

APPENDIX C

Moving Beyond Anecdotes: The Washington State Civil Legal Needs Study

by Justice Charles W. Johnson and Judge Mary Kay Becker

We are privileged to have co-chaired our state Supreme Court's Task Force on Civil Equal Justice Funding since its establishment on November 1, 2001. The task force is charged with finding solutions to the difficult and continuing problem of inadequate funding for the programs that provide civil legal services to low-income and vulnerable people in our state. The task force oversees completion of a Civil Legal Needs Study; establishes an appropriate level of funding for civil equal justice services; makes recommendations for funding strategies; and makes recommendations for funding administration and oversight.

This challenge is a new one for this Court, and one that we are deeply committed to addressing. But while there is general understanding and agreement by the members of the Court and the task force that the need for these services has reached critical levels, none of us was prepared for the alarming results of the task force's recently released Washington State Civil Legal Needs Study. The findings are disturbing, not only in terms of the extent of the problem, but also in terms of the tragic and heartbreaking impact on individuals and families when they cannot get legal assistance for the most basic of human needs. The study is a wakeup call for all of us who believe in our democracy's promise of equal justice under the law. As documented by the study, that promise is elusive for many.

Why do we need a civil legal needs study?

It is undisputed that the civil equal justice services in our state are inadequate to serve the need. Staffed legal-services programs and programs that utilize volunteer attorneys to provide civil legal services to low-income people can address only a small fraction of the needs of the poor, which for most programs include only those clients with incomes at or below 125 percent of the federal poverty level (FPL).

It also is undisputed that the poverty population continues to increase. Washington state has approximately 1,039,000 low-income residents living at or below 125 percent of the FPL. Washington ranked third in poverty growth rate over the past decade, with a 46 percent increase in the number of people living in poverty since 1990. Statewide, 13.2 percent of Washington state's census-based population is low-income.

That said, financial support for civil equal justice services continues to erode. We know how many low-income people receive services and

which services they receive; and we also have a good idea of the number of people who are turned away. Indeed, the civil equal justice programs in our state estimate that over the past decade they have turned away four out of every five eligible low-income clients. Given this continuing crisis, proposals for conducting a civil legal needs study in this state historically have been rejected as being an unnecessary use of scarce resources — resources that could better be utilized to pay for legal services for low-income clients.

The Task Force on Civil Equal Justice Funding is charged with taking a fresh and long-term approach to recommending solutions to the problem of inadequate funding for these services. To do that effectively, we need solid documentation of the extent of the need to enable us to establish an appropriate level of funding for state-supported civil equal justice services. The Washington State Civil Legal Needs Study is the first comprehensive effort in our state's history to provide this documentation of the types of civil legal needs experienced by low-income people, and the first study to explore the consequences for low-income people and the justice system.

The task force adopted a three-part approach to collecting this data, drawing on the best practices of two previous major legal-needs studies — a national study conducted by the American Bar Association in 1994, and a study conducted in Oregon in 2000. We commissioned a field survey of in-depth interviews of members of 15 "demographic cluster groups," similar to that of Oregon, and simultaneously commissioned a telephone survey of randomly chosen households, similar to that used by the American Bar Association. To these were added a new survey, one seeking anecdotal input from a broad array of legal and social-services professionals.

What do the findings tell us?

The data from the nearly 2,100 face-to-face and telephone interviews was analyzed and compiled into 12 key findings, followed by a discussion of supporting data. These findings paint a troubling picture. Many thousands of our state's most vulnerable residents have serious legal problems and cannot get any help in resolving them. Many don't even realize their situations have a legal dimension. Others don't know where to seek help or are too overwhelmed to try. Meanwhile, they are systematically denied the ability to assert and enforce fundamental legal rights, and forced to live with the consequences. The findings are predictable in many ways but also contain some surprises. Following are some of the study's salient points.

How great is the need in Washington state? Approximately 87 percent of low-income households experienced at least one civil legal need during the previous year, resulting in an aggregate of more than one million important problems annually.

Who gets assistance and who doesn't? Only 12 percent of low-income people were able to secure advice or representation from an attorney. Even problems characterized as "extremely important" by the households themselves, which usually involved housing conditions, access to or conditions of employment, or other basic needs, got attention only 15 percent of the time.

Do legal needs differ among women, minorities, and other groups? Domestic-abuse survivors, the vast majority of whom are women, have the highest per-capita rate of legal problems among all demographic cluster groups (5.6 percent vs. 3.3 percent for all households with a legal problem).

What kinds of legal needs do low-income people have? The greatest number of legal issues experienced by low-income people involve matters relating to housing. The overriding perception among the legal and social services professionals surveyed was that family law was the most prevalent. While the study confirms that family law is one of the areas of significant legal need, it accounts for only 13-14 percent of legal issues. And significantly, low-income people are more likely to get an attorney's help for family issues (30 percent) than for any other issue (less than 10 percent).

How do the legal needs of different income groups compare? There are significant differences in the number of legal problems experienced by low-income people as compared to higher-income households. For example, low-income households experience nearly three times as many issues relating to substandard housing conditions, at least twice as many issues relating to the ability to secure and maintain essential utilities, and four times as many discrimination-related issues.

How often is discrimination part of the problem? Discrimination is pervasive — one in four legal problems is perceived to have a discrimination component. Discrimination appears in nearly every category of legal problems, and accounts for half of employment and health issues, and nearly 15 percent of housing-relating issues. (It should be noted that only those claims that appeared to the reviewing attorney for this study to meet applicable legal standards for one or more types of actionable discrimination were entered into the database.)

Do legal needs differ based on where people live? The field survey allowed for comparative analysis of responses by region and by urban and rural residency. Although there was general consistency across the regions, there were some notable differences, including the fact that households in the North Central region report nearly twice the percentage of immigration-related problems as households in other regions. This finding reflects the changing demographics of this area, particularly immigration of Latinos.

Does knowledge of, and access to, legal resources differ by where people live? Even though legal problems do not vary significantly between urban and rural low-income households, urban residents are nearly 30 percent more likely than rural residents to know of free legal services in their areas, including various toll-free telephone "hotlines" for legal assistance. This is particularly true of households in the North Central and South Central regions, which have the highest percentages of households where English is not the primary language.

What happens to those who don't get legal help? Of those who were not able to get legal assistance and look elsewhere for help, 55.5 percent turn to organizations that cannot provide legal advice or assistance. Surprisingly, only 2.6 percent went to law libraries and only 1.3 percent consulted court staff.

Can technology make a difference? The surprising statistic is that nearly half of low-income people have access to computer technology and that 40 percent have the ability to use the Internet. However, only 19 percent of those households know of a website where they can get information or help with civil legal problems.

What are the consequences for low-income people and the justice system? Among those who seek but do not get an attorney's help, only 21 percent feel positively toward the justice system. By contrast, more than half of those who are able to get an attorney's help — whether from legal services or a private attorney — have positive attitudes toward the justice system.

Where do we go from here?

This Task Force on Civil Equal Justice Funding, the Washington State Supreme Court, and others will be examining these findings in the coming months to inform discussions about policy, service delivery, and funding. The study provides stark documentation of the need to increase the capacity of Washington state's legal-services delivery system to address these overwhelming needs. Despite the best efforts of our state's civil legal-services programs and programs that utilize

thousands of volunteer attorneys to provide free legal assistance to low-income people throughout the state, less than 15 percent of low-income people are able to get help with their civil legal problems. And the problem is about to get worse. In the past 36 months, stagnant funding has caused Columbia Legal Services and the Northwest Justice Project, Washington's two statewide staffed legal-services providers, to effectively downsize by 18 full-time attorneys between them (from a starting point of 105 attorneys). Last year, the Legal Foundation of Washington was forced to reduce funding for a number of volunteer attorney programs and other providers of civil legal assistance due to reduced IOLTA income. Finally, Columbia Legal Services and Northwest Justice Project face a \$2 million combined deficit by the end of 2004 and are consequently unable to maintain their already-reduced capacity to deliver critically needed legal assistance. The programs have begun a process to initiate involuntary downsizing (i.e., layoffs) to take effect in the first quarter of 2004.

Every lawyer, judge, and court clerk, and anyone else who serves as a steward of our state's justice system, should read the Washington State Civil Legal Needs Study. It also has important messages for those in our legislative and executive branches of government, for funders, for those who run social- and human-services programs, and for those who develop technologies. It should be featured prominently in all media outlets in our state so that members of the public can better understand the challenges facing our justice system. It should be a tool for us all to use as we work toward the promise of equal justice for all.

The study, in pdf format, can be found online at www.courts.wa.gov/newsinfo/CivilLegalNeeds%20093003.pdf.

Voices from the Task Force

Cowlitz-Wahkiakum Legal Aid was formed in 1999. It runs 20 hours per week, with volunteer attorneys providing legal services. Our area had a legal-services office before funding cutbacks in the mid-'90s, and I think the survey highlights just how desperate the need for legal services is for fundamental legal needs, such as prevention of eviction, access to health and welfare benefits, and protection from domestic violence.

— Angela Warning, Longview

As judges, we have been aware how dire the situation has been for low-income persons with civil legal needs, especially women with young children. With this report, we now have specific information, not

just anecdotal stories, that we can use to verify that our low-income citizens are in desperate need of legal help.

Our counties, Island and San Juan, are small and isolated, yet we experience the same problems, although in smaller numbers, as the larger counties do. We have fewer resources, however, to address these problems. I firmly believe that people want to help. This report gives us the tools that we can use to ask for that help from our county and city government, our Navy community, and our citizens. We plan to gather leaders from these areas into a task force to address these issues, using the Civil Legal Needs Study as a guide. Thank you for this invaluable tool.

— Vickie I. Churchill, Judge, Island/San Juan County Superior Court

The Civil Legal Needs Study is important, because it shows how big the problem is and documents the needs for funding. At the Office of Administrative Hearings, we handled more than 65,000 appeals last year on issues such as unemployment, child support, or types of public assistance. Most appellants appear pro se. While many cases do not require legal representation, it is essential to have civil legal-services organizations available to screen and provide assistance in the cases where lawyers are needed. The study makes the case for funding civil legal services. While we may have known this anecdotally, now we have documentation.

But the study also was full of surprises. The conventional wisdom was that the greatest needs would be in family law. Instead, we were surprised to learn that the greatest need for representation is in housing, and that needs for employment law were almost as high as family law. Many findings have strong implications for how we should structure services to best reach people and meet their needs.

The study also has implications for the credibility of the overall justice system in America. For those low-income households who got help from an attorney, 54 percent were positive and only 28 percent were negative about the justice system. But if they sought help from an attorney and didn't get it, 70 percent were negative and only 20 percent positive. Unless we can do a better job of providing access to attorneys, we will destroy respect for the justice system.

— Art Wang, Chief Judge, Office of Administrative Hearings

Legal Services for seniors and the associated practice of elder law have become specialized and more necessary than ever. As we get older, there is more personal involvement with civil legal services through

interactions with government rules, programs, and our healthcare needs. It ain't easy growing old. I get any phone call that comes to the agency in which people use the term law, lawsuit, probate, will, estate, and so on. So I know the need exists.

Being able to demonstrate it has been a harder problem. With the Civil Legal Needs Study, I will be able to defend and hopefully increase the time and expenditure of Older Americans Act money on legal services.

In addition, it gives us leverage to continue to work on the guardianship system, the physical access to the courts, and the impact of agency rules on long-term care for seniors.

— Hank Hibbard, Legal Services Developer under the Older Americans Act

The Civil Legal Needs Study presents a dramatic description of the extent to which legal services are not reaching many of the people in our state. This study is important, because it confirms what many of us have sensed for a long time but have been unable to document in a coherent format.

The trial courts struggle each day to provide a forum for the resolution of disputes, the enforcement of our laws, and the protection of our people. That struggle is made more difficult by the constant reduction in resources, and the significant increase in cases that come into the courts without the involvement of lawyers, such as domestic violence and family matters. In the less populated and more rural counties, such as Yakima, the situation is complicated even further by the lack of transportation and communication systems that would permit greater access to justice, and by the existence of transient populations that make service delivery more problematic and challenging. Furthermore, the rural areas receive less publicity and attention on a statewide basis and traditionally are underfunded, even though the needs are as great as those of bigger cities and counties.

With the completion of the Civil Legal Needs Study, we now have a credible tool that we can use to determine how we should allocate our existing resources, and how we can make the case for receiving an increase in resources from the public and private sectors.

— Mike Schwab, Judge, Yakima County Superior Court

The question has been raised, should we regard the provision of civil legal services for the poor as part of the central mission of state courts? My answer is, how can we not? We have progressive statutes

providing legal remedies for many of the problems experienced by people who responded to our survey — for example, landlord-tenant disputes, domestic violence, and consumer fraud. We have fine courts with honest judges who try hard to reach just results in the cases that come before them. The people identified in our survey pay their share of taxes to support the salaries of court personnel and for facilities in which the courts operate. How do they benefit in return if their poverty prevents them from enforcing their rights under the statutes, and from bringing their cases before the court?

In earlier eras, poverty, lack of educational opportunity, gender, or ethnic background would have blocked many of us from achieving our present positions as judges and lawyers. We are here now because of the collective efforts of others in the past to make equal justice under the law a reality. To assure reliable access to the courts for the poor is one way we can carry on that tradition in our own time.

— Judge Mary Kay Becker, remarks to the Board for Judicial Administration, October 17, 2003