

Executive Branch Support for Civil Legal Aid

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Abstract: For government, access to justice is about more than legal justice. Legal services are essential tools to enable government programs to achieve a wide range of goals that help to provide an orderly, prosperous, and safe country. Recent efforts have transformed how some federal and state government officials think about and use civil legal aid to get their work done. Key in convincing them has been empirical evidence about the effectiveness and cost-efficiency of including legal services alongside other supportive services.

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Ensuring justice is a fundamental purpose of government. The Preamble to the Constitution proclaims its goal to “establish Justice,” among other aims, and proponents of civil legal aid rightly focus on that imperative.

An initiative called the Legal Aid Interagency Roundtable – created at the federal level and now in play in a handful of states around the country – takes another tack. This model uses access to justice to support other core purposes of government outlined in the Constitution: domestic tranquility, general welfare, and the blessings of liberty.

Most people agree that government should use its legislative and regulatory powers to pursue these ends effectively. Too few realize that government efforts to secure tranquility, welfare, and liberty for the sixty million Americans living in or near poverty are more effective when these efforts include civil legal aid. Government agencies not dedicated to justice often need access-to-justice tools to put scarce resources to better use and achieve policy goals.

Ensuring access to civil justice concerns far more than the courts, lawyers, litigants, and rights. It

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helps ensure that government programs intended to assist people meet their basic needs actually do. More policy-makers, funders, service providers, and people in need should know how access to justice helps secure the necessities of life: a home, health care, employment, education, safety, and stability. But those who are most in need of legal aid to secure these necessities often do not recognize that their problem has a legal solution. And for those who do, too often they cannot access legal help. Eighty-six percent of low-income Americans who have a legal problem receive inadequate or no legal assistance.

A wide range of government programs can work at maximum efficiency only if people have access to legal services. Wages go up and recidivism goes down following legal help to expunge or seal a criminal record.¹ For low-income tenants in Massachusetts facing eviction who had full representation, approximately two-thirds remained in their homes compared with one-third of unrepresented tenants.² More victims of domestic violence break the cycle of violence if they get a restraining order against an abusive partner and legal custody of their children.³ Having access to legal aid can make the difference between successful government programs and ineffective ones, whether working to combat domestic violence and human trafficking; prevent homelessness and predatory lending; moving children of opioid-addicted parents from foster care into permanent families; or helping job trainees with criminal records gain a second chance to succeed.

Federal government objectives, like getting Americans working and keeping children in school, also animate policy discussions at the state level. Governors call for increased commitment to greater effectiveness amid severe fiscal

challenges. They talk about what effective government should do: increase opportunities for job-seekers; increase access to health care; attack the opioid crisis; expand housing and aid to homeless people; improve foster care; give second chances to people leaving the criminal justice system; help disaster recovery; prevent violent crime; ensure services for children, seniors, and homeless veterans; and address the needs of rural residents.

For example, a recent State of the State speech by Hawaii Governor David Y. Ige lamented the homelessness and housing problems on the islands: “Probably no issue challenges us as a society more than the daily sight of those who are now living on our streets and in our parks.”⁴ Wisconsin Governor Scott Walker called for greater attention to the opioid epidemic, declaring that “Along with coverage for general health care needs, we must continue to find new ways to fight the opioid and illegal drug addiction crisis in the state.”⁵

Governors – and those who work with them – increasingly understand that incorporating civil legal help and partnering with legal-aid and self-help service providers support state and federal goals of fiscal responsibility and effective social services and produce better outcomes. That help plays an invaluable role in solving underlying problems that trap people in poverty and closing the service gap in their states.

Those in the legal profession who seek to ensure that the government is “establishing justice” often focus their actions on the judicial and legislative branches of government. Civil justice advocates make and change laws through lawsuits and legislation, and secure funding to provide free legal help to those who could not otherwise afford it through attorneys’ fees, court rules, and budget appropriations.

However, during my tenure as a political appointee in the U.S. Department of Justice Office for Access to Justice and as the executive director of the White House Legal Aid Interagency Roundtable, we turned our focus to the third branch of government: the executive. Our aim was to identify programs, policies, initiatives, and law-enforcement goals that could be more effectively accomplished if their implementation included civil legal aid. To illustrate with one example, while it may seem counterintuitive, effective health care often requires legal services. A doctor can get a child's asthma attack under control. But to prevent traumatic and costly repeat emergency room visits, the doctor needs to prescribe legal help to enforce housing codes and eradicate the underlying rodent infestation in the family's apartment that triggers the asthma. At medical-legal partnerships, health care and legal professionals join forces to promote health. That's why the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services designated legal services as an "enabling service": meaning that HRSA-funded health centers can use federal dollars to pay for legal assistance for patients.⁶ The HRSA supported the new policy with training and technical assistance that helped cultivate and support medical-legal partnerships at community health centers across the country, contributing to the rise in medical-legal partnerships nationally and, more important, to improvements in people's health.⁷

Instead of focusing on legal aid for its own – or justice's – sake, this approach shifts the terms of discussion, focusing on the tools that most effectively achieve government goals with already appropriated funds. When the government has already chosen to act, the questions for executive-branch experts involve how

best to effectuate that mandate. By the time the White House roundtable published its first annual report to then-President Barack Obama, twenty-two executive agencies and partners – from the Administrative Conference of the United States to the U.S. Department of Veterans Affairs – were involved.⁸

Executive agency personnel were often persuaded to embed legal services in their programs by empirical evidence demonstrating that it works. Executive agency staff – lawyers and nonlawyers, political appointees and career public servants – learned about how legal aid can improve programs as varied as housing homeless veterans and helping families impacted by the opioid crisis. Ideological opposition to lawyers sometimes heard elsewhere or disagreement about the proper role of the federal government evaporates when the main topic is the executive branch's duty to meet policy goals and produce the best outcomes possible.

The sailing is not always smooth. Congress, the courts, and outside watchdog groups can constrain the actions of risk-averse federal agencies, which tends to preserve the status quo. Each agency has its own mandate and concerns, so broad generalizations about the value of legal services are not persuasive. Many factors make each agency unique, including its authorizing law, the nature of its mandate, the agency's structure and culture, and the values and personalities of career staff and political appointees. Discovering the person to persuade is not always easy; sometimes it is unclear who has the authority to make necessary changes within an agency. A project's success at the federal level depends on accommodating all of these differences.

The roundtable and its new counterpart at the state level – The Justice in Government Project at the American University Justice Programs Office – reach for the

lower-hanging fruit, avoiding big questions about the reach, source, and implications of agency authority. The work stays in the uncontroversial zone: helping state executive branch agencies and actors use legal aid to help them reach their established goals and objectives, on which they have clear authority to act, and incorporating legal services informed by a solid evidence base.

The roundtable grew out of efforts to do more good with existing resources. To address the crisis in the civil and criminal justice system, Attorney General Eric Holder Jr. established the Office for Access to Justice at the Department of Justice in 2010. The Office was tiny: it had only eight staff members and no budget for law enforcement, grant-making, or research. We discovered early on that most federal agency staff did not know what civil legal aid was or why they should care about it. But that knowledge gap turned into the Office's opportunity. Explaining how civil legal aid – whether delivered by legal-aid attorneys, pro bono volunteers, self-help opportunities, court-based services, navigators, or via community education and outreach – could help agencies better work on what they were mandated to address, helped them see why they should be funding and partnering with civil legal aid providers.

The Office educated agencies throughout the executive branch. For example, the U.S. Department of Labor's Employment and Training Administration heard about how legal services support programs designed to help people get and keep jobs. The U.S. Department of Health and Human Services and U.S. Department of Veterans Affairs learned about the effectiveness of medical-legal partnerships for improving health outcomes. The U.S. Department of Homeland Security considered research about how legal assistance can help eligible immigrants

become citizens. Agencies responding to the opioid epidemic learned how legal help gives kinship caregivers legal custody to enroll children in school and take them to the doctor while parents recover from substance use disorder. This educational work was customized to each agency's purpose, but the central aim was always to explain how legal aid could further *their own* goals and identify precisely how.

Perhaps surprisingly, in hundreds of conversations across the executive branch, the Access to Justice staff never encountered the political pushback that legal aid has historically encountered in Congress. Rather, most agency leadership and career public servants were genuinely interested in learning more about evidence-based strategies with the potential to improve their programs' effectiveness. They wanted to get their work done, and to do it well. What mattered to them was empirical evidence that demonstrated how providing legal aid could make government action more effective and efficient.

For example, they appreciated research documenting that the majority of low- and moderate-income Americans and their social-service providers too seldom see the issues they encounter as legal problems. A family concerned about unsafe housing conditions or harassment from debt collectors often assumes that they simply have personal or social problems, or just bad luck. So they miss out on the legal solution.⁹ To achieve the goals of federal policy, like safe housing or financial literacy and self-sufficiency, federal policy-makers need their social-service grantees and state and local government partners to connect people with the right services for their needs.

President Barack Obama directed the executive branch to fund only "evidence-based practices" that work, so research was necessary to identify those practices.¹⁰ Agency staff and leadership particularly

responded to studies showing that providing legal assistance to people who cannot afford it addresses root problems that keep people from climbing up the economic ladder and often provides substantial return on investment by preventing harm and financial waste.¹¹

A small but growing body of research connects legal help to many core agency objectives. Civil legal aid significantly reduces incidents of domestic violence by helping victims obtain child custody arrangements and child support payments that enable them to leave abusive relationships. Legal help increases tenants' chances of keeping their homes when facing eviction.¹² It positively impacts individual and public health while driving down health care costs.¹³ It addresses unmet needs of homeless veterans.¹⁴ It improves efficiency and cuts costs in public programs by helping children leave foster care faster.¹⁵ It increases income and job opportunities for people who have a criminal record expunged. Resolving these problems can reduce government expenditures in responding to crime, injuries, and homelessness, as well as individual, family, and community social, emotional, and financial harms.

The Legal Services Corporation's *The Justice Gap* report demonstrated that current funding for civil legal aid covers only a fraction of the civil legal needs of low-income Americans.¹⁶ As agency personnel often realized with surprise, these statistics describe only those at 125 percent of the poverty line or below: they leave out the tens of millions of moderate-income Americans who need legal help but cannot afford a private lawyer. It was news to many that four out of five Americans will experience some kind of economic hardship, such as relying on a government program for the poor or living at least one year in poverty or close to it.¹⁷

In 2015, the roundtable was elevated to a White House initiative when President Obama issued a Presidential Memorandum about its work. He called on the federal agencies to work together "to help the most vulnerable and underserved among us. . . . By encouraging Federal departments and agencies to collaborate, share best practices, and consider the impact of legal services on the success of their programs, the Federal Government can enhance access to justice in our communities."¹⁸ This endorsement made the roundtable a mandated activity, elevating its work to the highest level of each agency. It called on the attorney general and the director of the White House Domestic Policy Council or their designees to cochair three meetings per year. When invitations for the first meeting went out from Attorney General Loretta Lynch and Domestic Policy Council Director Cecilia Muñoz, they attracted top-level leaders from each agency.

By this stage, the agencies' accomplishments included: getting legal services designated as fundable services in at least two dozen major federal grant programs, such as those involving reentry into society for people with criminal records, access to health care, applications for citizenship, and services for homeless veterans; clarifying that other federal programs should allow legal services that would further their goals; new training and technical assistance opportunities; new research about civil legal aid; and strategic partnerships between agencies and legal-aid programs to achieve enforcement and outreach goals.¹⁹

In 2018, Attorney General Jeff Sessions closed the Office for Access to Justice and transferred its duties to the Justice Department's Office of Legal Policy.²⁰ But the work continues. Federal agencies are still thinking about and incorporating legal aid into their work. For example, the

Department of Labor's Second Chance Act grants allow and sometimes mandate legal services to assist some of the seventy million Americans – one in three adults – with criminal records who have paid their dues and done their time in finding and keeping employment. The Departments of Health and Human Services and Veterans Affairs continue to support medical-legal partnerships to assist with preventing illegal evictions, secure health care benefits, and address the social determinants of health through interconnected civil legal problems. In 2018, the Department of Justice and its grantee Equal Justice Works debuted the Crime Victims Justice Corps Legal Fellowship grant, enabling over sixty lawyers to increase access to civil legal assistance and enforce the rights of victims of human trafficking, campus sexual assault, and consumer fraud.

Federal government policy is high profile and has national reach, but an enormous amount of the implementation of programs and policies takes place in the states. An effort similar to the roundtable is underway at the state level, thanks to funding from the Open Society Foundations, Public Welfare Foundation, and The Kresge Foundation. This state-focused version operates through The Justice in Government Project at the American University Justice Programs Office. The Project launched in 2017 with a pilot program focused on four geographically and politically diverse states – Arizona, California, Mississippi, and Wisconsin – and added additional efforts in South Carolina and Hawaii over the first year.

Like federal officials, state executive branch public servants in executive departments and agencies use appropriated state and federal funds to implement legislative mandates and executive policies, and rely on specialized expertise to guide efforts to provide maximum benefit from

those public dollars. As with the federal roundtable, many of those efforts could be more effective, efficient, and fair to low- and moderate-income people and communities if they included legal aid.

State law affects most Americans' everyday lives, and most people interact more with state agencies than federal ones. State programs shape education, employment, public health, and social services. As the new effort develops, initiatives must be customized to fit the conditions of each state: state norms and processes are sometimes even more complex than their federal counterparts, with great variety within each state and across states.²¹ State policy choices reflect many factors: the structure and authority of those agencies; the political orientation of state leaders; the strength of the state's infrastructure; the extent to which decision-makers rely on new evidence regarding policy effectiveness; the interplay among the three branches and then among agencies; the role of interest groups and advocacy coalitions; and the influence of federal mandates and cost-sharing programs.

In each state, the Project searches for opportunities to connect good government with access to justice. Some opportunities arise in state-legislated and -funded programs and policies. Many opportunities flow from states' powers to administer federal funds: every state gets a share of the many federal block and formula grants ("block grants") for federally funded programs. Federal block grants set amounts and basic spending parameters, but they give states flexibility to tailor spending to local priorities and local infrastructure.

States receive a significant influx of capital through block grants – the average is 31 percent of a state's budget – as long as they follow the purpose and parameters defined by the legislation creating the grant.²² Because each block grant has

its own rules, regulations, formulas, and degrees of flexibility, the Project's work builds on the roundtable's efforts at the federal level, which includes cataloging the federal block grant funds that allow state spending on civil legal services.

Two approaches launched as part of the Project show how support for civil legal partners can be made more consistent and pervasive: one focuses on a specific block grant that allows spending on legal aid and its role in advancing particular state policy goals; the other focuses on a specific issue relevant to state policymakers and legal aid – for example, helping people with criminal records get a second chance to succeed – which can tap several different federal block grants as well as local funding streams.

Consider the Victim Assistance Formula Grant Program under the federal Victims of Crime Act (VOCA). It directs funding allocations to state agencies that make awards to direct service providers assisting crime victims. Since Congress passed the act in 1984, its funds have dramatically increased services to crime victims.²³ The Department of Justice has documented the importance of civil legal assistance to many types of crime victims. Legal help is one of the most critical yet too often unmet needs of domestic violence victims, who are typically the largest group of crime victims that states serve using these funds.

Three considerations made VOCA ideal for demonstrating how to connect good government with access to justice: a solid evidence base documents unmet civil legal needs among crime victims and the importance of civil legal help to solve myriad problems related to victimization; Congress consistently supports the act and recently increased funding; and a new rule clarifies that these funds can be used for comprehensive legal assistance for legal needs that flow from

victimization, including domestic violence, child abuse and neglect, elder abuse, human trafficking, financial and consumer fraud, identity theft, and other issues routinely addressed by legal-aid programs.

In about forty states, this effort has greatly increased legal help for crime victims. For some states, such as California, funds under the act were used to create new grant programs to provide legal services. At least five states – Massachusetts, Washington, Vermont, Michigan, and Pennsylvania – launched statewide VOCA-funded legal-aid programs.²⁴ The statewide models show great promise to raise the overall standard of care through joint provider trainings, data-sharing to better identify statewide patterns and trends, greater collaboration among legal-aid providers, and perhaps most important, extending legal aid to rural areas and communities where it has not been available due to fragmented and limited legal-aid funding.

Participating states are moving beyond emergency restraining orders for domestic violence victims to include legal assistance for a much broader list of crime victims. VOCA funds now support legal services to address abusive debt collection practices in Washington, D.C., elder abuse in Michigan, farmworker wage theft and hate crimes in California, and human trafficking in North Carolina.

The second approach focuses first on stated policy priorities and then asks how already appropriated funds can support both the policy and legal aid. For example, our Arizona partners identified successful reentry and reduced recidivism as one of their top agenda items. The need is there, and Governor Doug Ducey confirms it. Roughly 1.5 million Arizonan adults have criminal records that appear in background checks.²⁵ Studies and data show that expungement or

set-asides for eligible arrests and convictions, child support order adjustments, drivers' license reinstatement, and other civil legal needs can stabilize lives in ways that support getting a job while reducing recidivism.²⁶

Arizona is following the lead of other states like Maryland, Illinois, and South Carolina and cities like Los Angeles that are already working to deploy legal aid in efforts to remove obstacles to employment. Two Maryland and multiple Illinois American Job Centers have embedded legal-aid lawyers alongside other social-service providers to help people get jobs. South Carolina's Department of Employment and Workforce Director of Policies and Procedures issued guidance urging local workforce administrators to provide legal services consistent with a 2016 Workforce Innovation and Opportunity Act federal rule that lists legal aid among the supportive services considered "necessary to enable an individual to participate" in workforce activities.²⁷ And city governments can – and have – also used state funds in a similar way to how states use federal funds. For example, the Los Angeles Mayor's Office of Reentry opted to use some of their share of state funds – generated when voters passed Proposition 47 to reinvest savings from reduced prison spending in crime prevention and support programs – in a multidisciplinary program that includes employment, behavioral health, and legal services.²⁸

The next step in Arizona and other states seeking to help their hard-to-employ job-seekers is reviewing funding options. Several federal block grant prospects for supporting legal services include: U.S. Department of Labor's Workforce Innovation and Opportunity Act Statutory Formulas funds, U.S. Department of Health and Human Services' Temporary Assistance for Needy

Families, and U.S. Department of Housing and Urban Development's Community Development Block Grant. Each of these federal agencies has a published federal rule or other guidance about state use of these block grants for legal help to remove obstacles to employment.

As with the federal Legal Aid Interagency Roundtable, state-based efforts can encounter choppy waters. Risk aversion and the gravitational pull of the status quo can constrain state actors. Scarce resources can prevent innovations. Sometimes opaque bureaucracies and uncertain decision-making processes so muddy the waters that well-meaning advocates cannot see the way forward. An added challenge may be navigating local organizations' expectations that their existing grants will continue year after year. Legal-aid organizations and courts-based projects should avoid real or perceived accusations of "robbing Peter to pay Paul," taking away money from other needed services. In reality, though, this is often not the result: budgets may have enough flexibility to experiment; appropriations sometimes increase; partnerships with local grantee organizations may be possible; local priorities shift with changing needs and political leadership; and examination of new studies shows what works and where investments can lead to better results and government savings.

Access to justice is an essential purpose of government. But it is also necessary to enable government to achieve a wide range of goals related to providing the basic necessities of life and a tranquil, healthy, prosperous, safe country. That's why the Legal Aid Interagency Roundtable's focus on the federal executive branch agencies, and now The Justice in Government Project's focus on their state counterparts, works to embed civil legal aid into the machinery of good

government's existing priorities, generally without the need for new funding or legislation. These efforts seek to improve government policies, programs, and initiatives by incorporating civil legal services, leveraging research and data to achieve better results, and, sometimes,

even saving public dollars. More people can get or stay housed, healthy, in school, and employed. More families and communities can find and sustain stability.

And, as an added bonus, it also brings us all a little closer to the promise of establishing justice for all.

AUTHOR'S NOTE

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