

## THE OPPORTUNITIES AND CHALLENGES OF PROVIDING EQUAL ACCESS TO JUSTICE IN RURAL COMMUNITIES

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The quality of our justice system is measured by the service it provides to the poorest members of society.<sup>1</sup> Equally important to the notion of justice and fairness in our society should be the degree to which the poor have equal access to justice regardless of their geographical location.

Meaningful access to justice by the poor necessarily requires access to counsel.<sup>2</sup> Several years ago, a symposium was held at New York University School of Law whose topical theme was on rationing legal services for the poor.<sup>3</sup> The keynote speaker for the symposium, Christopher Stone, reminded those present that we have been rationing legal services for the poor ever since systems for civil legal assistance were created, each day turning numerous people away and informing them they could not be helped.<sup>4</sup> In fact, programs receiving funds from the Legal Services Corporation<sup>5</sup> are required to establish priorities for the types of cases that will be undertaken.<sup>6</sup>

Mr. Stone suggested that the challenge is to create a legal service delivery system that turns no one away.<sup>7</sup> Although the goal of universal access to a lawyer in civil cases may not be realistic,<sup>8</sup> we

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1. Lewis J. Liman, *The Quality of Justice*, 17 YALE L. & POL'Y REV. 287, 287 (1998).

2. Stephen Wizner, *Rationing Justice*, ANN. SURV. AM. L. 1019, 1020 (1997).

3. Symposium, *Crisis in the Legal Profession: Rationing Legal Services for the Poor*, ANN. SURV. AM. L. 731 (1997).

4. Christopher Stone, *Crisis in the Legal Profession: Rationing Legal Services for the Poor*, ANN. SURV. AM. L. 731, 731-32 (1997).

5. The Legal Services Corporation is a private, non-profit corporation established in 1974 to provide financial support for legal assistance in civil matters to persons unable to afford counsel. 42 U.S.C. § 2996b(a) (2001).

6. 45 C.F.R. § 1620.3 (2000).

7. Stone, *supra* note 4, at 732.

8. *Id.* at 734-35.

should, at the very least, make certain that no identifiable group, such as the rural poor, are systematically excluded from access to legal services.

Obvious challenges exist—providing equal access to civil legal services in rural communities as a result of remote locations some distance from legal service providers,<sup>9</sup> the scarcity of private attorneys able or willing to provide pro bono representation,<sup>10</sup> and the artificial barriers created by lack of adequate transportation.<sup>11</sup> For example, Legal Services of Northwest Minnesota (LSNM) is a civil legal services program which is responsible for providing access to free civil legal services to low-income and senior citizens in 22 counties of northwestern Minnesota covering nearly 25,000 square miles.<sup>12</sup> The poverty rate population in LSNM's service area averages 16% compared to 10.2% in Minnesota generally.<sup>13</sup> Seven of the state's poorest ten counties are located within their service region.<sup>14</sup> Another primarily rural legal services program in the region, Legal Assistance of North Dakota, Inc., is responsible for serving virtually the entire state of North Dakota.<sup>15</sup> Consisting of 68,976 square miles with a population of 642,200, this area has an average of 9.3 persons per square miles compared to the national average of 79.6 persons per square mile.<sup>16</sup>

A study by the Maine Commission on Legal Needs concluded that individuals living twenty-five miles or more from a civil legal services office were six times less likely to receive necessary legal

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9. *Special Legal Problems and Problems of Access to Legal Services of Veterans, Native Americans, People with Limited English-Speaking Abilities, Migrant and Seasonal Farmworkers and Individuals in Sparsely Populated Areas* 12, 45 (Legal Services Corporation, 1979).

10. Greg McConnell, *The Center for Pro Bono Creates New Project: The Rural Pro Bono Delivery Initiative*, 4 *DIALOGUE* (ABA/Division for Legal Services) 25, 25-26 (Winter 2000) (explaining that a significantly disproportionate share of attorneys reside and work in metropolitan areas and that private attorneys in rural areas often encounter conflicts precluding representation, have less support staff available, and face greater demands for travel in meeting with clients and for court appearances).

11. Faith R. Rivers, *South Carolina's Legal Aid Telephone Intake System*, 4 *DIALOGUE* (ABA/Division for Legal Services) 3, 3 (Summer 2000) (discussing how lack of transportation is a barrier to legal access in South Carolina).

12. Minnesota Legal Services Coalition, *Legal Services of Northwest Minnesota* at <http://www.mnlegalservices.org/lsnm/index.shtml>.

13. *Id.*

14. *Id.*

15. Legal Assistance of North Dakota, Inc., *History & Annual Report 1983*, at 3.

16. U.S. Census Bureau, *State and County QuickFacts, North Dakota* available at <http://quickfacts.census.gov/qfd/states/380000.html>.

services and two times less likely to be aware of what type of assistance was available.<sup>17</sup> Legal services programs must be challenged to not devise policies on rationing legal services to the poor exclusively on urban-based methodologies. These methodologies effectively and efficiently deliver legal services in the most economical manner to the exclusion of other factors which may more properly assure that the critical legal needs of the rural poor are equitably considered.

Why the focus on rural communities? Most see rural communities as something far removed from the norm. However, few people realize that of the 3,086 counties in the country, 2,248, or nearly 73 percent, have fewer than 50,000 people residing in them.<sup>18</sup> Rural areas comprise 83 percent of the total landmass of the United States containing 22 percent of the population.<sup>19</sup> Rural communities are not just smaller versions of urban areas; they are qualitatively different with such differences being consequential.<sup>20</sup> Extensive empirical studies of the legal problems of the rural are largely outdated.<sup>21</sup> The rural poor often encounter legal problems that are more difficult to address as a result of the availability of fewer jobs and public resources as well as greater difficulties with transportation and service delivery.<sup>22</sup> Poverty rates in rural communities are higher than in urban areas on the whole, and rural communities contain large areas of persistent poverty.<sup>23</sup>

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17. Marilyn Hotch, Beth Gallie & Michael W. Mullane, *Rural Access-An Innovative Program in Western Maine*, 9 ME. B.J. 186, 186 (1994).

18. Rural Policy Research Institute, Rural Welfare Reform Research Panel, *Welfare Reform in Rural America: A Review of Current Research* P2000-1 (February 2, 2001) at 9, available at <http://www.rupri.org/pubs/archive/reports/P2001-5/p2001-5.pdf>.

19. Rural Policy Research Institute, Rural Welfare Reform Research Panel, *Rural America and Welfare Reform: An Overview Assessment* P99-3 (February 10, 1999) at 10, available at <http://www.rupri.org/pubs/archive/old/welfare/p99-3.pdf>

20. *Id.* For a description of these differences in Minnesota, see Minnesota Planning, *Implications of Rural Minnesota's Changing Demographics*, Persp. (July 2000), available at [http://www.mnplan.state.mn.us/pdf/2000/rural\\_01.pdf](http://www.mnplan.state.mn.us/pdf/2000/rural_01.pdf).

21. Note, *Rural Poverty and the Law in Southern Colorado*, 47 DENV. L.J. 82, 82 (1970); Alan I. Widiss et al., *Legal Assistance for the Rural Poor: An Iowa Study*, 56 IOWA L. REV. 100 (1970); Note, *The Legal Problems of the Rural Poor*, 1969 DUKE L.J. 495.

22. Alan W. Houseman & Arloc Sherman, *Poverty Trends and Access to Legal Services in CIVIL JUSTICE: AN AGENDA FOR THE 1990's*, Papers of the American Bar Association National Conference on Access to Justice in the 1990's 287, 288 (Esther F. Lardent ed. 1991).

23. Rural Policy Research Institute, *supra* note 17, at 4. As an example, there was an increase in the percentage of people below the poverty level in North

Travel to work, school, health care and other community services is over longer distances through sparsely populated areas and with little public transportation;<sup>24</sup> consequently, for most individuals, the availability of a reliable vehicle is the only means to ensure access.<sup>25</sup>

A federally funded civil legal assistance program was initiated in the Office of Economic Opportunity (OEO) in 1965.<sup>26</sup> Current ongoing federal support for civil legal assistance to the poor was established through enactment of the Legal Services Corporation Act of 1974.<sup>27</sup> The primary method for providing legal services to the poor continues to be through the Legal Services Corporation (LSC).<sup>28</sup> The Legal Services Corporation funds local programs to provide civil legal services to clients in every state and county as well as in Puerto Rico, the Virgin Islands, Guam and Micronesia.<sup>29</sup>

Legislation initially transferring responsibility for the Legal Services Program to the Legal Services Corporation required a study of legal services delivery<sup>30</sup> and a report to Congress within two

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Dakota from 13.7 percent in 1990 to 15.1 percent in 1998 while the U.S. as a whole dropped from 13.5 percent in 1990 to 12.7 percent in 1998. U.S. Census Bureau, North Dakota State Profile, *Statistical Abstract of the United States 1999*, available at <http://www.census.gov/statab/www/states/nd.txt>.

24. In fact, close to 40 percent of all individuals residing in rural areas have no access to public transportation with an additional 28 percent having access to very low levels of public transportation service. Rural Policy Research Institute, *supra* note 18, at 35.

25. Rural Policy Research Institute, *supra* note 18, at 4.

26. Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 YALE L. & POL'Y REV. 369, 373 (1998).

27. Legal Services Corporation Act, Pub. L. No. 93-355, 88 Stat. 378 (1974) amended by Pub. L. No. 95-222, 91 Stat. 1619 (codified at 42 U.S.C. § 2996 (1977)).

28. Funding from the Legal Services Corporation remains the largest single source of funding for civil legal services nationally and, in some areas, almost the exclusive source. Douglas S. Eakeley, *Role of The Legal Services Corporation in Preserving Our National Commitment to Equal Access to Justice*, 1997 ANN. SURV. AM. L. 741, 743-44. For legal services programs as a whole, 53.23% of funding is from LSC grants and related income; 6.41% from other federal grants; 15.61% from state and local grants; 4.50% from private grants; 11.29% from Interest on Lawyers Trust Accounts (IOLTA); and 8.96% from Other Non-LSC funding. Legal Services Corporation, *1998 LSC and Non-LSC Funding-All Programs*, available at [http://www.lsc.gov/pressr/pr\\_progs.htm](http://www.lsc.gov/pressr/pr_progs.htm).

29. *Serving the Civil Legal Needs of Low-Income Americans: A Special Report to Congress* I (Legal Services Corp., Apr. 30, 2000), available at <http://www.lsc.gov/pressr/EXSUM.pdf>.

30. In particular, it required the Legal Services Corporation to "provide for comprehensive, independent study of the existing staff-attorney program . . . and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms." 42

years.<sup>31</sup> Plans were developed to meet the congressional mandate to “provide equal access to the system of justice in our Nation for individuals who seek redress of grievances”<sup>32</sup> and “to provide high quality legal assistance to those who would otherwise be unable to afford adequate legal counsel.”<sup>33</sup> Plans included a formula to target funds to the most severely underfunded local programs in order to provide a more equitable distribution of civil legal service to the poor throughout the country. A goal was established to provide a minimum level of legal assistance to all eligible clients by providing the equivalent of two lawyers for each 10,000 poor persons.<sup>34</sup> By 1981, more than a century after the founding of legal aid in the United States in 1876, legal assistance for the poor was available for the first time in every county in the United States.<sup>35</sup>

Subsequently, Section 1007 (h) of the Legal Services Corporation Act, as amended in 1997, required the Corporation to:

(h) . . . conduct a study on whether eligible clients who are (1) veterans, (2) native Americans, (3) migrants or seasonal farm workers, (4) persons with limited English-speaking abilities, and (5) *persons in sparsely populated areas* where a harsh climate and an inadequate transportation system are significant impediments to receipt of legal services have special difficulties of access to legal services or special problems which are not being met.<sup>36</sup>

This requirement was in recognition of the fact that certain client groups, including the rural poor, were believed to face unique legal problems as well as particular barriers in obtaining equal access to justice. As a result of this congressional mandate, the Legal Services Corporation undertook a study and issued its report and recommendations.<sup>37</sup>

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U.S.C. § 2996f(g) (2001).

31. *Id.*

32. 42 USC § 2996(1) (2001).

33. 42 USC § 2996(2) (2001).

34. *Delivery Systems Study, A Research Project on the Delivery of Legal Services to the Poor* 8 (Legal Services Corp., July, 1977).

35. Clinton Bamberger, Keynote Address at 1999 Summer IOLTA Workshops, in 3 DIALOGUE (ABA/Division for Legal Services) Fall 1999, at 27. In 1981, the Legal Services Corporation made grants to 323 legal services programs operating in 1,450 offices in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Micronesia and Guam. *Legal Services Corporation Annual Report 1981* 8 (Legal Services Corp., 1981).

<sup>36</sup> 42 U.S.C. § 2996f(h) (emphasis added).

37. *Special Legal Problems and Problems of Access to Legal Services of Veterans, Native*

More recently, among the recommendations of a program titled "National Conference on Access to Justice in the 1990's," co-sponsored by the ABA's Consortium on Legal Services and the Public and Tulane University Law School in 1989, was that a comprehensive national legal needs survey should be conducted which could accurately assess and quantify the unmet legal needs of the poor which would be essential to developing sound policies and principles for allocating scarce resources and to assist in planning and reevaluating the current legal services delivery systems for low- and moderate-income clients.<sup>38</sup> Recent legal needs studies<sup>39</sup> have quantified the substantial disparity between the promise of equal justice for all and the reality of no access to justice for many.<sup>40</sup>

In the most recent and the first comprehensive national study of legal needs among low- and moderate-income households undertaken within nearly 20 years, a slightly higher proportion of urban low-income households (41%) than rural households (36%) reported legal needs.<sup>41</sup> However, even with increased funding from other sources, such as Interest on Lawyers' Trust Accounts ("IOLTA") funds, state and local government support, and pro bono contributions, the delivery system for providing civil legal services to the poor today is capable of only serving a small fraction of those in need.<sup>42</sup> For example, in Minnesota, the Joint Legal Services Access and Funding Committee<sup>43</sup> estimated conservatively

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*Americans, People with Limited English-Speaking Abilities, Migrant and Seasonal Farmworkers and Individuals in Sparsely Populated Areas* (Legal Services Corp., 1979).

38. *Legal Needs and Civil Justice, A Survey of Americans, Major Findings from the Comprehensive Legal Needs Study* i (ABA Consortium on Legal Services and the Public, 1994).

39. See generally, The Spangenberg Group, Inc., *National Survey of the Civil Legal Needs of the Poor in TWO NATIONWIDE SURVEYS: 1989 PILOT ASSESSMENTS OF THE UNMET LEGAL NEEDS OF THE POOR AND OF THE PUBLIC GENERALLY* 5-6 (ABA Consortium on Legal Services and the Public, 1989) (concluding that only 20% of the civil legal service needs of the poor are met with existing resources).

40. See, e.g., INSTITUTE FOR SURVEY RESEARCH, TEMPLE UNIVERSITY, *LEGAL NEEDS AMONG LOW-INCOME AND MODERATE-INCOME HOUSEHOLDS: SUMMARY OF FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY* (ABA 1994); Barbara A. Curran, *THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY* (Am. Bar Found. 1977).

41. Institute for Survey Research, Temple University, *supra* note 40, at 35.

42. Douglas S. Eakley, *Role of the Legal Services Corporation in Preserving Our National Commitment to Equal Access to Justice*, ANN. SURV. AM. L. 741, 743 (1997).

43. During the 1995 legislative session, the Minnesota Legislature directed the Minnesota Supreme Court to: "Create a joint committee including representatives from the Supreme Court, the Minnesota State Bar Association (MSBA), and the Minnesota Legal Services Coalition to prepare recommendations

that legal aid programs could meet only 30 percent of the need for civil legal assistance for the poor.<sup>44</sup> In 1994 alone, more than 20,000 individuals eligible for services had to be turned away by legal services programs in Minnesota although having essential legal needs.<sup>45</sup> Likewise, in North Dakota, a Joint Committee concluded that existing resources were able to meet only 5% of the legal needs of the poor in North Dakota.<sup>46</sup>

Even before the 1996 funding reductions,<sup>47</sup> studies in a number of states<sup>48</sup> concluded that legal services programs had the resources to meet, at most, twenty percent of the identified civil legal needs of their client-eligible population. In light of excess demand for legal services and the limited resources available, LSC regulations have long required programs receiving LSC funds to set priorities and reasonably distribute services over the geographic areas they are responsible for serving.<sup>49</sup>

A variety of approaches to rationing the delivery of scarce legal resources may be undertaken by individual programs based on differing normative assumptions of what is fair and rational.<sup>50</sup> However, the choices that are made in allocating scarce resources should be undertaken carefully and with considerable thought so that rural communities are not left out.

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for state funding changes or other alternatives to maintain an adequate level of funding and voluntary services that will address the critical civil legal needs of low-income persons as a result of reductions in federal government funding for such programs.” The Minnesota Supreme Court subsequently established the Joint Legal Services Access and Funding Committee to undertake a study of the issues and make recommendations. *The Span Update: A Guide to Legal Services Planning 4* (ABA/Nat’l Legal Aid and Defender Assoc., July, 1997).

44. Thomas C. Mielenhausen & Charles A. Krekelberg, *A Better Idea: Reporting Pro Bono Services*, BENCH & BAR OF MINN., Mar. 1999, at 21, 22. See also, *Minnesota Supreme Court Task Force on Racial Bias in the Judicial System*, 16 HAMLINE L. REV. 477, 666-74 (1993).

45. Mielenhausen & Krekelberg, *supra* note 44, at 22.

46. Joel D. Medd et al., *A Workable Plan for Civil Legal Services for the Poor of North Dakota: A Practical, Equitable and Political Proposal for Bar Leadership: Report and Recommendations of the Civil Legal Services Committee of the State Bar Association of North Dakota, North Dakota Trial Lawyers’ Association and the North Dakota Supreme Court* 58 (Feb. 19, 1988).

47. Federal funding for civil legal services was cut by 30.5%, from \$400 million in 1994 to \$278 million in 1996. *LSC Statistics, Annual LSC Appropriations 1980-2001* (Legal Services Corp.), available at [http://www.lsc.gov/pressr/pr\\_alsa.htm](http://www.lsc.gov/pressr/pr_alsa.htm).

48. See, e.g., Jessica Pearson & Nancy Thoennes, *Assessing the Legal Needs of the Poor in Colorado*, 20 CLEARINGHOUSE REV. 200 (1986).

49. See 45 C.F.R. § 1620 (2000).

50. Wizner, *supra* note 2, at 1020-22.

The delivery of civil legal services to the poor in rural areas is more costly than in urban areas.<sup>51</sup> This discrepancy reflects the increased expenses associated with outreach, travel and communication.<sup>52</sup> The low population density and geographic isolation in rural areas can significantly stretch limited financial resources by increasing cost-per-client ratios.<sup>53</sup> There is the risk that simplistic cost-per-case measures could overshadow and replace more complex performance and outcome measures necessary to reflect the multiple dimensions of an effective civil legal service delivery system.<sup>54</sup>

In addition to reducing federal support for civil legal services, Congress imposed a variety of restrictions through legislative appropriations bills resulting in regulations limiting the types of cases that programs receiving LSC funds could undertake. Examples include class action litigation,<sup>55</sup> challenges to state or federal welfare reform legislation or regulations,<sup>56</sup> legislative lobbying and participation in administrative rulemaking proceedings.<sup>57</sup> In addition, regulations prohibit LSC-funded programs from providing representation to certain aliens,<sup>58</sup> persons incarcerated in a federal, state or local prison<sup>59</sup> or individuals charged with or convicted of illegal drug activities in certain public housing evictions.<sup>60</sup>

An increased emphasis on individual case representation in contrast to group representation through impact litigation may result in further risk to clients more costly to serve such as the rural poor. The restrictions imposed on the use of funding received by programs sponsored by Legal Services Corporation certainly prevents strategies designed to obtain relief for a greater number of clients than was formerly possible through group representation.

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51. *Report of the Task Force on Adequate Physical Facilities and Support Services; Meeting the Special Needs of Rural Areas and the Needs of Special Groups* 10 (Legal Services Corp., Mar. 13, 1978).

52. *Id.*

53. Rural Policy Research Institute, *supra* note 18, at 6.

54. Martha Bergmark & Clint Lyons, *Future Challenges: A Planning Document for Legal Services in CIVIL JUSTICE: AN AGENDA FOR THE 1990'S* 241, 276 (Esther F. Lardent ed., 1991).

55. 45 C.F.R. § 1617.1 (2001).

56. 45 C.F.R. § 1639.1 (2001).

57. 45 C.F.R. § 1612.1 (2001).

58. 45 C.F.R. § 1626.3 (2001).

59. 45 C.F.R. § 1637.1 (2001).

60. 45 C.F.R. § 1633.1 (2001).

This increases the pressure to serve a larger number of individual clients with reduced funding in the most cost-efficient manner. This may tempt local programs to avoid allocating sufficient resources to client groups more costly to serve in order to meet performance measures. Such restrictions may also be counter-productive to the overall goal of ensuring equal access to justice for the poor with the limited resources available.

In light of funding cutbacks and restrictions on permissible activities, the Legal Services Corporation in 1995 placed increased emphasis on statewide planning initiatives requiring programs to consider how they might enhance the efficiency of their legal services delivery system and the ability to meet increasing needs of clients.<sup>61</sup> Through LSC Program Letters 98-1 and 98-6, the Legal Services Corporation requested local civil legal services programs funded by LSC to consider how they could expand client services while ensuring that all eligible clients received equivalent levels of service regardless of their location in the state.<sup>62</sup>

In particular, programs were directed to report how the delivery of legal services to the poor would be coordinated and integrated within each state in seven key areas. These areas are defined as “enhancing client access; efficiently delivering high quality legal assistance; effectively using technology to expand access and enhance services; promoting client self-help and preventive legal education and advice; coordinating legal work and training staff; coordinating and collaborating with the private bar; developing additional resources to support legal services delivery; and designing a legal services delivery configuration that enhanced client services, reduced barriers and operated efficiently and effectively.”<sup>63</sup> In January, 2000, the Board of Directors of the Legal Services Corporation approved LSC’s 5 year Strategic Direction Plan which reaffirmed its commitment to LSC’s State Planning Initiative as the primary vehicle for improving access to legal

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61. *Building State Justice Communities, A State Planning Report from the Legal Services Corporation* 1 (Legal Services Corp., Mar., 2001), available at <http://www.lsc.gov/WEBSITEDOCS/BSTJCrpt.pdf> (providing a comprehensive overview of state planning initiatives undertaken by the Legal Services Corporation, the progress of state planning efforts in selected states and lessons learned) One of the states highlighted is Minnesota. *Id.* at 34-36.

62. *Id.* at 1.

63. Randi Youells, *Program Letter 2000-7, State Planning and Performance Measures* 1 (Legal Services Corp., Dec. 13, 2000) (on file with author).

services for the poor.<sup>64</sup>

In light of these developments, what then are the opportunities as well as challenges of providing equal access to civil legal services in rural communities? Decisions that individual civil legal assistance programs make in the future about providing “economical and effective” legal assistance to eligible clients must be premised on an assessment of demographic and poverty law trends.<sup>65</sup> In making choices as to how scarce resources are allocated and legal services rationed to the poor, programs must be careful that the goals of providing “economical and effective” legal assistance to eligible clients do not categorically exclude those client groups in rural areas who, by their nature, are more costly to serve.<sup>66</sup>

While the goal of maximizing client access to services might be realized by placing an office in each community of any size, it is impractical to do so. Consequently, a legal services delivery plan that exclusively relies on individual clients coming to a locally-based legal services office would not be workable and cannot result in a cost-efficient use of scarce resources. Options for providing effective outreach and other methods of ensuring equal access to services to hard-to-reach clients in isolated rural communities must be considered in any legal services delivery plan.

What is the role of the private bar in providing access to civil legal services to the poor in rural areas?

Since 1981, there has been a significant increase in the number of pro bono programs as well as the integration of private attorneys in the civil legal assistance program with over 130,000 lawyers providing civil legal assistance to the poor under organized pro bono programs.<sup>67</sup> Minnesota attorneys, in particular, have had a long history of volunteering their time to promoting the ideal of equal access to justice under the law for those unable to afford

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64. *Id.* at 2.

65. Bergmark & Lyons, *supra* note 54, at 260.

66. Section 1007(a)(2)(C) of the Legal Services Corporation Act requires the Corporation to “insure that (i) recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance (including such outreach, training and support services as may be necessary), including particularly the needs for service on the part of significant segments of the population with special difficulties of access to legal services.” 42 U.S.C. § 2996f(a)(2)(C) (2001).

67. Houseman, *supra* note 26, at 375.

counsel in civil cases.<sup>68</sup>

The substantial growth in the numbers of lawyers has surpassed that of the population as a whole as reflected in the decline of the population/lawyer ratio from 1 lawyer per 695 individuals in the general population in 1951 to 1 per 313 in 1991 and which was projected to be 267 to 1 in 2000.<sup>69</sup> However, in rural areas, after eliminating those attorneys no longer actively practicing, public lawyers and those, by the nature of their practice, unable to take certain cases, there are very few lawyers left to respond to the legal needs of the poor.<sup>70</sup> Additionally, in 1991, 44.7% of private practitioners were solo practitioners with an additional 5.8% in 2 lawyer firms.<sup>71</sup>

Although the primary means of delivering legal services to the poor since the development of federal support of civil legal services has been through the use of a staff attorney model,<sup>72</sup> a judicare model utilizing private attorneys who are paid on a fee-for-service basis by the program offers an alternative delivery system.<sup>73</sup>

As early as 1966, the Office of Economic Opportunity (OEO) Office of Legal Services, the forerunner of the Legal Services Corporation, funded the Wisconsin Judicare Program to serve 17 rural counties in Wisconsin.<sup>74</sup> The judicare model is patterned after the approach used in the health care field under the Medicaid and Medicare programs that support services provided by private medical providers paid on a fee-for-service basis by governmental funds.<sup>75</sup> The rationale for utilizing members of the private bar rather than staff attorneys under the judicare model was that, by relying on the natural distribution of private attorneys, the poor living in rural communities would have increased access to

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68. For a comprehensive account in Minnesota of pro bono contributions as well as descriptions of legal services programs and law school clinical programs engaged in the delivery of legal services to the poor, see Angela McCaffrey, *Pro Bono in Minnesota: A History of Volunteerism in the Delivery of Civil Legal Services to Low Income Clients*, 13 LAW & INEQ. 77 (1994).

69. BARBARA A. CURRAN & CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1990'S* 1 (Am. Bar Found. 1994).

70. Eugene Mooney, *Legal Services in Appalachia*, Panel on Legal Services for the Rural Poor (1965) in CONFERENCE PROCEEDINGS AT NATIONAL CONFERENCE ON LAW AND POVERTY, June 23-25, at 90.

71. CURRAN & CARSON, *supra* note 69, at 25.

72. Houseman, *supra* note 26, at 375.

73. *Delivery Systems Study*, *supra* note 34, at 2.

74. *Id.*

75. *Id.*

legal services than they otherwise would through establishing a limited number of staffed offices in the geographical area to be served.<sup>76</sup>

Many legal problems encountered by individuals may be resolved relatively quickly with limited representation.<sup>77</sup> According to the most recent statistics from the Legal Services Corporation, 39.3 percent of cases handled by legal services programs were closed with counsel and advice, 20.2 percent by brief service and 12.1 percent by referral after legal assessment.<sup>78</sup> However, intake in person can often result in delay.

Many legal services programs have developed systems for providing brief advice and counseling to clients through the use of legal hotlines and innovative approaches to conducting client intake.<sup>79</sup> While technological innovations<sup>80</sup> (such as videotelephones, hotlines, pro se centers and centralized intake) can offer some relief for underfunded and understaffed offices with a large client base over a large geographical area, especially for handling simple matters or providing self-help advice, they are not a substitute for vigorous and effective lawyering for poor people.<sup>81</sup> Hotlines may not be appropriate substitutes for all client groups.<sup>82</sup>

To be effective advocates for the poor, there must be a presence in the community; clients need a place to meet and

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76. *Id.*

77. Michael Millemann, Nathalie Gilfrich & Richard Granat, *Rethinking the Full-Service Legal Representational Model: A Maryland Experiment*, 30 CLEARINGHOUSE REV. 1178, 1179 (1997).

78. *LSC Statistics, 1998 Case Services: Reasons for Closure and Legal Problem Type* (Legal Services Corp.), at [http://www.lsc.gov/pressr/pr\\_cases.htm](http://www.lsc.gov/pressr/pr_cases.htm).

79. Houseman, *supra* note 26, at 370; *The Span Update*, *supra* note 43, at 24-30; Susan Sebok, *Intake Becomes Outstanding with Efficient, Cost-Effective Legal Hotlines*, 30 CLEARINGHOUSE REV. 429, 429 (1996).

80. Michael Genz, *Technology and Client Community Access to Legal Services—Suggestive Scenarios on Community Legal Education, Intake and Referral and Pro Se*, 5 UDC/DCSL L. REV. 225 (2000).

81. David S. Udell, *The Legal Services Restrictions: Lawyers in Florida, New York, Virginia, and Oregon Describe Costs* 17 YALE L. & POL'Y REV. 337, 349-350 (1998).

82. Preliminary results from a pre-test suggest that that some types of clients may experience less successful outcomes than others when using a hotline, including those less able to follow through with advice by virtue of their age, limited education, low incomes and other factors. Jessica Pearson & Lanae Davis, *The Hotline Outcomes Assessment Study, Final Report-Phase II: Pre-Test of Follow-up Telephone Questionnaire* 24 (September 2000) available at <http://www.equaljustice.org/hotline1/hotlinepretest.pdf>. Further assessment will be necessary to determine the effectiveness of hotlines as an alternative to other methods of providing equal access to legal services for all client groups.

advocates need to participate directly in issues confronting the community.<sup>83</sup> Some method of regular outreach to rural communities is essential to ensure that clients are aware of and have access to the services provided by the program.<sup>84</sup> Exclusive reliance on centralized telephone intake and hotlines for providing brief advice or counsel to clients may exclude some groups completely from access to civil legal services and disproportionately impact on rural communities.<sup>85</sup> Any reconfiguration of an integrated and coordinated civil legal services delivery system must, therefore, be cognizant of the limitations of telephone intake systems and other technological innovations in comparison to their benefits.<sup>86</sup> Any intake system devised must be accessible, flexible and responsive to client needs with supplementary methods targeting particular low-income constituencies.<sup>87</sup>

The active participation of private attorneys to deliver legal services to the poor through organized pro bono panels or through contract arrangements with legal services provider might prove difficult because of the inherent conflicts of interest created in remote areas, where the few members of the private bar may represent opposing parties or act as a part-time prosecutor or judge.<sup>88</sup> The challenge of providing equal access to justice in rural communities is particularly acute and, without careful attention to their needs in the ongoing planning process, we run the risk that their unique needs will be overlooked. Special efforts are required to provide services to hard-to-reach groups, particularly those that live in isolated rural areas.<sup>89</sup>

It has been argued that in order to provide information to all eligible individuals of their legal rights and the availability of legal services, the development of an integrated, comprehensive and collaborative statewide legal services delivery system must ensure

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83. Udell, *supra* note, 81 at 350.

84. *Report of the Task Force*, *supra* note 51, at 11.

85. While nearly 94% of all households in the United States have access to telephone service today, there remain unserved and underserved areas including Indian reservations where telephone access fall under 50% in many instances and even under 30%. Commissioner Gloria Tristani, *Statement Re: Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas*. CC Docket No. 96-45, at <http://www.fcc.gov/Speeches/Tristani/Statements/stgt924.txt>.

86. Houseman, *supra* note 26, at 403.

87. *Id.* at 404.

88. *Delivery Systems Study*, *supra* note 34, at 32.

89. *Id.* at 36.

that there is regular and systematic outreach targeted at all low-income groups throughout the state, including those isolated by reason of their remote locations.<sup>90</sup>

Discussion regarding the most appropriate and efficient model for the effective delivery of federally-funded civil legal assistance to the poor have been a part of the policy debate regarding the legal services program since its introduction within the Office of Economic Opportunity in 1965.<sup>91</sup> As states continue to engage in an ongoing planning process on the delivery of legal services to the poor, they must remain sensitive to methods to ensure access to legal services by the poor and the manner in which barriers to such access may be minimized. The Corporation has an obligation to facilitate, encourage and support alternative delivery systems to the rural poor. Such a recommendation made in 1978<sup>92</sup> is still applicable today. The Legal Services Corporation, as part of its State Planning Initiative, has communicated its expectation that a statewide civil legal services delivery system be developed and continued to provide:

- 1) relative equity of client access to the civil legal services delivery system throughout the state;
- 2) relative equity in the availability of the full range of client service capacities necessary to meet the full continuum of client legal needs regardless of where in the state the clients live;
- 3) relative equity in the capacity to serve client communities in all of their diversity; and
- 4) relative equity in the investment of civil equal justice resources (federal, state, private and in-kind/pro bono) throughout the state.<sup>93</sup>

This holds the promise of encouraging all stakeholders within each state—including the leaders of civil legal service providers, pro bono programs, law schools, the bench and bar as well interested community organizations—to become engaged in conscious and deliberate planning to achieve “comprehensive,

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90. Houseman, *supra* note 26, at 399.

91. THE DELIVERY SYSTEMS STUDY, A POLICY REPORT TO THE CONGRESS AND THE PRESIDENT OF THE UNITED STATES 2 (Legal Services Corp., June, 1980).

92. *Report of the Task Force*, *supra* note 51, at 15.

93. Youells, *supra* note 63, at 2.

integrated, and client-centered state justice communities.”<sup>94</sup> Future planning efforts for civil legal services to the poor in each state must, therefore, take seriously the issue of equitable access to legal services by the poor, regardless of geographical location.

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94. *Building State Justice Communities*, *supra* note 61, at 3.