

FOREWORD

James J. Sandman and Ronald S. Flagg***

The number of rural Americans living in poverty has climbed sharply in the past twenty years. At the turn of the 21st century, about one in five rural counties had a poverty rate higher than twenty percent.¹ Today, that number has climbed to about one in three rural counties.² This increase in rural poverty reflects two interrelated trends: (1) a decline in traditional blue-collar jobs that rural America long relied on, such as manufacturing in the Midwest and mining in Appalachia, and (2) an exodus of young workers, especially those with higher levels of education, from rural areas, thus depriving their communities of a new generation of business owners.³

Starting in the 1960s, America's urban crisis was a center of attention, as large cities—subject to high crime rates, low employment rates, drugs and suburban flight—were the nation's slowest-growing and most troubled places.⁴ Compared with America's struggling cities, rural America seemed stable, if not prosperous.⁵ By the late 1970s, more than 100,000 new companies were sprouting up across rural America each year, amounting to over twenty percent of the country's new businesses,⁶ and rural employers offering private health insurance supported medical centers that gave rural residents access to reliable care.⁷ Today, however, by many key measures of socioeco-

* James J. Sandman has served since 2011 as president of the Legal Services Corporation. He practiced law with Arnold & Porter LLP for 30 years and served as the firm's managing partner for a decade. He is a past president of the District of Columbia Bar and a former general counsel for the District of Columbia Public Schools.

** Ronald S. Flagg has served as Vice President for Legal Affairs and General Counsel of Legal Services Corporation since 2013. He practiced law at Sidley Austin LLP for 31 years and chaired the firm's Committee on Pro Bono and Public Interest Law for more than a decade. He is a past president of the District of Columbia Bar. Special thanks to Zoe Osterman, Graduate Fellow, Legal Services Corporation Office of Legal Affairs, for her substantial assistance in the preparation of this Foreword.

¹ See BRIAN C. THIEDE, HYOUNG KIM & MATTHEW VALASIK, U.N.H. CARSEY SCH. PUB. POLICY, CONCENTRATED POVERTY INCREASED IN BOTH RURAL AND URBAN AREAS SINCE 2000, REVERSING DECLINES IN THE 1990s at 1 (Fall 2017), <https://scholars.unh.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1324&context=carsey> [<https://perma.cc/A4AP-3UNX>].

² See *id.*

³ See Reid Wilson, *Rural Poverty Skyrockets as Jobs Move Away*, THE HILL (Dec. 5, 2017, 5:29 PM), <http://thehill.com/homenews/state-watch/363415-rural-poverty-skyrockets-as-jobs-move-away> [<https://perma.cc/7CWV-5UCJ>].

⁴ See 8 RODNEY P. CARLISLE, HANDBOOK TO LIFE IN AMERICA: POSTWAR AMERICA 1950–1969 at 68–69 (2009).

⁵ See Janet Adamy & Paul Overberg, *Rural America Is the New 'Inner City'*, WALL ST. J. (May 26, 2017, 2:04 PM), <https://www.wsj.com/articles/rural-america-is-the-new-inner-city-1495817008> [<https://perma.cc/F7HQ-UBQB>].

⁶ See KENAN FIKRI, JOHN LETTIERI & ANGELA REYES, ECON. INNOVATION GRP., DYNAMISM IN RETREAT: CONSEQUENCES FOR REGIONS, MARKETS, AND WORKERS 22 (Feb. 2017), <http://eig.org/wp-content/uploads/2017/07/Dynamism-in-Retreat-A.pdf> [<https://perma.cc/SL79-YUMF>].

⁷ See Adamy & Overberg, *supra* note 5.

conomic well-being, the urban/rural relationship has flipped. By the 2010s, only twelve percent of the country's new companies were created in rural areas.⁸ Across many socioeconomic indicators, including poverty, educational attainment, reliance on federal disability insurance, rates of teenage birth, divorce, death from heart disease and cancer, and male-labor force participation, rural counties now rank the worst among the four major U.S. population groupings (the others being large cities, suburbs, and medium or small metropolitan areas).⁹

It is thus important and timely for the *Harvard Law & Policy Review* to devote this issue to the theme of Revitalizing Rural America and to explore key legal and policy challenges facing underserved rural communities. In a co-authored piece, Professor Lisa Pruitt of the University of California, Davis School of Law; Professor Michele Statz, of the University of Minnesota; Dean Danielle Conway, of the University of Maine Law School; Professor Lauren Sudeall Lucas, of the Georgia State University College of Law; Professor Hannah Haksgaard, of the University of South Dakota Law School; and Amanda Kool, Lecturer on Law at Harvard Law School; offer a comparative perspective on rural access to justice challenges across six U.S. regions. The article explores common themes among the regions and proposes new approaches to the issues of lagging legal aid funding, attorney shortages, and rural lawyer attrition. Alexis Guild and Iris Figueroa of Farmworker Justice summarize the main challenges that currently confront farmworkers and their families and propose policy solutions to improve farmworkers' living and working conditions. Professor Ann M. Eisenberg of the University of South Carolina School of Law builds on her significant prior research on rural blight, examining its social and economic causes and proposing law and policy solutions at the state and regional levels. And Professor Nicole Huberfeld of Boston University School of Law explores rural health challenges resulting from features of space and population and considers whether targeted legislation can improve the plight of rural populations.

As these articles make clear, the poverty, employment, housing, and healthcare challenges facing rural Americans today often raise civil legal issues. Too often, low-income Americans, including those living in rural areas, face these legal challenges with little or no assistance, rendering hollow America's promise of "justice for all." Seeking to address this problem, in 1974, Congress created the Legal Services Corporation (LSC) "to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel."¹⁰ Since that time, LSC has served as the country's single largest funder of civil legal aid, and currently funds 133 independent legal aid organizations with over 800 offices serving every county in every state, the District of Columbia and the territories.¹¹ Over

⁸ See FIKRI, LETTIERI & REYES, *supra* note 6, at 22.

⁹ Adamy & Overberg, *supra* note 5.

¹⁰ 42 U.S.C. § 2996(2) (2012).

¹¹ See LEGAL SERVS. CORP., 2017 ANNUAL REPORT 5 (2017) <https://www.lsc.gov/media-center/publications/2017-annual-report> [<https://perma.cc/S6FB-4YY3>].

twenty percent of the nationwide population eligible to receive LSC-funded services lives in rural areas. For Fiscal Year 2018, Congress, which provides nearly all of LSC's funding, appropriated \$410 million to LSC, of which over ninety-four percent was granted out to legal aid programs.¹²

As described below, even with LSC-funded services, nearly nine in ten low-income Americans facing civil legal issues receive little or no assistance to address their civil legal needs, leaving an enormous “justice gap”—the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.¹³ The justice gap will not be bridged without making fundamental changes in the way Americans resolve civil disputes, in the means by which legal resources are made available to those in need, and in the volume of resources devoted to ensuring that all Americans can address their civil legal needs.

The first section of this Foreword describes the challenges of providing legal services to low-income rural residents. The second section identifies three strategies for meeting those challenges: (A) redesigning our civil dispute resolution system to make it more hospitable and accessible, including for those who cannot afford a lawyer; (B) changing how legal resources are made available, with the goal of providing some form of effective assistance to 100 percent of persons otherwise unable to afford an attorney for essential civil legal needs; and (C) increasing the resources available to provide effective assistance.

I. THE CHALLENGES OF PROVIDING LEGAL SERVICES TO LOW INCOME RURAL RESIDENTS

America's civil legal justice system was designed by lawyers for lawyers and on the assumption that users of the system would be represented by lawyers. The United States has thousands of courts of general civil jurisdiction, as well as specialized civil courts focusing more narrowly on disputes involving family law, housing law, probate, and small claims, among others.¹⁴ Proceedings in these courts are typically governed by detailed rules of procedure. States have their own rules of civil procedure,¹⁵ and, in some states, individual counties, municipalities or even individual courts use their own

¹² H.R. 1625, 115th Cong. (2018) (enacted).

¹³ See LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6–7, 30 (June 2017), [hereinafter JUSTICE GAP STUDY] <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [<https://perma.cc/C7GC-N7FA>].

¹⁴ See, e.g., Court Statistics Project, *Massachusetts*, NAT'L CTR. FOR STATE COURTS, http://www.courtstatistics.org/Other-Pages/State_Court_Structure_Charts/Massachusetts.aspx [<https://perma.cc/7FSR-RQ87>]; Court Statistics Project, *Colorado*, NAT'L CTR. FOR STATE COURTS, http://www.courtstatistics.org/Other-Pages/State_Court_Structure_Charts/Colorado.aspx [<https://perma.cc/4LT2-6FN3>].

¹⁵ See J. MICHAEL GOODSON LAW LIBRARY, DUKE UNIV. SCH. OF LAW, COURT RULES (Nov. 2017), <https://law.duke.edu/sites/default/files/lib/courtrules.pdf> [<https://perma.cc/B8EC-89C7>].

unique procedural rules and forms.¹⁶ These rules typically require written pleadings and offer a variety of vehicles for discovery, motions, and trial practice. Most jurisdictions require three years of law school and passage of a bar examination to learn and begin to master these rules and practices.¹⁷ In sum, we have a system that in most instances only a lawyer, and in many instances only a specialized lawyer, can use effectively.

The assumption that Americans facing civil legal issues will have access to a lawyer to help them through the labyrinth of courts, rules and practices is, unfortunately, false. LSC's 2017 study, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* (Justice Gap Study), showed that seventy-one percent of low-income households experienced at least one civil legal problem in the prior year, including problems with domestic violence, housing conditions, health care, veterans' benefits, and disability access; and eighty-six percent received inadequate or no legal help.¹⁸

Lack of access to lawyers in rural areas is particularly striking. Approximately ten million rural residents have family incomes below 125% of the Federal Poverty Level¹⁹—the benchmark to be eligible for LSC-funded legal services.²⁰ Seventy-five percent of low-income rural households experienced a civil legal problem in the past year, including twenty-three percent that experienced six or more problems.²¹ The most common types of civil legal problems among low-income, rural households include health (forty-three percent), consumer and finance (forty percent), and employment (twenty-five percent).²² Low-income rural residents seek professional legal help for twenty-two percent of their civil legal problems, and receive inadequate or no professional legal help for an estimated eighty-six percent of all their problems.²³ The top reasons low-income, rural residents gave for not seeking legal help include deciding to deal with the problem on their own (twenty-

¹⁶ See, e.g., Harris County, TX Local Rules, <https://www.justex.net/LocalRules/LocalRules.aspx> [<https://perma.cc/2BZ9-W984>]; City of Houston, TX Municipal Court Rules, http://www.houstontx.gov/courts/court_rules.html [<https://perma.cc/NK76-7Q9E>]; Civil Pre-Trial and Trial Procedures for Cases Assigned to Judge J. Brian Johnson, Court of Common Pleas, Lehigh County, PA, <http://www.lccpa.org/judges/JohnsonCivilTrialProcedures.pdf> [<https://perma.cc/23J7-9E9D>].

¹⁷ See *Jurisdiction Information*, NAT'L CONFERENCE OF BAR EXAM'RS, <http://www.ncbex.org/jurisdiction-information/> [<https://perma.cc/FTA9-EZDJ>]; NAT'L CONFERENCE OF BAR EXAM'RS, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2017 at 8–9 (2017), <http://www.ncbex.org/pubs/bar-admissions-guide/2017/mobile/index.html#p=20> [<https://perma.cc/YD5U-UR3N>].

¹⁸ See JUSTICE GAP STUDY, *supra* note 13, at 6–7, 30.

¹⁹ See *id.* at 19.

²⁰ 45 C.F.R. § 1611.3(c)(1) (2018). In 2017, 125% of the Federal Poverty Level for a single-person household was \$15,075 and for a four-person household was \$30,750. See 45 C.F.R. § 1611, App. A (2017).

²¹ See JUSTICE GAP STUDY, *supra* note 13, at 27.

²² See *id.* at 48.

²³ See *id.* at 36, 48.

six percent),²⁴ uncertainty whether the problem was a legal issue (twenty-one percent), and not knowing where to look or what resources were available (eighteen percent).²⁵

Even when rural residents recognize that they face a legal problem and would like a lawyer's assistance in addressing the problem, there are few lawyers available, and even fewer free legal aid lawyers. Only two percent of solo practitioners and small-firm law practices are in small towns and rural areas—a mismatch for the twenty percent of the population that live in rural America.²⁶ This mismatch is strikingly illustrated in Georgia. Fulton County, where Atlanta is located, has 13,752 attorneys.²⁷ By contrast, six counties in Georgia do not have a single attorney.²⁸ All six counties are rural and have poverty levels above the national average.²⁹ The two rural counties with the highest levels of people at or below the poverty line, Clay and Calhoun Counties, have zero and two active attorneys respectively.³⁰ There is one attorney for every sixty-six people in Atlanta, but no attorney for the 3183 people in Clay County, and only two attorneys for the 6695 people in Calhoun County.³¹

Even where rural residents are clustered, the relatively small total population renders it economically difficult or impossible to maintain a physical legal aid office. For example, individuals who qualify for LSC-funded legal aid in Clay and Calhoun Counties are served by seven legal aid attorneys operating out of Georgia Legal Services's office in Dougherty County, who work with individuals in 30 rural counties. In seven states, over thirty percent of the population eligible for LSC-funded services lives over an hour away from the nearest LSC-funded legal aid office.³² In four other states with much lower *percentages* of people living over an hour from LSC-funded legal aid offices but much larger *total populations*, over 200,000 residents eligible

²⁴ See *id.* at 36. Barriers such as language barriers and distrust of lawyers and outsiders chill some people's willingness to seek legal assistance. See Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 476, 490 (2014).

²⁵ JUSTICE GAP STUDY, *supra* note 13, at 36.

²⁶ Pruitt & Showman, *supra* note 24, at 467.

²⁷ See *Access to Justice Map of Georgia*, CTR. FOR ACCESS TO JUSTICE, <https://cwingtonton3.github.io/AccessToJustice/> [<https://perma.cc/MRN5-YJHY>].

²⁸ See Kathryn Hayes Tucker, *GSU Access to Justice Center Maps Rural Lawyer Gap*, DAILY REP. (Sept. 6, 2017, 10:25 AM), <https://www.law.com/dailyreportonline/almID/1202797336948/?slreturn=20171126165417> [<https://perma.cc/3LA3-FSM5>].

²⁹ *Id.*

³⁰ See *Access to Justice Map of Georgia*, *supra* note 27.

³¹ Statistics calculated based on the *Access to Justice Map of Georgia*, *supra* note 27. The dearth of rural lawyers is not unique to Georgia. For example, ninety-four percent of Arizona's lawyers practice in the state's two most populous counties, Maricopa and Pima and eighty-three percent of Texas lawyers practice in and around large cities. See Pruitt & Showman, *supra* note 24, at 469.

³² Vermont (sixty-four percent), Montana (fifty-two percent), North Dakota (fifty-one percent), South Dakota (thirty-nine percent), Alaska (thirty-five percent), Wyoming (thirty-five percent), and New Hampshire (thirty-one percent), LSC Office of Data Governance & Analysis (on file with the authors). See LEGAL SERVS. CORP. OFFICE OF DATA GOVERNANCE AND ANALYSIS, RURAL ACCESS DATA (2017) (on file with authors).

for legal services live over an hour away from the nearest LSC-funded legal aid office.³³ The barriers to providing legal resources for rural Americans are thus particularly acute.

II. STRATEGIES FOR MEETING THE CHALLENGES OF SERVING LOW INCOME RURAL RESIDENTS

Three strategies should be implemented to meet the challenges of serving low income rural residents and bridge the justice gap: (A) redesign our civil dispute resolution system to make it more hospitable and accessible to low income people; (B) change the means by which legal resources are made available, with the goal of providing some form of effective assistance to all those unable to afford an attorney for dealing with essential civil legal needs; and (C) increase the resources available to provide effective assistance.

A. Making the Civil Dispute Resolution System More Hospitable and Accessible

A crucial step to closing the justice gap is making the dispute resolution system more understandable and hospitable to non-lawyers. Attorney General Robert Kennedy underscored this point in 1964:

Lawyers have been paid, and paid well, to proliferate subtleties and complexities. It is about time we brought our intellectual resources to bear on eliminating some of those intricacies. A wealthy client can pay counsel to unravel — or to create — a complex tangle of questions concerning divorce, conflict of laws and full faith and credit in order to straighten out — or cast doubt upon — certain custody and support obligations. It makes no kind of sense to have to go through similarly complex legal mazes to determine whether Mrs. Jones should have been denied social security or Aid to Dependent Children benefits.³⁴

Over fifty years later, the need to redesign America's civil justice system remains. The system is far more complicated than it needs to be. We need to simplify court processes, redesign those processes for non-lawyers, and explore alternative means of dispute resolution. Two-thirds of the litigants are unrepresented in some categories of high-volume, high-stakes cases such as evictions, mortgage foreclosures, child custody and child support, and debt collection.³⁵ To better serve these non-lawyers, the redesign process must

³³ Georgia (377,074), Texas (275,596), North Carolina (233,582), and California (204,440), LSC Office of Data Governance & Analysis (on file with the authors). *See id.*

³⁴ Robert F. Kennedy, U.S. Att'y Gen., Address at the University of Chicago Law School Law Day 5 (May 1, 1964) (transcript available in the U.S. Department of Justice Library).

³⁵ THE JUSTICE INDEX 2016, NAT'L CTR. FOR ACCESS TO JUSTICE, <http://justiceindex.org/2016-findings/self-represented-litigants/> [https://perma.cc/YQ8P-ZNEL].

engage not just lawyers, but “customers” of the system and experts from other fields such as technology and systems design.³⁶ The redesign process should include at least three elements: remote access to the courts; simplified and uniform instructions, processes and forms; and alternative dispute-resolution mechanisms.

There are already good examples of jurisdictions redesigning access to justice by means of remote access and simplified and uniform instructions and forms. Orange County Superior Court in California has adopted a strategy of converting from a courthouse-centric services delivery system to a remote-services delivery model³⁷—a model likely to be even more useful in rural areas, where users may live many hours away from a courthouse. The court anticipates that in the future most court users will prefer to conduct most of their interactions with the court online, and that the court’s physical, court-based self-help centers will become the provider of last resort — rather than first resort, as at present.³⁸ The court delivers remote services through telephone, e-mail, e-filing, its self-help website, customer relations management software, an online small claims triage application, and videos available online.³⁹ Information is delivered through the court’s website, which provides access to forms and self-help packets for users. Forms are vetted on a website to promote use of easily understood language.⁴⁰ The court uses interview-based software to help litigants complete complicated legal forms.⁴¹ Orange County now requires e-filing for attorneys filing in all probate, family and civil cases.⁴² Although e-filing is optional for self-represented litigants under state judicial rules, self-help center staff encourage its use.⁴³ Fourteen e-filing service providers—thirteen private providers and the Legal Aid Society of Orange County—are currently authorized to file directly with the court in Orange County.⁴⁴

Another solution for making the civil dispute resolution system more efficient and hospitable is using web-based platforms where people can re-

³⁶ For example, the Legal Design Lab is an interdisciplinary collaboration between Stanford Law School and d.school, working to build new models of user-friendly, accessible, and engaging legal services. See LEGAL DESIGN LAB, <http://www.legaltechdesign.com/> [<https://perma.cc/AGU6-LHLQ>]. The Lab is working on projects like Navocado, a platform of visual and interactive guides that help users navigate the complex legal system, and the Visual Law Library, a collection of visual explanations of the law that make them easier to understand. See *Our Projects*, LEGAL DESIGN LAB, <http://www.legaltechdesign.com/our-projects/> [<https://perma.cc/BDW5-QKGV>].

³⁷ See JOHN GREACEN, SELF-REPRESENTED LITIG. NETWORK, SERVING SELF-REPRESENTED LITIGANTS REMOTELY: A RESOURCE GUIDE 50 (2016) [hereinafter SRL RESOURCE GUIDE], https://www.srln.org/system/files/attachments/Remote%20Guide%20Final%208-16-16_0.pdf [<https://perma.cc/43PF-EUYZ>].

³⁸ See *id.*

³⁹ See *id.* at 51.

⁴⁰ See *id.* (describing the Transcend website).

⁴¹ See *id.*

⁴² *EFiling*, SUPERIOR COURT OF CAL.: CTY. OF ORANGE, <http://www.occourts.org/online-services/efiling/> [<https://perma.cc/Q7QX-GKLT>].

⁴³ See *id.*

⁴⁴ SRL RESOURCE GUIDE, *supra* note 37, at 51.

solve disputes. State courts in Michigan have seen success using a web-based platform that litigants can use to resolve their matters through online communications with law enforcement officers, prosecutors, and judges.⁴⁵ The platform has reduced the time it takes for disputes to be resolved, decreased the number of defaults on fines and fees, and saved litigants time, lost wages, and other costs that are incurred when they are required to spend time in a courthouse.⁴⁶ Platform technology and other remote-access systems are particularly valuable in rural areas, where the courthouse may often be hours away.

B. Changing the Means by Which Legal Resources Are Made Available with the Goal of Providing Some Form of Effective Assistance to All Those Unable to Afford an Attorney to Deal with Essential Civil Legal Needs

Faced with a civil justice system built on the assumption that users would be represented by lawyers, access to justice advocates have long pursued the goal of providing people living in poverty, to the greatest extent possible, with access to a lawyer to meet their legal needs.⁴⁷ America remains, however, woefully short of meeting that goal. Of the civil legal problems reported by low-income Americans in the past year, eighty-six percent received inadequate assistance, or no legal help at all.⁴⁸

It is not realistic to try to provide full representation in every case, and pursuing that goal at the expense of other alternatives is letting the perfect be the enemy of the good. Some competent assistance—including referrals to remote or court-based resource centers or online self-help resources—is better than no assistance. In late 2013, LSC released a report addressing this issue following a technology summit it convened “to explore the potential of technology to move the United States toward providing *some form of effective assistance to 100% of persons otherwise unable to afford an attorney* for dealing with essential civil legal needs.”⁴⁹

⁴⁵ See J. J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 2021 (2017) (describing the Matterhorn web-based platform).

⁴⁶ *Id.* at 2030–45.

⁴⁷ See, e.g., STANDING COMM. ON PRO BONO AND PUB. SERV., AM. BAR ASS’N, SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS, 33–35 (March 2013), https://www.americanbar.org/content/dam/aba/administrative/pro_bono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf [<https://perma.cc/M4F2-WW3Q>]; David A. Kutik, *Pro Bono: Why Bother?*, GPSOLO MAG. (Oct./Nov. 2005), https://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/2005_oct_nov_probono.html [<https://perma.cc/BT5X-DAQN>]; David Lash, *The Critical Need For Pro Bono Immigration Work*, ABOVE THE LAW (Dec. 1, 2016, 3:59 PM), <https://abovethelaw.com/2016/12/the-critical-need-for-pro-bono-immigration-work/?rf=1> [<https://perma.cc/T8A6-DK75>].

⁴⁸ See JUSTICE GAP STUDY, *supra* note 13, at 6.

⁴⁹ LEGAL SERVS. CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE 1 (Dec. 2013), https://www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf [<https://perma.cc/RJY7-2QNW>] (emphasis added).

This vision contemplates the creation in each state of a unified legal portal or platform that uses an automated triage process to direct people needing legal help to the most appropriate form of assistance, and guides self-represented litigants through the entire legal process.⁵⁰ The portal will accomplish two goals. First, it will simplify access to legal assistance.⁵¹ Second, it will allocate available resources efficiently to meet civil legal needs.⁵²

These triage systems help the client community by providing a user-friendly interface and clear set of questions presented to the user in plain language.⁵³ Users can complete the online triage process and receive carefully tailored information about next steps, best online resources, and where to get more help.⁵⁴ This means that people in rural areas can pinpoint the most effective and efficient way to get help either from their home or at a nearby community center or public library.

The triage process will take account of such factors as the nature of the matter, the capacity of the user, what is at stake for the user (e.g., loss of a child or a home, or a dispute over ownership of a \$100 item), whether the opposing party is represented, and the availability of other resources.⁵⁵ As described in the LSC's technology summit report:

The automated process will ultimately be informed by a sophisticated 'triage' algorithm continually updated for each state by feedback data on the outcomes for persons who have previously sought assistance through the portal. The portal will support a broad variety of access-to-justice services provided by courts, the private bar, legal aid entities, libraries, and others who collaborate in implementing the initiative. The systems of all collaborating entities will exchange information automatically to support each other's applications and to enable the accumulation and analysis of information on the functioning of the entire access-to-justice process.⁵⁶

LSC, Microsoft and Pro Bono Net inaugurated a project in 2017 to create pilot statewide portals with the states of Alaska and Hawaii—both of which have extensive rural areas and widely dispersed populations.⁵⁷ While the pilot portals are being created, other states have already begun using state-wide triage systems that do not include the algorithm being developed for this pilot project. For example, in Maine, the state with the highest rural percentage of population eligible for LSC-funded legal services, 18,638 visitors

⁵⁰ *See id.* at 2.

⁵¹ *See id.*

⁵² *See id.* at 3.

⁵³ *See id.*

⁵⁴ *See id.*

⁵⁵ *See id.* at 4.

⁵⁶ *Id.* at 2.

⁵⁷ *See* Press Release, Legal Servs. Corp., The Legal Servs. Corp. Announces Pilot States for Innovative Program to Increase Access to Justice (Apr. 24, 2017), <https://www.lsc.gov/media-center/press-releases/2017/legal-services-corporation-announces-pilot-states-innovative> [<https://perma.cc/Q7YD-2RBE>].

used the state-wide triage tool “Self-Help Tools” to access information and resources to address a legal problem in 2017.⁵⁸

C. Increasing Resources Available to Provide Effective Assistance

Rationalizing the allocation of resources will not, by itself, ensure sufficient resources to provide some form of effective assistance to 100% of persons otherwise unable to afford an attorney to deal with essential civil legal needs. The volume of resources available to provide such assistance must be increased by (1) increasing the number of legal aid, pro bono and low bono lawyers;⁵⁹ (2) leveraging scarce lawyer resources through technology; and (3) increasing the use of non-lawyers where effective assistance does not require a law degree.

Currently lawyers are, and even in a redesigned civil justice system will remain, indispensable in many matters and for purposes of training and mentoring non-lawyers. Congress must provide the resources necessary to support LSC’s mission of funding high-quality civil legal assistance for low-income Americans.⁶⁰ We cannot reasonably hope to keep America’s pledge of justice for all if current funding levels remain static. For FY 2018, Congress has appropriated \$410 million for LSC, of which \$376 million is appropriated to support the day-to-day legal aid operations of LSC’s grantees.⁶¹ The \$410 million figure is virtually the same as the \$400 million LSC received in 1995,⁶² when the number of persons financially eligible to receive LSC-funded services was 18 percent *lower* than the number today.⁶³

⁵⁸ See PINE TREE LEGAL ASSISTANCE, <https://ptla.org> [<https://perma.cc/C22B-6LL8>] (providing interactive self-help tools on a variety of topics, e.g., rental housing).

⁵⁹ “Low bono” refers to the provision of legal services at reduced rates to persons unable to pay market rates for such services. See, e.g., Victor Li, *Georgetown Law teams up with 2 firms to create ‘low bono’ law firm*, A.B.A. J. L. SCRIBBER (Apr. 16, 2015, 9:00 AM), http://www.abajournal.com/lawscribber/article/georgetown_law_2_firms_team_to_create_low_bono_law_firm [<https://perma.cc/7ARW-RZ2K>].

⁶⁰ LSC-funded legal aid programs employ roughly two-thirds of the legal aid lawyers in the United States. There were 6,953 civil legal aid attorneys in the country in 2016. See *Justice Index 2016 Findings: Data Workbook*, JUSTICE INDEX, <http://justiceindex.org/2016-findings/> [<https://perma.cc/Z2N4-WJGK>] (number of Civil Legal Aid Attorneys). LSC-funded programs employed 4713 attorneys in 2016. See LEGAL SERVS. CORP., 2016 BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS (Sept. 2017), <https://www.lsc.gov/media-center/publications/2016-lsc-numbers> [<https://perma.cc/7TKN-79Q2>]. Congressionally-funded LSC grants represented by far the largest single revenue source for legal aid programs supported by LSC in 2016. *Id.* at 13. Fig. 4. LSC funding constituted 36.8% of the total funding for these programs, with state and local funds (22.8%), other federal funds (11.0%), private grants (7.8%), state Interest on Lawyer Trust Accounts (4.8%), and filing and other fees (4.4%) providing most of the balance of the funding. *Id.*

⁶¹ H.R. 1625, 115th Cong. (2018) (enacted).

⁶² 2016 BY THE NUMBERS, *supra* note 60, at 11 tbl.1.

⁶³ Compare LEGAL SERVS. CORP., FISCAL YEAR 2019 BUDGET REQUEST, 3, <https://www.lsc.gov/media-center/publications/fiscal-year-2019-budget-request> (projecting that by 2019, 56.3 million people will be financially eligible for LSC-funded services) [<https://perma.cc/65H9-9D6U>], with *Historical Poverty Tables: People and Families – 1959 to 2016*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html> (noting that “Table 6. People Below 125 Percent of the Pov-

Moreover, LSC's current \$410 million funding is about two-thirds of \$606 million, LSC's 1995 appropriation in inflation-adjusted dollars.⁶⁴ To put these figures in further perspective, the \$376 million legal aid programs will receive from LSC in 2018 for day-to-day operations is only slightly more than what Americans spend annually for Halloween costumes—for their pets.⁶⁵ In an era of stagnant and, at times, declining federal support for civil legal aid, and negligible funding from what previously was the second largest source of legal aid funding—state Interest on Lawyer Trust Accounts,⁶⁶ additional funding sources for legal aid must be developed, including state appropriations and private foundation support.⁶⁷

Increasing the availability of lawyers to assist rural persons living in poverty will require initiatives focused specifically on that goal. Legal aid programs need to enhance their recruitment of lawyers to serve rural areas. For example, in 2016, LSC launched its Rural Summer Legal Corps program in partnership with Equal Justice Works.⁶⁸ This project annually connects thirty law students with LSC's funding recipients with the goal of providing critical legal services to rural clients while engaging a new group of future lawyers with civil legal aid.⁶⁹

To serve rural areas, legal aid lawyers should be supplemented with pro bono lawyers, including pro bono lawyers from non-rural areas. Colorado Legal Services (CLS), with a grant from LSC's Pro Bono Innovation Fund, is developing methods to allow lawyers and other volunteers living in metro-

erty Level and the Near Poor: 1959 to 2016" concludes that 48.7 million people were eligible) [<https://perma.cc/724B-JB34>].

⁶⁴ 2016 BY THE NUMBERS, *supra* note 60, at 11.

⁶⁵ See Lou Carlozo, *Americans will spend \$350 million on Halloween costumes. For their pets*, CHRISTIAN SCI. MONITOR (Oct. 14, 2015), <https://www.csmonitor.com/Business/Saving-Money/2015/1014/Americans-will-spend-350-million-on-Halloween-costumes.-For-their-pets> [<https://perma.cc/E9MS-52RD>].

⁶⁶ A lawyer who receives funds that belong to a client must place those funds in a trust account separate from the lawyer's own money. Client funds are deposited in an Interest on Lawyer Trust Account (IOLTA) when the funds do not earn enough interest for the client to cover the cost of maintaining a separate account. Every state uses IOLTA to help those in need. See *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 216 (2003). Prior to 2009, IOLTA accounts were, after LSC funding, the second largest source of funding for legal aid around the country. See Nabanita Pal, *Cuts Threaten Civil Legal Aid*, BRENNAN CTR. FOR JUSTICE (Apr. 22, 2011), <https://www.brennancenter.org/analysis/cuts-threaten-civil-legal-aid> [<https://perma.cc/5UTN-TVPW>]. In 2007, IOLTA income reached an all-time high of \$371.2 million nationally. *Id.* With the precipitous decline in interest rates since the 2008 recession, IOLTA funding has plummeted to \$50 million in 2016. See 2016 BY THE NUMBERS, *supra* note 60, at 14 tbl. 3.

⁶⁷ See, e.g., PERMANENT COMM'N ON ACCESS TO JUSTICE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 5 (Nov. 2016), https://www.nycourts.gov/accesstojusticecommission/PDF/2016_Access_to_Justice-Report.pdf [<https://perma.cc/JMK7-SUF7>] (noting that New York state's budget provides \$100 million for civil legal services); *Civil Legal Aid*, PUB. WELFARE FOUND., <http://www.publicwelfare.org/civil-legal-aid/> [<https://perma.cc/BR24-H3RZ>] (explaining that the Public Welfare Foundation has a cluster of grants focused on increasing access to civil legal aid).

⁶⁸ See LEGAL SERVS. CORP., 2016 ANNUAL REPORT 26 (Oct. 2017), <https://www.lsc.gov/media-center/publications/2016-annual-report> [<https://perma.cc/26EN-ZRUP>].

⁶⁹ See *id.*; see also RURAL SUMMER LEGAL CORPS, <https://rurallegalcorps.org/> [<https://perma.cc/N4SL-GJH4>].

politan areas to assist low-income clients in rural areas.⁷⁰ CLS has developed five distinct clinic models that each focuses on a legal topic, a specific rural community, and a different service delivery system that can effectively use individual Denver-based attorneys or law firms to serve rural Coloradans.⁷¹ These clinics demonstrate that remote clinics can be an economical and efficient method to provide services to rural clients, and that they can result in high client satisfaction.

Leveraging scarce lawyer resources by means of technology is another important vehicle for increasing capacity to provide effective assistance. Since 2000, LSC has awarded Technology Initiative Grants (TIG) to develop, test, and replicate technologies that improve efficiency and provide greater access to high-quality legal assistance for low-income Americans.⁷² Over the past eighteen years, TIG has funded more than 700 projects totaling more than \$63 million.⁷³ LSC grantees have used these grants to build a foundation for improved service delivery that includes statewide websites; enhanced intake and case management systems; automated forms to support clients, legal aid staff, and pro bono lawyers; mobile delivery of legal services for clients using chat features, text messaging, video-conferencing technology to connect low-income clients in rural areas with legal services, pro bono lawyers and courts; and user-friendly online tools.⁷⁴ Another example is the legal aid chatbot being built by LawDroid for the Tennessee Alliance for Legal Services, which is funded by a TIG.⁷⁵ The chatbot is a computer program that mimics conversations with people using voice and text and guides users through an interview to help answer legal questions and create legal documents tailored to the particular circumstances of the user.⁷⁶

One important caveat about these technology tools should be noted. Although internet access can serve as a legal aid lifeline, internet access is not universal, especially in rural areas. Rural Americans' access to a broadband internet connection at home has dramatically increased from about one-third (thirty-five percent) in 2007 to two-thirds (sixty-three percent) in 2016.⁷⁷ Nevertheless, rural Americans are still ten percent less likely to have broadband at home and seven to twelve percent less likely to have a smartphone, traditional computer or tablet computer when compared to Americans overall.⁷⁸ Less than sixty percent of adults in rural communities reported using

⁷⁰ See *Pro Bono Innovation Fund Grants 2017*, LEGAL SERVS. CORP., <https://www.lsc.gov/pro-bono-innovation-fund-grants-2017> [https://perma.cc/D894-LS7V].

⁷¹ See *id.*

⁷² FISCAL YEAR 2019 BUDGET REQUEST, *supra* note 63, at 29.

⁷³ See *id.*

⁷⁴ *Id.*

⁷⁵ See *LawDroid to Build First Voice-Activated US Legal Aid Bot*, ARTIFICIAL LAWYER (Dec. 19, 2017) <https://www.artificiallawyer.com/2017/12/19/lawdroid-to-build-first-voice-activated-us-legal-aid-bot/> [https://perma.cc/YX9Y-DVVQ].

⁷⁶ See *id.*

⁷⁷ See Andrew Perrin, *Digital gap between rural and nonrural America persists*, PEW RES. CTR. (May 19, 2017), <http://www.pewresearch.org/fact-tank/2017/05/19/digital-gap-between-rural-and-nonrural-america-persists/> [https://perma.cc/5YLC-8FVX].

⁷⁸ See *id.*

the internet daily, compared to eighty percent of adults in urban communities and seventy-six percent of adults in suburban areas.⁷⁹ Furthermore, almost one in five adults in rural areas report that they never go online, compared to around one in ten adults in urban communities and suburban areas.⁸⁰ The “digital divide” or disparity between rural and urban varies across the country.⁸¹ For instance, counties in the rural South and in the Southwest remain in the lowest quintile of internet use rates in the country, while rural counties in Montana, Wyoming, North Dakota, Colorado, and Utah have relatively high rates of internet use.⁸² Closing this digital divide is critical to closing the justice gap in rural areas.

To increase the availability of meaningful legal assistance, more non-lawyers should be used where effective assistance should not require a law degree. For example, the state of Washington uses limited license legal technicians, who are non-lawyers authorized to provide legal advice in specific types of cases, and New York City uses court navigators, who are non-lawyers trained to assist unrepresented litigants on landlord-tenant and consumer debt cases.⁸³

Finally, increasing legal resources will not be effective unless we also increase knowledge about the need for and existence of those resources. People with legal needs often do not know where to look or what resources are available to address their needs.⁸⁴ To remedy this problem, legal resources must be brought to where the people who need those resources are located. For example, legal services providers have successfully collaborated with community organizations such as libraries, social services providers, churches and hospitals,⁸⁵ and legal information and assistance is increasingly available online. Bringing legal services directly to the people who need them is particularly critical for rural residents who may live a hundred miles or more from the nearest legal services provider.

⁷⁹ *See id.*

⁸⁰ *See id.*

⁸¹ *See* COUNCIL OF ECON. ADVISERS, MAPPING THE DIGITAL DIVIDE 3–6 (July 2015), https://obamawhitehouse.archives.gov/sites/default/files/wh_digital_divide_issue_brief.pdf [<https://perma.cc/J2XL-S7AP>].

⁸² *See id.* at 3–4.

⁸³ *See, e.g., Become a Legal Technician*, WASH. ST. BAR ASS'N, <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians/become-a-legal-technician> (last updated Mar. 28, 2018) [<https://perma.cc/YR43-R4UM>]; *Court Navigator Program*, N.Y. ST. UNIFIED COURT SYS.: N.Y.C. HOUS. COURT, <https://www.nycourts.gov/courts/nyc/housing/rap.shtml> (last updated Apr. 14, 2017) [<https://perma.cc/74NA-L7ZA>].

⁸⁴ JUSTICE GAP STUDY, *supra* note 13, at 13.

⁸⁵ *See, e.g.,* Kendra Morgan, *Lawyers in Libraries: Meeting Local Needs at the Jacksonville Public Library*, WEB JUNCTION (Oct. 18, 2017), <https://www.webjunction.org/news/webjunction/lawyers-in-libraries-jacksonville.html> [<https://perma.cc/AU3D-6T9P>]; Jay Chaudhary et al., *The Opioid Crisis in America & the Role Medical-Legal Partnership Can Play in Recovery*, Medical-Legal Partnership Population Series (March 2018), <http://medical-legalpartnership.org/wp-content/uploads/2018/02/MLP-and-the-Opioid-Crisis.pdf> [<https://perma.cc/J6PM-7P83>].

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Revitalizing rural America will require an ambitious range of initiatives to address poverty, employment, housing and healthcare challenges. Providing access to effective legal assistance is a critical component of these efforts. To provide this access, we need to redesign our dispute resolution system, fundamentally change how legal resources are made available to people in need, and greatly increase the funding for such resources. Although the challenge of making these changes is great, justice's place as a core American value should make their achievement one of our nation's highest priorities.