# Foreword

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## I. Civil *Gideon* and Legal Services in America

This symposium volume of the *Harvard Law & Policy Review* celebrates the fiftieth anniversary of *Gideon v. Wainwright*,[1] the landmark Supreme Court decision that required states to provide counsel for indigent defendants in criminal proceedings. It is clear that *Gideon* continues to have force and relevance for criminal defendants. Indeed, in 1967, the Supreme Court extended *Gideon* to youth defendants,[2] and in two decisions last term, the Court affirmed the right to effective assistance of counsel at the plea bargain stage.[3]

However, there is no parallel right to counsel in civil matters. The Supreme Court has had two opportunities to find a right to counsel in civil cases of great consequence for the parties involved—a proceeding to terminate a mother's parental rights[4] and a civil contempt proceeding for nonpayment of child support in which a father faced prison.[5] In both cases, the Court found that the defendant had no right to counsel. Civil *Gideon* efforts in state courts and legislatures have not fared much better. Progress has largely been limited to state statutes that primarily focus on proceedings involving intervention in parent-child relations (e.g., the termination of parental rights or the removal of children from parental care in instances of neglect or abuse) and proceedings that seek to curtail the freedom or personal choice of adults (e.g., petitions for civil commitment, involuntary sterilizations, or appointments of substitute decision makers on health or financial matters).[6]

While opinions might differ about the present health and future prospects of legal services in the United States, there is scant evidence that the country is moving towards a civil *Gideon*. In this regard, the United States, the largest and wealthiest Western democracy, stands alone among its peers. Government-funded legal aid programs of many common law countries (e.g., the United Kingdom, Ireland, Australia, New Zealand, and most Canadian provinces) and civil law countries (e.g., the Netherlands, Germany, Sweden, Norway, and Finland) guarantee access to an attorney in a wide

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[1] 372 U.S. 335 (1963).

[2] *In re* Gault, 387 U.S. 1 (1967).

[3] Lafler v. Cooper, 132 S. Ct. 1376 (2012); Missouri v. Frye, 132 S. Ct. 1399 (2012).

[4] Lassiter v. Dep't of Soc. Servs., 452 U.S. 18 (1981).

[5] Turner v. Rogers, 131 S. Ct. 2507 (2011).

[6] *See* Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 Clearinghouse Rev. 245, 252–70 (2006) (collecting right-to-counsel statutes across the United States).

range of civil matters.[7] Eligibility for free or low-cost legal assistance often extends to middle-income people. Because income eligibility is higher and everyone who qualifies for legal assistance gets it, legal aid expenditures are much higher—from two to eight times more per capita than in the United States.[8]

The origins, goals, and service delivery models of legal services in peer nations are markedly different from those in the United States. These differences may account, in part, for the significant differences among countries in government-guaranteed access to legal services today. The English legal aid system offers a useful point of comparison with the policy choices made in the United States. The two countries share a common legal system and language, as well as close political ties. Yet while other countries have adopted England's approach to delivering legal services, almost none have followed the path the United States set out on. Of particular note, in the debates surrounding the launch of the United States' federally funded legal services program for the poor, the so-called "English" system of legal aid was discussed and much preferred by certain sectors of the American bar.[9] For these reasons, a brief but careful look at the structure and rationale of legal services in England may be instructive as we look to the future of legal services in America.

The Legal Advice and Assistance Act of 1949 represented England's "first coherent attempt to provide a comprehensive system of state funded legal aid."[10] The program passed Parliament in the post-war period as part of a reform movement that included the creation of the National Health Service and that set the basic parameters of the modern welfare state in Britain. Because the British had just survived relentless bombing and prevailed in the Second World War, the reform era was also a period of national unity and pride.

The British legal aid program is founded on certain principles that guarantee access to legal assistance regardless of means. These principles are:

- Legal aid should be available in all courts and in such manner as will enable persons in need to have access to the professional help they require.

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[7] Alan Paterson, *Financing Legal Services: A Comparative Perspective*, *in* A READER ON RESOURCING CIVIL JUSTICE 237, 239 (Alan Paterson & Tamara Goriely eds., 1996).

[8] *See* Richard Zorza, *Making an International Case*, LSC's EQUAL JUST. MAG., Summer 2003, at 54; *see also* Earl Johnson, Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INT'L L.J. S83, S94 (2000); Earl Johnson Jr., Comparative Commitment to Equal Justice: Some New Statistical Indicators 3 tbl.1 (July 13–16, 2001) (unpublished discussion draft), *available at* http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Melbourne_2001/National_Reports/Comparitive_Commitment_to_Equal_Justice_in_the_US_Some_New_Statistical_Indicators.pdf.

[9] *See* EARL JOHNSON JR., JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICE PROGRAM 117–21 (1978).

[10] The Alliance for Legal Aid, *The History of Legal Aid*, SAVE LEGAL AID, http://www.savelegalaid.co.uk/history.html (last visited Dec. 23, 2012).

- This provision should not be limited to those who are normally classed as poor but should include a wider income group.
- Those who cannot afford to pay anything for legal aid should receive this free of cost.
- There should be a scale of contributions for those who can pay something toward costs.
- The cost of the scheme should be borne by the state, but the scheme should not be administered either as a department of state or by local authorities.
- The legal profession should be responsible for the administration of the scheme[.]
- Barristers and solicitors should receive adequate remuneration for their services.[11]

The English legal aid system operates on a "judicare"[12] model in which legal services are provided by the private bar.[13] Those found eligible for legal aid receive what amounts to a voucher that they can place with the solicitor of their choice. The solicitor then bills the legal aid authority for services provided.[14] As one legal aid scholar points out, the judicare model exists in most of the leading industrial countries in the Western world, and in many, it is the dominant mode of providing legal services.[15]

The United States' legal services system is the notable exception to the judicare model. Government-funded legal services began in America in the 1960s in a time of strife and division as the country debated momentous issues of racial justice, became increasingly embroiled in an unpopular war in Southeast Asia, and confronted an alarming level of abject poverty that disproportionately impacted people of color but also plagued whites in Appalachia and other regions. The 1960s were also a violent era. Civil rights protesters were beaten and killed in the South, and injuries and deaths followed riots in the poor areas of major American cities. The country suffered

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[11] *Id.*

[12] "Judicare" has been the preferred title for the private bar delivery model in the United States. Paterson, *supra* note 7, at 237, 239. The term has been used since the debates in the 1960s about the structure of the proposed legal services program, and it derives from the similarity of the English private bar model to Medicare.

[13] *Id.* Most legal aid programs have a means test. Judicare systems typically have one as well. In England, the means testing is generous. When enacted, eighty percent of the population was eligible for free legal advice and assistance. As costs rose, the means criteria was lowered but has always exceeded the poverty levels of the U.S. system. The merits test screens out cases without legal basis or of minor consequence. Russell Wallman, *Legal Services in England*, *in* LEGAL SERVICES FOR THE POOR: TIME FOR REFORM 194, 194–95 (Douglas Besharov ed., 1990).

[14] Some firms welcome both legal aid–funded clients and market clients. Moreover, such firms may offer a modified fee arrangement for clients of limited means who are not eligible for government legal aid. *See, e.g.*, *Funding Your Case*, TV EDWARDS SOLICITORS & ADVOCATES LLP, http://www.tvedwards.com/about/ (last visited Dec. 23, 2012).

[15] Michael A. Millemann, *Diversifying the Delivery of Legal Services to the Poor by Adding a Reduced Fee Private Attorney Component to the Predominantly Staff Model, Including Through a Judicare Program*, 7 U. MD. L.J. RACE RELIGION GENDER & CLASS 227, 250 (2007).

the national tragedy of the assassination of three national leaders in less than five years—President John F. Kennedy in November 1963; Dr. Martin Luther King Jr. in April 1968; and Senator Robert F. Kennedy, then a candidate for President, in June 1968.

Against the tumultuous events of the 1960s—and surely, in part, in response to those events—the public debated and Congress passed most of President Lyndon B. Johnson's ambitious legislative agenda: the Civil Rights Act of 1964; the Voting Rights Act of 1965; and major social welfare legislation, including Medicare, Medicaid, the Food Stamp Act, Project Head Start, and the College Work Study Program. At the same time, the creation of a federally funded legal services program in 1965 by the director of Johnson's Office of Economic Opportunity (OEO)[16] attracted little public attention but was actively debated within the bar. In his authoritative account of OEO legal services, Earl Johnson Jr. describes in detail the negotiations within the American Bar Association (ABA) that led the ABA to reverse its longstanding opposition to government financing of legal services and endorse the new program.[17]

Once the program was established, a sharp and, at times, contentious debate arose over the delivery model of the new legal services program. Many state and local bar associations lobbied vigorously for the English judicare model. However, the director of the new program, Clinton Bamberger, wanted a different, more radical approach.[18] He backed a model in which full-time staff in not-for-profit community-based offices would be the primary service providers. In a speech to the National Conference of Bar Presidents, Bamberger laid out the structure and priorities for the legal services program. He made it clear that his office had ambitions beyond "the mere resolution of controversies" and that the priority of the legal services program would be systemic change for the benefit of the poor as a class.[19] As Bamberger argued:

> We cannot be content with the creation of systems of rendering free legal assistance to all the people who need but cannot afford a lawyer's advice. This program must contribute to the success of the War on Poverty. Our responsibility is to marshal the forces of law and the strength of lawyers to combat the causes and effect of poverty. Lawyers must uncover the legal causes of poverty, remodel the system which generates the cycle of poverty and design new social, legal and political tools and vehicles to move poor people from deprivation, depression, and despair to opportunity, hope and ambition. I do not believe that an "English System" which parcels out the legal problems of the poor to lawyers en-

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[16] The Office of Economic Opportunity was headquarters for the Johnson Administration's War on Poverty.

[17] *See* JOHNSON, *supra* note 9, at 43–64.

[18] *See* Alan Paterson & Tamara Goriely, *Introduction*, *in* A READER ON RESOURCING CIVIL JUSTICE, *supra* note 7, at 1, 8.

[19] JOHNSON, *supra* note 9, at 119–20.

> gaged not because they have a singular dedication to assist poor people but because they are members of a bar association . . . will ever provide the necessary concerted and thoughtful legal analysis and challenge which must occur if the OEO program will be more than a chain of legal first-aid clinics. Twenty lawyers selected by twenty poor clients on twenty different days to defend eviction notices will never have even the opportunity to learn that every eviction was retaliation for the tenant's complaint of housing code violations . . . . But three lawyers in a "poor man's law firm" would soon see the common thread and seek the legal remedy to prevent . . . the same legal crises.[20]

Bamberger's vision prevailed, and by 1971, OEO legal services had a $61.2 million budget that, through grants to community-based not-for-profit offices, supported over 2500 full-time lawyers handling over one million cases annually.[21] This small army of poverty lawyers went to work representing migrant farmworkers in California,[22] suing to block urban renewal projects that displaced poor minority renters, and litigating the rights of welfare recipients in the U.S. Supreme Court.[23]

The explicitly redistributive goals of the program and the aggressiveness of the OEO lawyers generated controversy and fierce opposition. President Richard Nixon appointed an up-and-coming Republican, Donald Rumsfeld, to head the OEO and tame what were seen as its excesses.[24] In an interview, Rumsfeld commented that the legal services program represented "[f]ive percent of [his] budget and [fifty] percent of [his] headaches."[25] However, the legal services program had the backing of Democrats in Congress, and President Nixon eventually supported a compromise that turned the program into a federally chartered, politically independent entity.

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[20] *Id.*

[21] SUSAN E. LAWRENCE, THE POOR IN COURT: THE LEGAL SERVICES PROGRAM AND SUPREME COURT DECISION MAKING 28–29 (1990).

[22] California Rural Legal Assistance (CRLA) attorneys filed multiple successful suits challenging the policies of then-Governor Ronald Reagan. Their aggressive representation of migrant farmworkers resulted in a high level political collision between the Governor and OEO in Washington that was emblematic of the potential and the limits of change-oriented lawyering. For an account of the CRLA's battle with the Reagan Administrative, see Earl Johnson, Jr., *Justice and Reform: A Quarter Century Later*, *in* THE TRANSFORMATION OF LEGAL AID: COMPARATIVE AND HISTORICAL STUDIES 9, 21–30 (Francis Regan et al. eds., 1999).

[23] *See* LAWRENCE, *supra* note 21, at 88–89. For a general discussion of the heterogeneity of the legal services docket before the Supreme Court, see *id.* at 58–64, 125–27. From 1966 through 1974, OEO legal services lawyers litigated hundreds of cases in the Supreme Court with unrivaled success. *See id.* at 129–31 (displaying tables highlighting impact and success of litigation).

[24] Paul Delaney, *Pragmatic Aide to Nixon: Donald Rumsfeld*, N.Y. TIMES, Nov. 13, 1971, at 16.

[25] JOHNSON, *supra* note 9, at xii.

Nixon's last official act before resigning the presidency was signing the bill that created the Legal Services Corporation (LSC).[26]

Although LSC flourished during the Carter Administration, the years from 1980 until the late 1990s were a period of crisis that threatened the very existence of the program. First, during the Reagan Administration, and then again in the mid-1990s after the Republicans gained majorities in both houses of Congress, federal funds were slashed, and Congress restricted both the type of clients the legal services lawyers could represent and the permissible modes of representation.[27] The restriction that barred legal aid lawyers from filing class actions was an unmistakable repudiation of the law reform agenda that had defined the program in the OEO years.[28]

By building strong alliances with the organized bar, developing new sources of funding that more than made up for losses at the federal level, and focusing on states where the local bench and bar were supportive of their work, legal services advocates developed new bases of support at the same time that they defended the federal program.[29] LSC did survive, albeit with less money and more constraints. The price of survival was a sharp turn away from the antipoverty, change priorities of the OEO years towards a more centrist "access to justice" rationale. As I have noted elsewhere, "the access rationale, particularly in contrast to the explicitly redistributionist and social change goals of the 1960s . . . is widely viewed as apolitical, an entailment of the nation's commitment to equality under law."[30]

In the late 1990s, a moderate LSC board appointed John McKay to serve as its president. McKay, a self-described "conservative Republican and a long-time legal aid volunteer,"[31] offered a new vision for LSC following congressional efforts to abolish the federal program. As McKay explained:

> From its inception, federally funded legal services suffered from a basic conflict . . . . [S]ome wanted legal services to be community-based legal centers designed to address the root causes of poverty. . . . The law and the courts were seen as the solution for America's poor.
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> Rather than serving as a solution, however, implementation of this view obscured the more basic needs of low-income Ameri-

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[26] Johnson, *supra* note 22, at 24, 29 ("President Nixon signed the LSC Act of 1974. It turned out to be the final piece of legislation he signed into law before being compelled to resign from office.").

[27] *See* ALAN W. HOUSEMAN, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2009, at 12–13 (2009), *available at* http://www.clasp.org/admin/site/publications/files/CIVIL-LEGAL-AID-IN-THE-UNITED-STATES-2.pdf.

[28] *See generally* John Kilwein, *The Decline of the Legal Services Corporation: 'It's Ideological, Stupid!'*, *in* THE TRANSFORMATION OF LEGAL AID, *supra* note 22, at 41.

[29] Jeanne Charn, *Legal Services for All: Is the Profession Ready?*, 42 LOY. L.A. L. REV. 1021, 1029–31 (2009).

[30] *Id.* at 1025.

[31] John McKay, *Federally Funded Legal Services: A New Vision of Equal Justice Under Law*, 68 TENN. L. REV. 101, 102 (2000).

> cans who faced everyday injustices such as domestic violence, unlawful evictions, consumer fraud, and unjust denial of entitled benefits. . . .
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> . . . LSC's Board and supporters were able to preserve federally sponsored legal services by adopting a new vision that focused on a strong, professional, nonpartisan LSC, emphasizing bipartisan support for access to justice for *all* Americans, including low-income persons.[32]

As American legal services shifted from a redistributive to an access rationale, the civil *Gideon* idea became a rallying point of the access-to-justice movement. Activists formed the National Coalition for a Civil Right to Counsel and The National Center for Access to Justice. At each, a small staff and volunteers engaged in direct advocacy and many other supportive activities: lawyers who sought to support a civil right to counsel spoke publicly, wrote articles, gathered data, prepared model pleadings and statutes, sponsored and attended conferences, solicited allies in the organized bar, supported state bar and ABA resolutions, and mobilized law students.[33] Although its gains have been modest, the civil *Gideon* coalition has provided a locus for activism and debate about the future of legal services in America.

## II. A Transformed Legal Services Landscape

As legal services struggled to survive multiple existential crises in the 1980s and 1990s, activists at the state and local levels were actually making progress. They found new sources of support; identified stakeholders and allies; and, working through loose coalitions and networks, produced a remarkable array of service delivery innovations. The net result of these ground-level efforts is a substantially changed legal services landscape in America. The most important changes in the half century since the *Gideon* decision and the founding of OEO legal services are (1) the increases and diversification of the resource base for legal services, (2) the evolution of access-to-justice innovation and leadership from the state courts, (3) the institutionalization of pro bono services, and (4) an explosion in service-delivery innovation in the not-for-profit sector and the solo and small firm bar.[34] The following briefly describes these critical areas of change, all of which are treated in some depth by one or more of the papers in this volume.

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[32] *Id.* at 107–10.

[33] *See generally* Nat'l Center for Access to Just., http://ncforaj.org (last visited Dec. 23, 2012); Nat'l Coalition for Civil Right to Counsel, http://www.civilrighttocounsel.org (last visited Dec. 23, 2012).

[34] *See* Charn, *supra* note 29, at 1024–43 (providing preliminary analysis of the drivers of change).

### *A. A Larger and More Diverse Resource Base*

Legal services were originally funded primarily by the federal government. As federal funding for LSC began to stagnate, bar supporters and organized legal services lawyers succeeded in incrementally developing new funding sources.[35] Total funding for civil legal services is now in the vicinity of $1.3 billion, less than a third of which comes from LSC.[36] Two-thirds of the funding is from state and local sources, supplemented by some targeted funds from federal sources other than the LSC.[37] These new funds have increased the total resources available for legal services.[38] However, local funding varies widely among states. The result is a growing disparity across states, with differences in per capita funding ten times more in the highest resource states than in the lowest.[39]

### *B. Courts as Active Stakeholders in Access to Justice*

Many state court leaders are now engaged participants in achieving access to justice. Judges and court administrators lead national, state, and local access-to-justice activities.[40] Courts are a source of innovation because they develop and support self-help centers and lawyer-of-the-day programs and because they can cooperate with the lawyers who provide discrete task services. As a result of the courts' coordinative infrastructure and research capacity and on account of their prestige and authority with bar groups and lawyers and their positive image with the public, court leadership has significantly aided in increasing available resources and in coordinating the disparate sources of funds.

### *C. Institutionalized Pro Bono*

For many years after the founding of OEO legal services, pro bono was a local, informal activity; pro bono was neither mentioned in the Model Code of Professional Responsibility nor in most law school classrooms.[41] By contrast, pro bono work is now institutionalized at the national, state, and

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[35] *See* HOUSEMAN, *supra* note 27, at 15. The National Legal Aid and Defender Association (NLADA) and the Center on Law and Social Policy (CLASP) are the main hubs of field mobilization.

[36] *See id.* at 12.

[37] Examples of targeted funds include provisions in the Violence Against Women Act (VAWA) that fund legal services programs via the Department of Justice, as well as federal funding for legal services to the elderly.

[38] *See* Charn, *supra* note 29, at 1029–31 (suggesting a substantial gain in real (inflation adjusted) resources).

[39] *Id.* at 1031.

[40] *See, e.g.*, *Task Force to Expand Access to Legal Services in New York*, N.Y. ST. UNIFIED CT. SYS. (Oct. 17, 2012), http://www.nycourts.gov/ip/access-civil-legal-services/; *Welcome to the Self-Represented Litigation Network!*, SRLN, http://www.srln.org/ (last visited Dec. 23, 2012).

[41] *See* MODEL CODE OF PROF'L RESPONSIBILITY (1980).

local level, and has become both an important dimension of legal education and a main policy focus in legal services.[42]

### *D. Service Delivery Innovations*

There has been an explosion of innovation in service delivery in not-for-profits and in the solo and small firms that remain the primary legal resource for people of moderate means.[43] Technology in particular has helped to increase cost savings and promote innovation. LSC has an impressive technology competitive grant program that has sparked innovation; private sector innovators then collaborate through the ABA's eLawyering Task Force.[44]

## III. The Future of Legal Services in America

This symposium brings together authors with deep experience in and knowledge of the access to justice crisis and the dramatically changed legal services landscape in which the future of legal services in America will play out. Each author utilizes his or her expertise regarding a critical dimension of the present situation to identify those paths likely to move the access agenda forward.

The symposium's first author, Chief Judge Jonathan Lippman of the New York Court of Appeals, heads one of the largest court systems in the country and so brings the critical perspective of a court judge who has developed and implemented a master plan for improving access to justice. In his paper, Judge Lippman describes the impressive steps that the New York court system has taken to increase funding for legal services, increase pro bono resources, and bring together key stakeholders both within and without the court system. His paper offers the "New York Template" as an example of the progress that strong leadership from the courts can achieve.

Second, Russell Engler, an experienced legal services lawyer, clinical professor, and member of the Massachusetts Access to Justice Commission, similarly focuses on the "essential" role of the courts in expanding access. Engler begins his piece with an analysis of *Turner v. Rogers*,[45] the most recent statement from the Supreme Court on a civil *Gideon*, and argues that the mixed results in *Turner* (where the Court was unwilling to declare a categorical right to counsel in civil cases but nevertheless found due process

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[42] *See generally* Scott L. Cummings & Rebecca Sandefur, *Beyond the Numbers: What We Know—and Should Know—About American Pro Bono*, 7 Harv. L. & Pol'y Rev. 85 (2013).

[43] *See Standing Committee on the Delivery of Legal Services*, Am. B. Ass'n, http://www.americanbar.org/groups/delivery_legal_services.html (last visited Dec. 23, 2012) (describing innovative approaches to service delivery).

[44] *Law Practice Management Section: eLawyering Task Force*, Am. B. Ass'n, http://apps.americanbar.org/dch/committee.cfm?com=EP024500 (last visited Dec. 23, 2012).

[45] 131 S. Ct. 2507 (2011).

violations that could and should have been cured by judicially provided information and guidance) are consistent with his three-prong strategy for improving access to justice. Engler's tiered approach starts with the simplest and cheapest forms of assistance and countenances increasing assistance up to and including appointment of counsel only where the lower levels of assistance have proven inadequate to assure the party a fair hearing. Engler reads *Turner* as requiring courts to take affirmative steps to both enable self-representation and provide limited assistance by simplifying judicial rules and procedures, using plain language forms, and otherwise organizing helping resources for unrepresented parties in order to minimize the need for counsel. Engler suggests that a civil *Gideon* must remain available where basic human needs are at stake and lesser forms of intervention cannot provide meaningful access. His analysis further suggests that cases warranting appointment of counsel might decrease if limited assistance services increase in effectiveness over time. In other words, for Engler, the decision whether one should be entitled to counsel should be informed by a careful prediction of the value added by a lawyer in comparison to other sources of assistance.

Laura Abel, the Deputy Director of the National Center for Access to Justice at Cardozo Law School and a national access-to-justice leader, argues in her prescient article that coordination and organizational structures have not kept pace with the movement of legal services to a radically diverse and decentralized delivery "system" that is really not a system at all. Abel advocates building genuine delivery systems with stronger institutional connections and accountability in order to assure that (1) the provision of legal services is protected from outside political influences, (2) resources are allocated based on consumer needs and preferences, and, perhaps most challenging, (3) both outcome quality and cost-effectiveness are monitored and appropriately balanced. She suggests that policymakers turn to the disciplines of design and management expertise, particularly the tools of institutional design, to begin the process of system building.

Finally, Scott Cummings and Rebecca Sandefur apply serious, policy-relevant theory building and empirical analytics to the complex phenomenon of institutionalized pro bono. From a comparative perspective, pro bono occupies a much larger space in the American legal services landscape and has a more influential voice in legal services policy making than in any peer nation.[46] Cummings and Sandefur advance the reader's understanding of this unique dimension of access to justice in the United States, and they are persuasive in their argument that pro bono will play a significant yet evolving role in the future of legal services in America. What is clear is that we need to know a great deal more not only about pro bono but about all aspects of the multiple sources from which, and modes by which, legal advice and assistance are offered to the poor and to people of modest means.

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[46] *See generally* Cummings & Sandefur, *supra* note 42.

The contributors to the symposium share at least three areas of fundamental agreement. First, they conceive of the diversity of the present service landscape as an advantage. The variety of providers and modes of assistance have a place in an effective delivery system because client needs, circumstances, and preferences vary greatly.

Second, they agree that the growth in variety and complexity of services and providers has outpaced both management and coordination structures. Without such structures to gather data and compare outputs and performance between different programs, it is not possible to allocate resources in such a way as to satisfy client needs while maximizing cost-effectiveness and quality. The fragmented delivery system in the United States continues to suffer from a lack of data, an inability to scale up best practices, and an absence of accountability.

Third, the authors agree that the current U.S. legal services landscape lacks the knowledge necessary to effectuate data-driven improvement. Unlike most other legal aid programs in the world, the United States has no capacity for conducting policy-relevant research on important service-delivery questions at the national level—for example, comparisons between the effectiveness of attorneys and paralegals in administrative hearings, and between full-representation lawyer services and discrete-task services or other forms of limited assistance.[47] This lack of capacity has led to a serious dearth of ambitious and rigorous research, research that would help policy makers target scarce resources and would help lawyers more confidently advise clients. Without robust data collection and objective analysis, and without any data on outcomes or client views and opinions, it is nearly impossible to assess system performance.

The United States spends approximately $1.3 billion on civil legal services.[48] Yet neither providers nor funders can say much about what that sum currently buys. The LSC, legal services lawyers, the bar, and those activist groups that support and advocate for substantial expansion of funding have proven that they are resilient, durable, and creative. It is no small accomplishment to double the resources available to legal services from non-LSC sources at a time when it was not clear the federal program would survive. But the program has serious weaknesses. It lacks a policy center, has no identifiable way of understanding and therefore addressing its costs and its effectiveness, and has no rationale for how it chooses to allocate scarce re-

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[47] For examples of research conducted at the state level, see D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. (forthcoming 2013), *available at* http://ssrn.com/abstract=1948286 (finding substantially better outcomes achieved by attorneys when compared to those achieved by self-help services); D. James Greiner et al., How Effective Are Limited Legal Assistance Programs? A Randomized Study in a Massachusetts Housing Court (Sept. 1, 2012) (working paper), *available at* http://ssrn.com/abstract=1880078 (finding no difference between outcomes achieved by attorneys when compared to those achieved with limited assistance).

[48] HOUSEMAN, *supra* note 27, at 12.

sources among competing needs. Moreover, while promising approaches to delivery have been produced, there is no mechanism for bringing these good and innovative ideas to scale. Accordingly, the future of U.S. legal services may turn on the ability of a decentralized and fragmented program to apply the basic tools of policy analysis and objective research to increase its own transparency, evaluate its present status, and assess its options going forward.