

Bridging the Justice Gap: Wisconsin's Unmet Legal Needs

Final Report
Access to Justice Study Committee
State Bar of Wisconsin
March 2007

As of March 1, 2007, the views expressed in this report have not yet been approved by the State Bar of Wisconsin Board of Governors and, accordingly, should not be construed as representing policy of the State Bar unless expressly so stated.



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Table of Contents

Report at a Glance	1
Final Report of the Wisconsin Access to Justice Study Committee	3
Introduction	3
Background	3
The Access to Justice Committee	3
The study methodology	4
Whom we surveyed	4
Wisconsin's Justice Gap	6
The poor are confronted regularly with serious legal problems	6
These legal needs are not being met	7
The effects of the Justice Gap	7
Effects on the poor	7
Effects on our courts and our government agencies	8
Other effects	9
Why is there a Justice Gap in Wisconsin?	10
Gap remains despite efforts of the legal community	11
The time is ripe for change in Wisconsin	11
Recommendations	13
Conclusion	19
Endnotes	20
Appendices	
<i>Appendix 1: About the Wisconsin Access to Justice Study Committee</i>	
<i>Appendix 2: Wisconsin Civil Legal Needs Study Final Report by</i> Gene Kroupa & Associates	
<i>Appendix 3: Wisconsin Civil Legal Needs Study Survey Instrument</i>	
<i>Appendix 4: Client Stories: Examples of the Difference a Lawyer Makes</i>	
<i>Appendix 5: Wisconsin Legal Service Providers: 2005 Funding Levels</i>	
<i>Appendix 6: Executive Summary: State Bar of Wisconsin 2005 Pro Bono</i> Survey	
<i>Appendix 7: Bibliography of Selected Resources</i>	
<i>Appendix 8: Liz Elwart, et al., Increasing Access to Restraining Orders for Low-</i> Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program (2006)	

Report at a Glance

Our committee

The Wisconsin Access to Justice Study Committee is comprised of experienced lawyers and judges from the public, private, and nonprofit sectors who were appointed by the president of the State Bar of Wisconsin to oversee Wisconsin's first comprehensive legal needs study of low-income residents. We have first-hand experience with access to justice issues from a variety of perspectives. We believe that equal justice under law is a fundamental building block of our society. Our goals were to:

- identify low-income residents with unmet legal needs;
- identify reasons why the needs are not being met; and
- recognize what has been done but make recommendations on how to accomplish what remains to be done.

Our work

We began with a legal needs survey to assess the level of legal needs among low-income residents. Wisconsin families were randomly selected by a professional survey firm from a diverse pool, paying special attention to income, geographic location, and race/ethnicity. Families with incomes less than 125% of the federal poverty guidelines were our primary target and “working poor” households with incomes between 125% and 200% of the guidelines were included for comparison purposes. Surveys were completed by 1,122 households, and the survey had a margin of error of 3%.

What we found

Overall, 45% of the households we surveyed reported experiencing a need for legal assistance in at least one area of law. We also found that Milwaukee (54%) and other urban (49%) residents were more likely than rural (32%) residents to have had a legal problem. The level of need also was high among lowest income families (48%), minorities (59%), and in households with children (64%). The average number of problems reported by all respondents was 2.1 problems.

The Justice Gap

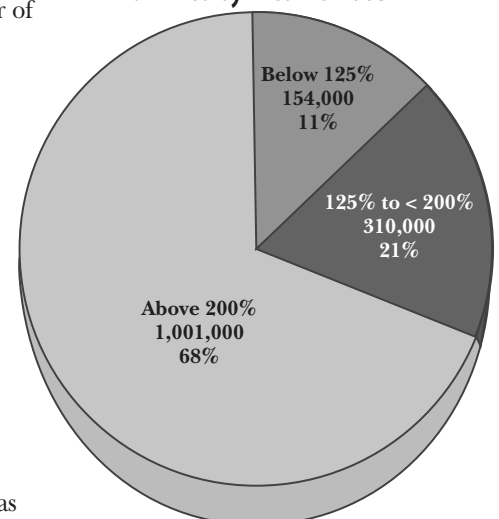
Up to 80% of poor households that confront a legal need do so without legal assistance. More than *half a million Wisconsinites* – people with families, many of whom have jobs, own homes and pay taxes – must contend with significant legal troubles without any legal help. And 60% of the time, the party on the other side is represented by a lawyer. Some legal aid organizations are able to help only about 20% of those who qualify. At other programs, for every client who is served, another is turned away due to a lack of funding. Most of the families we surveyed sought help but could not obtain it.

Despite the efforts of staff and volunteer advocates, as well as financial contributions from many sources, we are not closing the Justice Gap.

Current efforts at filling the Justice Gap are insufficient. Federal funding has diminished almost every year; it is only half what it was in 1980 when adjusted for inflation. The legal profession tries to make up the difference – individual lawyers and law firms contribute more than \$1 million and more than 40,000 hours of free legal

“ More than **half a million Wisconsinites** – people with families, many of whom have jobs, own homes and pay taxes – must contend with significant legal troubles without any legal help. ”

Figure 1: Wisconsin Families by Income 2005



Source: CPS POV46 Poverty Status by State: 2005, Families
Percentages refer to federal poverty guidelines

“Wisconsin trails neighboring states in tackling the large Justice Gap. Wisconsin is the only state in the Midwest providing no funding for general civil legal services.”

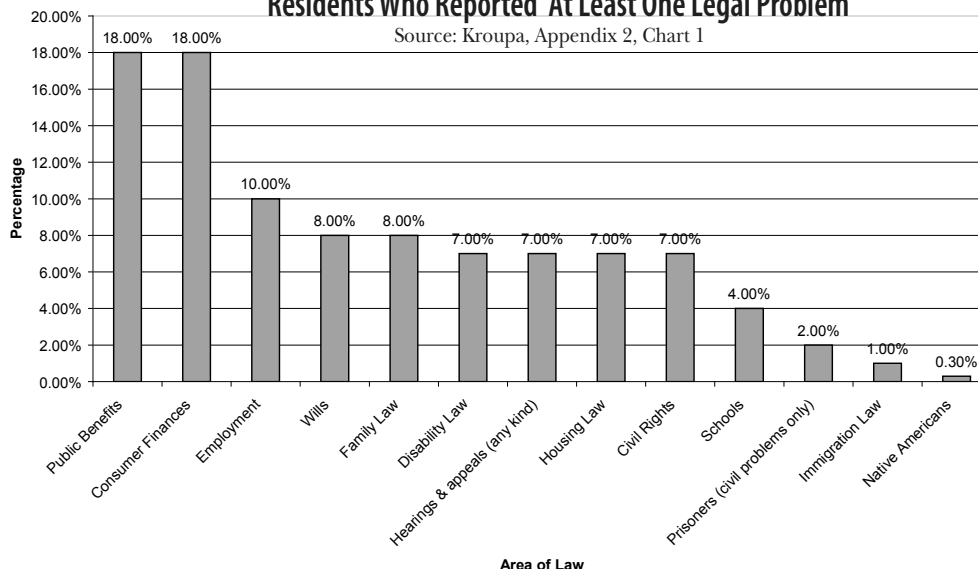
services every year. Courts have opened self-help centers, expanded the range of assistance court clerks can render, simplified court forms and made these forms available online. The Wisconsin Supreme Court approved new ethics rules that make it easier for lawyers to serve the legal needs of the poor. State government has made a small but exemplary step toward closing the gap with a program of benefit specialists who help the elderly and those with disabilities when they are faced with a loss of public benefits.

Wisconsin trails neighboring states in tackling the large Justice Gap. In Ohio, state government spends more than \$14 million on general civil legal services for the poor; Minnesota, \$12 million; Michigan, \$7 million. In Illinois, there is a proposal before the legislature to increase funding from \$3 million to \$5 million. Although it does provide some funding for help to the elderly and disabled, Wisconsin is the only state in the Midwest providing no funding for general civil legal services. We are encouraged that, as this report went to press, Gov. Doyle’s budget proposal to the Legislature included \$1 million in general purpose revenue funding to meet some of the civil legal needs of low-income residents.

Our recommendations

1. Funding from the State of Wisconsin is necessary to help close the Justice Gap and must be adequate to meet the needs of at least those who are currently turned away due to lack of funding.
2. A permanent Wisconsin Access to Justice Commission should be established with members appointed by the Supreme Court, the Legislature, the Governor, and the State Bar of Wisconsin to coordinate efforts to close the Justice Gap.
3. Self-help centers for unrepresented litigants should be established in every courthouse in Wisconsin.
4. Expanded use of nonlawyer advocates before Wisconsin courts and agencies must be explored.
5. Client contributions to the cost of services may be an appropriate means of expanding access to justice for residents who can afford to do so.
6. Increasing Wisconsin’s already high court filing fees is not an appropriate means of expanding access to justice.
7. The current \$50 assessment on attorneys to help pay for civil legal services to the poor should be retained and the exemption for judges should be removed.
8. Expanded efforts to increase the already substantial pro bono contributions of Wisconsin lawyers should be explored.

Figure 2:
Legal Needs of the 45% of Low-Income Wisconsin Residents Who Reported At Least One Legal Problem
 Source: Kroupa, Appendix 2, Chart 1



Final Report of the Wisconsin Access to Justice Study Committee

Introduction

For half a million Wisconsin residents, one of the fundamental promises of our democracy – equal justice before the law – is simply out of reach. A senior citizen facing foreclosure, a family with young kids forced onto the street by eviction, a child facing the loss of health care services for his severe disabilities because of a bureaucratic mix-up, a victim of domestic violence seeking safety and stability for herself and her kids. Every day Wisconsin residents who face complex legal problems are forced to go it alone, in court, before government agencies, in negotiations with their adversaries – that is, if they don't simply give up.

For these people, the promise of equal justice is unfulfilled, because they cannot afford the professional legal help they need and they cannot effectively represent themselves. These are people who are already sacrificing health insurance to pay the rent, prescription drugs to keep up with the mortgage, groceries to cover child care, and the like. There is simply no room in a family budget overwhelmed by choices like these to pay for legal help. They fall into the Justice Gap.¹

Background

The Access to Justice Committee

Our work was commissioned in the wake of a debate in the legal community in 2004 about the extent to which legal services are out of reach of those in need and about who should contribute to a solution. At that time, the Wisconsin Supreme Court had granted a petition of the Wisconsin Trust Account Foundation requiring Wisconsin lawyers to contribute to the cost of providing civil legal services to the poor. Many within the bar called for the legal needs of the poor to be studied in greater depth.

This committee was appointed in July 2005 by then-State Bar President D. Michael Guerin to conduct a rigorous assessment and analysis of legal needs among low-income Wisconsin residents. The goal was to help the State Bar and the Supreme Court better understand the scope and impact of the problem of access to justice for low-income residents. We were asked:

- to identify those with unmet legal needs;
- the nature of those needs;
- how those needs are distributed throughout the state;
- the reasons why the needs are not being met;
- the major social impact on our communities of allowing these legal needs to go unaddressed; and
- how the needs might be met.

Although the poor, and often even the middle class, cannot afford lawyers, “lawyers are always available to businesses, institutions and wealthy individuals. This disparity casts a dark shadow over the legitimacy of our profession and over the legal system itself. How can we expect individuals shut out of the legal system to give it the respect on which it depends?”

— Hon. David S. Tatel, U.S. Court of Appeals for the District of Columbia Circuit, March 3, 2005.



How will Maria get the medical care she needs?

Twelve-year old Maria (a pseudonym) is hospitalized for four days for complications of tuberculosis. Her family is presented with bills totaling \$12,000. That's more than half the family's annual income. The bills are submitted to Medicaid but Medicaid refuses to pay, on the ground that the care was "non-emergent." The family believes Medicaid is wrong, but no one in the family speaks English. They don't understand the intricate rules and exceptions under which, in fact, Maria qualifies for coverage. They obviously can't afford an attorney. How will this family cope?

President Guerin also asked the committee for recommendations about how to meet the challenge of funding needed services.

Our full committee mandate and biographies of our nine members are found in Appendix 1.

The study methodology

Over the course of nearly a year and a half, our committee has studied data, reports, and articles from Wisconsin and elsewhere in the nation. (A bibliography of many of these resources is found at Appendix 7.)

The centerpiece of our work is the comprehensive, in-depth telephone survey we commissioned. We employed the highly respected Wisconsin survey firm, Gene Kroupa & Associates, Madison, to assist us with survey design, question formulation, and administration of the actual survey. The full survey report, found at Appendix 2, spells out the complete methodology.

Two factors stand out: First, the overall number of respondents – 1,122 low-income households – is large and yields a high level of confidence in the results. Most statewide public opinion surveys are based on smaller samples and have larger margins of error. Because of the substantial survey size, the margin of error is quite low, plus or minus 3% overall.

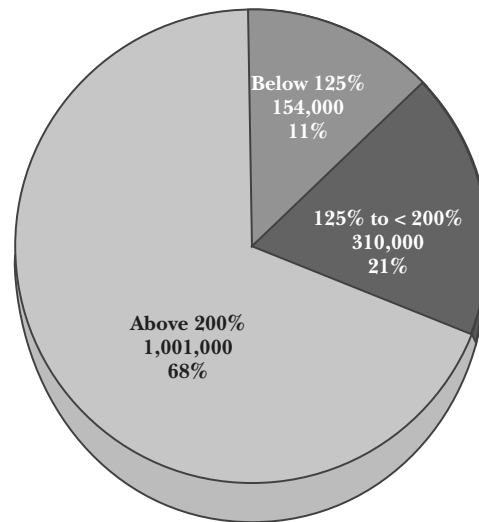
Second, our telephone survey actually required a substantial time commitment from the households who responded. Respondents were asked about legal problems in 13 categories considered significant enough that any reasonable person would consult an attorney, if possible, such as landlord tenant disputes, loss of public benefits, divorce, child custody and collection disputes. (The survey instrument is found at Appendix 3.) Respondents answered at least 68 questions in a survey that took 20 to 30 minutes to complete. Kroupa rated the cooperation of the survey respondents as "excellent."

In addition to the results of our telephone survey, we examined research from Wisconsin and other jurisdictions. Because the issue of access to justice has been studied and reported on extensively, we incorporate in this report lessons and information gathered across the country by study groups like ours.

Whom we surveyed

Our charge was to assess and evaluate the legal needs of low-income residents of our state. We defined this group to include two segments of people: The poorest of the poor, whose incomes fall below 125% of the federal poverty guidelines (FPG), and the "working poor" or "near poor," whose incomes fall between 125% and 200% of FPG. The general distribution of income groups in Wisconsin can be seen in Figure 1.

Figure 1:
Wisconsin Families by Income 2005



Source: CPS POV46 Poverty Status by State: 2005, Families
Percentages refer to federal poverty guidelines

A common benchmark of eligibility for government assistance is 125% of FPG. In 2005, when we began our study, FPG for a family of four was \$19,350; 125% is \$24,188. About 11% of Wisconsin families – consisting of almost 800,000 people – live on incomes that fall below this line.

Those with incomes above 125% of FPG also are considered poor by most experts. Academic and government experts in this field agree that measures of poverty like the FPG are outmoded. Thus, many social service, income and health programs in Wisconsin employ an income eligibility standard higher than FPG. For example, families with incomes as high as 185% of FPG are eligible for Medicaid and BadgerCare benefits. As another example, seniors with incomes in excess of 200% of FPG are eligible for prescription drug assistance under the SeniorCare plan.

We selected 200% of FPG as an upper limit on the incomes of those we studied. As of 2005, 200% of FPG for a family of four was \$38,700. Thus, we studied the needs of many of the people often called the “working poor.” Even families who earn at a level twice as high as the FPG struggle mightily to get by. Those families would have serious difficulty finding room in their household budget to pay for legal help.² About 21% of Wisconsin families – consisting of almost 1.5 million individuals (in total, about 27% of the state’s population) – live on incomes at or below this level.

In composing the survey sample, we made a special effort to include people representing all of the important elements of economic, geographic, social and ethnic diversity of Wisconsin’s communities. The sample was comparable to Wisconsin’s overall population. (See Appendix 2 at 7.)³

The data we collected demonstrate that people confronting the Justice Gap have much in common with the rest of Wisconsin’s population. Many of them pay taxes and are regularly employed. Many are homeowners. More than one-third of those with incomes up to 125% of the FPG and half of those with incomes up to 200% own homes. About 30% live in rural areas, about 30% live in the Milwaukee area, and about 40% live in other urban areas in Wisconsin. They are our neighbors. (See Appendix 2, Table 1.)



With legal help, victims of an auto mechanic training scam recover their losses.

A sham business in Dane County charged \$500 to \$800 for an auto mechanic training kit that supposedly included a training video and would lead to certification of the purchaser as a mechanic. The kits were advertised as sponsored by a prominent local social services agency. When the kits arrived, they contained only a screwdriver and a hammer. Law students in a supervised litigation program sued on behalf of two of the victims and recovered the fees they paid.

Wisconsin's Justice Gap

The poor are confronted regularly with serious legal problems

Our telephone survey confirms what anecdote has suggested: hundreds of thousands of our fellow citizens in Wisconsin need lawyers and other means of legal assistance to meet their basic needs, but few can afford them and even fewer are able to obtain help from existing legal service programs.

- Overall, 45% of the households in our sample confronted at least one serious legal problem last year. That translates to at least 630,000 individuals in our state.

- Nearly 48% of those in the lowest income group (household income of less than \$24,188 per year for a family of four) encountered at least one significant legal problem last year. That amounts to more than 384,000 people.

- At least half of the respondents encountered at least two serious legal problems from among the 13 categories we asked about. In the aggregate, that means that poor families confront about 420,000 legal problems per year.

- These burdens weigh most heavily on families with children. Nearly two-thirds of poor households with children face legal issues.

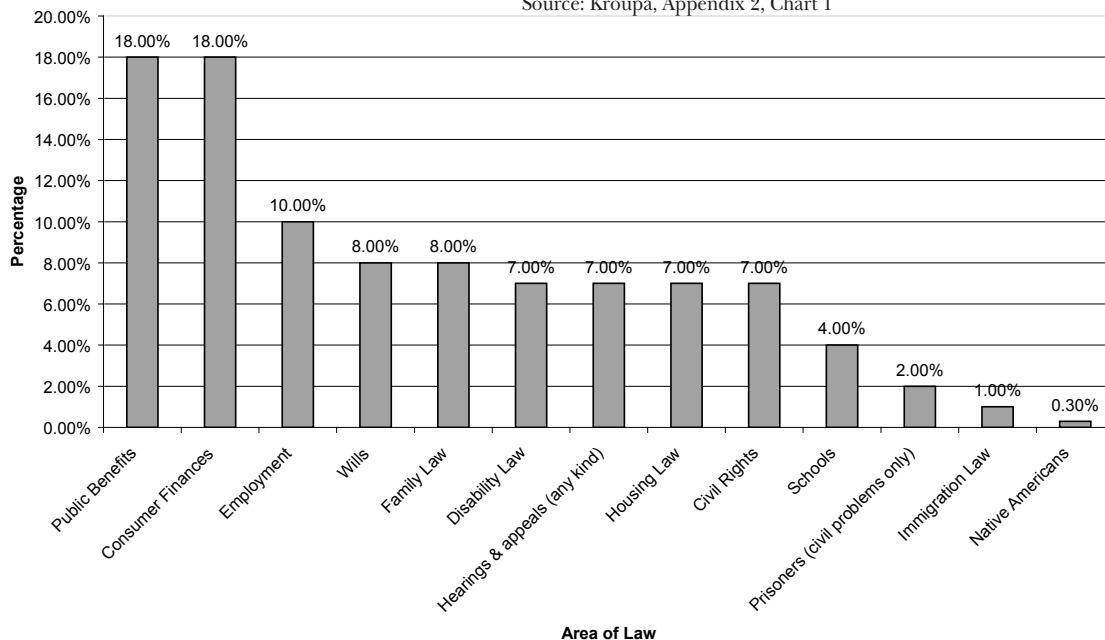
- The incidence of problems was higher among urban poor (about 50%), those under age 55, larger households, renters, and racial and ethnic minorities. Among rural households as a group, nearly one-third reported a significant civil legal need.

- The legal problem most frequently facing the poor, particularly people with disabilities, is the loss or reduction of public benefits. Nearly 70% of the sample received some form of public assistance. For 42% of respondents, at least one person in their household received Medicaid. Nearly 20% of respondents experienced a problem getting or keeping benefits, particularly food stamps, Medicaid, Social Security, or Supplemental Security Income.

- The second most frequently reported legal problem serious enough to merit consulting a lawyer involved financial or consumer-related issues. Nearly 20% of respondents reported such a problem. Leading the list were disputes about unpaid

Figure 2:
Legal Needs of the 45% of Low-Income Wisconsin Residents Who Reported At Least One Legal Problem

Source: Kroupa, Appendix 2, Chart 1



medical bills. About 15% of respondents had been contacted by a collection agency regarding unpaid medical bills. Problems with other creditors, taxes and bankruptcy were next on the list. (See Figure 2 for more detail.)

For the detail underlying these findings, including how they vary by geography, race/ethnicity, age and other factors, please see Appendix 2 at 2-16.

These legal needs are not being met

Although the number of legal issues facing the poor is large and the problems widespread, there are few legal resources to help them. Our telephone survey demonstrated that many respondents asked for legal help but only 27% got help from a lawyer for at least one of the problems they identified and even fewer, 12%, were able to get help for all of their legal problems. Only 8-13% of the respondents reported paying a lawyer to help them. Thus, based on the survey results demonstrating that about 630,000 residents face at least one significant legal problem in a year, more than half a million people in Wisconsin face those problems without legal assistance.

The resources provided to low-income people in Wisconsin are severely limited. Two of Wisconsin's principal providers of legal assistance to the poor, Legal Action of Wisconsin and Wisconsin Judicare, have resources (including staff lawyers and paralegals, volunteer lawyers, and partially compensated private lawyers) to handle only about 16,000 cases per year – about 20% of individuals who qualify for help through their programs. Many who might qualify do not even know about these programs.

Corroborating the fact that the legal needs of the poor are not being met is the fact that litigants are representing themselves in court in ever-increasing numbers. The increase has been so dramatic that in each of its last three strategic plans the Supreme Court has identified the need to provide assistance to unrepresented litigants as one of the top four problems facing the court system.

The Tenth Judicial District, which covers the northwestern corner of the state, investigated the number of self-represented litigants in its region. It reported that in 2005 more than 60% of parties in family cases and more than 50% of parties in large claims civil proceedings (that is, proceedings where even more is at stake than in small claims proceedings) represented themselves. Clerks of court and district court administrators around the state commonly report that in more than two-thirds of family law cases at least one of the parties is unrepresented and that most of the increase appears to be among those who are pro se not by choice but because they cannot afford to hire an attorney.

Our findings about the degree of unmet legal need among low-income people in Wisconsin are consistent with research from around the country, including Oregon (2000), Vermont (2001), New Jersey (2002), Connecticut (2003), Washington (2003), Tennessee (2004), Illinois (2005), and Montana (2005). These studies, as well as a nationwide American Bar Association study in 1993, demonstrate that fewer than 20% of the legal problems experienced by low-income people are addressed with the assistance of a private or legal aid lawyer.

“More than half a million people in Wisconsin face significant legal problems without legal assistance.”

The effects of the Justice Gap

Effects on the poor

In the course of our work, we encountered numerous stories about the difference legal assistance makes. Public interest lawyers, volunteers, and other organizations make a meaningful difference in the lives of low-income persons confronting a serious legal problem.

“ Making legal assistance available to an unrepresented litigant tends to expedite disputes and ease the litigation burden, because trained professionals know how to resolve disputes short of litigation.”

These success stories also demonstrate the risk that befalls a poor person who *cannot* gain access to such help.

Consider these real life examples:

- Maria, the 12 year old whose story is told earlier in this report, was lucky. Her family was put in touch with ABC for Health, a Madison public interest law firm concentrating in health care issues. Represented by a lawyer, the family challenged Medicaid’s decision before an administrative law judge. The lawyer explained to the judge how the child’s condition, when analyzed properly, did meet the federal definition of emergency, and the judge agreed. Medicaid paid more than \$12,000 in hospital charges.

- Edna, 78, owned her modest Milwaukee home free and clear. A home improvement company representative talked her into a new roof and siding for \$25,000. He “helped” her obtain a \$48,000 high-interest, high-cost home equity loan, then made unnecessary repairs to her house in an incomplete and shoddy manner. Edna refused to pay, but could not keep up with the loan and the lender began foreclosure proceedings. The Legal Aid Society helped Edna resolve the foreclosure proceeding, cancel the debt, and complete the work to the house, which she again owns free and clear.

- Beatriz is an immigrant who moved to northern Wisconsin with her American husband and quickly became emotionally and financially isolated. She was unable to retain an attorney because she was prevented from working and had no access to money. Her husband hid her documentation, which prevented her from filing a pro se divorce action. With the help of lawyers and advocates, she left her husband and moved into a shelter. After going to court, she was able to retrieve her belongings and legal documents and obtain a divorce.

- Many more case examples are found in Appendix 4.

Effects on our courts and our government agencies

The lack of access to legal aid undermines the sense of fair play on which our legal system is founded. Our telephone survey revealed that only 39% of respondents who had to go to court to solve their problem had a lawyer at their side, while 63% of them indicated that the other side was represented.

It’s not just the appearance of fairness that is a concern. Our merit-driven adversary system depends upon both parties being well represented. Research confirms, unsurprisingly, that a party with a lawyer can achieve significantly better results than a party who is unrepresented.⁴ Unrepresented parties are much more likely to give up and allow the other party to win by default, or to proceed to trial without conducting discovery or pursuing available motions.

When people represent themselves in court or in contested proceedings before administrative agencies, the proceedings drag. Novices need detailed guidance about the law and procedure that govern their cases. They aren’t proficient at assessing the strengths and weaknesses of their own cases. They lack the experience and the perspective that might encourage settlement. Many are functionally illiterate. Making legal assistance available to an unrepresented litigant tends to expedite disputes and ease the litigation burden, because trained professionals know how to resolve disputes short of litigation.

Furthermore, the higher the tide of unrepresented litigants, the greater the potential for the court’s impartiality to be compromised. “In seeking to insure that justice is done in cases involving pro se litigants, courts must struggle with issues of preserving judicial neutrality (where one side is represented and the other is not), balancing competing demands for court time, and achieving an outcome that is understood by pro se participants and does not lead to further proceedings before finality is reached.”⁵

The rule of law depends in substantial part on the public’s trust in the fairness of the system. For unrepresented litigants intimidated at the front door to the

courthouse or government office building by the complexities of the law, or even for those who brave the proceedings but taste defeat, one result is cynicism. It is all too easy to blame defeat not on the merits but on how the odds were stacked, and on procedures designed for lawyers, not lay people. Such cynicism seriously threatens the credibility and legitimacy of the tribunals, including our courts, where such disputes must be resolved to preserve the peace and order of the community. As California Chief Justice Ronald George observed, “Every day the administration of justice is threatened ... by the erosion of public confidence caused by lack of access.”⁶

Our survey revealed evidence of this cynicism. Regarding some issues, almost half the respondents reported that they felt they were not treated fairly by the legal system. This is not the level of public confidence to which we aspire in the system we serve.

Other effects

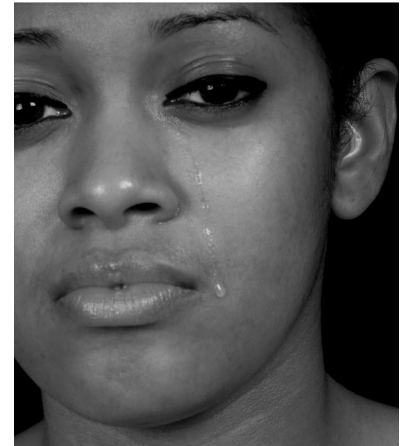
Our common experiences as citizens and as lawyers suggests that the dislocations suffered by low-income persons as a result of not having access to legal assistance are visited upon the community at large. The costs and benefits of access to justice have not been extensively studied. However, the findings of one study conducted at the committee’s request by graduate students at the UW-Madison’s La Follette School of Public Affairs are informative. (See Appendix 8.) The study sought to measure the costs and benefits of providing victims of domestic violence greater access to legal assistance, particularly in obtaining restraining orders against abusers. The researchers concluded that a \$1 million investment in such a program might yield more than \$9 million in net benefits to these victims, who are spared the costs of medical care, mental health care, property damage, lost productivity, and lost quality of life. Similar research might demonstrate the net positive impact of expanding access to justice in other fields. Commissioning a scientific study of the depth and breadth necessary to test this finding in other fields was beyond the committee’s resources.

Three propositions stand to reason, and deserve further study: First, an unrepresented person who loses his or her benefits or his or her home in circumstances in which a lawyer could have helped avoid the loss, or at least mitigated it, likely will to turn for emergency help to the government or to a community agency, the cost of which may equal or exceed the cost of supplying a lawyer in the first place. Legal Action of Wisconsin was able to document more than \$7 million in benefits that it obtained for its clients in 2005 in disputes involving housing, consumer law, family law, public benefits, and individual rights.

Second, business productivity suffers when an employee’s legal problems, compounded by lack of representation, interfere with his or her attention and determination to perform the job.

Third, our state economy suffers the loss of federal dollars when persons eligible for federal or other benefits cannot secure them because they are unrepresented and unsuccessful in navigating the complexities of the benefits system. The dollars that flow into Wisconsin through these benefit programs support our state’s hospitals, clinics, pharmacies, groceries, landlords, retailers, and other industries.

This third proposition is demonstrated by a successful Wisconsin program that provides legal services to the elderly and people with disabilities. The Department of Health and Family Services provides benefit specialists in almost all counties. These “ben specs” are trained and supervised by lawyers. They help clients navigate the complex rules and regulations of government benefit programs and help them secure benefits to which they are entitled by law. The department believes that for every dollar it spends on the program, Wisconsin citizens receive seven dollars in federal and state benefits, plus private insurance coverage. (These programs



Sasha got the legal help she needed to fight for her W-2 benefits.

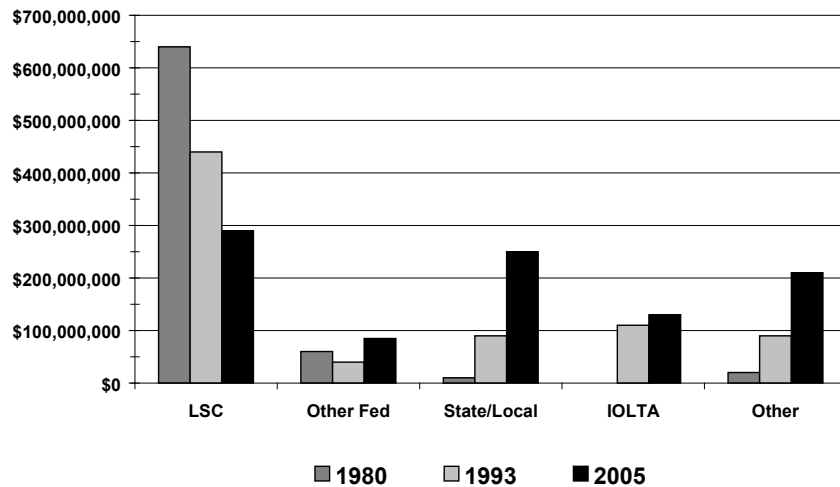
Sasha was eligible for W-2 benefits but her application was denied on a bad hunch. The county worker who was processing Sasha’s application visited Sasha’s garage sale. She saw Sasha’s ex-husband there and assumed the two were living together.

Back at the office, the worker believed that the hunch was confirmed because CCAP showed Sasha’s address as the address of her ex-husband. She terminated the application. In fact, the ex-husband did not live with Sasha. He had stopped by that day merely to pick up some of his belongings. And CCAP listed Sasha’s address as his because his creditors used her address in their pleadings.

Sasha protested but did not know what procedures to follow and forms to file to demonstrate that she and her ex-husband were not living together. A Legal Action of Wisconsin attorney did, and three weeks later Sasha’s benefits were issued. Without this assistance, Sasha and her children might have been homeless.

Figure 3:
National Civil Legal Aid Funding, 1980-2005, Adjusted for Inflation

Source, American Bar Association



demonstrate that nonlawyers can meet certain legal needs of low-income residents.) A study of other efforts by legal service providers to secure public benefits for low-income persons, particularly federal benefits, might demonstrate that these efforts produce a significant economic return to the state’s economy.⁷

Why is there a Justice Gap in Wisconsin?

The largest traditional source of funding for legal services to the poor has been the federal Legal Services Corporation (LSC). However, federal funding of civil legal services has diminished significantly. The 2005 federal appropriation for the LSC, when adjusted for inflation, is roughly one-half of what was appropriated in 1980. Two Wisconsin not-for-profit law firms rely heavily on the LSC for funding, Legal Action of Wisconsin and Wisconsin Judicare. (For a current roster of all providers, together with their current levels of funding, see Appendix 5.) However, the LSC is woefully underfunded. A national study of legal aid programs commissioned by the LSC found in 2005 that for every eligible client who receives assistance another is turned away due to lack of resources.⁸

As Figure 3 demonstrates, to some extent state and local governments are attempting to fill this void.⁹ But Wisconsin has not made the effort made by our neighbors. As noted previously, Wisconsin provides about \$3.8 million annually to benefit specialist programs for the elderly and people with disabilities. But Wisconsin neither provides nor funds any program that provides lawyers to its residents to help them with their general civil legal needs.¹⁰

More than 30 states provide at least a million dollars in funding for general civil legal services to the poor. Among states in the Midwest, Ohio provides more than \$14 million in funds for civil legal services every year, Minnesota provides more than \$12 million, and Michigan more than \$7 million. Last year, Illinois’ appropriation increased from \$2 million to \$3.5 million, and a proposal is pending before the state legislature to increase that amount to \$5 million.

“The current array of funding methods and contributions is not a substitute for stable funding at least at the levels to which other states have committed in order to make legal assistance broadly available to the poor.”

Gap remains despite efforts of legal community

There are other sources of funding for legal services in Wisconsin, including Interest on Lawyers' Trust Accounts (IOLTA), distributed by the Wisconsin Trust Account Foundation (WisTAF), the Equal Justice Fund, and, most recently, the Public Interest Legal Services Fund established by the Supreme Court to collect and distribute the \$50 assessment on all lawyers.¹¹ In 2005, WisTAF distributed \$411,000 in IOLTA funds, and the Equal Justice Fund raised \$135,000 from lawyers, law firms and businesses. Beginning in 2006, WisTAF, through the Public Interest Legal Services Fund, distributed \$776,000 for the general support of legal services to the poor.

On top of their cash contributions and the \$50 assessment, Wisconsin lawyers also contribute significant time to provide free legal services to the poor. Based on responses from approximately 9% of members, the State Bar pro bono survey reported that in 2005 Wisconsin lawyers living in Wisconsin donated about 40,000 pro bono hours in free legal services to the poor, a contribution worth more than \$6 million at market rates. This contribution can be equated with the hours put in by 22 full-time legal aid lawyers.¹²

Some courts and local bar associations have responded to this growth in pro se litigation by establishing free legal clinics in their communities. These projects provide legal information about procedure and forms but no ongoing representation. They are not, however, a solution for a litigant who lacks the experience, the education, and the training to speak for himself or herself as their case proceeds in a courtroom.

Court offices also have responded by increasing the legal information resources available for unrepresented litigants at the courthouse and over the Internet. The Supreme Court initiated a family law forms project accessible statewide by computer. A number of counties large and small have made additional strides in providing self-help assistance to unrepresented litigants. These are all positive developments. However, self help is appropriate only for certain types of matters and litigants and is inherently limited in its scope. It is not an adequate substitute for an attorney at the negotiating table or in the courtroom, especially when the other party is represented by an attorney.

As sizeable as these contributions might seem, and as much as they demonstrate that lawyers lead the way in addressing these problems, there is still an enormous Justice Gap in Wisconsin. The current array of funding methods and contributions is not a substitute for stable funding at least at the levels to which other states have committed in order to make legal assistance broadly available to the poor. The private bar alone is not large enough to solve this problem (especially in northern Wisconsin, where the scarcity of lawyers further limits access to justice). Indeed, a state should not assume that charity can substitute for a government guarantee of equal justice. In a speech at the 1941 meeting of the American Bar Association, U.S. Supreme Court Justice Wiley Rutledge observed: "Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion."

The time is ripe for change in Wisconsin

Across the nation, there are vibrant efforts to reverse the slide into the Justice Gap. In 2005, the American Bar Association described as "spectacular" the increases in state funding for civil legal services, which totaled more than \$9 million. As of December 2006, the ABA had reported further funding increases in 10 states totaling almost \$13 million.

In Illinois, for example, supporters of civil legal services are seeking annual funding of \$5 million. In previous years, the legislature had appropriated only



Medicaid refused to pay for Kyle's specialty bed to protect his brittle bones ... that is, until a lawyer worked to reverse that decision.

Jody's 11-year-old son, Kyle, suffers from a seizure disorder and is confined to a specialty bed that protects his brittle bones from his violent seizures. He receives Medicaid. Jody learned that Kyle's bed had been recalled due to a risk of feeding tubes becoming entangled in the bed. Medicaid refused to pay for a new bed on the ground that the bed was not "medically necessary" for Kyle. A public interest attorney with specialized training in Medicaid procedures obtained a reversal of the decision, but only after an investment of 33 hours of her time and professional acumen. What would any mother in Jody's position do without an attorney?



Edna nearly lost her modest home as a result of a home improvement scam.

Edna, 78, owned her modest Milwaukee home free and clear. A home improvement company representative talked her into a new roof and siding for \$25,000. He “helped” her obtain a \$48,000 high-interest, high-cost home equity loan, then made unnecessary repairs to her house in an incomplete and shoddy manner. Edna refused to pay, but could not keep up with the loan and the lender began foreclosure proceedings. The Legal Aid Society helped Edna resolve the foreclosure proceeding, cancel the debt, and complete the work to the house, which she again owns free and clear.

\$500,000. According to Leslie Corbett, executive director of the Illinois Equal Justice Foundation, the legislature’s heightened commitment to legal services funding came after reports revealed to legislators “cold, hard numbers” about how many of their constituents were unable to obtain the civil legal assistance they urgently needed.

Similarly, in 2006 in New Mexico, the state’s supreme court acted on a report by the state’s Access to Justice Commission, which recommended that: 1) attorneys be required to complete more than the 50 hours of pro bono work currently recommended each year; 2) attorneys who do not meet the pro bono requirement pay \$500 toward civil legal services; and 3) the state legislature at least double funding for civil legal aid to \$2 million.

The ABA itself addressed the civil legal needs of the poor in 2006. The ABA House of Delegates proclaimed its support for a civil right to legal counsel:

“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.”

The State Bar of Wisconsin has long been committed to similar policies. It is its stated policy to “support policies which encourage or enhance the quality and availability of legal services to the public” and support “State general purpose revenue funding . . . to adequately provide low income citizens access to the legal system.”¹³

Backing up its pronouncements with concrete action, the State Bar has demonstrated its support for low-income civil legal services in myriad ways. The State Bar funded this committee’s efforts. The State Bar created a full-time pro bono coordinator staff position and has filled the position with an accomplished lawyer who has distinguished himself in the field of public interest law. The State Bar encourages improvements in the delivery of pro bono services with Pro Bono Initiative grants, maintains free liability insurance for volunteer lawyers, and rewards outstanding volunteers with continuing legal education vouchers.

In 1996, the State Bar convened the Commission on the Delivery of Legal Services. The commission’s report presaged many of the recommendations we make later in this report and promoted access-to-justice solutions that have become reality, such as self-help centers, pro se forms, and systematic, statewide coordination of pro bono efforts. The State Bar has gone to bat before the Supreme Court for initiatives ranging from unbundling legal services¹⁴ to lawyer assistance in self-representation. The State Bar helped launch the Equal Justice Fund Campaign to raise donations for the provision of civil legal services, and made its own substantial donation.

In sum, that so many states have begun public or expanded funding of civil legal services for the poor in the recent past, and that state and national bar associations have pledged their support for such funding, demonstrates that this is an idea whose time has come. Wisconsin must get in step with the rest of the nation.

Recommendations

All of us in Wisconsin, and particularly those who practice in Wisconsin and lead our communities, have a stake in equal justice for all Wisconsinites. Indeed, the needs we have identified require action by all stakeholders. Thus, we make the following recommendations to enable Wisconsin to keep its promise of equal justice to all.

We begin by laying out our primary recommendations, followed by other recommendations we make for individual stakeholders.

Primary recommendations

1 The Wisconsin Supreme Court, in cooperation with the Governor, the Legislature, and the State Bar, should establish a permanent Access to Justice Commission under the auspices of the Supreme Court to supervise the long-term effort needed to accomplish these recommendations.

We have studied closely the history of efforts elsewhere in the nation to bring about improved funding of civil legal services. A key element of a successful campaign for change is a broad-based coalition of influential leaders across the state, including state agencies, the legal profession, legal service providers, law schools, industry, and the citizenry, with significant leadership from the courts, the legislature, the governor's office, and the bar.

Members of this new commission might be appointed as follows: Three members appointed by the governor, two by the president of the Senate, two by the speaker of the Assembly, three by the chief justice, three by the president of the State Bar, and one by each law school dean. Care should be taken to ensure that members of the public outside the legal profession are appointed.

2 The Wisconsin Legislature should provide funding of civil legal services for low-income residents of Wisconsin adequate to meet the needs at least of those who currently are turned away for lack of funding.

Currently the needs of only about 12% of low-income residents of Wisconsin are being met satisfactorily. This implies that an investment many times the size of the current expenditures may be needed to meet the current need. However, because services currently operate on such a small scale in comparison to the size of the problem, economies of scale made possible by a full-fledged, coordinated legal services program might significantly limit the overall cost of such a program.

At a minimum, the state must meet the most urgent need. The Legislature should appropriate funds sufficient to enable legal service providers to serve at least those eligible persons who seek their services and are turned away simply for lack of funds. We believe that will entail an annual state investment of approximately \$16 million, which is the amount currently spent on programs that are forced to turn away about half of those who qualify for their services (see Appendix 5). An annual appropriation of \$16 million for civil legal services for the poor would constitute only about one-tenth of one percent of the state's annual general purpose revenue budget allocations.¹⁵

These funds might be allocated by an independent board organized and operated like the Wisconsin Trust Account Foundation, which administers the Interest on Lawyers' Trust Account Program, and borrowing from its expertise.

“Wisconsin must get in step with the rest of the nation.”

3 The Legislature should fund self-help centers connected to every courthouse in Wisconsin.

Self-help centers, open during all business hours and staffed by a knowledgeable assistant, enable many unrepresented litigants to accomplish uncomplicated legal objectives by themselves and to get basic guidance in legal procedure, particularly in family court and in small claims court. While these services are not a solution for people who are illiterate or those incapable of representing themselves, there are many who have made successful use of such programs.¹⁶

Ideally, every courthouse in Wisconsin would contain a self-help center. However, videoconference and computer technology may permit access from more remote courthouses to self-help centers in regional locations.

4 The Wisconsin Supreme Court should modify ethics rules and procedural rules to permit paralegals to advocate in court and before agencies on a limited basis.

In an ideal justice system, every client would receive the assistance of an experienced, well-trained lawyer. The reality in Wisconsin, however, is that there are not enough lawyers in Wisconsin to meet the needs of all potential clients. Thus, for decades, lawyers and clients have relied on paralegals.

As discussed previously, the state's benefit specialist programs demonstrate the potential for trained and supervised nonlawyers to help fill the Justice Gap. Programs such as these will make an even more effective solution if specialists are permitted to advocate for their clients in proceedings in court and before administrative agencies. Lay advocates are used extensively and successfully in tribal courts located within Wisconsin. The available research shows that trained paralegals under the supervision of a lawyer can be effective, efficient advocates in simple proceedings involving, for example, harassment injunctions, public benefit eligibility, benefit coverage and termination, and small claims.

5 Where possible, clients should be required to pay for a portion of the services they receive, based on their ability to pay.

To defray a portion of the cost of providing civil legal services, those who receive the services should be required to pay a reduced fee, on a sliding scale depending on income. Many who have studied the delicate issue of requiring consumers to contribute something toward the cost of legal services favor such a proposal. Our telephone survey revealed that a majority of respondents, even those with the lowest incomes, are willing to contribute to the cost of services they receive.

6 Civil legal services should not be financed by an increase in filing fees.

We recommend against paying for civil legal services by raising filing fees or imposing other general "service" fees on those who use the courts. The fees imposed on litigants in Wisconsin are already higher than average, and increased fees themselves become barriers to access to justice. In other states where new programs were paid for by increased filing fees, the existing fees were lower than Wisconsin's.

Other major recommendations

7 The Wisconsin Supreme Court:

- a. **The Wisconsin Supreme Court should seek funding for and organize self-help centers connected to every courthouse in Wisconsin.**
- b. **The Wisconsin Supreme Court should make permanent the modest mandatory assessment upon lawyers to the Public Interest Legal Services Fund and expand it to judges as well.**

What has come to be known as the WisTAF assessment, currently set at \$50, represents a concrete financial commitment by all lawyers that will continue to demonstrate lawyers' leadership on these critical issues. Because judges are members of the legal community and because the leadership of judges is critical to ensuring equal access to justice, judges, too, should pay this assessment.

c. The Wisconsin Supreme Court should adopt new ethics rules that support expanded voluntary pro bono contributions by lawyers.

Although the Supreme Court may turn to other matters before revisiting the Code of Professional Conduct again soon, the code deserves amendment in order to encourage and expand pro bono practice. Lawyers who reside in Wisconsin but are licensed and in good standing elsewhere should be permitted to represent pro bono clients in Wisconsin even before being admitted to practice here, and inactive bar members should be permitted to engage in a limited amount of pro bono work without incurring dues. Practice rules like these have been adopted in New York, Colorado, Washington, and elsewhere.

d. The Wisconsin Supreme Court should organize efforts by judges to promote pro bono service.

Active participation by judges in encouraging lawyers to be faithful to their pro bono obligations is a proven way of expanding pro bono services. In matters of justice and fair play, lawyers are sensitive to the expectations of judges. In a number of other states including Minnesota, Indiana, and Maryland, judges join lawyers in organized programs to promote pro bono service. Judges speak to law students, new lawyers, and seasoned practitioners about the importance of such service and its personal and professional benefits. Judges assist in training lawyers. Judges participate in awards ceremonies to honor extraordinary performance. The Supreme Court should encourage judges to take a leadership role in spreading the pro bono ethic among lawyers¹⁷

8 State and federal agencies should permit qualified nonlawyers to appear and advocate on behalf of low-income clients.

Many, but not all, government agencies already permit nonlawyers to appear on behalf of applicants and advocate for them. To attain maximum benefit from the legal services that might be provided by paralegals, administrative agencies should revise their rules and processes to permit these nontraditional methods of practice.

9 Lawyers, with the support of their law firms and in-house legal departments, should expand their pro bono contributions of time and money.

As the 2005 State Bar pro bono survey demonstrated (see Appendix 6), many Wisconsin lawyers have fulfilled their obligation under SCR 20:6.1 to provide legal services to all who seek justice, and not merely those who can afford what lawyers charge.

Congratulations are due to those who made the effort and are answering the call to make a contribution, but there is still considerable room for improvement. The 2005 pro bono survey revealed that only 57% of respondents provided free legal services to low-income persons, only 38% provided reduced fee legal services to the poor, and only 29% made a voluntary donation of money to fund legal aid to the poor.

a. Lawyers should take advantage of new rules permitting lawyers to provide short-term limited legal services without creating imputed conflicts.

One of the principal concerns heard from lawyers about providing legal services to low-income persons is that the work presents a conflict of interest for the lawyer's firm. The individual lawyer might not represent landlords, finance companies, utilities or the like, but an imputed conflict arises if other lawyers in the firm do so.

This concern is met, at least in part, by the new SCR 20:6.5, one of the Ethics 2000 rule changes approved by the Supreme Court, effective July 1, 2007. SCR 20:6.5 permits lawyers, under the auspices of a program sponsored by, for example, a legal service provider, the bar, a law school, or a court, to provide short-term legal services without continuing representation, and permits such services in circumstances that might otherwise give rise to a conflict of interest. This rule was designed to make the personal and professional rewards of pro bono work available to a much wider pool of lawyers.

Legal service providers, the law schools, other nonprofit organizations, and circuit courts should review their practices to create more of these opportunities.

b. Law firms and in-house legal departments should study and adopt the sophisticated pro bono practices found in other communities around the nation.

Lawyers in other communities around the nation, including Minneapolis, Chicago, Boston, and New York, contribute more of their time to pro bono services than lawyers in Wisconsin. One reason is that the local legal culture sets higher expectations for those lawyers and the practice of pro bono work is better supported. Law firm foundations and groups of law firms directly fund public interest legal programs, and pay for staff positions and their own lawyers to volunteer in such programs through pro bono externships. Within law firms, the practice of pro bono work is more structured and systematized; it is more highly valued. Firms adopt and implement written pro bono policies and appoint senior lawyers to coordinate pro bono work within the firm and set expectations for new lawyers. The firms commit to measurable pro bono goals – and then report on them publicly. In Wisconsin, robust pro bono programs like these are the exception, not the rule.

10 The State Bar of Wisconsin:

a. The State Bar of Wisconsin should endorse this report and approve its dissemination to the Wisconsin Supreme Court and the Wisconsin Legislature.

b. The State Bar of Wisconsin should support a permanent moderate mandatory assessment upon lawyers and judges to fund civil legal services.

c. The State Bar of Wisconsin should help the Supreme Court establish a permanent Access to Justice Commission under the auspices of the Supreme Court to supervise the long-term, coordinated effort needed to accomplish these recommendations.

d. The State Bar of Wisconsin should expand the Lawyer Referral & Information Service to include a panel of attorneys willing to offer limited scope representation and/or reduced fees to clients who qualify based on income.

e. The State Bar of Wisconsin should foster a market for affordable limited legal services by organizing CLE programs on unbundling and by promoting unbundling as a viable means of practice and meeting currently unmet legal needs.

Amendments to the Rules of Professional Conduct that explicitly permit lawyers to provide “limited representation” legal services go into effect on July 1, 2007. Lawyers currently provide such services, but the changes to the ethics rules, including SCR 20:1.2, might make limited representation more commonplace. Limited representation is a key aspect of an efficient program of improving access to justice for the poor by enabling clients with some ability to pay to purchase only those services they need or can afford.

f. The State Bar of Wisconsin should fund projects that demonstrate the gains to be achieved by these recommendations.

g. The State Bar of Wisconsin should adopt a resolution akin to ABA House of Delegates Resolution 112A calling for the recognition of a human right to a lawyer in civil cases where basic human needs are at stake.

h. The State Bar of Wisconsin should provide the administrative support and guidance necessary to organize expanded pro bono programs funded by law firms.

i. The State Bar of Wisconsin should continue to encourage and support greater levels of pro bono service from its members.

j. The State Bar of Wisconsin should coordinate the implementation of these recommendations with the study of best practices in delivery of legal services being conducted by the State Bar Legal Assistance Committee.

In particular, the Legal Assistance Committee should explore with the Attorney General ways to enable government lawyers to practice appropriate pro bono legal service while protecting the genuine interests of the state and local governments whom these lawyers represent.

k. The State Bar of Wisconsin should conduct another telephone survey of low-income households in Wisconsin in five years (2011) to measure the progress being made to close the Justice Gap.

11 Public interest law firms and nonprofit legal services organizations should continue to search for and experiment with innovative methods of legal services delivery.¹⁸

Legal service providers in Wisconsin devote the bulk of their efforts on the front lines trying to help the most desperate of their clients. But they have much more to offer in the way of the experience and expertise needed to implement a coordinated, multiple-point-of-access and multiple-service-model approach to ensuring legal services for all low-income people. Consistent with any limitations on their operations imposed by state or federal law or granting authorities, legal service providers should do the following:

a. Nonprofit legal service providers should be key participants in the Access to Justice Commission.

b. Nonprofit legal service providers should study and report on effective and efficient legal service delivery strategies and data about their results.

c. Nonprofit legal service providers should expand programs (including externships) that recruit and train pro bono lawyers and provide and support pro bono service opportunities.

12 The University of Wisconsin Law School and Marquette Law School should support efforts to close the Justice Gap.

Wisconsin's two law schools have a long history of sensitizing students to the need for lawyers to serve the legal needs of the poor and opportunities to provide legal services. The personal commitment of Howard Eisenberg, the late dean of Marquette Law School, set an extraordinary example for students, faculty, and lawyers across the state. As the two institutions responsible for preparation of lawyers, Wisconsin's two law schools have an extremely important role in expanding access to justice.

a. Wisconsin's two law schools should set an example of commitment to equal justice.

There are any number of ways that law school administrators and law school faculty members can demonstrate to students – to future lawyers upon whom the profession confers the responsibility to ensure access to justice for all – that access to justice is vital. For example, they can:

- Join students in performing pro bono services and providing legal information;
- Testify before legislative committees in support of access-to-justice initiatives;
- Appear as friends of the court in proceedings affecting legal services to the poor;
- Teach legal service providers and pro bono practitioners the fine points of the law governing transactions that routinely involve the poor, such as consumer law or administrative law;
- Give special recognition to students who perform pro bono service hours;
- Revise tenure criteria to recognize pro bono service; and

- Integrate into course work presentations by practicing attorneys about how lawyers meet their ethical obligation to provide pro bono services.

b. Wisconsin’s two law schools should expand clinical programs to provide more civil legal services.

Both law schools already sponsor clinics and programs that serve low-income populations. These clinics and programs should be expanded and others founded and all should be adequately and permanently funded so that students, faculty, and administrators have full-fledged opportunities to meet their professional obligations to those who can’t afford lawyers. Students should be required, as a condition of graduation, to participate in a clinical program serving low-income people or to participate in qualified pro bono projects sponsored by others or organized by students themselves. The law schools should work with private law firms and the State Bar to develop more public interest summer and academic year clerkships and to increase Public Interest Law Foundation grants for summer internships and clerkships at nonprofit organizations.

c. Wisconsin’s two law schools should encourage students to perform pro bono services upon graduation.

The law schools should help develop public interest law programs that assist students interested in pursuing careers in public interest law and pro bono services. The law schools should continue to fund and expand their loan repayment assistance programs for graduates who accept positions at public interest law firms. The law schools should encourage law students to pledge a small portion of their post-graduation earnings, for example, one percent per year, to support legal services programs or the law school’s loan forgiveness program. The law schools should encourage on-campus interviewers to inform law student applicants about how their law firm or organization helps its attorneys fulfill their pro bono obligations.

d. Wisconsin’s two law schools should study and teach how the law ensures equal access to justice.

The best contribution law schools can make is by doing what law schools do best: studying, reporting, and teaching. The law schools should convene public interest entities and support their work, as Marquette University’s Coalition for Access to Legal Resources initiative has demonstrated. Likewise, the professional responsibilities curriculum should be bolstered to emphasize a lawyer’s ethical duty to perform pro bono services and suggest the many practical ways these duties can be discharged.

Conclusion

Among the issues that perennially face the bar is how to demonstrate that having the services of a lawyer makes a difference. The State Bar has gone to great lengths to brand the profession, to educate the public, and to promote the difference that it makes for one to have the expertise and problem-solving skills of a lawyer.

And in the realm of civil legal services for the poor, the State Bar and its members have put their money where their mouths are, so to speak. The State Bar and especially its members have made generous charitable and pro bono contributions to support civil legal services to the poor. All lawyers support these services through the Supreme Court's assessment to the Public Interest Legal Services Fund, administered through WisTAF.

The next logical step is support for an expanded range of state funding of civil legal services for the poor, for whom having a lawyer makes a vital difference. This difference is especially important for the most vulnerable of our neighbors when their legal problems implicate their basic human needs.

For the State Bar and its members to take this stand will stand as witness to equal justice: If having a lawyer truly matters, can we possibly say there is anyone who doesn't deserve a lawyer?

On the façade of the United States Supreme Court building is engraved a four word promise to all citizens: EQUAL JUSTICE UNDER LAW. As Justice Lewis Powell once observed: "Equal justice under law is not just a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society ... It is fundamental that justice should be the same, in substance and availability, without regard to economic status."

Our fidelity to that promise is not broken, but we need to keep that promise as consistently as we proclaim it. We offer this report and our recommendations in hopes that the inequities we have identified will be remedied through a comprehensive program to fund and provide civil legal services in Wisconsin.

“We offer this report and our recommendations in hopes that the inequities we have identified will be remedied through a comprehensive program to fund and provide civil legal services in Wisconsin.”

Endnotes

- ¹ We acknowledge the October 2005 report of the Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, a report that concludes that at least 80 percent of the civil legal needs of low-income Americans are not being met.
- ² Consumer expenditure survey data compiled annually by the U.S. Department of Labor Bureau of Labor Statistics demonstrate that a family of four with an annual income around \$40,000 exhausts virtually all of its income just covering the basics – food, housing, utilities, transportation, health insurance and health care, apparel, and child care – leaving little or nothing to cover the expense of legal help.
- ³ The survey was conducted by landline telephone (as almost all telephone surveys are), which limited its reach somewhat. This method is likely to exclude the homeless, those without landline telephone service (according to Kroupa, about 7% of all US households rely only on cellular phones, and that percentage may be higher among some key racial and ethnic populations), and the incarcerated and institutionalized. Further, some people are reluctant to participate, such as undocumented immigrants and victims of domestic violence. There are other means of reaching people without landline phones, for example, focus groups, personal interviews, and surveys of community gatherings, but collecting a large enough pool of reliable data using these methods was beyond the committee's resources.
- ⁴ For example, the Equal Rights Division of the state Department of Workforce Development tracks outcomes in probable cause hearings and found that complainants with counsel are successful more than 42% of the time while complainants without are successful only 17% of the time. In a probable cause hearing, the ERD determines whether there is enough believable evidence of job discrimination to let the case move forward to a hearing on the merits. Judges in Rock County reported a similar disparity in outcomes in cases involving domestic abuse injunctions. Large numbers of abuse victims who are unrepresented give up before the case comes to a final hearing. Abuse victims who are represented regularly appear and most often prevail. Judge James Daley observed, "I doubt that this circumstance is the result of [a] chang[e] of mind[] or that the abuse complained of in the petition stops." See also Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in the Legal Process*, 20 Hofstra L. Rev. 533 (1992); Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of A Randomized Experiment*, 35 Law & Soc'y Rev. 419 (2001); Herbert Kritzer, *Legal Advocacy: Lawyers and Nonlawyers at Work*. Ann Arbor, MI: University of Michigan Press (1998); Herbert Kritzer, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Post-Professional World*. 33 Law & Society Review. 713-59 (1999).
- ⁵ Report to the ABA House of Delegates from the ABA Task Force on Access to Civil Justice (August 2006).
- ⁶ Chief Justice Ronald George, State of Judiciary Speech to California Legislature, 2001.
- ⁷ A study of the economic benefits in Nebraska suggests such a return, but a thorough, independent study of the scope of the issues in Wisconsin was beyond the resources of this committee.
- ⁸ *Documenting the Justice Gap in America supra* note 1, at 5. It also should be noted that many of the cases in which local programs reported they provided services were ones where limited resources meant they only were able to supply self-help assistance, but believed full representation would have led to a better outcome for the clients. *Id.* at 6 n.8.) Further, the study counted only those who had contacted the program for assistance, not the many who were not aware of such programs or were discouraged by previous turn-downs.
- ⁹ As Figure 1 demonstrates, federal funding from other sources has filled the gap somewhat as well (for example, funding provided through the Department of Housing and Urban Development and under the auspices of the Violence Against Women Act and the Older Americans Act). But Figure 1 also demonstrates that these small increases do not restore the shortfall.
- ¹⁰ The state and Wisconsin counties together spend a considerable amount on providing lawyers to those accused of crimes, but that does not solve the problem of access to civil legal services. Appointment of counsel in criminal cases for indigent defendants is mandated by the Constitution (although for many indigents accused of a crime, the state's outmoded eligibility standards render this promise hollow).
- ¹¹ The IOLTA program, created by the Supreme Court, generates funds for civil legal services by requiring funds held in trust for clients to be deposited in interest-bearing accounts; the interest is paid to the Wisconsin Trust Account Foundation (WisTAF), which distributes it to nonprofit legal organizations around the state through a program of grants. WisTAF also administers the PILSF fund, which was created by the Supreme Court's imposition of a mandatory assessment on every Wisconsin lawyer of \$50.00 to fund legal assistance to the poor. The Equal Justice Fund is a nonprofit foundation established by lawyers to solicit donations for legal assistance to the poor and make grants to nonprofit legal organizations.
- ¹² Those who responded to the survey donated 44 hours on average; the median donation was 25 hours.
- ¹³ Similarly, it is the stated policy of the bar to "support the inherent judicial power to appoint attorneys to assist the court in the fair administration of justice by service as counsel for parties."
- ¹⁴ "Unbundling" refers to limiting the scope of legal representation. It refers to the practice of offering clients a menu of discrete services from which a client can choose without being required to retain the lawyer to perform the entire menu. For example, a client in need of a divorce might agree with a lawyer to have the lawyer only draft the marital settlement agreement, while the client takes on the other tasks

necessary to accomplish the divorce. This style of practice may make more services affordable for low-income clients.

¹⁵ While it is our recommendation that state funding of civil legal services be appropriated from general purpose revenue, the Legislature should consider other funding options. For example, the Legislature should consider dedicating undistributed class action awards to civil legal services through the mechanism of *cy pres*, the doctrine that authorizes a court to award such funds to worthy pursuits that serve the public interest. Other states have enacted or are considering approaches like this to help fund civil legal services. These and other creative funding alternatives are regularly evaluated by the ABA Standing Committee on Legal Aid and Indigent Defendants Project to Expand Resources for Legal Services. The most recent evaluation, "Innovative Fundraising Ideas for Legal Services," was published in 2004.

¹⁶ An award-winning self-help center opened in 2002 in Waukesha County has served as a model for the nation, although recent funding cuts have now limited its hours of operation.

¹⁷ Actions speak louder than words, of course. The Supreme Court should study ways to enable judges to volunteer in programs that provide assistance to those who cannot afford lawyers, perhaps by providing general information in a self-help center or other program where legal information is offered outside the context of an attorney-client relationship to persons who are unlikely to appear before the judge. In such a capacity, judges would become much more effective role pro bono role models.

¹⁸ A note about technology as a substitute for legal professionals: Our survey demonstrates that the computer is not a reliable alternative to the direct assistance of a lawyer, paralegal, or legal information provider. Respondents told us that they have not been able to use computers to navigate their way to meaningful information as a substitute for having a lawyer; only 28% said they would be willing to use the Internet to help solve legal issues. Nor have other means of inexpensively trying to get legal information to the poor sufficed to replace legal professionals. Telephone hotline campaigns and brochures and the like have generally not enabled unrepresented persons to overcome their lack of experience with courts and administrative agencies.

