain as much flexibility as possible in deciding what cases to accept.

⁹⁵See *IOLTA: A Leadership Platform That Can Make 100 Percent Access a Reality*, by Ken Smith and John Scanlon, *DIALOGUE*, Vol. 1, No. 3, p. 1 (Summer 1997).

⁹⁶See Section 1001(1) of the LSC Act (42 U.S.C. 2996(1) – "There is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances." See also *STUDY OF SPECIAL DIFFICULTIES OF ACCESS AND SPECIAL LEGAL PROBLEMS OF VETERANS, NATIVE AMERICANS, MIGRANT FARMWORKERS, PERSONS WITH LIMITED ENGLISH-SPEAKING ABILITIES, PERSONS RESIDING IN RURAL AREAS, THE ELDERLY AND HANDICAPPED*, conducted by the Legal Services Corporation. Four reports on this study were issued 1980 and 1981.

Telephone hotlines are now beginning to be used in a number of locations to address the problem with program case review systems and intake procedures that created barriers between attorneys and advocates with expertise and the clients who need immediate advice, assistance or referral. Some focus on particular client groups such as the elderly. Others focus on all client groups. A few have been developed for special targeting efforts, such as changes in welfare reform.⁹⁷

While there may not be a one size fits all approach that works in every state, it is likely that in many states the most efficient way to provide advice and brief service is to do so through a statewide centralized system. In states where one centralized system may not make sense, regional systems may be sufficient and efficient, so long as they are coordinated and avoid duplication of resources and materials.

Since existing legal services providers assist most clients with brief service or advice, it is important to focus on how to do this work more efficiently and effectively and how to integrate these activities into the program so that effective advice and quality brief service is seen as central to the work of most programs. However, it is also important to recognize the limits of using phone contact and new technologies and the potential costs as well as benefits. Improved hotlines cannot alone fully identify the most critical issues facing the client community, but they can provide some insight and information about them. Using new technologies to enhance client contact and assistance must be developed in the context of maintaining and improving lawyer-client relationships, not supplanting them. Providing clients greater information about their rights and responsibilities and giving them information to enable them to understand their situation and take action can be empowering, but it is not the primary means of empowering clients that programs must develop. It is one of many strategies that must be employed.

3. Accessible, flexible, responsive intake systems

To facilitate and enhance access, each state system must ensure that, throughout the state, there is an accessible, flexible and responsive intake system or systems which include telephone screening, case evaluation and referral system(s). These systems must be able to effectively diagnose legal problems and identify legal interests to determine the level of service that each applicant needs. They also must have the capacity to make

⁹⁷The early development was pioneered by the American Association of Retired Persons which funded legal hotlines in 11 states which provide brief assistance and advice by experienced attorneys and paralegals to elderly individuals who call on an 800 number. Hotlines are funded by AARP in the District of Columbia, Florida, Michigan, Ohio, Pennsylvania, Texas, Maine, Arizona, New Mexico, Puerto Rico and California. Later, Cook County has established the Coordinated Advice & Referral Program for Legal Services (CARPLS) which uses attorneys to provide legal information and advice over the telephone for low-income residents of Cook County and then coordinated referrals if needed among the 23 affiliated legal services and pro bono providers in the county. See, Marquardt, Mark, *CARPLS: Inventing the Wheel*, 12 CENTER FOR PRO BONO EXCHANGE 1 (October 1994).

referral to the system of legal providers including pro bono advice and referral panels, evening legal workshops and clinics, law school clinics, high-volume automated document assembly systems and pro se assistance programs. They also should be able to make referral to alternative dispute resolution (ADR) providers or community based organizations and make referral to other appropriate non-legal organizations.

In a number of states it will also be necessary to create supplementary client intake and screening systems that target particular low-income constituencies, persons having particular legal problems that need immediate attention, persons unable to navigate a telephonic intake system, and persons who come to the office in person.

4. Maximum use of technology

Achieving relative equal access cannot be accomplished without the maximum use of new and innovative electronic and video technologies to improve access and address unique and distinct unmet legal problems. For example, using new technologies and the Internet assures full communication statewide among lawyers involved in the delivery of civil legal assistance and enables lawyers to transfer client information and cases.

5. Efficient, client friendly gateway into the state civil legal assistance system

Combining a statewide advice and brief services system with a statewide intake system is a particularly effective way to serve as a client friendly gateway into the civil legal assistance system for those low income persons and groups who can navigate such a system. They should not supplant client sensitive intake and advice and brief referral systems for those who cannot or do not want to navigate such a system. Such combined systems not only provide critical services that are used by a majority of low-income persons now accessing the current system, but they offer clients who need a fuller range of legal advice and/or representation easy access to such legal assistance. In addition, such combined systems also can serve as a clearinghouse of information for staff, low income persons, courts, pro bono programs, law school clinics and other providers and partners.

Recently, a number of states have begun statewide advice and referral systems as the primary method of intake and referral.⁹⁸ Several new programs have even devoted significant resources to statewide hotlines and have all but abandoned using staff to provide direct representation, leaving such representation to non-LSC funded providers.⁹⁹

⁹⁸For example, statewide hot lines have been established in Vermont, New Hampshire, Maine, Connecticut, New Jersey, Washington, Hawaii,

⁹⁹See e.g., Law Line of Vermont and Statewide Legal Services of Connecticut.

LSC has strongly encouraged these efforts both through its funding decisions and by disseminating information about what programs have been doing.¹⁰⁰

C. PROVIDE A FULL RANGE OF SERVICES

The civil legal assistance delivery system should systematically ensure the collective capacity to provide a full range of civil legal assistance services to all clients regardless of their location or the forum within which their legal problem is best resolved. For example, the system should enable low-income persons and groups to address some legal problems without legal representation, receive advice and brief services in appropriate situations, and receive representation from an attorney or paralegal when necessary. In addition, the system should provide representation when the legal issues affect a substantial number of poor people. Services that must be available include:

- \$ Legal advice and referral;
- \$ Brief legal services;
- \$ Representation in negotiation;
- \$ Representation in the judicial system and in administrative adjudicatory processes using all forms of representation appropriate for the individual or group being represented;
- \$ Transactional assistance (including community economic development, job creation, housing development, and the like);
- \$ Representation before state and local legislative, administrative and other governmental or private bodies that make law or policies affecting legal rights and responsibilities;
- \$ Assistance to clients using mediation and dispute resolution programs, including community-based dispute resolution services (where they exist), and development of linkages with such programs;
- \$ Assistance to individuals representing themselves pro se;
- \$ Advocacy to help make the legal system more approachable, receptive and responsive to low-income persons, including those with special needs.

1. Continued Sustained Representation

¹⁰⁰See BASIC ELEMENTS OF EFFECTIVE CENTRALIZED TELEPHONE INTAKE AND DELIVERY SYSTEMS, LSC, (March 1997) which described how such systems worked and provided some basic regulatory guidance and INTAKE SYSTEMS REPORT: INNOVATIVE USES OF CENTRALIZED TELEPHONE INTAKE AND DELIVERY IN FIVE PROGRAMS, LSC (March 1998) which described the statewide systems for Connecticut, New Hampshire, Vermont and Washington and the system in the Boston area.

While it is imperative that the civil legal assistance system serve more clients through a vastly expanded range of services and a much wider range of partners, it remains the case that legal services must continue to provide high-quality, effective representation in the trial courts and administrative agencies. Only by sustained, continuing representation will low-income persons realize their rights. This representation must include all of the techniques of advocacy that lawyers can pursue on behalf of clients including, for example, class actions and claiming attorneys' fees for which clients are entitled.

However, basic legal representation will have to be more holistic—a practice that does not isolate client problems into narrow categories, but sees the essential connections between income support, housing and neighborhood, family and consumer law. In addition, individual representation will be more fact based—it will rely less on legal claims and more on factual arguments about why a certain policy should not apply to an individual, or how the policy should be changed to take into account the individual's actual circumstances.

Gary Bellow and the staff at the Hale and Dorr Legal Services Center have developed and implemented a focused representation approach that provides a model that legal services need to utilize more than ever.¹⁰¹ The strategy involves undertaking detailed case reviews of existing cases to determine whether there are typical responses that were made by adversaries, officials, or institutions in the cases reviewed that need to be changed. The program would then analyze (a) the importance of the desired change to the program's clients; (b) the number of clients who are already coming to the office faced with the same problem; (c) the results that could be obtained and their potential impact should a change be achieved; and (d) the broader strategies available to challenge the problem while continuing to provide service on the type of cases in which the problem arises.

From this array of problems and possible changes, the program would select one or two areas of focus and develop ways to increase both caseload (sufficiently large to have some chance of achieving the desired result) and the aggregate impact of the way the cases are handled in these areas. For example, hearings at a particular welfare office might routinely be followed by conversations with the worker involved concerning the practice that has been challenged, or regularly circulating appellate or hearing decisions touching on the agency's practice to the office's staff. Such low key challenges can sometimes affect future behavior on the issue involved, strengthening the influence of people in the office more sympathetic to the legal services position. The program then should monitor the results from these strategies. The program may face predictable reactions, many of which can be anticipated. Initial strategies will inevitably need to be

¹⁰¹See Gary Bellow and Jeanne Charne, *Paths Not Yet Taken: Some Comments on Feldman's Critique of Legal Services Practices*, 83 GEORGETOWN L. J. 1633 (April 1995).

changed as circumstances change or as efforts fail, succeed or hit roadblocks that cannot easily be dislodged.

2. Representation before Legislative and Administrative Bodies

The civil legal assistance system must provide representation before legislative and administrative bodies and other bodies that make law or policies affecting low income persons to make sure that low income persons are at the table when decisions affecting them are made. These bodies make many decisions directly affecting the rights and interests of low-income persons and they are an integral part of the civil justice system. State level representation is essential because states make critical decisions that affect the legal rights and responsibilities of low-income persons. If such representation cannot be provided by LSC-funded programs or other institutional providers, because of funding restrictions imposed by funding bodies because of the ideological opposition of some legal services supporters,¹⁰² the state system must find ways to provide this vital service. For example, the private bar has been able to provide such representation in many parts of the country. In addition, child advocacy groups and other nonlawyers have been able to advocate effectively before state and local legislative bodies on behalf of low income persons and groups.

3. Transactional and Economic Development Work

There is also a growing recognition that legal services programs, working with private lawyers, should provide assistance to community-based organizations and development corporations engaged in venture development and community building activities in low-income neighborhoods. Economic development assistance can help develop housing, nonprofit development projects, and small business ventures and can help initiate and operate social services ventures through community-based organizations such as job training, credit unions, home health care and child care.¹⁰³ Such advocacy will

¹⁰²Rep. Bill McCollum and Rep. Charles Stenholm have sought to prohibit such advocacy in legislation they have co-sponsored since 1989. See, e.g., H.R. 1345 introduced on March 7, 1991 by Rep. McCollum for himself and Rep. Stenholm and which became the framework for amendments introduced during the House consideration of H.R. 2039, which the House passed in 1991. See 13 CONG. REC. H 3129 (daily ed. May 12, 1992). The 1995 version of their legislation became the framework for the current appropriations restrictions that prohibit such advocacy with LSC funds. See n. 16.

¹⁰³John Little and National Economic Development and Law Center, *Practicing Community corporate Law*, 23 CLEARINGHOUSE REVIEW 889 (November 1989); Debbie Chang and Brad Castel, *Creating Opportunities through Litigation: Community Economic Development Remedies*, 26 CLEARINGHOUSE REVIEW 1057 (January 1, 1993).

enhance clients ability to become more self-reliant and more economically self-sufficient (as opposed to an approach in which the only goal is mere dependency maintenance.)¹⁰⁴

In addition, civil legal assistance advocates can help the poor develop their own businesses through micro-enterprise initiatives and through Individual Development Accounts.¹⁰⁵ Micro enterprise development has been able to reshape and expand enterprise and economic development for women, people of color, long-term welfare recipient and single heads of households. It has helped participants increase income, savings and assets, reduce welfare payments, build entrepreneurial skills, and move into other employment.¹⁰⁶ IDAs can help welfare recipients climb the economic ladder by providing a mechanism for families to save, invest, build assets and create businesses and jobs. PRWORA authorizes states to set up IDA programs using TANF funds which provide additional employment incentives, increase job retention, upgrading and creation, and promote economic independence. Over 16 states have implemented IDAs in various forms and protect AFDC recipients who build assets in restricted accounts from losing eligibility and nine states have enacted some sort of matching programs ranging from refundable tax credits to employer contributions to child support pass-throughs.¹⁰⁷

4. Alternative dispute resolution and community-based dispute resolution services

Legal services will have to utilize new approaches to problem solving, such as the use of alternative dispute resolution (ADR), private dispute resolution forums, and community justice centers. Some of these possibilities have not been adequately explored and their feasibility considered in representation of the poor. Yet, low-income persons are using such services, just as are the more affluent and corporations. Private judges and arbitration services are developing throughout the country and are being widely used by business and individuals. However, legal services has been slow to consider this source,

¹⁰⁴See John M. Little, *One LSC Programs Practice: CED*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. 10, No. 1, p. 27 (March 1996).

¹⁰⁵Micro enterprise initiatives refer to self-employment or very small business firms. IDAs are IRA-like matched savings accounts restricted to use for post-secondary education and training, business capitalization and home ownership.

¹⁰⁶See Studies by the Self-Employment Learning Project of the Aspen Institute reported in 1997 ENTREPRENEURIAL ECONOMY REVIEW, Chapter on *Entering the Economy: Micro enterprise and Opportunity*, pp. 38 - 41, Corporation for Enterprise Development, 1997.

¹⁰⁷See POLICY BRIEF: BUILDING ASSETS AND ECONOMIC INDEPENDENCE: INDIVIDUAL DEVELOPMENT ACCOUNTS, Corporation for Enterprise Development, March 1997; Oliver, Melvin L. and Thomas M. Shapiro, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY, New York: Routledge, 1995; Sherraden, Michael, ASSETS AND THE POOR: A NEW AMERICAN WELFARE POLICY, Armonk, NY: M.E. Sharpe, 1991.

even when the services have been offered pro bono. Legal Services has also been reluctant to fully utilize ADR for several reasons. Some have been concerned about the power disparities between low-income users and more affluent parties or between men and women in relationships. In addition, the use of ADR was politicized by critics of legal services who proposed replacing the staff attorney system with free-standing ADR programs. Generally, however, advocates and managers have been unfamiliar with what is going on in ADR and how ADR could be effective for the poor.¹⁰⁸ These concerns can be addressed without depriving low income persons of their rights or abilities to resolve disputes in an equitable manner. To ensure that low income persons do get the advantages of ADR, it is essential that the state system develop effective relationships with ADR providers and resolve whatever barriers may exist to full utilization by the poor.¹⁰⁹

5. Assistance to Pro Se Litigants

Recently, there has been growing interest in creating initiatives on pro se assistance both within legal services programs and as part of statewide access to justice planning initiatives. While there are only a few operating programs at this time, many more are being contemplated and a number of experimental initiatives are beginning.¹¹⁰ These efforts usually involve one or more group sessions on a particular legal problem type (such as child support, uncontested divorce, eviction defense) combined with the provision of detailed educational information, hands on assistance in completing pleadings and, in many, the availability of immediate access to individual assistance or even individual consultations. Most refer clients with complex matters, special needs or where the opposing party is represented to private attorneys, a pro bono program or the legal aid office. To work well, there have to be standardized, streamlined and specialized pleadings that can be filled out easily and acceptable to the court. In addition, such initiatives involve

¹⁰⁸Singer, Lewis, Houseman & Singer, *Alternative Dispute Resolution and the Poor – Part II: Dealing with Problems in Using ADR and Choosing a Process*, 26 CLEARINGHOUSE REVIEW 288 (July 1992).

¹⁰⁹These include costs that may have to be incurred, problems of unequal bargaining power between poor clients and their adversaries, and the lack of knowledge that mediators may have about the consequences of a mediated settlement on public benefit eligibility or payments.

¹¹⁰The Legal Aid Society of Hawaii, Legal Aid Bureau of Maryland and the University of Maryland Law School Clinical program have been pioneers in these efforts. Community Legal Services in Phoenix has been a cooperating partner with the Self-Service Center operating by the Superior Court of Arizona in Maricopa County. The Access to Justice Board in Washington State has developed a pro se assistance program that uses courthouse facilitators based either in the county clerk's office or independently operating under authority of the local court. These facilitators are, in some places, linked electronically to staff providers and will, in the future, be networked under a single equal justice platform.

trained staff including lawyers and paralegals as well as the availability of critical administrative and substantive support.¹¹¹

In addition to these staffed approaches, there has been considerable interest in the use of stand-alone, computer-based kiosks located in courthouses or other public buildings to general legal forms in response to input from the user. These were first pioneered in Colorado with a pilot project which used touch-screen computers for presenting public information and generating simple forms for child support and small claims cases. Kiosk technology has been in use in Long Beach, Ventura, California and, most well publicized, in Maricopa County, Arizona. The kiosks in Maricopa County are now used to generate no-fault divorce documents, child support petitions, domestic violence petitions and documents for land-lord tenant actions for a small user fee. More recently, there has been initial experimentation with creating a broad network of community-based pro se legal information centers through a web site that is organized as a set of libraries in major substantive areas.¹¹²

The civil legal assistance system needs to explore and experiment with these and other approaches in order both to help the growing number of pro se litigants navigate the court system more effectively and to provide concrete services to more clients in an efficient manner. Approaches that should be considered include clinics and on-site activity by law students, provider staff, volunteers, private attorneys, court personnel, or others who will help low income persons identify legal problems; analyze claims and defenses; prepare forms and pleadings; understand the processes, procedures and rules of the court; and locate appropriate legal assistance providers and/or private or pro bono attorneys. In addition, the state system needs to advocates to change court procedures and practices to enable more efficient and effective self-representation and to encourage use and availability of new technologies to increase access of low-income persons to the court system. While pro se assistance efforts are not a substitute for direct representation, they are a critical element of a civil legal assistance system and must be developed, evaluated, improved and funded.¹¹³

¹¹¹An extensive and useful overview of pro se assistance is provided in *MIE Special Feature: An Examination of Self-Help Advocacy*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. X, No. 3 (November 1996).

¹¹²Richard Granat has developed the concept in the Peoples Law Library described by Granat in *Creating a Network of Community-Based Pro Se Legal Information Centers*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. X, No. 3, p. 25 (November 1996).

¹¹³There are a host of legal issues raised by pro se systems and the related efforts to unbundle legal services. See, e.g., Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L. Q. 421 (1994) and Michael Millemann, Nathalie Gilfrich and Richard Granat, *Limited Service Representation and Access to Justice: An Experiment*, AMERICAN JOURNAL OF FAMILY LAW, Vol. II, No. 1, Spring, 1997.

D. UTILIZE A FULL RANGE OF PROVIDERS

Civil legal assistance will continue to be delivered by staff attorneys and paralegals but will increasingly involve private attorneys, law students working in clinical and other programs, staff from other community-based organizations, Lawyers, paralegals or staff working for other entities (including governmental entities such as attorney general offices, corporations, labor unions, civil rights and civil liberties organizations, human services providers and other non-profit institutions), nonlawyers and lay advocates, and others involved in or relating to the civil justice system such as clerks, law librarians and other court personnel. These must all work as a community of advocates.

Solving problems of individual and group clients will involve more than lawyers, law students and paralegals. Like the modern law firm which has many non-lawyer specialists and activities, to solve some problems will require utilizing skills of people from a variety of different disciplines and developing interdisciplinary and holistic approaches to advocacy in order to focus on clients' problems and to look beyond narrow legal conceptions or approaches.

1. Private Lawyers

In order to achieve access and to meet basic client needs, legal services programs will have to form creative partnerships, collaborate with and effectively utilize the private bar. Yet, unlike civil liberties and civil rights organizations, in only a few places does the organized civil legal assistance system take full advantage of private attorneys and their skills.¹¹⁴

a. One Example: Volunteer Legal Services Program (VLSP)

An example of how an innovative pro bono program effectively uses private attorneys is the Volunteer Legal Services Program of the San Francisco Bar Association. VLSP provides services to 30,000 people each year through mobilization of volunteers. Last year, for example, 3,000 volunteers donated more than 123,000 hours of help to low-income persons. Among other initiatives, VLSP has developed a Homeless Advocacy Project, which involves a number of participants, including the Coalition on Homelessness, AIDS Benefits Counselors, San Francisco Department of Public Health, and San Francisco Neighborhood Legal Assistance Foundation. VLSP also conducts the SSI For Children with Disability Project, in conjunction with the National Center for Youth Law, which

¹¹⁴For example, the ACLU relies extensively on private attorneys for a significant amount of major civil liberties litigation. Likewise, the Lawyers Committee for Civil Rights Under Law and the NAACP Legal Defense Fund utilize a large group of private lawyers and law firms to handle major civil rights litigation.

provides training to pro bono attorneys, direct representation and holistic social services to children and adults at risk of losing SSI eligibility. In addition, VLSP conducts an Immigration Project in conjunction with the Northern California Citizenship Project.

Finally, VLSP has developed several comprehensive services delivery models which integrate legal and social services, such as the One-Stop Women's Clinic. The Clinic offers low-income women simultaneous access to a wide range of social, legal, medical, vocational and parenting services in one location, at one time. Between 90 and 140 women attend each clinic where 20 different service providers offer counseling, information, health examinations and workshops throughout the day. Those needing legal representation are referred to VLSP panel attorneys.

This more holistic approach to advocacy was effectively summarized in a recent memo from VLSP to the author as follows:

If people are to be successfully assisted to become self-sufficient, then we must address the whole array of issues which prevent escape from poverty; more often than not, focusing on one area alone does not resolve this problem. VLSP recognizes that legal services alone cannot resolve many of the underlying issues facing our clients. That is why we have developed a "holistic" approach, providing access to services which go beyond seeking legal remedies or benefits advocacy for clients, an approach designed to meet the full range of client needs. In this way, we are able not only to provide a battered woman and her children with legal protection from abuse and assistance in securing child support, custody, divorce or separation, but also in getting her counseling, emergency shelter, and, in the longer term, affordable housing and employment. Thus, we go beyond meeting clients' emergency needs to help them realize a stable and self-sufficient future.

We have developed this holistic system of service through the following means:

- \$ creation of partnerships and collaborations with existing service providers so that we offer clients streamlined systems of service and prevent duplication of services;
- \$ training VLSP legal volunteers to determine when clients need resources other than legal assistance, and training them regarding the resources available; and
- \$ the in-house provision of social services through development of a volunteer program utilizing social services professionals and built along the same lines as the successful VLSP legal volunteer program.@

b. What Private Attorneys Must Do

To help meet the challenges of the legal services restrictions and devolution, and to participate in a coordinated, holistic approach to addressing the legal needs of low-income clients, pro bono programs and coordinators must expand beyond their traditional role of tapping individual attorneys for a particular case and engage in one or more of the following activities:

Undertake complex litigation. There are many cases with solid legal position which LSC-funded legal services programs cannot take on either because the cases involve prohibited activities like or challenges to welfare reform laws or require resources that legal services programs do not have. Moreover, one of the most significant restrictions on LSC-funded programs is the prohibition on initiating or participating in class action cases. Yet, class actions are often essential tools to preventing adverse and illegal action by both government and private entities. This work cannot be done solely by non-LSC funded entities because they often do not have enough staff or resources.

Represent individual clients. Civil legal assistance providers can form partnerships with private law firms and pro bono programs to augment the representation of clients who need assistance. This is not the same as referring clients to a pro bono lawyer. Instead, what is contemplated is for a law firm or pro bono program to take on a whole category of cases or a set of legal problems. For example, the American Bar Association created the Children in SSI Project which has mobilized the private bar in virtually every State to prepare volunteer attorneys to represent affected families with many law firms on behalf of parents of severely disabled children denied SSI by the changes in the SSI program.¹¹⁵ Similar local initiatives have involved representation by law firms in landlord tenant cases or in housing development matters. Two other practices that have worked well in a few areas could be expanded into many more places. Law firms can place associates with civil legal assistance providers for significant periods of time (six months to a year or more). Law firms can also take on a series of specific types of cases as co-counsel with a staff program.

Train and mentor legal assistance staff lawyers and paralegals. Many legal assistance staff are not experienced in advocacy focused on persuasive factual presentations, because they have relied in the past upon the application of federal regulations to state policies and practices in representing adversely affected clients. In subject areas where the federal law and regulations on which advocates have previously relied are no longer in effect, advocates need training and mentoring on how to argue facts effectively. In addition, some staff lack basic trial advocacy skills and need training on such skills which private firms can do. For example, a private firm could include civil legal

¹¹⁵See Julie Justicz, *Children in SSI Project Update*, in DIALOGUE. at p. 21, Vol. 1, No. 4, Fall 1997

assistance staff in its own training programs or participate in private firm exchanges with the staff provider.

Undertake critical lobbying and policy advocacy before legislative and administrative rulemaking bodies. In this new environment, it is very important that low-income persons be represented before state and local agencies while these bodies are making policies and laws to implement the new federalism. Moreover, because of the discretion accorded state agencies under devolution, there is an opportunity to help develop new and innovative anti-poverty policies that could be more effective than prior approaches. Private lawyers and law firms can bring the power of the large firm to bear on problems of low income persons by forming effective partnerships with advocates who are in daily contact with client problems as well as with key state and national advocacy groups.¹¹⁶ In conjunction with such advocacy, private lawyers can help legal services and other advocates who are engaged in policy advocacy garner the support of the business community on issues of mutual interest, such as welfare-to-work and job training.¹¹⁷

Provide transactional assistance to job creation, welfare to work and community revitalization efforts. Using transactional legal skills and expertise, private lawyers and law firms can assist legal services or undertake directly legal work necessary to help community organizations and even governments create jobs, including creating community services employment opportunities; improve welfare to work services, such as new means of transporting workers to jobs; and revitalize low-income communities.

2. Law Students

Another overlooked group of advocates are law students, many of whom come to law school with an interest and initial commitment to assisting low-income persons with their legal problems. Yet, for a variety of reasons including how law school clinical programs frequently operate, the civil legal assistance system has not taken full advantage of these future young lawyers. In part this is because many clinical programs have developed to emphasize the training of law students and have focused on lawyering techniques through simulations and careful caseload control. However, many legal services providers have also viewed law students as added help and not taken the opportunity to develop more extensive programs that could effectively utilize such students in the delivery of civil legal assistance.

¹¹⁶There will be occasions when other interests represented by the law firm prevent representation of low-income persons, but this is little different than representation of clients in court where there are conflicts.

¹¹⁷There are also situations when representation by legal services providers clouds the merits of the client interests because of how the legal services provider is perceived by the legislative body.

Several successful examples provide useful models upon which to build. First, Harvard and Northeastern law students spend part of a semester for academic credit at Gary Bellows Hale and Dorr Legal Services Center providing civil legal assistance as well as learning trial and advocacy techniques. Second, the University of Michigan Law School has formed a partnership with Southeast Michigan Legal Services and a non-LSC funded staff program to provide representation in a variety of cases, including LSC-restricted cases, and to provide support to Michigan legal services program staff. Although this project has only recently begun, it has been effective in attracting law student participation as well as utilizing clinical and other faculty at the law school for critically important civil legal assistance advice and representation.¹¹⁸

A third is the successful Maryland pro se project. In 1995 and 1996, thirty-four law students from the University of Maryland clinical program conducted diagnostic interviews, made appropriate referrals and gave basic legal information advice to approximately 4,400 people who were otherwise representing themselves in domestic cases. The students were initially supervised in person at the courthouse, but later off site by phone. The students not only helped identify legal problems and analyzed claims and defenses that the clients might have, but also provided assistance in completing forms, serving process, understanding the processes and rules of the court and making appropriate referrals to private or pro bono attorneys. In order to provide effective assistance, the project had to develop and use simplified pleading forms. Overall, consumer satisfaction was very high and the project was successful in assisting clients obtain their objectives in the domestic cases.¹¹⁹

3. Young Lawyers and Advocates

The civil legal assistance system needs to invest in young lawyers and advocates, offer them opportunities to be creative and give them the freedom to become leaders. Many law students who are eager to represent low-income people after law school often have difficulty finding jobs in legal services programs or other civil providers. Those who do find jobs, often experience programs with older entrenched staff and a bureaucratic structure that prevents or hinders professional and financial advancement. Still others encounter an office culture that discourages or limits innovation and new approaches to work. As a result, many young lawyers are not coming into legal services programs or, if they are hired, are not finding the opportunity to grow and innovate. In addition, some

¹¹⁸See Bob Gillette (Director, Legal Services of Southeastern Michigan) *The Role of Law Schools in Re-Creating State Support*, NLADA CORNERSTONE, Vol. 20, No. 1, Spring 1998, p.5,

¹¹⁹See Michael Millemann, Nathalie Gilfrich and Richard Granat, *Limited Service Representation and Access to Justice: An Experiment*, AMERICAN JOURNAL OF FAMILY LAW, Vol. II, No. 1, Spring, 1997 and *Rethinking the Full-Service Legal Representational Model: A Maryland Experiment*, CLEARINGHOUSE REVIEW, Vol. 30, p. 1178 (March-April, 1997).

young lawyers have accumulated large loans from law school and college and are leery of taking legal services jobs at far lower salaries than available to some in the private and other public sector positions.

Legal services and pro bono programs must give priority to hiring more young lawyers, even at the expense of hiring more experienced practitioners. Hiring recent law school graduates is critically important to maintaining legal services as a central player in the justice system in the eyes of law schools and to ensuring that civil legal assistance continues to attract bright and committed lawyers to assisting the poor. Perhaps even more important, many young lawyers have new and creative ideas about how to address problems of the poor through both individual and collective strategies. They bring new perspectives and approaches that may be more effective in today's world than the approaches used by existing advocates which were successful in a different era but less effective today. Even when their ideas may suggest approaches that have not been used in the past or were once tried and rejected, the ideas of young lawyers should not be thwarted but encouraged and nurtured.¹²⁰

In addition, IOLTA, LSC, the bar and private foundation funders should consider creating new programs that would attract young lawyers into civil legal assistance work.¹²¹ Existing models in California and elsewhere can provide guidance and experience in designing and funding such initiatives. Legal services programs should also take advantage of new programs that are emerging, such as the National Association of Public Interest Law's Open Society matching program which matches funds for programs to hire young lawyers. In addition, a systematic effort should begin to encourage more law firms to establish fellowship programs like that run by Skadden, Arps, Slate, Meagher and Flom.¹²² Loan forgiveness and other programs to assist young lawyers with large loans should also be consistent. If feasible, such programs could be developed and become part of the civil justice system in each state.

¹²⁰When OEO began the federal legal services program, one of the early steps was to establish the Reginald Heber Smith Fellowship Program which had, as its original goal, to bring to legal services the best and the brightest young lawyers and law graduates. This strategy was necessary in order to ensure that the federal program did not remain dependent upon the managers and directors of the traditional legal aid societies who had failed to develop new areas of the law relevant to the poor or to undertake necessary appellate advocacy as well as advocacy before legislative and administrative policy bodies. For a discussion of the critical role of Reggies, see Johnson at 178-180; Alan W. Houseman, *Political Lessons: Legal Services for the Poor: A Commentary*, 83 GEORGETOWN L. J. 1669 at 1683 (April 1995).

¹²¹Civil legal assistance providers have also not taken advantage of many young public policy school graduates who are interested in assisting low-income persons. These graduates often bring critical analytical and policy skills that could be effectively used for research, analysis, and advocacy in the civil justice system of the future.

¹²²Each year, the firm sponsors Fellows who work in public interest and legal services organizations for one or two years.

The civil legal assistance system must also reach out to young lawyers in private practice to encourage their participation in advocacy for the poor and the economically disadvantaged. While young lawyers may be reached through formal pro bono programs, too often the opportunities offered such young lawyers are not challenging or interesting. Together with expanding the types of work which is done pro bono, it is also necessary to create exciting and interesting efforts that will attract young lawyers in large firms, small firms and solo practices. Moreover, many young lawyers are not targeted for participation in new civil legal assistance initiatives that are developed by legal services programs or the bar. This too should change.

E. ENSURE HIGH QUALITY, COORDINATED, EFFICIENT AND EFFECTIVE CIVIL LEGAL ASSISTANCE

1. Creating a Community of Advocates

To ensure a full range of legal assistance options to all low income persons in all civil justice forums, legal providers throughout the state and their partners need to work together in a coordinated and collaborative manner. It is particularly important that providers who are restricted in the services that they can provide work with providers who are not restricted in order to ensure the availability of the full range of legal services to low-income persons. In addition, legal providers must work collaboratively with one another and the broader community to use and integrate all individuals and organizations providing civil legal assistance to low-income persons.

More than collaboration is needed, however. Providers throughout the state must coordinate their activities to make the highest and best use of all available resources; minimize duplication of capacities and administration; develop and maintain coordinated and accessible client intake, advice and brief services and referral systems; and maintain organizational relationships and structures that maximize economies of scale and ensure the effective use of existing and emerging technologies. Providers also need to coordinate to ensure that legal assistance is available when needed and to respond quickly to client emergencies including those created by natural disasters or by significant changes in the law.

2. Expertise and Flexibility

Legal providers must have the substantive expertise, institutional presence, and experience necessary to provide high quality legal assistance consistent with the standards of practice within the state and with national standards of provider performance.

Institutional presence is particularly important to effective, high quality representation of low income persons because of the radically changing nature of the laws affecting them and the shift in decision making from the federal and state levels.

Providers will be called upon to ensure that the rights and interests of low-income persons are taken into account by courts, administrative agencies, legislative bodies and other private and public institutions that make decisions affecting such persons.

Legal providers must also have the capacity and flexibility to identify and respond effectively and efficiently to new and emerging legal trends and changes in the nature of the legal problems of low-income persons. Substantive strategies and appropriate techniques of advocacy must be constantly reappraised to respond to changing client legal needs. In addition, providers need the flexibility to reconfigure their structures, integrate their activities, and reallocate their resources to carry out new necessary to respond to changing client legal needs. Such flexibility cannot be attained unless sufficient support exists within the system to identify and respond to emerging legal trends and changes in the nature of the legal problems of low income persons through training, availability of specialized expertise, and other resources.

3. Collaboration with human services providers

To create a true community of advocates, legal providers will also have to coordinate and collaborate with human services providers, community based organizations, low-income groups and other entities to deliver holistic and interdisciplinary services and to enable non-legal services providers to provide their clients with accurate and relevant information about legal rights and options and how to access the system.

Developing partnerships and collaborations with a variety of providers and community entities, including local and State governmental agencies, can be a very effective way of providing critical services and maximizing assistance to low-income clients. Often, more clients can be reached through such collaborations than by working in isolation.¹²³ There are other advantages as well from such partnerships and collaborations. These groups can directly influence policy, often more effectively than the legal services program.¹²⁴ Moreover, joining in partnerships with other human services providers can result in increased funding for the legal services program, either directly or as a line item in the human services agencies budget.¹²⁵ Finally, such partnerships can

¹²³An excellent discussion of the advantages of partnerships was provided by Steve Xanthopoulos, Executive Director, West Tennessee Legal Services, in the Fall 1997 issue of the NLADA CORNERSTONE. See *View from the Trenches: Local Partnerships Enhance Results for Program Clients*, p. 6-7.

¹²⁴A good example of the effectiveness of coalitions in welfare advocacy is about obtaining domestic violence exception for time limits, Sharon M. Dietrick, Irv Ackelsberg, Deborah L. Freedman, Louise E. Hayes, and Richard P. Weishaupt, *Welfare Advocacy: Tactics for a New Era*, 31 CLEARINGHOUSE REVIEW 419 (January-February 1998).

¹²⁵Monroe County Legal Assistance Corporation in Rochester, New York has been particularly affective at such fund raising efforts.

create a greater awareness of the substantive challenges facing low income persons, increased understanding of the role of civil legal assistance and facilitate the creation of new grass roots, community based organizations of low income persons.

For example, the Legal Aid Society of Cincinnati has developed a partnership with Cincinnati Works, a collaborative entity founded by a successful businessman to help poor people escape poverty by obtaining and retaining self-support jobs. Not only does Legal Aid work on addressing employment barriers such as transportation and child care, but Legal Aid also provided direct legal assistance to Cincinnati Works participants on referral from the program. This successful partnership not only has helped clients address barriers to employment that necessitated legal assistance but also helped Legal Aid develop important relationships within the business and civil community.¹²⁶

Collaborations and partnerships also offer opportunities for holistic service delivery innovations that involve legal services working in conjunction with other human services delivery programs to deliver integrated services. Such partnerships not only enhance a legal services program role as an integral part of a community's delivery of services, but enable the program to become a part of a bigger solution for our client's problems.¹²⁷ For example, West Tennessee Legal Services has set up one stop shopping for victims of domestic violence by sharing space with a domestic violence organizations in two of its rural offices. Similarly, Bay Area Legal Services in Tampa, Florida created partnerships with local domestic violence shelters, including placing a full-time attorney at one of the shelters. Another example is the Partnership Project funded by Ford Foundation and involving Legal Services of North Carolina, Legal Aid Society of Hartford, Connecticut and Oregon Legal Services. A final example, Monroe County Legal Assistance Corporation, has contracts with hospitals to provide legal services in conjunction with hospital programs, such as drug and alcohol rehabilitation programs.

F. EFFECTIVE USE OF TECHNOLOGY

The civil legal assistance system of the future will have to use the most up-to-date technology to ensure efficiency and effective communication, coordination and collaboration, to access a broader base of knowledge, work more efficiently, and reach more clients. Thus, legal providers take full advantage of existing and innovative technologies and maximize the use of technology to deliver high quality legal assistance.

¹²⁶Legal Aid also operates Project Able, a collaborative with CRI, a mental health provider. Project Able provides legal services to help people on disability benefits successfully transition to work while maintaining economic stability and medical coverage. Legal Aid provides a comprehensive benefits analysis and representation before SSA and other agencies. All fees are paid by the Ohio Rehabilitation Services Commission.

¹²⁷The quote is from LeAnna Hart Gipson in *Effective Delivery: Rethinking Fundamental Issues*, MIE JOURNAL, Vol. XI, No. 2, November 1997, p. 46.

These technologies can be divided roughly into three groups: (1) Program management/delivery of legal services to clients by attorneys or other advocates; (2) Support and information for attorneys and other advocates; and (3) Assistance to individuals who choose to or must attempt to access the legal system without an attorney or other advocate.

1. Program Management/Service Delivery

The most familiar use of advanced computer technology is to automate routine office functions. Computerized forms and pleadings, automatic benefit calculation programs, case management systems that include docketing and calendaring, document assembly and timekeeping software all can increase staff productivity and the number of clients served. If client education materials are made available on-line, advocates can download those materials and easily customize them for their local communities.

In addition to office automation, computer and telephone technologies offer the opportunity to centralize intake and to offer telephone hotlines that provide clients with brief advice and referrals. Technology can also be used to link program offices, and to link different organizations, through e-mail and shared databases, which enable staff to perform program-wide conflict checks and to work on cases with people at other offices or organizations. Providers can communicate with courts, share information about clients with social workers, shelter providers and others working on clients' needs, access common statewide resource materials and work easily across the boundaries of staff programs, private firms, law schools, and other providers.

In addition, technology can help providers better understand the work and productivity of their staff and the results which the work is achieving for low income persons.

Thus, legal providers must invest in technology for acquisition of hardware and software on an ongoing basis. In addition, staff must have access to and adequate training for use of up-to-date technological tools to access information, communicate with colleagues, courts and clients, and work productively.

2. Support

Another major role of technology is to provide advocates with support and resources from outside their own offices. Computer-assisted legal research, including fee-based services, such as Lexis and Westlaw, CD-ROM products, and the Internet, can dramatically reduce time spent on legal research and enable a much wider net to be cast. If they are stored electronically, advocates also can access pleadings from other cases and other organizations, along with articles and other useful documents, and can use practice manual and other substantive law guides. Training modules can be available on

the Internet, using interactive and discussion technologies, and advocates also can take advantage of audio conferencing, video conferencing, and videotape.

The Internet can expedite the transmission of information about new opinions, legislation, regulations, and other developments requiring the response of the civil legal assistance community. APush@technology can be used to get important information directly into advocates' e-mail-boxes. Advocates can share information and advice through e-mail, web-based discussion groups, and listservs, including information about substantive law developments as well as upcoming trainings, conferences, and community meetings.

As a result, advocates will develop inter-organizational and lateral communications with advocates in other states as well as inter-connectedness essential to the creation of a broad community of advocates.

3. Client Assistance and Education

Technology also has tremendous potential to educate clients about their rights, help them understand when they could benefit from accessing the legal system, and help them find a lawyer or proceed pro se. Interactive technologies have shown great promise to help people proceed pro se. For example, people can fill out standard forms and pleadings on computer kiosks available in courthouses or other social services agencies, or through the Internet, and can access libraries and other substantive resources.

At the same time as technology presents enormous opportunities, it also has the potential to disadvantage low-income people disproportionately, and the civil legal assistance community must develop the capacity to address these issues. At the most basic level, providers need to monitor and evaluate their own use of new technologies, particularly in the area of intake and hotlines, to ensure that clients are obtaining favorable outcomes. Similarly, as clients are increasingly required to access courts, government agencies, and private sector businesses through telephone menus and computers, providers must ensure that these systems can accommodate people with limited access to computers and limited educational backgrounds and must be alert to unintended consequences of computerization. Finally, providers must work with the larger community to ensure that low-income people have equal access to computers and computer training through public libraries, schools, and social service agencies.

G. ENSURING STATEWIDE COORDINATION AND SUPPORT FOR PROVIDERS OF CIVIL LEGAL ASSISTANCE

An integrated, comprehensive state system of civil legal assistance not only requires a range of critical services and a coordinated community of advocates, but it also requires a systematic effort to ensure coordination and support for all legal providers and

their partners and a central focus on statewide issues of importance to low income persons including representation before legislative and administrative bodies. This will require a system to coordinate advocacy in all state level legal forums on matters of consequence to low-income people, including amicus work;

The loss of over \$10 million in state support funding as a result of the Congressional funding decision made in 1995 has taken a large toll on the state support structure that was previously in place. Many of the state support units and the regional training centers that were part of larger programs have been eliminated. A number of new entities that are generally severely under funded and understaffed have developed to carry on state level advocacy, particularly policy advocacy.¹²⁸ Most of the remaining free-standing state support programs have survived, although with a few exceptions that have not made up the loss of LSC funds.¹²⁹ Since the demise of LSC funding, in many states, there has been no significant training of staff, information sharing about new developments, state level policy advocacy, litigation support or effective coordination among providers. In others, only a few of these activities have been taken up by new entities or carried on by former LSC-funded entities.

It is essential that this system be reconstructed in some form. Rebuilding a state support system will require new funds, contributions from existing providers of civil legal assistance and, in many states, substantial restructuring of the system. In addition to coordination of advocacy, the state system must undertake the following activities:

1. Statewide coordination of state-level resource development

The ability of a state to provide the full range of services and develop a community of advocates depends on its capacity to raise necessary funds from sources within the state, including both private and public sources. While LSC funds must continue, it is clear that state resources are equally vital to creating and maintaining an integrated, comprehensive state system. Legal providers and their partners must work together to raise funds for the state system as a whole. Successful state efforts have usually involved unified private and capital campaigns, unified approaches to major potential state public sources, and unified liaison with and maintenance of existing statewide sources. In addition, the state system needs to coordinate technical assistance for targeted local

¹²⁸For example: the Arizona Justice Institute; the Northern California Lawyers for Civil Justice and the Public Interest Law Project (CA); the Poverty Law Project in Illinois; Project Safety Net in Kentucky; Maine Equal Justice Project; Center for Civil Justice in Saginaw, Michigan; Nebraska Appleseed Center; New Mexico Center on Law and Poverty; North Carolina Justice and Community Development Center; Tennessee Justice Center.

¹²⁹These include: Western Center for Law and Poverty; Massachusetts Law Reform; Legal Services of New Jersey; Greater Upstate Law Project; Texas Legal Services Center; Ohio State Legal Services; Florida Legal Services; and Michigan Legal Services.

funding efforts, coordinate efforts to develop local and regional funding sources and coordinate communication, public relations, media and branding activities.¹³⁰

2. Information Dissemination

A critical role of state support efforts involves information dissemination. States must ensure effective monitoring, analysis and timely distribution of information regarding all relevant legal developments to all individual and institutional providers and others participating in the statewide system.

States must also create and maintain an efficient state-of-the-art statewide information dissemination network which includes at least five elements. First is statewide e-mail access for institutional providers of civil legal assistance, such as legal services programs, pro bono programs, law school clinical and related programs, specialized legal advocacy programs and staff working in community-based organizations. Second is a statewide civil legal assistance web site and other methods of communication to provide up-to-date information about state legislative, regulatory and policy developments affecting low-income persons as well as other information relevant to the delivery of civil legal assistance. Third, states must establish statewide electronic library of briefs, forms, best practices and proprietary texts and client information materials, which are accessible by all institutional providers and private attorneys providing civil legal assistance. Fourth, states need to develop a coordinated statewide research strategy integrating Internet usage, on-line services, proprietary sources, and other resources. Finally, states should also develop a coordinated data management systems to facilitate information sharing and case file transfers.

In addition, states should convene regular statewide meetings of, or communications among, attorneys, paralegals and lay advocates (including private attorneys and law firms, attorneys working for governmental entities, corporations, labor unions and human services providers) to discuss common issues, problems, subject areas, client constituencies, techniques of advocacy and strategies to make the most effective and efficient use of resources.

3. Coordinated statewide education and training activities

Education and training activities must be available for all individual and institutional providers within the state to develop expertise in all major areas of legal services practice within a state, to update advocates on new developments and emerging trends in law and policy affecting low income persons, to ensure the use of new strategies, tools, skills and

¹³⁰ ABranding activities@refers to deliberate use of distinctive logos and symbols to build public awareness of the civil legal assistance system within the state.

techniques of advocacy, to develop managers and new leaders, and to maximize opportunities for professional staff development for all experience levels of staff.

Training activities need to be carried out both at the workplace and outside of the workplace for maximum efficiency and effectiveness. State support entities must also provide assistance to local providers to ensure development of appropriate local training and education activities and materials. States should coordinate with continuing legal education programs offered by state or local bar associations or other entities. Finally, all legal providers must provide opportunities for staff to participate in national and regional training and collaborations where relevant to civil legal assistance activities of the state.

4. Administrative coordination and support

Some state support systems have also provided administration coordination and support to local providers. These have included coordinated central purchasing whenever there are significant economies of scale to be realized (equipment, technological systems) and consolidated or coordinated statewide financial operations where appropriate and efficient. It is also useful for states to develop statewide norms and policies, such as staff performance standards and referral and conflict procedures.

5. Coordinated statewide civil legal assistance liaison

Each states should coordinated statewide civil legal assistance liaison with all major institutions affecting or serving low-income people in legal matters, including state, local and federal courts; administrative agencies; legislative bodies; alternative dispute resolution bodies; and other public or private entities providing legal information, advice or representation.

6. Coordinated statewide research

Finally, the state system must ensure both substantive and delivery research is systematically undertaken. Delivery research should focus on improving the delivery of civil legal assistance within the state. As part of these efforts, states also need to identify and promote systemic "best practices" in areas such as intake, needs assessment, priority setting, case management, techniques of advocacy and strategy development. In addition, states should undertaken research on relevant demographic trends and new and emerging legal problems that affect low income persons within the state.

H. ENSURING NATIONAL COORDINATION AND SUPPORT FOR PROVIDERS OF CIVIL LEGAL ASSISTANCE

National support has fared better than state support after the loss of LSC funding. Most of the old LSC-funded centers are still in existence and many are doing quite well.

This is because some of the former LSC-funded centers had considerable non-LSC funding on which they could build, some were able to obtain additional funding to offset or surpass the LSC loss and a few were components of much larger organizations and thus could absorb the LSC loss without a significant change in activities.¹³¹ In addition, other national organizations not funded by LSC provided significant support in some areas to legal services advocates.¹³²

Nevertheless, even though many of these former LSC-funded entities remain and other entities continue to provide some support, the reality is that advocates in the civil legal assistance system have less access to support assistance than in the past before the termination of LSC funding. There is less training, fewer manuals and other relevant materials, less information about policy and legal developments and often little capacity to provide immediate and ongoing assistance to local advocates. While national policy advocacy may have suffered the least, there remains less capacity than previously to ensure that the rights and interests of low-income families are represented before Congress and federal agencies. Moreover, there remain gaps in national advocacy on issues of importance to the poor and lack of training, manuals, information and assistance on new and emerging issues, such as transportation. In addition, the national advocacy system is not undertaking sufficient research on new areas and ideas and not providing the civil legal assistance system with demographic and other analyses that will be helpful to them in planning, setting priorities and building a system for a future client cohort that may differ considerably from the client cohort of the past three decades.

Recreating the old national support system will not be possible because there will not be sufficient funds to do so from private foundations, the government or legal services programs. Moreover, the old system is not what is needed today or for the future because it would not meet the needs of advocates efficiently or effectively nor would it have the capacity to meet the gaps in support and advocacy that exist and will increase in the future. Instead, the national legal services community must build a new system, utilizing modern technology to the fullest to provide training, information, manuals and even advice and strategy assistance. This new system will also take advantage of the funding possibilities that do exist for devolution and other advocacy and state policy work and utilize the range of organizations that are involved in one or more of the critical functions that must be done at the national level.¹³³

¹³¹For example, the National Immigration Law Center and the National Consumer Law Center have actually increased their overall funding after the loss of LSC funds while Indian Law Support Project was absorbed into the regular operations of the Native American Rights Fund.

¹³²Examples include: Center for Law and Social Policy; Center on Budget and Policy Priorities; Children's Defense Fund; Bazelon Center for Mental Health; Families USA; National Women's Law Center.

¹³³This rebuilding has begun as part of the Project for the Future of Equal Justice, a joint project of the National Legal Aid and Defender Association and the Center for Law and Social

I. ENGAGEMENT WITH CLIENTS AND THEIR COMMUNITIES

Those involved in civil legal assistance must be in constant touch and dialogue with the low-income persons and families in communities so that providers understand the values, concerns, needs and problems of low-income persons including what they know about existing or potential legal problems they may face and how they are reacting to changes directly affecting their lives. Such client engagement will require changes in how programs operate.¹³⁴ As one client recently stated: "Legal services attorneys and paralegals need to get out and know the community. They do not live in the communities in which they work. They need to learn about the community, know the churches, schools and organizations that serve the community so that they understand what a client's life is where they live and work, who they know and what their problems really are."¹³⁵

First, provider staff will have to view their work differently than in the past. Their job will include community meetings and interaction with clients in community settings as well as increased outreach efforts to communicate with low-income persons in a variety of settings, such as welfare offices, housing projects, head start programs, domestic violence shelters, homeless shelters, churches and a host of other settings. This client and community orientation to their work, to be effective, will need to be written into job descriptions and used as a basis for evaluation, salary increases and job promotion.

Second, providers through each state will need to develop a more structured approach to community lawyering so that staff have clear road maps about what such lawyering is about and how it can be effectively done. Community lawyering is the provision of legal assistance, outreach and community legal education to organized groups of low-income persons in poor communities who are trying to assert more control over their own lives and preserve and improve their communities.¹³⁶ the state system should develop guidelines for effective group representation as well as how to work with a variety of client

Policy, and through a new NLADA Section on Support.

¹³⁴Client engagement is not the same as client involvement as legal services have traditionally used that term. Client involvement works well when there are strong, viable client groups that represent broad constituencies and when client representatives are themselves involved in leading social change. Unfortunately, that is not the case today in many communities. Thus, without giving up the historic and value-laden strong commitment to client involvement, legal services must focus on client engagement as an active, outreach effort that involves community lawyering and the development of options and opportunities for clients.

¹³⁵Marion Hathaway made this statement at the Conference on Legal Services and Poverty Advocacy, Airlie House, February 26-28, 1994.

¹³⁶This definition is borrowed from Andy Scherer of Legal Services of New York City.

and human services agencies that care for and provide services to low-income persons and families.¹³⁷

Third, providers and their partners will have to expand the places where intake is done, as well as utilize a wider range of intake techniques, including telephone intake and hotlines (discussed above). For example, programs should consider intake in evenings or on Saturdays both at their offices and at community settings, such as human service providers, welfare departments, unemployment offices, domestic violence shelters, churches and the like.

Fourth, providers must be sensitive to the values, cultures and aspirations of low-income households in the state. Advocates and others involved in the civil justice system must work and communicate effectively with the various constituencies of low-income persons within the state. To assume effective communication and responsiveness will require diverse staffing patterns within and among providers and the use of community volunteers or lay advocates. When there are a large number of low-income households that speak a language other than English, providers collectively must ensure that there are advocates who can speak the language of the clients.

All providers should also consider periodic efforts to evaluate their services and staff performance through structured client efforts. For example, programs have successfully convened focus groups of clients to assess services and provide information on clients' needs and perceptions.¹³⁸

In addition to active community involvement, legal assistance should be provided in ways that enable, support and enhance the ability of low income individuals and groups to define, assert, promote and enforce the legal rights and interests within the state's civil justice system.¹³⁹ To empower clients will involve a range of activity depending on the

¹³⁷As mentioned earlier, one of the only articles on community lawyering remains relevant today. See Michael J. Fox, *Some Rules for Community Lawyers*, 14 CLEARINGHOUSE REVIEW 1 (May, 1980).

¹³⁸An excellent example of how focus groups can be used and the impact such efforts can have is provided in two articles by James Bamberger and Sally Pritchard, *Challenging Institutional Relevance Part I* MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. VII, No. 3, October 1993 and *Challenging Institutional Relevance Part II*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. VIII No. (November 1994).

¹³⁹Randi Youells, a former project director, defined client empowerment as a process during which people who are without power or influence or the ability to prevail in the face of opposition are assisted in obtaining what they want, need, and/or are entitled to in ways that foster their ability to learn and understand how they can best exercise their own skills, talents and strengths (and under what circumstances) to improve the problems, situations, or conditions that confront them. See *Empowering the Client Community: What Does it Mean?* MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol IX, No. 1, March 1995.

capacities of the clients. Some will be able to advocate effectively for themselves, particularly in administrative hearings, if support and assistance is provided by the program. Other clients may need the support and assistance of lay advocates, support groups, self-help groups or client organizations that have been trained to be of assistance by the program. Many will need the assistance of lawyers and paralegals during the advocacy itself, but can play greater roles in preparing for and in the proceedings than often assumed. Legal services has long struggled with what it means to empower clients, but very few programs have actually put in place modes of practice which reduce client-s dependency, foster clients self-esteem and enhance clients capacities to advocate on their own behalf. To empower clients will involve giving more attention to prevention of problems than has historically been the case in legal services and it will require the program to examine the legal problems through the eyes of their clients and in the context of where clients live and work.¹⁴⁰

Finally, a client-centered approach may well involve reconceptualizing clients as producers not just consumers or recipients of services. For example, Edgar Cahn has developed a concept of time-dollars to enable clients to be producers, an approach that legal services needs to experiment with throughout the country in different settings.¹⁴¹ Time Dollars are service credits that convert time spent helping others into purchasing power. Legal Services would charge clients a fee to be paid with Time Dollars. This could involve community groups undertaking activities in return for legal representation or individuals receiving representation and advice as if they were in a prepaid legal insurance plan. This idea has not been tried in a legal services context nor on the scale necessary to yet determine its utility as an approach to assisting the economic, social and civic empowerment for the poor. But it at least has the advantage of changing "the relationship between lawyer and client, from one of dependency and implicit subordination, to one of reciprocity and mutuality."¹⁴²

J. WHO SHOULD BE SERVED

Historically, the civil legal assistance system has primarily served individuals who are very poor. Prior to the federal legal services programs, these were the poorest of the poor, although many legal aid programs added at one time or another during their history, other criteria, such as whether the clients were morally deserving to be represented.¹⁴³

¹⁴⁰Ibid. and Youells, Randi, *Rethinking Client Empowerment*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. VII, No. 2, (July 1993).

¹⁴¹See Edgar S. Cahn, *Reinventing Poverty Law*, 103 YALE L. J. 2133 (1994).

¹⁴²Ibid.

¹⁴³LEGAL SERVICES HISTORY, Chapter 1, pg. 1.

During the first ten years of the federal program, the financial eligibility standard was based on the official federal government poverty line.¹⁴⁴ Since 1976, LSC has set the federal eligibility standard for use of LSC funds at 125% of the federal poverty guidelines, although there are exceptions for recipients of public benefits and for people with unusual expenditures.¹⁴⁵ However, LSC funded programs could serve individuals with higher incomes with non-LSC funds and many have and continue to do so.¹⁴⁶ Since 1965, except when Congress imposed restrictions, there have been few moral criteria or other barriers imposed by LSC or the programs funded by LSC.

As the delivery system for the 21st Century is put into place, the civil legal assistance movement needs to revisit the financial eligibility criteria that it has used for the last 33 years while at the same time remaining vigilant against efforts to impose moral or non-financial eligibility criteria on who can be served.

1. Moderate Income and the Working Poor

A number of leaders in the civil legal assistance movement have recently suggested that legal services programs should serve both the very poor and those with moderate incomes who make up the working poor.¹⁴⁷ The ABA Comprehensive Legal Needs Study (CLNS) shows that the legal problems of low- and moderate-income households are more alike than different, and that households just above and below the current LSC eligibility line of 125% of poverty are especially disadvantaged.¹⁴⁸ This finding led to several policy conclusions by the Policy Development Committee of the CLNS, including a recommendation that legal services programs serving low-income persons retain as much flexibility as possible in deciding which cases to accept and adopt an eligibility criterion that is as high as possible.¹⁴⁹ At the very least, it is time to systemically examine whether

¹⁴⁴This line was first set by the Office of Economic Opportunity and then the Community Services Administration before shirting to the Department of Health, Education and Welfare and its predecessor the Department of Health and Human Services. See, 63 Fed. Reg. 9235 (February 24, 1998).

¹⁴⁵See 45 CFR 1611.

¹⁴⁶See 45 CFR 1611.3(e).

¹⁴⁷See, e.g., F. William McCalpin *Should Clients Pay? The Canadian Experience*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. IX, No. 3, November 1995, p. 33; Victor Geminiani *Introduction, Income-Generating Services*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. X, No. 2, July 1996, p.17.

¹⁴⁸See FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY, American Bar Association, 1994, pp 7-17.

¹⁴⁹See Albert H. Cantril, AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL

eligibility needs to be extended to permit representation of a larger number of low-income persons. Civil providers should be encouraged to experiment with co-payments and sliding fee schedules and pro bono programs should be encouraged to increase pro bono services to moderate income households.

However, for two reasons, this is an area for experimentation and careful development, but not yet for generic change in all states and jurisdictions. First, there could be an adverse impact on the representation of lowest-income persons. Many poor persons raise realistic concerns that expanding eligibility and using co-payments or fee schedules will dilute the focus of legal services programs on the poor and target scarce resources on persons who can afford to pay an attorney.¹⁵⁰ These legitimate concerns suggest that experimentation on eligibility, co-payments and sliding fee schedules should be done and the results evaluated before substantial changes are made in the basic eligibility and fee systems we have used in the United States. Second, expanding eligibility to include persons with moderate incomes may create friction with the private bar in some areas of the country and put the civil legal assistance system into unnecessary internal conflicts at a time when the bar, the judiciary, staff providers, pro bono programs and all partners need to be working together to improve access to those who cannot afford legal services.

2. The Deserving Poor

As the civil legal assistance system moves to achieve full access and implement the critical components outlined above, it must continue to serve all those low-income clients that are in political disfavor or are ethnic minorities or who are perceived as undeserving. As supporters of federal legal services program have learned all too well in the last three years, the opponents of LSC, if they believe at all in civil legal assistance, believe it should only be available to the deserving poor and they have now begun to state so publicly and forcibly.¹⁵¹ Congress did not stay on the sideline but took steps to prevent LSC-funded programs from representing prisoners, public housing tenants charged with drug-related offense, and some aliens and created barriers to representing welfare recipients. Pressures to extend the types of clients that cannot be served will continue.¹⁵² The civil

JUSTICE, American Bar Association, 1996, pp. 31-32. This report was the final analysis done of the CLNS and focused on the implications of the CLNS for the delivery of legal services.

¹⁵⁰THE LEGAL NEEDS STUDY also found that moderate income persons used lawyers more than low-income persons. See pp 26-29.

¹⁵¹For example, in a letter to THE LEGAL TIMES by John K. Carlisle of the National Legal and Policy Center, states that it is @the deserving poor federal legal aid is supposed to be helping.@ THE LEGAL TIMES, p. 27, (September 1, 1997).

¹⁵²For example, the testimony of Kenneth F. Boehm, Chairman of the National Legal and Policy Center before the Subcommittee on the Departments of Commerce, Justice and State, the

legal assistance system of the future cannot embrace the notion that clients who are politically or socially unpopular, or of certain ethnic or racial backgrounds, should not receive civil legal assistance.

K. MEDIA RELATIONS

The state legal assistance system as well as institutional providers need to nurture and develop effective relations with the media. The media can play an important role in educating the public about low-income persons, such as their employment, housing and legal problems. For example, highlighting the reality of low-income persons and the recipient experiences under devolution is a critically important strategy to counter the exploitative media stories that often have stereotyped welfare recipients as abusers of an overgenerous, dependency-creating system.¹⁵³ As Jon Asher, Director of Legal Aid of Metropolitan Denver, has eloquently argued, legal services programs and the broader civil legal assistance system need to hear clients' stories and communicate these stories to policymakers and the public. These can be powerful vehicles to educate the public and civic leaders as well as elected and appointed officials about what is going on and its impact on the real lives of the poor.

The media can also be a very useful vehicle to publicize the availability of various forms of assistance and services that legal services and human services provides have available. While it is certainly helpful to encourage effective stories in the major media, legal services should nurture the local media and community newspapers which reach the public in the local service areas. Some programs have developed regular columns in local papers about what they are doing and various programs affecting the poor. Others have developed regular TV and radio programs and participated in interviews of important community leaders.

L. NEW PRIORITIES AND PLANNING

Programs funded by LSC have been required to set priorities since 1976. Most recently, LSC-funded programs must set priorities which determine all of the cases and matters that will be undertaken and, except for emergencies, staff are required to confine

Judiciary and Related Agencies, House Appropriations Committee, on April 1, 1998, called for a prohibition on representation of temporary agricultural guest workers under the H-2A program created by the Immigration Reform and Control Act of 1986. See 8 U.S.C. 1101(a)(15)(H)(ii)(A). Moreover, he implied that legal services programs should not be representing alcoholics, drug abusers and tenants involved in evictions where allegations of drug abuse were present.

¹⁵³Such media advocacy is permissible under LSC regulations and laws. See Alan Houseman and Linda Perle, MEMORANDUM, MEDIA ADVOCACY, RECIPIENT COMMUNICATIONS AND MEDIA TRAINING, CLASP, December, 1997, on file with the journal and available as well from CLASP.

their activities to these cases and matters.¹⁵⁴ While such priority setting is essential, meeting the LSC requirements should not be confused with the more critical activities of determining mission and engagement in ongoing, interactive planning.

However, program planning and priority setting cannot be undertaken in isolation in order to be effective in the new world of civil legal assistance. Staff programs are not the only critical players within the expanded state civil legal assistance system that is necessary to be developed. Moreover, the civil legal assistance system within each state has the responsibility to ensure that there is a comprehensive and integrated delivery system that provides the full range of services outlined above and carries out the full component of critical statewide functions. Thus, the state as a whole will have to engage in ongoing planning initiatives that emphasize both strategic thinking and strategic planning. How this is done will vary depending on the size and demographics of the state.

When fundamental changes occur in the legal framework for civil legal assistance, it is particularly important that both the state as whole and individual providers within consider the implications of the change on both their substantive and functional work. For example, PRWORA and subsequent devolution developments have had and will continue to have an enormous impact on what civil legal assistance providers should do to help low-income clients affected. As welfare agencies emphasize a "work first" approach, a critical area of legal assistance involves helping clients obtain and maintain stable employment and improve job prospects so that those who can work, can obtain jobs that help get them out of poverty and so that those who have jobs and can retain jobs and income do not fall into poverty. The strategies vary according to local situations, but include:

- C working with a community collaboration of business and civic leaders seeking to assist welfare recipients to obtain private sector work and employment;¹⁵⁵
- C ensuring that minimum employment standards apply to unpaid work and similar work assignments;¹⁵⁶

¹⁵⁴See 45 CFR 1620, 62 FED. REG. 19406 (April 21, 1997). Under the appropriations provisions and implementing LSC regulations, staff must also sign a statement that they will only engage in activities within priorities.

¹⁵⁵The Legal Aid Society of Cincinnati has developed a collaboration with Cincinnati Works, as described above.

¹⁵⁶See Sharon Dietrich, Maurice Emsellem, and Karen Kithan Yau, *Welfare Reforming the Workplace: Protecting the Employment Rights of Welfare Recipients, Immigrants and Displaced Workers*, 30 CLEARINGHOUSE REVIEW 903 (Jan.-Feb. 1997),

- C utilizing employment discrimination theories in individual representation and agency advocacy;¹⁵⁷
- C engaging in agency advocacy, individual representation and client education focusing on critical supports for work participation, including child care, transportation and health care.

PRWORA also brings together in a concrete way the public benefits and family law practices of legal services. There are two critical intersections: first, a large number of TANF recipients are, or have been, subject to domestic violence¹⁵⁸ and will face significant obstacles to meeting TANF work and child support cooperation requirements as well as to using TANF to obtain financial recovery, employment and increased income;¹⁵⁹ and second, child support will be an increasingly important source of income for TANF recipients, yet child support and paternity cooperation requirements may be developed and implemented in ways that are punitive or which deter recipients from seeking essential child support.

Not only must the civil legal assistance system undertake effective policy advocacy to encourage states to adopt Family Violence Option¹⁶⁰ provisions or other domestic violence provisions, but legal services programs need to consider new intake or more holistic service delivery approaches to more effectively respond to the problems.¹⁶¹ In

¹⁵⁷ See Sharon M. Dietrick, Irv Ackelsberg, Deborah L. Freedman, Louise E. Hayes, and Richard P. Weishaupt, *Welfare Advocacy: Tactics for a New Era*, 31 CLEARINGHOUSE REVIEW 419 (January-February 1998).

¹⁵⁸ See Jody Raphael, *Prisoners of Abuse: Policy Implications of the Relationship Between Domestic Violence and Welfare Receipt*, 30 CLEARINGHOUSE REVIEW 186 at 187-188 (Special Issue, 1996); Paula Roberts, PURSUING CHILD SUPPORT AND NONVIOLENCE, CLASP (May, 1997).

¹⁵⁹ *ibid.*

¹⁶⁰ To partially address domestic violence affecting TANF recipients, Congress adopted the Family Violence Option in PRWORA which gives states the option to develop programs which (1) screen applicants for domestic violence while maintaining confidentiality, (2) make referrals to counseling and supportive services, and (3) grant good cause waivers for certain welfare program requirements. Good cause waivers could be granted when domestic violence makes it harder or impossible to comply with time limits, child support and paternity establishment cooperation requirements and child exclusion provisions. The Family Violence Option is both a protection against adverse welfare agency action against survivors of domestic violence and an opportunity for states to develop effective policies that will enable welfare recipients subject to or affected by domestic violence to obtain physical, mental and economic security and employment and increase income.

¹⁶¹ For example, Legal Services of Eastern Missouri developed Lasting Solutions which utilizes an extensive intake interview for clients seeking protective orders due to domestic violence.

addition, because clients may face immediate loss of benefits unless they can produce information about the absent parent and because establishing paternity and a child support income stream takes on new importance in the context of time-limited welfare, legal services programs need to reconsider their family law priorities in light of the increasing importance of paternity establishment and child support for both custodial and noncustodial parents and to better coordinate their family law and public benefits practices.

Finally, and most challenging, are the growing intersections between housing and welfare.¹⁶² The changing relationships between welfare and housing programs and the growing interconnectedness of the legal problems arising from those new relationships will require staff programs to both rethink their long-standing structural divisions that separate housing and public benefits into two often separate units but also how programs can redesign intake so that the problems of clients are not pigeon-holed into traditional categories that may not reflect the underlying problem which the client faces.¹⁶³ As welfare reform is implemented, time-limits are reached and participation requirements increased, there is a greater likelihood, indeed certainty, that more welfare recipients will face greater problems in retaining existing housing (whether public or private housing) or finding new housing. The legal problems brought to the civil legal assistance system will require expertise in both housing and welfare to solve.

CONCLUSION

The civil legal assistance system as we have known it over the past three decades is in transition. More of the same will not suffice. To be effective in an environment of limited resources, new restrictions and extraordinary changes in policies affecting low-income Americans, the civil legal assistance system needs new techniques of advocacy, new substantive strategies, new capacities, a broader range of services and new forms of interprofessional cooperation. To achieve equal justice for all, and to build the base of public support necessary to regain lost funding and removal of unacceptable restrictions, the civil legal assistance system of the 21st century must provide increased access to larger numbers of low-income persons through an integrated, comprehensive state delivery system addressing changing legal needs in new and innovative ways. More and more the private bar will be a central partner and key collaborator in the delivery of a full range of legal services to the poor. Likewise, the system must use law students effectively and

The intake process also incorporates questions about TANF work requirements and the Family Violence Option. On site social workers assist clients to prevent future domestic violence and end destructive relationships.

¹⁶²See Barbara Sard and Jennifer Daskal, HOUSING AND WELFARE REFORM: SOME BACKGROUND INFORMATION, Center on Budget and Policy Priorities, February 26, 1998.

¹⁶³See Barbara Sard, *Perspectives on the Future of Legal Services Housing Advocacy*, 27 HOUSING LAW BULLETIN 37 (March 1997).

ensure that young lawyers can fully participate in staff programs and private attorney initiatives. How all of the participants can work together as partners and a community of advocates to ensure an improved civil justice system and to improve the lives of low-income persons, is the central challenge of those committed to equal justice for all.