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## From the “War on Poverty” to Pro Bono: Access to Justice Remains Elusive for Too Many, Including Our Veterans

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# FROM THE “WAR ON POVERTY” TO PRO BONO: ACCESS TO JUSTICE REMAINS ELUSIVE FOR TOO MANY, INCLUDING OUR VETERANS

PATRICIA E. ROBERTS\*

**Abstract:** Fifty years ago, President Lyndon B. Johnson launched the War on Poverty. The Legal Services Program of 1965, along with the Legal Services Corporation formed in 1974, considerably increased civil legal aid to America’s poor. Yet today, there is only one legal aid attorney for every 6,415 people living in poverty. Veterans, comprising 4.6% of those living in poverty, often suffer additional obstacles and extensive legal needs, including assistance in obtaining benefits to which they are entitled. While encouraging additional pro bono service among attorneys incrementally increases the availability of legal services to the poor, law school clinics across the country enroll students eager to address the legal needs of the poor. A concerted effort by law schools and higher education institutions to provide legal services to veterans in particular will foster a greater sense of social responsibility towards the men and women who served our country and will make significant strides toward equal access to justice for our nation’s underserved poor.

## INTRODUCTION

There is a vast justice gap in America. This gap exists despite Justice Powell’s reminder to us that:

[e]qual justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists . . . it is fundamental that justice should be the same, in substance and availability, without regard to economic status.<sup>1</sup>

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<sup>1</sup> Lewis Powell, Jr., U.S. Supreme Court Justice, as quoted in *Collected Quotes Pertaining to Equal Justice*, NAT’L LEGAL AID & DEFENDER ASS’N, [http://www.nlada.org/News/Equal\\_Justice\\_Quotes](http://www.nlada.org/News/Equal_Justice_Quotes) (last visited May 4, 2014).

America has the most lawyers of any country, yet one of the least adequate legal assistance systems.<sup>2</sup> Although legal issues are just one of the myriad of challenges faced by those in poverty, the lack of representation by an attorney in facing civil legal issues can exacerbate those challenges. Lack of access to representation often has an impact on basic human needs such as safe and secure living arrangements, employment, custody of children, and opportunities to obtain benefits, such as pensions and insurance.<sup>3</sup> Reductions in funding to legal aid initiatives and greater restrictions on client eligibility, the economic recession, resultant unemployment, increased levels of poverty, and scant pro bono legal services all contribute to a shocking number of individuals unable to access lawyers. Veterans seeking benefits related to injuries and deployments comprise a significant percentage of those individuals who are unable to access justice.<sup>4</sup>

The number of veterans currently living in the United States is estimated at over twenty-two million; each year additional veterans return from our current conflicts.<sup>5</sup> There has been a significant increase in the number of disability claims filed with the Department of Veterans Affairs (“VA”), and a shameful backlog of pending disability claims is causing unacceptable wait times for adjudication of those claims.<sup>6</sup> The first five years of William & Mary Law School’s Lewis B. Puller, Jr. Veterans Benefits Clinic demonstrate that higher education faculty and students can assist in the preparation of veterans’ claims, aid in reducing the backlog and wait times for claims at the regional office level, and more quickly and efficiently obtain benefits for veterans.<sup>7</sup> Law school clinics across the country can and should aid in lessening the justice gap for veterans seeking the benefits they were promised by our nation. The soldiers who bravely and selflessly sacrificed so much for all of us deserve our assistance.

Attempts at addressing the justice gap, or the difference between what people living in poverty can afford and the civil legal representation available

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<sup>2</sup> Deborah Rhode, Remarks at “Ethics at Noon” Presentation, *Equal Justice Under Law*, SANTA CLARA UNIV. (Jan. 17, 2012), <https://www.scu.edu/ethics/publications/submitted/rhode/equal-justice.html>.

<sup>3</sup> REBECCA L. SANDEFUR, AM. B. FOUND., CIVIL LEGAL NEEDS AND PUBLIC LEGAL UNDERSTANDING 1 (2011), available at [http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_-\\_civil\\_legal\\_needs\\_and\\_public\\_legal\\_understanding\\_handout.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_-_civil_legal_needs_and_public_legal_understanding_handout.pdf).

<sup>4</sup> See YALE LAW SCHOOL VETERANS LEGAL SERVICES CLINIC, <http://www.law.yale.edu/academics/veteranslegalservicesclinic.htm> (last visited Feb. 14, 2014).

<sup>5</sup> OFFICE OF THE ACTUARY, DEP’T OF VETERANS AFFAIRS, VETERAN POPULATION PROJECTIONS: FY2010 TO FY2040 (2011), available at [http://www.va.gov/vetdata/docs/QuickFacts/Population\\_quickfacts.pdf](http://www.va.gov/vetdata/docs/QuickFacts/Population_quickfacts.pdf).

<sup>6</sup> See Steve Vogel, *Veterans in Maryland Seeking Disability Benefits Can Face a Perilous Wait*, WASH. POST, Feb. 3, 2013, at A1.

<sup>7</sup> See Lewis B. Puller Jr. Veterans Benefits Clinic, WILLIAM & MARY LAW SCH., <http://law.wm.edu/academics/programs/jd/electives/clinics/veterans/> (last visited May 4, 2014).

to them, have persisted since the early 1960s.<sup>8</sup> Part I of this article will address legal services provided as part of the “War on Poverty,” and the eventual creation of the Legal Services Corporation (“LSC”). Part II will consider the efficacy of the LSC and other efforts currently aimed at narrowing the justice gap, with a focus on the unmet legal needs of veterans. Part III will explore pro bono efforts as a partial solution to addressing the justice gap. Part IV will explore the role of law school clinics in meeting the civil needs of those living in poverty. Finally, Part V will discuss how clinics like the Puller Clinic can address the unmet legal needs of veterans.

## I. THE WAR ON POVERTY & LEGAL SERVICES

In the early 1960s, President Kennedy shifted the welfare conversation from one of handouts to the poor to one of helping the poor to succeed.<sup>9</sup> On the premise of “Give a hand, not a handout,” his administration wanted to focus on training and employment that would lead to self-sufficiency.<sup>10</sup> To this end, he implemented the Public Welfare Amendments of 1962 and the Manpower Development and Training Act.<sup>11</sup> The Public Welfare Amendments constituted a considerable revision to the 1935 Public Welfare program, and included incentives to reduce dependency and encourage productivity, as well as increased federal funds for the aged, blind, and disabled.<sup>12</sup> The Manpower Development and Training Act provided for skills training for unemployed workers, allowances for family support during that training, and guidance in career and training selection.<sup>13</sup>

During President Johnson’s first nine months in office he continued his predecessor’s quest to encourage independence rather than provide handouts. He signed the first antipoverty bill, The Economic Opportunity Act, in August of 1964.<sup>14</sup> Some of the initiatives included in the Act included the Job Corps, the Neighborhood Youth Corps, Work-Study Programs, the Adult Basic Education Program, the Work Experience Program, Volunteers in Service to America

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<sup>8</sup> See Marshall M. Mansfield & Louise G. Trubek, *New Roles to Solve Old Problems: Lawyering for Ordinary People in Today’s Context*, 56 N.Y. L. SCH. L. REV. 367, 368 (2011–12).

<sup>9</sup> CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950–1980*, at 22 (2d ed. BasicBooks 1994) (1984).

<sup>10</sup> *Id.* at 22–23.

<sup>11</sup> *Id.* at 23.

<sup>12</sup> President John F. Kennedy, Statement by the President Upon Approving the Public Welfare Amendments Bill, (July 26, 1962), available at <http://www.presidency.ucsb.edu/ws/?pid=8788>.

<sup>13</sup> President John F. Kennedy, Statement by the President Upon Signing the Manpower Development and Training Act (Mar. 15, 1962), available at <http://www.presidency.ucsb.edu/ws/?pid=9106> (last visited March 6, 2014).

<sup>14</sup> MURRAY, *supra* note 9, at 23.

("VISTA"), and Community Action Programs.<sup>15</sup> Additional "national emphasis" programs, so called for their popularity, included Project Head Start, the Foster Grandparents Program, Comprehensive Health Services, Upward Bound, and, most pertinent to this article, Legal Services.<sup>16</sup> The Office of Economic Opportunity ("OEO"), part of the Executive Office of the President, ran these programs.<sup>17</sup> Within five years, no fewer than seventeen programs implemented ten thousand projects which addressed employment and skills training needs for the poor.<sup>18</sup>

Early in the crafting of the War on Poverty, Justice Arthur Goldberg supposedly asked President Johnson to include legal services in the initiatives, but the President said no.<sup>19</sup> Nonetheless, with some modest funding from the Ford Foundation, Jean and Edgar Cahn started a Legal Services Program similar to one that Jean Cahn previously created in New Haven, Connecticut.<sup>20</sup> Sargent Shriver, the director of OEO and an attorney, opined early on that the Legal Services Program would potentially be the most significant program in the War on Poverty.<sup>21</sup> Shriver noted that "making provision for attorneys to represent the poor and for the courts to recognize rights of the poor never before recognized would have a far-reaching and continuing effect on the distribution of power in the society."<sup>22</sup>

Before a successful legal services program could be created, the Cahns recognized that they had to get the organized bar to support the initiative.<sup>23</sup> At that time, the American Bar Association (ABA) had its own legal aid program that spent five million dollars annually to aid the poor.<sup>24</sup> The legal profession already had a long history of providing services to the poor: bar associations operated charitable legal aid programs since the 1800s, and the first formalized legal aid began in New York City in 1876.<sup>25</sup> By the 1960s, when the federal Legal Services Program was being proposed, there were 236 legal aid offices and one hundred public defender offices in operation; just like today, attorneys in those offices were underpaid and struggled with overwhelming caseloads.<sup>26</sup>

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<sup>15</sup> MICHAEL L. GILLETTE, *LAUNCHING THE WAR ON POVERTY: AN ORAL HISTORY*, at xix (2d ed. 2010).

<sup>16</sup> *Id.* at xix–xx.

<sup>17</sup> ROBERT F. CLARK, *THE WAR ON POVERTY: HISTORY, SELECTED PROGRAMS AND ONGOING IMPACT* 13 (2002).

<sup>18</sup> MURRAY, *supra* note 9, at 83.

<sup>19</sup> GILLETTE, *supra* note 15, at 295.

<sup>20</sup> *Id.* at 294–95.

<sup>21</sup> *Id.* at 296.

<sup>22</sup> *Id.*; JOHN F. KENNEDY PRESIDENTIAL LIBRARY & MUSEUM, *R. Sargent Shriver*, <http://www.jfklibrary.org/JFK/The-Kennedy-Family/R-Sargent-Shriver.aspx> (last visited Apr. 1, 2014).

<sup>23</sup> GILLETTE, *supra* note 15, at 296–97.

<sup>24</sup> *Id.*

<sup>25</sup> CLARK, *supra* note 17, at 178.

<sup>26</sup> *Id.* at 179–80.

The ABA sent representatives to negotiate with the Cahns over what the ABA saw as “federal interference in the private practice of law” and “a threat to the integrity of the profession . . . .”<sup>27</sup> Ultimately, the ABA and the National Legal Aid and Defenders Association supported a federal Legal Services Program, and the Program was created over some vehement objections from select state and local bar associations.<sup>28</sup> The Legal Services Program began in 1965 and was placed under the authority of the Community Action Program.<sup>29</sup> In 1969, Stephen J. Pollak explained the impact of Legal Services:

The poor by and large did not have access to lawyers. Where they had good arguments, they weren’t able to present them. Where they needed laws to protect them, our system requires lawyers to move the legislation along, and the poor didn’t have lawyers. So this Legal Services Program changed the equation very greatly, and it still is.<sup>30</sup>

The 1966 amendments to the Economic Opportunity Act (“EOA”) granted legislative authority to the Legal Services Program to provide legal advice and representation to those who could not afford such representation.<sup>31</sup> In 1967, amendments to the EOA included Legal Services as a separate program under “Special Programs and Assistance.”<sup>32</sup> Initially, Legal Services often took on class action suits that resulted in “major social reforms.”<sup>33</sup> As appropriations increased, Legal Services obtained national support centers to provide legal research and support for the Legal Services attorneys handling family and juvenile law, consumer protection, landlord and tenant issues, public housing challenges, and issues related to welfare and other benefit programs.<sup>34</sup>

In 1974, Congress established the LSC to protect the Legal Services Program from political pressures.<sup>35</sup> LSC distributes funding from the federal government to nonprofits providing civil legal services to the poor.<sup>36</sup> The impetus for the creation of LSC was Congress’s recognition that there is a need to provide equal access to the system of justice in our nation for those who would be

<sup>27</sup> GILLETTE, *supra* note 15, at 297.

<sup>28</sup> *Id.* at 300.

<sup>29</sup> *Id.* at 295; Kenneth F. Boehm, *The Legal Services Program: Unaccountable, Political, Anti-Poor, Beyond Reform And Unnecessary*, 17 ST. LOUIS U. PUB. L. REV. 321, 333 (1998).

<sup>30</sup> GILLETTE, *supra* note 15, at 300–01.

<sup>31</sup> CLARK, *supra* note 17, at 183.

<sup>32</sup> *Id.* at 177.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 184.

<sup>35</sup> See CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., LEGAL SERVICES CORPORATION: BACKGROUND AND FUNDING 1 (2013) [hereinafter BACKGROUND & FUNDING], available at <http://mspbwatcharchive.files.wordpress.com/2013/10/legal-services-corporation-background-and-funding-aug-29-2013.pdf>.

<sup>36</sup> CLARK, *supra* note 15, at 177.

otherwise unable to afford adequate legal counsel.<sup>37</sup> LSC is still in operation forty years later, despite repeated political challenges, reductions in funding, restrictions on services and clientele, and burgeoning caseloads.

## II. LEGAL SERVICES CORPORATION & THE JUSTICE GAP

The LSC is a private, nonprofit, federally funded corporation that manages and distributes congressionally appropriated funding to civil legal services providers addressing the needs of low-income clients in all 50 states, Washington, D.C., and the U.S. territories.<sup>38</sup> The LSC does not provide the legal services, but instead funds local legal service providers.<sup>39</sup> In 2012, the LSC provided forty percent of all civil legal services funding for the American poor.<sup>40</sup> It is the largest single source of funding for civil legal services, but local legal services providers sometimes procure additional government and private funding.<sup>41</sup> In 2012, government and private funding for civil legal services for the poor totaled \$882.9 million.<sup>42</sup>

Congress restricts organizations with LSC funding from engaging in “lobbying; political activities; class actions except under certain conditions; assisted suicide activities; and cases involving abortion, school desegregation, and draft registration or desertion from the military.”<sup>43</sup> Additional restrictions include litigation involving partisan redistricting, attempts at influencing government or LSC activities, efforts to reform welfare, and representation of prisoners in litigation.<sup>44</sup>

The LSC limits services in its funded organizations to those individuals with civil legal needs who have household incomes of less than 125% of the federal poverty guidelines.<sup>45</sup> In 2007, 50.8 million Americans qualified.<sup>46</sup> Following the economic downturn in 2012, nearly one in five Americans, 61.8

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<sup>37</sup> See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 5 (2009) [hereinafter JUSTICE GAP], available at [http://www.legalservicesnyc.org/index.php?option=com\\_content&task=view&id=381&Itemid=98](http://www.legalservicesnyc.org/index.php?option=com_content&task=view&id=381&Itemid=98).

<sup>38</sup> BACKGROUND & FUNDING, *supra* note 35, at Summary.

<sup>39</sup> *Id.* at 1.

<sup>40</sup> *Id.* at Summary.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 17.

<sup>43</sup> *Id.* at 3.

<sup>44</sup> *Id.* Previously there was a prohibition against LSC funded attorneys claiming or collecting attorney’s fees, but the Consolidated Appropriations Act of 2010 eliminated that prohibition. See Pub. L. No. 111-117, 123 Stat. 3034, 3297–3310 (2009) (codified in scattered sections of U.S.C.).

<sup>45</sup> BACKGROUND & FUNDING, *supra* note 35, at Summary (showing that with limited exceptions, local programs can provide services for some households whose income is up to 200% of the federal poverty guidelines).

<sup>46</sup> LEGAL SERVS. CORP., 2012 FACT BOOK 7 (2012), available at [http://www.lsc.gov/sites/lsc.gov/files/LSC/lscgov4/AnnualReports/2012\\_Fact%20Book\\_FINALforWEB.pdf](http://www.lsc.gov/sites/lsc.gov/files/LSC/lscgov4/AnnualReports/2012_Fact%20Book_FINALforWEB.pdf) [hereinafter FACT BOOK].

million, qualified as having an income less than the LSC threshold—\$13,963 for individuals and \$28,813 for a family of four.<sup>47</sup> The 134 LSC-funded legal aid programs with 807 offices served 1,996,860 people and closed 809,830 cases in 2012 despite having a full-time staff of only 8056 assisted by about one hundred thousand private attorneys.<sup>48</sup> That same year more than one-third of all cases closed were family law cases, with housing, income maintenance, and consumer cases adding an additional fifty percent.<sup>49</sup> In 2012, more than two-thirds of LSC clients were women, and the vast majority of all clients were between the ages of eighteen and fifty-nine.<sup>50</sup> In addition to closing approximately one million cases annually for the last several years, LSC grantees also teach communities about the law, provide legal materials to pro se litigants, provide referrals, and assist with mediation.<sup>51</sup>

LSC provided these legal services with an appropriation of \$348 million in the 2012 fiscal year—a decrease of 13.9% from the 2011 appropriation.<sup>52</sup> The LSC's current need for additional funding is not just reflective of the cuts from federal appropriations; LSC also suffers from reduced private, state, and Interest on Lawyer Trust Account (IOLTA) funding as a result of the recession.<sup>53</sup> Between 2010 and 2012, LSC grantees eliminated more than ten percent of their staff, including 385 attorneys, due to reductions in funding, yet the unmet legal needs among persons living in poverty continue to rise.<sup>54</sup>

Despite the efforts of the federal government and the LSC to provide civil legal services to those unable to afford private representation, the justice gap remains huge. At a time when the number of individuals and households in poverty is reaching catastrophic proportions, LSC-funded legal aid programs are rejecting almost one million cases per year because of insufficient resources.<sup>55</sup> This translates into one person being turned away for every one client served by an LSC-funded program.<sup>56</sup> When the LSC was established, the initial goal was to provide the legal services equivalent of one attorney for every 5,000 people living in poverty, a goal briefly achieved in 1980.<sup>57</sup> Instead, in the most recently collected data, there was one legal aid attorney for every 6,415 people living in poverty;<sup>58</sup> conversely, for those not living in poverty,

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 1.

<sup>49</sup> *Id.* at 18.

<sup>50</sup> *Id.* at 25.

<sup>51</sup> *Id.* at 29–30.

<sup>52</sup> BACKGROUND & FUNDING, *supra* note 35, at 4.

<sup>53</sup> *Id.* at 5.

<sup>54</sup> LEGAL SERVS. CORP., 2012 ANNUAL REPORT 2 (2012), available at <http://www.lsc.gov/about/annual-report> [hereinafter ANNUAL REPORT].

<sup>55</sup> JUSTICE GAP, *supra* note 37, at 9.

<sup>56</sup> *Id.* at 1.

<sup>57</sup> BACKGROUND & FUNDING, *supra* note 35, at 5.

<sup>58</sup> JUSTICE GAP, *supra* note 37, at 19.



there is one attorney for every 429 people.<sup>59</sup> The same 2009 LSC report also found that at least eighty percent of people eligible for LSC services do not end up with access to an LSC, private, or pro bono attorney.<sup>60</sup> Not surprisingly, state and local courts are seeing an increasing number of pro se litigants, particularly in the areas of family law and housing issues.<sup>61</sup>

In addition to these staggering unmet needs amongst those in poverty, our nation's veterans, many of whom are also facing poverty, are facing significant legal challenges. According to a report from the U.S. Congress Joint Economic Committee, the percentage of veterans living in poverty rose from 5.4 to 7% between 2007 and 2010.<sup>62</sup> There are more than 1.4 million veterans living in poverty, and more than one million more at risk of slipping into poverty.<sup>63</sup> Veterans serving after 9/11 suffer the highest poverty rates.<sup>64</sup> "Multiple and prolonged deployments for members who leave civilian jobs and families behind without a military base structure drive these [legal] needs."<sup>65</sup> Deployment can result in creditor and eviction challenges that require legal assistance, as well as divorce, custody, and estate planning needs resulting from the strain of military service and deployments.<sup>66</sup>

The Department of Veterans Affairs identified legal needs as among the most significant unmet needs of homeless and poor veterans.<sup>67</sup> The LSC started an initiative in 2010 focused on improving access to justice for low-income military veterans and for military families.<sup>68</sup> Nevertheless, LSC grantees are limited in the types of cases they are allowed to take and are already turning away one million cases annually. Moreover, more than 700,000 veterans are in the corrections system, with eighty percent of those struggling with a substance abuse issue.<sup>69</sup> While LSC and programs like Veterans Legal Corps Fellows address issues related to disability benefits claims, housing and employment, debt, and family law, they are not authorized to address criminal issues and homelessness. A 2009–2010 VA profile of homeless veterans noted na-

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<sup>59</sup> BACKGROUND & FUNDING, *supra* note 35, at 5.

<sup>60</sup> *Id.*

<sup>61</sup> JUSTICE GAP, *supra* note 37, at 1–2.

<sup>62</sup> ANNUAL REPORT, *supra* note 54, at 19–20.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* (12.4% of post 9/11 veterans were living in poverty in 2010).

<sup>65</sup> VETERANS OUTREACH CTR., INC., COMING HOME TO CARING COMMUNITIES: A BLUEPRINT FOR SERVING VETERANS & FAMILIES 34 (2012), available at <http://nyshealthfoundation.org/resources-and-reports/resource/coming-home-to-caring-communities-a-blueprint-for-serving-veterans-families>.

<sup>66</sup> *Id.*

<sup>67</sup> *Veterans Legal Corps to be Largest Deployment of Lawyers Serving Veterans*, EQUAL JUSTICE WORKS, June 26, 2013, <http://www.equaljusticeworks.org/news/06-26-13-Veterans-Legal-Corps> (last visited May 4, 2014).

<sup>68</sup> *Serving Veterans and Military Families*, LEGAL SERVS. CORP., <http://www.lsc.gov/about/about-legal-aid/serving-veterans-and-military-families> (last visited May 13, 2014).

<sup>69</sup> *The Impact*, JUSTICE FOR VETS, <http://www.justiceforvets.org/vtc-impact> (last visited May 13, 2014).

tional estimates of more than 130,000 homeless veterans on a particular night in 2009, a figure that rose to more than 140,000 in 2010.<sup>70</sup> For homeless veterans, three of their top ten unmet needs were found to be legal in nature.<sup>71</sup>

In an attempt to meet the overwhelming unmet legal needs among those living in poverty, more than 650 civil legal aid societies across the country, including law school clinics, supplement legal aid to the poor.<sup>72</sup> These organizations rely on private and government funding. According to recent state studies considering the legal problems experienced by low-income populations, data indicates that low-income households experience up to three legal needs per year, and that an attorney helps with only one in five of the legal problems suffered by this population.<sup>73</sup> While many argue that low-income individuals do not seek assistance from an attorney for monetary reasons, surveys indicate other reasons such as resignation to their problems, a lack of awareness that their justice problems are legal in nature or that an attorney would be appropriate, and a conscience decision to handle the issue outside of the justice system.<sup>74</sup>

The majority of those individuals who refrain from obtaining legal representation do so because they are unable to afford it.<sup>75</sup> Although a large portion of those people qualify for legal aid, often legal aid comprises only advice and counsel rather than direct representation due to limited available resources.<sup>76</sup> Without representation, case outcomes suffer and justice is at risk.<sup>77</sup> William T. Robinson, III, then President of the ABA, wrote in a letter to the editor of *The New York Times*, “The American Bar Association strongly agrees that our nation must expand access to justice for low-income Americans” and that “more funding is needed for legal assistance for the poor.”<sup>78</sup>

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<sup>70</sup> DEP’T OF VETERANS AFFAIRS, PROFILE OF SHELTERED HOMELESS VETERANS FOR FISCAL YEARS 2009 AND 2010, at 2 (2012), available at [http://www.va.gov/vetdata/docs/SpecialReports/Homeless\\_Veterans\\_2009-2010.pdf](http://www.va.gov/vetdata/docs/SpecialReports/Homeless_Veterans_2009-2010.pdf).

<sup>71</sup> See CATHERINE ABSHIRE ET AL., COMMUNITY HOMELESSNESS ASSESSMENT, LOCAL EDUCATION AND NETWORKING GROUPS (CHALENG) FOR VETERANS FISCAL YEAR (FY) 2011, at 12 (2011), available at [http://www.va.gov/HOMELESS/docs/chaleng/2011\\_Challeng\\_Report\\_FINAL.pdf](http://www.va.gov/HOMELESS/docs/chaleng/2011_Challeng_Report_FINAL.pdf).

<sup>72</sup> Rebecca L. Sandefur, *Lawyers’ Pro Bono Service and American-Style Civil Legal Assistance*, 41 LAW & SOC’Y REV. 79, 83–84 (2007).

<sup>73</sup> JUSTICE GAP, *supra* note 37, at 13.

<sup>74</sup> See Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 117–18.

<sup>75</sup> See JUSTICE GAP, *supra* note 37, at 24.

<sup>76</sup> See *id.*

<sup>77</sup> See *id.* at 26.

<sup>78</sup> William T. Robinson III, *Legal Help for the Poor: The View from the A.B.A.*, N.Y. TIMES, Aug. 31, 2011, at A26.

### III. PRO BONO EFFORTS AS A PARTIAL SOLUTION FOR NARROWING THE JUSTICE GAP

The civil legal assistance system in the United States is inadequate in providing low-income individuals, including veterans, access to representation. As a partial solution to make lawyers more accessible to the poor, public and private employers should develop more robust pro bono services.

#### A. *The Need for More Legal Assistance*

In an attempt to more fully understand the scope of unmet legal needs of those in poverty, to identify gaps in those services, and to make more strategic allocations of scarce resources, the U.S. Department of Justice created the Access to Justice Initiative in 2010.<sup>79</sup> Soon thereafter, Congress created the Consortium on Access to Justice to promote research and teaching on access to justice issues and encourage academics to engage in these efforts.<sup>80</sup> This initiative is particularly important given that the LSC's Research Institute lost funding in the 1980s, and that there had not been a national study regarding legal needs and civil justice since a study by the ABA in 1994.<sup>81</sup> In the ABA survey of low- and middle-income households in the United States, roughly half of those surveyed were experiencing at least one civil legal problem that was potentially actionable.<sup>82</sup> More recent data from a handful of state surveys found that about a quarter of middle-income individuals and between one-fifth and one-half of low-income individuals took no action in response to legal problems.<sup>83</sup> Even more disturbing, the 2011 World Justice Project Index found that the United States ranked fifty-second out of the sixty-six countries examined in relative cost and availability of civil legal assistance and twenty-first regarding inaccessibility to disadvantaged groups.<sup>84</sup> Moreover, the Index noted a significant gap between rich and poor individuals regarding use of and satisfaction with the civil courts.<sup>85</sup>

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<sup>79</sup> See Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 532 (2013).

<sup>80</sup> *Id.*

<sup>81</sup> See *id.* at 533–34.

<sup>82</sup> See AM. BAR ASS'N CONSORTIUM ON LEGAL SERVS. AND THE PUBLIC, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS, at tbl.1 (1994), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf> [hereinafter A SURVEY OF AMERICANS].

<sup>83</sup> Rhode, *supra* note 79, at 534.

<sup>84</sup> MARK DAVID AGRAST ET AL., WORLD JUSTICE PROJECT, RULE OF LAW INDEX 2011, at 23 (2011), available at [http://worldjusticeproject.org/sites/default/files/WJP\\_Rule\\_of\\_Law\\_Index\\_2011\\_Report.pdf](http://worldjusticeproject.org/sites/default/files/WJP_Rule_of_Law_Index_2011_Report.pdf).

<sup>85</sup> *Id.*

Given that there was no central organization systematically and comprehensively collecting data concerning unmet civil legal needs,<sup>86</sup> the American Bar Foundation, Friends of Legal Services, and LSC partnered to fund Access Across America: First Report of the Civil Justice Infrastructure Mapping Project in October 2011.<sup>87</sup> The Report indicates that the civil legal assistance infrastructure consists of many small-scale public-private partnerships.<sup>88</sup> Furthermore, the diversity and fragmentation of those programs cause large inequalities between and within states, leading to service availability based on geographic location.<sup>89</sup> The Report goes on to note that although conservative estimates by the ABA suggest that public and private civil legal assistance received \$1.3 billion in funding in a recent year, the criminal justice system received an estimated \$228 billion in 2007.<sup>90</sup> There is no constitutional right to counsel in civil court proceedings,<sup>91</sup> yet litigants who cannot afford representation regularly face issues that involve a financial, medical, family, or housing crisis.<sup>92</sup> These civil issues involve basic human needs that can become catastrophic for low-income individuals and their families.

For veterans seeking assistance with their benefits claims, there is an additional impediment to getting legal assistance early in the process. By law, no person or organization may charge veterans a fee for assistance in preparing initial applications or presenting initial claims to the VA.<sup>93</sup> Fees for assistance may only be charged once the Department has issued a decision on a claim, a Notice of Disagreement has been filed to appeal that decision, and the agent or attorney has complied with the power-of-attorney requirements in 38 C.F.R. § 14.631 and the fee agreement requirements in 38 C.F.R. § 14.636(g).<sup>94</sup> Moreover, the VA must accredit agents, attorneys, or representatives of a VA-recognized veteran's service organization to assist in the preparation, presentation, and prosecution of a claim for benefits.<sup>95</sup> With limited opportunity for attorney's fees at the initial stage in veteran benefits claims and additional accreditation and continuing education requirements, the majority of attorneys are not likely to represent veterans on a pro bono basis. Without legal assistance, veterans will often submit incom-

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<sup>86</sup> Rhode, *supra* note 79, at 533.

<sup>87</sup> See REBECCA L. SANDEFUR & AARON C. SMYTH, ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT, at ix (2011), available at [http://www.americanbarfoundation.org/uploads/cms/documents/access\\_across\\_america\\_first\\_report\\_of\\_the\\_civil\\_justice\\_infrastructure\\_mapping\\_project.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf).

<sup>88</sup> *Id.* at 9.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 17.

<sup>91</sup> See Sandefur, *supra* note 72, at 79.

<sup>92</sup> See Mansfield & Trubek, *supra* note 8, at 372.

<sup>93</sup> *Accreditation*, U.S. DEP'T OF VETERANS AFFAIRS: OFFICE OF THE GEN. COUNSEL, <http://www.va.gov/ogc/accreditation.asp> (last visited Jan. 30, 2014).

<sup>94</sup> 38 U.S.C. § 5904(c)(1) (2012); 38 C.F.R. § 14.636(c) (2012).

<sup>95</sup> See 38 U.S.C. §§ 5901–5902, 5904; 38 C.F.R. § 14.629; *Accreditation*, *supra* note 93.

plete claims packages at the initial, regional office stage, creating more of a burden on the claim reviewers and increasing the likelihood of delay and error in the processing of a veteran's claim.

### B. *Pro Bono Work: Narrowing the Justice Gap*

While there is widespread agreement that there is a significant justice gap in the United States that requires attention, the question of how to narrow that gap is up for debate. One solution is to increase the amount of pro bono civil legal services provided by private attorneys. Such an increase would add to the Private Attorney Involvement ("PAI") requirement, in effect since the early 1980s, that LSC-funded organizations use at least 12.5% of their LSC funding to encourage private attorney pro bono involvement.<sup>96</sup> Following implementation of the PAI requirement, the number of pro bono programs increased from 88 in 1980 to more than 500 by 1985, and 900 in 1990.<sup>97</sup> Significant efforts are still being devoted to increasing pro bono services by all lawyers. Under LSC's 2007 action plan entitled, "Help Close the Justice Gap, Unleash the Power of Pro Bono," more than one hundred LSC-funded programs adopted local resolutions supporting greater private attorney involvement.<sup>98</sup> LSC's August 2011 Pro Bono Task Force brought together judges, general counsel, bar leaders, technology experts, leaders of pro bono programs, legal services organizations, law firms, government lawyers, and law school deans to discuss the need for additional pro bono legal services.<sup>99</sup>

While concerted efforts are underway to increase pro bono efforts among the private bar, Rule 6.1 of the ABA Model Rules of Professional Conduct already states that "[e]very lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico [sic] legal services per year."<sup>100</sup> Rule 6.1 further holds that "a substantial majority of the (50) hours" should be to persons of limited means or to organizations that support the needs of persons of limited means.<sup>101</sup>

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<sup>96</sup> See MEREDITH MCBURNEY, AM. BAR ASS'N, THE IMPACT OF LEGAL SERVICES PROGRAM RECONFIGURATION ON PRO BONO 1 (Apr. 2003), available at [https://apps.americanbar.org/legalservices/probono/impact\\_reconfiguration.pdf](https://apps.americanbar.org/legalservices/probono/impact_reconfiguration.pdf).

<sup>97</sup> *Id.*

<sup>98</sup> JUSTICE GAP, *supra* note 37, at 27.

<sup>99</sup> LEGAL SERVS. CORP., REPORT OF THE PRO BONO TASK FORCE, at i (2012), available at [http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF\\_%20Report\\_FINAL.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf) [hereinafter PRO BONO TASK FORCE].

<sup>100</sup> MODEL RULES OF PROF'L CONDUCT R. 6.1 (2006), available at [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_6\\_1\\_voluntary\\_pro\\_bono\\_publico\\_service.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service.html).

<sup>101</sup> *Id.*

An ABA study found that the average annual amount of pro bono service provided by attorneys in 2011 was 56.5 hours, with a median amount of 30 hours.<sup>102</sup> The foregoing averages included attorneys who did not provide any such service.<sup>103</sup> When only considering those attorneys who performed some sort of pro bono service, the average was 70.91 hours.<sup>104</sup> Eleven percent of the lawyers surveyed provided no pro bono work at all during 2011.<sup>105</sup> Only one-third of lawyers met the aspirational goal of fifty hours of annual service—or less than one hour a week.<sup>106</sup> For those attorneys who do engage in pro bono efforts, the good news is that the majority of respondents in *Supporting Justice III* reported doing more pro bono work in 2011, despite the depressed economy.<sup>107</sup> The Standing Committee on Pro Bono and Public Service, which published the report, noted it would work with LSC and its Pro Bono Task Force to build strong pro bono initiatives and perform empirical studies to aid in enhancing attorney commitment to pro bono efforts.<sup>108</sup>

LSC's Pro Bono Task Force made several recommendations to the LSC and its grantees to encourage the development of strong pro bono programs: (1) serve as an information clearinghouse and source of coordination and technical assistance to grantees; (2) revise its Private Attorney Involvement regulation; (3) launch a public relations campaign recognizing the importance of pro bono; and (4) create a fellowship program to foster lifelong commitments to pro bono.<sup>109</sup> The Task Force also asked various bar association leaders and the judiciary to recruit, support, and applaud pro bono efforts; amend attorney practice, judicial ethics, and Continuing Legal Education ("CLE") rules to be more supportive of pro bono; and create or strengthen state access to justice commissions.<sup>110</sup> Among the recommendations for helping to alleviate the estimated eighty percent of unmet civil needs among the low-income population, the Task Force suggested engaging non-lawyers, including law students as well as encouraging retired lawyers, to engage in pro bono initiatives.<sup>111</sup>

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<sup>102</sup> These figures represent those services provided for free, without expectation of fee, to persons of limited means or organizations who assist them, and included full case representation, limited scope representation, legal advice and mediation representation. See JANET BUCZEK ET AL., AM. BAR ASS'N STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 5 (2013), available at [http://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/lsc\\_pb\\_Supporting\\_Justice\\_III\\_final.auth\\_checkdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lsc_pb_Supporting_Justice_III_final.auth_checkdam.pdf).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at vi n.2.

<sup>105</sup> *Id.* at 34.

<sup>106</sup> *Id.*

<sup>107</sup> See *id.* at vi.

<sup>108</sup> *Id.* at 34–35.

<sup>109</sup> PRO BONO TASK FORCE, *supra* note 99, at ii–iii.

<sup>110</sup> *Id.* at iv.

<sup>111</sup> See *id.* at 2–10.

As of December 31, 2010, the number of attorneys in the U.S. and all its possessions and territories stood at 1,225,452,<sup>112</sup> an increase of 2% over 2010, and 17% since 2001.<sup>113</sup> While efforts to increase the pro bono services provided by the nation's attorneys is a laudable goal that should continue to be pursued, it is unrealistic to expect that those efforts will narrow the justice gap more than incrementally:

Pro bono currently accounts for at most 1–2% of legal effort in the country; even if every lawyer in the country did 100 more hours a year of pro bono work, this would amount to an extra thirty minutes per U.S. person a year, or about an hour per dispute-related . . . problem per household.<sup>114</sup>

Unfortunately, there are rarely disputes that require only one hour of an attorney's time to be resolved. In addition, it is implausible to imagine that every attorney would give one hundred hours with only the current aspirational Model Rule. The provision of pro bono services by private attorneys is a critical supplement to those services provided by legal aid. Pro bono work in any amount, however, is not by itself enough to close or significantly reduce the justice gap.

Challenges to increasing the amount of pro bono efforts provided by private attorneys include the need for training, and sometimes oversight, of volunteer attorneys unfamiliar with the subject matter. Training is required particularly in the areas with the most need for civil legal services: family law, housing, income maintenance, and consumer issues.<sup>115</sup> Attorneys surveyed regarding the provision of pro bono services noted that time was the biggest obstacle to their providing such services.<sup>116</sup> Suggestions for addressing these challenges included the provision of mentoring and co-counsel opportunities with legal aid attorneys or law school clinics, the provision of support and resources from employers for pro bono services to be accomplished during the work day, and the development of rules and policies that allow for limited representation and scope of services.<sup>117</sup>

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<sup>112</sup> James Podgers, *State of the Union: The Nation's Lawyer Population Continues to Grow, but Barely*, AM. B. ASS'N JOURNAL (July 1, 2011), [http://www.abajournal.com/magazine/article/state\\_of\\_the\\_union\\_the\\_nations\\_lawyer\\_population\\_continues\\_to\\_grow\\_but\\_bare/](http://www.abajournal.com/magazine/article/state_of_the_union_the_nations_lawyer_population_continues_to_grow_but_bare/).

<sup>113</sup> *Id.*

<sup>114</sup> Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 152 (2010).

<sup>115</sup> See FACT BOOK, *supra* note 46, at 18.

<sup>116</sup> BUCZEK ET AL., *supra* note 102, at viii.

<sup>117</sup> *Id.* at 33–34.

#### IV. LAW SCHOOL CLINICS CAN, & SHOULD, HELP

The idea of law school clinics providing legal services to those in poverty is not new. In fact, such a concept helped shape President Johnson's War on Poverty fifty years ago.<sup>118</sup> Prior to the creation of the OEO's legal services program, the Ford Foundation funded anti-poverty neighborhood legal services programs that resulted in the creation of the Council on Legal Education for Professional Responsibility ("CLEPR").<sup>119</sup> CLEPR recognized that law students could learn skills and develop a professional identity that fostered continued social responsibility while simultaneously aiding those in need of legal assistance.<sup>120</sup> Despite the synergy between legal services programs and early clinical education, by the mid-1970s each individual initiative instead focused on its own survival in the face of political pressures, funding challenges, and resistance to change within the academy.<sup>121</sup>

As noted in Part II, federal LSC funding is considerable. While existing funding is inadequate to meet the immense demand, and is still subject annually to potential reductions, LSC funding nonetheless plays an essential role in the provision of civil legal services currently being provided to those in poverty. LSC persists as the largest single source of funds for civil legal assistance and sets the standards for legal assistance providers.<sup>122</sup>

Clinical legal education, on the other hand, is an increasingly emphasized component of legal education. In particular, the Carnegie Report, "Educating Lawyers—Preparation for the Profession of Law," emphasized the educational value of law clinics.<sup>123</sup> Students and schools increasingly favor clinical education due to the current enrollment and employment challenges for the nation's law schools. In a recent survey of 156 law schools, there were a total of 1036 distinct live-client law clinics, with an average of 6.6 per law school.<sup>124</sup> Nearly 80% of the respondent schools noted that demand for live-client clinics increased during the prior five years, 19% reported the demand remained constant during that time period, and fewer than 1% noted a decrease in demand.<sup>125</sup>

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<sup>118</sup> See Jeanne Charn & Jeffrey Selbin, *Legal Aid, Law School Clinics and the Opportunity for Joint Gain*, MGMT. INFO. EXCH. J., 28, 28 (Winter 2007) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1126444](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1126444).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> See *id.*

<sup>122</sup> POVERTY, HEALTH AND LAW 56–57 (Elizabeth Tobin Tyler et al., eds., 2011).

<sup>123</sup> See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS—PREPARATION FOR THE PROFESSION OF LAW 9 (2007).

<sup>124</sup> DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., THE 2010–11 SURVEY OF APPLIED LEGAL EDUCATION 7 (2012).

<sup>125</sup> *Id.* at 11.



The Carnegie Report studied the way that law schools develop legal understanding and form professional identity.<sup>126</sup> The report emphasized that legal educators must link their interests with the needs of legal practitioners and the public the profession takes an oath to serve.<sup>127</sup> In making their recommendations for legal educators, the report noted that “[t]he existing common core of legal education needs to be expanded to provide students substantial experience with practice as well as opportunities to wrestle with the issues of professionalism.”<sup>128</sup> To this end, the report suggested a “capstone” opportunity to engage students in advanced clinical training.<sup>129</sup>

This is a challenging time in legal education, a time when there is a confluence of perplexing circumstances facing law schools, those in need of legal services, and law graduates. The crisis in access to justice necessitates an emphasis on social justice and public service in the professional training of lawyers.<sup>130</sup> The number of law students graduating from law schools far exceeds the available legal employment.<sup>131</sup> Professor and former Dean of Northeastern School of Law, Emily A. Spieler, theorized that “the future success of law schools is inextricably tied to the ability of our profession to provide adequate legal assistance to people without significant means.”<sup>132</sup> She noted that equal access under law is necessary for maintaining the rule of law, promoting social justice, ensuring the economic well-being of law school graduates, and safeguarding the future of legal education.<sup>133</sup> The role of legal educators is key to instilling lawyers with the skills and sense of social responsibility required to uphold freedom and equality.<sup>134</sup>

Law schools can, and should, provide their students with clinical education experiences. Law clinic students practice their skills and reflect on their professional development and role as lawyers under the mentoring of a professor while aiding those unable to afford legal services. Although future attorneys are taught the skills and professionalism that the practice of law will require, they can “see, first hand, how law is practiced, and what the barriers are to achieving social justice through the law.”<sup>135</sup> This knowledge of inequality

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<sup>126</sup> See SULLIVAN ET AL., *supra* note 123, at Summary.

<sup>127</sup> *See id.*

<sup>128</sup> *Id.* at 9.

<sup>129</sup> *Id.*

<sup>130</sup> See Rhode, *supra* note 2.

<sup>131</sup> On the national level, there were nearly twice as many bar exam passers (53,508) in 2009 than openings (26,239). See Joshua Wright, *Data Spotlight: New Lawyers Glutting the Market (Updated)*, ECON. MODELING SPECIALISTS INT’L (June 22, 2011), <http://www.economicmodeling.com/2011/06/22/new-lawYERS-glutting-the-market-in-all-but-3-states/> (last visited May 13, 2014).

<sup>132</sup> Emily A. Spieler, *The Paradox of Access to Civil Justice: The “Glut” of New Lawyers and the Persistence of Unmet Need*, 44 U. TOL. L. REV. 365, 366 (2013).

<sup>133</sup> *Id.*

<sup>134</sup> See SULLIVAN ET AL., *supra* note 123, at 11.

<sup>135</sup> Spieler, *supra* note 132, at 396.

and injustice can enrich their legal education and inspire future pro bono service to underserved constituencies.<sup>136</sup>

Some argue that law school clinics can contribute only minimally to meeting the legal needs of the underserved because they have a low faculty-student ratio and require intensive supervision and reflection. Clinics are small, costly, and provide services to only a very limited number of people.<sup>137</sup> Nationwide, however, more than one thousand faculty teach and supervise clinic students in increasingly diverse fields.<sup>138</sup> Moreover, clinic students at all ABA-accredited law schools in the 2009–2010 academic year provided over 1.38 million hours of free civil legal services and represented almost thirty thousand civil clients.<sup>139</sup> In addition to this significant number of pro bono hours and clients represented by law school clinics, law students who enroll in a clinic have the benefit of experiential learning that aids in their professional development, as well as increased awareness of social justice and the inequalities inherent in our judicial system. While enriching their professionalism and skills training, clinic students also reap the intrinsic rewards of representing those struggling with access to justice.

Although it is argued that law school clinics can make only a modest dent in the justice gap, providing 1.38 million pro bono hours to thirty thousand clients is a considerable contribution.<sup>140</sup> If one were measuring those hours relative to the aspirational goal of fifty pro bono hours per year prescribed in Model Rule 6.1, it would take 27,600 attorneys performing fifty hours annually to match this contribution from law school clinic students.<sup>141</sup> In addition, clinic students provide legal services in areas of law in which they receive training and supervision; pro bono attorneys are often asked to assist with cases in areas of law with which they are completely or relatively unfamiliar. Thus, pro bono attorneys may require more time and encounter more obstacles to achieving a successful case resolution than supervised clinic students.

Furthermore, sixty-one percent of the LSC's case services in 2012 consisted of counseling and advice rather than more extensive services such as litigation and court and agency representation.<sup>142</sup> Were law school clinics to add more counseling and advice to their already extensive and protracted representation, it is likely that the total number of clients served annually by law

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<sup>136</sup> See *id.*

<sup>137</sup> See Quintin Johnstone, *Law and Policy Issues Concerning the Provision of Adequate Legal Services for the Poor*, 20 CORNELL J.L. & PUB. POL'Y 571, 613 (2011).

<sup>138</sup> Cham & Selbin, *supra* note 118, at 29.

<sup>139</sup> SANTACROCE & KUEHN, *supra* note 124, at 20.

<sup>140</sup> See *id.*

<sup>141</sup> See MODEL RULES OF PROF'L CONDUCT R. 6.1 (2006), available at [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_6\\_1\\_voluntary\\_pro\\_bono\\_publico\\_service.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service.html); SANTACROCE & KUEHN, *supra* note 124, at 20.

<sup>142</sup> FACT BOOK, *supra* note 46, at 17.

students would increase considerably. In addition, law school clinics could adopt some of the suggestions made by the LSC's Pro Bono Task Force for increasing pro bono efforts and the legal services available to the poor. For example, some clinical programs include free CLE training for private attorneys in exchange for a commitment to handle a pro bono case; an increasing number of law students engage in rural outreach, spring break, and summer programs that provide access to legal services; and law school technology support can be expanded to aid in pro bono efforts.<sup>143</sup>

Law school clinics also could supplement existing LSC Programs by providing community legal education presentations, workshops to aid pro se litigants, help desks at courts, referrals to other civil legal service providers or pro bono attorneys, referrals to non-legal community service providers, and web resources to aid with civil legal issues.<sup>144</sup> In 2012, LSC programs aided more than one million people by providing some of the foregoing services, exponentially increasing the people they were able to help by providing services more limited than individual client representation.<sup>145</sup> By collaborating with LSC and non-LSC legal services programs to assist in providing these educational services to the poor, law school clinics can unburden the legal services attorneys, making them available for more extensive individual representation. At the same time, law students would learn valuable skills (i.e., research, writing, presentation skills, interviewing, and counseling) while expanding available legal assistance to those in need.

Law school clinics alone cannot solve the justice gap, any more so than LSC-funded programs, other programs, and pro bono efforts can do it independently. A concerted effort to increase clinical programs, however, can address the shared objectives of legal education and the justice system: to prepare future attorneys to be ethical and skilled practitioners, and to provide civil legal services to those unable to afford such representation themselves. Both objectives will further the goal of "Equal Justice Under Law."

#### V. A MODEL OF ACCESS TO JUSTICE FOR VETERANS: CLINIC ASSISTANCE IN OBTAINING THEIR EARNED BENEFITS

The William & Mary Law School's Lewis B. Puller, Jr. Veterans Benefits Clinic ("Puller Clinic") aids veterans in obtaining their earned benefits while training law students in skills and professionalism and fostering the moral duty we owe to those who served our country.<sup>146</sup> Law students in a clinic setting are

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<sup>143</sup> See PRO BONO TASK FORCE, *supra* note 99, at 2–29.

<sup>144</sup> See FACT BOOK, *supra* note 46, at 30.

<sup>145</sup> See *id.*

<sup>146</sup> See Lewis B. Puller Jr. Veterans Benefits Clinic, WILLIAM & MARY LAW SCH., <http://law.wm.edu/academics/programs/jd/electives/clinics/veterans/> (last visited May 4, 2014).

ideally suited to aid veterans in their VA claims for disability and compensation claims. Due to the scarcity of legal representation for veterans, law clinic efforts are particularly needed at points in the claims process where attorney's fees are unavailable.

The Puller Clinic was the first legal clinic in the country to address veterans' needs holistically. The Puller Clinic combines legal and psychological assistance in representation of veterans by partnering with higher education partners such as Virginia Commonwealth University's Center for Psychological Services and Development. Under attorney supervision, Puller Clinic law students interview veterans, analyze medical records, communicate with health care providers, and craft strategies to help clients obtain their benefits. By working with clinical psychologists and other medical professionals, Puller Clinic students secure the medical evaluation, diagnosis, treatment, and evidence required to address a veteran's medical needs and support a comprehensive benefits claim. These goals are accomplished while also training graduate students in these complex areas of law and medicine, and instilling in them a sense of responsibility to our nation's heroes.

The Puller Clinic typically handles complex cases at the Department of Veterans Affairs' regional office level that require extensive factual and legal research, and for which an attorney would not be paid. Because the Puller Clinic submits claims that are persuasively prepared, well organized, comprehensive, and complete, the VA is able to adjudicate them more quickly and accurately than incomplete and unsupported claims. This saves the VA considerable time, which it can use to process additional claims. Well-prepared claims also benefit the veterans by improving accuracy in claims decisions and reducing wait time for those decisions.

The Puller Clinic also aids veterans by regularly training pro bono attorneys in veterans' benefits law and partnering those attorneys with law students to present education and outreach sessions at homeless shelters throughout Virginia. At these outreach sessions, pro bono attorneys and students provide advice and counsel on site and take on veterans as clients for longer term representation.

Since its inception in 2009, the Puller Clinic has represented more than sixty-five veteran clients in hundreds of claims for disabilities; provided advice and counsel to hundreds of indigent and homeless veterans; trained dozens of pro bono attorneys and more than 140 law students in veterans' benefits law; inspired multiple Puller Clinic alumni to provide pro bono services to veterans; and provided pro bono legal services valued at more than \$425,000 annually to veteran clients. The Puller Clinic specializes in the complex claims that are most difficult for veterans to prove, such as post-traumatic stress, traumatic brain injury, and military sexual trauma. Compared to pre-Puller Clinic representation levels, Puller Clinic clients received 120% more benefits, 45% more

disabilities connected to service, and 25% higher disability ratings. Furthermore, through psychological and neurological evaluations by higher education partners, sixteen veterans obtained mental health diagnoses for previously undiagnosed conditions and nine veterans received corrections in prior misdiagnoses. To date, veteran clients have received close to \$700,000 in back benefits they were owed, with a present value of more than \$12 million in future earned benefits over the lifetime of current clients.

For a comprehensive and successful claims package, Puller Clinic attorneys and students must provide medical evidence and proof of a service-connection in support of a veteran's disability claim, after extensive factual and legal investigation and analysis. The Puller Clinic relies on other institutions of higher education and their faculty and students for reduced or no cost evaluation, diagnosis, treatment, and evidentiary support of veteran claims—evidence which typically makes the difference between a claim being successful or not. In working with the Puller Clinic's medical partners in support of their claim, some veteran clients are addressing their service-connected traumas and mental health issues for the very first time. The evaluation and treatment that these veterans receive from Puller Clinic partners can have a profoundly healing effect on the veteran.

The Puller Clinic's inter-professional and inter-institutional partnerships educate Clinic students in the skills and benefits of collaboration, while providing pro bono or reduced fee evaluation and treatment to veteran clients. The success of these efforts with our first inter-professional partner, Virginia Commonwealth University's Center for Psychological Services and Development,<sup>147</sup> led to the creation of the Puller Veterans Clinic Consortium, which currently counts nineteen Virginia higher education institutions, and several out of state institutions, among its partners. These higher education partnerships have been so successful in aiding veteran clients and educating students that the Puller Clinic plans to pilot a medical-legal partnership with a medical student free clinic in Norfolk, Virginia beginning in 2014.<sup>148</sup>

There is an extraordinary need among veterans for legal assistance with their benefits claims. The VA has a monumental backlog of previously filed claims and increased volume in new claim filings, and rarely do veterans have the benefit of legal representation at the regional office initial filing and adju-

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<sup>147</sup> The Center for Psychological Services and Development was a Puller Clinic partner from the Clinic's inception, and to date, their faculty and students have provided services to more than thirty referred veterans, or forty-five percent of Puller Clinic clients.

<sup>148</sup> The Health Outreach Partnership with EVMS Students ("H.O.P.E.S.") Free Clinic is staffed by Eastern Virginia Medical School's students, residents, and physicians, and serves uninsured citizens of Norfolk with long term and specialty care. The 2014 MLP pilot will focus on veterans. *See H.O.P.E.S. Clinic*, E. VA. MED. SCH., [http://www.evms.edu/education/additional\\_resources/community\\_outreach\\_service\\_learning/community\\_outreach/community\\_outreach\\_programs/hopes/](http://www.evms.edu/education/additional_resources/community_outreach_service_learning/community_outreach/community_outreach_programs/hopes/) (last visited May 4, 2014).

dication stages. By supporting the creation of law school clinics in veterans' benefits law, law schools can supplement the work of LSC legal aid programs, the VA, and pro bono attorneys. Law school clinics increase the quality of claims, thus enabling more timely, efficient, and accurate adjudication, and train pro bono attorneys in veterans' benefits law. As Senator Mark Warner (D-VA) noted recently when discussing the Puller Clinic's work:

This is a win-win-win: veterans get quicker approval for benefits they have earned, the VA can move quicker through its backlog because it will be receiving more complete and accurate claims, and William & Mary law students will develop new legal skills as well as a respect for *pro bono* service.<sup>149</sup>

According to the LSC, the 34,498 veteran clients that they served in 2012 comprised 4.5% of all LSC clients that year; proportionally, veterans comprise 4.6% of the total national poverty population.<sup>150</sup> In addition to assistance with benefit claims, law school clinics can engage in a number of alternative initiatives that support unmet veteran legal needs. Law clinics, pro bono attorneys, and legal aid offices are increasingly engaging in civil legal representation of veterans in areas of their most significant needs, such as housing, employment, and consumer and family law issues. Law clinics are also assisting veterans involved in the criminal justice system through participation in newly developed Veterans Treatment Courts.<sup>151</sup>

The Puller Clinic is the first law school clinic to be certified by the VA as a national "best practice" and a Community of Practice Partner.<sup>152</sup> The Puller Clinic is training law students to advise, counsel, and represent veterans without access to justice, provide education and outreach for veterans in the community, and train pro bono attorneys. In addition, William & Mary Law School encourages and trains additional law schools and higher education institutions across the country to replicate the Puller Clinic model.<sup>153</sup> Helping our nation's

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<sup>149</sup> Press Release, Office of Mark Warner, Sen. Warner Announces Dep't of Veterans Affairs Certification for William & Mary Puller Clinic as a National Model (Aug. 21, 2013), available at [http://www.warner.senate.gov/public/index.cfm/pressreleases?ContentRecord\\_id=0ae06281-8e7d-41aa-a49c-24cc69469bee](http://www.warner.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=0ae06281-8e7d-41aa-a49c-24cc69469bee).

<sup>150</sup> FACT BOOK, *supra* note 46, at 26.

<sup>151</sup> See JUSTICE FOR VETS, *What Is a Veterans Treatment Court?*, <http://www.justiceforvets.org/what-is-a-veterans-treatment-court> (last visited May 13, 2014). According to Justice for Vets, there are 130 veteran courts already up and running in the United States, with hundreds more being planned. "The Veterans Treatment Court model requires regular court appearances . . . as well as mandatory attendance at treatment sessions and frequent and random testing for substance use (drug and/or alcohol). Veterans respond favorably to this structured environment given their past experiences in the Armed Forces." *Id.*

<sup>152</sup> Press Release, Office of Mark Warner, *supra* note 149.

<sup>153</sup> William & Mary Law School hosted the National Conference on Law Clinics Serving Veterans in April 2014, where more than 125 attendees representing more than forty universities and law

veterans access the benefits they earned at great personal sacrifice is an obligation we all share, and law school clinics are uniquely suited to address this unmet need.

### CONCLUSION

There exists a right to free counsel for indigent felony defendants and those facing appeals and misdemeanors where conviction includes possible jail time. Those who face civil legal challenges (with limited exceptions) and who cannot afford to hire an attorney have no similar right.<sup>154</sup> Despite the efforts of private legal aid organizations as early as 1876, the first federal legal services program in 1965, and the creation of the LSC in 1974,<sup>155</sup> there remains an overwhelming unmet need for civil legal services for those in poverty. The LSC's 2009 "Justice Gap" report noted that LSC programs turn away more than half of all eligible applicants, fewer than twenty percent of the civil legal needs of those with low-income are being met, and there is only one legal aid lawyer for every 6,415 people in poverty.<sup>156</sup> Fifty years after the War on Poverty began its efforts to increase legal services for the poor, there remains a dangerous and desperate unmet need for millions of people annually. Among those with unmet legal needs is a significant portion of our nation's veterans, many of them homeless or at risk of homelessness.

The LSC, the ABA, and state and local bar associations encourage private attorneys to provide at least fifty hours per year of pro bono civil legal services to those unable to afford them.<sup>157</sup> While a significant number of attorneys met the goal of Model Rule 6.1 in 2011, eleven percent of lawyers provided no pro bono services at all that year, and only one-third of those lawyers engaged in pro bono services met the rule's fifty hour aspiration.<sup>158</sup> Efforts should continue to increase the amount of pro bono services provided by our nation's more than one million attorneys, but that alone cannot make up the difference between those currently able to access civil legal aid assistance and those who cannot.

At the same time that we are failing to meet the civil legal needs of an extraordinary percentage of our population living in poverty, law schools are fac-

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schools were introduced to the Puller Clinic model and alternative pro bono models from other law clinics and law firms. Attendees were encouraged to replicate these pro bono models at their own institutions.

<sup>154</sup> POVERTY, HEALTH AND LAW, *supra* note 122, at 52–53.

<sup>155</sup> *Id.* at 54–55.

<sup>156</sup> JUSTICE GAP, *supra* note 37, at 1.

<sup>157</sup> MODEL RULES OF PROF'L CONDUCT R. 6.1 (2006), *available at* [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_6\\_1\\_voluntary\\_pro\\_bono\\_publico\\_service.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service.html).

<sup>158</sup> BUCZEK ET AL., *supra* note 102, at 34.

ing turbulent times. Recent years have seen a “dramatic drop in law school applications combined with the collapsing job market and escalating student debt . . . .”<sup>159</sup> Students are increasingly seeking experiential learning opportunities while in law school to further prepare them for practice opportunities that now involve less mentorship and on-the-job training, such as small and solo firm practice. The ABA, the LSC, and the Association of American Law Schools also encourage law schools to advance social justice and public service ideals to create a culture of pro bono service among law students before they graduate. Student participation in law school clinics is increasingly encouraged in legal education because students can learn practical skills and professionalism while exploring those skills and social justice issues with a reflective faculty member. The legal services provided by law students in the increasing number of law school clinics nationwide can help ameliorate the justice gap through direct client representation, education and outreach to the community, and training and support of pro bono and legal aid attorneys.

One successful example for addressing a portion of the justice gap that involves focusing on the unmet legal needs of our veteran population is William & Mary Law School’s Puller Clinic and its inter-professional partnerships with other higher education institutions. In providing pro bono legal and psychological services in the direct representation of veterans with disability claims, particularly when attorney’s fees are disallowed, the Puller Clinic assists hundreds of veterans and their families with the complex benefits process annually. Over a two-year period, the Puller Clinic provides approximately four hundred hours of pro bono legal and psychological services to each represented veteran having a post-traumatic stress or traumatic brain injury claim. The Puller Clinic develops comprehensive claims packages with pertinent legal and factual analysis as well as supporting medical evidence from higher education partners. These comprehensive claims packages offer the VA the opportunity to adjudicate Puller Clinic claims more quickly and efficiently, thereby saving time and money and helping to reduce the VA’s backlog of claims. The Puller Clinic further assists the VA by weeding out veteran claims that are not compensable. Engaging higher education institutions to assist in addressing the unmet legal needs of veterans taps into the expertise and energy of students and faculty while allowing them experiential learning opportunities. Such efforts can go a long way towards narrowing the justice gap for our nation’s veterans.

Although the country has made tremendous progress since the early 1900s in providing civil and criminal legal services to those unable to afford

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<sup>159</sup> Tamar Birckhead, *Clinical Legal Education and the Future of the Academy*, PRAWFSBLOG (July 11, 2013, 12:32 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2013/07/clinical-legal-education-and-the-law-school-crisis.html> (last visited May 13, 2014).



them, civil aid programs account for less than one percent of legal expenditures and lawyers contribute less than one percent of their hours to pro bono service.<sup>160</sup> Equal justice under the law should remain our primary aspiration and not just decorate our courthouse doors, but guide what happens inside them.<sup>161</sup> There remains much work to be done to reach this basic premise of our justice system, and law schools can play an essential role in achieving that goal.

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<sup>160</sup> See Rhode, *supra* note 2.

<sup>161</sup> *Id.*