

The Path to Equal Justice

A FIVE-YEAR STATUS REPORT ON ACCESS TO JUSTICE IN CALIFORNIA



A PUBLICATION OF THE CALIFORNIA COMMISSION ON ACCESS TO JUSTICE
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**“If the motto ‘and justice for all’
becomes ‘and justice for those
who can afford it,’ we threaten
the very underpinnings of our
social contract.”**

California Chief Justice

Ronald M. George

State of the Judiciary speech

2001

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This report is dedicated to the California Judiciary, a vital partner in the effort to achieve full and equal justice for all Californians. The accomplishments reflected in this report could not have been achieved without the vision and leadership of Chief Justice Ronald George, the commitment of the California Judicial Council and the Administrative Office of the Courts, and the dedication of hundreds of judicial officers and court staff from across the state.

Executive Summary: The Path to Equal Justice

A Five-Year Status Report on Access to Justice in California Published by the California Commission on Access to Justice October 2002

Five years ago, access to justice for the poor was near the bottom of California's public policy agenda. California was one of a few states that had not appropriated government funds to support civil legal services for the poor. Legal services programs helped low income clients facing critical legal needs, but they were often underfunded and understaffed. Courts were not equipped to assist those who appeared without lawyers, and some even posted signs that discouraged litigants from asking for help. Despite broad public support for legal aid programs, California was far from living up to our country's goal of "justice for all," and – worse yet – few people in power seemed concerned about that failure.

What a difference five years have made!

- **Access Commission:** The state has established a broad-based commission to lead the access to justice effort. The governor, attorney general, and legislature have joined forces with the judiciary and the State Bar as well as business, labor, and community groups in creating the California Commission on Access to Justice to plan and implement a statewide effort to ensure equal access to justice for all Californians.
- **State funding:** California has taken its first steps toward adequate funding of equal justice. The California Legislature and Governor Gray Davis established the Equal Access Fund through the Judicial Council, allocating an initial appropriation of \$10 million a year and placing California among the 40 state governments that fund legal aid. The private sector also responded with an unprecedented level of commitment. While public funding increased 40 percent (27 percent after correcting for inflation), private funding of legal services – primarily from foundations and law firms – increased more than 70 percent (55 percent after correcting for inflation).
- **Judicial leadership:** Under the leadership of the Chief Justice, the judicial system is becoming much more accessible. Chief Justice Ronald George and the Judicial Council, in many cases working with the state legislature, took a series of bold steps to increase pro bono representation and to make the courts more user-friendly for those who don't have lawyers. Those steps

“ Legal services clients are as diverse as the nation, encompassing all races, ethnic groups and ages. They include the working poor, veterans, family farmers, people with disabilities and victims of natural disasters. ... For millions of Americans, LSC-funded legal service is the only resource available to access the justice system.”

President George W. Bush
Budget Proposal for 2002

CALIFORNIA'S VISION IS AN

inclusive client-centered community that shares responsibility for fairly, compassionately and effectively meeting the essential legal needs of low income individuals and communities – no matter where they live and what language they speak – and for removing barriers to achieving self-sufficiency and meaningful access to justice.

“State Vision” adopted at the
Statewide Stakeholders Meeting,
May 31, 2002

include creating a statewide self-help Web site; providing family law facilitators in every county; partnering with legal services providers to place centers for self-help assistance in several courthouses; and launching a statewide task force on self-represented litigants to find long-term solutions.

- **Innovation and state planning:** The state is developing a more cost-effective, accessible system for delivering justice to lower-income residents. Legal aid providers and other participants in California’s justice community undertook a comprehensive state planning process, started or expanded legal advice hotlines, and are experimenting with cutting-edge computer and Internet technology to more efficiently deliver legal representation and to offer assistance in cases where representation by lawyers is not essential or is unavailable. New standards for lay advocates provide increased consumer protection. These changes benefit both low- and moderate-income Californians.

The legal needs of California’s lower-income families

Despite this great progress, low-income Californians continue to face dire circumstances. In 2000, 6.4 million Californians lived in poverty, including nearly one in five children, and California’s poverty rate remained higher than the national average. The economic boom of the 1990s did little to help the state’s poorest residents. In fact, the gap between rich and poor has only worsened: During the decade of the ’90s, the number of people in poverty – and the number of potential legal aid clients – jumped 30 percent. Changes in welfare rules have not always helped either. While many poor people have been placed in jobs by new welfare-to-work programs, those jobs are usually low-paying. Twenty-six percent of California workers earn poverty-level wages. The result is a substantial increase in the number of working poor who remain impoverished even as they work part- or full-time jobs.

Now, faced with an uncertain economy, high unemployment, and a shrinking safety net, California’s most vulnerable residents need legal assistance more than ever – to secure safe, affordable housing; to overcome barriers to employment; to obtain health care and an adequate education; or to stop domestic violence and elder abuse.

Reducing pressure on state services

Legal advocacy can help families escape domestic violence, avoid homelessness, obtain needed mental health care, access basic support services, and resolve a myriad of other problems that threaten the well-being of families and their children. Legal advocacy can play a key role in helping to reduce or avoid poverty-related family dysfunction and child maltreatment, and in helping keep special needs children with their families to reduce reliance on public institutions.

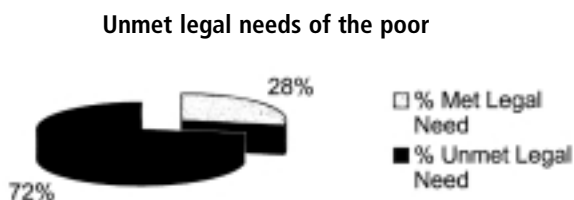
Law enforcement personnel and district attorneys have been working closely with legal aid programs across the state because of the potential for reducing domestic violence and other crimes. Thus, legal services programs are having an impact far beyond what is immediately evident, reducing the need for many state services and increasing public trust and confidence in the court system and other branches of government.

Bridging the access gap

Government, private and other sources of funding provided nearly \$149 million for California legal services programs in 2000, up from approximately \$101 million in 1996 (2000 is the most recent year for which complete data is available). As a result, the access gap – the difference between the funding needed and the total resources available for legal services – has begun to shrink: In 1996, the access gap was \$440 million; in 2000, \$384 million. Yet, even with the increased funding and the diminishing access gap, just 28 percent of the legal needs of the state’s poor and lower-income residents are being addressed (see Appendix B for detail on how the access gap is calculated). Some of the new funding of the past five years simply compensated for a loss in federal funding and state trust fund support sustained in 1995. And now, the recent economic downturn and the impact of September 11 jeopardize some of these recent gains.

In addition, California continues to lag far behind other industrial states in its funding of legal services for the poor. Its record is also dismal in comparison to other countries whose

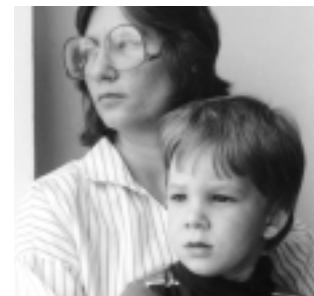
economies are similar in size (or even smaller) than that of California. Clearly, California can – and must – do better for its citizens.



Next steps

In the year 2002, the fifth anniversary of the creation of the Access Commission, the state faces new and increasing challenges in the effort to provide equal access to justice. Among the remaining tasks:

- **Additional funding needed:** During the next five years, the Equal Access Fund must be dramatically enhanced, and total resources for legal services for California’s poor should be increased so that at least 50 percent of the legal needs of the poor are being met. Public and private sector leaders must be actively involved to ensure adequate government funding for legal services is available to reach this important five-year goal.
- **Role of legal profession:** Financial and pro bono contributions from attorneys and law firms must increase. While achieving accessible justice is a societal responsibility, and the goal of increasing state funding reflects



PROTECTING A CHILD’S RIGHTS

A car accident left an 8-year-old boy with severe brain damage. His school repeatedly failed to provide learning services and support as required by federal and state law. Working with the boy and his mother, legal aid attorneys obtained bus transportation, occupational therapy and a classroom aide to enable the boy to stay in school.

CARING FOR SENIORS' HEALTH

An elderly woman was hospitalized with injuries sustained in a fall. She was then discharged to a skilled nursing facility for her recovery. After only a few days, her HMO gave her a discharge notice. She and her doctor agreed she still needed time to fully recover before returning to her independent lifestyle. The local senior law center filed an appeal with the HMO, gaining three more weeks of care and treatment for the woman.

that assumption, the legal profession must also fulfill its responsibility for playing a lead role in the effort to improve the justice system.

- **Self-help:** Assistance for unrepresented litigants must continue to expand and be improved and access to lawyers must be available when necessary to ensure equal justice. Sophisticated systems for sorting cases must be developed to distinguish between those that require lawyers and those where unrepresented people have an equal chance if given some assistance.
- **Language access:** Litigants with limited English proficiency must receive assistance in order to fully understand and participate in the judicial process. In many areas of the state, a third or more of all litigants may lack fluency in English. Particularly when they are self-represented, they cannot hope for justice without the assistance of trained interpreters and other services that can help them understand and present their cases, and courts must have the ability to provide adequate certified interpreters.
- **Urban/rural equity:** A statewide plan must be completed and implemented to eliminate disparities in legal services resources between urban and rural areas. In part because of California's heavy dependence on local private funding, legal services are unequally distributed across the state. While no area has adequate funding, many rural areas remain grossly underfunded.
- **Addressing moderate-income level needs:** Innovative programs for delivering lower-cost legal services to moderate-income residents must be developed. California's high cost of living means families earning relatively moderate incomes still cannot afford adequate legal representation when the need arises. Prepaid legal service plans, limited-scope representation and other creative solutions must be explored, evaluated and implemented or expanded to ease the strain on moderate-income households.

This executive summary only highlights some of the key findings and recommendations detailed in this important five-year status report on access to justice in California. We urge readers to continue reading to learn more about the legal needs of low-income Californians, the progress California has made during the past five years toward achieving equal access to justice, and what must still be done to fulfill the oft-repeated promise of justice for all.

Many of the building blocks of a truly accessible justice system are now in place, and the public overwhelmingly supports the goal of equal justice. We urge you to join us as we continue to work toward this critical – and achievable – goal.

I. Overview of the 1996 Report “And Justice For All”

In 1996, a task force created by the State Bar of California issued a comprehensive report examining the relationship between poverty and justice in California. The report’s findings were alarming: Lower-income Californians faced a staggering number of civil legal problems, many of which involved matters of home, health and survival. However, the state’s efforts to address these problems were wholly inadequate. California lagged far behind most comparable industrial states and even farther behind countries with similarly sized economies in its financial commitment to equal justice. As a result, a large percentage of California’s most vulnerable residents could not access the legal assistance they needed and suffered economic, emotional and physical hardships as a result. Our great nation’s promise of equal justice under the law seemed to apply only to those who could afford legal representation.

The report, “And Justice For All: Fulfilling the Promise of Access to Civil Justice in California,” found that nearly six million Californians were living at or below 125 percent of the federal poverty level in 1993. For a family of four, that meant a household income of \$19,500 or less. And, studies showed poor people had significant legal needs. The American Bar Association’s “Comprehensive Legal Needs Study,” published in 1994, found poor people experience an average of one legal problem per household each year. For example:

- Battered women need legal assistance to separate themselves from abusive partners.
- Children with disabilities and special education requirements need help to ensure schools will provide proper care and accommodations.
- Veterans need assistance to access services and resources guaranteed to them.
- Elderly people need legal assistance to escape the abuse or negligence of a caregiver.

Other legal problems involve health care, housing, government benefits, employment, civil rights, education and consumer rights.

In 1996, legal aid organizations throughout the state offered legal assistance to low-income people and private lawyers were estimated to be providing nearly one million

“Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion.”

U.S. Supreme Court Justice
Wiley Rutledge,
speaking to the
American Bar Association,
Sept. 29, 1941

hours of pro bono legal service each year; however, the demand for service far outweighed these limited resources. The 1996 report found that, as a result, approximately 75 percent of the legal needs of poor people were not being addressed. And the problem was not limited to California's poorest residents. Studies showed that low- to moderate-income households – those earning between \$27,000 and \$45,000 – also averaged one new or ongoing legal need per year, and that fewer than 40 percent of these families were able to pursue legal action.

To increase funding and support for legal aid for lower-income Californians and to improve legal services delivery, "And Justice for All" made several recommendations. Chief among them was that the state government recognize its obligation to ensure all Californians equal access to justice and solidify a financial commitment to providing legal services to the poor. Other important recommendations were:

- create a broad-based, statewide commission to provide leadership and oversee efforts to increase funding and improve the delivery of legal services;
- develop programs to expand delivery of a wider range of legal services to provide assistance ranging from full legal representation to guidance for self-representation;
- take steps to make the courts more user-friendly for unrepresented litigants; and
- develop innovative legal services for near-poor and moderate-income Californians who do not meet the federal poverty threshold but still struggle to afford adequate legal services when the need arises.

Five years after "And Justice for All" issued its call to action, many of these recommendations still require significant work. However, the state of California has made a great deal of progress toward the goal of providing adequate legal aid to low-income residents. The following report examines the movement toward access to justice in California, including the many accomplishments of the past five years and the many challenges that remain.

II.

The Changing Needs of California's Lower-Income Families

IN 2000, 6.4 MILLION CALIFORNIANS LIVED IN POVERTY, and California's poverty rate remained higher than the national average. The economic boom of the 1990s did little to help the state's poorest residents. In fact, the gap between the wealthy and poor has only worsened: During the decade of the '90s, the number of people in poverty jumped 30 percent. Changes in welfare rules have not always helped either. While many poor people have been placed in jobs by new welfare-to-work programs, those jobs are usually low-paying. The result is a substantial increase in the number of working poor who remain impoverished even while holding part- or full-time jobs. Now, faced with an uncertain economy, high unemployment, and a shrinking safety net, California's most vulnerable residents need legal assistance more than ever.

During the past five years, the legal needs of low-income people have grown in both scope and complexity, highlighting the importance of having lawyers to address those needs. The late 1990s saw an enormous boom in the California economy. Some benefited and escaped poverty, but the lives of most poor people did not improve. In fact, the income gap widened.

The nature of poverty also changed: Since 1996, the number of people receiving welfare has dropped, and most poor families now have at least one person who is working. But for many, employment has not necessarily been an escape from poverty. An increasing number of low-income Californians work at low-paying jobs with no health insurance, and they lack childcare and adequate transportation resources. A disproportionate slice of their income goes to housing that, because of short supply, is often both costly and substandard. These difficult circumstances are now compounded by new problems associated with an uncertain economy. The recent recession has boosted unemployment and exacerbated problems in housing, transportation, health care and education. In addition, federal and state budget cuts are significantly affecting programs that protect the poor. The lingering effects of the recession will plague poor and lower-income families for years to come.

CALIFORNIA'S PORTION OF NATIONAL POVERTY GROWTH (1990 - 2000)

Increase in number of people in poverty in the U.S.: **1,955,826**

Increase in number of people in poverty in California: **1,078,545**

Increase in number of people in poverty in Los Angeles County: **478,627**

Percentage of total poverty increase in the entire country that occurred solely in Los Angeles County: **24.5 percent**

– U.S. Census Bureau

The state's poorest working families now bring home 22 percent less in real dollars than they did in 1969.

As the characteristics of poverty have changed and the state faces challenging economic times, legal services are increasingly needed to protect those who are most vulnerable. Legal aid advocates help enforce the legal rights of the poor by removing barriers to employment, housing, health care and transportation while monitoring how state and federal policies affect those who lack the resources to assert their own rights and move toward self-sufficiency. As low-income families confront deepening economic hardship, the need for trained legal professionals dedicated to the needs of California's low-income families is critical.

The poor got poorer

Some 6.4 million Californians are poor enough to be eligible for free legal services¹ – more than the total population of the state of Washington. Although the poverty rate in California has declined since 1996, it remained higher than that of the rest of the nation throughout the 1990s. According to the Census Bureau, the number of people living in poverty in California jumped 30 percent during the 1990s – increasing significantly the number of people turning to the legal aid system for help. A recent U.S. Census study for 2001 reported that the poverty rate in California declined slightly more than the national average during the prior year, but the current poverty rate in California, 12.6 percent, is still higher than the national average of 11.5 percent. Indeed, during the 1990s, more than half of the increase in poverty in the United States occurred in California, and one-fourth of the nation's increase occurred in Los Angeles County alone.²

Annual income of a family of four living at federal poverty rate		
	1996	2000
Poverty	\$15,600	\$17,050
125%*	\$19,500	\$21,313
200%	\$31,200	\$34,100

*this level and below eligible for free legal services

The economic growth of the late 1990s did not lift the lot of the poorest among us; instead, it widened the gap. In early 2000, when high-tech stocks were soaring, the widening gap between rich and poor in California was noted with alarm. The *Los Angeles Times* reported in a front-page story that “the income gap between rich and poor was wider than at almost any time in history,” and that the state's poorest working families “now bring home 22 percent less in real dollars than they did in 1969.”³ The reasons the state's prosperity had not resulted in higher incomes across the board were twofold, according to the article: “High-tech doesn't create a vast array of well-paying factory jobs, and it puts a premium on an educated work force. And California, more than other states, has a high concentration of uneducated immigrant workers.”⁴

A report by the Federal Reserve Bank of San Francisco later that year confirmed this conclusion. “In the rest of the U.S., the interesting thing about the 1990s was that income inequality leveled off. But in California, it continued to grow rapidly,” said Mary Daly, a senior economist with the Federal Reserve Bank and the principal author of the study.⁵ California, she reported, now has “larger numbers of high-income and low-income families, and a narrower middle class than in other states.”⁶

Implementation of the new 60-month welfare time limits will begin to affect low-income Californians in January 2003. The change is likely to exacerbate income inequality in California, placing further demands on legal services programs.

Poverty disproportionately affects women and the most vulnerable members of society: the elderly, the disabled, immigrants and children. A recent national report published by the American Association of Retired Persons, based in part on research published in the *Journal of Gerontology*, found that half of all Americans over age 60, regardless of their current economic circumstances, will see their income drop below 125 percent of the federal poverty level at some point in their later lives.⁷ Poverty is of similar concern to people with disabilities who, as a group, had an unemployment rate exceeding 70 percent in 1999.⁸

The situation for California's poor children is particularly bleak, according to a report by the California Budget Project: Although child poverty has decreased since the mid-1990s, by the end of the last decade more than 19.5 percent of children in California were poor compared to about 17.1 percent in the rest of the nation.⁹

Lower- and moderate-income families also need assistance

Families living just above the poverty line are not much better off. In 2000, approximately 7.5 million people had incomes higher than 125 percent of the federal poverty level but still made less than the state's median income.¹⁰ The state's high cost of living has kept many basic needs out of reach, even for the middle class. The widening gap between rich and poor left these lower-income families at an economic standstill – or worse off than they were 10 years earlier:

- The median household income in California in 1999 was still below the level of the previous decade.¹¹
- Between 1989 and 2000, hourly wages fell for workers at the lowest 20th percentile as well as the 50th percentile, adjusting for inflation.¹²
- Only 31 percent of California households could afford to purchase a median-priced home in 2000, down from 36 percent in 1999.¹³
- In 2000, more than 1.8 million of California's working families had an income below 200 percent of the federal poverty line – about \$35,000 for a family of four.¹⁴

Many individuals and families in this lower-income group do not qualify for legal aid or other legal assistance that is available to those just above the poverty line. Most would face severe economic hardship if confronted with a legal problem.

CHILDREN IN POVERTY

STATISTICS (2000)

Number of California children living in poverty: **2.12 million**

Percentage of California children living in poverty: **18.6 percent**

Percentage of children nationwide living in poverty: **15.8 percent**

Portion of poor children in the U.S. who live in California: **one in six**

Portion 20 years ago: **one in 10**

Percent of national increase in children living in poverty since the late 1970s for which California accounts: **100 percent**

Portion of poor children in California who live in families with at least one working parent: **two in three**

– “The Changing Face of Child Poverty in California,” National Center for Children in Poverty

August 2000

**CHANGES IN HOURLY WAGES
(ADJUSTED FOR INFLATION)**

Percentage increase in the hourly wages of a typical California worker between 1989 and 2001: **1.4 percent**

Percentage increase in the hourly wages of the typical U.S. worker between 1989 and 2000: **4.9 percent**

Percentage change in the hourly wages of low-wage workers (those at the 20th percentile), between 1989 and 2001: **+0.4 percent**

Percentage change in the hourly wages of low-wage workers between 1979 and 2001: **-4.4 percent**

–“The State of Working California,”
California Budget Project
September 2002

Most poor people are working but still face critical legal issues

The rise of poverty in California has meant more and more families have been touched by the sweeping effects of the 1996 welfare reform legislation, the Personal Responsibility and Work Opportunity Reconciliation Act. The core of welfare reform is the Temporary Assistance for Needy Families (TANF) program, dubbed CalWORKs in California.

The changes enacted in TANF were sweeping. Among the most important:

- **Work requirements:** Entitlement to benefits was abolished; in most cases benefits are conditioned on work activities.
- **Devolution:** States were given primary responsibility for and broad discretion in designing their cash assistance programs. In California, much of this authority has devolved further to the counties.
- **Limited funding:** Open-ended federal funding was replaced by fixed block grants to the states.
- **Penalties:** States are required to place an increasing number of people each year in work activities and face fiscal sanctions for failure to meet required rates.
- **Time limits:** States are not allowed to use federal TANF funding to pay the benefits of families who have been on welfare for more than five years.

The law encouraged states to move people into jobs regardless of quality or future prospects. Because a state’s federal funding stayed constant whether the caseload went up or down, the block grant structure created an enormous incentive for case reduction.

And, indeed, states reduced their caseloads. Due in part to the legislation and a favorable economy, the number of families on welfare decreased nationwide by 53 percent from 1996 to 1999.¹⁵ However, during that same period, the number of families living in poverty decreased by just 13.9 percent.¹⁶ Roughly 60 percent of those leaving the welfare roles are working, but their earnings are often as low as \$7 an hour¹⁷ – the equivalent of \$14,560 annually for someone working 40 hours per week. Many work seasonal or part-time jobs with fewer hours per year – and even smaller annual incomes. (In the months following September 11, 2001, however, the number of welfare caseloads rose in 40 of 50 states.¹⁸)

In California, the decrease in the number of families receiving welfare in the late 1990s mirrors the national trend, with the number of families on welfare declining much faster than the poverty rate. In 1995, half of all Californians living in poverty received welfare; in 2000, just 34 percent did.¹⁹ Between March 1995 and February 2001, the number of people receiving welfare declined 44 percent, from 932,345 to 521,916.²⁰ But from 1995 to 2000, the poverty rate in California fell much less, from 16.7 percent to 12.9 percent.²¹

Far fewer poor people receive welfare now, but many of those who left welfare to work are still poor. And, in California, two-thirds of families living in poverty have a worker employed at least part time; 41 percent have a worker employed more than 1,500 hours a year.²² This rate is significantly higher than the rest of the nation.²³

Just as the reduction in the welfare caseload has not reduced poverty, neither has it diminished the legal problems of low-income families. Indeed, legal issues have become more numerous and complex. Parents who found only low-paying jobs without health benefits did not improve the well-being of their children. Women who entered the workforce in low-skilled positions with no opportunity to acquire marketable skills lack realistic long-term options. Obstacles to employment such as lack of child care and transportation, domestic violence, and job discrimination raise a host of new legal issues, both for individual clients and policy implementation. The entire system is replete with new rules and a maze of entities – welfare departments, courts, schools, employers, child care facilities, transportation authorities, workforce investment staff – that are supposed to coordinate their efforts. In response to these issues, legal aid offices have risen to the challenge, expanding their practice areas and methods of operation to help move families to self-sufficiency.

How legal aid advocates help

Until recently, TANF has operated during an extraordinary expansion in the economy. With a severe downturn and a sharp spike in unemployment, the challenge of moving people from welfare to work becomes immensely more difficult. Many predict that the existing social safety net might not be able to cushion the blow of the recent recession to the many new unemployed.²⁴ Indeed, the existing social safety net continues to sag under the weight of persistent problems that are exacerbated by an uncertain economy.

Through individual representation, legal services advocates have actively monitored the broad impact on the poor of legislative and economic changes. Advocates have worked with state and local governments to ensure that incentives to work (and sanctions for lack of success) are effective and fair and the supports for work are adequate to help move families out of poverty. Legal services attorneys also have sought to remove barriers to employment for their clients. For example, a lack of medical care, transportation, education, housing, and child care are all factors that make it difficult for a mother of young children to maintain regular employment. Working with local governments and community organizations, legal services advocates up and down the state have tried to make the system work. Advocates also have worked with mental health patients to ensure they receive the assistance they need and are able to access the services available. These are areas of practice with new statutes and regulations, new agencies and stakeholders, which require the expertise of trained and dedicated legal aid professionals.

FAIR HOUSING

Substandard housing conditions caused illness for a family. The landlord refused to fix the roof, which leaked for years; mold growing inside the house caused asthma and other respiratory problems for the children. Under attorney supervision at a legal aid office, law students helped the family sue the landlord. The case settled for \$11,000, and the family moved to a new, healthier home.



BREAKING A VIOLENT CYCLE

The victim of domestic violence, a mother needed help enforcing spousal and child support orders. Although she had been married 19 years and had obtained a dissolution, the woman's ex-husband claimed they were never married. Legal services helped her assemble the necessary papers, and she successfully represented herself in court, where both orders were upheld.

Other core issues addressed by legal aid

Legal aid advocates also work to address a range of problems that further exacerbate the economic hardships faced by the poor. Following are some of the core issues addressed:

■ **Education**

Without educational opportunities, families will not escape poverty. As studies documenting the persistence of income inequality show, lack of education is a key barrier to advancing in an increasingly information-based economy. Legal aid organizations have offered information and advice to policy makers, worked with local school districts and community colleges, and assisted individual clients in accessing the services the law provides. Because more than one of every four (26 percent) California workers earned poverty level wages in 2000,²⁵ efforts to break the cycle of poverty through education and training are a vital new area of advocacy for legal services programs.

■ **Housing**

Low wages and housing problems also are intertwined. A severe shortage of affordable housing in California has compelled low-income families to spend a disproportionate percentage of their income on housing. Census Bureau figures for 2000 show 47 percent of California renters devoted 30 percent or more of their incomes to rent.²⁶ Among the 50 states, that was second only to Louisiana and significantly higher than the national average.²⁷ Six of the 10 least affordable metropolitan areas are in California.²⁸

California has a particularly large discrepancy between the number of affordable housing units and the number of low-income people in need of a decent place to live. In 2001, the fair market rent for a two-bedroom apartment in California was \$957 a month.²⁹ A minimum-wage worker (earning \$6.25 an hour in 2001) could afford monthly rent of no more than \$325; a disabled recipient of Supplemental Security Income could afford monthly rent of no more than \$208.³⁰ To afford a two-bedroom unit at the fair market rent, a worker earning the minimum wage would have had to work 118 hours a week.³¹ In Los Angeles, in 2002, average rents for a two-bedroom apartment at the low end of the rental market climbed to \$1,088, requiring an hourly wage of \$20.92, or an annual income of \$43,500.³² According to a recent report in the *Los Angeles Times*, the problem is exacerbated by the fact that federal subsidies for low-income tenants are expiring – 10,000 units were lost in Los Angeles alone in the past two

years – and many more will expire between now and 2006. This will put even more pressure on low-income renters who may be forced into homelessness.³³

Housing units that are more affordable often do not meet health and safety codes; blighted buildings drag down communities and stifle business development. Because workers often cannot find affordable, decent housing in areas where jobs are available, the housing shortage also hampers business efforts to recruit workers and the state's efforts to attract businesses. To address these problems, legal services attorneys join forces with state and local housing agencies and health departments to enforce building codes. They also assist individuals and families in fighting unfair evictions and work with community organizations to encourage development of affordable housing.

■ Domestic violence

Grimmer economic times often put more women and children at risk of domestic abuse. Domestic violence-related calls for assistance in California increased from 186,406 in 1999 to 196,880 in 2000.³⁴ Legal services advocates around the state report an increasing number of domestic violence cases, particularly in the Central Valley. The County of Fresno leads the state in the number of felony domestic violence cases filed with the District Attorney's Office. Seventy percent of domestic violence calls in Fresno county involved guns;³⁵ 69 percent of cases in Tulare county involved weapons, according to a report of the California State Attorney General's office.³⁶ In the first eight months of 2002, Fresno experienced three times the number of domestic violence killings than had occurred the entire previous year. Domestic violence accounted for 26 percent of all homicides in Fresno in 2002; the national average is approximately 10 percent.³⁷ Fortunately, federal funding for domestic violence legal assistance has enabled legal services to expand representation of domestic violence victims. Legal services programs also are working closely with law enforcement, social service agencies and the court system in a coordinated approach to seeking justice for victims of domestic violence.

■ Legal needs of immigrants

The 2000 census confirmed that the percentage of first- and second-generation immigrant families in California is on the rise. In addition to having to deal with immigrant status issues, these families have legal needs related to housing, employment, domestic violence and other issues, just as others do; however, immigrants also are hampered by

"These programs ... have a positive influence on the communities that we serve, decreasing crimes of violence and substance abuse. I believe that legal services for the poor is essential to the safety and well-being of our communities."

– Leroy D. Baca, Sheriff,
Los Angeles

INADEQUATE RESOURCES

Ratio of poor people to legal aid attorneys in California:
10,000 to 1

language and cultural differences. They generally cannot be served by federally funded legal aid offices because of Legal Services Corporation restrictions. A network of legal service providers is working to fill the need, but the need far outweighs the available resources.

■ Income maintenance and employment issues

As noted, the advent of welfare reform has transformed most legal aid clients into the working poor and has resulted in more complex legal issues. New policies and rules invariably result in some bureaucratic errors, often requiring intervention by legal aid advocates on behalf of individual clients. In addition, because legal aid lawyers and paralegals have the expertise and experience to know how the new system actually impacts clients, they are well positioned to assist with policy reform and even to train welfare agency workers on what the law requires. Moreover, legal services programs' involvement with Workforce Investment Boards, transactional work for non-profit organizations that are creating jobs, and enforcement of wage and hour laws are examples of newer practice areas in employment law that have assumed greater importance.

There are many other ways that legal services programs help low-income clients: assisting them with access to health care and HMO issues, adoptions and grandparent guardianships, bankruptcy and consumer debt, home equity fraud and elder abuse, and veterans' issues. Unfortunately, there is not room in this report for an exhaustive analysis of each of these areas because they are so extensive and diverse – as diverse as the people who turn to legal aid for help.

Litigants of modest means

Many legal services programs offer services for those who are above 125 percent of the poverty level but still unable to afford an attorney. These services are offered particularly through programs for seniors and domestic violence victims, law school clinics and programs relying on pro bono attorneys. While funding sources for most legal aid agencies require that services be limited to those who are poor, some funding sources allow legal assistance for families earning two to three times the federal poverty level – levels considered “lower-income” by the U.S. Department of Housing and Urban Development (see chart next page). As a result, a wider range of people are eligible for some of these services. Self-help clinics, community education programs and instructional materials developed by legal services offices also are invaluable sources of law-related information. It is also important to note that the improvements in agency procedures and the systemic change that is implemented as a result of legal aid advocacy also improves the system for all, regardless of income. Simplified court procedures, for

example, resulting from the collaborative efforts of legal services programs and the judiciary will improve access to justice for low- and moderate-income families.

Court-based self-help clinics and family law facilitator offices that exist in every county also are important sources of information and support for those who are ineligible for most legal aid programs.

Lawyer Referral and Information Services (LRIS), offered primarily through local bar associations, provide a critical link, and many are starting to offer "limited-scope legal assistance" panels composed of attorneys willing to provide some coaching and advice, or to make a court appearance, without taking on full representation of the client.

Despite these services, working families of modest means often have little access to the legal system. As is reflected in Recommendation 6 of Chapter Five in this report (see page 42), innovative methods of low-cost delivery must continue to be developed and expanded to increase the help provided to those of modest means facing critical legal needs.

Low-income eligibility levels for a family of three (U.S. Dept. of Health and Human Services standards)	
	2002
Poverty	\$15,020
125%*	\$18,775
"Very low-income"	\$24,800
"Low-income"	\$39,650

*this level and below eligible for free legal services

The Aftermath of September 11

The events of September 11, 2001, and their aftermath have dealt a deep blow to working low-income families. In March 2002, California's unemployment rate reached 6.5 percent, the highest level in five years.³⁸ The downturn particularly hurt the Central Valley, which has some of the highest poverty rates in the state. Three of the four California counties with the highest poverty rates are from the San Joaquin Valley, led by Tulare County at 23.9 percent.³⁹ Officials predicted that Los Angeles County alone would lose 41,000 tourism related jobs, and some 40 percent of the county's unionized hotel workers – 3,500 people – lost work or saw their hours cut.⁴⁰ Statewide, the tourism sector has been hard hit.⁴¹ These problems are not likely to recede any time soon. The Economic Policy Institute predicts that unemployment will continue to rise through 2003: "Long after the economy begins to grow again, and even after unemployment stops climbing, it may be years before the jobless rate returns to the 4 percent level enjoyed at the end of 2000, and years more before families see their incomes return to pre-recession levels."⁴²

Clearly, higher unemployment will exacerbate already serious problems. Evictions will multiply, and with greater demand for housing, property owners will have fewer incentives to repair slum dwellings. Homelessness and its attendant problems will increase. As

low-income families struggle to stay afloat, educational and health needs will go unaddressed. Increased stress within families will lead to greater incidents of domestic violence.

For the newly unemployed, the difficult loss of a job is often accompanied by a host of legal issues. To the extent the newly unemployed are former welfare recipients who recently joined the workforce, legal services advocates will be needed to assist people in determining eligibility for unemployment insurance, continuation of work supports, and application of welfare time limits. And should federal and state officials seek to assist those hardest hit by the economic slump, legal aid lawyers will join with them to help ensure smooth functioning and to advocate improvements on behalf of low-income communities.

In conclusion

Legal aid lawyers and paralegals have always been a voice for the poor, offering access to a bewildering and increasingly complex legal system. In the past five years, particularly in light of the most recent national and economic crises, the need for this assistance has only grown. The nature of poverty and the structure of government assistance programs for low-income people have been radically altered, and economic uncertainty has brought new concerns about housing, employment, health and education for lower- and moderate-income families.

As unemployment pushes more people into poverty with a diminished safety net beneath them, legal services advocates must assist families in accessing the resources and remedies they need to survive. The recommendations for ensuring full and equal access to justice that were articulated in “And Justice for All” five years ago carry even greater urgency today.

III.

Five Years of Progress

TO ASSIST OUR NEEDIEST RESIDENTS, California took significant steps during the late 1990s toward ensuring equal access to justice. The state committed \$10 million a year to legal aid, which helped compensate for a significant drop in federal funding and interest on lawyers' trust accounts (IOLTA). In addition, Chief Justice Ronald George made equal access a top priority, and a growing community of equal justice advocates worked together with the newly created Access to Justice Commission to ensure that what little funding is available is used in the most efficient way possible. Their accomplishments include:

- increasing resources for legal services,
- increasing access to the courts, including self-help services in every county,
- increasing pro bono efforts among attorneys,
- addressing language barriers for litigants with limited English proficiency,
- maximizing use of technology, and
- improving the delivery of legal services statewide.

While much remains to be done, the achievements of these past five years demonstrate that the goal of equal access to justice is an achievable goal, and one that is shared by the public as well as key leaders throughout the state.

A growing and thriving state justice community has emerged in California under the leadership of the Access to Justice Commission, the state judiciary, and the state's strong network of legal services providers. This broad-based community involves civic leaders and representatives from a cross-section of businesses, many of whom have not historically taken a role in access to justice issues. Representation from each of these groups on the Legal Services Coordinating Committee ensures institutional accountability by coordinating ongoing planning of justice programs and ensuring projects are implemented. The Coordinating Committee holds an annual stakeholders meeting that helps set annual priorities and identifies gaps in the delivery system. First we identify the participants in the state justice community and, later in this chapter, describe the accomplishments made possible by this unprecedented collaboration.

The Chief Justice and the Judicial Council

The California judicial system has changed dramatically since May of 1996, when Chief Justice Ronald George began an unprecedented effort to make the state court system more accessible, efficient, and user-friendly. In addition to the monumental achievement of the unification of the Municipal and Superior Courts and the shift to state funding of the trial court system, the Chief Justice and the Judicial Council have worked hard to remove economic barriers to justice through a variety of initiatives, including innovative court programs that help litigants who cannot afford counsel. Today, several pilot self-help and family-law information centers have been established throughout the state, and family law facilitators assist unrepresented litigants in every county. (These achievements are described in detail later in this chapter.)

The California Commission on Access to Justice

Launched in 1997 by the State Bar, the Access to Justice Commission is composed of members appointed by the Governor, the Attorney General, President Pro Tem of the Senate, Speaker of the Assembly, the Chief Justice, the State Bar, and statewide business, labor, religious, and civic organizations. The commission's goal is to coordinate and advance efforts to ensure equal access to civil justice. During its first five years, the commission has made substantial inroads in several priority areas, including: securing \$10 million in annual state funding for legal services programs beginning in 1999; facilitating bench-bar collaboration; serving as a resource for the judiciary, state lawmakers and other civic leaders on access issues; utilizing new technologies to improve legal services; and addressing ways to eliminate language barriers in the judicial system.

State and local bar associations

Improving access to justice always has been one of the State Bar's top priorities. In addition to its role in launching key statewide organizations – the Access to Justice Commission and the Legal Aid Association of California (LAAC) – the State Bar's Office of Legal Services, Access and Fairness and its Standing Committee on the Delivery of Legal Services are engaged in promoting and supporting pro bono, providing training on poverty law issues, and developing community education materials. The State Bar's Legal Services Trust Fund Program (LSTFP) funds over 100 local and statewide legal services organizations. Despite a dues crisis that nearly shut down the State Bar for two years, the bar has reemerged as a central player in California's justice community. Local bar associations have also been important partners in the access to justice effort, through staunch support of their local legal aid and pro bono programs and lawyer referral services and their valuable work on issues of statewide importance to the administration of justice.

Coordinated legal services community

The efforts of the emerging justice community would be futile without California's strong network of legal aid providers and support centers engaged in the delivery of critical legal

services. In spite of inadequate resources and in the face of overwhelming need, legal services programs have evolved, successfully maximizing limited resources through new partnerships with courts, community-based organizations, and government offices. The past five years have seen great progress toward the ultimate goal: a comprehensive integrated web of client-centered legal services for the low-income community.

- **Legal Aid Association of California (LAAC).** As a membership organization of legal aid programs, LAAC serves as a unified voice for the California legal services community and offers a forum for providers and clients to discuss challenging issues and to develop, coordinate and implement strategies for a coordinated statewide legal aid delivery system. It also provides membership services such as advocate training, recognition awards, and fellowship grants.
- **Legal aid providers and support centers.** The more than 100 local legal aid providers and statewide support centers funded by the Legal Services Trust Fund Program (LSTFP) are the primary entities working to meet the legal needs of the poor in California. They help battered spouses seeking freedom from violence; families trying to secure benefits for disabled children; elderly victims of home equity fraud; grandparents trying to become guardians for grandchildren; and homeless veterans seeking job training and health benefits they qualify for but do not receive.

Legal services programs and pro bono organizations work with diverse partners to develop expansive new strategies to assist their low-income clients. In addition to traditional one-on-one client representation and clinics, they also offer brief advice through hotlines, engage in targeted community outreach that is linguistically and culturally sensitive, post legal information on Web sites, reach remote communities using mobile vans, and use cutting-edge technology to help advocates be as efficient and effective as possible.

Achievements of the past five years

The state judiciary, Access to Justice Commission, State Bar, and legal services providers have collaborated to achieve key priorities in the access to justice effort.

Increasing resources for legal services

- **Equal Access Fund:** In 1998, all three branches of government collaborated to establish the Equal Access Fund, which was originally proposed by the Access to Justice Commission. The fund – appropriated to the Judicial Council and disbursed through the State Bar’s Legal Services Trust Fund Program – has provided \$10 million each year for



ENSURING HOME HEALTH

An elderly retired veteran and his wife suffered severe health problems. In-Home Supportive Services (IHSS) enabled their son to live with them and take care of meals, bathing and travel to medical appointments. When the county considered cutting their IHSS benefits, the couple faced possible institutionalization. Attorneys at a community health advocacy project represented the elderly couple at a nine-hour administrative hearing, where the hearing officer reversed the county’s decision and reinstated the couple’s IHSS coverage.

PROTECTING HOMES

A 94-unit low-income housing development was nearly uninhabitable because of years of neglect. With help from legal aid attorneys, residents were able to postpone a HUD foreclosure, find a nonprofit developer to rehabilitate the buildings, and preserve the living units for very low-income persons for the next 55 years.

more than 100 local legal aid programs as well as 15 court-based self-help centers operated by legal services programs in partnership with the courts. The fund could not have been established without the partnership of legal aid programs, the bench, the bar, and business and civic communities. Both the governor and the legislature attempted to provide a 50 percent increase in funding for fiscal year 2001-2002, but the economic downturn made that impossible. Nonetheless, Gov. Gray Davis voiced strong support for this “worthy program” and pledged to increase funding when the economy improves.

- **Other funding for legal services:** To supplement state funding for legal services, local programs continue to aggressively seek other funding. As discussed in Part IV of this report, funding from private sources has risen from \$27.8 million in 1996 to \$47.4 million in 2000. In addition to increased individual donor contributions, a significant portion of these funds comes from foundation grants, including more than \$13 million (cumulatively) in large collaborative healthcare advocacy grants. Legal services agencies also have forged new partnerships to maximize resources, including programs with the U.S. Department of Justice for domestic violence prevention and with the District Attorney’s office to expedite drivers’ license approval, which is critical for clients to maintain employment.

In 2001, a loan repayment bill for public interest attorneys created an endowment account for appropriated or donated funds; the bill awaits future funding. A legislatively established statewide task force is recommending ways the legislature can enhance services for seniors.

- **Public Outreach:** The Access Commission, the Public Interest Clearinghouse (PIC) and Western Center on Law and Poverty have begun a project to educate the public about the need for legal services. Recent public opinion research reveals that despite overwhelming public support for the concept of government-funded civil legal services, few people are aware that civil legal services actually exist, let alone that those services are underfunded. To overcome the anonymity of civil legal aid and develop the essential base of support for adequate funding for civil legal aid, the Commission and PIC have begun plans for a statewide mission-focused communications plan to expand public support for legal services. In addition to policymakers and other public and private sector leaders, the effort also will target the larger foundation community on the importance of funding legal services programs, joining an existing collaboration of foundations and legal services programs educating the philanthropic world.

Increasing access to the courts

Recent changes in the California state court system reflect the Judicial Council's commitment to making the state's court system more accessible and user-friendly. Statewide initiatives include efforts to simplify forms and procedures, increase the level of information available to self-represented litigants, and provide increased funding for alternative dispute resolution. The Judicial Council, with the involvement of the Access Commission, is developing methods for educating judges, clerks and other staff about the need for legal services and the problems faced by unrepresented litigants. The Judicial Council, the State Bar and the California Judges Association jointly present the annual Benjamin Aranda III Access to Justice Award to recognize and encourage judicial support of equal access programs. And, the Judicial Council's "Community-Focused Court Planning Project" involves the community members in identifying and addressing barriers to the courts at a local level and establishes action plans to provide better services to self-represented litigants.

Other state efforts to improve access to the courts include:

- **Access protocol:** The Commission developed a protocol for analyzing proposed forms, policies and court rules to ensure new measures do not inadvertently hamper access to the judicial system for low- and moderate-income individuals. The protocol was adopted by the Judicial Council in December 2001. (See Appendix C.)
- **Self-help:** Onsite assistance is now available in every county. A system of family law facilitators, established in 1996 in all 58 California counties, provides guidance to more than 30,000 litigants per month on child and spousal support. Pilot self-help centers and family law information centers serve as models for other courts. In addition, 10 percent of the state's Equal Access Fund is designated for partnership grants to legal services programs for joint efforts with the courts to assist low-income self-represented litigants with civil matters. New videotapes have been developed in English and Spanish to explain family law and domestic violence law.
- **Web site:** The Judicial Council's self-help Web site (<http://www.court-info.ca.gov/selfhelp>), launched in 2001, is an impressive resource for all litigants and provides useful information for attorneys, court administrators and judges. Individual courts, including the San Mateo and Sacramento Superior Courts, have developed interactive Web sites that assist self-represented litigants in preparing and filing pleadings in the areas of family law and small claims court.
- **Task force:** The Judicial Council recently created a task force on self-represented litigants to develop a statewide action plan for assisting the large number of litigants who cannot afford representation.

“Access and fairness in the courts are not abstract philosophical principles – they are basic to preserving the rule of law.”

California Chief Justice

Ronald M. George

Address to the State Bar

2000

- **Small claims:** Small claims courts, where lawyers are not allowed, is another important forum for offering services to unrepresented litigants. There have been many suggestions over the years to increase the jurisdiction or to improve the training for Small Claims Court judges. Both of these issues deserve serious consideration. The Small Claims Court Advisory Program, although not yet adequately funded, provides important assistance to those using the small claims court system.
- **Limited-scope representation:** The Access Commission issued a report on limited-scope legal services, and the State Bar Board of Governors approved its recommendations. Limited representation, also called “unbundling,” will allow clients to receive the help of a lawyer for part of their case, even if they cannot afford or do not choose to pay for full representation. The Judicial Council has proposed draft forms in the family law area to document limited assistance and clarify when representation has terminated. The Access Commission’s Limited Representation Committee is coordinating with other entities to analyze the implications of limited-scope legal service, develop risk management materials, and implement a feasible system for delivery.
- **User-friendly courts:** The Judicial Council is working with low-literacy experts to redesign and rewrite forms that are commonly used by self-represented litigants. Also, new materials and training sessions have been provided to court clerks on the difference between legal information and legal advice, emphasizing the importance of helping the public with legal information.

Increasing pro bono

Pro bono representation by attorneys and other volunteers is a major component of the system to deliver legal services to the poor, and efforts to promote and support pro bono services have increased in recent years. State-level efforts to expand pro bono services continue to be a high priority. Recent achievements include the following:

- **Judicial Council:** The Chief Justice appealed directly to lawyers and judges to encourage pro bono service. A 1996 Judicial Council resolution, similar to the one later adopted by the Conference of Chief Justices, outlined specific ways individual judges can encourage pro bono (see Appendix D for full text of resolution). In partnership with the Chief Justice and the Chief Judge of the Federal District Court, several Bay Area programs and private attorneys obtained the commitment of 19 large law firms to use best efforts to meet targeted goals for pro bono.
- **Federal courts:** Similar efforts are underway in the Federal Courts. The Access Commission developed a resolution, adopted in 2000 by the 9th U.S. Circuit Court Judicial Conference, calling on each district to adopt

an action plan to increase pro bono representation. The Access Commission is working on implementation. (See Appendix E for full text of resolution.)

- **Six-point Pro Bono Plan:** The State Bar is implementing its six-point Pro Bono Plan, adopted in September 2000, to reinvigorate pro bono efforts, including publication of a formal pro bono resolution, training for pro bono attorneys, and promotion of pro bono services through the State Bar President's Pro Bono Service Awards. (See Appendix F.)
- **State contracting requirement:** In 2001, the legislature adopted and the governor signed a bill calling on the state to require law firms with which it contracts to make good faith efforts to fulfill pro bono obligations (AB 913, as amended by AB 1703). Similar provisions are now being implemented at the local level.

Addressing language barriers

In the words of Chief Justice Ronald George, "There can be no justice without comprehension." Efforts to mitigate language barriers that hamper access to justice are a priority of the Access Commission, the judiciary and the legal services community.

- **Judicial Council efforts:** The Judicial Council has devoted significant resources to increasing the availability of qualified interpreters; providing training, testing programs and a mentoring system for new interpreters; and encouraging college-level courses and degree programs. Judicial Council forms and instructions for domestic violence cases have been translated into Spanish, Vietnamese, Korean and Chinese. And, the council's self-help Web site will soon be available in Spanish.
- **Legal aid innovations:** The Asian Language Legal Access Project in Southern California is developing toll-free hotlines in the pilot languages of Mandarin and Vietnamese; six legal services agencies and 13 community-based organizations in Northern California are collaborating on the Legal Language Access Project, which developed a bank of trained interpreters.
- **Access Commission focus:** The new Language Access Project of the Access Commission is preparing a policy paper that explores language barriers, recommends possible solutions, and identifies possible responsible entities. The project is also serving as a clearinghouse for best practices and sponsored a successful 2001 statewide summit on language and cultural competence issues.

Leveraging resources through technology

For more than a decade, California providers have worked together to use technology to improve the delivery of legal services. Through a project launched by the Access

CARE FOR DISABLED CHILDREN

A 12-year-old's disability benefits were discontinued, leaving him without the special education programs his behavioral problems demanded. His mother contacted legal aid for help. As a result of legal representation, the boy's benefits were restored, and he returned to his special education classes.



SAFE AND SECURE

Maria was searching for a job that would enable her to separate herself and her children from years of physical abuse at the hands of her husband. She struggled for two years to obtain a work authorization permit before seeking help from legal aid. A paralegal cut through the red tape at the Immigration and Naturalization Service, and Maria secured employment – and independence from her husband.

Commission, the Public Interest Clearinghouse, guided by its diverse and representative CalJustice Advisory Committee, is currently developing and coordinating technology initiatives focused on increasing client access to the judicial system.

- **Statewide Web site:** To build on existing Internet resources, including the Judicial Council’s self-help Web site, California Indian Legal Services and the Public Interest Clearinghouse are collaborating to build a statewide legal services Web site. The site will offer clients a full-range of legal education material and will also refer them to an appropriate legal service provider. The site also will enable advocates to share legal resources.

- **E-filing:** A committee of the Access Commission analyzed issues raised by electronic filing of court documents to provide input to policy makers to ensure that legal services programs and low-income litigants are not inadvertently harmed or disadvantaged by implementation of e-filing.

- **Electronic self-help resources:** Legal Aid Society of Orange County (LASOC) has developed I-CAN!, an innovative interactive system to help clients fill out Judicial Council forms. Now operating in three languages, I-CAN! is a touch-screen computer with audio and visual components that provides explanations and asks questions to help clients complete forms for immediate filing. I-CAN! offers services in paternity, domestic violence, unlawful detainer, license denial, small claims and fee waiver procedures. I-CAN! has been widely praised, and LASOC, together with the courts and other legal services providers, has begun bringing it to other counties. An e-filing component to the program is being developed with the Orange County Superior Court.

Court-based self-help centers are exploring ways to provide assistance to litigants using Web-based and video-conferencing technologies to reduce the need to travel to court. Butte County will offer self-help workshops to adjacent rural counties by video-conference. The San Mateo Superior Court has developed an interactive forms program to assist litigants in completing a variety of family law forms. The Sacramento court allows small claims litigants to complete and e-file their documents – saving both litigants and clerks time.

- **Expert systems for advocates:** The Public Interest Clearinghouse and its partners are developing “expert systems” to help advocates do centralized intake and case placement and to enable advocates to share their specific expertise with other advocates and clients throughout the community. Two expert system modules are currently under development – one on fair housing, in partnership with Bay Area Legal Aid and Morrison & Foerster LLP, and the other on advising community-based

organizations, in partnership with the Bar Association of San Francisco, Volunteer Legal Services Program, and Wilson Sonsini Goodrich & Rosati.

Improving the delivery of legal services

The past five years have seen continued strengthening of legal services programs and improvement in the services these programs are able to offer clients. Advocates are trained, dedicated professionals who have chosen emotionally satisfying but not financially rewarding positions with legal aid because of their commitment to serving the low-income community. Programs offer a range of services, trying to fill clients' legal needs in the most efficient, effective way, providing full representation where appropriate but also offering self-help clinics and hotlines to avoid turning away those calling for advice. Programs also have established close working relationships with other social service agencies to address the full range of issues facing a client and to truly have an impact on clients' lives.

Recently, there has been a trend toward consolidation of legal services programs, initiated in part by changes in Legal Services Corporation (LSC) requirements that led to consolidation of more than 30 programs in California into 11 LSC-funded programs. National and state support centers lost all LSC funding in 1995 and have rebuilt their organizations over the past six years. While mergers and consolidation are often difficult, the emerging programs have largely been strengthened in their ability to provide quality legal services to the client community.

Coordinating statewide planning and infrastructure development: Since 1996, the courts, state and local bars, legal service providers and the client community have engaged in statewide planning for the delivery of legal services. At the annual statewide stakeholders meeting, now held under the auspices of the Legal Services Coordinating Committee, stakeholders help set statewide priorities, identify strengths and gaps in the current system, and plan effective strategies for enhancing legal services delivery. Regular reports and evaluations are submitted to the Legal Services Corporation and other partner organizations. (See the current state plan for legal services delivery at <http://www.pic.org>.)

Other important statewide coordination and resource sharing include:

- **Rural training:** The Legal Aid Association of California (LAAC) has strengthened its ability to support member legal service programs. In response to statewide concerns that quality, substantive legal training was not available in rural areas, 23 support centers joined together to create substantive "traveling trainings" covering various areas of law, which were brought to rural communities.
- **Assessment of support centers:** As part of the development of statewide support center standards for quality services to field programs, a LAAC committee of support centers coordinated a survey sent to

programs to measure the effectiveness of support center delivery systems in California.

- **Evaluation:** The Access Commission, the Legal Services Trust Fund Program, the State Bar Office of Legal Services, Access and Fairness Programs, the Administrative Office of the Courts (AOC) and LAAC have worked to involve statewide stakeholders in efforts to evaluate legal services delivery systems and build collaborations to enhance the delivery of legal services.
- **Community legal education:** The State Bar, AOC and legal services providers have worked together to expand community legal education through broad dissemination of culturally and linguistically relevant community education materials. Additionally, the Standing Committee on the Delivery of Legal Services regularly develops training programs on access issues to educate the broader legal community.

Strengthening partnerships: Partnerships between a variety of agencies and the development of holistic strategies have strengthened efforts to meet the legal needs of the poor. Legal services advocates are forming partnerships with others who have related goals to develop strategies and leverage legal knowledge to increase access to justice.

- **Law schools:** Law schools continue to offer a range of opportunities to serve the poor, leverage human resources and inspire the next generation of lawyers to give back to the community. Through increasing numbers of partnerships, law schools and legal services offices have collaborated to create clinical and law student pro bono programs, and created new courses – sometimes taught by legal services lawyers – that address the legal problems of the poor. Campus fundraising to provide summer grants to students working at legal services offices throughout the state also has grown substantially over the last five years.
- **Central Valley Access to Justice Coalition:** The Central Valley Access to Justice Coalition, co-chaired by a Fresno Superior Court judge and a local legal services director, grew out of a partnership between the Access Commission and the legal aid program in Fresno. The Coalition has helped form neighborhood Justice Centers and is developing a Homeless Court and studying language access issues.
- **Community participation:** Several new partnerships with community-based organizations are focusing on client participation and leadership, including a partnership that has become a statewide model for obtaining effective health care for low-income, uninsured communities.
- **Nonlawyer providers:** The state legislature passed legislation establishing certification and education requirements for nonlawyers, such as landlord/tenant and immigration assistants and document preparers,

who can provide limited law-related information and assistance with forms. This legislation has helped clarify what nonlawyers can and cannot do and established minimum training requirements. Work to clarify and implement the legislation is ongoing.

- **Law libraries and public libraries:** Many courts are working closely with local libraries to develop self-help centers as most libraries provide free Internet access, self-help legal books and more convenient hours for users.

Reducing pressure on state services

Legal advocacy can help families escape domestic violence, avoid homelessness, obtain needed mental health care, access basic support services, and resolve a myriad of other problems that threaten the well-being of families and their children. Legal advocacy can play a key role in helping to reduce or avoid poverty-related family dysfunction and child maltreatment, and helping to keep special needs children with their families to reduce reliance on public institutions.

Law enforcement personnel and district attorneys have been working closely with legal aid programs across the state because of the potential for reducing domestic violence and other crimes. Thus, legal services programs are having an impact far beyond what is immediately evident, reducing the need for many state services and increasing public trust and confidence in the court system and other branches of government.

In conclusion

By expanding resources for funding, improving the accessibility of the courts, maximizing use of technology, and improving the efficiency of legal services delivery, the state's access to justice community has effectively focused its limited resources on high-impact strategies. Since the publication of "And Justice for All" in 1996, the state of California has made substantial strides toward making its justice system work for everyone. A stable foundation for equal justice throughout California has been laid, thanks to the dedication and support of the Chief Justice and the state judiciary; the governor and legislature, private bar and business leaders; legal services providers; legal professionals who volunteer their time and energy; and community and statewide leaders who have made access to justice a priority.

However, the state is still far from achieving its goal. The constantly changing economic and political environment presents challenges for the state and for poor and near-poor Californians. And California still lags far behind many other states in providing legal aid to its residents. The next sections of this report outline the work that remains to be done in the state's efforts to fulfill the promise of justice for all of its citizens.



IV.

Funding Equal Access in California

GOVERNMENT, PRIVATE AND OTHER SOURCES OF FUNDING provided nearly \$149 million for California legal services in 2000, up from about \$101 million in 1996. However, the estimated amount needed to address all of the legal needs of the state's poor and lower-income residents is more than \$533 million per year. Although resources for legal services in California have increased over the past five years, some new funding simply compensated for a \$20 million loss of federal funding and state trust fund support in 1995. And still, just 28 percent of the legal needs of the state's poor and lower-income residents are being addressed. California lags far behind other comparable states in its funding of legal services for the poor. Its record is also dismal in comparison to other countries whose economies are similar in size (or even smaller) than California's. Clearly, California can – and must – do better.

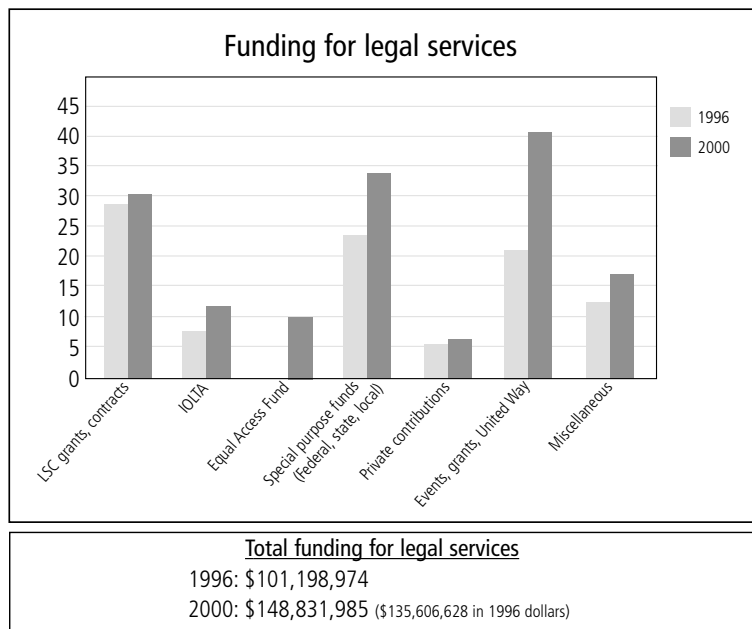
In 1996, “And Justice for All” found that the United States lagged far behind other industrial democracies in funding legal services for the poor, and that California provided far fewer resources for legal services than other American states. Both findings were deeply disturbing: Many felt that a country whose justice system has become a model for freedom and equality throughout the world could certainly do better for its own residents. Particularly in California – a state whose prosperity, ingenuity and promise has beckoned the world for more than a century – the poorest among us should have equal opportunity for justice before the law. While a network of organizations was providing legal aid to the poor, these programs were underfunded and understaffed. It was clear that funding for legal services programs would need to increase if the state had any hope of ensuring all Californians equal access to the justice system.

Generating financial support for legal services programs has been a top priority for the California Commission on Access to Justice since it was established in 1997, and during the past five years the state of California has made significant progress in expanding resources for legal services. Between 1996, the year “And Justice For All” was published, and 2000, the most recent year with available data, funding increased at an encouraging rate. Altogether, funding for legal services in 2000 was \$148.8 million, up from \$101.2

million in 1996. (See Table 4 in Appendix A.) This growth was due to a booming economy and a new awareness at the state and local levels of the great need for legal services. Despite this progress, however, a great need remains. The Access Commission estimates that current funding addresses less than 28 percent of the legal needs of California’s poor and lower-income residents, and the state continues to trail its counterparts throughout the country and the world in its commitment to equal justice for its lower-income residents.

Funding for legal services in California

The good news: By 2000, government funding – federal and state funds combined – had increased 40 percent over 1996 levels (27 percent after correcting for inflation), rising from \$60.4 million to \$84.5 million.⁴³ (See Table 1 in Appendix A.) Almost half the increase between 1996 and 2000 may be attributed



to the new Equal Access Fund and a 28 percent increase in funding from IOLTA.⁴⁴ The Commission overseeing the IOLTA program has been diligent in trying to increase the yield on lawyers’ trust accounts, which partly accounted for the jump in IOLTA. The increase is especially notable because it happened despite nearly level federal funding from the Legal Services Corporation (LSC) during the same period.

Meanwhile, funding for a number of other special purpose government programs, such as support for domestic violence victims and other special groups, as well as local and state funding of legal services as part of social services grants that include legal services,⁴⁵ rose 43 percent between 1996 and 2000. (See Table 1 in Appendix A.)

There is more good news from the private sector. Private funding of legal services for the poor surged by 70 percent (55 percent after correcting for inflation) during the same five-year period, rising from \$27.8 million to more than \$47.4 million – a surge due, no doubt, to the booming economy of the late 1990s. (See Table 2 in Appendix A.) Grants from foundations nearly doubled, as did revenue from fund-raising events. Donations

from lawyers and law firms, organizations such as United Way, and the general public also increased.

Additional miscellaneous sources of financial support for legal services grew as well. These sources, including court-awarded fees, client contributions and fees, interest payments and other sources, helped generate an additional \$16.8 million for legal services in 2000 – a 30 percent increase over the amount of funding those same sources provided in 1996. (See Table 3 in Appendix A.)

Altogether, funding for legal services for the poor in California has grown by 47 percent, from \$101.2 million in 1996 to \$148.8 million in 2000. (See Table 4 in Appendix A.) Even correcting for inflation, this represents a 34 percent increase in the legal resources available to serve California's poor.

This good news is tempered, however, by other developments. The economy is no longer booming. Unemployment is up by 21 percent, casting more people into poverty and increasing the need for legal services. Some increased funding in the 1990s merely made up for earlier losses: In 1995, legal services programs lost \$20 million when LSC and IOLTA funding for California dropped by \$10 million each. It is also important to note that the Washington Legal Foundation is pursuing two lawsuits, currently pending at the U.S. Supreme Court, that challenge IOLTA programs in Texas and Washington state on constitutional grounds.⁴⁶ Meanwhile, lower interest rates mean IOLTA reduced its grants by approximately 38 percent for 2002-03. This huge drop in IOLTA funding has a major impact on the many recipient programs for which IOLTA contributes a large percentage of total funding. Low interest rates and a faltering economy mean that private foundations have significantly reduced the size and number of grants they award. The economic downturn also may reduce funding from other private sources, both individual and corporate, which have become important sources of legal services support. As a result, the task of maintaining and increasing the Equal Access Fund, the Legal Services Corporation budget, and other sources of public funding at the state and federal levels is more urgent than ever.

In 2000, funding for legal services supported 644 legal services attorneys who tried to fill the legal needs of the 6.4 million eligible clients in California – approximately 10,000 eligible clients for every one legal aid attorney.⁴⁷ In some areas of the state, particularly rural areas, the ratio of available attorneys to clients in need is much worse.

Beginning to reduce the “access gap”

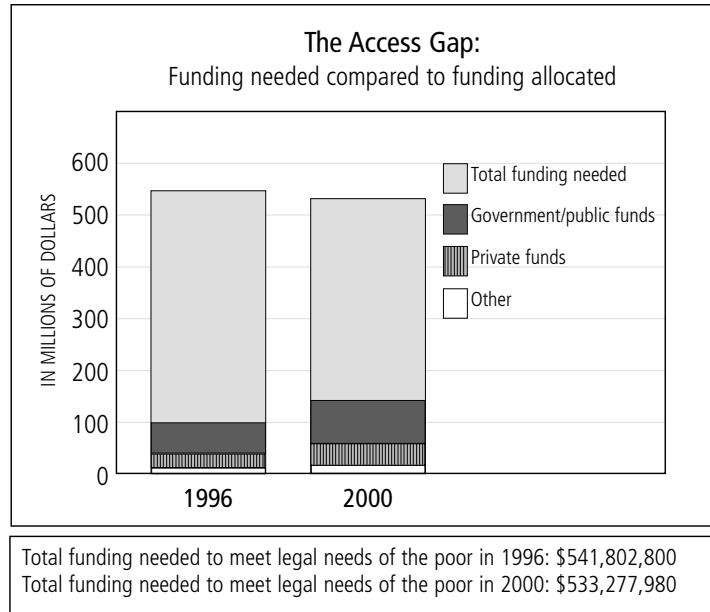
The substantial increase in funding for civil legal services for the poor between 1996 and 2000 also began to chip away at the “access gap” – the difference between the minimum amount of funding required to adequately meet the legal needs of poor Californians and the amount of the state's current investment in legal services programs. Assuming continued cost-effective use of resources, conservative estimates indicate that California would have needed to spend \$533 million to adequately meet the legal needs of low-

The task of maintaining and increasing the Equal Access Fund, the Legal Services Corporation budget, and other sources of public funding at the state and federal levels is more urgent than ever.

Government is shouldering a smaller share of the funding responsibility for legal services than at any time in the past three decades.

income citizens in 2000. (See Appendix B for an explanation of how the access gap was calculated.) That figure might seem high, but it is actually about 2 percent of the amount Californians spend on lawyers each year.⁴⁸ And that 2 percent would be providing legal assistance to nearly 20 percent of the state's population.

The state's combined public and private investment in legal services in 2000 – \$148.8 million – left an access gap of approximately \$384.4 million. In 1996, the access gap was \$440.6 million. Thanks in part to a smaller poverty population in the boom year of 2000 and the increase in government and private-sector funding for legal services, the access gap declined by 12.7 percent. (See Table 5 in Appendix A.) While recent economic developments have certainly pushed more people into poverty – and probably in the short run will reduce legal services funding somewhat below the level reached in 2000 – there is no doubt the access gap remains smaller today than it was in 1996. California has seen a substantial and encouraging improvement in its effort to ensure equal access to justice. It is crucial that the state capitalize on the momentum of the past five years and continue its work to boost funding for legal services and close the access gap into which so many low-income Californians fall. During the next five years, the Equal Access Fund must be dramatically enhanced, and total resources for legal services for the poor in California should be increased so that at least 50 percent of the legal needs of the poor are being met.



Government's role

While the remarkable achievements of the past five years can be universally applauded, this good news is accompanied by a disturbing trend: Government is shouldering a smaller share of the funding responsibility for legal services than at any time in the past three decades. In 1996, federal, state and local government funds comprised 60 percent of the state's total spending on legal services programs. In 2000, government funds accounted for 57 percent of the state's legal services funding. Thus, despite a 40 percent increase in government funding, the government's share of the overall expenditure actually dropped. (See Table 4 in Appendix A.)

A dramatic upsurge in private funding accounts for this shift. But with a less favorable economic climate looming ahead, dependence on private funding could threaten the future of legal services programs in California. Rural areas in particular are far behind the statewide average in legal services spending per eligible client. And the great disparity between legal services resources in urban and rural areas of the state is fueled by the bulk of private donations being made primarily to programs in large cities. Because ensuring equal access to justice is ultimately the responsibility and obligation of government, the state must provide stronger leadership in funding and supporting legal services programs.

While California's government increased its financial support for legal services over the dismal levels reported in 1996, the state still lags far behind many other states and nations with comparable economies in government funding for legal services. The government's investment of \$84.5 million in 2000 still amounted to only \$13.20 worth of legal services for each of California's almost 6.4 million poorest people. In contrast, public spending on legal services in New Jersey was nearly \$39 for each of the state's poorest residents. The much smaller high-tech state of Minnesota also spent that amount – three times California's funding level.

To match the level of public funding for legal services in New Jersey or Minnesota, combined federal and state government support in California would have to grow from its present \$84.5 million to nearly \$250 million. To match New York, California spending would have to reach nearly \$160 million. (See Table 6 in Appendix A.) In other words, when California raises its total federal and state investment to the level already reached in New Jersey and Minnesota, the state will have closed two-thirds of the "access gap" – assuming the private sector continues its generous support of legal aid. These other states are that much closer to achieving equal access to justice for their poorest residents.

California's government commitment to legal services also compares poorly to that of other industrial nations, many of which have smaller economies than the state of

States' funding of legal services	
State	Government spending per eligible person*
Minnesota	\$39
New Jersey	\$39
Connecticut	\$36.45
Maryland	\$30.45
Massachusetts	\$27.90
New York	\$24.90
Washington	\$22.80
Ohio	\$19.95
Pennsylvania	\$18.11
California	\$13.20

*Government and IOLTA funds spent per person living at or below 125% of federal poverty rate

California. In England, whose population is just 50 percent greater than California's and whose economy is equal in size, the government spends approximately \$1.35 billion on civil legal services for the poor – more than 14 times California's current government funding level and seven times California's combined public-private investment. England's commitment is outstanding, but other common law countries – such as Canada, Australia, Scotland, and New Zealand – also demonstrate far greater commitment to access to justice, spending anywhere from two to 10 times more proportionally than California on government-funded legal services. Hong Kong spends more than six times as much of its national resources on legal services for its low-income citi-



A GUARDIAN AND CAREGIVER

After his father was murdered and his drug-addicted mother abandoned him, young David needed help. Legal aid attorneys assisted David's grandmother in obtaining legal guardianship of the boy. To address the severe emotional problems David suffered, attorneys helped obtain MediCal coverage for psychiatric health care.

zens proportionally than do federal, state, and local government combined in the state of California. (See Table 7 in Appendix A.)

Those unable to afford counsel also receive a much smaller share of California's total legal resources – the total amount spent by private citizens and government on lawyers – than they apparently do elsewhere. In England, for example, 12 percent of the nation's legal resources are dedicated to legal services for those unable to afford counsel. In the Netherlands, seven percent of total legal resources go to lower-income citizens. Meanwhile, California presently spends only four-tenths of a percent of its total legal resources on legal services for the poor. (See Tables 8 and 9 in Appendix A.)

Fortunately, California does not need to boost its legal services investment to the levels found in England or the Netherlands in order to provide equal access to justice. Most legal services agencies operate with incredible cost-efficiency. Innovative new programs provide limited-scope services, self-help assistance and technological resources, enhancing the state's ability to meet the legal needs of the poor and reducing dependence on lawyers in cases where such expertise is not needed. This makes it possible for California to ensure each of its residents equal access to the justice system at a cost of little more than \$500 million – 2 percent of the state's legal resources – and with a good portion of those funds coming from the federal government and private sources. In context, this figure represents an incredible bargain: Five hundred million to provide representation to six and a half million poor people, while just a few thousand clients of a single California-based corporate law firm are currently spending more than \$600 million a year for that firm's services.

V.

Findings and Recommendations

BASED UPON PROGRESS DURING THE PAST FIVE YEARS, and the continuing need for increased financial resources, the Access to Justice Commission has developed a set of findings and recommendations that should guide the state's next steps in the effort to provide access to justice to all Californians. Rooted in the understanding that access to justice is a governmental responsibility and a community obligation, the commission's recommendations emphasize the need for increased funding and participation from civic and business leaders in the equal justice effort. The goal is not out of reach: with collaboration, commitment and compassion, the state of California can live up to the promise of justice that is the bedrock of our democracy.

Two important observations were made in “And Justice For All” when it was published in 1996: First, the report noted that the dedicated professionals in legal services programs and the many pro bono lawyers working with them have made and continue to make an outstanding contribution toward the goal of justice for all. Second, the report found that adequate representation remains an unfulfilled promise for the vast majority of poor and near-poor Californians. Both of these statements continue to be true. However, California has made progress over the past five years in the effort to achieve access to justice. In addition, there are new partners in the fight for justice, key players who help ensure that the goal can eventually be reached.

The goal of true access to justice for all is daunting, but it can – and must – be achieved. The accomplishments of the past five years are proof that substantial progress can be made building on past success, addressing targeted needs, and moving steadily toward a clear, bold vision.

Following are the Access to Justice Commission's findings of fact – some based on the initial findings of “And Justice for All,” some based on new observations and developments – as well as recommendations for next steps in the continuing effort to ensure all Californians equal access to justice.

Eighty-nine percent of Americans agree that legal help for civil matters should be provided for low-income people.

Findings

Finding A. Access to justice is a fundamental right.

Access to justice is a fundamental and essential right in a democratic society. It is the responsibility of government to ensure that all people enjoy this right.

- *Access to legal counsel is vital.*

In our civil justice system, equal access to justice requires that parties have access to legal assistance. Free legal help for the poor, or partially subsidized assistance for other low-income people, must be provided and a broad spectrum of free or low-cost legal services must be made available so that each litigant obtains the level of assistance needed to achieve justice.

- *Providing counsel is as much a government responsibility as is providing the courts.*

Government is responsible for providing access to lawyers for those who cannot afford representation, just as it provides judges, courts, and other means of dispute resolution in order to guarantee an opportunity for justice in civil cases.

Finding B. Counsel is guaranteed and better-funded in other countries.

The governments of most industrial democracies other than the U.S. already guarantee low-income people the assistance of free lawyers in civil cases as a matter of either statutory or constitutional right. The majority of industrial democracies that fund legal representation for lower-income citizens place a much higher priority on funding for access to justice than does the U.S., spending twice to seven times more per capita than U.S. jurisdictions (including California) on civil representation for those unable to afford their own lawyers.

Finding C. The public supports government-funded legal aid programs.

The vast majority of the public supports government funding of legal services for the poor. According to a 1999 study conducted by Belden Russonello & Stewart,⁴⁹ 89 percent of Americans agree that legal help for civil matters should be provided for low-income people. Eight in 10 support the idea when it is described as a tax-funded program.⁵⁰

Finding D. Despite the new state fund, demand for legal aid exceeds current resources.

As a result of several factors – including some increased funding, some new funding sources, and a slight reduction in the number of poor people – the state was able to meet

a slightly higher percentage of the legal needs of the poor in 2000 than it could five years earlier. However, the ensuing economic downturn may have reversed that trend. Regardless, the demand continues to far exceed available resources. The amount needed, from all sources, to adequately address the legal needs of California's poor is \$533 million; the amount being provided is \$148 million.

- *Poor residents' needs not being met.*

The need for civil legal assistance far exceeds the current level of resources provided through government, private charity and other sources. As of 2000, approximately 6.4 million people were below 125 percent of the federal poverty level, and approximately 72 percent of the legal needs of the poor were not being met. The number of unrepresented litigants continues to rise, challenging the ability of the court system to function smoothly.

- *Resources for rural communities are particularly inadequate.*

A great discrepancy in funding for legal aid exists between California's rural and urban communities. Although no area of the state has enough resources to fully serve the number of people who need legal services, rural communities are particularly stretched for resources.

- *A policy of incremental increases in funding is flawed when initial funding was already inadequate.*

When federal funding of legal services was established in the 1960s and 1970s, the amount of funding was woefully inadequate. When increases are considered, they seem to be premised on the assumption that only incremental boosts are needed, rather than a wholesale recalculation of true need. Even so, funding levels have decreased, not increased. Policymakers must understand that the level of funding provided at the outset was never adequate and was never intended to delineate the limits of government participation.

- *Low- to moderate-income residents also need assistance.*

Approximately 7.5 million low- and moderate-income people also need low-cost or subsidized legal assistance. Subsidized services and/or creative methods of delivery such as prepaid plans must continue to be pursued for those families for whom the financial strain of a major legal problem could force them to forego their legal rights or push them toward financial ruin.

- *Legal aid can reduce pressures on other state services.*

By providing adequate legal services for the poor, the state may actually realize a cost-savings in other service programs. Legal services programs collaborate with local law enforcement on domestic violence cases, help prevent homelessness, and support community economic development

FAIR EMPLOYMENT

When a Los Angeles factory changed locations, several employees had to quit because travel to the new location became too burdensome. One woman's commute, for instance, was a four-hour round-trip by bus, and the longer day increased child-care costs for her six children. When their former employer objected to their claims for unemployment benefits, the employees sought legal help. A legal services attorney secured a rehearing to brief the prohibitive costs of child care and transportation, and won unemployment insurance benefits for the client.

– all of which can result in cost-savings for local and state government and society as a whole.



PREVENTING HOMELESSNESS

A 76-year old woman was threatened with eviction from her home of 18 years because her landlord claimed excessive clutter caused a fire hazard. With her limited income, the woman faced homelessness. A legal aid social services expert arranged for psychological treatment for her obsessive/compulsive disorder, the real source of her clutter, and a volunteer attorney negotiated an agreement in court enabling the woman to stay in her home.

Finding E. **Innovative delivery systems offer creative ways to provide effective and efficient legal services, and innovative models are the only way to reach full access for moderate-income litigants.**

Creative solutions for delivery of legal services can improve cost-effectiveness and provide assistance to poor and low- to moderate-income individuals simultaneously.

- *Dispute resolution methods represent a cost-effective alternative.*

Innovative methods of dispute resolution present promising possibilities for addressing certain problems without lawyers, so long as they protect litigants' interest and assure quality justice for the poor, near poor and middle class.

- *Technological resources offer important opportunities to improve efficiency of legal services delivery.*

Web sites, kiosks, and expert systems provide opportunities to improve services to litigants and maximize limited staffing and financial resources, but must include provisions for personal assistance for litigants who cannot navigate the technology on their own.

- *Court-based self-help centers are an essential new component of the delivery system.*

Approximately 4.3 million Californians go to court without the assistance of an attorney.⁵¹ Self-help centers throughout the state provide enormous help to “pro per litigants” while significantly reducing court delays and improving public understanding of and confidence in the legal system. These centers function best when there is a systematic way to refer individuals for legal representation when necessary.

- *A full range of services is needed.*

A full range of legal services must be available throughout the state to address the legal needs of the poor, from self-help assistance and limited-scope legal services for simple cases involving people who can actively participate in their cases to full representation and appellate representation where appropriate. In the past five years, we have put in place the last few components of a full delivery system. While each component is not yet fully funded, an effective and efficient structure now exists and is ready to expand to truly meet the need.

- *Trained interpreters and other language resources are necessary for true access for those with limited English proficiency.*

Language is a continuing barrier for litigants with limited English proficiency, who have little chance at equal access to justice when they cannot understand court proceedings or comprehend the issues at hand. The Judicial Council has taken steps to remedy the problem, including expanding the pool of certified court interpreters and increasing the number of languages for which certification programs are available. The Access Commission has launched a language access project to explore remedies as well.

- *Evaluation of innovative systems is key.*

In the past few years, an increasing level of evaluation has been undertaken by court-based self-help centers and by legal services programs, particularly by those projects funded by the United Way or the Partnership Grants of the Legal Services Trust Fund Program. As programs experiment with the innovative delivery models described above, evaluation is a critical component so that pilot projects that succeed can be replicated and innovation that is not in the best interests of clients can be identified and discontinued. The Judicial Council will submit a report to legislators in March 2005 on the efficiency and effectiveness of projects funded by the Equal Access Fund.

Finding F. Public and private sector leaders are essential partners.

The task of providing equal justice requires the support of all Californians. The legal profession commits hundreds of thousands of pro bono hours per year and donates significant amounts of money. The profession's role in providing services to the poor is critical. However, support and financial assistance from business, financial institutions, government, and community organizations are equally critical to equal justice efforts.

The Access to Justice Commission, composed of state and community leaders in business, education, government, judiciary and the legal profession, is an important first step toward building this important coalition. The Commission's efforts to build broad-based community support and leadership for access to justice programs are vital.

Recommendations

Recommendation 1. Establish government’s obligation to provide access to justice for all Californians.

The majority of Europe’s western democracies and Canada’s provinces have long recognized their governments’ legal obligation to ensure access to justice in civil matters for poor citizens. California law should also expressly recognize that government has an obligation to ensure all Californians meaningful access to quality justice when they need it. As a first step, there should be a funded right to representation in cases involving basic human needs such as housing, food, health care, employment, education, safety, child custody and public assistance.

Recommendation 2. Increase funding for legal aid and guarantee appropriate representation in cases involving basic human needs.

Funding from public and private sources must continue to increase in order to ensure access to legal assistance for all, regardless of income. The Equal Access Fund, through which the state has provided a stable level of funding for local legal aid programs – \$10 million each year for four years – is a significant first step toward ensuring the rights of future generations. This fund must be maintained and significantly increased to meet the need. Federal funding, through the Legal Services Corporation as well as through other targeted funding programs, must also increase to truly achieve access to justice. Private fund raising is an important supplement to the basic funding needed from the state and federal governments. During the next five years, the Equal Access Fund must be dramatically enhanced, and total resources for legal services for the poor should be increased so as to fill 50 percent of the legal needs of the poor.

Recommendation 3. Continue the leadership role of the Access to Justice Commission.

Created in 1997 through the leadership of the State Bar of California working with the Judicial Council and many other organizations, the California Commission on Access to Justice has assembled leaders from the public and private sectors to pursue a bold vision of achieving true access to justice. No single entity can solve a problem of the magnitude of providing access to civil justice for all Californians. The Commission has made significant progress toward its vision, and should continue its efforts toward this critical goal.

Recommendation 4. Continue to encourage financial and volunteer support from attorneys.

The Access Commission should continue to work with the State Bar, the judiciary and the legal profession to encourage expanded pro bono service within the legal profession. Increased financial support also should be encouraged as well as volunteered time and

services. Clearly, lawyers cannot resolve the crisis in access to justice alone. However, given their unique role within the legal system and their capabilities as contributors and volunteers, attorneys must be leaders in the access to justice effort.

Recommendation 5. Continue efforts to improve and coordinate delivery of legal services for the poor regionally and statewide.

Efforts to improve delivery of legal services benefit not only the poor, but also low- and moderate-income Californians who struggle to afford legal representation. State planning for the legal services delivery system has become a high priority, and these coordination efforts must continue. Such coordination is necessary to avoid unacceptable gaps in services across the state, particularly with regard to immigrant families and rural areas.

■ *Target programs to address legal service needs of rural communities.*

Address regional inequities in funding for legal services by increasing resources and using technology, volunteer lawyers and law students to focus on the needs of rural communities.

■ *Use advanced technology to facilitate improved legal services.*

Technology offers myriad opportunities for faster, broader and more efficient delivery of legal services and should be utilized whenever possible to improve legal aid. As evidenced by new programs and software and legal services Web sites, technology can greatly enhance the efficiency and accuracy with which legal services are provided and tracked. However, help should be available to clients who cannot navigate the technology on their own.

■ *Continue to increase the flexibility of legal services delivery mechanisms.*

Most legal services programs have added night or evening hours to accommodate the increasing number of clients who work; kiosks, hotlines, and other innovations also provide more flexible access for the client community. These efforts should continue and be expanded, and mechanisms should be in place to allow programs to readily share information about implementation and evaluation of these efforts.

■ *Continue to build partnerships and leverage existing resources to maximize effectiveness of services.*

Legal services advocates must continue to seek ways to collaborate and maximize limited resources. In particular, programs and infrastructure should be developed to involve law schools in coordinating volunteer programs and research efforts to improve access to justice statewide.

“The American people stand firm in the faith which has inspired this nation from the beginning: We believe that all men have a right to equal justice under the law and equal opportunity to share in the common good.”

President Harry S. Truman,

Inaugural Address,

1949

“Is there a more important undertaking than to defend the defenseless and to be a voice for the voiceless?”

– Rabbi Harold M. Schulweis,
Valley Beth Shalom

Recommendation 6. Develop innovative methods for delivery of low-cost legal services to assist those of modest means.

Because of the high cost of living in California, those who live just above the federal poverty level also are unable to afford legal services. Programs to assist these individuals in accessing low-cost legal assistance must be a component of any effort to achieve equal access to justice. Many programs that address this need also advance the effort to provide equal access to the poor.

- *Explore innovative methods for delivering low-cost legal services.*

Mechanisms such as self-help Web sites, publications, centers and kiosks, statewide prepaid plans, partial subsidies and alternative dispute resolution should be developed, tested and implemented to assist low-income and moderate-income families.

- *Expand use of paraprofessionals in cases that do not require a lawyer’s expertise.*

New certification standards for paraprofessionals – paralegals, landlord/tenant/immigration assistants, document preparers – have been developed by the state legislature and are being implemented. In certain types of cases, trained paraprofessionals may be able to handle disputes and alleviate the need for the more expensive services of a lawyer. The State Bar of California should continue to work with all branches of government to evaluate implementation of these provisions and ensure that they are fair and effective.

- *Expand availability of limited-scope legal assistance.*

Litigants who can participate in the development and presentation of their cases should have access to limited-scope legal assistance, enabling them to hire attorneys for specific components of their cases. The State Bar, Judicial Council, and other interested parties should collaborate to develop an outreach program to explain these options to attorneys, judges, insurers and the public, and parameters for implementation of limited-scope services should be developed.

Recommendation 7. Continue efforts to improve accessibility of courts

Community-focused court planning programs and other measures described in this report have succeeded in making the courts more responsive to community needs and improving the accessibility of the courts to lower-income Californians. Self-help centers and Web sites, judicial training on access to justice issues and efforts to remove language barriers should continue to be priorities.

- *Build on expanded self-help programs to provide full spectrum of services.*

Consumers of legal services need an array of legal services that includes full-service representation and guidance for self-represented litigants. Efforts to expand self-help programs have progressed substantially, and the administration, legislature, and Judicial Council should be acknowledged for their roles in expanding this important resource. A triage system always should be available to separate cases that require representation from those that can use limited legal services. This guarantees efficient use of resources while ensuring adequate assistance for those who need full representation.

- *Continue to improve small claims courts.*

The simplified court system modeled by the small claims courts offers a low-cost alternative to traditional courts; efforts to make these courts more accessible to low- and moderate-income litigants and to streamline their administration within the Judicial Council should continue. There have been many suggestions over the years to increase the jurisdiction or to improve the training for Small Claims Courts judges. Both of these issues deserve serious consideration.

- *Expand efforts to provide assistance for litigants with limited English proficiency.*

The pool of court interpreters must be increased and programs providing assistance to litigants who do not speak English must be expanded to ensure these people can fully understand and participate in legal proceedings. Other institutions must join with the Judicial Council, the Access Commission and the State Bar to assist in the effort, and a broader range of solutions must be developed to ensure that litigants with limited English proficiency are able to fully understand and participate in legal proceedings.

- *Continue to develop ways to simplify the law and evaluate progress.*

Efforts to simplify the law, forms and procedures have proliferated. The Judicial Council has made great strides toward ensuring that the language of justice, both the spoken and written word, is comprehensible and clear. These efforts should continue and be expanded beyond family law, where the most progress has been made. These and other simplification approaches should also be tested and evaluated on an ongoing basis for their potential impact (positive or negative) on access to justice.

“The work of legal services lawyers avoids devastating court battles, protects the vulnerable and assures that justice is within reach of those who otherwise could not afford an attorney.”

– Cardinal Roger Mahony,
Archdiocese of Los Angeles

Recommendation 8. Expand outreach effort to educate public on access to justice issues

During the past several years, the State Bar, the Judicial Council and others have made commendable progress in educating the general public about their legal rights, how courts function and the legal system in general. These efforts should continue and expand. However, public opinion surveys reveal a woeful lack of knowledge and numerous misconceptions about the status of equal justice in California. To address this problem, the Access Commission is developing a major new effort to educate the public about this subject. An educated public, in turn, should contribute to the development of sound public policy in this area of governmental responsibility. Legal services programs also should continue their own outreach efforts that are linguistically and culturally competent.

Recommendation 9. Evaluate service delivery approaches

Mechanisms for evaluating ongoing and experimental service delivery approaches are being used but need to be expanded and made a high priority. Ensuring the efficacy of the delivery system and measuring impact on access to quality justice is a high priority. All resources must be directed to the best possible use, and triage needs to be part of the mixed delivery system so that a person's legal need is met with the most appropriate delivery system.

In conclusion

Clearly, California has come a long way in the past five years. The state's initial investment in legal services has paid off, and more of California's poor than ever before are receiving the legal assistance they need. But more is not enough: When 72 percent of the legal needs of the state's most vulnerable residents are unmet, the state is failing in its obligation to ensure justice for all. New funding, new resources and new commitment are needed to reach this crucial goal.

The remaining task may seem daunting, but the successes of these recent years are clear indicators that the state of California can provide full and equal access to the judicial system. The Commission on Access to Justice is confident that, with strong leadership and statewide collaboration across professional and political boundaries, California will live up to the promise of equal justice for all.

Endnotes

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- 9 CALIFORNIA BUDGET PROJECT, THE STATE OF WORKING CALIFORNIA: INCOME GAINS REMAIN ELUSIVE FOR MANY CALIFORNIA WORKERS AND FAMILIES 4 (2001), *available at* <http://www.cbp.org/pubs2001.htm>.
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- 12 *Id.* at 2.
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- 30 *Id.*
- 31 *Id.*
- 32 Diana Wedner, *Many Southland Workers Fall in Gap Between Income, Rents: Minimum Wage is not Enough as Housing Costs Climb*, Report Says, L.A. TIMES, September 19, 2002, at A2.
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- 40 See Marla Dickerson, *41,000 Jobs in Tourism May Be Cut*, L.A. TIMES, October 5, 2001, at C1.
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- 43 Government funding for legal services for the poor in 2000 is 76.9 million in 1996 dollars.
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- 45 While funding for some of these social programs increased, some haven't changed at all. Funding for legal services for senior citizens has remained stagnant since 1994 – a 16.2 percent drop when adjusted for inflation – which poses significant problems for the state as its elderly population grows.
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Appendix A.

Tables

Table 1. Sources of public funding for civil legal services in California¹

	1996	2000 (percent increase)
LSC grants and contracts	\$28,611,498	\$30,656,376 (+7%)
IOLTA	\$7,881,128	\$10,230,039 (+30%)
Equal Access Fund*	\$0	\$9,500,000 (+100%)
Special purpose funds**	\$23,943,712	\$34,186,491 (+43%)
TOTAL	\$60,436,338	\$84,572,906 (+40%)

* Fund created in 1999. Total allocation is \$10 million, and 5 percent of fund is designated for administrative costs (Stats 2000, Ch. 52, Section 2; item number 0250-101-0001, schedule in provision 2, AB 1740)

** Includes federal, state and local funds

Sources of public funding

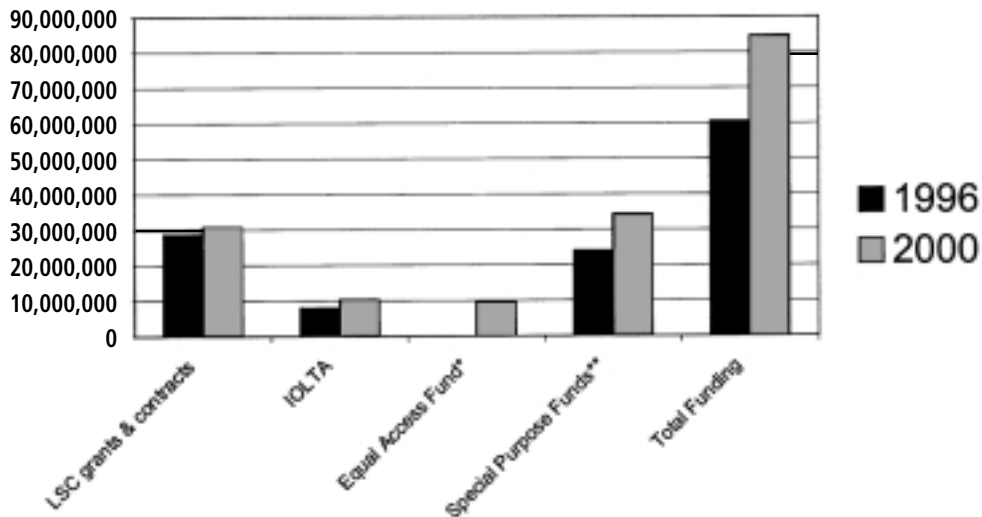


Table 2. Sources of private funding for civil legal services in California²

	1996	2000 (percent increase)
Foundation grants	\$12,862,479	\$24,631,727 (+92%)
United Way, etc.	\$4,939,567	\$6,897,026 (+40%)
Private contributions (primarily from lawyers)	\$5,519,825	\$6,425,386 (+16%)
Fund-raising events	\$4,491,992	\$9,479,872 (+111%)
TOTAL	\$27,813,863	\$47,434,011 (+71%)

Sources of private funding

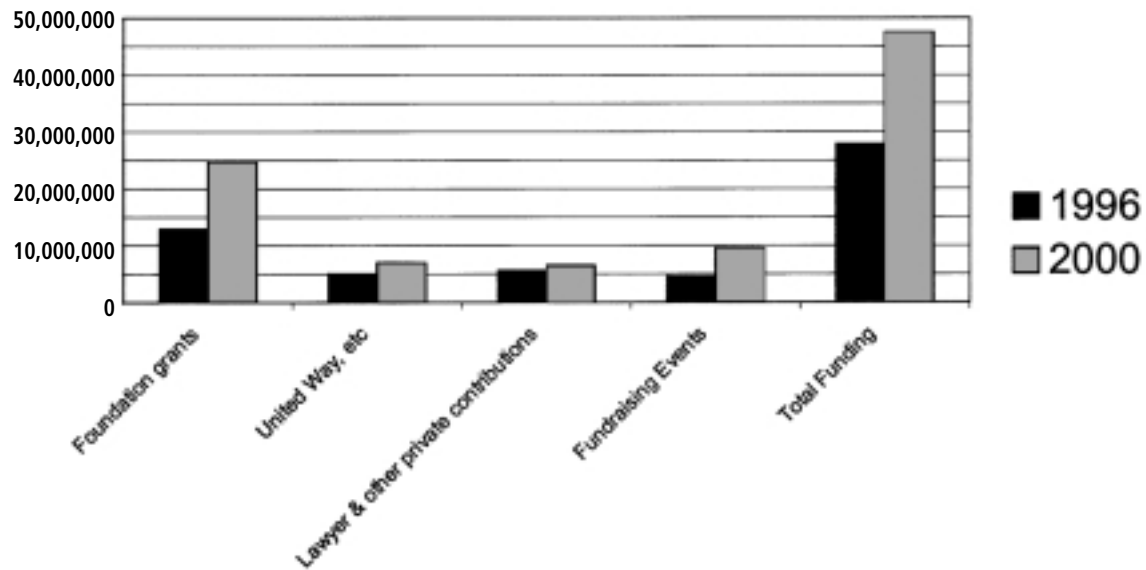


Table 3. Miscellaneous sources of funding for civil legal services in California*³

	1996	2000 (percent change)
Court-awarded fees**	\$7,728,398	\$6,120,057 (-21%)
Client contributions and fees	\$771,591	\$2,094,489 (+171%)
Interest	\$1,381,014	\$2,120,742 (+54%)
Other (law school contributions, etc.)	\$3,067,770	\$6,489,780 (+112%)
TOTAL	\$12,948,773	\$16,825,068 (+30%)

* These categories were combined into 'Other' in some statistics included in the 1996 report "And Justice For All."

** Number has decreased because of an LSC regulation added in 1996 that prohibits court-awarded attorney fees.

Miscellaneous sources of funding

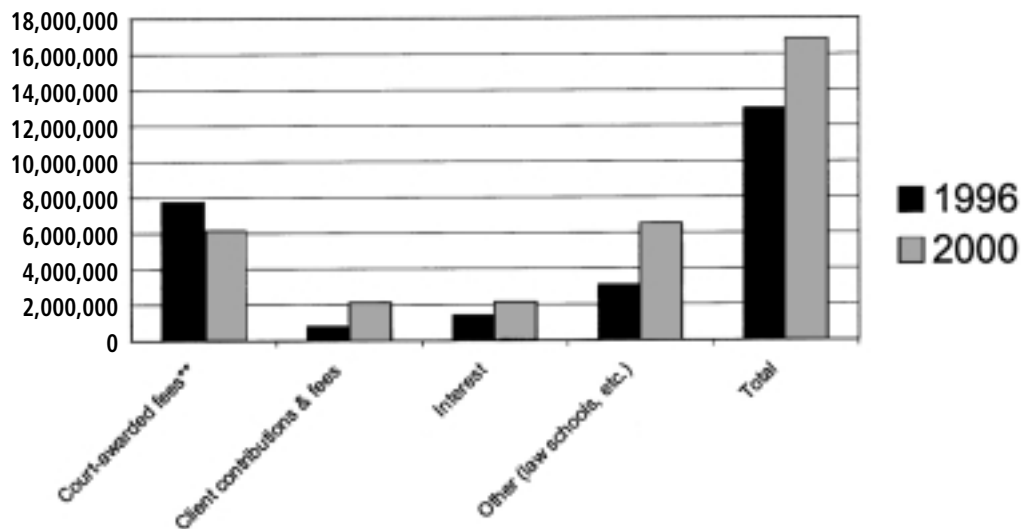


Table 4. Total funding of civil legal services⁴

	1996	2000 (percent increase)
Total public (and IOLTA)	\$60,436,338	\$84,572,906 (+40%)
Total private	\$27,813,863	\$47,434,011 (+71%)
Total miscellaneous	\$12,948,773	\$16,825,068 (+30%)
TOTAL	\$101,198,974	\$148,831,985 (+47%)

Total funding of civil legal services

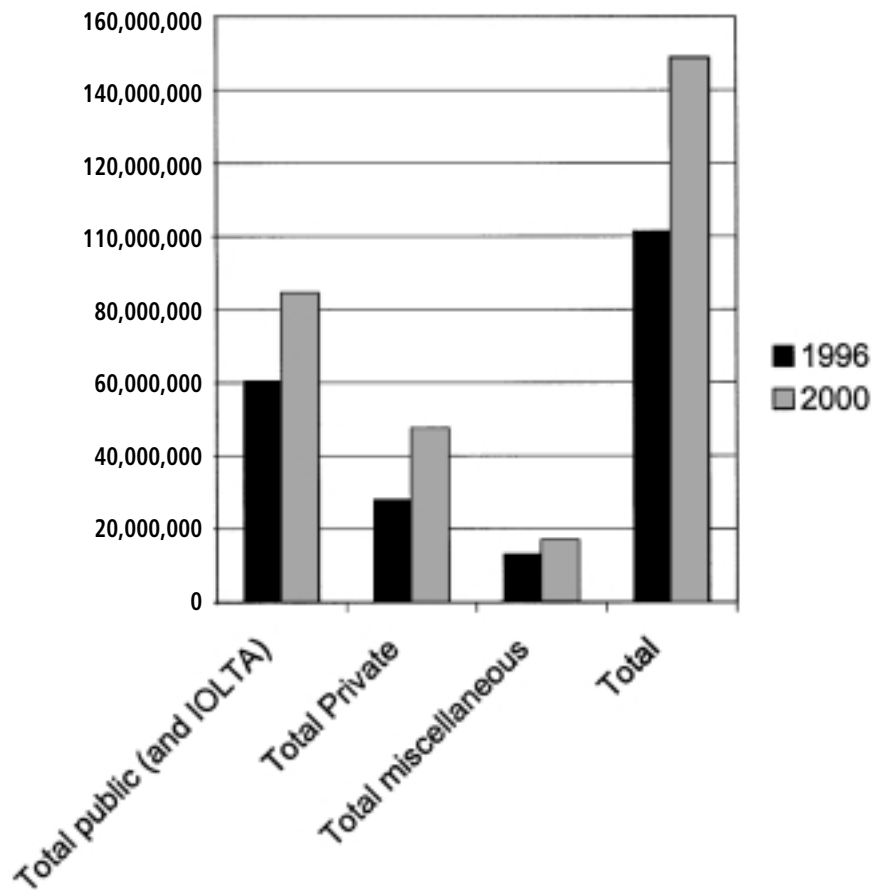


Table 5. Reducing the Access Gap, 1996-2000 (corrected for inflation)⁵

	1996	2000
Estimated funding needed for adequate access*	\$541,802,800	\$533,277,980
Government investment in legal services	\$60,436,338	\$84,572,906
Total state investment (government and private)	\$101,198,974	\$148,831,985
Access Gap (difference between adequate investment and actual investment)	\$440,603,826	\$384,445,995
Decrease in Access Gap		\$56,157,831 (-12.7%)
PERCENTAGE OF TOTAL NEED MET	18.7%	27.9% (+9.2%)

* Corrected for inflation and change in poverty

Reducing the Access Gap (corrected for inflation)

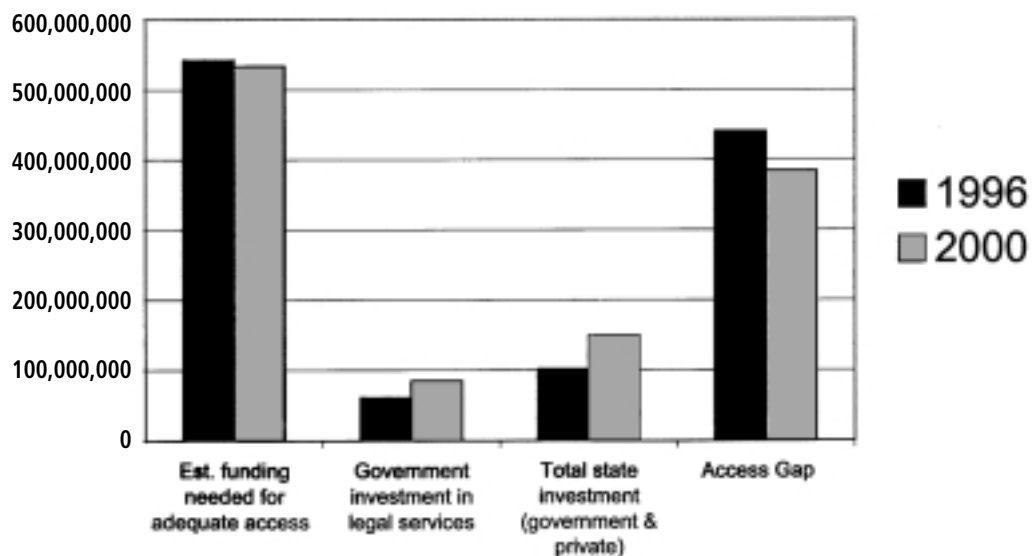


Table 6. Amount of combined federal and state funding needed in California to match civil legal services funding for the poor in these states⁶

	Amount CA would have to spend to match this state's funding
New Jersey	\$249.6 million
Minnesota	\$249.6 million
Connecticut	\$233.28 million
Maryland	\$194.88 million
Massachusetts	\$178.56 million
New York	\$159.36 million
Washington	\$145.92 million
Ohio	\$127.68 million
Pennsylvania	\$115.9 million

Table 7. Combined federal and state funding for civil legal services in California compared to other countries⁷

	Percent of gross national (or state) product committed to government-funded civil legal services for the poor	Combined federal and state funding for civil legal services needed in California to match commitments of these countries
England	.100%	\$1,350,000,000
Scotland	.070%	\$948,000,000
British Columbia, Canada	.042%	\$540,000,000
Netherlands	.040%	\$526,000,000
Hong Kong (China)	.038%	\$513,000,000
Ontario (Canada)	.033%	\$486,000,000
Quebec (Canada)	.032%	\$470,000,000
New South Wales (Australia)	.022%	\$370,000,000
Germany	.020%	\$255,000,000
France	.020%	\$255,000,000
New Zealand	.018%	\$245,000,000
CALIFORNIA	.007%	\$84,500,000

Table 8. Civil legal aid investment as percentage of total societal expenditures on lawyers⁸

	Total public/private expenditures on legal services	Total government investment on civil legal services	Government-funded civil legal services as percent of total expenditures on lawyers	Government investment in civil legal services as percentage of total societal expenditures on lawyers
England	\$11,250,000,000	\$1,350,000,000	12%	\$2,640,000,000
Netherlands	\$2,140,000,000	\$150,000,000	7%	\$1,540,000,000
California	\$20,000,000,000	\$84,500,000	.42%	

Table 9. Ratio of government funding of legal services to government funding of courts⁹

	Total court budget	Total government investment in civil legal services	Legal aid budget as percentage of court budget	California's government-funded civil legal services budget if the ratio of civil legal services to judicial budget were to match this country
England	\$882,000,000	\$1,350,000,000	153%	\$3,519,000,000
Quebec (Canada)	\$85,000,000	\$52,000,000	61%	\$1,403,000,000
California	\$2,300,000,000	\$84,500,000	3.6%	

¹ Information calculated from applications submitted to the Legal Services Trust Fund, on file in the Program Office at the State Bar of California.

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ Numbers calculated from American Bar Association's Project to Expand Resources for Legal Services, the National Association of Protection and Advocacy Systems, and the US Bureau of the Census.

⁷ Legal aid expenditures for each country were compiled using data from the National Equal Justice Library, which is available at <http://www.equaljusticelibrary.org.cnchost.com/international/comparative.asp> (last modified January 16, 2002). The legal aid expenditure as a percentage of gross national product was calculated using the World Bank data tables, available at <http://www.worldbank.org/data/countrydata/countrydata.html> (2002).

⁸ Id.

⁹ Id.



Appendix B.

Methodology for Calculating the 72 Percent Unmet Need

THIS REPORT ESTIMATES THAT approximately 28 percent of the legal needs of the poor in California are being met, leaving 72 percent unmet. The methodology used in this calculation is described below – starting with the assumptions used in the 1996 study, "And Justice for All," and updated with current poverty and inflation data as well as changes in the amount of funding now allocated to meet the need.

When it was published in 1996, "And Justice For All" estimated the amount of funding needed to meet the legal needs of California's poor at \$432 million. The figure was based on research conducted by the Project Advisory Group (PAG),¹ which estimated in 1993 that \$3.6 billion was needed to fund the legal needs of the entire nation's poor population. To calculate California's share of that cost, "And Justice For All" used the most recent census available at the time — 1990 — to determine California's poverty population in relationship to the nation's poverty population. According to the 1990 census, 12 percent of the nation's poor lived in California; therefore, "And Justice For All" concluded, approximately \$432 million, or 12 percent of \$3.6 billion, was needed to fully fund legal services for California's poor.²

Now, thanks to more current poverty and inflation data, a more precise estimate of the access gap can be made by taking into account a changing poverty population, inflation, and the funds spent on achieving access to justice for the poor.³ First, the estimates cited in "And Justice For All" must be updated to reflect current poverty and inflation data. This update requires controls for inflation, changes in the magnitude of the poverty population, and changes in the amount of funding allocated to meet this need. Dividing the PAG estimate by the number of poor people in the United States in 1993⁴ (\$3.6 billion/51,801,000) provides a legal aid cost estimate of \$69.50 per poor person.⁵ By making the assumption that the total cost of meeting the legal needs of the poor is primarily a function of changes in inflation and changes in the number of poor, the total need estimate can be updated.⁶ In addition, given the amount of resources allocated to meet the legal needs of the poor for any particular year, the level of unmet need can be calculated.

Figures cited in this report update estimates made in “And Justice For All” to correctly account for the cost of inflation changes between 1993 and 1996 and the availability of more accurate census data. During this period, inflation increased the cost of legal aid per poor person, but the poverty population declined. Using an inflation-corrected PAG estimate, the cost of legal aid per poor person in 1996 was \$75.46.⁷ In 1996, California’s poor population was 7,180,000; the state’s poor population multiplied by the per person cost of legal services produces a legal aid funding need of \$541,802,800. In 1996, California spent a total of \$101,198,974⁸ on legal services for the poor. This means that 18.68 percent of the need was being funded. To fully meet the need for legal aid in 1996, the state would have needed to spend an additional \$440,603,826.

From 1996 to 2000, the number of poor people in California declined 10.32 percent to 6,439,000. In addition, the amount of funding for legal services for the poor increased by 47 percent⁹ to \$148,831,985. These increases were somewhat offset, however, by inflation. Using 1996 dollars, the amount of funding available in 2000 was \$135,610,000, a 34 percent increase over funding available in 1996. In 2000, an inflation-corrected PAG estimate for the cost of legal services per poor person was \$82.82 per poor person, or \$533,277,980 to meet the total need. By 2000, the increase in funding coupled with the declining poverty population meant that 27.91 percent of the need for legal aid was being met – 9.23 percent more than the need met in 1996, but clearly a long way off from the goal of equal justice. Given the recession beginning in 2001, the current poverty population is likely larger.

1 PROJECT ADVISORY GROUP, INC., EQUAL JUSTICE FOR PEOPLE IN POVERTY: THE LONG-TERM GOAL OF LEGAL SERVICES 14 (1993). This paper was presented to the board of directors of the Legal Services Corp. and is on file with the Legal Services Corp.

2 “And Justice for All” page 40

3 The report also produced another estimate of need based on calculating the number of legal problems in the poverty community, estimating the level of met need, and projecting a cost per case based on the met need compared to the unmet need. It was considered an extremely conservative estimate because it was based on the assumption that closed cases by legal aid providers represented met need. In the five years since the report was written, it has become clear that this same assumption would not be justifiable today. Indeed, the assumption is problematic given the rise of large group clinics and phone banks, programs providing brief advice and service, and other alternative legal services delivery mechanisms adopted by legal aid providers to cope with shrinking federal aid.

4 We define poor as individuals below 125 percent of the census poverty level because this is the income eligibility level used by most agencies that provide legal services to the poor.

5 This assumes that the cost of meeting legal needs is constant nationwide.

6 This assumes that changes in technology (for example phone banks and interactive information technology) or changes in court procedures are not reducing the overall cost of meeting the legal needs of the poor (which may allow programs to allocate savings from one type of representation into more thorough representation for other clients).

- 7 Corrections for inflation were calculated using the consumer price index inflation correction calculator available on the Bureau of Labor Statistics Web site (www.bls.gov).
- 8 This includes funding from foundations, contributions, organizations, special events, Legal Services Corporation, IOLTA, special-purpose government funding, court-awarded attorney fees, client-paid fees, interest and other sources. See Table 4 in Appendix 1.
- 9 It is important to note that most of the increased funding came from the state, foundations and special purpose government funds. LSC funding did not keep pace with inflation. See Table 4 in Appendix A.



Appendix C.

Access Policy for Low- and Moderate-Income Persons

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue
San Francisco, California 94102-3660

Report

TO: Members of the Judicial Council

FROM: Center for Families, Children & the Courts
Diane Nunn, Director, (415) 865-7689
Bonnie Rose Hough, Senior Attorney, (415) 865-7668

DATE: November 12, 2001

SUBJECT: Approval of an Access Policy for Low- and Moderate-Income Persons
(Action Required)

Issue Statement

The ability of many of California's low- and moderate-income residents to effectively participate in the justice system is limited by economic barriers, including lack of access to legal assistance, inability to pay court fees, and lack of access to technology. Rules, forms, programs, and legislative proposals adopted by the council have the potential to impede access for low- and moderate-income persons.

The California Commission on Access to Justice is a broad-based blue-ribbon commission dedicated to improving access to justice for poor and moderate-income Californians both represented and unrepresented by counsel. The commission, which includes members appointed by the Chief Justice, has requested that the Judicial Council adopt the following policy. The Access and Fairness Advisory Committee also supports the policy. The policy seeks to identify and address existing barriers and to seek to prevent actions, rules, standards, and forms adopted by the Judicial Council from creating addi-

tional barriers to participation by low- and moderate-income litigants.

Recommendation

AOC staff recommend that the Judicial Council approve a policy on access to the court system for low- and moderate-income persons as recommended by the California Commission on Access to Justice, as follows:

1. When establishing or revising court rules, standards, or forms, or when considering positions on proposed legislation, the Judicial Council's advisory committees should expressly consider the impact of the proposed action on low- and moderate-income litigants and address that impact in the report to the council. Staff should ensure that comments on these proposals will be sought from groups and entities representing or advocating for litigants who face economic and other barriers to the effective use of the judicial system. A list of such entities will be maintained and updated on an annual basis by the Administrative Office of the Courts.
2. Council advisory committees will begin a process to solicit comments from the legal services community to identify issues and concerns regarding existing rules, standards, and forms, with comment from the groups and entities included on the AOC list maintained as directed in the preceding paragraph, to determine the extent to which any of these create economic barriers to access. The advisory committees will determine the extent to which new rules, standards, or forms would affirmatively increase access. Thereafter, each committee will, as part of its annual plan, review new projects and proposals using the same standards.
3. The Center for Judicial Education and Research will attempt to ensure that economic access issues are included in the curriculum development process and integrated into substantive courses as appropriate in education for judges, court administrators, and staff.
4. Attorneys with knowledge of low-and moderate-income issues will be encouraged to apply for membership on council advisory committees and task forces.
5. AOC staff will provide a copy of this policy, and may provide technical assistance to the extent that resources allow, to local courts to help them develop and maintain their own procedures for evaluating local practices consistent with the goals and mechanisms set forth in paragraph 1.
6. To assist the implementation of this policy, the AOC will develop and disseminate to the council, its committees, and trial court presiding judges information concerning successful practices, rules, standards, and forms developed by courts to improve economic access.
7. The liaison between the council's Access and Fairness Advisory Committee and the California Commission on Access to Justice will be continued to coordinate work and information on appropriate issues of fairness and access.

Rationale for Recommendation

The Judicial Council has adopted “Access, Fairness, and Diversity” as Goal I of its strategic plan. The second policy direction related to Goal I of the strategic plan provides that the council shall “Broaden and facilitate access to and understanding of the court process for all persons served by the courts, including unrepresented, low- or middle-income, disabled, and non-English-speaking individuals.” This protocol is an important step that will enhance and complement the other actions already taken by the Judicial Council to improve access, including the work of the Access and Fairness Advisory Committee and the newly established Task Force on Self-Represented Litigants.

The problems addressed by this protocol are not limited to the population in poverty or to the self-represented. The barriers for moderate-income persons, who have some ability to bear the costs of representation and access, are also real. Lack of economic access can also disproportionately impact people of color, women, persons with disabilities, and language minorities. The California Commission on Access to Justice believes, and AOC staff concur, that consideration of the impact of actions upon low- and moderate-income persons will improve access for a broad range of Californians.

Alternative Actions Considered

The council could choose not to approve this policy. However, the policy advanced by this protocol directly supports the goals set forth in the Judicial Council’s strategic plan, which include improvement of access to justice for all persons.

The council could choose, alternatively, to adopt a rule of court requiring that all local courts adopt such a protocol in their consideration of local rules, forms, and procedures. However, staff recommends that the council, instead, provide information to the courts about its activities in this area and suggest best practices, rather than mandate these activities.

Comment From Interested Parties

This proposal was not circulated to outside groups, as it is an internal policy for the Judicial Council.

Implementation Requirements and Costs

Implementation of this protocol would involve staff and committees undertaking the following steps:

1. Analyze issues relevant to each committee or task force that may impact low- or moderate-income litigants, in order to develop a framework for periodic analysis of rules, standards and forms;
2. Amend the Judicial Council report format to require a description of the impact of the proposed action, rule, or form on economic access to justice and a list of entities

or individuals to whom the proposal was circulated for comment prior to submission;

3. Convene appropriate trainings about access issues for low- and moderate-income persons for AOC staff who draft rules and forms.

The recommendations contained in this report will have no direct fiscal effect on the courts; nevertheless, the courts will indirectly benefit from assistance provided to self-represented litigants.

Appendix D.

Judicial Council Resolution on Pro Bono

Judicial Council Resolution

(Unanimously endorsed by the Judicial Council of California, May 17, 1996)

RESOLVED, that the Judicial Council of California will join the State Bar of California to launch a cooperative effort to broaden access to the courts for unrepresented and low- or middle-income persons; this access is threatened due to the lack of adequate funding for legal services programs serving the poor. There presently are an increasing number of litigants who must represent themselves without the assistance of counsel, and the lack of funding for legal services programs further diminishes access to our judicial system for those without adequate financial resources.

The Judicial Council urges members of the California judiciary to help address this urgent need by contributing to the effort to encourage pro bono legal work; such as:

- (1) agreeing to sign pro bono recruitment letters on behalf of pro bono programs;
- (2) participating in pro bono recognition events;
- (3) assisting in the training of pro bono lawyers;
- (4) considering special accommodations for counsel who are volunteering their services on behalf of the indigent, such as allowing pro bono attorneys to be heard first on the calendar, setting pro bono cases at specific times, or allowing pro bono attorneys to attend routine hearings by conference call; and
- (5) working closely with pro bono programs to make clinics available at or near the courthouse for those who cannot otherwise afford counsel.



Appendix E.

Formal Resolution on Pro Bono for Federal Courts

Resolution

(Adopted by the 9th Circuit Judicial Conference, August 2000, Sun Valley, Idaho)

WHEREAS an increasing number of civil cases are filed each year by parties appearing in propria persona in each district court in this Circuit; and

WHEREAS, in many of these cases the matters presented for adjudication by the court are complex, either legally or factually; and

WHEREAS, many of these cases involve meritorious claims; and

WHEREAS, proceeding without assistance of counsel may result either in an inability to establish a case, or inefficient and ineffective use of the court's time, as well as that of the litigants, in prosecuting the matter; and

WHEREAS, lawyers practicing within the districts recognize their ethical responsibility to ensure access to justice for litigants,

Therefore let it be

RESOLVED, that each district shall prepare and implement an action plan to provide for the representation of litigants in meritorious claims filed in propria persona, including establishing panels of pro bono lawyers; and let it be

FURTHER RESOLVED, that this Circuit requests the Federal Judicial Center to study the number of unrepresented litigants presently in federal court, and the nature of their claims; to provide guidance for the effective and efficient use of private volunteer counsel in meritorious matters.



Appendix F.

State Bar Resolution on Pro Bono

Pro Bono Resolution

**(Adopted by the Board of Governors of the State Bar of California at its
Dec. 9, 1989, meeting and amended at its June 22, 2002, meeting)**

RESOLVED that the Board hereby adopts the following resolution and urges local bar associations to adopt similar resolutions:

WHEREAS, there is an increasingly dire need for pro bono legal services for the needy and disadvantaged; and

WHEREAS, the federal, state and local governments are not providing sufficient funds for the delivery of legal services to the poor and disadvantaged; and

WHEREAS, lawyers should ensure that all members of the public have equal redress to the courts for resolution of their disputes and access to lawyers when legal services are necessary; and

WHEREAS, the Chief Justice of the California Supreme Court, the Judicial Council of California and Judicial Officers throughout California have consistently emphasized the pro bono responsibility of lawyers and its importance to the fair and efficient administration of justice; and

WHEREAS, California Business and Professions Code Section 6068(h) establishes that it is the duty of a lawyer "Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed"; now, therefore, it is

RESOLVED that the Board of Governors of the State Bar of California:

(1) Urges all attorneys to devote a reasonable amount of time, at least 50 hours per year, to provide or enable the direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to indigent individuals, or to not-for-profit organizations with a primary purpose of providing services to the poor or on behalf of the

poor or disadvantaged, not-for-profit organizations with a purpose of improving the law and the legal system, or increasing access to justice;

(2) Urges all law firms and governmental and corporate employers to promote and support the involvement of associates and partners in pro bono and other public service activities by counting all or a reasonable portion of their time spent on these activities, at least 50 hours per year, toward their billable hour requirements, or by otherwise giving actual work credit for these activities;

(3) Urges all law schools to promote and encourage the participation of law students in pro bono activities, including requiring any law firm wishing to recruit on campus to provide a written statement of its policy, if any, concerning the involvement of its attorneys in public service and pro bono activities; and

(4) Urges all attorneys and law firms to contribute financial support to not-for-profit organizations that provide free legal services to the poor, especially those attorneys who are precluded from directly rendering pro bono services.

Appendix G.

California Commission on Access to Justice

October 2002

The broad-based California Commission on Access to Justice is dedicated to finding long-term solutions to the chronic lack of legal representation available for poor and moderate income Californians. The Access Commission's composition is one of its key strengths. Because improving the justice system and working to achieve equal access to that system is a societal responsibility and not an obligation of the legal profession alone, the Commission includes members of the civic, business, labor, education and religious communities.

In order to make significant progress toward the goal of improving access to justice, the Access Commission is developing cooperative efforts with the judiciary, state and local bar associations, legal services providers and the broader community. The Commission is seeking both new financial resources to expand the availability of legal services advocates as well as systemic improvements that will make the law more accessible to the poor, the near-poor and those of moderate means.

Key Priorities and Projects

- **Resources:** Increasing resources for legal services programs, including supporting the Equal Access Fund, the state appropriation to the Judicial Council, and working with all sectors of the community to increase support for legal services to the poor.
- **Language Barriers:** Eliminating language barriers facing low income Californians in the legal and judicial system.
- **Self-Help Resources:** Expanding the availability of self-help resources for self-represented litigants.
- **Court System Improvements:** Working collaboratively with the state and federal court systems to share best practices and establish procedures to improve access for those of limited means.
- **Benjamin Aranda Award:** Working with the State Bar, Judicial Council, and California Judges Association to recognize judges for outstanding dedication to increasing access to the legal system.

- **Communication:** Increasing public awareness of the valuable work of legal services programs throughout the state.
- **State Planning:** Coordinating with other partners in the state justice community to oversee statewide planning so as to avoid gaps in the state’s delivery system and to ensure accountability of the legal services planning process.
- **Unbundling:** Expanding the availability of limited scope legal assistance, also known as “unbundling.”
- **Technology:** Leveraging resources through developing and coordinating innovative uses for technology in the legal services setting.

Appointing Entities and Members of the California Commission on Access to Justice:

Governor, State of California

Robert L. Lieff
Lieff, Cabraser, Heimann & Bernstein
San Francisco

Julie Paik
Child Support Services Department
County of Los Angeles

President Pro Tem of the Senate

Lauren Hallinan
San Francisco

Speaker of the Assembly

Angela E. Oh
Oh & Barrera, LLP
Los Angeles

California Attorney General

Ramon Alvarez
Alvarez/Lincoln Mercury
Riverside

Judicial Council of California

Honorable James R. Lambden
Associate Justice, Court of Appeal
First Appellate District, San Francisco

Honorable Ronald L. Taylor
Superior Court of Riverside County

California Judges Association

Honorable Rosemary Pfeiffer
Superior Court of San Mateo County
Redwood City

State Bar of California

Honorable Rosalyn M. Chapman
United States Magistrate Judge, U.S. District Court
Los Angeles

Donald Gray
Toshiba America Information Systems
Irvine

Honorable Earl Johnson, Jr. (Co-Chair)
Associate Justice, Court of Appeal
Second Appellate District
Los Angeles

Associate Dean Karen Lash (Co-Chair)

USC Law School

Los Angeles

Jack W. Londen

Morrison & Foerster

San Francisco

Mercedes Marquez

McCormack Baron Salazar, Inc.

Los Angeles

Professor James Meeker

School of Social Ecology

University of California, Irvine

Tony L. Richardson

Kirkland & Ellis

Los Angeles

Geoffrey L. Robinson

Bingham, McCutchen

Walnut Creek

Toby Rothschild

Legal Aid Foundation of Los Angeles

Long Beach

California Council of Churches

Appointment Pending

California League of Women Voters

Sylvia Martin-James

Riverside

California Chamber of Commerce

Fred L. Main

Vice President and General Counsel

California Chamber of Commerce

Sacramento

California Labor Federation

Marshall Walker, III

President, Local 790 SEIU

Oakland

Consumer Attorneys of California

Appointment Pending

Ex Officio Members

Honorable Terry J. Hatter, Jr.

U.S. District Court, Central District

Los Angeles

Jan Greenberg Levine

Fogel, Feldman, Ostrov, Ringler & Klevens

Santa Monica

Harvey I. Saferstein

Mintz, Levin, Cohn, Ferris, Glovsky, Popeo

Santa Monica

Honorable Laurie D. Zelon

Superior Court of Los Angeles County

Los Angeles



Appendix H.

References to Web Sites and Other Resources

Key Resources

Administrative Office of the Courts/Judicial Council: <http://www.courtinfo.ca.gov>

- Information to serve Californians who go to court without attorneys: <http://www.courtinfo.ca.gov/self-help>
- Court Interpreters Program (general information): <http://www.courtinfo.ca.gov/programs/courtinterpreters>
- "Report to the Legislature on the Use of Interpreters in California Courts": <http://www.courtinfo.ca.gov/reference/documents/useinterprept.pdf>
- Center for Families, Children and the Courts: <http://www.courtinfo.ca.gov/programs/cfcc/resources/self-help/list.html>
- California Court and Community Collaboration Program: <http://www.courtinfo.ca.gov/programs/community/>

National Legal Aid & Defender Association: <http://www.nlada.org>

- "The SPAN Report: Access to Justice Partnerships, State by State," March 2002 (survey of the status of access to justice structures and initiatives in the 50 states and the District of Columbia).
- "12 Lessons from Successful State Access to Justice Efforts" (discussion draft prepared by SPAN with input from experienced access to justice leaders around the country).
- "Chart of Significant Fundraising for Legal Services," prepared by the Project to Expand Resources for Legal Services (PERLS). (Also available at <http://www.abalegalservices.org/sclaid> under "Funding Civil Legal Services")

Public Interest Clearinghouse: <http://www.pic.org>

- California State Justice Plan (2001)
- Links to Legal Services Programs
- PIES JobAlert!
- Resource Materials – Funding Opportunities
- Legal Aid Association of California (LAAC)

Other valuable resources

American Association of Retired Persons: <http://www.aarp.org>

- "Beyond Fifty: A Report to the Nation on Economic Security"

American Bar Association: <http://www.abanet.org/legalservices>

- Division on Legal Services (Standing Committee on Legal Aid and Indigent Defendants, Committee on the Delivery of Legal Services, IOLTA Commission)

American Judicature Society: <http://www.ajs.org/prose/home.asp>

- Pro Se Forum - Resources, Conference Information

Brennan Center for Justice at NYU School of Law: <http://www.brennancenter.org>

- Access to Justice and Economic Justice Issues
- Legal Services E-let

The California Budget Project: <http://www.cbp.org>

- "Report: The State of Working California," September 2002
- In-depth Information on the Contents of the State Budget
- "An Updated Report on California's Continuing Housing Crisis," *Locked Out 2002*, Available in Mid-October
- An Update on the Minimum Wage, California Workers, and the Economy

Center for Law and Social Policy: <http://www.clasp.org>

- Impact of Recession and September 11 Seen on Welfare Caseloads: Caseloads Up in Most States between September and December 2001
- Welfare Reauthorization, Childcare and Early Education, Workforce Development and Job Creation

Center on Budget and Policy Priorities: <http://www.cbpp.org>

- Analysis of the 2001 Census Bureau Data on Poverty and Income Disparities
- "Federal and State Welfare Policies, Health Policies, Food Assistance, Low-Income Housing, Poverty and Income Trends"
- "Economic Policy Institute – Pulling Apart: A State-by-State Analysis of Income Trends, April 2002"

Children Now: <http://www.childrennow.org>

- "California Focus," Annual Statistical Reviews on the Status of California's Children at State and County Levels
- "Report Card 2001" and "California County Databook" Found Major Regional Differences in Children's Education, Economic Security, Health and Safety

Cornell University Legal Information Institute: <http://www.law.cornell.edu/index.html>

Court-Related Web Sites from California Superior Courts

- Kern County Superior Court: "What the Court Can Do for You," <http://www.co.kern.ca.us/courts/whatcando.asp>
- Sacramento Superior Court Small Claims E-filing Project: <http://www.apps-saccourt.com/scc/>
- Santa Clara Superior Court Self-Help Web Site: <http://www.scservice.org/home/>
- San Joaquin Superior Court Self-Help Web Site: <http://www.stocktoncourt.org/courts/selfhelp.htm>
- San Mateo Superior Court Family Law Forms Completion Program: <http://www.ezlegalfile.com/elf-ezlf/index.jsp>
- Ventura Superior Court Self-Help Web site: <http://courts.countyofventura.org/venturaMasterFrames5.htm>

Economic Policy Institute: <http://www.epinet.org>

- "Pulling Apart: A State-by-State Analysis of Income Trends, April 2002"
- "The State of Working America, 2002-2003"
- "Living Wage, Poverty and Family Budgets, Immigration and Poverty"

Fresno Madera Continuum of Care: <http://fmcoc@thecontinuumofcare.org>

- "Homeless Access to Care Survey," May 2002

The Institute for the Study of Homelessness and Poverty: <http://www.weingart.org/institute>

- Studies for the City of Los Angeles on Homelessness, Housing, Poverty and Hunger.

Legal Services Corporation: <http://www.rin.lsc.gov>

- State Planning – Reports
- Bulletin Board – Case, Staffing and Funding Data

Legal Services of Northern California: <http://www.lsn.net> and <http://www.lsc.gov>

- Meta Legal Research Sites, Statistics and Data
- Policy and Advocacy Resources
- Statistics and Data
- Thorough Links to Other Related Web Sites

National Center for Children in Poverty: <http://www.nccp.org>

- "Child Poverty Update - The Changing Face of Child Poverty in California," August 2002
- "Growing Majority of California's Poor Children Live in Working Families"

National Center for State Courts: <http://www.ncsconline.org>

- Information on Pro Se Litigation
- *The Self-Help Friendly Court: Designed from the Ground Up to Work for People Without Lawyers*, Richard Zorza, Zorza Associates, 2002

National Council on Disability: <http://www.ncd.gov>

- "National Disability Policy: A Progress Report, November 1, 1998 – November 19, 1999"

National Equal Justice Library: <http://www.equaljusticelibrary.org>

- Barbara and Earl Johnson Collection on Legal Aid in the United Kingdom and Ireland
- "Judicial Decisions Affecting Equal Access to Justice"
- Information from Other Nations' Programs Providing Equal Access to Justice

National Law Center on Homelessness and Poverty: <http://www.nlchp.org>

- Housing, Income, Education, Civil Rights, Homelessness and Poverty in America

National Low Income Housing Coalition: <http://www.hlihc.org>

- "Rental Housing for America's Poor Families: Farther Out of Reach Than Ever," California, 2002

Pine Tree Legal Assistance: <http://www.ptla.org/>

- Extensive Legal Services Web Site Providing Resources and Links to Other Legal Services Providers, Law Libraries, etc.

Public Policy Institute of California: <http://www.ppic.org>

- Reports, Research Briefs and Publications on Children and Families, Health Care, Welfare and Social Policy, Immigrants and Immigration, Employment and Income
- *California Counts – Population Trends and Profiles*
 - "The Linguistic Landscape of California Schools"
 - "Poverty in California: Levels, Trends, and Demographic Dimensions"
 - "Population Mobility and Income Inequality"
 - "Demographic and Economic Trends of Older Californians"

Self Help Practitioners Resource Center: <http://www.probono.net/areas>

Shelter Partnership, Inc.

- "A Report on Housing for Persons Living with AIDS in the City and County of Los Angeles"

State Bar of California: <http://www.calbar.ca.gov>

- Attorney Search
- Lawyer Referral Services
- Consumer Information

"Unbundling" (Limited Scope Legal Assistance) Web Site: <http://www.unbundledlaw.org>

- National Sources of Findings and Recommendations

University of California, Berkeley, California Policy Research Center: <http://www.ucop.edu/cprc>

- Welfare Policy Research Project

- California Census Research Data Center (CCRDC)
- California Welfare Research Database

University of California, Los Angeles

- Center for Health Policy Research: <http://www.healthpolicy.ucla.edu>
 - Publications and Research on National, State and Local Health Policy Issues
- The Ralph & Goldy Lewis Center for Regional Policy Studies, <http://www.ucla.edu/lewis>
"A Decade of Progress? The Poor and Affluent in California, 1990 and 2000"

U.S. Census Bureau: http://ferret.bls.census.gov/macro/032001/pov/new25_001.htm

- "Poverty Status by State: Annual Demographic Survey – A Joint Project of the Bureau of Labor Statistics and the Bureau of the Census"
- "Poverty in the United States: 2001 – Current Population Reports"

U.S. Department of Labor, Bureau of Labor Statistics: <http://www.bls.gov>

Wider Opportunities for Women: <http://www.wowonline.org>

- Self-sufficiency Standards for Women by State

The Women's Foundation: <http://www.twfusa.org>

- "Failing to Make Ends Meet: A Report on the Economic Status of Women in California," Summary of Findings and Recommendations

