

TOWARD EQUAL JUSTICE FOR ALL:

Report of the Civil Legal Justice
Coalition to the Pennsylvania State
Senate Judiciary Committee

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INTRODUCTION AND BACKGROUND

The Pennsylvania Civil Legal Justice Coalition (the “Coalition”) is a statewide coalition of bar leaders, representatives of the public interest legal community, and other key stakeholders that work collaboratively on exploring and implementing strategies to improve access to justice and address the growing crisis in unmet civil legal services needs of low-income Pennsylvanians. Coalition goals include generating broader awareness of this crisis and highlighting the significant economic and societal benefits that are provided through legal services, as well as studying, proposing and pushing forward strategies and solutions to alleviate this crisis and improve access to justice.

The Coalition originated in parallel efforts by the Philadelphia and Pennsylvania Bar Associations to address the growing need for free civil legal services among low-income Pennsylvanians through bar-appointed task forces.¹ In late 2011, the Philadelphia Bar Association hosted an inspirational address by New York’s Chief Justice Jonathan Lippman about the growing access to justice crisis in New York and the steps that the judiciary and legislative branches of that state had taken to address the crisis.² Those steps included statewide hearings at which stakeholders from all segments of the community discussed the need for legal services, the economic benefit from providing such services and the social and economic harm when they are absent.

Justice Lippman’s remarks electrified the audience. The Philadelphia Bar Association’s Civil Gideon Task Force formed a Statewide Strategies Working Group and charged it with building a statewide effort to achieve the necessary public attention and political support to reverse the growing justice gap in Pennsylvania. At the inaugural meeting in February 2012, the Working Group began designing the strategies for a statewide coalition and the goal of statewide hearings on the availability of civil legal aid. Gerald A. McHugh, Jr., Esq., a member of the Working Group, obtained the support of Senator Stewart J. Greenleaf, Chair of the Pennsylvania Senate Judiciary Committee, who agreed to convene public hearings of the Senate Judiciary Committee. The Philadelphia Bar Association’s 2012 Chancellor, John Savoth, communicated with Supreme Court Justice Ronald Castille about the group’s goals and plans. The Working Group commenced discussions with then-Pennsylvania Bar Association President Thomas G. Wilkinson, Jr., Esq. about joining forces.

In early 2013, then-Philadelphia Bar Association Chancellor Kathleen D. Wilkinson secured the support of Pennsylvania Supreme Court Chief Justice Ronald D. Castille and the Pennsylvania Bar Association to apply for a grant from the American Bar Association (ABA) to examine the civil justice gap and whether a civil access to justice commission

¹ The Philadelphia Bar Association’s work is conducted through the Task Force on Civil Gideon and Access to Justice (“Task Force”) and the Pennsylvania Bar Association’s effort is led by the Access to Justice Committee.

² For more information about the approach taken in New York to address the justice crisis, see Jonathan Lippman, *New York's Template to Address the Crisis in Civil Legal Services*, 7 Harv. L. & Policy Rev. 13 (Winter 2013), available at <http://www3.law.harvard.edu/journals/hlpr/files/2013/06/New-Yorks-Template-to-Address-the-Crisis-in-Civil-Legal-Services.pdf>.

should be formed in Pennsylvania. Letters of support for the ABA grant were also provided by IOLTA, through then-President Andrew F. Susko, and by the Pennsylvania Legal Aid Network, through Executive Director Samuel W. Milkes. Following the application and receipt of the ABA grant, the Working Group's efforts reached a new level of intensity. The Group added co-chairs designated by the Pennsylvania Bar Association and the Allegheny County Bar Association and expanded its geographic reach by inviting stakeholders from all parts of the Commonwealth.³ Chief Justice Castille agreed to serve as Honorary Chair of the Group, which was named the Civil Legal Justice Coalition.⁴

The newly formed Coalition plunged into its substantive mission. The group planned three hearings, conducted by the Senate Judiciary Committee and chaired by Senator Greenleaf, that addressed the following question: "*Civil Legal Representation of the Indigent: Have We Achieved Equal Access to Justice?*" The hearings were held May 7, 2013, in Harrisburg; May 23, 2013, in Philadelphia; and October 29, 2013, in Pittsburgh. Members of the Senate Judiciary Committee who participated in the hearings included Senator Stewart J. Greenleaf, Chair; Senator Jay Costa; Senator Wayne D. Fontana; Senator Daylin B. Leach; Senator Michael J. Stack; Senator Randy Vulakovich; and Senator Gene Yaw.⁵ 48 witnesses provided oral and written testimony including the Chief Justice of Pennsylvania, Supreme Court Justice Max Baer, president judges, and other judges from throughout the Commonwealth, as well as leaders of the bar, business leaders, directors and staff of civil legal services programs and social services programs, and experts in access to justice.⁶ In addition, low-income legal services clients, and other low-income *pro se* litigants testified about their personal experiences. The Coalition presented written testimony of an additional 35 witnesses and various studies, documents and reports either submitted by witnesses to supplement the record of the hearings or otherwise obtained by the Coalition.⁷ The hearings generated significant publicity throughout the Commonwealth.⁸

³ The Coalition's Co-Chairs are Jennifer R. Clarke, Executive Director of the Public Interest Law Center of Philadelphia; Samuel W. Milkes, Executive Director of the Pennsylvania Legal Aid Network; and James W. Creenan, President-Elect, Allegheny County Bar Association.

⁴ In addition to the Honorary Chair and Co-Chairs, the following individuals are members of the Coalition: Sandy Ballard; Karen C. Buck; Molly Callahan; Catherine C. Carr; William P. Fedullo; Rudolph Garcia; Barbara Griffin; Sylvia Hahn; Baruch Kintisch; Christine Kirby; Stephanie S. Libhart; Lynn Marks; Gerald A. McHugh, Jr.; Forest N. Myers; Robert Racunas; Louis S. Rulli; Dveera Segal; Kenneth Shear; Anita Santos-Singh; Cynthia Stoltz; Joseph A. Sullivan; Mark Tarasiewicz; David Trevaskis; Kathleen D. Wilkinson; Thomas G. Wilkinson, Jr.; and Merrill L. Zebe. A list of the Coalition members is available at <http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/CivilLegalJusticeCoalitionMembershiplist.pdf>.

⁵ The Coalition appreciates the assistance provided during the hearings by Gregg Warner, Esq., Counsel for the Senate Judiciary Committee; Pat Snively, Secretary to Senator Stewart J. Greenleaf; and Zachary Hoover, Esq., Minority Counsel.

⁶ The Coalition also greatly appreciates the pro bono transcription services provided by James DeCrescenzo Reporting LLC, for the May 23, 2013 hearing, and Donna Betza & Associates Court Reporting, for the October 29, 2013 hearing. The Coalition also acknowledges Filius & McLucas Reporting Service, Inc., for providing transcription services for the May 7, 2013 hearing.

⁷ The findings and recommendations contained in this document have been endorsed by the Civil Legal Justice Coalition and are being presented to the Senate Judiciary Committee only on behalf of the

EXECUTIVE SUMMARY

Senator Greenleaf has called upon the Coalition to present findings and to make recommendations relating to improving access to justice, and to present those to the Judiciary Committee. This report, based on the record of the public hearings, contains those findings and recommendations. That record leads to the inexorable conclusion that the answer to the question presented, “*Civil Legal Representation of the Indigent: Have We Achieved Equal Access to Justice?*” is a resounding “No,” but that there are steps that can be taken to turn that around. This report explains why the answer is no, and what can be done.⁹

People who cannot afford a lawyer and thus must navigate the legal system alone face a frightening, confusing universe; one in which the rules are unknown and the risk is unimaginable: losing a home, a child or being at risk of personal harm. Examples of testimony and written statements at the hearings included:

- A veteran, after a lifetime of employment, became unable to work after collapsing from a heart condition. Without income he fell behind on his mortgage and was served by the sheriff with foreclosure papers on the small trailer he called home. He did not have the information or skills needed to obtain disability benefits which could have helped with mortgage payments or to stop the foreclosure.
- A UPS dockworker and young father was unable to gain access to his child.
- A woman, subject to vicious abuse at home, appeared in court on her own, trying to obtain a protection from abuse order against her child’s father. She did not know to bring witnesses or that she could subpoena people to testify about the abuse and her plea for protection was rejected.
- A case manager at a mental health/mental retardation facility, was hit by a car, could not work, fell behind in mortgage payments and risked losing her home.

In each case, it was only later, with the assistance of a lawyer that the home, the child, the life was saved.

Coalition. At this time, this document does not represent the official policy or position of the Philadelphia Bar Association, Pennsylvania Bar Association, Allegheny County Bar Association, Pennsylvania IOLTA Board or the Pennsylvania Senate Judiciary Committee.

⁸ More information about the publicity is available on the Philadelphia Bar Association’s *Civil Gideon Corner*, at <http://www.philadelphiabar.org/page/CivilGideonHearingsPublicity?appNum=1>. For further reference, see an article entitled, “*Civil Gideon and Access to Justice*,” written by Joseph A. Sullivan and published in *The Philadelphia Lawyer*, Winter 2014 edition; and a Commentary entitled, “*Mind the Gap: Taking Steps to Bridge the Gap in Access to Civil Legal Services*,” written by Thomas G. Wilkinson, Jr., and published in the November/December 2013 edition of *The Pennsylvania Lawyer*.

⁹ The Coalition is grateful to Andrew Scherer for preparing an initial draft of this report and appreciates the editing assistance provided by Coalition members Catherine C. Carr, Jennifer R. Clarke, Samuel W. Milkes, Louis S. Rulli, Joseph A. Sullivan, and Merril L. Zebe. The Coalition also acknowledges the contributions of the following interns: Eric Bodzin, Karla Cruel, Sara Dominick, and Ruben Perez. The Coalition also thanks Pepper Hamilton LLP for assistance with the cover design for this report.

These were just some of the stories that emerged from the oral and written testimony of witnesses at the Pennsylvania Senate Judiciary Committee hearings. As the testimony, studies, documents and reports demonstrate, the need for lawyers is urgent and the gap between the need and the supply is growing because of growing poverty and declining funding for free civil legal services. The hearings documented the profoundly negative impact that the lack of legal services has on the quality of justice in Pennsylvania. Our findings also demonstrate significant economic and social benefits to individual litigants and the community, when civil legal services are available for critical legal needs and significant economic and social harm to individuals and the community is inflicted when they are not.

The findings the Coalition has drawn from the hearings should come as no surprise to anyone who is familiar with the administration of justice in the Commonwealth of Pennsylvania. The testimony and data presented in the course of the hearings inexorably point to the conclusion that there is a dire crisis in access to justice in our Commonwealth, a crisis that affects the operations of the courts, faith in the legal system and, most importantly, that profoundly affects the lives and well-being of our state's poorest residents. These findings are as follows:

Finding 1: A longstanding and growing crisis exists in the unmet critical legal needs of low-income litigants who are unable to access legal services in Pennsylvania.

Finding 1A: Poverty has been increasing in Pennsylvania

Finding 1B: Funding for Civil Legal Services has been declining

Finding 1C: Civil legal services programs cannot meet the growing need for legal assistance

Finding 1D: The unmet need for legal assistance for low-income people has been growing

Finding 1E: The growing justice gap in Pennsylvania reflects a national trend

Finding 2: The longstanding and growing civil legal justice crisis throughout the Commonwealth adversely affects the quality of justice for those unable to afford counsel, negatively impacts the Courts' administration of justice, and undermines the rule of law.

Finding 2A: There has been a surge in the numbers of unrepresented litigants in the Pennsylvania courts

Finding 2B: The civil legal services crisis has a negative impact on litigants

Finding 2C: The crisis in access to justice has a negative impact on the courts

Finding 2D: Alternative dispute resolution and other innovative tools can mitigate, but not resolve, the crisis in access to justice

Finding 2E: The lack of legal services undermines the rule of law and equal access to justice for those unable to afford counsel

Finding 3: Access to civil legal services in basic human needs cases provides significant economic and social benefits to individual litigants and the community, while significant economic and social harm to individuals and the community is inflicted when critical legal needs are not met.

Finding 3A: Funding civil legal aid produces dramatic economic and social benefits for Pennsylvania: For each dollar spent on legal aid, there is an *eleven dollar return* to Pennsylvania and its residents

Finding 3B: Civil legal services representation serves Pennsylvania businesses

Finding 3C: Civil legal services representation saves costs associated with domestic violence

Finding 3D: Civil legal services representation saves costs associated with foster care and child custody

Finding 3E: Civil legal services representation saves costs associated with housing

Finding 3F: Civil legal services representation saves costs associated with healthcare

Finding 3G: Civil legal services representation saves costs associated with crime and imprisonment

Finding 4: *Pro bono* representation by private attorneys is an enormously valuable supplement to the services of civil legal aid programs, but not a replacement for them. Effective *pro bono* services depend upon screening, coordination, mentoring and training by legal aid programs.

Our recommendations for measures to address this crisis are simple and achievable: increase legal services funding; establish an Access to Justice Commission and charge it with evaluating and proposing additional measures to further access to justice; and move,

in the long run, toward a right to counsel in civil legal matters affecting fundamental human needs.

Recommendation 1: The Pennsylvania State Legislature should annually appropriate an additional \$50 million for civil legal services to adequately address the immediate crisis in access to Justice.

Recommendation 2: The Pennsylvania Supreme Court should establish an Access to Justice Commission to study and implement measures to expand access to justice. An Access to Justice Commission should have a broad agenda and the mandate to be creative and innovative in its approach to furthering access to justice, including proposing and promoting strategies and ideas to generate increased and adequate levels of public, private, and volunteer resources and funding for civil legal aid providers in Pennsylvania and the access to justice initiatives identified by the Commission. Possible measures for it to consider, include studying and adopting:

- minimum standards for all judicial districts in the Commonwealth to improve access to justice;
- innovative court programs, with demonstrated success, for adoption in every suitable judicial district;
- methods for administrative agencies to review procedures and forms to simplify and standardize the public's access to services and benefits;
- methods for Pennsylvania law schools to help reduce the gap between the need for legal services and the resources available to provide services and to help promote public awareness and understanding;
- feasibility and costs of providing counsel at public expense for indigent persons in adversarial civil matters involving basic human needs, such as shelter, child custody, health, sustenance and safety;
- measures to increase pro bono participation;
- methods to promote efficiencies in delivery of services by legal services programs across the Commonwealth, including urban and rural areas; and
- methods to increase public awareness of the critical need for expanding access to justice and greater understanding of the relationship between the rule of law and access to justice.

Recommendation 3: The Commonwealth of Pennsylvania should work toward establishing a right to counsel in civil legal matters in which fundamental human needs are at stake.

The Coalition is enormously grateful to Senator Greenleaf and the Senate Judiciary Committee for drawing much-needed attention to the burgeoning crisis in access to justice in the Commonwealth of Pennsylvania. We stand ready to do all we can to assist with implementation of our recommendations and to make access to justice a reality in Pennsylvania.

THE SENATE JUDICIARY HEARINGS

OPENING REMARKS BY SENATOR STEWART J. GREENLEAF

The reason for this hearing is to explore the need for adequate funding for those individuals that are engaged in litigation or the need for representation in our civil courts of our Commonwealth.

All too often we find people that are going to court without counsel. I know in some areas it could be as much as 80 percent of those people in a particular area of civil law and they have no counsel. It places a terrible burden upon the judge, first of all, in that it causes them to be in a difficult position in trying to make sure that that individual is adequately, or the process is fair to them without going over and being their advocate. Also, it's not fair to an individual who doesn't have representation it's not fair to the person who does have representation and the court then has to deal with that situation. So it's a terrible situation we're dealing with. Justice is not being done because of it and we thank all the individuals and the witnesses who are here today to testify and expand on this to demonstrate what the consequences are for the Commonwealth and hopefully to generate more support for the solution of this and the support for appropriations or legislation that will help to remedy it.¹⁰

¹⁰ Pennsylvania Senate Judiciary Committee Public Hearing on Legal Services (hereinafter referred to as "Public Hearing"), May 7 Public Hearing, Transcript (Opening Remarks of Senator Stewart J. Greenleaf, Chair, Pennsylvania Senate Judiciary Committee, at 3-4). The written statements and transcripts of oral testimony presented at the May 7, May 23 and October 29, 2013, public hearings held by the Pennsylvania Senate Judiciary Committee are available along with links to video and audio recordings of the hearings on the Philadelphia Bar Association's [Civil Gideon Corner](#) and on the website of the [Pennsylvania Legal Aid Network](#).

FINDINGS

FINDING 1: THE GROWING CRISIS IN UNMET LEGAL NEEDS

People in Pittsburgh “have been hit hard by the close of steel mills, by the close of other related manufacturing plants -- and now these people who we call the indigent but are our friends and neighbors after all, literally need help to deal with foreclosures, evictions, child custody and so on.”

Dean Ken Gormley, Duquesne University School of Law¹¹

FINDING 1: A LONGSTANDING AND GROWING CRISIS EXISTS IN THE UNMET CRITICAL LEGAL NEEDS OF LOW-INCOME LITIGANTS WHO ARE UNABLE TO ACCESS LEGAL SERVICES IN PENNSYLVANIA.

The word “crisis” implies a critical juncture, a turning point, a moment when conditions are particularly acute. But the crisis in access to justice in Pennsylvania is longstanding. It has long been the case that low-income people cannot afford to pay for legal representation, that by virtue of their poverty and life’s circumstances they need legal help all too often, and that the free resources available to them through civil legal services programs and *pro bono* efforts have not come close to meeting the need for assistance. Moreover, while this “crisis” is longstanding, in recent years the great recession significantly exacerbated the crisis in availability of counsel. The economic downturn has hit low- and moderate-income people hardest of all, with high unemployment, foreclosures, and reductions in public benefits, housing subsidies and other programs intended to alleviate poverty. These economic hardships have led to a growth in a wide range of legal problems while, at the same time, there has been a radical decline in funding for civil legal aid – from the federal Legal Services Corporation, the IOLTA (“Interest on Lawyer Trust Account”) program, the state legislature, private foundations, local government contracts, private donors, and other sources. This “perfect storm” has led to a dramatic increase in the unmet civil legal needs of low-income people and the enormous civil legal justice gap crisis that we face today.

Finding 1A: Poverty has been increasing in Pennsylvania

The incidence and growth of poverty in Pennsylvania is alarming. Out of Pennsylvania’s population of about 12.8 million people, 1.8 million live in poverty, up from 1.6 million just a couple of years ago. Two million Pennsylvanians are eligible for free legal services.¹² Poverty pervades both our rural and urban communities. For example, Reading has been ranked as having the highest poverty level in the nation for a period of

¹¹ Oct. 29 Public Hearing, Transcript (Ken Gormley, Dean and Professor of Law, Duquesne University School of Law, at 44).

¹² Oct. 29 Public Hearing, Transcript (Samuel W. Milkes, Esq., Executive Director of Pennsylvania Legal Aid Network and Co-Chair of the Civil Legal Justice Coalition, at 132-133).

time and 19.2% of Fayette County's population is poor.¹³ Among the 18 counties covered by MidPenn Legal Services, the number of people below the poverty line rose from 250,000 in 2000 to 361,000 in 2010 alone.¹⁴

Witness Dabney Miller, Associate Director of the Women's Law Project, stated about Philadelphia: "We live in the poorest city, we have the fourth-hungriest Congressional district in the country. A quarter of all Philadelphia adults cannot read or write, another quarter can't read or write well enough to accurately complete forms."¹⁵ The Hon. Margaret T. Murphy, Supervising Judge, Philadelphia Court of Common Pleas-Family Division, similarly observed that Philadelphia is among the poorest cities in the country, citing as of December 2012, an unemployment rate of 10.6% and poverty rate of 26.7%.¹⁶

Poverty particularly affects the elderly, women, and children. Pennsylvania has the fourth largest population of elderly residents in the nation.¹⁷ 78% of those who take advantage of legal aid are women; 75% of people living in poverty in Pennsylvania are single mothers.¹⁸ And 39% of Philadelphia's children now live in poverty.¹⁹

Finding 1B: Funding for Civil Legal Services has been declining

In spite of the growth in poverty and greater need for legal assistance, funding for civil legal services from all levels of government and all sources has been significantly diminished during the great recession. Here in Pennsylvania, all sources of State funding have been reduced. The following graph displays the stagnation of state sources of funding:²⁰

¹³ *Id.*, at 133; see also Sabrina Tavernise, *Reading, PA., Knew It Was Poor. Now It Knows How Poor*, N.Y. Times (September 26, 2011).

¹⁴ May 7 Public Hearing, Transcript (Rhodia D. Thomas, Esq., Executive Director, MidPenn Legal Services, at 15).

¹⁵ May 23 Public Hearing, Transcript (Dabney Miller, Associate Director, Women's Law Project, at 166).

¹⁶ May 23 Public Hearing, Written Testimony (Hon. Margaret T. Murphy, Supervising Judge, Philadelphia Court of Common Pleas-Family Division, at 42).

¹⁷ Oct. 29 Public Hearing, Transcript (Samuel W. Milkes, at 133).

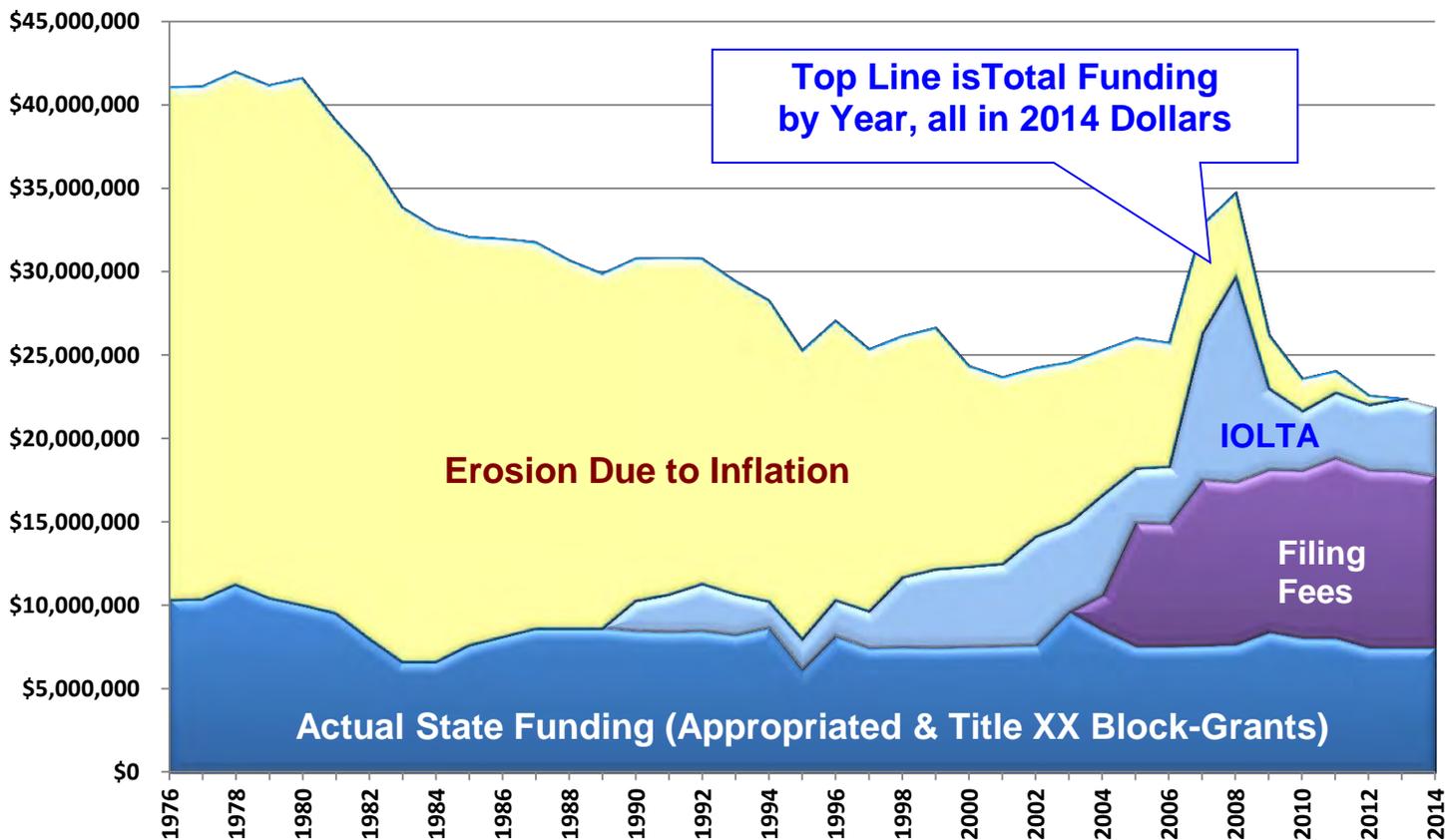
¹⁸ Oct. 29 Public Hearing, Transcript (Heather Arnet, Chief Executive Officer, Women and Girls Foundation of Southwest Pennsylvania, at 80).

¹⁹ The Pew Charitable Trusts, *Philadelphia 2013: State of the City* (2013), available at: http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Philadelphia_Research_Initiative/Philadelphia-City-Statistics.pdf.

²⁰ This graph is attached as an appendix to the May 7 Public Hearing, Written Testimony (Samuel W. Milkes, at 30).

State Funding Sources for Civil Legal Services*

This graph portrays recurring sources of state governmental types of support for civil legal aid, all in 2014 dollars. It does not include special or one-time sources, and it does not include local sources of support.



IOLTA funding: a major funding source for civil legal aid has declined precipitously in recent years.

Since 1988, Interest on Lawyer Trust Accounts (IOLTA) funding has been a major source of support for civil legal services in Pennsylvania. These funds are administered by the Pennsylvania IOLTA Board, an arm of the State Supreme Court whose members are appointed by the Court. Attorneys are not ethically permitted to make money from their client's funds, yet they often hold small amounts of funds for clients or they hold larger amounts for short periods of time, such that it is not economically feasible to invest the funds for individual clients. Typically, these funds might be held as a client retainer, which has not yet been earned by the attorney, as real estate settlement funds, pending distribution to the parties involved in the sale of a home, or settlement funds from some sort of dispute, pending payment on that settlement. The interest generated on these funds is pooled statewide and used to help provide civil legal services to the indigent. Before the creation of the IOLTA program, the interest earned reverted as a windfall to the banks.

As recently as about five years ago, annual revenues from IOLTA accounts were at about \$12.2 million. Now they are down to about \$3 million, due to lower interest rates and reduced economic activity. As Pennsylvania Chief Justice Ronald D. Castille testified, IOLTA revenues have witnessed “a decline of 74%” since 2007, and that’s strictly because of the near-zero interest rates paid by qualified banks on these accounts.”²¹ That \$9 million loss of revenue has had devastating effects.

And now, the funding shortfall is about to get worse. The Supreme Court recently passed a new Court rule which provides for 50% of *cy pres* funds to go to the Pennsylvania IOLTA Board to fund civil legal aid. For example, on occasion the IOLTA Board receives *cy pres* awards, which are undistributed funds from certain kinds of litigation, which can be used to help fund legal services. Several *cy pres* awards have come to the Board. *Cy pres* funds received in June 2012 that supplemented IOLTA grants have been exhausted. Conventional IOLTA revenues are supplemented to some extent by other revenues that are held to the same rules as to usage and requirements as the IOLTA funds themselves. These funds are unpredictable in frequency and amount. Even though IOLTA revenues themselves were about \$3 million in FY 2012-13, the Pennsylvania IOLTA Board was able to distribute \$5.7 million in FY 2013-14 due to the receipt of some *cy pres* funds and \$2.2 million generated by Supreme Court from attorney registration fees. However, because fewer supplemental funds are available this year, total IOLTA revenues will be reduced in the next fiscal year.

Moreover, funds available for distribution in the coming year will be reduced further because the Pennsylvania IOLTA Board needs to recover a shortfall in its reserves. The Board has generally awarded grants to the Pennsylvania Legal Aid Network and other legal aid providers based on projected revenues. For FY 2013-4, the grants to legal aid were based upon a projected amount of available funds, calculated about one year ago. For the past five years, those projections have fallen short of actual revenues, sometimes by significant amounts. Now the Board is faced with having to recover reserves that were used to cover those shortfalls. The Board does not have enough cash in hand to cover grants payable on July 1, 2014, much less a reasonable amount of reserves needed to make ongoing payments to programs and to cover other cash flow, administrative, and good governance needs. To address this deficit, the Board plans to cut back total IOLTA grants to \$3 million annually for the next three years and, as a result, grants to programs will again be significantly reduced, and there will be further cutbacks in legal services staff and offices and thus services to impoverished Pennsylvanians.

Other state funding sources have declined or stagnated in recent years

Again, the graph above helps to display the effect of stagnating state funding. The state appropriation of funding is comprised of two elements. One is the state appropriation of federal Social Services Block Grant (SSBG) funding and the other is the state appropriation of state dollars. The darker blue shaded area of the graph demonstrates that

²¹ May 23 Public Hearing, Transcript (remarks of Hon. Ronald D. Castille, Chief Justice, Pennsylvania Supreme Court, at 8).

over the 40-year history of state funding for legal services, the level of support has remained stagnant and in fact has declined, particularly within the past few years. The entire appropriation of state dollars for the statewide delivery of civil legal services today is about \$2.5 million. Added to this is the SSBG funding of about \$5 million.

Federal funding has also declined

The cut in federal Legal Services Corporation funding by 15% over the past two years has further reduced the revenue available for civil legal services programs.²² As former Governor Dick Thornburgh explained:

Let me share with you some statistics compiled by the Legal Services Corporation (LSC), the national umbrella agency and largest single funder in this field, from its 134 programs across the United States. The number of people eligible for civil legal assistance is soon expected to reach nearly 66 million, an all-time high. The sharp rise in economic turbulence has been coupled with a shrinking pie of appropriations as federal support has been reduced 17 percent since 2010 to just \$348 million this year, an inflation-adjusted all-time low. Legal aid offices have been closed, staff has been laid off and more people have been turned away as fortunes declined. Nearly 1,500 positions are projected to have been eliminated as of this year, from LSC-funded programs, a more than 15 percent reduction, and these programs have been obliged to turn away more than 50 percent of those seeking aid.²³

Finding 1C: Civil legal services programs cannot meet the growing need for legal assistance

The cuts and stagnation in funding for civil legal services in Pennsylvania in recent years have reduced services to clients. According to a recent IOLTA Report, “Only one in five low-income Pennsylvanians having a critical legal problem receives legal help from any source.”²⁴ While historically, PLAN programs have been able to handle about 100,000 cases annually, the number of cases is now down to about 80,000 annually.²⁵ Programs are no longer able to ride the ups and downs in funding, and have been forced to lay off staff and close offices. These steps were taken only after local program steps, like freezing salaries or eliminating benefits, were insufficient to close program deficits.

Dana Rich-Collins, a paralegal at North Penn Legal Services, presented a long-term perspective:

²² *Id.*, at 9.

²³ Oct. 29 Public Hearing, Written Testimony (Hon. Dick Thornburgh, former Governor, Commonwealth of Pennsylvania, and former U.S. Attorney General, at 84-85).

²⁴ *A Report on Pennsylvania's Access to Justice Act, FY 2004-2011*, prepared by The Resource for Great Programs, Inc., at 6 (May 2012), available at <http://www.paiolta.org/Grants/PA%20IOLTA%20AJA%20Report%20FINAL-5-1-2012%20at%204pm.pdf>

²⁵ May 7 Public Hearing, Transcript (Samuel W. Milkes, at 51).

[W]hen I first started [thirty-eight years ago], we represented Lycoming County, which as you all know probably is the size of Rhode Island, and we had nine attorneys in our office, two and a half paralegals, three support staff, a director of development and a director of education. There were two other counties that were represented, Clinton County and Tioga County. Both had their own offices, their own attorneys, their own paralegals. Now in 2013, the Williamsport office represents Tioga, Lycoming and Clinton County out of the Williamsport office. We have two attorneys, one and a half paralegals. So as you can see, the ability to deliver the legal services has been greatly reduced.²⁶

Michelle DeBord, Managing Attorney from Neighborhood Legal Services (NLS), serving the four-county Pittsburgh area commented, “[W]e are no longer able to represent about 7,000 people [in the NLS service area] that we could have represented before.”²⁷ She added, “the timing could not have been worse [for the most recent round of cuts]. It came during an economic downturn in which our low-income citizens lost jobs in greater numbers than ever before, needing more legal services than ever before. Where formerly middle class people who were strangers to the public welfare system needed help with food stamps, with Medicaid, with all kinds of public benefits.”²⁸ Rhodia Thomas, Executive Director of MidPenn Legal Services, an eighteen county program in the middle of the state: “We had a staff of 102 about three years ago. We’re down to 40 people. That’s 40 attorneys, paralegals, support staff and administrative staff. While we were never, ever able to meet all the need across our region, now it’s even worse.”²⁹

Catherine C. Carr, Executive Director of Community Legal Services (CLS) in Philadelphia, testified that due to cutbacks CLS now has 50 attorneys, while in 1979 there were 100, and that they used to have offices across the city of Philadelphia and now they only have two.³⁰ The consequences, she explained, were that Community Legal Services has to find ways to limit demand, such as limiting intake hours and no longer taking certain types of cases. CLS only takes cases where there is already a crisis, such as where someone is about to lose their home or has lost their income or medical care; there are no resources to handle cases that will prevent a crisis; and even many people in crisis must be turned away. CLS recently closed down a hotline to assist people facing cutoffs or a denial of Medicaid, food stamps or cash assistance for families with children. CLS is turning away mortgage, employment and wage theft cases, and has fewer resources for community education and outreach.³¹

Other civil legal services programs in the state have been similarly affected. Laurel Legal Services used to have three offices and thirteen lawyers in Westmoreland County and the

²⁶ May 7 Public Hearing, Transcript (Dana Rich-Collins, Paralegal, North Penn Legal Services, at 21).

²⁷ Oct. 29 Public Hearing, Transcript (Michelle DeBord, Esq., Managing Attorney, Neighborhood Legal Services, at 95).

²⁸ *Id.*, at 96.

²⁹ May 7 Public Hearing, Transcript (Rhodia Thomas, at 16).

³⁰ May 23 Public Hearing, Transcript (Catherine C. Carr, Esq., Executive Director, Community Legal Services, at 176-177).

³¹ *Id.*, at 177-180.

five surrounding counties; now they have one office and three attorneys. Their budget today is the same as in 1980.³² The Chambersburg office of MidPenn Legal Services used to have three lawyers; now it only has one and two paralegals.³³

Finding 1D: The unmet need for legal assistance for low-income people has been growing

The decline in resources for civil legal services has inevitably led to a decline in services to clients. Sam Milkes, Executive Director of PLAN, testified that in matters involving protection from abuse, “in the last fiscal year, we represented 10,879 protection from abuse clients [statewide]. I’m being that precise because every one of those is an important case. It was about 15,000 only a few years ago and that’s not because domestic violence has gone down.”³⁴ Shirl Regan, President and CEO of the Women’s Center and Shelter of Pittsburgh, testified that victims of domestic violence may be able to get help for a protection from abuse order in Allegheny County, but there aren’t any lawyers available to help in follow up proceedings for custody, divorce or support actions. This is a very dangerous time for women.³⁵

The lack of access to legal assistance is just as apparent in child custody cases:

- “[I]n 2012, this is in custody cases only, there were 1145 custody orders entered in Dauphin County. Of those 1145 custody orders, in 325 cases there was one self-represented party, where someone else had the attorney. In 471 cases there was more than one self-represented party. So that is 69 percent of the cases were without...any attorney or maybe one or two.”³⁶
- In Philadelphia, “[there were] 1,327 cases that we heard in April, I will note for you that there were 706 custody events before judges, and of that number 208 had one attorney at least, not both attorneys. That proportion is 29.5 percent, which is much less than that, because it's not two-sided cases, it's normally one attorney. So it's much less than that.”³⁷
- For a custody conciliation program in Monroe County, “over the last 17 months, 57 percent of the litigants in that program were *pro se*. And that represented about 1800 individuals who did not have the benefit of counsel.”³⁸

³² Oct. 29 Public Hearing, Transcript (Hon. Gary Caruso, President Judge, Westmoreland County Court of Common Pleas, at 32).

³³ Oct. 29 Public Hearing, Transcript (Forest N. Myers, Esq., President of the Pennsylvania Bar Association, at 17).

³⁴ May 7 Public Hearing, Transcript (Samuel W. Milkes, at 52).

³⁵ Oct. 29 Public Hearing Transcript (Shirl Q. Regan, President and CEO of the Women’s Center and Shelter of Pittsburgh, at 67-71).

³⁶ May 7 Public Hearing, Transcript (Hon. Todd A. Hoover, President Judge, Dauphin County Court of Common Pleas, at 69).

³⁷ May 23 Public Hearing, Transcript (Hon. Margaret T. Murphy, at 116-117).

³⁸ May 23 Public Hearing, Transcript (Hon. Margherita Patti-Worthington, President Judge, Monroe County Court of Common Pleas, at 52).

- In Lackawanna County, in protection from abuse and custody cases, “in excess of 50%” of the litigants are unrepresented.³⁹

Similarly, access to counsel is severely limited in housing matters. In Monroe County mortgage foreclosure cases, Judge Worthington reported that, “[w]e had 236 cases scheduled between January and April of this year. And in the 236 scheduled cases 183 people represented themselves against the banks...approximately 23 percent on civil appeals were *pro se*, about 45 percent in consumer credit type cases, credit card debt and the like, were *pro se*, approximately 47 and a half percent in mortgage foreclosure.”⁴⁰ Poor people who need help in eviction cases fare even worse. “There are 30,000 eviction cases filed each year in Philadelphia [Landlord-Tenant Court]. Of the 30,000 evictions actions, 85% of the landlords choose to hire an attorney. In public housing cases, an attorney is always present. In stark contrast, only 3-5% of tenants in eviction cases have legal representation.”⁴¹

Finding 1E: The growing justice gap in Pennsylvania reflects a national trend

According to a 2009 study of the “justice gap” by the federal Legal Services Corporation, there is one lawyer for every 177 people above the poverty level in the United States. For people eligible for legal services, there is one lawyer for every 4,198 people.⁴² Since that study, the number of poor people being served has decreased.⁴³

Some states have conducted comprehensive legal needs studies to document the extent of the justice gap. A number of states have held public hearings to assess the impact of the recession on the delivery of legal services. These studies and inquiries have all confirmed the 2009 Legal Services Corporation Justice Gap Study conclusion that fewer than one of five low-income individuals with serious legal problems are helped by legal services programs. And that gap is growing.

In response to reduced funding, legal service programs across the nation have been forced to retrench, reduce staff and drastically cut back on services. Many legal services programs can only provide full legal representation in the most egregious cases; many have resorted to triage systems that go wide but not deep by providing limited assistance to many rather than full representation to few in an effort to reach more clients.

One recent national study, the Civil Justice Infrastructure Mapping Project, provides a national portrait of access to civil justice infrastructure. It describes general patterns

³⁹ May 7 Public Hearing, Transcript (Hon. Chester Harhut, Senior Judge, Lackawanna County Court of Common Pleas, at 77).

⁴⁰ May 23 Public Hearing, Transcript (Hon. Margherita Patti-Worthington, at 52-53).

⁴¹ May 23 Public Hearing, Written Testimony (Michele Cohen, Esq., Supervising Attorney, Philadelphia Landlord Tenant Legal Help Center, at 27).

⁴² Legal Services Corporation, *Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans* (September 2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf

⁴³ May 7 Public Hearing, Written Testimony (Samuel W. Milkes, at 31).

observed across the 50 states and the District of Columbia and includes detailed reports for every state. This study demonstrates that access to justice often depends on where a person lives and that, in most states, there is a patchwork of independent civil legal services providers and court-based services for unrepresented litigants rather than a coherent delivery system. The study found:

Diversity and fragmentation combine to create an access to civil justice infrastructure characterized by large inequalities both between states and within them. In this context, geography is destiny: the services available to people from eligible populations who face civil justice problems are determined not by what their problems are or the kinds of services they may need, but rather by where they happen to live.⁴⁴

Whether one looks at the crisis in legal services in Pennsylvania as a function of increasing poverty rates, a declining funding base, a growing level of need for services, part of a national trend, or a combination of all these elements, the fact is that staff have been reduced in legal aid programs throughout Pennsylvania, services have been cut back, and the need for representation of low income Pennsylvanians is at a critical stage.

⁴⁴ Rebecca Sandefur, *Across America: First Report of the Civil Justice Infrastructure Mapping Project*, (October 2011), available at http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf.

**FINDING 2:
LACK OF COUNSEL UNDERMINES
THE ADMINISTRATION OF JUSTICE**

From the beginning, an unrepresented litigant faces difficulty navigating a system which lawyers have gone to law school to learn. It's like forcing someone to play poker without telling them the rules, and where the chips are the player's children, finances, home or job. The misunderstanding of the process begins at the inception of the case.

President Judge Todd A. Hoover, Dauphin County Court of Common Pleas⁴⁵

[W]e should see the mission of providing access to justice not as a luxury, but as a necessity in a civilized society.

Dean William M. Carter, Jr., Esq., University of Pittsburgh School of Law⁴⁶

FINDING 2: THE LONGSTANDING AND GROWING CIVIL LEGAL JUSTICE CRISIS THROUGHOUT THE COMMONWEALTH ADVERSELY AFFECTS THE QUALITY OF JUSTICE FOR THOSE UNABLE TO AFFORD COUNSEL, NEGATIVELY IMPACTS THE COURTS' ADMINISTRATION OF JUSTICE, AND UNDERMINES THE RULE OF LAW.

The civil legal justice crisis has vastly swollen the population of unrepresented low-income litigants embroiled in adversarial civil legal proceedings where their basic human needs are at stake, such as custody, shelter, safety, sustenance and health. Chief Justice Ronald D. Castille and Justice Max Baer of the Pennsylvania Supreme Court, and eight other judges representing diverse urban and rural jurisdictions throughout the Commonwealth, all testified that these expanding legions of unrepresented litigants have led to a growing crisis in the courts. The oral and written testimony of numerous other witnesses as well, clearly establishes that the burgeoning number of unrepresented litigants adversely affects the quality of justice for all litigants, negatively impacts the Courts' fair administration of justice, imposes a drain on already reduced Court resources, undercuts the rule of law, diminishes fundamental fairness in our judicial system and denies equal justice under the law.

Finding 2A: There has been a surge in the numbers of unrepresented litigants in the Pennsylvania courts

Although the statistics vary depending on the size of populations in the various jurisdictions, the following summary of testimony at the hearings presents an alarming snapshot of the overwhelming numbers of unrepresented low-income litigants who are

⁴⁵ May 7 Public Hearing, Written Testimony (Hon. Todd A. Hoover, at 44).

⁴⁶ Oct. 29 Public Hearing, Written Testimony (William M. Carter, Jr., Esq., Dean and Professor of Law, University of Pittsburgh School of Law, at 89).

flooding the Courts and struggling to navigate a complex judicial system on their own throughout the Commonwealth.

- In Philadelphia there are over 30,000 landlord/tenant eviction cases filed each year in Municipal Court.⁴⁷ Of the 30,000 eviction cases, approximately 85% of the landlords are represented by counsel and only 3-5% of tenants in eviction cases have legal representation.⁴⁸ There are only 5-6 full-time legal services attorneys who represent low-income tenants in eviction cases in Philadelphia.⁴⁹
- Since 2008, over 24,000 cases have been processed through the Philadelphia Mortgage Foreclosure Diversion Program. In these cases, only approximately 5% of the homeowners have been represented by legal counsel.⁵⁰
- In Philadelphia Domestic Relations Court, the volume of custody petitions is equally staggering, and less than 20% of the parties are represented by counsel. During 2012, custody petitions filed in Philadelphia totaled 27,302, including 13,577 new complaints in custody, plus petitions for modifications, contempt and interim relief. The number of individual custody cases processed totaled 11,359 with 36,605 custody petitions being resolved.⁵¹
- In addition to custody matters, in 2012, the Philadelphia Domestic Relations Court received 11,993 petitions seeking the entry of a Protection from Abuse (PFA) Order and 12,108 of these cases were processed.⁵² In 2012 the Court also handled approximately 39,500 support filings, 12,951 divorce filings and 3,600 criminal abuse cases.⁵³ During 2012, the total volume of cases filed in the Philadelphia Domestic Relations Court was 91,733 and 104,629 petitions were resolved by dispositions.⁵⁴
- Similarly, Allegheny County Family Court handles approximately 200,000 cases a year.⁵⁵ The Allegheny County Family Court *pro se* statistics mirror national statistics, which show that 80% of family cases have at least one self-represented litigant.⁵⁶
- In Dauphin County, statistics show that approximately 69% of the 1,145 custody orders entered in 2012 involved cases with one or both parties who were unrepresented.⁵⁷ Of those 1,145 custody orders, there was one self-represented

⁴⁷ May 23 Public Hearing, Written Testimony (Michele Cohen, at 27).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ May 23 Public Hearing, Written Testimony (Hon. Annette M. Rizzo, Philadelphia Court of Common Pleas, Civil Trial Division, at 56).

⁵¹ May 23 Public Hearing, Written Testimony (Hon. Margaret T. Murphy, at 45).

⁵² *Id.*

⁵³ *Id.*, at 46.

⁵⁴ *Id.*

⁵⁵ Oct. 29 Public Hearing, Written Testimony (Hon. Kathryn Hens-Greco, at 26).

⁵⁶ *Id.*, at 25.

⁵⁷ May 7 Public Hearing, Transcript (Hon. Todd A. Hoover, at 69).

party in 325 cases and both parties were unrepresented in 471 cases.⁵⁸ From 2008 to 2012, Dauphin County experienced a 33% increase in family law cases.⁵⁹

- In Monroe County, during the last 17 months, over 57% of the 1,800 litigants in the Custody Conciliation program were unrepresented.⁶⁰
- In Lackawanna County, at least 50% of the low-income individuals appearing in family law cases are unrepresented.⁶¹

Finding 2B: The civil legal services crisis has a negative impact on litigants

As noted in Finding 1 of this report, the economic downturn coupled with the drastic reduction in funding from all sources for legal aid has severely hindered the capacity of legal services organization to address the widening justice gap and meet the escalating unmet civil legal needs of poor people in Pennsylvania. The testimony presented at the hearings as well as reports and studies considered by the Coalition overwhelmingly establishes that low-income litigants who are not trained in the law or familiar with formal rules of evidence and rules of the court are put at a huge disadvantage when they are unable to obtain free obtain legal representation; it is abundantly clear to the judiciary that these litigants are adversely affected when forced to represent themselves in complicated civil legal proceedings that jeopardize their basic human needs. Because unrepresented litigants generally do not have the ability to advocate on their own behalves and do not know what facts should be presented to make a case, and are otherwise ignorant about the substantive law, justice is all-too-often not served, even though the judge may make every effort to elicit the needed information, within applicable ethical bounds. As noted by Chief Justice Ronald D. Castille of the Pennsylvania Supreme Court:

The unfortunate and often tragic fact is that many Pennsylvanians face formidable legal situations in our civil courts where those citizens may face dire consequences as the result of a civil legal matter that can greatly impact their lives or their futures. The vast majority of those citizens are left to fend for themselves in an unfamiliar courtroom without legal representation simply because they cannot afford to hire an attorney to represent them. Our Constitution guarantees the right of a citizen to represent himself or herself before the Courts of Pennsylvania if they so desire. But the question is at what cost? Realistically, how can a person effectively defend himself or herself in the face of an often-complicated legal challenge, in a usually unfamiliar and daunting environment of a courtroom, before a judge sitting there in a black robe?⁶²

⁵⁸ *Id.*

⁵⁹ *Id.*, at 68-69.

⁶⁰ May 23 Public Hearing, Written Testimony (Hon. Margherita Patti-Worthington, at 74).

⁶¹ May 7 Public Hearing, Written Testimony (Hon. Chester Harhut, at 63).

⁶² May 23 Public Hearing, Transcript (Hon. Ronald D. Castille, at 1-2).

Similarly, Hon. Gary P. Caruso, President Judge of Westmoreland County Court of Common Pleas, testified:

It is very difficult for the unrepresented litigant to understand the Pennsylvania Rules of Civil Procedure and each county's Local Rules of Civil Procedure without the benefit of legal training. The unrepresented litigant's failure to understand and follow these rules is often the snare to which they fall prey and thereby suffer serious adverse consequences.⁶³

Judge Margherita Patti-Worthington, President Judge of Monroe County Court of Common Pleas, testified that low-income families and individuals are more likely to come to court when the economy is in crisis and they are dramatically impacted by legal problems that are less likely to affect those of greater economic means.⁶⁴ The types of cases in which unrepresented parties find themselves dealing with most often involve access to basic necessities, such as housing, medical assistance, protection from abuse, the care and custody of their children, maintenance of their basic finances (such as credit card or other consumer debt problems), and other similar cases.⁶⁵ As noted by Judge Patti-Worthington, in most of these cases these issues directly impact children, who are the most vulnerable.⁶⁶

Judge Patti-Worthington further summarized the impact of the crisis in access to legal aid for low-income litigants and noted that the increasing number of *pro se* litigants is troubling for all parties involved, including the litigant, the court, its staff and the community at large:

... I have seen the extent to which an understanding of the law and of the court system is severely lacking among our citizens... Even people who have undergone a formal education and who have obtained a college degree don't have the knowledge or understanding that is necessary to be able to navigate through the legal system effectively. How can we expect those who are less educated and unable to afford counsel to navigate that same system alone?

As we well know, many of the most vital issues relating to basic human needs are decided in the Court of Common Pleas, which is a formal and structured court, often the only court of record, and which operates by following many technical, procedural rules. Trying to protect one's legal rights in this forum without legal counsel is a formidable, almost insurmountable, challenge. A litigant must be able to follow the Pennsylvania Rules of Civil Procedure, the Rules of Evidence, along with the requirements of whatever substantive laws apply to their particular case. These rules and statutes are not easily learned on the fly. They are studied by law students for years and then tested on the rigorous Pennsylvania Bar Exam before

⁶³ Oct. 29 Public Hearing, Written Testimony (Hon. Gary Caruso, at 17).

⁶⁴ May 23 Public Hearing, Written Testimony (Hon. Margherita Patti-Worthington, at 74).

⁶⁵ *Id.*

⁶⁶ *Id.*

those well-educated graduates are allowed to practice competently in this court. The notion that an untrained person will understand how to use and apply these rules is almost preposterous to contemplate.⁶⁷

The testimony of Elaine Strokoff highlighted the types of problems low income Pennsylvanians face when they do not have an attorney and don't even know they might need one. As Executive Director of Harrisburg's Downtown Daily Bread for the past 17 years, she has had the opportunity to see and talk with many homeless people. In her testimony, Strokoff cites many examples of homeless clients who could have avoided homelessness had they been represented. These are people who are veterans, who were wrongly evicted, who lost their jobs and should have received unemployment compensation benefits, or even spouses, who were out on the streets following the breakup of a marriage, when they should have received some basic necessities as part of the equitable distribution of marital property.

...so often we see clients who are living on the streets and if you talk to them they will tell you about the problems that they have had and we know that if they had had an attorney by their sides with these legal proceedings, they would not be where they are.⁶⁸

Ms. Strokoff also noted the economic and social benefits of providing counsel:

...the more opportunities that people have who are living in poverty and that don't have the wherewithal to hire an attorney, the more opportunities they have for legal services, the better the whole community, the whole society is going to be because the bottom line is they can become homeless. They will become homeless and that puts a tremendous drag on our resources, on all of our resources.⁶⁹

Child custody cases

As stated by Judge Murphy, the stakes are especially high in custody cases and often these cases are fraught with extremely emotional issues, including a child's stated preference of one parent over another, which may escalate the conflict between the parents and negatively impact the children.

When parties begin questioning one another during the trial, without the "buffer" of an attorney, the tensions are heightened and outbursts often follow.

⁶⁷ May 23 Public Hearing, Written Testimony (Hon. Margherita Patti-Worthington, at 71-72).

⁶⁸ May 7 Public Hearing, Transcript (Elaine Strokoff, Executive Director, Downtown Daily Bread, at 90-91).

⁶⁹ *Id.*, at 89. After hearing Ms. Strokoff's testimony, Senator Greenleaf commented: "This is what happens when they don't get help, they end up at your facility with all those problems. When they could be possibly helped to be a productive member of society and having housing, and paying taxes which the Commonwealth always likes and we want to see them rehabilitated." May 7 Public Hearing, Transcript (Senator Stewart J. Greenleaf, at 94).

Agreements are much more difficult to reach without attorneys, and the litigation process itself seems to intensify the discord between the parties, which is not in the best interest of the children involved in the case.⁷⁰

Similarly, Judge Murphy commented that low-income unrepresented litigants in custody cases often have other obstacles to deal with that contribute to their inability to adequately represent themselves in a formal court proceeding: “Often, litigants have language barriers, physical and/or mental impairments, limited education, inadequate housing, in addition to being involved in a contentious and volatile conflict over a domestic relations matter.”⁷¹

Domestic violence cases

The court process can be particularly intimidating for a pro se victim of domestic violence. Many victims have endured years of abuse and are isolated and unsure that they will be believed. Additionally, when victims attempt to leave their abuser or access the court system, they are often threatened and intimidated by their abuser. The threats include threats to harm or take the children, threats to kill the victim as well as threats to take their own life. The cycle of violence makes the legal process an incredibly intimidating experience for a victim. She is frightened of the abuser, and now she must stand next to him and tell a judge extremely personal, traumatizing details about her life and the lives of her children. Additionally, research shows that the most violent and dangerous time for victims is when they leave the relationship or exert independence. It is not surprising that without attorney representation, some victims simply feel they cannot go through with this process, thus disappearing from the system altogether.

Molly Callahan, Esq., Legal Center Director, Women Against Abuse, Philadelphia.⁷²

Later at this same hearing, Senator Greenleaf discussed how vital services for victims of domestic violence are, and touched upon a civil right to counsel for basic human needs: “This is the, I think one of the first, or one of the issues that we should be, I think, paying some attention to, because this is certainly a basic human need, because we’re talking about physical abuse, threats. Sometimes we see people who are violating the order and shooting, and we just saw that recently in the news that that happened. So these are life and death issues that we’re talking about here.”⁷³

In cases involving domestic violence, Judge Chester Harhut testified about potential danger to an unrepresented victim who has to face an offender in court without the assistance of counsel.

⁷⁰ May 23 Public Hearing, Written Testimony (Hon. Margaret T. Murphy, at 45).

⁷¹ *Id.*, at 42.

⁷² May 23 Public Hearing, Written Testimony (Mary Callahan, Esq., Legal Center Director, Women Against Abuse, at 104).

⁷³ May 23 Public Hearing, Transcript (Senator Stewart J. Greenleaf, at 155).

Imagine the difficulty for a victim of domestic violence who is seeking a protection from abuse order. Whether the opposing side is represented or not, the fact is that the victim will be placed in the position of being in a courtroom and having to question the abuser on the witness stand and sometimes of having to be subjected to cross examination by the abuser. Self-representation in cases such as this is very problematic in two ways. First, it puts the parties directly against each other, instead of having trained lawyers fulfill the role of reasonably presenting the evidence and witnesses, so that a decision can be calmly made according to the principles of law, and so the parties are not directly confronting each other.

Second, a frequent benefit of having lawyers involved is that disputes can get worked out. Lawyers know how the law will apply to a particular situation and they know how judges are likely to rule. While not all cases settle, many do, especially because of the skill of lawyers, who know how to settle cases. When cases cannot settle, the court system itself gets bogged down. Disputes go to trial when they shouldn't. Cases get delayed and justice slows down when an agreement should have and could have been reached. When the parties are left to try to settle their case themselves, there are great risks and the attempt is usually unsuccessful. When there is unequal power, such as when one party is physically intimidated by the other party, but even when the parties are of different intelligence or skill level, an agreement is hard to reach.⁷⁴

Studies have shown that victims of domestic violence with attorney representation are much more likely to safely leave an abuser and remain free from their abuser.⁷⁵ Written testimony presented by experts in the field of domestic violence underscores the fact that unrepresented victims of domestic violence often encounter repeated incidents of harm following an unsuccessful effort to obtain court intervention without the assistance of an attorney.⁷⁶

The testimony of J.R., a client of Women Against Abuse in Philadelphia, is illustrative. J.R. went to court without an attorney to get a protection from abuse (PFA) order against her husband, who was represented by counsel. She was frightened and didn't know she had to bring witnesses to the abuse or that she could subpoena witnesses. At the end of the hearing, the court dismissed her case. J.R. then obtained counsel and went with her lawyer to get a PFA for her son, based on essentially the same facts. The lawyer knew what questions to ask her and what witnesses to call, and advised her about keeping a record of abuse. She got the PFA Order.⁷⁷

⁷⁴ May 7 Public Hearing, Written Testimony (Hon. Chester Harhut, at 63-64).

⁷⁵ May 23 Public Hearing, Written Testimony (Molly Callahan, at 104, footnote 9).

⁷⁶ *Id.*, at 105.

⁷⁷ May 23 Public Hearing, Written Testimony (J.R., client of Women Against Abuse, presented by Deborah Culhane, Esq., Staff Attorney at Women Against Abuse, at 13); *see also* May 23 Public Hearing, Transcript, at 150-154.

In her submitted testimony, Colleen F. Coonely, Esq., on behalf of Laurel House, a domestic violence shelter in Norristown, and of the Temple University Beasley School of Law Domestic Violence Law Clinic, shares a wealth of information about the challenges faced by survivors of domestic violence in southeastern Pennsylvania. In her submission, Ms. Coonely describes the circumstances of a Laurel House client who fled her home with her two minor children, in order to escape domestic violence. The short version of this story is that even though the client had court ordered primary physical custody of the child she had in common with the abusive father, and even though she was able to obtain a protection from abuse order against him, when she appeared in custody court unrepresented against the father who was represented by counsel, she ended up losing custody of the children to the father who had never had more than weekend visits for 8 ½ years, other than the 19 months the parties lived together. Even the transportation to exchange custody became her responsibility, even though she had no car, the father did have a car, and a 45 minute drive is now a 3 hour public transportation trip every time she visits her son. “Of course D.M.’s case is a painful answer to the oft-posed question about women who remain in abusive relationships: ‘Why doesn’t she just leave?’ Women frequently report that they don’t leave an abuser because she fears losing custody of her child. That fear was fully realized for D.M.”⁷⁸

Veterans

Damon Clay testified at the May 23 hearing. He told the story about how he, as a veteran, was represented by Community Legal Services. While serving in the Army, Mr. Clay was injured and taken by medivac from the site after 36 hours of exposure to cold and harsh conditions without the supply of proper gear that was supposed to have arrived.⁷⁹

For years on his own, Mr. Clay tried to find counsel without success as he couldn’t afford to hire counsel. Mr. Clay applied for VA benefits and was repeatedly denied any adjustment in benefits even though his condition continued to deteriorate and he could not work. At one point his benefits were actually reduced.⁸⁰

After contacting CLS, Mr. Clay received further treatment at the advice of attorney Sam Brooks, and was ultimately provided the full disability benefits to which he was entitled. But for years, the disabled Mr. Clay had to survive on an inadequate income to support him, unable to work and unable to get benefits on his own. There are many more like him who go without legal representation.⁸¹

Landlord-tenant cases

The courtroom experience of unrepresented litigants facing eviction is similarly dramatic. As stated by Judge Patti-Worthington, unrepresented tenants in landlord tenant cases are

⁷⁸ May 23 Public Hearing, Written Testimony (Colleen Coonely, at 96-97).

⁷⁹ May 23 Public Hearing, Written Testimony (Damon Clay, at 17-19).

⁸⁰ May 23 Public Hearing, Transcript (Damon Clay, at 33-39).

⁸¹ May 23 Public Hearing, Transcript (Damon Clay, at 33-39).

irrevocably harmed when they lose their homes because they do not know how to file an appeal to stay an eviction.⁸² Frequently, unrepresented tenants are intimidated when an opposing party has an attorney and they often enter into unconscionable agreements with unreasonable terms in the hallways of the courthouse without even seeing a judge because they are so intimidated or to avoid antagonizing the adverse party and his or her attorney.⁸³

Gabriel Ononuga testified about his experience as a tenant facing eviction. While he was not represented in his case, due to the large number of landlord-tenant cases in Philadelphia, he did receive advice from Michele Cohen, the supervising attorney of the Philadelphia Landlord/Tenant Legal Help Center. The story presented through the testimony of Mr. Ononuga and Ms. Cohen reflects some success; Mr. Ononuga avoided the immediate eviction he had feared. But it contained a very distressing component as well. Because he was intimidated by the attorney for the landlord, and did not have an attorney himself at landlord/tenant court, Mr. Ononuga signed an agreement that obligated him to pay \$2,500 in past rent that he did not owe and for which he had receipts to prove he had paid.⁸⁴

Ms. Cohen told another story of an unrepresented tenant faced with eviction, whom she was only able to advise but not to represent due to the limited resources of the Legal Help Center. Ms. Cohen had seen this client during the week of her hearing. The client was cognitively impaired by a brain injury and could not understand numbers. Ms. Cohen reviewed the payment history and concluded that instead of owing the landlord \$3,000, as the landlord asserted, the client actually was owed \$500. Ms. Cohen put the calculations into a spreadsheet and sent them to the landlord's attorney, with a caution about the tenant's limited capacity. The client then went on to represent herself. She walked out of the courthouse, having signed an agreement to pay \$4,000. At the hearing, Ms. Cohen testified as to what was next for this tenant:

She's going to be homeless. And what is she going to do when she's homeless? She's going to look for a shelter to house her at the city expense, or the state expense, I'm not sure who funds the shelters. And then she's going to have this eviction on her record. So where is she going to get housing? She's not going to get credit, she's not going to get housing. She's going to be in a perpetual downward spiral.⁸⁵

Mortgage foreclosure cases

In mortgage foreclosure cases, the potential adverse harm to unrepresented low-income litigants who are facing the loss of their homes is particularly egregious and the power imbalance between the parties is significant, especially since only a handful of

⁸² May 23 Public Hearing, Transcript (Hon. Margherita Patti-Worthington, at 62).

⁸³ May 23 Public Hearing, Transcript (Michele Cohen, at 85-87; *see also* Written Testimony, at 27-28).

⁸⁴ May 23 Public Hearing, Transcript (Gabriel Ononuga, at 71-80).

⁸⁵ May 23 Public Hearing, Transcript (Michelle Cohen, at 84-85).

homeowners are represented by legal aid attorneys and almost all of the petitioning banks and mortgage lenders are represented by counsel. Moreover, the underlying substantive law usually involves a complicated web of state and federal laws and regulations as well as formal rules of evidence and local procedural rules of the court. The Hon. Annette M. Rizzo, founder and supervising judge of the Philadelphia Residential Mortgage Foreclosure Diversion Program (Diversion Program), testified that while this program has alleviated some of the need for counsel for low-income homeowners facing foreclosure by facilitating mandatory conciliation conferences between the parties and providing homeowners with access to a housing counselor to assist in the process, it is not enough. There remains an urgent need for legal representation of homeowners entangled in mortgage foreclosure litigation, who often are unsophisticated, low-income homeowners who were targeted by brokers of mortgage companies and sold unaffordable subprime loans.

There are devastating stories to be told of those who navigate the foreclosure world without any legal advocate. There are senior citizens who are unable to understand the complexities of this area of law and may have legal defenses with no one to advocate for them. There are individuals with mental health problems who do not have alternative housing, but no way to advocate on their own to stay in their current home. This area of law is considered to be a “boutique” practice with very few trained lawyers having the necessary knowledge to navigate through the endless banking regulations that LITERALLY change every single day. Expecting a *pro se* homeowner to put forth their own legal defenses in these cases is asking the impossible and creating an incredible burden on the legal system as the volume of foreclosure cases has increased dramatically since 2008.⁸⁶

Similarly, Judge Caruso testified that self-represented litigants in mortgage foreclosure cases are among the most disturbing cases facing the court in which unrepresented litigants proceed at their own peril. He observed that in mortgage foreclosure cases self-represented litigants often do not respond to formal pleadings, titled “Requests for Admission,” because they think they’ve already answered the “Complaint.” Then, they lose the “Motion for Summary Judgment” because everything has been deemed admitted. They don’t realize something is wrong until they lose and are “ejected” from the home.⁸⁷

A study by the Brennan Center for Justice, entitled *Foreclosures: A Crisis in Legal Representation*, underscores the fact that the foreclosure crisis is also a crisis in legal representation: low-income homeowners are losing their homes in foreclosure because they are not represented by attorneys in these complicated legal proceedings and they are unaware of potential legal defenses.⁸⁸ This study emphasizes the difference that legal

⁸⁶ May 23 Public Hearing, Written Testimony (Hon. Annette M. Rizzo, at 57).

⁸⁷ Oct. 29 Public Hearing, Transcript (Hon. Gary Caruso, at 33-35; *see also* Written Testimony, at 16).

⁸⁸ *See* Melanca Clark and Maggie Barron, *Foreclosures: A Crisis in Legal Representation*, Brennan Center for Justice, New York University School of Law (October 6, 2009), available at <http://www.brennancenter.org/content/resource/foreclosures>.

representation can make in helping many low-income homeowners preserve their homes and avoid homelessness, which in turn prevents urban blight and helps stabilize property values and at-risk neighborhoods.⁸⁹ The study finds that providing legal representation in these cases may result in identifying violations of state and federal laws, enforcing consumer protection laws, obtaining protection through the bankruptcy laws, and raising other defenses that facilitate the renegotiation of the loans, or slow the foreclosure proceedings to provide time for the homeowner to secure alternative housing.⁹⁰

The testimony of Delores Barnes, a senior who was ultimately represented by the SeniorLAW Center, illustrates the adverse impact of lack of counsel. Ms. Barnes was the defendant in a foreclosure action that would have been prevented entirely if she had access to counsel to help change the name on the deed.⁹¹

Finding 2C: The crisis in access to justice has a negative impact on the courts

The civil legal justice crisis has created a crisis for the courts as well. As evidenced by the testimony of the judges at the hearings, the impact of the widespread lack of legal representation for poor litigants has an adverse effect not only on the litigants, but also on the operations of the courts and their staff. The courts are overwhelmed by the volume of unrepresented litigants. When parties do not have access to representation and do not understand court protocol and rules – much less the applicable law – cases take longer to resolve. This slows down the docket and often the court’s ability to administer justice in an efficient manner and, as a result, fundamental fairness to all parties is greatly compromised. And the court crisis has been exacerbated by reductions in the courts’ resources due to budgetary cuts.

Judge Patti-Worthington summarizes the dilemma succinctly:

The lack of sufficient funding for civil legal services has an enormous and adverse impact not only on litigants but on the justice system as a whole. This crisis directly impacts an already overburdened court system, court and court-related staff and jeopardizes the efficient administration of justice.⁹²

Judge Todd A. Hoover, President Judge of the Dauphin County Court of Common Pleas, and the majority of the other judges at the hearings testified about the extensive strain placed on courts because they must adjudicate complex civil cases with unrepresented litigants. Judge Hoover observed that cases involving unrepresented litigants take far more time to process than cases where both sides are represented by counsel and judges and courthouse staff must spend substantial time on these cases, time which could be devoted to other cases.⁹³ Judge Hoover summarized the concern:

⁸⁹ *Id.*, at 12-26.

⁹⁰ *Id.*, at 2.

⁹¹ May 23 Public Hearing, Written Testimony (Delores Barnes, Client of SeniorLAW Center, at 49).

⁹² May 23 Public Hearing, Written Testimony (Hon. Margherita Patti-Worthington, at 75).

⁹³ May 7 Public Hearing, Written Testimony (Hon. Todd A. Hoover, at 43).

If we were able to provide attorneys to people with legal problems early on, we could often avoid the filing of many of the cases which clog our dockets. Many of these cases would not be brought if the parties had consulted with an attorney before filing an action. Furthermore, each step in the litigation process is unduly delayed because the unrepresented litigant is completely unfamiliar with the process. Not surprisingly, unrepresented parties often need to return to court because filings are incorrect or incomplete, and procedural items are missed. Valuable court time is spent on cases which are ultimately dismissed.

Because meaningful settlement discussions are rarely possible with unrepresented litigants, many cases which should be settled early on proceed unnecessarily to trial. When those cases go to trial, the trials last substantially longer than those involving represented litigants. We have repeated continuances. The unrepresented party cannot present their case or resolve cases that otherwise could be resolved if an attorney were involved on both sides. Having attorneys on both sides simplifies the process of reaching fair agreements. Unrepresented parties will sometimes agree to unreasonable terms so as not to antagonize the adversary.

As judges, we have difficulty ascertaining the facts in these cases, because the unrepresented party fails to properly present necessary evidence. Unrepresented litigants are rarely aware of the burden of proof associated with their case. The testimony from an unrepresented litigant is usually excessive and unrelated to any of the issues at trial... There are rarely objections by unrepresented litigants, resulting in the presentation of long-winded, extraneous and irrelevant matters. ... Unrepresented litigants are usually unable to present effective witness examination and arguments.⁹⁴

Pennsylvania Supreme Court Justice Max Baer, Judge Hoover and other judges also highlighted the ethical quandary that judges face when they attempt to balance the duty of neutrality and the duty to ensure that all participants have the opportunity to be meaningfully heard. This quandary extends to courthouse staff and opposing counsel who must wrestle with how to deal with unrepresented litigants.⁹⁵ Judge Hoover observed:

...it is difficult to remain neutral in a proceeding in which unrepresented parties face able counsel, and the unrepresented party lacks the ability to introduce into evidence a decisive document, or even ask the right question..... This difficulty in maintaining neutrality is particularly challenging in cases in which a party's home, access to health care, ability to feed, clothe or educate one's children, or escape from domestic violence, are at stake. It stretches our neutrality when judges attempt to engage in a case involving unrepresented litigants. Even more, it

⁹⁴ *Id.*, at 44-45.

⁹⁵ Oct. 29 Public Hearing, Transcript (Hon. Max Baer, Justice, Pennsylvania Supreme Court, at 10-11).

is painful to see an obvious unfair advantage for the party with experience and proper counsel over those who cannot afford legal assistance.⁹⁶

Judge Gary Caruso similarly testified:

We have to try to assure that both parties have the right to be heard and that that right to be heard is protected. We have to try to avoid a situation where the unwary, self-represented litigant loses basic human rights or necessities merely through the unwitting failure to properly use the law, the rules of evidence, or the rules of procedure. This creates quite a balancing act for the trial judge. They have to walk an ethical tight rope. On one hand, they have to protect the litigant's right to be heard, and on the other, we're required to maintain the impartiality that's required of the trial judge.⁹⁷

Judge Margherita Patti-Worthington concurred with the observations of Judges Hoover and Caruso, specifically noting the ethical dilemma and strain faced by courthouse personnel:

No court staff or court-related county staff may give legal advice to an unrepresented litigant. And yet, our staff members are often the obvious and first point of contact for the numerous confused and anxious citizens in need of help in the courts. The increasing and constant barrage of questions from a population truly in need of assistance puts an enormous strain upon the already limited and over-burdened resources at the Common Pleas level.⁹⁸

Judge Hoover also commented that opposing counsel faces ethical issues when litigating against unrepresented individuals as well:

Judges are not the only ones in the courthouse walking this ethical tightrope. Opposing counsel must avoid overstepping lines when the opposing party is unrepresented... The entire courthouse staff faces the struggle of attempting to explain the legal process to the unrepresented litigants, help them understand the pleading procedures, and provide the correct forms, without crossing the line to improperly providing legal advice.⁹⁹

Judge Harhurt sometimes goes looking for counsel:

...in my experience the court system itself does not work as well when parties in need of representation are not represented. And the resolution of disputes between the parties is often less satisfactory and can be unnecessarily contentious or even dangerous for the parties who represent themselves. Even the outcome of the case

⁹⁶ May 7 Public Hearing, Written Testimony (Hon. Todd A. Hoover, at 45-46).

⁹⁷ Oct. 29 Public Hearing, Transcript (Hon. Gary Caruso, at 33).

⁹⁸ May 23 Public Hearing, Written Testimony (Hon. Margherita Patti-Worthington, at 72).

⁹⁹ May 7 Public Hearing, Written Testimony (Hon. Todd A. Hoover, at 45-46).

may be wrong, simply because a self-represented party was unable to properly put on his or her case.

As a judge, there are times when I find it so important for a person to be represented in a case that I will send a member of my staff into the halls of the courthouse to find a lawyer who will handle the case on a *pro bono* basis. Of course, this is not always successful. There are times when I have to continue cases in order to find a way to get an attorney involved. These situations especially involve custody cases, where I must decide what is in the best interests of the child, not necessarily the parents, and I am concerned that I am not getting a full or accurate description of the facts. There is a crisis in our legal system when judges are concerned they do not have the information before them that is needed to make a fair decision.

My observation is that when legal aid is involved in representing clients in civil cases in court, there are good results, both for the court and for the client. This does not mean that they win every case, but it does mean that the court system itself works well and that the parties in the case understand the process and results, and that they get a fair shake in the outcome, within the rules of court proceedings.

I find legal aid lawyers to be knowledgeable of the law and effective at negotiating cases and representing clients. I also find they are effective at screening cases. Given their limited resources, they do not have an interest in bringing cases where there is not merit to their side of the case.¹⁰⁰

Finding 2D: Alternative dispute resolution and other innovative tools can mitigate, but not resolve, the crisis in access to justice

Courts throughout Pennsylvania are struggling with limited resources to develop innovative tools, programs and services for self-represented litigants and more of these measures are needed in the courthouses throughout Pennsylvania. As stated by Judge Rizzo, Courts in Pennsylvania and throughout the nation have reacted to the surge in the *pro se* population and reduction in access to legal services by making changes in the court system and developing stream-lined procedures; providing access to “easy-read” legal pleadings and documents; setting up legal help desks; providing language translation services; and posting pleadings, forms and instructions on the courts’ websites. The courts have also offered new training to assist judges and court personnel in the handling of *pro se* cases.¹⁰¹

Courts have also developed alternative dispute resolution programs designed to divert cases from the litigation track and facilitate a settlement, where appropriate. Judge Rizzo testified that the Philadelphia Mortgage Foreclosure Diversion Project is a prime example

¹⁰⁰ May 7 Public Hearing, Written Testimony (Hon. Chester Harhut, at 64-65) .

¹⁰¹ May 23 Public Hearing, Written Testimony (Hon. Annette M. Rizzo, at 57).

of a successful mortgage foreclosure diversion project; the Project has been nationally recognized as a model program and has now been replicated in 21 other counties in Pennsylvania.¹⁰² However, there are 46 counties in Pennsylvania that still have not implemented this type of program. A recent report published by the Administrative Office of Pennsylvania Courts (AOPC) on August 26, 2013, entitled *Self-Represented Litigants Survey Results*, contains the results of a survey distributed to all 67 Pennsylvania district court administrators seeking information regarding the types of self-represented litigant services provided at the county level.¹⁰³ There were 60 judicial districts that submitted responses to the survey. The results of this survey support the observation of many of the witnesses at the hearings that innovative measures to help self-represented litigants have not been uniformly and widely implemented in all of Pennsylvania's judicial districts.¹⁰⁴ Of the 60 judicial districts that responded to this survey, 67.7% or 42 districts indicated that they did not monitor or track self-represented litigants.¹⁰⁵

The following is the breakdown of the numbers and percentages of counties that provide specific services for self-represented persons in their courthouse:¹⁰⁶

¹⁰² *Id.*, at 55.

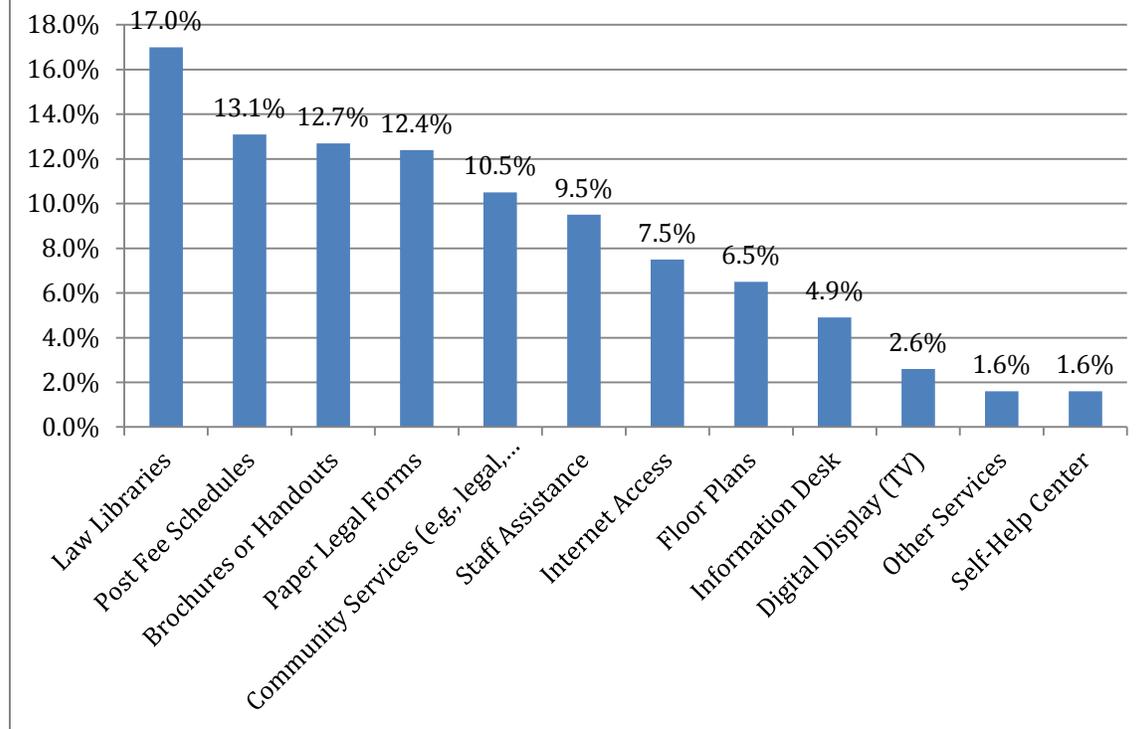
¹⁰³ The AOPC Report, *Self-Represented Litigants Survey Results*, available at http://www.pabar.org/public/probono/SRL_Survey_Results_Aug_2013.pdf

¹⁰⁴ Oct. 29 Public Hearing, Transcript (Hon. Max Baer, at 13).

¹⁰⁵ *Supra*, note 87, at 10.

¹⁰⁶ *Id.*, at 9.

Services Offered in Pennsylvania's 67 County Courts



There was a unanimous response that family law cases reflect the highest volume of self-represented litigants, and custody, divorce and protection from abuse were identified as the leading areas that need more self-represented litigant services.¹⁰⁷ The responses also rated the most effective methods of delivering self-represented litigant services as follows: 28% website and online resources; 26% standardized legal forms; 22.7% written brochures/paper handouts; and 20.8% staff/help desks.¹⁰⁸

Judges observed that while these alternative dispute resolution and other self-help measures are able to alleviate some of the pressures on the courts, they do not provide a substitute for representation by competent counsel. Judge Hens-Greco, for example, offered that in January 2014, the Allegheny County Family Court Division will be launching a new Universal Intake and Self-Help Center and a web based site for public access 24/7 to create and transmit documents electronically. While these innovative measures will assist self-represented litigants, Judge Hens-Greco acknowledged that "...[w]hat most [of our self-represented litigants] need is a competent attorney who knowledgeably and thoughtfully could decide first whether this matter is appropriate to

¹⁰⁷ *Id.*, at 11.

¹⁰⁸ *Id.*, at 11.

bring to the Court and, second, what's the best process to lead to resolution for the person?"¹⁰⁹

Finding 2E: The lack of legal services undermines the rule of law and equal access to justice for those unable to afford counsel

The huge and widening gap between the legal needs of Pennsylvania's growing low-income population and the resources available to address those needs is not only a problem for the litigants and the courts, it presents a challenge to our core values as a democratic society. Many of the witnesses, most notably the judges who testified, observed that the crisis in civil legal representation threatens the rule of law, fundamental fairness and the notion of equal access to justice.

As then-Chair of Pennsylvania IOLTA Board of Directors, Andrew F. Susko emphasized, "Part of the IOLTA mission is to assure equal access to our justice system, because legal rights without protection have no meaning. And when individuals as you've just heard fall outside of those rights and don't have the protection of the advocacy of a lawyer, there are huge societal costs."¹¹⁰ Judge Kathryn Hens-Greco, Allegheny County Court of Common Pleas, Family Division, testified about the inequities in the court system for low-income people and the efforts in Allegheny County Family Court to improve court services and use court personnel, data and technology to better serve the *pro se* litigants:

As a young lawyer, I was having a conversation with an older, more seasoned colleague about our Family Court system. I can still distinctly remember his chilling comments. He said: "This is a system that only poor people would put up with because they have no other choice." Our current system for litigants without counsel is untenable. Every Tuesday and Thursday morning as I enter the courthouse, I see weary grandmothers and mothers with squirming small children, fathers with a fistful of pay stubs, bewildered teenagers, and angry boyfriends and girlfriends standing in a line that snakes around the Family Court rotunda and out the door. Some of them do not understand English. Some of them cannot read or write. On these mornings upwards of eighty people stand in line hoping for one of the coveted twenty slots in our First Floor Emergency room. If they are lucky they will have the opportunity to speak with a volunteer lawyer or a hardworking Pitt or Duquesne Law student to help them obtain custody, modify child support, or address an issue of family violence. The remaining unlucky sixty people are left to navigate the complexities of the court on their own. Our statistics mirror national statistics, which show that 80% of Family cases have at least one self-represented litigant. *This is unacceptable in a nation dedicated to the rule of law and to the maxim of justice for all.* (emphasis added)¹¹¹

¹⁰⁹ Oct. 29 Public Hearing, Transcript (Hon. Kathryn Hens-Greco, at 53).

¹¹⁰ May 7 Public Hearing, Transcript (Andrew F. Susko, Esq., then-Chair, Pennsylvania IOLTA Board of Directors, at 100).

¹¹¹ Oct. 29 Public Hearing, Written Testimony (Hon. Kathryn Hens-Greco, at 25).

Judge Hens-Greco, also experienced that people will accept that a court rules against them if they think the process was fair, "...but the process can't be fair if they can't figure out how to get to me, how to get to the courthouse, how to figure out how to navigate this. So that's important for communities. It's important for the perception of government. It's important for the perception of the court."¹¹² She concluded, "[P]ublic trust in the rule of law means that people have equal access to justice. Otherwise, the whole system is threatened. People won't believe us anymore."¹¹³ Judge Hens-Greco's colleagues on the bench arrived at similar conclusions as to the dire consequences of the civil legal services crisis for the justice system:

- Judge Worthington said that the lack of counsel and the difficulties court staff have in helping "contributes to the perception that no one is helping the people who come in to try and gain access to the system."¹¹⁴
- Judge Harhut concurred, stating, "There's a crisis in the legal system when you can't get the full story. You don't get a fair and equal, the parties don't get a fair and equal share of justice."¹¹⁵

¹¹² *Id.*, Transcript, at 50.

¹¹³ *Id.*, Transcript, at 53.

¹¹⁴ May 23 Public Hearing, Transcript (Hon. Margherita Patti-Worthington, at 48).

¹¹⁵ May 7 Public Hearing, Transcript (Hon. Chester Harhut, at 76).

FINDING 3: THE HUGE SOCIAL AND ECONOMIC BENEFITS OF LEGAL SERVICES

FINDING 3: ACCESS TO CIVIL LEGAL SERVICES IN BASIC HUMAN NEEDS CASES PROVIDES SIGNIFICANT ECONOMIC AND SOCIAL BENEFITS TO INDIVIDUAL LITIGANTS AND THE COMMUNITY, WHILE SIGNIFICANT ECONOMIC AND SOCIAL HARM TO INDIVIDUALS AND THE COMMUNITY IS INFLICTED WHEN CRITICAL LEGAL NEEDS ARE NOT MET.

Finding 3A: Funding civil legal aid produces dramatic economic and social benefits for Pennsylvania: For each dollar spent on legal aid, there is an *eleven dollar return* to Pennsylvania and its residents

By assisting low-income households with legal matters that affect their physical and material well-being, civil legal services programs produce enormous economic and social benefits for the Commonwealth of Pennsylvania as well as for the individuals who are helped. Andrew F. Susko, Esq., then-Chair of the IOLTA Board, testified at the May 7, 2013 hearing about an independent study, commissioned by the Board and released in April of 2012, entitled “The Economic Impact of Outcomes Obtained for Legal Aid Clients Benefits Everyone in Pennsylvania.” The study found that the total economic impact of civil legal assistance in 2011 to Pennsylvania’s low-income individuals and families was \$594 million, representing a greater than *eleven-fold* return on the investment of \$53.6 million from all funding sources. In other words, for each dollar spent on legal aid, there is an \$11 return to Pennsylvania and its residents.¹¹⁶

As a result of legal aid’s work in 2011, eligible, low-income Pennsylvanians received \$118 million in federal Social Security benefits and Supplemental Security Income, and \$59 million in the federal share of Medicaid benefits. Each federal dollar coming into the commonwealth as a result of the work of legal aid circulates 1.86 times. According to data from the U.S. Department of Commerce, every one million dollars in federal funds supports 13.84 state jobs. The payoff is more sales for local businesses and more jobs for Pennsylvania’s workers. The 2012 study commissioned by the IOLTA Board demonstrates that the provision of legal services to the poor is an essential gateway for eligible Pennsylvanians to access federal public benefits, which not only allows them to pay their rent, purchase food and medicines but also stimulates businesses and supports jobs.

When unrepresented Pennsylvanians are unable to obtain warranted federal benefits, such as federal disability and federal Medicaid payments, the state’s economy loses tens of millions of dollars each year. The state and local governments must then foot the bill for

¹¹⁶May 7 Public Hearing, Written Testimony (Andrew F. Susko, at 69-73). The study is attached as an appendix to the Written Testimony of Andrew F. Susko, at 74, available at [http://www.paiolta.org/Grants/The Economic Impact of Access to Justice - STATEWIDE FOCUS-FINAL 4-11-2012.pdf](http://www.paiolta.org/Grants/The_Economic_Impact_of_Access_to_Justice_-_STATEWIDE_FOCUS-FINAL_4-11-2012.pdf)

programs to combat homelessness, domestic violence, and poverty. Each domestic violence incident costs on average \$3,462 in medical care to injured victims, special education, housing and counseling for affected children, police resources and prison for perpetrators. This does not include costs that are equally real, but difficult to quantify, such as the value of time lost from school and work or the long-term costs of trauma on children and adults caused by exposure to domestic violence. As a result, of the 6,658 families that obtained a protection from abuse order in 2011, it is estimated that \$23 million in domestic violence costs was saved. Additionally, legal aid services saved Pennsylvania \$25 million in emergency shelter costs by helping an estimated 4,147 low-income households avoid eviction or foreclosure.¹¹⁷

The economic benefits of legal aid representation were also discussed in some detail by Pennsylvania's Legislative Budget and Finance Committee in its audit of the effectiveness of the state's filing fee surcharge that helps fund civil legal aid. The report found that in a four-year period of funding legal services, Access to Justice Act filing fees generated an economic impact of \$154 million.¹¹⁸

Studies in a number of other states have also quantified the economic and societal benefits and cost savings for states and local governments, from providing legal aid services.¹¹⁹ These studies have been used to support the case for increased funding. Some of the results from these studies are staggering:

- A 2009 Texas study found that for every dollar spent on providing indigent civil legal services, the Texas economy gained \$7.42 in total spending, \$3.56 in gross output and \$2.20 in personal income. Texas state and local governments benefited from approximately \$30.5 million in yearly fiscal revenues from legal aid's work even though only \$4.8 million in state and local funding supported legal services.¹²⁰
- A 2012 Massachusetts study found that the state received an increase of \$48 million in economic revenue and cost savings from the state's appropriation of only \$10.5 million for legal services.¹²¹

¹¹⁷ *Id.* See Pennsylvania Interest on Lawyers Trust Account Board, *The Economic Impact of Outcomes Obtained for Legal Aid Clients Benefits Everyone in Pennsylvania* (April 11, 2012), available at http://www.paiolta.org/Grants/Appendix_Statewide%20Economic%20Impacts%20Fact%20Sheet_FINAL_4-11-2012.pdf.

¹¹⁸ Report of the Legislative Budget and Finance Committee, A Joint Committee of the Pennsylvania General Assembly, *A Performance Audit of Pennsylvania's Access to Justice Act Conducted Pursuant to Act 2006-81* (May 2011), at 18, available at <http://lbfc.legis.state.pa.us/reports/2011/54.PDF>.

¹¹⁹ For further reference, see an article entitled, "Money," written by Louis S. Rulli and published by the Philadelphia Lawyer, Fall 2012 edition.

¹²⁰ The Perryman Group, *The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential* (February 2009), available at <http://www.texasatj.org/files/file/Perryman%20Report.pdf>.

¹²¹ Massachusetts Legal Assistance Corporation's 2012 FY12 Economic Benefits Statement, available at http://www.mlac.org/pdf/Economic_Benefits_Fact_Sheet_FY12.pdf.

- In New York, the Chief Judge’s Task Force to Expand Access to Civil Legal Services calculated that for every dollar spent on legal services, there is a five-dollar return that benefits the New York economy. According to the Task Force, the state also loses approximately \$400 million or more in overall revenue each year due to the inability of unrepresented litigants to access federal benefits.¹²²

A recent report by the National Center for Access to Justice summarized the benefits documented by studies around the country and found that the economic benefits of civil legal services include:

- Saving public money by helping victims of domestic violence obtain protection orders and child custody and support arrangements that enable them to leave an abusive relationship and avoid further violence. This reduces public spending on medical care for injured victims and sustains their work productivity; reduces the need for special education and counseling for affected children; reduces the drain on police resources and prisons for perpetrators; and reduces victims’ property losses;
- Saving public money by helping children leave foster care more quickly through family reunification or adoption, which reduces public expenditures for foster care payments, subsidies for medical care, cash benefits and monitoring foster care families;
- Saving public money by protecting patients’ health, reducing public funds for health care as well as generating more revenue for hospitals in the form of insurance reimbursement and government benefits; and
- Generating greater economic activity and revenue in states by helping low-income clients secure financial help from federal safety-net programs, such as SNAP, SSI and SSD, which is then spent in local economies, producing income for businesses and jobs.¹²³

Witnesses who testified at the hearings confirmed the vast economic and social benefits that are realized in a variety of sectors when people are provided meaningful access to the judicial system by legal services programs. Pittsburgh City Council Member Natalia Rudiak submitted written testimony that addressed this topic:

¹²² *Report of the New York Task Force to Expand Access to Civil Legal Services* (2012), available at <http://www.nycourts.gov/ip/access-civil-legal-services/>.

¹²³ Laura Abel, *Economic Benefits of Civil Legal Aid*, National Center for Access to Justice at Cardozo Law School, (September 4, 2012), available at http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2013/05/nat_l_mtg_of_accesstojusticecmmnchairs/l_sclaid_atj_economic_benefits_of_legal_aid.authcheckdam.pdf. See also Laura Abel and Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 Seattle J. for Soc. Just. 139 (Fall/Winter 2010), available at <http://www.law.seattleu.edu/Documents/sjsj/2010fall/Abel.pdf>.

All of the cases that [Neighborhood Legal Services Association] handles have reached a crisis stage that threatens the fundamental safety and security of low-income individuals living in our community. These issues involve basic quality of life matters such as: the ability to maintain housing; obtaining or maintaining essential benefits to the disabled and children; employment practices; child custody and visitation issues; and protection from abuse and neglect. Although NLSA typically works case by case, its positive impact is cumulative. Generally, legal assistance for one person improves the lives of entire families. When families live in adequate housing, with essential benefits intact, predatory lenders at bay, and fear of domestic violence reduced or eliminated, entire communities are stabilized – providing great benefit not only to our City but to our entire state through other legal aid programs funded by the Pennsylvania [government].¹²⁴

Finding 3B: Civil legal services representation serves Pennsylvania businesses

Unmet legal needs for Pennsylvania’s low-income households have a detrimental effect on Pennsylvania’s businesses. As Max W. Laun, Esq., the Vice President and General Counsel for Alcoa stated,

Businesses also rely on predictability in their workforces. Personnel are essential to accomplishing business objectives. So when personnel are forced to miss workdays because of legal issues such as child custody matters, domestic violence, or housing problems, their absence creates instability and uncertainty. These problems can have rippling effects, also. A family who is evicted from their home may subsequently have to deal with school issues for their children, or face the financial pressures of moving such as coming up with a security deposit, paying for a moving truck, and having utilities turned on. The stress of these issues can lead to health problems. One day of missed work can turn into weeks of lost productivity.

Legal services programs fulfill a key role in promoting the greater certainty and predictability business interests look for.¹²⁵

William F. Rothman, a businessman who founded RSR Realtors, Central Pennsylvania’s largest locally owned real estate company, agreed that access to legal services helps to stabilize the workforce and promotes the interests of businesses and communities:

As a businessman I’m acutely aware of the importance of a stable workforce. When employees are distracted by custody battles, both their work performance and attendance suffers. Arguing over custody rights and using children as

¹²⁴ Oct. 29 Public Hearing, Written Testimony (Hon. Natalia Rudiak, Pittsburgh City Council, at 104). *See also* May 23 Public Hearing, Written Testimony (Hon. María Quiñones Sanchez, Philadelphia City Council, at 164, discussing the importance of legal aid to prevent economic harm to communities).

¹²⁵ Oct. 29 Public Hearing, Written Testimony (Max W. Laun, Esq., Vice President and General Counsel for Alcoa, at 92).

bargaining chips is destructive not only to those in the immediate family but to the entire community. I believe that having a custody order in place makes for a more stable situation for these families. It gives these kids a chance to grow up in a steady and supportive home. I think it can help to reduce incidents of domestic violence in these households. We all have a stake in this because stable families make stable communities. I support funding legal aid. I've seen firsthand the scope of the need as well as the good work they are doing for our communities.¹²⁶

Finding 3C: Civil legal services representation saves costs associated with domestic violence

The direct and indirect economic benefits to the Commonwealth from providing civil legal services to victims of domestic violence are enormous. Ellen Kramer, Esq., Legal Director of the Pennsylvania Coalition Against Domestic Violence, summed it up: civil legal services programs save public money by helping victims achieve financial self-sufficiency through support awards, equitable distribution in divorce and preservation of employment. Legal services programs at domestic violence shelters serve over 4,500 victims and obtain approximately \$300,000 annually in support awards for victims of domestic violence in Pennsylvania. Representation also sustains a victim's employability, and protects them from being fired as a result of their victimization. Nationally, victims lose approximately 8 million paid days of work each year, which is equivalent to 32,000 full time jobs. In addition, by assisting victims of domestic violence, civil legal services programs reduce the cost of domestic violence services by reducing the rate of domestic violence. These programs also assist victims to leave abusive partners and become financially self-sufficient.¹²⁷

Other witnesses confirmed these findings, and pointed out that legal services representation helps reduce homicides. For example, Shirl Q. Regan, President/CEO of Women's Center & Shelter of Pittsburgh, testified that:

If we do not find the means to support these legal services that are so necessary, you are going to see many more homicides. But, in addition to that, you are gonna see many more children scarred from the families going through these situations. ... and we need to look at the numbers of people that are impacted every time there's one victim. It's just not one victim. It's her children, his children, their families; the people they work with.... [T]he services that the attorneys provide are absolutely crucial to the safety of our society.¹²⁸

There is a strong business case to be made for representing domestic violence victims. Barbara Penner, Associate Director of Employer Services at Standing Firm, submitted written testimony containing a great deal of empirical data. For example, she confirmed

¹²⁶ May 7 Public Hearing, Written Testimony (William F. Rothman, RSR Realtors, at 54).

¹²⁷ Oct. 29 Public Hearing, Written Testimony (Ellen Kramer, Esq., Legal Director, Pennsylvania Coalition Against Domestic Violence, at 116).

¹²⁸ Oct. 29 Public Hearing, Transcript (Shirl Q. Regan, at 68).

that, “using available epidemiological data, the estimate is that in a company of 700 employees, of whom 50% are women and for whom the average salary is \$15/hour, a company will spend approximately \$150,000 per year, whether it is aware of it or not, for partner violence-related health care, mental health care and absenteeism costs for victims.”¹²⁹

Similarly, David Spurgeon, Esq., Allegheny County Deputy District Attorney, testified that:

We are honored to partner with our legal aid colleagues who advocate for domestic violence victims to obtain protection from abuse orders, provide counsel, and pursue emergency interventions. We know that domestic violence is the most under-reported crime in America, and it takes an extraordinary toll on victims, their children and our communities. The estimated total annual medical cost of domestic violence in Pennsylvania was \$326.6 million. Thirty-nine percent of all female victims of homicide were victims of domestic violence. Legal aid works with us to prevent those cruel deaths and the ruinous impact on Pennsylvania families.¹³⁰

Finding 3D: Civil legal services representation saves costs associated with foster care and child custody

The provision of civil legal services in matters involving the care of children not only benefits the children, it has great economic benefit to society in costs associated with the care of children. Pennsylvania Supreme Court Justice Max Baer testified that:

We need the people that will take these kids into their families, make them permanent members of their family, and raise them well. And we don't care if they're from the dad's side, the mom's side. We don't care if they're extended relatives, not extended relatives. We frankly don't care if they're from the church, a former baseball coach, or the like. And, so, that's what we need to do and to the extent we have greater legal services for them with the trappings, that helps.¹³¹

Judge Kathryn Hens-Greco testified about taking children from their parents:

... is a very important part of what we do. There needs to be a check and balance. The agency has all of the resources. They have an attorney. They have people who are investigating, and if the parent doesn't have an attorney, they're relying basically on their ability to be able to bring witnesses to court and express

¹²⁹ Oct. 29 Public Hearing, Written Testimony (Barbara Penner, Associate Director of Employer Services, Standing Firm, at 98).

¹³⁰ Oct. 29 Public Hearing, Transcript (David Spurgeon, Esq., Allegheny County Deputy District Attorney, at 88).

¹³¹ Oct. 29 Public Hearing, Transcript (Hon. Max Baer, at 6).

adequately what they need in order to get their children back. And it may not be successful.¹³²

Finding 3E: Civil legal services representation saves costs associated with housing

Loss of housing, through eviction or foreclosure, takes an enormous toll on individuals, families and communities. Legal assistance in housing matters can keep people in their homes, stabilizing lives and communities, avoiding homelessness and saving the state enormous short and long-term costs. As Sister Mary Scullion put it,

... it's not just the physical deterioration of homelessness and the extreme poverty, but also the emotional stress that's put on people by not having a home. A home is such a fundamental gift in everybody's lives; it really should be a basic human right... We see that it not only saves lives, and it literally does, and families, but it also saves the state a lot of money, because the resources and the prevention work that these unbelievable attorneys do in cities, in Philadelphia and beyond, just has such a great economic impact across our state... Everybody is better off with people in their homes...we show the economic benefit of, it's cheaper for the state to house people than to have people being homeless."¹³³

Additional testimony to this effect was presented by Forest N. Myers, Esq., President of the Pennsylvania Bar Association, who testified that:

It makes sense to me – it always has made sense to me that you would try to keep people in a home. Why have a bunch of empty houses across the Commonwealth? Even if they can't pay the full amount, they may be paying something, and if they're paying the taxes and keeping it heated and so forth and so on, it's certainly to the bank's advantage than to have a house sitting there and having people go in and vandalize it and so forth.¹³⁴

Judge Gary Caruso, President Judge of Westmoreland County, testified that:

Now, one of the areas that I find most disturbing is in the area of mortgage foreclosures. That's where I see a great increase in the number of people who are trying to represent themselves. And it's obvious why; I mean, they wouldn't be in a foreclosure situation if they had adequate financial well-being. What happens is, the Complaint is filed and then the unrepresented litigant files an Answer. Well, this Answer will be inadequate because it will contain merely general denials. And, then, what occurs is the Plaintiff will file what's called a Request for Admissions, and the unrepresented litigant will not respond to that Request for Admissions.... But, now it's too late because they cannot collaterally attack the

¹³² Oct. 29 Public Hearing, Transcript (Hon. Kathryn Hens-Greco, at 55-56).

¹³³ May 23 Public Hearing, Transcript (Sister Mary Scullion, Executive Director, Project HOME, at 141-143).

¹³⁴ Oct. 29 Public Hearing, Transcript (Forest N. Myers, at 21).

original judgment any longer, and the judge is constrained to grant the Ejectment, and the person is removed from their home. And this is despite the fact that they may have actually had meritorious defenses to the mortgage foreclosure in the first place.¹³⁵

And Judge Annette M. Rizzo pointed out, with respect to foreclosure prevention efforts that

We've seen pretty great success with our program, about 35 percent have found resolution. Of that, 80 percent do not redefault. That's the critical factor.... So that when an individual is stabilized in the home, that means there's stabilization on that block in Philadelphia, community and the city at large.... The impact is so great, not just socially but of course economically. We want to keep our city vibrant, and this is part of it, to keep people out of homelessness and stabilized on a long-term basis in their communities.¹³⁶

Ellen Kramer also pointed out that civil legal aid prevents homelessness and cited the Massachusetts Legal Assistance Corporation as reporting that, in 2009, legal services programs prevented or delayed eviction for 1,851 households. Without that assistance, an estimated 25% of those clients would have ended up in a homeless shelter.¹³⁷ Heather Arnet, Chief Executive Officer, Women and Girls Foundation of Southwest Pennsylvania, discussed the impact of housing issues on women in particular:

75 percent of folks living in poverty in our state are single moms raising kids on their own. So it makes sense when we think about who needs access to some *pro bono* legal aid, the majority of those folks are going to be female.... We also know that women are accessing legal aid around getting support in defense from discriminatory landlords. Landlords that won't rent to them because they have Section 8 vouchers, right? That housing that they need to make sure that their children are safe.

The foreclosure crisis impacted women in astronomical rates. Currently, women are still – a third of female lenders receive a subprime loan. Their male counterparts, it's a quarter. But here's a statistic that just broke my heart: African American women are 256 percent more likely than white men to receive subprime loans. And then we know what happens with those loans, and so then you're in a foreclosure crisis, and now your attempts to be economically sufficient, right, to pursue that American dream of home ownership, can be absolutely devastating. One out of five families with a subprime loan will lose their home. And in just the last few years, nearly two million children were directly impacted by a foreclosure, by losing their home, and we know that that's how families end up on our streets and homeless. So when we talk about cost benefits, right. Here are

¹³⁵ Oct. 29 Public Hearing, Transcript (Hon. Gary Caruso, at 33-34).

¹³⁶ May 23 Public Hearing, Transcript (Hon. Annette M. Rizzo, at 128-129).

¹³⁷ Oct. 29 Public Hearing, Written Testimony (Ellen Kramer, at 116).

families, here are women, who are trying to be economically self-sufficient. The work that Neighborhood Legal Aid does is transformative. It's the work that you're doing as legislators. It's trying to move folks from being victims to being survivors, right? From being economically dependent to an abuser or to a public system to being economically independent, right? To having a job. To having a home. To being safe.

If you help me make sure that my home isn't foreclosed, then I can continue to pay real estate taxes, right? If you help me not lose my job because of workplace discrimination, now I can continue to give you earned revenue through my income tax revenue.¹³⁸

A legal services client, Sonya Butts Rainey, discussed the personal toll she experienced from being threatened with eviction:

I took sick, and the unit that I was living in – and the landlord kind of more or less took advantage of it, me not understanding the legal rights and everything – so I kind of like, then, I discharged myself out of the hospital because I didn't really understand. And the social worker was like, no, I'm gonna refer you to someone that's excellent, which I was surprised, and it ended up being Miss Kimberly Phil [sic]. She immediately asked me to come in, showed me the right way. Showed me how to read the documents right. What's to sign. Gave me pamphlets, you know, and explained everything to me step-by-step... you know, people could have been in the same situation like I was and now I'm grateful and honored by her showing me the right, correct way. I'm getting ready to move into my own house; getting ready to own my own house, and I'm blessed and I'm honored for having the legal service for showing me the correct way. And that's all I got to say.

SENATOR GREENLEAF: What do you think would have happened if legal service had not been available to you?

MS. RAINEY: I would have been out in the street, sir. I would have been out in the street, and I would have lost the custody rights of my disabled grandson. I had him ever since he was three months old... They took my case to court and, um, the landlord tried to evict me and went for order for possession. Kinda like, and I panicked, so I called Miss Kimberly and she explained to me and somehow someway by the grace of God, things turned around and they went in my favor.¹³⁹

Finding 3F: Civil legal services representation saves costs associated with healthcare

¹³⁸ Oct. 29 Public Hearing, Transcript (Heather Arnet, at 80-84).

¹³⁹ Oct. 29 Public Hearing, Transcript (Sonya Butts Rainey, client of Neighborhood Legal Services Association, Medical Legal Collaborative for Patients, at 59).

Witnesses also testified that the provision of legal services has an important economic impact on health care costs. John Lovelace, President of the University of Pittsburgh Medical Center (UPMC), testified:

The issues [UPMC Health System patients] have in health care largely are affected by issues related to lives around them; especially people who are poor, elderly or disabled. So the ability to access health care services, the ability to use health care services, are often seriously impeded by their inability to access other services. Advocates play an invaluable role in helping us to be sure that people get services to which they are entitled. They help keep us honest. We make our own set of mistakes, and advocates are helpful in pointing those out and helping us to correct them.

Our access to services through advocates help people to access health services directly, to access things such as rent assistance, utility assistance, legal assistance and so forth, and really are invaluable in helping people to be sure they are able to benefit from the health care services that they use.... We would not be able to do the work we are able to do, in being the largest Medicaid plan in Western PA, without support of a variety of human service providers whose access is often supported by the work of public interest attorneys.¹⁴⁰

Finding 3G: Civil legal services representation saves costs associated with crime and imprisonment

David Spurgeon, Esq., Allegheny County Assistant District Attorney, pointed out that “[C]ivil legal services are also essential supports for those in re-entry, facing civil legal challenges following incarceration, and, in turn, help reduce recidivism and have an excellent impact on those of us in law enforcement. The cost of housing an individual in a Pennsylvania prison is at least \$35,000 a year. If the civil legal issues of ex-offenders go unaddressed, they may ravage the lives that impoverished individuals are trying to reconstruct.”¹⁴¹ Mr. Spurgeon responded to questioning by Senator Greenleaf about the impact of civil legal services on the criminal justice system as follows:

SEN. GREENLEAF: What impact do you see – and you touched on that, but can you give us maybe some specific examples – what you see when we do not resolve these civil disputes that occur in our society with regards to the criminal justice system and its impact on that system?

MR. SPURGEON: Well, I think the impact does increase violence because then you're leaving these decisions and these resolutions to be made among the parties which aren't often on equal footing.

¹⁴⁰ Oct. 29 Public Hearing, Transcript (John Lovelace, President of the University of Pittsburgh Medical Center, at 62).

¹⁴¹ Oct. 29 Public Hearing, Transcript (David Spurgeon, at 85).

SEN. GREENLEAF: One final point, I think that my colleague, Senator Vulakovich, would agree with this as a former police officer and you as a prosecutor, that probably the most dangerous incident that a law enforcement officer can be involved in is not the bank robbery, not the burglary, but the domestic violence issue.

MR. SPURGEON: Absolutely. Statistically, that's one of the most dangerous times for a police officer to report to a home is in a domestic violence situation, because you are unaware of what the dynamic is that's going on;¹⁴²

Finally, Mr. Spurgeon pointed out that, “By addressing basic human needs such as housing, child custody, health care, and in fighting poverty and homelessness, civil legal aid helps make our families and our communities safer, more secure, healthier, and more stable. Healthier and more stable communities inevitably enhance public safety. Civil legal service providers are a necessary partner in our collaborative strategy for reducing crime and enhancing public safety.”¹⁴³

William J. Higgins, Jr., District Attorney of Bedford County, submitted written testimony. Characterizing himself as a “conservative Republican District Attorney,” Mr. Higgins reflected upon the need for adequate resources in the criminal justice system. But despite that, he advocated for additional needed resources in civil legal aid:

I have worked with enough poor people to know that having their civil legal aid needs met often keeps them out of the criminal justice system. They say “a tide rises all boats” and we need an increased tide of support for our entire justice system so that those without means truly have access to justice in our society in all areas of law.”¹⁴⁴

¹⁴² *Id.*, at 91-92.

¹⁴³ *Id.*, at 86.

¹⁴⁴ Oct. 29 Public Hearing, Written Testimony (William Higgins, Esq., District Attorney of Bedford County, at 18).

**FINDING 4:
THE IMPORTANT, YET DISCRETE, ROLE OF *PRO BONO***

Our attorneys, our partnership, our collaboration, is entirely dependent on legal services agencies such as the Bar Foundation here in Allegheny County and Neighborhood Legal Services Association who provide all of our training; all of our mentoring; all of our guidance. They set up CLE programs that enable us to market, recruit, and train our attorneys which, in turn helps us empower them to know that they can do it, they can step outside of that comfort zone, take on that case and help someone and that, in turn, will inspire them to take the message back to their firm, back to their corporation, and bring someone else into the mix.

Kathryn M. Kenyon, a lawyer in private practice, who is active with the Pittsburgh *Pro Bono* Partnership¹⁴⁵

FINDING 4: *PRO BONO* REPRESENTATION BY PRIVATE ATTORNEYS IS AN ENORMOUSLY VALUABLE SUPPLEMENT TO THE SERVICES OF CIVIL LEGAL AID PROGRAMS AND NOT A REPLACEMENT FOR THEM. EFFECTIVE *PRO BONO* SERVICES DEPEND UPON SCREENING, COORDINATION, MENTORING AND TRAINING BY LEGAL AID PROGRAMS.

Pennsylvania has a long and rich tradition of *pro bono* legal services. Before we had civil legal aid programs, individual attorneys would provide *pro bono* services and this was the only means by which indigent Pennsylvanians could obtain free legal representation and access to justice. Today, *pro bono* attorneys work in partnership with a well-developed, if underfunded, civil legal services system in the Commonwealth. Nearly fifty years after the federal government initially funded civil legal services through the Office of Economic Opportunity and forty years after the birth of the Legal Services Corporation and the inception of state funding for civil legal aid by the Commonwealth of Pennsylvania, *pro bono* help by individual attorneys remains a crucial component of the overall system of access to justice in the Commonwealth.

Today, there is a substantial amount of *pro bono* service delivered by private practice and corporate attorneys and there is a genuine commitment of the organized bar to provide these services. Legal aid offices provide the screening, training, referrals, mentoring, and coordination, which are key to the effective provision of these *pro bono* services. These *pro bono* services are vital, and reflect a very meaningful contribution to the goal of access to justice for low-income Pennsylvanians. However, it is readily apparent to anyone familiar with the justice system in the Commonwealth that the challenge of representing low-income Pennsylvanians in legal matters affecting their fundamental human needs cannot be met by expanding the extent of *pro bono* representation alone and without a commensurate expansion of civil legal services programs.

Chief Justice Castille testified that in 2011, Pennsylvania attorneys performed approximately 116,000 hours of *pro bono* representation.¹⁴⁶ Admirable and helpful as

¹⁴⁵ Oct. 29 Public Hearing, Transcript (Kathryn M. Kenyon, Chair, Pittsburgh Pro Bono Partnership and Partner at Pietragallo Gordon Alfano Bostick & Raspanti, at 24-26).

this is, the value of their services is roughly equivalent to adding, at cost, 56 additional full time lawyers to serve Pennsylvania's 1.8 million people living in poverty. And those *pro bono* resources only exist, for the most part, because legal services programs provide the infrastructure to connect them to clients and to train, mentor and supervise them in providing services in unfamiliar areas of legal practice.

Many witnesses at the Senate Judiciary hearings testified about the effectiveness and importance of *pro bono* services, but also about the limitations on those services and the extent to which they are dependent on the existence of robust legal services programs.

Bruce N. Kuhlik, Executive Vice President and General Counsel of Merck, Inc., submitted written testimony at the May 23 hearing. In his testimony, he summarized the outstanding and award winning *pro bono* work of the lawyers of Merck. Then he spoke to the relationship between legal aid programs and *pro bono* counsel:

Merck is committed to continuing its support of access to justice, both financially and through the volunteered time of our talented workforce. But Merck, and other companies and private law firms, rely heavily on legal service providers like LASP [(Legal Aid of Southeastern Pennsylvania)] with whom we can partner to provide assistance. Legal service providers are in the best position to triage the legal needs and they play a vital role in terms of organizing and leveraging the volunteer efforts of corporations, law firms, and individuals. Legal service providers are the foundation of the delicate networks that deliver civil legal services to those in need every day, making such a tremendous impact in the lives of so many.¹⁴⁷

The Performance Audit of the Legislative Budget and Finance Committee made note of the “ripple effect” that cuts in funding and staffing for legal aid programs have on the delivery of *pro bono* services. Since legal aid attorneys monitor, mentor and train *pro bono* lawyers, any loss of legal aid staff has the direct impact of also reducing the amount of *pro bono* services that can be provided.¹⁴⁸ Thomas Wilkinson, Jr., Esq., a partner at the Philadelphia law firm of Cozen O’Connor and then-President of the Pennsylvania Bar Association testified about the effectiveness of *pro bono* services and how those services fit into the overall delivery of civil legal aid:

Pro bono volunteers, encouraged by the PBA and local bars provide time and financial contributions to help the important work in dealing with clients who have critical legal needs, but cannot afford to obtain private counsel.

¹⁴⁶ May 23 Public Hearing, Transcript (remarks of Hon. Ronald D. Castille, at 9).

¹⁴⁷ May 23 Public Hearing, Written Testimony (Bruce N. Kuhlik, General Counsel of Merck, Inc., at 90).

¹⁴⁸ *Supra*, note 117, at 33, available at <http://lbfc.legis.state.pa.us/reports/2011/54.PDF>. See also Legal Services Corporation, *Report of the Pro Bono Task Force* (October 2012), at 2, available at http://lsc.gov/sites/default/files/LSC/lscgov4/PBTF_Report_FINAL.pdf.

It's important that we continue to expand *pro bono* participation well beyond the core group of lawyers who always can be counted upon to represent another client in need.... Those PBA members who have devoted many hours to leading the effort to narrow the justice gap and expand access to legal services representation are to be commended.

But lawyers cannot do this alone and increased *pro bono* service will not close the gap without more. Going forward we need to urge that all the key players, including the judiciary, civil legal aid organizations, the organized bar, the legislature and community groups actively participate and resolve to bridge the civil justice gap.¹⁴⁹

After the completion of his formal remarks, Mr. Wilkinson was then asked by Senator Greenleaf to what extent he believed *pro bono* services could help to close the gap between the need for legal representation and the current level of services. Mr. Wilkinson responded:

Well, more lawyers can participate. But they always need a structure for purposes of that participation. And they need the training; they need some oversight. To ask someone who primarily does mergers and acquisitions to then jump in and assist with a mortgage foreclosure problem or a child custody problem, they need the oversight and management of our competent legal aid lawyers and there are many lawyers who are willing to take that training and dive in and be helpful. But it's very difficult without having adequate staffing of the legal aid agencies that assist in not only delivering the clients to the lawyer and then making sure they're adequately trained so they can take on these cases.¹⁵⁰

At the Pittsburgh hearing on October 29, the successor Pennsylvania Bar Association President, Forest N. Myers, bookended this testimony by pointing out that every officer and board member of the PBA has committed to handling at least one *pro bono* case per year, with 100 percent participation, and many handling more than the one case. The 400 member House of Delegates has also recently committed to this, with 75% participation so far.¹⁵¹ Mr. Myers stated:

[O]ne of the benefits the legal aid offices provide is to screen the clients so that whenever a lawyer gets a case it comes to them and they truly are a *pro bono* individual. And, again, that's a part of their programs that are being cut back. Obviously, if they have to make a choice between the screening or representation, they choose representation.¹⁵²

¹⁴⁹ May 7 Public Hearing, Written Testimony (Thomas G. Wilkinson, Jr., Esq., at 25).

¹⁵⁰ May 7 Public Hearing. Transcript (Thomas G. Wilkinson, Jr. at 44-45).

¹⁵¹ Oct. 29 Public Hearing, Transcript (Forest N. Myers, at 20).

¹⁵² *Id.*, at 20-21.

Judge Todd A. Hoover, President Judge of Dauphin County, confirmed the sentiments of Mr. Wilkinson and Mr. Myers from the perspective of the bench:

I believe the lawyers do incredible things with *pro bono* service. They really do. In Dauphin County there's a *pro bono* program that attorneys, it's a guardianship program. It's by statute that the Orphans' Court has to have jurisdiction over guardianships. 69 *pro bono* attorneys have stepped up to go out and visit guardians and wards.... Dauphin County attorneys step up and do that.

And I heard something that was very interesting when someone talked about the training. The *pro bono* lawyers don't want to do the custody case or divorce because they're unfamiliar with that area. So there's some training I think that could be helpful to lighten the burden as well. So that's my view from 20 years.¹⁵³

Another President Judge, the Hon. Margherita Patti-Worthington, from the more rural county of Monroe County, made similar remarks:

I just want to make a comment regarding the legal services lawyers. In my opinion and as I have seen them coming into our courts to try to do very much with very little in terms of resources, these are people who are committed. I believe they have a calling, as many people have a calling to their professions. They're not making money at this, they're not getting rich at this, and they do a fantastic job.

As a Court we try to supplement what is done by legal services. Some districts have a good culture of *pro bono* within their district and some do not. Since I became president judge in 2012 I've been trying to institute a better culture of *pro bono* among our local bar association.¹⁵⁴

Judge Kathryn Hens-Greco also testified that legal services programs do the essential triage work that brings many partners together:

But the real thing that works is to have Neighborhood Legal Services assess these people and then parcel them out to all of these *pro bono* attorneys or programs that are willing to deal with them. They do incredible triage work, but it's like putting their finger in a dike. There is –it's – they don't have the resources to address as many people as they can, and it would be two, three, four times the help to poor people in Allegheny County if Neighborhood Legal could open their doors and just assess.¹⁵⁵

Kathryn M. Kenyon, a lawyer in private practice, is active with the Pittsburgh *Pro Bono* Partnership, a highly successful program that involves attorneys, law firms, and corporate

¹⁵³ May 7 Public Hearing, Transcript (Hon. Todd A. Hoover, at 71).

¹⁵⁴ May 23 Public Hearing, Transcript (Hon. Margherita Patti-Worthington, at 54-55).

¹⁵⁵ Oct. 29 Public Hearing, Transcript (Hon. Kathryn Hens-Greco, at 57).

legal departments in effective and innovative projects. She spoke from the direct services perspective of *pro bono* lawyers, including varied projects that help out homeless people, veterans, people involved in custody disputes and protection from abuse cases, people in need of expungements of criminal records, and people involved in public housing problems. Kenyon added some words of caution:

However, we can only do so much as attorneys; as volunteer attorneys. Many of our attorneys are operating outside of their comfort zone in these different areas of law. We take transactional attorneys, people who have never seen the inside of a courtroom, and put them in a family law setting which, as you heard, can be rather confrontational. We take litigation attorneys who have never looked at contracts or paper and have them doing those types of projects to help people.

We can only do so much. Our attorneys, our partnership, our collaboration, is entirely dependent on legal services agencies such as the Bar Foundation here in Allegheny County and Neighborhood Legal Services Association who provide all of our training; all of our mentoring; all of our guidance. They set up CLE programs that enable us to market, recruit, and train our attorneys which, in turn helps us empower them to know that they can do it, they can step outside of that comfort zone, take on that case and help someone and that, in turn will inspire them to take the message back to their firm, back to their corporation, and bring someone else into the mix.

Those agencies, then, are available for those frantic calls, for those frantic e-mails, “Help, Thanks for the training. It was great, but now I’m in a real-life situation, and I want to make sure I’m doing right by this person.” Without having those agencies, the knowledge, the experience, the depth that those agencies give us, we would not be able to do what we do. Without the volunteer attorneys, there would be a precipitous drop in the ability to provide *pro bono* work, *pro bono* representation, to those who are disadvantaged.¹⁵⁶

The many witnesses who spoke on the subject of *pro bono* – judges, legal aid and private attorneys, and bar leaders – shared a core commonality of views:

- The *pro bono* services of attorneys in Pennsylvania provide invaluable resources for low-income people in need of representation across the state.
- Pennsylvania lawyers have a substantial commitment to providing *pro bono* services.
- Screening, mentoring, training, coordination and referral services by legal aid programs are key to the effective delivery of *pro bono* services; without these supportive activities, *pro bono* services would be greatly diminished and much less effective.

¹⁵⁶ Oct. 29 Public Hearing, Transcript (Kathryn M. Kenyon, at 24-26).

- *Pro bono* services cannot alone meet the need for civil legal services. There must be adequate funding for better-staffed legal services offices to work in partnership with *pro bono* lawyers.

RECOMMENDATIONS

RECOMMENDATION 1: INCREASE CIVIL LEGAL SERVICES FUNDING BY \$50 MILLION

RECOMMENDATION 1: THE PENNSYLVANIA STATE LEGISLATURE SHOULD ANNUALLY APPROPRIATE AN ADDITIONAL \$50 MILLION FOR CIVIL LEGAL SERVICES TO ADEQUATELY ADDRESS THE IMMEDIATE CRISIS IN ACCESS TO JUSTICE.

As a Commonwealth, we should be treating civil legal services for indigent individuals and families as an important government service, like roads, like police service, like the courts. There should be a dedicated certain line item with equal application to every county or citizens facing serious civil legal situations.

Chief Justice Ronald D. Castille¹⁵⁷

We need to focus on developing a solution to support and increase public funding to support the hiring of more civil legal services staff to represent more low-income individuals and families in these critical cases involving basic human needs which are unmet.

Then-Chancellor Kathleen D. Wilkinson, Philadelphia Bar Association¹⁵⁸

I don't want to be presumptuous, but I feel very comfortable that Senator Greenleaf on the Republican side, and I on the Democratic side and others, that anyone who has common sense realizes we have to do a better job of funding. So we're going to do that.

Pennsylvania Senator Michael J. Stack¹⁵⁹

The cumulative testimony of the witnesses at the Senate Judiciary Committee hearings over the course of 2013 incontrovertibly supports the conclusion that increased funding is necessary to address the immediate, critical and growing need for civil legal services in the Commonwealth. The evidence presented at the hearings established that the greatest need now is for increased funding to bolster the existing legal services programs and that civil legal services for low-income litigants is clearly the most effective means of assuring equal access to justice.

For example, Judge Hoover observed that funding for legal aid is clearly the most effective solution to address the crisis in the courts and assure access to justice:

It is my opinion that the lack of sufficient funding for legal services to the indigent in civil matters has, and will continue to have, a counterproductive effect

¹⁵⁷ May 23 Public Hearing, Transcript (remarks of Hon. Ronald D. Castille, at 10).

¹⁵⁸ May 23 Public Hearing, Transcript (Kathleen D. Wilkinson, Esq., Then-Chancellor of the Philadelphia Bar Association and partner at Wilson Elser Moskowitz Edelman & Dicker LLP, at 26).

¹⁵⁹ May 23 Public Hearing, Transcript (Senator Michael J. Stack, Pennsylvania, at 119).

on our legal system, and will continue to overburden the courts, court administration and court-related departments, and will directly lead to unfair results with the potential to do harm to those without financial resources.¹⁶⁰

James D. Schultz, Esq., General Counsel to Governor Corbett, submitted testimony about the role of those in the legal profession in offering their own services and in supporting adequate funding for civil legal aid:

We have a lifelong career opportunity to pursue improvement – not only in our own lives, but the lives of people around us. One way to pursue such improvement, beyond individual commitment to serve, is to ensure that legal services organizations, including those in the Pennsylvania Legal Aid Network continue to receive sustained funding to support their significant cause.¹⁶¹

Bruce N. Kuhlik of Merck, Inc., added:

More can and must be done to improve the access to justice for all. The availability of civil legal aid is critical to our communities and provides tremendous benefits. Individuals in need can rely on civil legal aid to help them obtain basic human needs, such as housing, sustenance, and medical care. Whether it is assistance with domestic violence, divorce, custody, eviction, bankruptcy, Medicaid and prescription drug coverage, SSI and SSD benefits and access to other health care service and benefits, the ability to have legal representation with these major life events materially improves outcomes. By providing this support to those less fortunate among us, we strengthen the fabric of our communities.¹⁶²

Quantifying the \$50 million increase that is needed

The Pennsylvania Civil Legal Justice Coalition has examined current funding and the extent of the unmet need for assistance and has concluded that \$50 million in increased funding is needed to assure access to justice in Pennsylvania. The Coalition is not, at this point, proposing a timeline to get to this goal, and recognizes that this will be a multi-year endeavor.

To assess the current funding of legal aid in Pennsylvania, the Coalition examined the revenue sources of all Pennsylvania civil legal aid provider organizations that receive IOLTA grant funding. Total annual funding received by the 39 IOLTA-funded legal services organizations, which includes all of the PLAN programs, is \$78,050,000. This total includes revenues from multiple sources: federal, state, IOLTA, filing fees, local government, United Ways, donations from attorneys, bar associations, foundations and

¹⁶⁰ May 23 Public Hearing, Transcript (Hon. Todd A. Hoover, at 49).

¹⁶¹ Oct. 29 Public Hearing, Written Testimony (James D. Schultz, Esq., General Counsel, Office of the Governor, at 95-96).

¹⁶² May 23 Public Hearing, Written Testimony (Bruce N. Kuhlik, at 54).

other sources. A limited number of legal aid providers do not receive PLAN or IOLTA-administered funds, and we estimate their revenues to be about \$5 to \$10 million. The Coalition therefore estimates that there is approximately \$85 million of current total funding.

Current levels of funding have been found by careful study to support service delivery to just 50% of the eligible clients that actually seek help from a legal aid office;¹⁶³ the other 50% are people eligible for legal services and asking for help, but who have to be turned away. In the rural parts of Pennsylvania, the numbers of those turned away are even greater. Other studies have shown that legal aid programs are serving only 20% of the total need, including both those that have and those that have not sought help.¹⁶⁴ Judges frequently report that as many as 80% to 90% of parties before them on family law matters, especially custody, are unrepresented.

These studies were conducted before the most recent economic decline, which rendered more people eligible for legal services, with even fewer resources to serve them. Rhodia Thomas, Executive Director of MidPenn Legal Services, testified at the May 7 Judiciary Committee hearing, “We’re doing 5 to 10 percent of the need for the people who are coming to access our services. And also, there’s just a growing number of people who try to access our services who can’t get help – who have just given up. So that number we can’t even count, we can’t quantify, because we don’t know how many people there are.”¹⁶⁵

As of June 30, 2012, the 39 IOLTA-funded organizations employed a total of 383 attorneys, or one lawyer for every 4,198 Pennsylvania residents living in poverty. Compare this to the 62,706 Pennsylvania attorneys¹⁶⁶ available to serve those that can afford representation, or one lawyer for every 177 Pennsylvania residents not living in poverty. The disparity is impossible to ignore. Improving this representation ratio for those in poverty is the key to successfully reducing the number of people being turned away.

As an initial step toward the ultimate goal of serving all eligible clients in need, the Coalition finds that funding must be secured to address the problem that 50% of the eligible clients actually asking for help are turned away due to lack of resources. If \$85 million serves 50% of eligible clients seeking help, and economies of scale are considered, the Coalition respectfully concludes that \$50 million in additional funding, not an actual doubling of funding, would be needed to significantly reduce the number of eligible clients who are currently being turned away by legal aid due to a lack of resources.

¹⁶³ Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* (September 2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.

¹⁶⁴ *Supra* note 115, at S-2.

¹⁶⁵ May 7 Public Hearing, Transcript (Rhodia Thomas, at 15-16).

¹⁶⁶ Disciplinary Board of Pennsylvania, *2012 Annual Report*, at 1, available at <http://www.padisiplinaryboard.org/about/pdfs/2012-annual-report.pdf>.

This additional \$50 million in funding could enable legal services programs to hire hundreds of additional advocates, which would expand by as much as 64% the number of legal problems solved for an additional 95,000 individuals and families facing legal crises, where basic life necessities, such as shelter, sustenance, safety, health and the custody of children are at risk. While studies show the overall need to be even greater, addressing the current level of need based on those eligible for services and asking for help is crucial.

This is not to find or suggest that there could be an immediate increase on this scale. Other states have set target funding levels at higher amounts (Maryland and New York both concluded that \$100 million was needed) and have adopted phase-in schedules. The target for Pennsylvania will take a number of years to reach, but it is necessary to set a reasoned target and to make strides to reach that target over a limited period of years.

Filing fee revenues appear to be the most immediate resource available to address funding shortfalls

Of the state sources of support, filing fee revenues appear to be the most immediate resource that can help to increase funding for civil legal aid. At the time of this writing, HB 1337 is pending in the State Senate. This Bill would add one dollar to the filing fee for various courthouse filings, to help civil legal aid. The dollar translates to about \$2.5 million in additional annual revenues. Presently, a \$3 filing fee (in total) is dedicated to support civil legal aid. This is considered by many to be a user fee, helping provide access to justice by the imposition of a minor fee on all who utilize or come in contact with the various courthouse offices and services.

The Bill passed the House unanimously. As noted by James D. Schultz, General Counsel, Office of the Governor, the bill is also supported by the Governor:

Representative Tarah Toohil has introduced House Bill 1337 which proposes to increase the total filing fee amount placed into the Access to Justice Account to \$4.00. I, as well as the Governor, fully support House Bill 1337 and hope to see its passage this session. Providing additional funding for legal aid is an essential step in the expansion of services to those in need. Working together, we can solve one problem at a time, one case at a time, one person at a time.¹⁶⁷

Legal aid advocates remain hopeful the Senate will act on this bill very soon. As the earlier graph portrays, even the revenues from existing filing fees have diminished somewhat in recent years, as the slowed economy has led to fewer filings. And IOLTA revenues have also declined significantly, as discussed earlier. There is strong support for the enactment of this supplemental funding bill to address the urgent needs of legal services clients.

¹⁶⁷ Oct. 29 Public Hearing, Written Testimony (James D. Schultz, at 96).

When filing fee revenues for legal services were scheduled to sunset in 2012, the legislature conducted a study about the effectiveness of the use of those fees, before ultimately preserving that support by extending the sunset provision for another five years. The study, “A Performance Audit of Pennsylvania’s Access to Justice Act, Conducted Pursuant to Act 2006-81,” was conducted by the legislative Budget and Finance Committee, A joint committee of the Pennsylvania General Assembly. This study offered the General Assembly the opportunity to test whether these funds were being well spent and whether the continuation of the fee was justified. The conclusion of this 75-page report was that the funds were well spent and justified. The study found that “known case outcomes are generally positive, and the large majority of clients appear satisfied with the services provided.”¹⁶⁸ The report went on to recommend that the “General Assembly should consider making the Access to Justice fee and surcharge permanent to provide a more stable funding stream for civil legal aid.”¹⁶⁹

¹⁶⁸ *Supra*, note 115, at S-4.

¹⁶⁹ *Id.*, at S-5. The report made only one other recommendation, which was that the IOLTA Board and PLAN study the effectiveness of telephone services offered as a part of the array of legal services offered by legal aid programs. That comprehensive study was conducted, including interviews of actual clients served, and the services were found to be an effective counterpart to full-fledged services, for clients whose cases could not be handled with extended representation due to lack of sufficient resources and who often had logistical challenges being able to travel to a legal services office. *See Final Report on the Assessment Of Telephone-Based Legal Assistance Provided by Legal Aid Programs in Pennsylvania Funded Under the Access to Justice Act*, prepared by The Resource for Great Programs, Inc. (July, 2012), available at http://www.paiolta.org/Grants/AJA_Final%20Overall%20Report_FINAL_7-9-2012_With%20Covers_No%20Appendices.pdf.

RECOMMENDATION 2: ESTABLISH AN ACCESS TO JUSTICE COMMISSION

RECOMMENDATION 2: THE PENNSYLVANIA SUPREME COURT SHOULD ESTABLISH AN ACCESS TO JUSTICE COMMISSION TO STUDY AND IMPLEMENT MEASURES TO EXPAND ACCESS TO JUSTICE.

The Coalition recommends that the Pennsylvania Supreme Court establish a high-level Access to Justice Commission (ATJC) to study and implement measures to expand access to justice in the Commonwealth. An ATJC is a blue-ribbon commission or similar formal entity that brings together leaders of the courts, the bar, the General Assembly, the Governor's office, civil legal aid providers and other key stakeholders to work in a coordinated and collaborative effort to expand access to civil justice at all levels for low-income and disadvantaged people in the state (or equivalent jurisdiction) by assessing their civil legal needs, developing strategies to meet them and evaluating progress.

Over the past few years, there has been a growing movement throughout the nation for states to create Access to Justice Commissions. Thirty-one states have created Access to Justice Commissions and an additional six states are in the process of evaluating the benefits of creating one. Both the American Bar Association House of Delegates and the Conference of Chief Justices (CCJ), at their recent 2013 annual meetings, adopted resolutions reaffirming their commitment to promote the work of ATJCs, as has the National Conference of State Court Administrators.¹⁷⁰ The Philadelphia Bar Association, the Allegheny County Bar Association and the Pennsylvania Bar Association have all passed resolutions supporting the creation of an Access to Justice Commission in Pennsylvania.¹⁷¹

Support for the Commission is conditioned upon assurance that the Commission membership includes representation from a cross-section of groups in the state, so that it truly reflects the myriad of interests such a body will need to represent. In addition, support for the Commission is based on the view that funding of the ATJC itself be established and that it be modest. The ATJC should be adequately supported to perform its responsibilities but should not be a drain upon the resources otherwise used to support legal services.

The Coalition has developed concrete recommendations that will be presented to the Pennsylvania Supreme Court for consideration, which outline the full mission of the Pennsylvania ATJC as well as its composition and structure. While the ATJC should have a broad and flexible agenda, the Coalition recommends that the Commission focus

¹⁷⁰ Oct. 29 Public Hearing, Written Testimony (Steven Grumm, Esq., Director, Resource Center for Access to Justice Initiatives, American Bar Association, at 69).

¹⁷¹ See Philadelphia Bar Association resolution, available at http://www.philadelphiabar.org/page/ResDec13_2?appNum=4; Allegheny County Bar Association resolution, available at <http://www.pittsburghprobono.org/doc/ACBA-Resolution-Access-to-Justice-Commission.DOCX>; Pennsylvania Bar Association resolution, available at [http://www.pabar.org/public/committees/1spublic/atj/Resolution final-1.pdf](http://www.pabar.org/public/committees/1spublic/atj/Resolution%20final-1.pdf).

on identifying and pursuing strategies that will significantly increase funding for legal services and help to achieve the goal set forth in Recommendation 1 of this report. The Coalition also recommends a series of proposed solutions to the problem of securing access to justice in Pennsylvania for consideration by the ATJC. The following proposed solutions should be studied and considered:

Proposed Solution 1: Study innovative court programs with demonstrated success to identify which measures, if any, should be recommended for development in every suitable judicial district.

Proposed Solution 2: Study whether every judicial district in the Commonwealth should consider adopting minimum standards intended to improve access to justice, and then make recommendations based on this study.

To the extent that the courts are more user-friendly, litigants will have a better chance of having meaningful access to justice. Thus, the ATJC should study and evaluate approaches to making the courts more accessible and helpful to unrepresented litigants and should determine whether every judicial district in the Commonwealth should consider adopting minimum standards intended to improve access to justice. Measures that should be considered include:

- Further study to determine what uniform requirements should be created, such as self-help centers and materials, on-line forms and innovative technology, clinics, facilitation of discrete-task representation, simplification of forms and procedures, judicial training, and enhanced use of technology, and other methods.
- The study should include how the development and implementation of the tools deemed necessary for access to justice will be funded.

Proposed Solution 3: Study whether all Commonwealth administrative agencies that conduct adversarial hearings and render adjudications should review their procedures and forms, and simplify and standardize the public's access to services and benefits.

Proposed Solution 4: Explore how Pennsylvania law schools may help to reduce the gap between the need for legal services and available services and help promote public awareness and understanding.

Proposed Solution 5: Undertake a comprehensive study of the feasibility and costs of providing counsel at public expense for indigent persons in adversarial civil matters involving basic human needs, such as shelter, child custody, health, sustenance and safety.

Proposed Solution 6: To increase pro bono participation, study initiatives intended to expand the delivery of free legal services, such as the following, and then make further recommendations based on this study.

- Amend Pennsylvania Rule of Professional Conduct 6.1 to adopt the language of the ABA’s Model Rule 6.1 that calls for every lawyer to aspire to render at least 50 hours of pro bono service annually.
- Amend the Pennsylvania Bar Admission Rules to require that all applicants perform 50 hours of pro bono service with a qualifying organization as a requirement for admission to the Pennsylvania bar.
- Adopt an “emeritus rule” that permits retired lawyers and other lawyers who are no longer engaged in the practice of law to provide pro bono service in conjunction with a qualifying organization, either without having to pay annual attorney registration fees or at a substantial discount.
- Award attorneys CLE credit for pro bono service performed for low-income persons in conjunction with a qualifying organization.

Proposed Solution 7: Study the system of legal services programs and delivery to determine whether there are changes that could be made to promote efficiencies in the service delivery and to provide easier access across the Commonwealth, including in urban and rural areas.

Proposed Solution 8: Study and consider how to increase public awareness of the critical need for expanded access to justice and civil legal assistance to low-income residents as well as a greater understanding of the rule of law and how individuals may secure access to justice.

**RECOMMENDATION 3:
ESTABLISH A CIVIL RIGHT TO COUNSEL IN PENNSYLVANIA**

RECOMMENDATION 3: THE COMMONWEALTH OF PENNSYLVANIA SHOULD WORK TOWARD ESTABLISHING A RIGHT TO COUNSEL IN CIVIL LEGAL MATTERS IN WHICH BASIC HUMAN NEEDS ARE AT STAKE.

I firmly believe Civil Gideon is the solution. Civil Gideon will provide counsel to enhance the perception of justice in the laws enacted by the Legislature and for the court process we work within. I also believe Civil Gideon will alleviate and reduce the large amount of frivolous pleadings by unrepresented parties. As aptly stated by Chief Judge Jonathan Lippman, Chief Judge of the State of New York and Chief Judge of the Court of Appeals, “Civilized societies are ultimately judged by how they treat their most vulnerable citizens.” Our constituents and citizens deserve to be represented by counsel in civil matters which affect the perception of justice in the eyes of the citizens we serve.

Judge Stephanie Domitrovich, Erie County Court of Common Pleas¹⁷²

Dick Thornburgh, former Governor of Pennsylvania and a founding board member of Neighborhood Legal Services Association, the legal aid provider in Pittsburgh and the southwest, submitted written comments. He discussed the history and current status of legal aid. He also wrote favorably about the need for representation in cases involving basic human needs:

... When we fail to provide legal counsel to those who cannot afford to hire a lawyer – we ration justice so that only those who can pay [can] receive the benefit of “Equal Justice under Law” that our Supreme Court has set as a goal for all our citizens.

We can surely do better. And we can do better by leaders in the bar, in the courts and in the legislature stepping up to assure that there are meaningful systems in place to help those who represent themselves and that we continue to strive to assure that those eligible for legal services, having a legal problem involving basic human needs, have counsel available to them.

The Pennsylvania ATJC should undertake a comprehensive study of the feasibility and costs of providing counsel at public expense for indigent persons in adversarial civil matters involving basic human needs, such as shelter, child custody, health, sustenance and safety.

The Pennsylvania Bar Association, the Philadelphia Bar Association and the Allegheny County Bar Association are all on record, having formally adopted resolutions in support of a right to counsel in civil cases, where basic human needs are at stake.¹⁷³

¹⁷² Oct. 29 Public Hearing, Written Testimony (Hon. Stephanie Domitrovich, Judge, Erie County Court of Common Pleas, at 140-141).

The U.S. Supreme Court held in *Gideon v. Wainwright* that "... in our adversary system of justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."¹⁷⁴ This "obvious truth" that there must be a right to counsel in criminal cases is equally applicable to civil matters in which basic human needs are at stake. The recognition of this "obvious truth" has led to a national effort to establish a right to counsel for indigent people in critical civil cases. It also led American Bar Association President Michael Greco to form a Presidential Task Force on Access to Justice in Civil Cases in 2006 to study the issue, which in turn resulted in the introduction of an ABA resolution calling upon states to create a civil right to counsel in critical cases. In August 2006, the ABA House of Delegates unanimously passed the groundbreaking Resolution 112A, which states:

"RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction."¹⁷⁵

The ABA resolution and concurrent report urged states to explore how to create and implement a right to counsel in civil cases. The ABA recognized that an incremental approach was necessary. It suggested that the right should be established for those cases that involve basic human needs and interests that, because of their potential consequences, justify providing attorneys at government expense for low-income persons who otherwise cannot afford counsel. The resolution has spurred legal service programs, bar associations, law schools, private law firms, courts, and other key stakeholders across the nation to intensify efforts to address the growing unmet civil legal needs of the poor and to explore a variety of approaches to creating a right to counsel for low-income individuals. Activities have included: litigation; developing legislation to create model state statutes; conducting local and national unmet needs studies and other social science research to substantiate the benefits of providing counsel; and publishing reports, articles and other writings to educate judges, legislatures, the public and the legal community about the issues.

¹⁷³ See Philadelphia Bar Association resolutions, available at <http://www.philabar.org/page/BoardResolution0525200606?appNum=4> and at http://www.philabar.org/page/RESOLUTION_CALLING_FOR_THE_PROVISION_OF?appNum=4; Pennsylvania Bar Association resolution, available at <http://www.pabar.org/public/committees/lspublic/resolutions/right%20to%20counsel%20resl%20boardapprovddoc.pdf> and Allegheny County Bar Association resolution, available at <http://www.pittsburghprobono.org/doc/Public-Service-Committee-resolution-re-Civil-Gideon.DOC>.

¹⁷⁴ *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

¹⁷⁵ American Bar Association, *Resolution 112A* (Aug. 2006), available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A_112A.authcheckdam.pdf.

This “obvious truth,” that there should be a right to counsel in civil legal matters involving fundamental human needs, was recognized by many of the witnesses at the Senate Judiciary Committee hearings, particularly by judges and bar association leaders who have a unique, experience-based perspective on the administration of justice.

As Westmoreland County President Judge Caruso urged:

It is necessary we recognize that when a party cannot truly afford legal representation in civil cases, that put at risk their basic human rights and necessities, it should be a fundamental right that they have representation. I believe that the failure to fund such projects really has a counterproductive effect on the integrity of the court system and the corresponding confidence that the public has in our justice system. If we do nothing there will be continuing delays in the administration of justice which unfortunately may lead to results that are unfair and unjust... We must not allow these truly needy persons to be invisible.¹⁷⁶

Judge Stephanie Domitrovich, Erie County Court of Common Pleas, added:

On numerous occasions, I have heard over and over again from unrepresented litigants that they wish they could have afforded to hire counsel because they feel lost in a court system where they have rarely appeared. And I believe that their state of financial inability to hire counsel seriously damages their perception of justice and faith in our court process.¹⁷⁷

These sentiments were also echoed by Thomas G. Wilkinson, Jr., Esq., then-President of the Pennsylvania Bar Association:

[W]e provide appointed counsel to those facing potential confinement for months or years, while we do not do so for those facing eviction and homelessness for months or years, or even for victims of domestic violence seeking court protection.¹⁷⁸

Kathleen D. Wilkinson, Esq., then-Chancellor of the Philadelphia Bar Association, testified:

In the Harrisburg hearing you heard of an individual who was about to lose his home, and there was a warrant on the door and he happened to see a phone number and called that aid organization who helped him. Some people don't know where to turn. I think it's also a question of getting the word out. But if you get the word out, where do you turn? Because there's not enough public interest lawyers,

¹⁷⁶ Oct. 29 Public Hearing, Written Testimony (Hon. Gary Caruso, at 18).

¹⁷⁷ Oct. 29 Public Hearing, Written Testimony (Hon. Stephanie Domitrovich, at 140).

¹⁷⁸ May 7 Public Hearing, Transcript (Thomas G. Wilkinson, at 39).

there's not enough pro bono hours that could be spent, and there's not enough funding to support this.

So if people go into court on their own, or don't show up in court at all, which either/or occurs, then they're not getting true access to justice. Yet on the 50th anniversary of *Gideon vs. Wainright*, which did establish the right to counsel for the indigent in criminal matters, loss of liberty, loss of life, we do not recognize that same right, and we should, because if your home is about to be taken away from you, if your children are going to be removed, if you can't – if you don't know and can't find a way to get insurance coverage for your injury or your illness.

SENATOR GREENLEAF: Or protect yourself.

KATHLEEN WILKINSON: Or protect yourself, or you have no food and you have nowhere to turn to, you don't know where to go, you're going to be on the streets, you're going to create an additional burden on society. It's not only the right thing to do, there's an economic benefit as well.

SENATOR GREENLEAF: It's the smart thing to do.

KATHLEEN WILKINSON: It is the smart thing to do, because then you help these people, you lift them up, they become productive members of the society.

You're going to hear more stories here today, as you did in Harrisburg, very inspirational stories, people like you and me, that but for the Grace of God something happened and they fell on hard times and they didn't have a place to go but for the fact they found out about a legal aid organization. That's not true in most cases, as you've already heard. One out of five people find help. What about the other four out of five? What's happening to them and is that good for Pennsylvania? I don't think so.¹⁷⁹

Forest Myers, Esq., the succeeding President of the Pennsylvania Bar Association, and an attorney from Franklin County, aptly summed up the view of the Coalition:

Not many people had ever given much thought, I don't think, in our profession or even – and especially in the public at large – as to a Civil Gideon and whether that's a right. And we need to work toward that, and I think the Bar Association and your Committee certainly – and this Coalition that has been put together to steer these hearings – are doing a wonderful job of bringing to the forefront the need for a Civil Gideon concept and perhaps a right, hopefully a right.¹⁸⁰

¹⁷⁹ May 23 Public Hearing, Transcript (Kathleen D. Wilkinson, at 30-32).

¹⁸⁰ Oct. 29 Public Hearing, Transcript (Forest N. Myers, at 19).

CONCLUSION

The function of the judicial system and the attorneys is that we actually solve disputes among people. That's part of our democracy. If we fail to do that, then we fail in democracy, because when we fail that, then those issues are unresolved and there's a lot of unintended consequences that come about from that, and some of which are criminal activities, some of which are civil violations, unresolved disputes then proliferate in our society and it becomes dysfunctional and the system isn't working.

Senator Stewart J. Greenleaf, Chair, Pennsylvania Senate Judiciary Committee¹⁸¹

The administration of justice in Pennsylvania is at a critical juncture. The Pennsylvania Senate Judiciary Committee hearings in 2013 gathered overwhelming evidence that the justice system is failing the most vulnerable Pennsylvanians. We have a growing crisis in access to justice due to a perfect storm of expanding legal need and diminishing resources to meet that need. This crisis affects the lives and livelihoods of low-income Pennsylvanians, the functioning of our courts, and faith in the administration of justice and the rule of law.

The hearings made it abundantly clear that this is the time to move forward and address the crisis in access to justice. The Coalition worked closely with Senator Greenleaf and the Judiciary Committee to draw much-needed attention to the problem. This report contains a set of significant findings that emanate directly from the broad-based, extensive and thoughtful testimony that was presented at the hearings.

The Coalition is proposing a logical, meaningful and achievable set of recommendations and we stand ready to assist in whatever ways we can with implementation. We believe that the implementation of these recommendations will, to paraphrase Justice Powell, make justice in Pennsylvania the same in substance and availability to all, without regard to economic status, and will make equal justice under law – perhaps the most inspiring ideal of our society – a reality and not merely a caption on the façade of a courthouse.

¹⁸¹ May 23 Public Hearing, Transcript (Senator Stewart J. Greenleaf, at 180-181).