



**U.S. Department of Justice's
National Institute of Justice and Office for Access to Justice
with the National Science Foundation**

**White House Legal Aid Interagency Roundtable:
Civil Legal Aid Research Workshop Report**



February 2016

AUTHORS' NOTE

A thoughtful and dynamic group of experts assembled in May 2015 for a two-day workshop to discuss a research agenda and federal priorities for civil legal aid. These experts engaged in lively discussions, sparked new ideas, and put forth many recommendations to the representatives from the White House Legal Aid Interagency Roundtable. We extend our sincere thanks to all of the participants for taking time out of their busy schedules to attend and so fully engage.

This meeting was a true collaboration among the U.S. Department of Justice's Office for Access to Justice (ATJ), the U.S. Department of Justice's National Institute of Justice (NIJ), and the National Science Foundation (NSF). We would like to thank our colleagues Maureen McGough, John Picarelli, and Seri Irazola from NIJ for their partnership and support. We also thank the co-directors of the NSF's Law and Social Sciences Program, Jon Gould and Helena Silverstein for their invaluable expertise on social science and justice and their knowledge of the legal research community.

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While this report is primarily a summary of the discussions, in some instances we have included participants' statements unedited. The recommendations, points of view, and opinions contained in the report are those of the experts and do not necessarily represent the views of the authors or the official position or policies of the U.S. Department of Justice or the National Science Foundation.

For more information about:

- The Office for Access to Justice, please visit www.justice.gov/atj/
- The National Institute of Justice, please visit www.nij.gov
- The National Science Foundation, please visit www.nsf.gov
- The White House Legal Aid Interagency Roundtable, please visit <http://www.justice.gov/lair>

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This report is available online at www.justice.gov/lair/select-publications-and-research.

EXECUTIVE SUMMARY

On May 20 – 21, 2015, the U.S. Department of Justice’s Office for Access to Justice (ATJ) and National Institute of Justice (NIJ), in collaboration with the National Science Foundation (NSF), hosted a Civil Legal Aid Research Workshop.¹ The workshop was designed to help create a civil legal aid research agenda and identify federal priorities on civil legal aid for the conveners and the White House Legal Aid Interagency Roundtable (WH-LAIR).²

The workshop brought together an Expert Working Group (EWG) of approximately 40 domestic and international researchers and practitioners to discuss the existing literature and research gaps concerning civil legal aid and its intersection with public safety and criminal justice.³ The workshop accomplished three goals.

First, it assisted NIJ to identify a civil legal aid research agenda in anticipation of possible dedicated funding of this work. By its current authority, NIJ is called to “engage in and encourage research and development to improve and strengthen the criminal justice system *and related aspects of the civil justice system.*”⁴ The 2017 President’s Budget requests \$2.7 million for a proposed Civil Legal Aid Research Institute housed at NIJ.⁵ If the funding request is approved by Congress, this Civil Legal Aid Research Institute would be tasked with coordinating the U.S. Department of Justice’s efforts to develop a better understanding of the policy issues related to civil legal aid, to improve research and data collection, and to provide policy makers with more timely and detailed data to support their efforts to improve the nation’s civil legal aid programs.

Second, the workshop enabled WH-LAIR agencies to hear from civil legal aid experts on the effectiveness of civil legal aid at the intersection with public safety and criminal justice and the critical need for research and evaluation in this arena. This is important because WH-LAIR has been encouraging research and evaluation with respect to existing federal programs involving civil legal aid. In addition, President Obama explicitly mandated the WH-LAIR to “advance relevant evidence-based research, data collection, and analysis of civil legal aid and indigent defense, and promulgate best practices.”⁶ Furthermore, the September 2015 Executive Order on Using Behavioral Insights to Better Serve the American People encourages executive departments and agencies to “strengthen agency relationships with the research community to better use empirical findings from the behavioral sciences.”⁷ The workshop and this report assist WH-LAIR in fulfilling these obligations.⁸

Finally, the workshop helped spur domestic activities to implement the United Nations’ (UN) call for indicators on access to justice as a development and anti-poverty goal. On September 25, 2015, the UN unanimously adopted the 2030 Agenda on Sustainable Development (Agenda), which included 17 Global Goals to end

¹ The workshop’s agenda is reproduced at Appendix A.

² The Presidential Memorandum formally establishing the White House Legal Aid Interagency Roundtable (WH-LAIR) is reproduced at Appendix C. The WH-LAIR’s toolkit can be found at: <http://www.justice.gov/lair>.

³ The members of the Expert Working Group and the federal participants in the Workshop are listed in Appendix B.

⁴ The National Institute of Justice’s authorizing legislation is found at 42 U.S.C. §§ 3721 – 3723.

⁵ Both the President’s 2015 Budget and 2016 Budget had requested the same, but Congress did not appropriate the funds.

⁶ See Presidential Memorandum – Establishment of the White House Legal Aid Interagency Roundtable (WH-LAIR), Section 4(v), reproduced at Appendix C.

⁷ Executive Order 13707, Using Behavioral Science Insights to Better Serve the American People, Sec. 1(a)(iv) (Sept. 15, 2015).

⁸ Appendix D includes a sample of federally funded or authored research on civil legal aid and the WH-LAIR agencies’ research programs.

extreme poverty. Among these goals, Global Goal 16 calls on countries to: “Promote peaceful and inclusive societies for sustainable development, *provide access to justice for all* and build effective, accountable and inclusive institutions at all levels.”⁹ To track progress on these goals, the Agenda calls for the creation of global, regional, and national indicators that will be in place for the next 15 years. In anticipation of the UN’s inclusion of Global Goal 16 in the Agenda, the Expert Working Group (EWG) considered how to track access to justice and which indicators could be used for that purpose.¹⁰

Over the two days, participants engaged in facilitated discussions on the following topics:

- ✚ Measuring Access to Justice in the Civil Context
- ✚ Civil Legal Aid as a Necessary Service for the Reentry Population
- ✚ Human Trafficking and Civil Legal Aid
- ✚ Consumer Protection and Civil Legal Aid
- ✚ Elder Abuse and Civil Legal Aid
- ✚ Domestic Violence and Civil Legal Aid

Each topic opened with presentations by four or five experts, a brief overview of related federal activity presented by a WH-LAIR representative, and a facilitated discussion within the EWG. At the conclusion of the discussions, participants were divided into six breakout groups to identify specific, actionable recommendations for the conveners and WH-LAIR. These breakout groups aligned with the panel topics, and participants were asked to draft recommendations that could advance federal efforts to identify research gaps in the field and set civil legal aid priorities.

This report summarizes the presentations, discussions, and recommendations organized by topic.

The conveners were pleased to foster cooperation between domestic and international researchers and practitioners in the civil legal aid field. The lively exchange of ideas at the workshop was a measure of this new cooperation, but so too are the many contacts that have continued after the meeting. This report provides the federal government, researchers, and civil legal aid community with recommendations that can help steer the direction of civil legal aid research and potential reform strategies for years to come.

⁹ See General Assembly resolution 70/1, Transforming our world: the 2030 Agenda for Sustainable Development A/RES/70/1, (Oct. 21, 2015) (emphasis added), *available at* http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

¹⁰ The anticipated process to establish the indicators for Global Goal 16 is included in Appendix E.

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MEASURING ACCESS TO JUSTICE IN THE CIVIL CONTEXT

The Expert Working Group (EWG) began with presentations by five experts who spoke about the ongoing domestic and international efforts to measure access to justice in the civil context, including the development of new methodologies and indices. The panel also discussed the United Nations (UN) activity to establish the post-2015 Sustainable Development Goals (SDGs or Global Goals) to end extreme poverty and the inclusion of access to justice in that framework.

History and Current State of Civil Legal Aid Research

Professor Rebecca Sandefur from the American Bar Foundation and the University of Illinois opened the panel by providing the historical context of civil legal aid research in the United States. She explained that around 1982, the Legal Services Corporation's research office was closed due to funding shortages. As a result, little was done to advance a civil legal aid research agenda until about five years ago when grassroots efforts began to coalesce around the topic. However, research activity remains limited and fragmented, with no permanent source of funding or infrastructure to support this work.¹¹

She also provided an overview of her findings on the utilization rates of legal services. Her research indicates that while two-thirds of adults have problems that can be resolved through a legal intervention, very few access the justice system.¹² The research further indicates that the most common reason why people do not access or seek legal assistance is because they are unaware that their problems are legal in nature. They may go to social service providers, but rarely seek legal counsel or solutions.¹³ This contradicts the widely held belief that the primary reason individuals do not seek legal assistance is due to cost concerns. She explained that while cost is a major issue, it is only the fourth or fifth most common reason why people do not seek legal assistance.¹⁴ And relatedly, she confirmed that the United States funds civil legal aid at one of the lowest levels among Western countries.

In order to have an even better grasp on the need, she urged research and study on the following topics: how many legal needs go unmet; what are the consequences of those unmet legal needs; how to scale up small civil legal aid projects that are already in the pipeline; and how to repurpose existing data to support and engage with small-scale civil legal aid projects.

Comparative Perspective: The Approach to Civil Legal Aid Research in Australia

Suzie Forell, Principal Researcher of the Law & Justice Foundation of New South Wales, Australia, (LJF) provided an international comparison on access to justice research by describing efforts in Australia to study the

¹¹ A notable effort to improve this situation is the National Legal Aid and Defender Association's public legal aid research database, available at <http://legalaidresearch.org>.

¹² See Rebecca Sandefur and Aaron Smyth, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project*, American Bar Foundation, American Bar Foundation 16 (2011), available at http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf; Rebecca L. Sandefur (forthcoming) "What We Know and Need to Know about the Legal Needs of the Public," University of South Carolina Law Review; Rebecca L. Sandefur (forthcoming) "Bridging the Gap: Rethinking Outreach for Greater Access to Justice," University of Arkansas at Little Rock Law Review; Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, American Bar Foundation (2014), available at http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf.

¹³ *Id.*

¹⁴ *Id.*

civil legal aid need and impact. She explained that the Australian legal aid community uses her organization's research to inform their decision-making.¹⁵ As such, LJF's research has focused on identifying:

- ✚ The prevalence, distribution, and consequences of legal problems;
- ✚ What, if anything, people do about their legal problems and relatedly, to whom they turn for help or the reasons for inaction;
- ✚ The barriers people face in accessing legal help and resolving issues; and
- ✚ The implication of these findings for legal assistance services.

LJF's key findings have confirmed that legal problems are widespread and that half of the population has legal needs.¹⁶ The research also found that those most vulnerable to legal problems have less knowledge and fewer resources, and face systemic barriers. Like Professor Sandefur's research in the United States, LJF's research confirmed that in Australia few people with legal problems seek lawyers or legal assistance. LJF's research also demonstrated, however, that some Australians turn to non-legal advisors, who in limited instances have resolved their clients' problems.

As Ms. Forell explained, the need for civil legal aid research – particularly research at the intersection of high legal need and low capability – is ongoing in Australia. This type of research involves system review, provider evaluation, and capacity building. The existing research confirms that civil legal aid should be timely, targeted, appropriate to client need and capability, and combined with other services.¹⁷ Ms. Forell noted that this research might be helpful to the United States in its ongoing efforts to study these problems.

The International Legal Aid Group's Research Efforts

Professor Alan Paterson, Chair of the International Legal Aid Group (ILAG), provided an overview of ILAG and its activities to support evidence-based research on the need for civil legal aid and its effectiveness.¹⁸ ILAG is a network of policymakers and academic researchers, and its mission is to improve evidence-based policymaking in poverty legal services through research on access to justice.

Worldwide, ILAG participants have completed 26 large-scale studies of public justiciable needs.¹⁹ This research confirms that many people do not seek legal assistance nor do they handle their legal needs on their own – in fact, they only obtain a lawyer in a small percentage of cases. The dominant factor determining people's response to civil legal problems is how people characterize the problems—as legal or not legal. Again, as with Professor Sandefur's findings, this research has demonstrated that the high cost of legal services is not the primary reason people do not seek legal assistance. Professor Paterson also noted that this research has confirmed that early intervention is important to obtain good outcomes for clients.

He provided some examples of ongoing research efforts with preliminary results: one on the use of technology to enhance service delivery in the Netherlands, and another on the importance of peer review and quality in the

¹⁵ See Law and Justice Foundation of New South Wales website: <http://www.lawfoundation.net.au/>.

¹⁶ See Coumarelos, Macourt, People et al., Law and Justice Foundation of NSW, Sydney, *Legal Australia-Wide (LAW) Survey: Legal Need in Australia* (2012), available at [http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf).

¹⁷ See Pascoe Pleasence, Christine Coumarelos, Suzie Forell & Hugh McDonald, *Reshaping Legal Assistance Services: Building on the evidence base* (2014), available at [http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf).

¹⁸ See The International Legal Aid Group's website: <http://www.internationallegalaidgroup.org>.

¹⁹ See Pascoe Pleasence, Nigel J. Balmer, and Rebecca Sandefur, *Paths to Justice: a Past, Present and Future Roadmap*, UCL Centre for Empirical Legal Studies, London (2013), available at <http://www.nuffieldfoundation.org/sites/default/files/files/PTJ%20Roadmap%20NUFFIELD%20Published.pdf>.

United Kingdom, Chile, and China.²⁰ He remarked that ILAG's efforts to contribute to research on legal aid match well with the purposes of the workshop and reminded the EWG of the opportunities to collaborate with researchers in other countries to grow the evidence base.

The Role of Indices: The Justice Index

The National Center for Access to Justice at Cardozo Law School (NCAJ) launched the Justice Index in 2014 to draw on the power of data and indicators to increase access to justice in the United States.²¹ The Justice Index creates a state-by-state picture of civil legal aid – a snapshot of the traditional assistance provided by civil legal aid programs and of new models of assistance located not only in legal aid programs but in courts and other settings.

Professor David Udell, the Executive Director of NCAJ, explained that the purpose of the Justice Index is to provide courts with indicators and data that promote replication of best practices to increase access to justice. The Justice Index ranks the 50 states and Washington, DC based on their adoption of laws, rules and practices in four categories: (i) number of civil legal aid attorneys, (ii) systems to support self-represented litigants, (iii) systems to support people with limited English proficiency, and (iv) systems to support people with disabilities.

Professor Udell reported that officials in almost every state justice system are engaging with NCAJ and its 2015 Justice Index research initiative. He further noted that officials in several states have reported using the Justice Index indicators to educate their court staff about best practices. Some state officials have sought NCAJ's assistance to set a reform agenda relying on the Justice Index criteria. According to Professor Udell, credible comparisons force a public conversation that cannot be ignored and create incentives for officials and the public to bring about reform.

Post-2015 Sustainable Development Goals and Global Goal 16 on Access to Justice

Professor Udell then discussed the UN's post-2015 Sustainable Development Goals, known as the Global Goals, and the inclusion of access to justice in Global Goal 16, and expressed his hope that officials in the WH-LAIR agencies will draw on their expertise (and on existing systems of indicators like NCAJ's Justice Index and the World Justice Project's Rule of Law Index) to create more indicators to measure access to justice in the United States.

He noted that the previous development goals, the Millennium Development Goals (MDGs), were established in 2000 to track and promote progress in the developing world, but the MDGs did not include access to justice for a variety of reasons, including that it was considered too difficult to measure.²² With the expiration of the MDGs on the horizon, countries around the world, including the U.S., agreed on the UN's new Global Goals, and agreed to apply them universally to help end extreme poverty in both developing and developed countries.

Notably, Global Goal 16 includes "access to justice". Professor Udell explained that it is included thanks to growing awareness that most things can be measured and to the emergence of the global access to justice movement over the past ten years, with its emphasis on "legal empowerment of the poor" as a strategy for

²⁰ See Alan Paterson and Roger Smith (2014), *Face to Face Legal Services and Their Alternatives: Global Lessons from the Digital Revolution*, available at http://www.ilagnet.org/index.php?option=com_content&view=article&id=33:auto-generate-from-title&catid=12&Itemid=122.

²¹ The Justice Index was launched with pro bono research support from law firms, expert input from bar associations and other entities, and pro bono tech support from corporations, see <http://www.justiceindex.org/>. Relatedly, the World Justice Project publishes the "Rule of Law Index," which provides original, impartial data gathered through survey questioning of experts and lay people on how the rule of law is experienced by the general public in 102 countries around the world. See <http://worldjusticeproject.org/rule-of-law-index>.

²² See Risa Kaufman and David Udell, "The Global Access to Justice Goal," available at <http://ncforaj.org/2015/08/03/the-global-access-to-justice-goal/>.

ending poverty.²³ He noted that the Secretary General, in the Synthesis Report supporting the Global Goals, has described justice as central to the Global Goals, important both as an independent goal and as a predicate for accomplishing other anti-poverty Global Goals.²⁴ He remarked this approach paralleled the WH-LAIR activity of including legal services among the range of supportive services provided in federal programs that help the vulnerable and underserved.

Following Professor Udell's presentation, Dr. Jennifer Park, Senior Statistician with the U.S. Office of Management and Budget (OMB) and a key member of the U.S. team participating in the development of these indicators, provided valuable insight on the process to establish them. She explained that while the MDGs have been monitored over the past 15 years, they were limited in application and scope because they were developed outside the context of measurability. Dr. Park explained that this is in contrast to the current effort to establish the SDGs' indicators because the statistical community has been involved from the start in identifying the 17 Global Goals and 169 associated targets.

She explained that the UN Statistical Commission is managing the process to help identify and select indicators to measure progress across these goals and targets as well as the process to monitor progress against those indicators. She noted that by leveraging official statistics, involving stakeholders, and pulling in big data, the selection of indicators can be done in a transparent and accessible way.

The indicators will be used at three levels:

- ✚ At an international level, for comparison among member states;²⁵
- ✚ At a regional level, using supplemental indicators more relevant for a given region – such as the Americas; and
- ✚ At the national level, with additional indicators that are most meaningful to measure access to justice in the United States.

Dr. Park explained that researchers will have the opportunity to be involved in identifying what these indicators should look like at all levels. Within the federal government, the U.S. Department of State is taking the lead in organizing the U.S. government's views by working with the 127 programs that produce federal statistics and other stakeholders.

Dr. Park also explained that the indicator formation process will naturally involve input from a variety of actors, including the UN, member countries, regional bodies, and individual experts. The EWG was informed that the U.S. Government will look to the expert community for feedback on the indicator formation process to ensure that the chosen indicators are relevant and useful. She then explained that the United States is approaching this process openly and intends to monitor its domestic progress at the global, regional, and, perhaps most importantly, national levels in a transparent way. Dr. Park cautioned that the national level indicators should be readily accessible to the public and that the EWG should keep this in mind. The final process for gathering input continues to be developed and will be posted on the UN Statistical Division's web site.

²³ For more information on the U.N.'s Initiative on Legal Empowerment of the Poor, see http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_justice_law/legal_empowerment.html.

²⁴ The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet: Synthesis Report of the Secretary-General On the Post-2015 Agenda (Dec. 2014), available at http://www.un.org/disabilities/documents/reports/SG_Synthesis_Report_Road_to_Dignity_by_2030.pdf.

²⁵ The international or global indicators will be finalized by March 2016. See Appendix E.

Discussion

History of civil legal aid and research. The EWG discussed the historical context behind losing the research arm of the Legal Services Corporation in the 1980s and the resulting dearth of civil legal aid research and evaluation. One expert countered that narrative by discussing a 1994 civil legal aid study that established a methodology which was used over 30 times in reports done in state settings.²⁶ He asserted that those “legal needs studies” and others including cost-benefit analysis have had positive impacts on state efforts to expand funding for civil legal aid. But another expert cautioned that those studies were not scientific and not peer reviewed; so while they may have had a successful advocacy impact in some settings, they cannot be relied upon by the scientific community. She explained that that is an area of research that has remained dormant and is in great need.

Impact of politics on research and evaluation. One expert cautioned that research and evaluation should be depoliticized. The EWG discussed ways to achieve that goal – including data collection of basic targets, such as the number of individuals who are unrepresented in state justice systems, and collecting data transparently so that the interpretation will be neutral. One expert suggested using independent bodies to perform “legal needs assessments,” which was the case in the United Kingdom until recently had an independent body that performed this work. He also suggested that the United States needs to engage in greater public education and awareness of civil legal aid.

How to prioritize research agenda. The EWG discussed priorities for a civil legal aid research agenda. Experts discussed the need to identify timing of the legal intervention; the effectiveness and impact of the particular intervention; the factors that are preventing people from using civil legal aid; and ways in which proposed innovative models and new technologies can expand the delivery of civil legal aid.

Global Goal 16 indicators and data to measure access to justice. The EWG was particularly interested in opportunities to provide feedback to OMB and the U.S. government on indicator formation around Global Goal 16.

Recommendations

The breakout group on measuring access to justice in the civil context made the following recommendations:

1. **Create Sound Indicators for Sustainable Development Goals.** The federal government should suggest sound indicators for the SDGs related to civil legal aid. It should ensure that the indicators are concrete and relevant to civil legal aid providers and capture the cascading benefits of legal aid, rather than simply tallying services provided.
2. **Collect data or commission a census of unrepresented litigants.** The Bureau of Justice Statistics or another statistical agency should explore producing a national census of number of unmet civil legal needs, the number of unrepresented civil litigants, the number of litigants with representation, and a description of the types of services provided to litigants. This census should interview people and use data maintained by the courts as well as by service providers and other stakeholders. Too little is known about the number of people served by civil legal aid, the size of the unmet need, the types of services actually provided, and the outcomes of these services.

²⁶ The Comprehensive Legal Needs Study funded by the American Bar Association and released in 1994 is available at http://www.americanbar.org/content/dam/aba/migrated/legal services/downloads/sclaid/legalneedstudy_authcheckdam.pdf.

3. **Compile a list of existing federally-funded or produced civil legal aid research.** The federal government should compile an inventory of civil legal aid research, documenting relevant research conducted or funded by federal agencies.²⁷
4. **Fund research on the benefits of early intervention by civil legal aid.** Future research should help to identify and quantify the cascading benefits of early intervention by civil legal aid. Such research should also examine the consequences of inaction for individuals and communities in the face of the civil legal aid crisis.
5. **Fund research into use of non-lawyers in service delivery.** Research examining how legal services could be effectively re- and/or de-regulated to increase access while preserving consumer protections should also be funded.
6. **Incentivize researcher-legal aid provider cooperation.** Incentivize researcher-provider cooperation so that researchers will have access to sufficient data for study and feedback on the appropriate problems and issues to examine.
7. **Encourage holistic services.** The federal government should encourage a holistic approach to civil legal aid by helping to promote multidisciplinary teams of lawyers and other professionals and involving non-lawyers in service delivery. This is especially important as lawyers perform more “unbundled services”.
8. **Support experiential education.** The federal government should recognize the growing interest in experiential education in law schools by providing opportunities for law students to assist in providing civil legal aid.
9. **Create a national self-help portal.** The federal government should consider creating a national self-help portal for people with civil legal problems that would provide basic information on legal processes, offer common court forms and directions, and potentially include links to services provided.

²⁷ Appendix D of this report attempts to implement this recommendation.

REENTRY & CIVIL LEGAL AID

Each year, nearly 650,000 individuals are released from state and federal prisons. Another nearly 12 million cycle through local jails, and even more get criminal records without doing time. According to the U.S. Department of Justice's Bureau of Justice Statistics, more than 100 million individuals have a criminal history on file in state records. When reentry fails, the societal and economic costs are high. High rates of recidivism mean more crime, more victims and more pressure on an already overburdened and costly criminal justice system.

People with a criminal record frequently encounter significant barriers to securing a job, obtaining housing, and continuing their education. Some employers admit they are unlikely to hire an applicant with a criminal record. Having a record of even a single arrest without a conviction can also profoundly reduce a person's earning capacity. Studies also demonstrate the negative impact of a criminal record in securing housing, education, and credit. These consequences affect adults with a criminal record as well as youth involved in the juvenile justice system.

Legal aid helps the reentry population with all of these problems. For example, legal aid can secure expungement or sealing of records or even a pardon for eligible people, thereby improving prospects for employment, housing, and education. Legal aid can also correct inaccurate criminal records, reinstate a revoked or suspended driver's license, and modify child support orders to more realistic payment obligations.²⁸

This session called upon legal aid experts and researchers to discuss the delivery of civil legal aid for the reentry population and both the existing and needed research on its impact.

Civil Legal Aid Addressing Collateral Consequences of Convictions and Criminal Records

Since the 1990s, Community Legal Services of Philadelphia (CLS) has worked to address collateral consequences of incarceration in response to the community's needs. CLS Litigation Director Sharon Dietrich explained that her office's primary way of mitigating clients' collateral consequences is through clearing criminal records. Criminal records, even without conviction, impact clients' ability to get jobs and secure housing, as the use of background screening by employers, colleges, and landlords has dramatically increased in recent years.²⁹ CLS helps its clients expunge criminal records, correct violations of the Fair Credit Reporting Act (FCRA), and resolve criminal debts such as supervision fees and bail judgments.

CLS also addresses collateral consequences through impact litigation and advocacy.³⁰ It has filed class action lawsuits to seek damages for FCRA violations and challenge the constitutionality of state laws that restrict employment of people with certain criminal records. In addition, CLS engages in advocacy on issues such as broadening expungement laws.

²⁸ See WH-LAIR's case study, *Civil Legal Aid Supports Federal Efforts to Help People with Criminal Records Make a Successful Reentry* (April 2014), available at www.justice.gov/lair/wh-lair-case-studies.

²⁹ See, e.g., Michelle Natividad Rodriguez and Maurice Emsellem, National Employment Law Project, *65 Million Need Not Apply: The Case for Reforming Criminal Background Checks for Employment* (2011), available at http://nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply1.pdf; Rebecca Vallas & Sharon Dietrich, Center for American Progress, *One Strike and You're Out* (2014), available at <https://www.americanprogress.org/issues/criminal-justice/report/2014/12/02/102308/one-strike-and-youre-out/>; Sharon Dietrich, Community Legal Services of Philadelphia, *EEOC's Criminal Record Guidance One Year Later: Lessons from the Community* (2013), available at <http://clsphila.org/sites/default/files/issues/EEOC%20CHR%20guidance%20one%20year%20later%20-%20policy%20paper.pdf>.

³⁰ For more information about CLS's impact work, see <http://clsphila.org/learn-about-issues>.

Ms. Dietrich noted that the research demonstrating that recidivism diminishes over time has been helpful in supporting CLS's reentry work.³¹ She also noted that current policies on the use of criminal records, such as life-long bans, contradict the research findings.³²

The Public Defense Perspective on the Civil Legal Needs of the Reentry Population

Michelle Bonner, Chief Counsel – Defender Legal Services of the National Legal Aid & Defender Association and Co-Chair, of the American Bar Association's Reentry and Collateral Consequences Committee discussed the critical need for civil legal aid to address collateral consequences experienced by the reentry population. Reflecting on her experience as a public defender and a legal services director for a program that served formerly incarcerated women, Ms. Bonner highlighted the top civil legal needs of the reentry population as matters related to: employment, driver license reinstatement, housing, child custody, child support payments, domestic violence, disability benefits, immigration, and education.

Ms. Bonner noted that public defenders often recognize the civil legal needs of their clients and, when possible, participate in initiatives such as the Community-Oriented Defender Network, which promotes defender-civil legal aid collaboration and holistic representation.³³ Yet given funding restrictions, public defender offices usually limit their direct civil legal services to alternatives to incarceration. Communication and coordination between civil legal aid programs and criminal legal aid providers is still generally lacking and urgently needed. Ms. Bonner noted that research on the intersection between civil and criminal legal problems could incentivize advocates to increase collaboration between their respective civil and criminal legal programs. Ms. Bonner also suggested more research on how criminal records affect civil legal challenges, and on the effectiveness of the holistic defense approach.

Impact of Clean Slate Interventions

The Clean Slate Clinic of East Bay Community Law Center (the Clinic) has served almost 10,000 people over the past decade through Clean Slate Intervention, a program that works to clear criminal records through expungement.³⁴ The Clinic's faculty director, Professor Jeffrey Selbin, provided an overview of the clinic's activities and noted that clients often remark that expunging their records restores rights they did not even realize they had.

Professor Selbin described the Clinic's studies on how Clean Slate Intervention affected clients' lives in two areas:

- ✚ **Earnings:** Professor Selbin, together with an economist, is studying the economic impact of the Clean Slate Intervention by looking at pre- and post-intervention earnings. People with criminal records face barriers to employment, but does record clearing result in better employment outcomes? Preliminary evidence suggests that the Clean Slate Intervention stems the decline in earnings and may even boost

³¹ See Alfred Blumstein and Kiminori Nakamura, *Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences*, Final report for the National Institute of Justice Grant #2009-IJ-CX-0008, Washington, DC: U.S. Department of Justice (2012); Alfred Blumstein and Kiminori Nakamura, 'Redemption' in an Era of Widespread Criminal Background Checks, *NIJ Journal*, June 2009; Megan C. Kurlychek, Robert Brame, and Shawn D. Bushway, *Enduring Risk? Old Criminal Records and Short-Term Predictions of Criminal Involvement*, 53 *Crime & Delinq.* 64 (2007).

³² Shawn D. Bushway and Gary Sweeten, *Abolish Lifetime Bans for Ex-Felons*, *Criminology & Public Policy*, Volume:6 Issue:4, Pages:697 to 706 (November 2007).

³³ See National Legal Aid and Defender Association's Community Oriented Defender Network, available at <http://www.nlada100years.org/CODNetwork>; see also, Brenna Center for Justice, Community Oriented Defender Network, available at <https://www.brennancenter.org/analysis/community-oriented-defender-network>.

³⁴ Professor Selbin shared a short video featuring the Clinic, which can be accessed at <http://www.kaltura.com/tiny/aver9>.

earnings. However, the study also found that people with criminal records seek Clean Slate legal remedies after a prolonged period of declining earnings. This finding suggests possible benefits of an earlier intervention by legal service providers and/or expungement by operation of law.³⁵

- ✚ **Dignity:** Professor Selbin, together with a criminologist and the Clinic's executive director, is studying the dignity impact of the Clean Slate intervention. There is a heavy psychosocial toll associated with the degrading experience of arrest and conviction. Professor Selbin analyzed qualitative data on the clients' experience of the intervention. He noted that the findings suggest that how we help people is just as important as what we do. Clients placed high value on some less obvious benefits, such as a sense of relief, a renewed sense of dignity, and personal empowerment. The process, not just the outcome, can serve as a ritual to reintegrate people into the society.

Professor Selbin relayed that these studies provide an initial basis to identify more targeted and effective strategies to facilitate reentry, increase employment prospects, and reduce recidivism.

Researching the Impact of Civil Legal Aid on Child Support Disputes for the Reentry Population

Child support payments have a real impact on the reentry population because child support obligations are not held in abeyance while the paying parent is in prison. As a result, significant debt may accrue, and failure to pay the child support may result in reincarceration under civil contempt laws.³⁶ Professor Tonya Brito of the University of Wisconsin Law School discussed her current research on how legal assistance influences low-income litigants' access to justice in the child support context.

She explained that her research explores *how* legal assistance influences the outcome, rather than *whether* legal assistance affects outcomes. The study is looking at data from two states that offer contrasting models of legal assistance in child support enforcement proceedings: free attorney representation in Wisconsin and limited legal assistance in Illinois.

Preliminary findings from the study showed that parents defending against child support contempt claims rarely get a free attorney even though they are entitled to one under the law in most states, and even though the real threat of prison puts their liberty at stake. Further, the study revealed how non-defense legal professionals think of the role of defense counsel: judges and other attorneys were not troubled by the absence of defense counsel and, in fact, did not believe that defense counsel impacted case outcomes. Professor Brito stated that further research is needed to understand the contributing factors to the low take-up rate of free counsel and what mechanisms can be employed to increase access.

³⁵ Jeffrey Selbin and Justin McCrary, *Got Clean Slate? New Study Suggests that Criminal Record Clearing May Increase Earnings* (unpublished research summary, 2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2486867.

³⁶ See, e.g., Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families*, 15 J. Gender Race & Just. 617 (2012).

Discussion

Expungement laws' variations and policy advocacy. One expert noted that the definition of “expungement” varies across the country and many states lack record sealing or expungement provisions.³⁷ While this creates difficulties for legal service providers, it provides an opportunity for comparative study. The experts agreed that there needs to be more advocacy to broaden record sealing and expungement laws. For example, states can adopt automatic expungement laws that would clear misdemeanor records after a reasonable amount of time has passed.³⁸

Expungement ritual and public ceremony. The EWG commented on the role of ritual or public ceremony involved in expungement. One expert stated that some clients resent redemption ritual because their interactions with the criminal justice system were unfair from the start. Another expert noted that due to racial disparities in the criminal justice system, people of color may have to “jump through additional hoops” in the process and may view a public ceremony as yet another hurdle.

Recommendations

The breakout group on reentry and civil legal aid made the following recommendations:

1. **Examine whether existing rules, regulations, and practices on reentry need to be revised.** Federal agencies should examine their existing rules, regulations, and practices in order to ensure that they are aligned with the Administration’s goals of supporting reintegration of the reentry population – as evidenced by the activity of the Federal Interagency Reentry Council.³⁹
2. **Fund research on the consequences of sealing or expunging criminal records.** What are the consequences of sealing or expunging criminal records? This might include cost-benefit analysis and whether expungement improves employment outcomes.
3. **Fund studies to compare automatic expungement and expungement by application.** What are the relative costs and benefits of automatic expungement and expungement by application? This might include examining whether expungement by application has benefits associated with having someone participate in a public ritual.
4. **Fund research on the timing and type of civil legal aid.** Research questions might include: Is the provision of civil legal aid during incarceration, rather than just post-incarceration, comparatively beneficial? What are the relative benefits and costs of different forms of assistance for the reentry population (e.g., legal aid, self-help, other support and services)?
5. **Fund research on the economic impact of legal aid on the reentry population.** Research questions might include: Do the long-term employment outcomes for the reentry population vary with the provision of civil legal aid?
6. **Articulate a national strategy to address civil legal needs in reentry.** The federal government should clearly articulate a national strategy to address civil legal needs in reentry using a multi-prong strategy that leverages the federal government as convener, funder, and moral authority.

³⁷ An inventory of state-by-state expungement rules compiled by the National Association of Criminal Defense Lawyers is available at <http://www.nacdl.org/rightsrestoration>.

³⁸ Rebecca Vallas and Sharon Dietrich, Center for American Progress, *One Strike and You’re Out* (2014), available at <https://www.americanprogress.org/issues/criminal-justice/report/2014/12/02/102308/one-strike-and-youre-out/>.

³⁹ The federal government’s coordinated effort in this area is exemplified by the works of the Federal Interagency Reentry Council. See <https://csgjusticecenter.org/nrrc/projects/firc/>.

7. **Foster integration of civil and criminal legal services.** As the problems faced by the reentry population do not neatly separate into criminal and civil categories, the federal government should foster integration of civil and criminal legal services and their providers to better serve the reentry population.
8. **Encourage public-private partnerships for successful reentry.** The federal government should encourage public-private partnerships that can create more opportunities for individuals reentering society to make a successful transition.
9. **Provide support to civil legal aid's activities on behalf of the reentry population.** The federal government should expand resources for civil legal aid to address collateral consequences of incarceration in addition to the daily emergency needs that monopolize the use of scarce existing resources (e.g., foreclosure or domestic violence).

HUMAN TRAFFICKING & CIVIL LEGAL AID

Over 20 million men, women, and children around the world, including in the United States, are victimized by forced labor and sex trafficking. Human trafficking is modern day slavery and considered to be one of the fastest growing criminal industries in the world. Many victims are lured with false promises of well-paying jobs or manipulated by people they trust. They are forced or coerced into prostitution, domestic servitude, or other types of forced labor in places like sweatshops, massage parlors, farms, restaurants, hotels, and domestic service. These victims – both U.S. citizens and foreign nationals – typically require a multitude of emergency and long-term services including housing, food, healthcare, mental health and substance abuse treatment, and immigration and other legal assistance.

Legal aid helps trafficking victims access resources needed to regain control of their lives and avoid re-trafficking. Such resources include housing, food stamps, medical assistance, public benefits, education, employment authorization, and name changes. Legal aid also helps immigrant victims obtain immigration relief and remove trafficking-related convictions and other criminal records such as prostitution charges under state law.⁴⁰

This session called upon legal aid experts and researchers to discuss the delivery of civil legal aid for human trafficking victims and both the existing and needed research on its impact.

Who Are the Trafficking Victims?

Dr. Meredith Dank, Senior Research Associate at the Urban Institute's Justice Policy Institute, provided an overview of the characteristics of human trafficking victims. Labor trafficking and sex trafficking victims differ in their type of victimization, their needs, and the community response. But both types of victims share common features in that they belong to hidden populations and rarely self-identify as victims of human trafficking.⁴¹

For labor trafficking, victims are largely foreign born and mostly from Asia and Latin America. In her research, Dr. Dank found that about 71 percent came to the United States on a legal visa, but nearly 70 percent were undocumented at the time of escape.⁴² Traffickers often use the victims' immigration status to further exploit them, in addition to other forms of force, fraud, and coercion.

Sex trafficking victims, on the other hand, tend to be domestic. Traditionally, the research has focused on domestic minors, especially girls, but recent research has shed light on boys and LGBTQ trafficking victims.⁴³ These victims are particularly vulnerable because they are less likely to be identified as sex trafficking victims.

Dr. Dank explained that many trafficking victims of both types have the added vulnerability of being homeless and 70 percent of them have been arrested at least once.⁴⁴ The victims therefore tend to view law enforcement

⁴⁰ See WH-LAIR's case study, *Civil Legal Aid Supports Federal Efforts to Help Human Trafficking Victims* (Feb. 2016), available at www.justice.gov/lair/wh-lair-case-studies.

⁴¹ See, e.g., Colleen Owens and Meredith Dank, *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, 2014, available at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

⁴² *Id.*

⁴³ See Meredith Dank et al, *Surviving the Streets of New York: Experiences of LGBTQ youth, YMSM and YWSW Engaged in Survival Sex*, 2015, available at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000119-Surviving-the-Streets-of-New-York.pdf>.

⁴⁴ See Meredith Dank et al., *Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM and YWSW Who Engage in Survival Sex*, 2015, available at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000424-Locked-In-Interactions-with-the-Criminal-Justice-and-Child-Welfare-Systems-for-LGBTQ-Youth-YMSM-and-YWSW-Who-Engage-in-Survival-Sex.pdf>.

with suspicion. Dr. Dank recommended that more research be conducted on the effects of the criminalization of victims and what is needed to help them assimilate into their communities. She noted that assimilation is difficult when basic needs like shelter are not met. Research also found that not all victims have an interest in pursuing criminal charges against their traffickers; thus, often their civil legal needs are more important. Dr. Dank recommended research to identify the types of legal solutions (criminal or civil) that address victims' need.

Legal Framework for Trafficking Prosecution and Remedies for Victims

Professor Kathleen Kim of Loyola Law School gave an overview of the legal framework around human trafficking and discussed prosecution of these crimes and the remedies available to victims.

Human trafficking is a contemporary form of “unfree labor”. In other words, workers – no matter how they come to the workplace – are not free to quit due to “force, fraud, or coercion”. The primary indicator of trafficking, therefore, is a coercive working environment, with recruitment and migration as secondary indicators.

With its doctrinal background in the Thirteenth Amendment’s abolition of slavery, the cornerstone of contemporary federal trafficking laws is Trafficking Victims Protection Act (TVPA) of 2000, which added new criminal penalties for trafficking, adopted prevention strategies to combat trafficking, and created a range of remedies for trafficking victims.⁴⁵ Under the TVPA and its subsequent reauthorizing laws, trafficking victims may be eligible for T-visas, which can provide a path to citizenship, and are given a private right of action to sue their traffickers.⁴⁶ Professor Kim explained that victims find additional causes of action in the Racketeer Influenced and Corrupt Organizations Act, the Alien Tort Claims Act, and the Fair Labor Standards Act. On the state level, over 43 states have trafficking laws, and states such as California provide civil remedies. Professor Kim recommended that the states without civil remedies should be encouraged to provide them.

Civil Litigation for Trafficking Victims

Trafficking victims can pursue legal remedies and face a range of legal needs. Trafficking victims sue for damages and attorney’s fees against traffickers or anyone who knowingly financially benefited from their trafficking under 18 U.S. Code § 1595. According to data compiled by the Human Trafficking Pro Bono Legal Center (the Center), 147 federal civil trafficking cases were filed between 2003 and 2015.⁴⁷ Most of them relate to labor trafficking. The Center reported that among them, domestic servitude cases make up the majority and many of the defendants are corporations, such as labor recruiters.

Ms. Martina Vandenberg, Founder and President of the Center presented this data and challenged the EWG to consider why there have been so few civil trafficking cases over these years, especially when the number of T-visas issued in 2013 alone was 848. She explained that presumably each individual receiving a T-visa could bring a civil trafficking case.

Trafficking victims also have a variety of legal needs. For example, they often need vacatur of criminal convictions related to trafficking, which might be prostitution or loitering.⁴⁸ Under federal law, youth under the

⁴⁵ See Polaris Project, Current Federal Laws, *available at* <https://polarisproject.org/current-federal-laws/>.

⁴⁶ See Jill Laurie Goodman & Dorchen Leidholdt (eds.), Supreme Court of the State of New York, Appellate Division, First Department & New York State Judicial Committee on Women in the Courts, *Lawyer’s Manual on Human Trafficking: Pursuing Justice for Victims* (2013), *available at* <https://www.nycourts.gov/ip/womeninthecourts/pdfs/LMHT.pdf>.

⁴⁷ For more information on the case database available through The Human Trafficking Pro Bono Legal Center, see <http://www.htprobono.org/resources/>.

⁴⁸ The Vacatur & Expungement Database created by The Human Trafficking Pro Bono Legal Center, Advocating Opportunity, CAASE, the Legal Aid Society of New York, the Urban Justice Center, the Women’s Law Center of Maryland, and with pro bono assistance from Weil, Gotshal & Manges provides more information on vacatur laws, *available at* <https://sites.google.com/a/htprobono.org/vsdatabase/>.

age 18 are automatically considered victims, but many states still prosecute children for prostitution. Other legal needs include immigration relief, family matters such as child custody and divorce, civil protection orders, name changes, enforcement of restitution orders, disability benefits, landlord-tenant issues, tax law issues, and defamation litigation. Ms. Vandenberg suggested examining the legal needs of trafficking victims as a potential area of further research.

Finding Lawyers for Trafficking Victims

Vivian Huelgo Chief Counsel of the American Bar Association Task Force on Human Trafficking and Commission on Domestic & Sexual Violence, addressed the concerns of finding and connecting lawyers to trafficking victims.

Ms. Huelgo noted that although many lawyers are interested in becoming more involved in these cases, their lack of expertise often inhibits their involvement. She explained that while comprehensive training is needed to support attorneys' taking these cases, quality training is not widely available. She suggested that better data collection and research around the legal needs of trafficking victims can support efforts to advocate for increased funding to create quality training for lawyers.

Additionally, Ms. Huelgo recommended exploring the use of privacy law to protect trafficking victims. She asked the EWG to consider the appropriate response to traffickers who post victims' pictures online. She noted that vacatur statutes do not address such issues and that the legal community should consider how best to handle such problems where no formal legal response exists.

Discussion

Identifying legal needs of trafficking victims. The EWG discussed the difficulty of measuring the legal needs of trafficking victims because they rarely recognize their needs as legal. One expert noted that the underlying problem is that victims do not know what their rights are. For foreign born victims, their consulates in the U.S. should give them "know your rights" cards upon entry, but it is not always done. One expert relayed that among the many cases she reviewed, only two clients had the card, which she credited with helping the clients escape. The expert urged the EWG to consider how to distribute "know your rights" information to victims in an effective way.

The EWG further discussed the need to carefully consider what kind of questions should be asked to accurately understand and respond to the victims' needs. As one anecdotal example of an unexpected legal need, the North Carolina pro bono project found that almost all sex trafficking victims they served asked for a name change.

Challenges of civil litigation against traffickers. One expert noted that while attorneys' fees may be recovered in civil suits brought under 18 U.S. Code §1595, the private bar has not mobilized to file those suits. She further noted that in her experience of litigating these suits pro bono, she had never recovered awarded attorneys' fees. Another difficulty, noted by an expert, is that the victim might only be able to recover damages after going through a traumatizing discovery process. Many sex trafficking victims also may be deterred from pursuing a civil suit against their traffickers because of fear of retaliation.

Finding legal help. One expert stated that while many law firms are interested in trafficking cases for pro bono work, many are unwilling to handle certain types of matters such as family law, which is a major area of legal need for trafficking victims.

Addressing trafficking internationally. The EWG discussed how trafficking can be addressed internationally. One expert relayed her organization's work raising awareness in communities where recruiters are active. She noted that non-legal community-based organizations can be highly effective in supporting relevant research initiatives. Another expert agreed and highlighted the importance of client-

centered lawyering that focuses on developing trust and cultural competence and overcoming language barriers.

Lastly, an expert noted the need for cooperation in two areas related to trans-national trafficking: (1) assisting victims when they are sued by perpetrators in their countries of origin; and (2) finding pro bono lawyers in those countries who can protect the victims' families.

Special concerns working with victims. Another expert relayed the results of a study on LGBTQ trafficking victims. She trained and used service providers from an LGBTQ street organization to interview research subjects. The results were amazingly rich interviews and minimized risk of re-traumatization due to the sensitivity of the interviewers.

Another expert noted that representing trafficking victims in civil suits calls for a tremendous amount of emotional and physical resources, and that the cultural competency learning curve is very steep.

Recommendations

The breakout group on human trafficking and civil legal aid provided the following recommendations:

1. **Fund research on connecting trafficking victims to legal services and related outcomes.** Research questions might include: How do trafficking victims find legal services? How does legal representation impact the outcomes of trafficking victims in related legal proceedings? Can a study analyze trafficking victim information in connection with T-visa applications to better understand how victims escape and whether or how they access legal assistance?
2. **Fund research on victimization under criminal justice and immigration systems.** Even after escaping, trafficking victims are sometimes further victimized by the criminal justice and immigration systems. The federal government should fund research on how to address multiple layers of victimization, particularly with non-citizen trafficking victims.
3. **Fund research on trafficking victims' structural vulnerabilities.** In order to promote thoughtful prevention efforts, the federal government should fund research to study trafficking victims' structural vulnerabilities and what places them in those positions of vulnerability.
4. **Provide more training to local law enforcement on human trafficking.** The federal government should increase its support of local law enforcement training on trafficking so that they can better identify victims and respond accordingly.
5. **Improve outreach to trafficking victims.** The federal government should support efforts to improve outreach to trafficking victims through its law enforcement offices and nongovernmental partners such as faith- or community-based programs and legal service providers.
6. **Create a legal service referral pipeline and promote legal representation of victims.** The federal government should create a referral pipeline connecting trafficking victims to legal service providers through victim-witness coordinators or other appropriate offices. Also, in federal criminal cases against traffickers, the federal prosecutors should promote appointment of Guardians *Ad Litem* for minor victims and representation of other victims by pro bono or legal aid attorneys to protect their rights.
7. **Seek restitution orders in trafficking prosecution.** To help trafficking victims access services and meet financial needs, the federal prosecutors should actively seek restitution orders in human trafficking prosecution cases in accordance with the mandatory restitution provisions.⁴⁹

⁴⁹ See The Human Trafficking Pro Bono Legal Center & Wilmer Hale, *When "Mandatory" Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking Cases in the United States* (2014), available at <http://www.htprobono.org/wp-content/uploads/2014/09/HTProBono-Trafficking-Restitution-Report.pdf>.

CONSUMER PROTECTION & CIVIL LEGAL AID

Each year, approximately 25 million adults are victims of consumer fraud. Victims include the poor, the elderly, and other vulnerable populations. In the worst cases, fraud can lead to homelessness and bankruptcy. The shame of being defrauded inhibits some victims from reporting scams and seeking help.

Fraud takes many different forms, and perpetrators use a variety of approaches. Although anyone may be susceptible to abusive practices, the most vulnerable among us are often the target of mortgage scams, Ponzi schemes, identity theft and predatory lending schemes. The Government Accountability Office reports that financial exploitation of the elderly has reached epidemic proportions. Older adults are targeted for their retirement savings and accumulated home equity, and because they also are more likely to experience cognitive decline, they can be more susceptible to financial scams.

Identity theft also threatens consumers. Using someone else's personal information to fraudulently obtain goods or services was the number one complaint to the Federal Trade Commission's Consumer Sentinel database, and the third most common credit card complaint made to the Consumer Financial Protection Bureau. There are 16.6 million new victims annually, with devastating consequences, including tax problems, lowered credit ratings, lawsuits, and garnishment. Children are also victims. A study of 40,000 children found that about 10% had someone else using their Social Security Number.

Legal aid helps address these problems by asserting consumer rights when businesses, lenders, or debt collectors have not followed the law. Legal aid also assists consumers by providing debt collection information, preventing unnecessary foreclosure or repossession, and correcting harm caused by identity theft or credit reporting errors.⁵⁰

This session called upon legal aid experts and researchers to discuss the delivery of civil legal aid in the consumer protection context and both the existing and needed research on its impact.

Legal Aid as the Canary in the Coal Mine

Ira Rheingold, Executive Director of the National Association of Consumer Advocates, explained that civil legal aid has long played an important role protecting consumers, serving as "the canary in the coal mine." The worst consumer abuses originate in low- and moderate- income communities, and legal aid organizations are well-situated to inform public agencies on emerging issues.

He noted that legal aid lawyers and consumer advocates have warned about predatory lending issues long before it became a full-blown crisis. The focus then shifted to foreclosure prevention work. Today, as foreclosure prevention funding decreases, debt work has become prevalent with the growth of the debt industry.

Mr. Rheingold asserted that today the greatest threat to the consumer protection system is debt collection. Every day court dockets are filled with debt collection cases that end in default judgments. This reality affects people's belief in the fairness of the justice system.

He encouraged the EWG to consider research related to civil legal aid and the following areas: payday lending; short-term loans; subprime lending; and credit reporting.

Studying Civil Justice Decision-Making

Professor Sara Sternberg Greene of Duke University School of Law discussed a study she conducted on civil justice decision-making. She also described a new project she is embarking on in North Carolina (soon to be expanded to other states) to measure outcome differences based on different levels of legal service.

⁵⁰ See WH-LAIR's case study, *Civil Legal Aid Supports Federal Efforts to Help Protect Consumers* (May 2015), available at www.justice.gov/lair/wh-lair-case-studies.

In her civil justice decision-making study,⁵¹ Professor Greene conducted in-depth interviews with public housing residents on why they were or were not seeking legal help on issues such as abusive debt collection. The study found that people were confused about the difference between criminal and civil justice procedures and that there was a large group of people who did not seek civil legal help for that reason. For example, in some instances, debt collectors threatened delinquent borrowers with criminal prosecution and incarceration. As a result, those borrowers were fearful of seeking legal help, based in part on their negative perception of the criminal justice system. This study demonstrates that the legal aid community should focus not only on those who seek help, but also those who do not seek help because of misperceptions about the civil justice system.

Professor Greene also discussed a new study that she and others are conducting in partnership with Legal Aid of North Carolina.⁵² Her team will survey a number of people who contact Legal Aid of North Carolina for help and track the outcomes based on the assistance they received: no help, limited help (such as advice only), and representation or extensive help. The study will focus on issues relating to consumer debt problems, expungement, housing, and health, and will assess the resolution of the problem, long term financial and health outcomes of clients, and clients' satisfaction with the legal intervention.

Consumer Debt Research Projects and Use of Technology

Nan Heald, Executive Director of Pine Tree Legal Assistance (Pine Tree), a statewide legal aid program in Maine, discussed her office's work in debt collection cases and the role of technology in responding to client needs.

In 2012, Pine Tree began the "lawyer of the day" project to assist defendants appearing in debt collection cases, many of which involved credit card debt. Of the roughly 550 cases where Pine Tree provided limited representation, all but two were dismissed for lack of proof regarding the validity of the debt at issue. But unfortunately, most cases that do not benefit from Pine Tree's representation are resolved without due scrutiny by the court.

Ms. Heald explained that Pine Tree is starting a pilot study with Harvard Law School, the University of Connecticut School of Law, and the University of Maine School of Law to look at the impact of consumer debt and debt collection on an individual's financial health, including the outcome of her debt collection case, her credit score, her personal stress level, and her knowledge of good debt management practices.⁵³ Those who participate in the study may get education materials, full representation, financial counseling, or some combination of these. The "Financial Distress Research Project" will attempt to determine whether the strategies make a difference and which strategy makes the greatest difference.

Additionally, Ms. Heald discussed the effectiveness of Pine Tree's website as a legal aid tool. In 1996, Pine Tree lost half of its staff due to budget cuts. In order to continue its service with limited staff, the organization launched its website and made educational materials available in plain language.⁵⁴ While the website is widely accessed,⁵⁵ Ms. Heald noted that Pine Tree has limited knowledge of how effectively people use the information to resolve their legal problems, which might be a useful research topic.

⁵¹ Sara Sternberg Greene, *Race, Class and Access to Civil Justice*, 101 Iowa L. Rev. (forthcoming 2016).

⁵² Sara Sternberg Greene and Mathew McCubbins, *Aiding the Access to Justice: An Empirical Study of Legal Aid to the Poor* (forthcoming).

⁵³ See Dalié Jiménez, D. James Greiner, Lois R. Lupica, Rebecca L. Sandefur, *Improving the Lives of Individuals in Financial Distress Using a Randomized Control Trial: A Research and Clinical Approach*, 20 Geo. J. Pov. L. & Pol'y 449 (2013); see also D. James Greiner, Dalié Jiménez, Lois R. Lupica, *Lay Deployment of Professional Legal Knowledge* (Aug. 2, 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2633032.

⁵⁴ See Pine Tree Legal Assistance's website: www.ptla.org.

⁵⁵ There are 1.3 million people in Maine, and Pine Tree recorded 1.1 million visitors to its website in 2014.

Studies on Debt Collection and Access to Credit Reports in Texas

Professor Mary Spector of Southern Methodist University, Dedman School of Law (SMU), discussed three studies on debt collection cases, consumer debt-related complaints, and accessibility of credit reports.

The first study reviewed court records for 45,000 debt collection cases in 40 Texas counties, representing about 25 percent of the state, and made in-court observations in certain jurisdictions.⁵⁶ The study showed that the debt collector won most of the time. However, when the consumer appeared, the collectors' win rate dropped to 33 percent, and when the consumer appeared with a lawyer, the collectors' win rate dropped to less than 5 percent. She explained that the findings demonstrated that having a lawyer made a real difference.

The second study looked at consumer complaints filed with the Texas Office of the Attorney General to understand the Texas consumers' experiences.⁵⁷ The complaints showed continued harassment from debt collectors despite existing state and federal protections. Among the most troubling findings were the frequency of complaints regarding threats and the use of criminal prosecution for failure to pay civil debts, particularly in connection with payday loans.

Professor Spector explained that the last study was intended to measure credit reports' error rate, but the study also demonstrated the difficulty of accessing credit reports for low- and moderate- income individuals.⁵⁸ SMU's consumer advocacy clinic partnered with a Volunteer Income Tax Assistance (VITA) program to help those who seek services for tax return preparation with accessing their credit reports and disputing any errors. Professor Spector's team found that some clients could not successfully obtain their credit reports from a website because the screening questions were difficult. This difficulty was compounded if the client did not speak English.

Discussion

Legal aid's role in informing policy makers about the debt crisis. The EWG discussed the role of legal aid in informing policymakers about debt collection practices. Beginning in 2008, the volume of debt collection cases increased dramatically. Legal aid can describe problems they see and be a critical portal for other researchers and policymakers. Comparing consumer protection laws among the states could produce valuable research.

Influencing the behavior of courts and judges. The EWG discussed the judge's role in consumer cases. Experts stated that some courts do not apply the rules when the defendants are not represented. One legal aid program director remarked that she hoped her office's representation of clients in these cases might also serve to train judges to examine cases for proof of the validity of the debt instead of rubberstamping the creditors' claims. One expert called for research on the impact of judicial education in handling these cases.

One expert referenced a courtroom study which found a correlation between the length of a proceeding and case outcome for the consumer defendant.⁵⁹ The longer the proceeding, the more likely that it ended in an outcome other than the plaintiff winning. The EWG agreed that there is a great need for judicial education and it also is a research opportunity.

Alternatives to attorney-based legal services. The EWG debated alternatives to traditional representation in consumer cases. Some experts advocated for tools or diagnostic approaches to better match a person's

⁵⁶ Mary Spector & Ann Baddour, Collection, *Texas-Style: An Analysis of Consumer Collection Practices In and Out of the Courts*, 67 *Hastings L.J.* ___ (forthcoming).

⁵⁷ *Id.*

⁵⁸ Mary Spector, *Understanding Consumer Reports: A Pilot Project Integrating Policy and Research into the Law School Clinic 3* (May 2015) (unpublished draft manuscript) (on file with author).

⁵⁹ Mary Spector, Collection, *Texas-Style: An Analysis of Consumer Collection Practices In and Out of the Courts*, 67 *Hastings L.J.* ___ (forthcoming 2016).

need with the necessary legal intervention. This approach might involve consumer education, self-help centers, software to assist with filling out court forms, or assistance from trained non-lawyer professionals. An expert with an international perspective agreed that litigating every case with a lawyer is unwise because it might only add to the cost the debtor ultimately has to pay. According to this expert, Scotland has a similar problem. He thought supplying lawyers is not a systematic answer because it's too expensive. But another expert thought that legal aid lawyers are not expensive; rather it is a matter of political will to fund them adequately.

Another expert noted that currently we do not have enough information on how well triage works and what types of intervention work best. Thus, more research is needed in this area. One researcher pointed out that court rules and proceedings need to be simplified before relying on nonlawyer help. Research on bankruptcy cases showed that many *pro se* petitioners are not successful because bankruptcy rules are difficult to understand, even for law students.

Others highlighted the important role of legal aid lawyers to advocate for changes in policies and court rules, such as working with courts to change pleading rules to dismiss “thinly pled” debt cases that do not establish the validity of the creditor’s claim.

Relatedly, experts discussed the “commodification” of debt collection practice and the possible application of more routine practices on the defense side. For example, one expert wondered if it was possible to train defendants to follow a script that would prompt the right action from a judge and force the plaintiff-debt collector to produce evidence. Another idea that was discussed concerned whether technology could assist with debt defense, by linking court resources to simple phrases or questions such as “What is a petition?” or “What is a defense?” This idea was met with caution by one expert who noted that many online tools give bad advice.

Recommendations

The breakout group on consumer protection and civil legal aid provided the following recommendations:

1. **Inventory existing federal agency research initiatives and databases on consumer protection.** The federal government, through WH-LAIR, should inventory and organize existing research initiatives and databases relevant to consumer protection advocacy and expand access to this information.
2. **Support better data collection and fund research on the high default rate in consumer cases.** The federal government should support better data collection on consumer cases with the high default rate, such as the number of debt collection cases and the number of defaults. For example, the federal government should support creating additional detail and uniform coding to the State Court Guide to Statistical Reporting, which is a joint project of the Conference of State Court Administrators and the National Center for State Courts. The federal government should also fund research to address why people default in such high rates in consumer matters and why they do not pursue legal remedies.
3. **Fund research on the economic benefit of civil legal aid in foreclosure cases.** Research questions might include: What are the economic benefits of legal aid in foreclosure cases? More specifically, what is the economic benefit to avoiding foreclosure and keeping people in their homes? How many homes were saved? What was the economic impact on those communities because they had more stability?
4. **Limit mandatory arbitration provisions and fund related research.** The mandatory, pre-dispute arbitration provisions limit consumers’ ability to meaningfully dispute their claims and have a negative impact on civil justice. The federal government should address the harmful impact of the mandatory arbitration provisions and fund research on monetary losses related to arbitration requirements.

5. **Fund research on the credit report dispute process.** This research need recognizes the critical importance of credit reports to consumers and the frequency of credit reporting errors. How effective is the current process to dispute credit report errors?
6. **Direct federal settlement proceeds towards consumer protection advocacy.** The federal agencies should direct an appropriate portion of settlement proceeds from consumer protection-related enforcement actions to fund legal aid programs that assist consumers and enforce consumer protection laws. In addition, the federal government should create more targeted funding, such as grants, for consumer protection advocacy.
7. **Enhance the capacity of state courts to address debt collection issues.** The federal government should help enhance the capacity of state courts to address debt collection issues through judicial education and technical assistance. The federal government should also study: the impact on the rule of law when judges rubberstamp debt collection cases, and how judicial education impacts outcomes.
8. **Strengthen ties between the federal military community and civil legal aid providers.** The federal government should strengthen ties between the federal military community and civil legal aid providers in order to strengthen protection and enforcement activities for service members and veterans.
9. **Integrate civil legal aid expertise into federal agencies' work.** The federal government should use WH-LAIR to better integrate legal aid expertise into federal agencies' anti-poverty programs through establishing regular and effective channels of communication.

ELDER ABUSE & CIVIL LEGAL AID

A hidden epidemic in America threatens far too many of the nation's seniors: elder abuse affects approximately 10% of people age 60 and older, and close to 50% of people with dementia. Victimized by strangers and those on whom they depend, elder abuse leads to premature deaths, and increased hospitalizations; depletes the resources of individuals, families, businesses, and public programs such as Medicare and Medicaid; and places burdens on our health care, financial, and judicial systems. Without proper training, professionals working with older Americans too often miss signs of elder abuse. Despite the dire consequences, some studies suggest that as few as 1 in 23 cases is reported to authorities, and even fewer are ever prosecuted. Estimates of the direct medical costs associated with violent injuries to older adults add over \$5.3 billion to the nation's annual health expenditures.

Legal aid combats this epidemic by preventing mortgage foreclosures due to elder abuse, protecting physical safety by doing a holistic intake of elders, and providing legal help to break an abuser's control over the victim with protective orders and guardianship proceedings. Legal aid also secures government benefits such as Medicaid and veterans' benefits and counsels older adults about avoiding financial scams and exploitation.⁶⁰

This session called upon legal aid experts and researchers to discuss the delivery of civil legal aid for elder abuse victims and both the existing and needed research on its impact.

Elder Abuse and Rural Communities

Alison Paul, Executive Director of Montana Legal Services Association (MLSA), described her office's efforts to provide civil legal aid services to her community, which includes tribal members. She explained that while MLSA does not have a targeted program for elder abuse, they address it through all of their activities. Such activities include protecting elders from financial exploitation (e.g., repairing credit scores) and a domestic violence program that serves elders. Of the 13 attorneys who serve the entire state, only five are available to handle domestic violence cases, which are not enough to meet the demand for their services.

She also described ongoing efforts to evaluate their services funded through a Vision 21 Victim Legal Assistance Network grant through the U.S. Department of Justice's Office for Victims of Crime. Ms. Paul hopes that the study will help answer questions such as how to identify the hidden population of elder abuse clients, how MLSA can reach them, how to use limited staff for best results, and what is the best method to deliver services with limited resources.

Research on Elder Abuse and Legal Interventions

Prof. Victoria Rizzo of Binghamton University–State University of New York described research she conducted in New York City in partnership with the Jewish Association Serving the Aging (JASA). She noted that it is the first study of elder abuse prevention that uses multivariate analysis. She further explained that there are challenges in performing this research, such as the ethical concerns of withholding versus providing treatment, consent, mandatory reporting requirements, resource access, finding the population, and interagency collaboration.

JASA's program, known as JASA LEAP, is designed to alleviate cases of elder abuse and neglect in all forms by integrating social workers and attorneys, who are employed by the same agency.⁶¹ In this

⁶⁰ See WH-LAIR's case study, *Civil Legal Aid Supports Federal Efforts to Help Prevent Elder Abuse* (April 2015), available at www.justice.gov/lair/wh-lair-case-studies.

⁶¹ See Mara Schecter and Donna Dougherty, *Combating Elder Abuse Through a Lawyer/Social Worker Collaborative Team Approach: JASA Legal/Social Work Elder Abuse Prevention Program (LEAP)*, *Case Management Journals* (2009).

model, should a client choose to abandon a legal claim of elder abuse with a lawyer, the social worker can continue to implement a safety plan uninterrupted. And should the client later choose to reinstate the legal case, the lawyer can simply pick up where she left off.

While some research on elder abuse exists, Prof. Rizzo cautioned that it has limitations. She has attempted to address those limitations in her current research by designing the data collection forms to be reliable and consistent across cases. She also had two individuals to verify the information being recorded from case records and used multivariate analysis to examine the outcomes of JASA-LEAP.

Prof. Rizzo's evaluation of JASA-LEAP included three of New York City's boroughs, a total of 250 cases, with three different analyses (retention of clients, mistreatment status at case closure, and factors that predict abuse) and found:⁶²

- ✚ The retention rate for clients in the JASA-LEAP program, which includes the services of lawyers and social workers, was 71.7 percent, and the risk of further abuse to clients was reduced by 68.2 percent;
- ✚ Covariates (e.g., being female, living with the perpetrator, and being married to the perpetrator often predict unfavorable mistreatment status outcomes at JASA-LEAP case closure); and
- ✚ Exposure to multidisciplinary service (law and social work) related to favorable outcomes at discharge.

Future elder mistreatment intervention research should find ways to develop prospective, quasi-experimental and experimental designs. Also, Professor Rizzo stated that an absence of psychometrically sound outcome measures denoting mistreatment status at case closure limits the field to subjective measurement methods, and development of a valid mistreatment status at case closure outcome instrument for use in social service intervention settings is a priority for future research.

Medical-Legal Partnership as a Model for the Delivery of Civil Legal Aid

Professor James Teufel of Mercyhurst University described the collaboration between civil legal aid and health services through Medical-Legal Partnerships (MLP) and his research on the effectiveness of this legal service delivery model.

He first provided an overview of the health care system in the United States and explained that while the United States spends significantly more money on health care for older adults than other developed countries, better health outcomes do not follow.⁶³ Despite spending more on health care than any other country over the last 40 years, the United States' relative rank in life expectancies has dropped,⁶⁴ calling into question whether this spending on health care is effective.

With that backdrop, Professor Teufel discussed the access to justice gaps in the United States and asserted that civil legal aid can impact the social determinants of health. He explained that by linking legal aid attorneys and medicine, hospitals and other healthcare providers can better address community health aims. Moreover, civil legal aid attorneys can help non-profit hospitals meet their community benefit requirements while being a sound financial and social investment.

⁶² Victoria Marie Rizzo, David Burnes and Amy Chalfy, *A Systematic Evaluation of a Multidisciplinary Social Work–Lawyer Elder Mistreatment Intervention Model*, *Journal of Elder Abuse & Neglect* (2013), available at <http://www.tandfonline.com/doi/abs/10.1080/08946566.2013.792104>.

⁶³ Organisation for Economic Co-operation and Development, *OECD Health Statistics 2014: How does the United States compare?* (2014), available at <http://www.oecd.org/unitedstates/Briefing-Note-UNITED-STATES-2014.pdf>.

⁶⁴ Organisation for Economic Co-operation and Development, *OECD Health Statistics* (data covering 1960-2013), available at http://stats.oecd.org/index.aspx?DataSetCode=HEALTH_STAT.

He described an MLP program that started in 2003 in the most economically impoverished region in Illinois, which not only sustained itself, but has since scaled up. Building off of a relatively small investment, the program initially handled 46 cases, of which 16 were older adults. Ten years later, they were serving 750 cases, of which 500 were older adults. Professor Teufel explained that a key to this sustainability and growth was demonstrating the MLP's return on investment and that the MLP fit into the health care provider's mission. Professor Teufel's research supported that MLPs achieved a monetary financial return on investment that exceeded 200% and a broader social return on investment of more than 3000%.⁶⁵ He strongly recommended that the business case model for civil legal aid be developed to further support expansion of MLPs.

Tribal Communities and Medical-Legal Partnership

Matt VanWormer, Director of the Four Corners Legal Care of DNA–People's Legal Services, Inc. (DNA), described his office's efforts to set up and grow the MLP model in Indian country.⁶⁶ His program primarily serves clients from the Navajo Nation, where poverty rates are three times higher than in the U.S. general population and the unemployment rate is also very high due to lack of economic opportunity.⁶⁷

Unfortunately, this economic situation results in exploitation and abuse of grandparents and elders in the community who may have some revenue through public benefits – albeit usually at low, fixed rates.⁶⁸ Powers of attorney may be misused to siphon income from grandparents, often resulting in negative health effects.

Mr. VanWormer explained that with low police presence, lack of criminal law enforcement, and limited tribal sentencing authority, tribes are often reliant on federal authority to intervene. Overcrowded and substandard housing also drives up the risk of abuse. The rates of chronic disease are high, so medical complications exacerbate the problem. The prevalence of close-knit multigenerational families means elders are reluctant to report abuse. Moreover, access to services is limited due to elders' limited mobility and cognition, their dependence on others, and limited number of nurses.

This reality led DNA to break out of the traditional model of providing legal services only to people who seek it and launch an MLP to incorporate elder abuse advocacy. The MLP has resulted in the development of a screening tool and a referral form in health centers and training for health care providers on the civil legal needs of their patients.

He reported that, although the data set is still small, the outcomes have been positive. According to Mr. VanWormer, in one year, health care providers made 32 direct referrals to legal aid lawyers about suspected elder abuse that resulted in actual cases. DNA also recovered \$1.2 million in revenue for

⁶⁵ See James A. Teufel, Danilea Werner, Diane Goffinet, et al., *Rural Medical-Legal Partnership and Advocacy: A Three-Year Follow-up Study*, *Journal of Health Care for the Poor and Underserved* 23 (2012): 705–714; Teufel, J., Goffinet, D., Land, D. & Thorne, W., *Rural health systems and legal care: Opportunities for initiating and maintaining legal care after the Patient Protection and Affordable Care Act*, *Journal of Legal Medicine*, 35, 81-111 (2014); Goffinet, D., Teufel, J., Land, D., Weaver, A. & Thorne, W., *Medical-Legal Partnerships in the age of the Affordable Care Act*, *Clearinghouse Review: Journal of Poverty Law and Policy*, 47, 265-266 (2013); Teufel, J., Weaver, A., Goffinet, D., Dudley, D. & Loops, K., *Estimating the social return on investment of medical-legal partnership*, Presentation at the National Medical-Legal Partnership Summit, McLean, VA (April 9, 2015).

⁶⁶ See DNA-People's Legal Services, Inc.'s website: <http://www.dnalegalservices.org/>. For more information about the Four Corners Legal Care program, see <http://medical-legalpartnership.org/partners/program-health-people/>.

⁶⁷ Using 2010-2014 American Community Survey 5-Year Estimates, the U.S. Census reports the poverty rate for Navajo Nation families at 37.8 percent, compared to 11.5 percent for the U.S. population as a whole. See <http://factfinder.census.gov>.

⁶⁸ See National Indian Council on Aging, *A Review of the Literature Elder Abuse in Indian Country Research, Policy, and Practice* (2004), available at http://nicoa.org/wp-content/uploads/2014/05/elder_abuse_litreview.pdf.

families – through one-time and new monthly benefits for clients and successful enrollment in health insurance over three years. In addition, DNA is working to eliminate conditions that can create elder abuse and influence the community to prevent its recurrence.

Mr. VanWormer recommended that future research should concentrate on obtaining information on effective outreach to vulnerable elders and how prevention of elder abuse, neglect, and exploitation makes a return on investment.

Discussion

Civil legal aid's savings on health costs. The EWG discussed both the existing and needed research to determine whether and to what degree investing in civil legal aid may decrease health costs (including those to federal health care programs). There might be opportunities to gather data and research from economic development organizations in communities that might be able to track whether increasing clients' successful enrollment in Social Security brings money to those communities. Another expert discussed that before we can move on to cost effectiveness studies, we need to invest and promote a good screening tool for elder abuse.

Supply and demand of civil legal aid. The experts discussed whether paralegals and non-lawyers could help satisfy the growing demand and what research would be needed to identify the best use of these professionals. The experts discussed the usefulness of employing paralegals when a triage system is employed – both to increase supply and decrease costs. Also discussed was the use of community leaders who can encourage clients to access civil legal aid, which the experts indicated is particularly helpful in rural and tribal communities. The experts discussed the impact of increasing the demand for scarce civil legal aid by better identifying elder abuse victims. The EWG discussed the need for research to develop the best screening method to identify the most vulnerable so that the demand can be sorted accordingly.

Location of services. The EWG discussed the importance of co-location of services. Mobile units and other opportunities to bring civil legal aid to the clients are necessary. Therefore supporting these co-location programs like MLP and studying their effectiveness is key.

Federal benefits abuse. The EWG discussed federal law enforcement as a tool to prevent or end elder abuse given that some elder abuse manifests in federal benefits abuse, such as stealing Social Security income.

Indicators on elder abuse. The experts discussed possible elder abuse indicators for the Global Goal indicator process. One preliminary indicator to be considered is the number of elder abuse victims, which is routinely underreported. One expert suggested metrics focusing on the number of victims, how they are differentiated, whether the abuse is physical, sexual, emotional, or financial. Another expert cautioned that indicators should be chosen in part based on their feasibility.

Recommendations

The breakout group on elder abuse and civil legal aid provided the following recommendations:

1. **Collect better data.** Better data will lead to the right research questions. For example, the federal government could explore adding elder abuse screening measures to appropriate agency goals under the Government Performance and Results Act (GPRA).
2. **Fund research on the return on investment for health-related legal aid and how civil legal aid impacts the social determinants of health.** The research can identify the direct impact of civil legal aid intervention on Medicare and specific health issues, such as diabetes.⁶⁹ Additional research questions could include: How do you effectively reach the targeted population? What is the most effective way to use technology to reach tribal communities and rural communities?
3. **Fund or author studies on the processes and outcomes of Medical-Legal Partnership.** Research questions might include: What makes MLPs effective? Can you show your funder that civil legal aid is impacting your bottom line?
4. **Study types of elder abuse and impact of civil legal aid.** Research questions might include: For different types of elder abuse, do the interventions by civil legal aid work the same? If not, how should the interventions be different?
5. **Designate specific legal aid activities as a reimbursable medical expense.** The WH-LAIR should work with the Centers for Medicare and Medicaid Services to develop a pathway to shift the cost of certain health-related civil legal aid services to be reimbursable under Medicaid and Medicare. This builds on the U.S. Department of Health and Human Services' Health Resources and Services Administration's recognition of civil legal aid as an allowable expense for community health centers.⁷⁰
6. **Increase funding for civil legal aid to serve victims of elder abuse.** Agencies and stakeholders should support diversification of funders through public-private partnerships, including private foundations. The U.S. government should fund the Elder Justice Act so that it can be as effective in the provision of legal services as the Violence Against Women Act.
7. **Assist and develop outreach capacity, especially for rural and tribal communities that are often remote.** By developing outreach capacity for these communities, elder abuse victims who are isolated would be better served. This includes the use of technology and multidisciplinary practices.
8. **Convene healthcare administrators to educate them on the importance and value of civil legal aid.** Federal agencies could convene administrators to encourage their support of civil legal aid and models like MLP across federal, state, and tribal entities.

⁶⁹ There are underutilized discrete Center for Medicaid Services older adult benefits that might be appropriate to explore such as older adult diabetes education/training benefits. See Diabetes National Coordinating Center (2013), Diabetes Self-Management Education/Training Reimbursement Toolkit; Health Indicators Warehouse (2014) available at <http://qioprogram.org/edc>, Diabetes management benefit use: diabetic older adults, available at <http://www.healthindicators.gov/Indicators/Diabetes-management-benefit-use-diabetic-older-adults-percent-1263/Profile/ClassicData>.

⁷⁰ National Center for Medical Legal Partnership, *HRSA recognizes civil legal aid as "enabling service" for health centers* (2014), available at <http://medical-legalpartnership.org/enabling-services/>.

9. **Support greater education of medical professionals about what civil legal aid can do.** It is important to raise awareness in the medical field about what lawyers can do that cannot be done by other service professionals. Relatedly, civil legal aid lawyers should be trained to articulate the value of their work to medical professionals and their patients.
10. **Innovate electronic health records to flag for elder abuse.** Such innovations could allow for systematic flagging in electronic health records to identify victims of elder abuse. Relatedly, screening and assessment through the electronic records system should be developed.

DOMESTIC VIOLENCE & CIVIL LEGAL AID

Nearly one in four American women have experienced domestic violence. On average, more than three women are murdered by their intimate partners in the United States every day. More than 15 million children in the United States live in families where partner violence has occurred, and seven million children live in families where severe partner violence has occurred. Children who have been exposed to violence are more likely to require hospitalization or mental health services, and are more likely to be involved in the child welfare and juvenile justice systems. The health-related costs of intimate partner violence exceed \$5.8 billion each year, nearly \$4.1 billion of which is for direct medical and mental health care services. Victims of intimate partner violence also lose a total of nearly 8 million days of paid work each year—the equivalent of more than 32,000 full-time jobs—and nearly 5.6 million days of household productivity as a result of the violence. These acts of violence compromise public safety, restrict the U.S. economy, and destroy American lives.

Legal aid prevents future violence by obtaining, renewing and enforcing protective orders in court, providing resources to law enforcement and making perpetrators accountable through legal remedies, including incarceration. Legal aid also helps domestic violence victims by securing or modifying child custody orders so that a mother and her children can legally and safely leave the batterer, and helps resolve identify theft and other forms of financial exploitation perpetrated by abusers.⁷¹

This session called upon legal aid experts and researchers to discuss the delivery of civil legal aid for domestic violence victims and both the existing and needed research on its impact.

Alaska as a Case Study for Native and Rural Communities

Nikole Nelson, Executive Director of Alaska Legal Services Corporation (ALSC), described the unique circumstances facing the Alaskan population, especially as it relates to its Alaska Native and rural communities.⁷² ALSC is a Legal Services Corporation-funded civil legal aid program that provides services in 11 offices across the state. But only four of these offices are on the road system, meaning that the rest are only accessible by plane, boat, or snow machine. This results in severe access limitations to essential services, including civil legal aid.

She reported that Alaska has one of the highest rates of domestic violence and sexual assault in the nation.⁷³ Alaska Native women are overrepresented in domestic violence cases, which often results in negative contacts with the state Child Welfare Agency. Moreover, in child welfare proceedings, most of the Alaska Native children who are removed from their families are placed outside of their communities and with non-tribal members. Ms. Nelson noted that the bipartisan, Congressionally-formed Indian Law and Order Commission found that criminal safety problems in Alaska are among the worst of all tribal communities and that rural Alaska Natives do not have access to the same level or quality of services as other U.S. residents.⁷⁴

⁷¹ See WH-LAIR's case study, *Civil Legal Aid Supports Federal Efforts to Help Prevent Domestic Violence* (April 2014), available at www.justice.gov/lair/wh-lair-case-studies.

⁷² See Alaska Legal Services Corporation's website: <http://www.alsc-law.org>.

⁷³ See Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, *Ending Violence So Children Can Thrive* (2014), available at http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf.

⁷⁴ See Indian Law and Order Commission Report to the President & Congress of the United States, *A Roadmap for Making Native America Safer: Chapter Two Reforming Justice for Alaska Natives: The Time is Now* (2013), available at http://www.aisc.ucla.edu/iloc/report/files/Chapter_2_Alaska.pdf.

With only 30 attorneys, Ms. Nelson explained ALSC's success hinges on its partnership with other social service providers. This includes collaboration with tribes to build tribal courts' capacity and develop rules to govern their relationship with state courts. Additionally, legal advocates partner with tribal social services providers to protect native communities from having their children inappropriately removed by the state child welfare agency. Ms. Nelson recommended research to study the impact and effectiveness of legal services on these uniquely situated Alaskan communities.

Texas RioGrande Legal Aid and the Bi-national Project on Family Violence

Pamela Brown, the Director of Texas RioGrande Legal Aid (TRLA) Bi-national Project on Family Violence, provided an overview of TRLA. She explained it is the third largest legal aid provider in the country with a service area covering roughly one-third of the state, primarily along the Texas-Mexico border. TRLA's service population is 70 to 90 percent Hispanic. Ms. Brown explained that while they receive many different grants that require voluminous reporting, it is unclear whether the reporting provides helpful data that can evidence the program's efficacy.

In 1999, TRLA began partnering with battered women shelters in 1999, thanks to a grant for Legal Assistance for Victims from U.S. Department of Justice's Office on Violence Against Women. The shelters serve as an entry point for clients, where legal intake and screening can be performed. Once the shelter service providers identify the legal needs of these clients, TRLA can provide the needed legal services. Ms. Brown noted that research has demonstrated that civil legal aid is a key tool to help domestic violence victims escape their violent situation.⁷⁵

Ms. Brown also described TRLA's Bi-national Project on Family Violence, which she directs.⁷⁶ This program grew out of the legal needs of TRLA's client population along the United States-Mexico border. When their child custody disputes cross the border, they trigger obligations under the Hague Convention on the Civil Aspects of International Child Abduction to which the United States and Mexico are state parties. TRLA's novel use of an international treaty to address their clients' custody disputes is gaining popularity and continues to be better understood across the country.⁷⁷ Ms. Brown noted that this segment of TRLA's clients often identify their problems in terms of human rights, rather than a technical civil legal need such as obtaining a civil legal protection order.⁷⁸ She recommended research on the impact of framing civil legal needs in human rights terms.

Randomized Study on Triage and Civil Protection Orders

Professor Jim Greiner from Harvard Law School described his ongoing research into civil protection orders (CPOs) for domestic violence victims and the type of legal representation needed to obtain them. He explained that the goal of the research was to inform choices made in a triage environment: which treatment (level of service) should be applied to which clients with the goal of maximizing the number of CPOs obtained by the client population.

⁷⁵ See, e.g., May Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 *Contemporary Economic Policy* 158-172 (April 2003).

⁷⁶ See Texas RioGrande Legal Aid Bi-national Project on Family Violence website: <http://www.trla.org/practice-area/bi-national-project-on-family-violence>.

⁷⁷ Jeffrey Edleson and Taryn Lindhorst, *Multiple perspectives on battered mothers and their children fleeing to the United States for safety: A study of Hague Convention cases*, 25 (2010) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/232624.pdf>; Simon Hattenstone, *The Guardian*, "My partner abducted my child: the parents left behind" (September 21, 2013), available at <http://www.theguardian.com/lifeandstyle/2013/sep/21/partner-abducted-child-parents-left-behind>.

⁷⁸ See Human Rights Local Lawyering Project at <https://www.wcl.american.edu/humright/center/localawyering.cfm>.

The study will take place in northeast Ohio at Community Legal Aid Services, where the researchers will track the CPO petitioners' legal representation status in eight counties. The legal aid program covering these eight counties offers three levels of service: (1) a self-help packet only; (2) an explanatory phone call plus a self-help packet; and (3) full representation. About a third of the client population receives each level of service, but all clients are eligible for full representation. The findings will reveal whether triage decisions made by the legal aid provider avoid a potential "waste" of resources that would occur if, for example, CPO petitioners who would obtain CPOs with a self-help packet alone are instead given full representation. It will also reveal how much a difference full representation makes in CPO success rate, as opposed to lesser levels of service. Professor Greiner responded that on this latter subject, a preliminary look at some data revealed that in three counties, CPO petitioners who proceeded *pro se* were met with a higher success rate than those with lawyers. But Professor Greiner cautioned that it would be inaccurate to conclude from this study that a petitioner should not seek a lawyer because assignment of petitioner to a lawyer was not random. These findings do suggest, however, that one cannot learn much of anything from comparing success rates in cases with lawyers to success rates in cases without lawyers, in any legal arena, unless the lawyers were randomly assigned.

Professor Greiner explained that research in other fields suggests that people are not good at making triage decisions (e.g., emergency room nurses and Navy Corpsman). For this reason, his research will attempt to find out if legal services providers are good at triage by constructing a double randomization tree – some clients in a triage system determined by a person and others by a totally random decision.

The EWG discussed the design of Professor Greiner's study, specifically the use of a randomized study and whether that might harm those clients who are in the control group and not provided with legal services. Professor Greiner countered that the study uses an existing triage methodology that should predict who will do better with or without a lawyer. In addition, randomization is an acceptable allocation device when there are not enough lawyers to service all eligible petitioners.

Employment Law and Domestic Violence

Professor Robin Runge from The George Washington University explained that when she began her academic career, the notion that domestic violence victims could benefit from civil legal services was new. But studies since that time have demonstrated that accessing civil legal services improves victims' outcomes and their economic status.⁷⁹

Professor Runge noted that as an initial matter, the EWG should query how the law can support victims of domestic violence. One area of focus she suggested was employment law.⁸⁰ If a domestic violence victim loses a job because of the effects of fear from her domestic violence situation, she may be eligible for unemployment benefits. Legal aid lawyers can also ensure that clients are protected from discrimination when they disclose domestic violence to their employer. Moreover, clients often need to access services during working hours and may need to take leave, which may not always be available. Therefore, she recommended additional research into the ways in which employment law might provide increased protections to domestic violence victims.

Discussion

Study design. An expert discussed a study design that measures outcomes and noted that it is difficult to do because clients have different preferences on the outcome in a given case. He noted that client

⁷⁹ See Robin Runge, *The Evolution of a National Response to Violence Against Women*, 24 *Hastings Women's L.J.* 429 (2013).

⁸⁰ See Robin Runge, *The Legal Response to the Employment Needs of Domestic Violence Victims*, 37-SUM *Hum. Rts.* 13 (2010).

satisfaction surveys are also difficult for that reason and suggested that peer-reviewed studies would be a better alternative. By asking professionals to assess the work of other professionals, it might be possible to determine if a lawyer acted reasonably. Another expert explained that a human rights lens might help resolve some of these issues. By asking whether a client's human rights were protected, one can avoid the subjective nature of client satisfaction.

Collaboration between researcher and provider. The EWG discussed the need to educate legal service providers on the importance of participating in research studies. The panelists agreed that a multidisciplinary approach is necessary. This might include embedding a researcher in a civil legal aid office to study wraparound services. It was noted that at the federal level, there has been increased pressure to fund research projects that include a team of researchers and practitioners.

Recommendations

The breakout group on domestic violence and civil legal aid provided the following recommendations:

1. **Fund research on and support the use of alternative process.** The federal government should fund research on the impact of removing family issues from the courts and developing alternative processes. Additionally, the federal government should explore ways to support alternative processes in family law matters that ensure victim safety and prevent re-victimization. This might be especially true for Native American families, where culturally-sensitive processes can create better outcomes for families.
2. **Study co-location of services and the use of non-legal entities.** Similar to efforts to study Medical-Legal Partnerships, federal agencies should fund research on the impact of co-locating services for victims of domestic violence and whether such models reduce rates of re-victimization. Also, studying the use of non-legal entities (e.g., client navigators, social workers) to work with legal aid attorneys, and identifying non-legal solutions could be a way to address the legal aid resource issue.
3. **Fund or perform research on legal assistance help-seeking patterns over time.** Research questions might include: What are the help-seeking patterns of domestic violence victims as it relates to their legal needs? Which legal interventions provided at the early stages decrease the incidence of domestic violence?
4. **Adjust existing interventions and study the impact.** The federal government should add civil legal aid to existing protocols, such as lethality assessment protocols, and study the impact of its inclusion. Does the inclusion of civil legal aid in these protocols decrease the incidence of domestic violence?
5. **Develop outcome measures for the impact of civil legal aid on domestic violence victims.** Desirable outcomes could include safety, economic independence, and family stability. The research should also provide guidance on how to measure these outcomes.
6. **Perform research and evaluation of existing programs.** The federal government should support partnerships between researchers and civil legal aid programs to develop needed research infrastructure. These researchers should assess the effectiveness of civil legal aid by looking at both legal and non-legal outcomes of their clients.
7. **Fund or perform analysis of existing domestic violence policies.** What is the impact of policies or recommendations by bodies such as the American Bar Association in the appropriate and efficient handling of domestic violence cases?

8. **Support integration of civil legal aid across disciplines and government entities and institutionalize civil legal aid.** Federal agencies should identify programs that can be more helpful to domestic violence victims through enhanced integration of civil legal aid.
9. **Create tools for local organizations to develop a legal assistance network.** The federal government should support the creation of networks or consortiums of civil legal aid providers, which can result in better outcomes for clients.
10. **Educate first responders on civil legal needs of victims and develop screening tools.** The federal government should educate the first points of contact for domestic violence victims, such as law enforcement, ER staff, and shelters, on the civil legal needs of this population, and develop screening tools that can help identify the legal needs and the points at which a legal intervention would be most impactful.

CONCLUSION: THE WAY FORWARD

At the end of the two-day workshop, the Expert Working Group concluded that the impact of civil legal aid as a tool to empower the lives of low-income people is significantly understudied and that the federal government can and should help close that research gap. The participants were especially eager to learn about the research priorities of the conveners and the rest of the White House Legal Aid Interagency Roundtable.

Since the workshop, President Obama issued a Presidential Memorandum formally establishing the White House Legal Aid Interagency Roundtable and charged it to “advance relevant evidence-based research, data collection, and analysis of civil legal aid and indigent defense, and promulgate best practices.”⁸¹ This report is a first step in fulfilling this mandate.

While the experts provided over 50 specific recommendations to NIJ, ATJ, and NSF, including suggestions for a potential research agenda, key themes emerged over the course of the workshop:

1. **Increase support for civil legal aid through increased federal funding and programs that partner with civil legal aid;**
2. **Fund research on the delivery of civil legal aid to grow the evidence base and identify what works;**
3. **Expand private-public collaborations around civil legal aid;**
4. **Improve data collection on the issues impacting civil legal aid and make available information on relevant federal databases and studies;**
5. **Create greater transparency regarding the federal government’s research capacity around civil legal aid; and**
6. **Develop access to justice indicators to measure the United States’ implementation of Global Goal 16 of the UN’s 2030 Agenda on Sustainable Development with civil society input.**

Although the experts directed their recommendations primarily at the federal government, they made it clear that support, data collection, and research should be a collaboration among the federal government, private foundations, academics, and practitioners.

They also noted that their recommendations related to data collection and research were especially important in light of the UN’s 2030 Agenda on Sustainable Development and its call for international, regional, and national indicators on access to justice and urged greater inclusion of civil society into that process. Importantly, in addition to being charged with advancing this research activity, the White House Legal Aid Interagency Roundtable is also charged with assisting the United States with implementing Global Goal 16 of the UN Agenda.⁸² This workshop started the process of identifying and developing these indicators at home.

⁸¹ See Presidential Memorandum – Establishment of the White House Legal Aid Interagency Roundtable (WH-LAIR), Section 4(v), reproduced at Appendix C.

⁸² *Id.* at Section 4(iv).

APPENDIX A: AGENDA

WEDNESDAY, MAY 20, 2015

7:30 – 8:30 Registration – Great Hall

8:30 – 9:00 Welcome

- ❖ Assistant Attorney General Karol Mason, Office of Justice Programs
- ❖ Attorney General Loretta E. Lynch
- ❖ Director Lisa Foster, Office for Access to Justice

9:00 – 10:30 Panel 1: Overview - Measuring Access to Justice in the Civil Context

The panel will discuss the ongoing domestic and international efforts to measure access to justice in the civil context, including the development of new methodologies and indices. A discussion of the ongoing United Nations activity to establish the post-2015 Sustainable Development Goals and likely inclusion of access to justice in that framework will be included. All participants will have an opportunity to discuss their goals for the workshop and the questions they would like to explore over the course of the two days.

- ❖ *Moderator:* Jon Gould, Co-Director, Law and Social Sciences Program, National Science Foundation
- ❖ *Panelists:*
 - Rebecca Sandefur, Faculty Fellow & Associate Professor of Sociology and Law, American Bar Foundation and University of Illinois
 - Suzie Forell, Principal Researcher, Law & Justice Foundation of New South, Wales – Australia
 - Alan Paterson, Chair, International Legal Aid Group and Professor of Law and Director of the Centre for Professional Legal Studies, Strathclyde University Law School, Scotland
 - David Udell, Executive Director, National Center for Access to Justice
 - Jennifer Park, Senior Statistician, U.S. Office of Management & Budget

10:30 – 10:45 Break

10:45 – 12:30 Panel 2: Civil Legal Aid as a Necessary Service for the Reentry Population

The panel will discuss civil legal aid as a necessary service for the reentry population. Researchers will discuss the findings of their research related to civil legal aid and reentry and future research needs. A facilitated roundtable discussion with all of the workshop's participants will follow.

- ❖ *Moderator:* Helena Silverstein, Co-Director, Law and Social Sciences Program, National Science Foundation
- ❖ *Federal Agency Discussant:* Amy Solomon, Director of Policy, Office of Justice Programs, U.S. Department of Justice
- ❖ *Panelists:*
 - Sharon Dietrich, Litigation Director, Community Legal Services of Philadelphia
 - Michelle Bonner, Chief Counsel, Defender Legal Services, National Legal Aid & Defender Association (NLADA); Co-Chair, Reentry and Collateral Consequences Committee, American Bar Association
 - Jeffrey Selbin, Clinical Professor of Law, UC Berkeley School of Law
 - Tonya Brito, Burrus-Bascom Professor of Law, Director of Institute for Legal Studies, University of Wisconsin Law School

12:30 – 2:00 Break for Lunch**2:00 – 3:45 Panel 3: Human Trafficking and Civil Legal Aid**

The panel will discuss civil legal aid as a necessary service for survivors of human trafficking. Researchers will discuss research findings and future research needs on the topic. A facilitated roundtable discussion with all of the workshop's participants will follow.

- ❖ *Moderator:* Maureen McGough, Policy Advisor, National Institute of Justice, U.S. Department of Justice
- ❖ *Federal Agency Discussant:* Kathrina Peterson, Attorney Advisor, Office for Victims of Crime, U.S. Department of Justice
- ❖ *Panelists:*
 - Martina Vandenberg, Founder & President, The Human Trafficking Pro Bono Legal Center
 - Vivian Huelgo, Chief Counsel, ABA Task Force on Human Trafficking and Commission on Domestic & Sexual Violence
 - Kathleen Kim, Professor of Law, Loyola Law School - Los Angeles
 - Meredith Dank, Senior Research Associate, Justice Policy Center, The Urban Institute

3:45 – 4:00 Break**4:00 – 5:45 Panel 4: Consumer Protection and Civil Legal Aid**

The panel will discuss civil legal aid as a necessary service in the consumer protection context. Researchers will discuss research findings and future research needs on the topic. Panelists will also touch on special concerns for service members and the use of technology in the provision of legal services. A facilitated roundtable discussion with all of the workshop's participants will follow.

- ❖ *Moderator:* Monica Vaca, Assistant Director, Division of Marketing Practices, Federal Trade Commission
- ❖ *Federal Agency Discussant:* Mary Griffin, Senior Advisor, Office of Financial Empowerment, Consumer Financial Protection Bureau
- ❖ *Panelists:*
 - Nan Heald, Executive Director, Pine Tree Legal Assistance
 - Mary Spector, Professor of Law, Southern Methodist University – Dedman School of Law
 - Sara Sternberg Greene, Associate Professor of Law, Duke University School of Law
 - Ira Rheingold, Executive Director, National Association of Consumer Advocates

5:45 – 6:00 Wrap-Up for the Day

Karen Lash, Deputy Director, Office for Access to Justice

THURSDAY, MAY 21, 2015**8:30 – 9:00 Welcome**

- ❖ Maha Jweied, Deputy Director, Office for Access to Justice
- ❖ Fay Lomax Cook, Assistant Director of the National Science Foundation for Social, Behavioral, and Economic Sciences
- ❖ Roy Austin, Director of the Office of Urban Affairs, Justice and Opportunity, White House Domestic Policy Council

9:00 – 10:45 Panel 5: Elder Abuse and Civil Legal Aid

The panel will discuss civil legal aid as a necessary service for survivors of elder abuse. Researchers will discuss research findings and future research needs on the topic. Panelists will also touch on special concerns for indigenous communities and the effectiveness of innovations in the delivery of legal services, such as the Medical-Legal Partnership model. A facilitated roundtable discussion with all of the workshop's participants will follow.

- ❖ *Moderator:* Andy Mao, Assistant Director/Elder Justice Initiative Coordinator, Civil Division, U.S. Department of Justice
- ❖ *Federal Agency Discussant:* Judith Kozlowski, Senior Advisor for Elder Justice, Administration for Community Living, U.S. Department of Health and Human Services
- ❖ *Panelists:*
 - Matt VanWormer, Director – Four Corners Legal Care, DNA – People's Legal Services, Inc.
 - James Teufel, Assistant Professor of Public Health and Director of the Institute for Public Health, Mercyhurst University
 - Alison Paul, Executive Director, Montana Legal Services Association
 - Victoria Rizzo, Department Chair and Associate Professor of Social Work, Binghamton University – State University of New York

10:45 – 10:50 Remarks

- ❖ Acting Associate Attorney General Stuart Delery

10:50 – 11:00 Break**11:00 – 12:45 Panel 6: Domestic Violence and Civil Legal Aid**

The panel will discuss civil legal aid as a necessary service for survivors of domestic violence. Researchers will discuss research findings and future research needs on the topic. Panelists will also discuss the unique needs of rural, indigenous, and cross-border communities. A facilitated roundtable discussion with all of the workshop's participants will follow.

- ❖ *Moderator:* Bethany Backes, Social Science Analyst, Violence and Victimization Research Division, National Institute of Justice, U.S. Department of Justice
- ❖ *Federal Agency Discussant:* Jennifer Kaplan, Supervisory Attorney Advisor, Office on Violence Against Women, U.S. Department of Justice
- ❖ *Panelists:*
 - Pamela M. Brown, Director, Bi-national Project on Family Violence, Texas RioGrande Legal Aid
 - Nikole Nelson, Executive Director, Alaska Legal Services Corporation
 - Jim Greiner, Professor of Law, Harvard Law School
 - Robin Runge, Adjunct Professor, The George Washington University Law School

12:45 – 2:00 Break for Lunch**2:00 – 3:30 Breakouts in Small Groups to Prepare Recommendations on Research Needs/Federal Action**

Led by Department of Justice and National Science Foundation staff.

3:30 – 4:00 Reports from Small Groups and Adjourn

- ❖ Maha Jweied, Deputy Director, Office for Access to Justice
- ❖ Allie Yang-Green, Counsel, Office for Access to Justice

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**APPENDIX C: PRESIDENTIAL MEMORANDUM --
ESTABLISHMENT OF THE WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE**

September 24, 2015

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Establishment of the White House Legal Aid Interagency Roundtable

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the availability of meaningful access to justice for individuals and families and thereby improve the outcomes of an array of Federal programs, it is hereby ordered as follows:

Section 1. Policy. This Nation was founded in part on the promise of justice for all. Equal access to justice helps individuals and families receive health services, housing, education, and employment; enhances family stability and public safety; and secures the public's faith in the American justice system. Equal access to justice also advances the missions of an array of Federal programs, particularly those designed to lift Americans out of poverty or to keep them securely in the middle class. But gaps in the availability of legal aid -- including legal representation, advice, community education, and self-help and technology tools -- for America's poor and middle class threaten to undermine the promise of justice for all and constitute a crisis worthy of action by the Federal Government.

The majority of Americans who come to court do so without legal aid. They may be left by their economic circumstances to face life-altering events -- such as losing a home or custody of children, or escaping domestic violence or elder abuse -- on their own. More than 50 million Americans qualify for federally funded civil legal aid, but over half of those who seek assistance are turned away from legal aid organizations, which lack the funds and staff to meet the demand.

When people come into contact with or leave the criminal justice system, they are likely to face a range of legal issues. A victim of abuse may need a protective order, or a formerly incarcerated individual may need a driver's license reinstated in order to get a job. Access to legal aid can help put people on a path to self-sufficiency, lead to better outcomes in the civil and criminal justice systems, and enhance the safety and strength of our communities. Increased legal resources in a community can also help courts process cases more effectively and more efficiently, saving time and money.

Federal programs that are designed to help the most vulnerable and underserved among us may more readily achieve their goals if they include legal aid among the range of services they provide.

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.

Sec. 2. Establishment. There is established the White House Legal Aid Interagency Roundtable (LAIR).

Sec. 3. Membership. (a) The Attorney General and the Director of the Domestic Policy Council, or their designees, shall serve as the Co-Chairs of LAIR, which shall also include a representative from each of the following executive departments, agencies, and offices:

- (i) the Department of State;
- (ii) the Department of the Treasury;
- (iii) the Department of Justice;
- (iv) the Department of the Interior;
- (v) the Department of Agriculture;
- (vi) the Department of Labor;
- (vii) the Department of Health and Human Services;
- (viii) the Department of Housing and Urban Development;
- (ix) the Department of Education;
- (x) the Department of Veterans Affairs;
- (xi) the Department of Homeland Security;
- (xii) the Equal Employment Opportunity Commission;
- (xiii) the Corporation for National and Community Service;
- (xiv) the Office of Management and Budget;
- (xv) the United States Agency for International Development;
- (xvi) the Administrative Conference of the United States;
- (xvii) the National Science Foundation; and
- (xviii) such other executive departments, agencies, and offices as the Co-Chairs may, from time to time, designate.

(b) The Co-Chairs shall invite the participation of the Consumer Financial Protection Bureau, Federal Trade Commission, Legal Services Corporation, and Social Security Administration, to the extent consistent with their respective statutory authorities and legal obligations.

Sec. 4. Mission and Function. (a) The LAIR shall work across executive departments, agencies, and offices to:

- (i) improve coordination among Federal programs that help the vulnerable and underserved, so that those programs are more efficient and produce better outcomes by including, where appropriate, legal services among the range of supportive services provided;
- (ii) increase the availability of meaningful access to justice for individuals and families, regardless of wealth or status;
- (iii) develop policy recommendations that improve access to justice in Federal, State, local,

tribal, and international jurisdictions;

(iv) assist the United States with implementation of Goal 16 of the United Nation's 2030 Agenda for Sustainable Development; and

(v) advance relevant evidence-based research, data collection, and analysis of civil legal aid and indigent defense, and promulgate best practices to support the activities detailed in section 4(a)(i)-(iv).

(b) The LAIR shall report annually to the President on its success in achieving its mission, consistent with the United Nation's 2030 Agenda for Sustainable Development. The report shall include data from participating members on the deployment of Federal resources that foster LAIR's mission.

Sec. 5. Administration. (a) The LAIR shall hold meetings at least three times a year and engage with Federal, State, local, tribal, and international officials, technical advisors, and nongovernmental organizations, among others, as necessary to carry out its mission.

(b) The Director of the Office for Access to Justice in the Department of Justice, or his or her designee, shall serve as Executive Director of LAIR and shall, as directed by the Co-Chairs, convene regular meetings of LAIR and supervise its work. The Office for Access to Justice staff shall serve as the staff of LAIR.

(c) The Department of Justice shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative services, funds, facilities, staff, equipment, and other support services as may be necessary for LAIR to carry out its mission.

(d) The LAIR members are encouraged to provide support, including by detailing personnel, to LAIR.

(e) Members of LAIR shall serve without any additional compensation for their work.

Sec. 6. General Provisions. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

APPENDIX D: EXISTING FEDERAL RESEARCH AND CAPACITY

Federally Funded Research on Civil Legal Aid

The following list represents research and program evaluations that WH-LAIR agencies conducted or had available relating to civil legal aid since 2009. Symbols are used to indicate whether the research was conducted internally (I) or externally (E).

1. **(E) An Evaluation of Court System Best Practices for Domestic Violence Protective Orders** (ongoing) – funded by DOJ, National Institute for Justice
2. **(E) Evaluation of the Office for Victims of Crime Wraparound Victim Legal Assistance Network Demonstration Project** (ongoing) - Funded by DOJ, National Institute for Justice
3. **(E) The Long-Term Effects of Civil Legal Services on Battered Women** (ongoing) - funded by DOJ, National Institute for Justice
4. **(E) Impact of Legal Representation on Child Custody Decisions among Families with a History of Intimate Partner Violence Study** (2015) - funded by DOJ, National Institute for Justice, *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/248886.pdf>.
5. **(E) Evaluation of Face Forward grants** (ongoing) – funded by DOL, Office of Evaluation
6. **(E) Accessing Justice in Contemporary America: The Community Needs and Services Study** – funded by NSF, *available at* http://www.nsf.gov/awardsearch/showAward?AWD_ID=1123507&HistoricalAwards=false.
7. **(E) Workshop: Access to Civil Justice: Re-envisioning and Reinvigorating Research, Chicago, IL, Fall 2012** (2014) – funded by NSF, *available at* http://www.nsf.gov/awardsearch/showAward?AWD_ID=1237958&HistoricalAwards=false.
8. **(E) Migration, Workplace Disputes, and the Legal System in the United States** (ongoing) – funded by NSF, *available at* http://www.nsf.gov/awardsearch/showAward?AWD_ID=1324234&HistoricalAwards=false.
9. **(E) Doctoral Dissertation Research: Accessing Assistance and Citizen Engagement** (ongoing) – funded by NSF, *available at* http://www.nsf.gov/awardsearch/showAward?AWD_ID=1324074&HistoricalAwards=false.
10. **(E) Doctoral Dissertation Research: Bureaucratic Decision making Concerning Families and Social Services** (ongoing) – funded by NSF, *available at* http://www.nsf.gov/awardsearch/showAward?AWD_ID=1323916&HistoricalAwards=false.
11. **(E) Workshop: Quality Legal Representation: Definition, Measurement, Theory and Practice** (ongoing) – funded by NSF, *available at* http://www.nsf.gov/awardsearch/showAward?AWD_ID=1550942&HistoricalAwards=false.
12. **(E) RAPID: Measuring the Effect of Defense Counsel Funding: A Natural Experiment in Louisiana** (ongoing) – funded by NSF, *available at* https://www.nsf.gov/awardsearch/showAward?AWD_ID=1545620&HistoricalAwards=false.
13. **(E) Comparative and Longitudinal Study of Experiences with Court Systems** (ongoing) – funded by NSF, *available at* http://www.nsf.gov/awardsearch/showAward?AWD_ID=1421098&HistoricalAwards=false.
14. **(E) Collaborative Research: Lay Deployment of Professional Knowledge** (ongoing) – funded by NSF, *available at* http://www.nsf.gov/awardsearch/showAward?AWD_ID=1421410&HistoricalAwards=false.
15. **(E) The Responsibility of Judges to Assure Due Process: Tension Among Neutrality, Rights Protection, and Role** (ongoing) – funded by NSF, *available at* http://www.nsf.gov/awardsearch/showAward?AWD_ID=1456772&HistoricalAwards=false.

16. **(E) Assisting with SSI/SSDI Applications, Case Study of a Program to Help Clients of a Homeless Shelter and Supportive Housing Residence with SSI/SSDI Applications** (2013) – funded by SSA, Disability Determination Process Small Grant Program, *available at* http://ddp.policyresearchinc.org/SiteAssets/doc/MacGregor_Final_Report.pdf.
17. **(E) Justice-Involved Adults with Serious Mental Illness (SMI) and the Disability Determination Process** (2013) – funded by SSA, Disability Determination Process Small Grant Program, *available at* http://ddp.policyresearchinc.org/wp-content/uploads/2013/12/Telford_Final_Report.pdf.
18. **(E) The TANF-SSI Transition** (2013) – funded by SSA, Disability Determination Process Small Grant Program, *available at* http://ddp.policyresearchinc.org/SiteAssets/doc/Sogar_Final_Report.pdf.
19. **(E) The Child SSI Program and the Changing Safety Net** (2015) – funded by HHS, Office of Assistant Secretary for Planning and Evaluation, *available at* <https://aspe.hhs.gov/pdf-report/changing-role-child-ssi-program-safety-net>.

Federal Research Capacity

This section outlines WH-LAIR agencies' research capacity that could potentially support WH-LAIR-related research activities. Symbols are used to indicate whether the agency's research capacity is through research or evaluation conducted internally **(I)** or externally **(E)**.

(I / E) Administrative Conference of the United States (ACUS)

ACUS conducts research to promote improvements in the efficiency, adequacy, and fairness of the procedures by which federal agencies conduct regulatory programs, administer grants and benefits, and perform related governmental functions. The research is conducted both in-house and through contracts with outside entities.

(I / E) Consumer Financial Protection Bureau (CFPB)

CFPB's **Office of Research** is mandated to research, analyze and report on various issues, including experiences of traditionally underserved consumers. The Office of Research both conducts research in-house and funds research through contracts with outside entities.

CFPB's **Offices in the Consumer Education and Engagement Division** also conduct research related to financial education and the impact of programs on consumers, including programs that serve low-income and economically vulnerable consumers. The Offices in the Consumer Education and Engagement division typically procure outside entities to conduct research and evaluations.

(I / E) Department of Agriculture (USDA)

USDA conducts and funds research on a wide variety of subjects regarding agriculture, forestry, bioenergy, and nutrition issues. USDA's Research, Education, and Economics Mission Area oversees intermural and extramural research through the **National Institute of Food and Agriculture, the Economic Research Service, and the Agricultural Research Service**. USDA also conducts dietary research reviews and activities through the **Center for Nutrition Policy Promotion** and conducts other nutrition research through the Food and Nutrition Service. USDA does intermural and extramural research and funds program evaluations through grants and contracts with outside entities.

(I / E) Department of Justice (DOJ)

DOJ **Bureau of Justice Assistance (BJA)** provides services in grant administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities. BJA funds research and/or program evaluation through grants/cooperative agreements with outside entities.

National Institute of Justice (NIJ) is DOJ's research, development and evaluation agency, dedicated to improving knowledge and understanding of crime and justice issues through science. NIJ has six operating offices, three of which are responsible for scientific inquiries into criminal justice matters. They are: Office of Research and Evaluation, Office of Science and Technology, and Office of Investigative and Forensic Sciences. NIJ primarily funds research and program evaluation through grants, cooperative

agreements and contracts. However, NIJ is moving to a model where its staff will become increasingly involved with in-house research activities.

DOJ **Office of Juvenile Justice and Delinquency Prevention (OJJDP)** conducts research and evaluation, and undertakes statistical analyses on a wide range of juvenile justice matters through its Division of Research and Innovation. OJJDP primarily funds research, program evaluation, and statistical data collection through grants, cooperative agreements, and inter-agency agreements.

DOJ **Office on Violence Against Women (OVW)** does not directly conduct or fund research and evaluation at present, but on an ad hoc basis transfers funds to NIJ to fund specific research and evaluation projects. OVW collaborates with NIJ to see that funds for research and evaluation are targeted in ways that are useful and relevant to OVW and its grantees.

(I / E) Department of Health and Human Services (HHS)

HHS Administration for Children and Families (ACF)'s **Office of Planning, Research and Evaluation (OPRE)** studies ACF programs and the populations they serve through rigorous research and evaluation projects. These include evaluations of existing programs, evaluations of innovative approaches to helping low-income children and families, research syntheses, and descriptive and exploratory studies.

ACF OPRE primarily conducts research and program evaluation through contracts and grants with outside entities. Additionally, grants for demonstrations or services typically also require grantees to conduct evaluations or performance measurement. ACF Office of Child Support Enforcement program demonstration grants also require, administer, and fund research and evaluation through outside entities.

HHS's **Office of Research and Evaluation (ORE) within Health Resources and Services Administration (HRSA)'s Office of Planning, Analysis, and Evaluation**, serves as HRSA's primary source for research and evaluation by conducting internal evaluation and research studies of HRSA public health programs. Their work informs agency program and policy-making and provides consultation, technical assistance and review services to HRSA's offices and bureaus regarding their evaluation and research protocols, tools and activities. ORE conducts most of its research and program evaluation activities in-house.

Other Bureaus and Offices at HRSA also have divisions and branches conducting research and evaluation activities both in-house and through grants or contracts with outside entities, focusing on specific programs that fall under their purview.

HHS **Office of Assistant Secretary for Planning and Evaluation (ASPE)** is HHS's lead on research and evaluation issues, and conducts a variety of policy analysis, research and evaluation through a combination of intramural activity and extramural funding through contracts and grants.

In HHS **Substance Abuse and Mental Health Services Administration (SAMHSA), the Quality, Evaluation, and Performance Branch (QEP Branch)** provides evaluation expertise in domains such as underage substance abuse prevention (Center for Substance Abuse Prevention), the integration and/or colocation of behavioral health care with primary care or HIV care (Center for Substance Abuse Prevention, Center for Mental Health Services, Center for Substance Abuse Treatment, and the Office of Policy, Planning and Innovation), and increasing access to mental health services (Center for Mental Health Services).

In addition, the **Analytic and Services Research Branch** is involved in a number of ongoing analyses looking at critical issues related to prevention, treatment, recovery, the impact of the Affordable Care Act, and evidence-based and practice-based research issues.

SAMHSA does a combination of a few small in-house evaluations and carries out larger evaluations through contracts. Over time, more of the evaluations will be shifted to the evaluation unit in the Center for Behavioral Health Statistics and Quality.

(I / E) Department of Housing and Urban Development (HUD)

The Office of Research, Evaluation, and Monitoring conducts research, evaluation, and monitoring efforts for a wide variety of HUD programs and activities. This office is comprised of the following three divisions: (1) **The Program Evaluation Division** is responsible for conducting and overseeing systematic and rigorous research on programs and experimental demonstrations operated by HUD. (2) **The Program Monitoring and Research Division** conducts research and carries out a variety of efforts designed to support and enhance HUD-wide program monitoring. (3) **The Affordable Housing Research and Technology Division** conducts studies and provides research assistance on issues related to building codes, standards, and technologies; land use planning and housing issues related to “green” construction and energy efficiency; disaster preparedness and resilient construction, and housing and community planning addressing the needs of multiple age, income, and accessibility groups.

Research and evaluations are done primarily through grants and contracts with outside entities with some in-house research or evaluations.

(E) Department of Labor (DOL)

DOL **Office of Evaluation** funds research through grants and contracts.

(I) Federal Trade Commission (FTC)

The **Bureau of Economics (BE)** conducts in-house research and helps the FTC evaluate the economic impact of its actions. To do so, BE provides economic analysis and support to antitrust and consumer protection investigations and rulemakings.

The **Office of Policy Planning**, in collaboration with other FTC offices, organizes public workshops and issues reports on cutting-edge competition and consumer protection topics, addressing questions of substantive antitrust law, industry-specific practices, and significant national and international policy debates. This office’s research work is done in-house.

(E) National Science Foundation (NSF)

The **Law and Social Sciences Program within the Division of Social and Economic Sciences** in NSF considers proposals that “address social scientific studies of law and law-like systems of rules.” The NSF funds research through grants to outside entities.

(I / E) Social Security Administration (SSA)

SSA **Office of Retirement and Disability Policy (ORDP)** manages the planning, development, issuance, and evaluation of operational policies, standards, and instructions for programs administered by SSA, including: retirement and survivors insurance; disability insurance; supplemental security income and other SSA programs.

Within SSA ORDP, **Office of Research, Demonstration, and Employment Support** provides broad program analysis and development in support of the Social Security Disability Insurance and Supplemental Security Income programs. Also under SSA ORDP, **Office of Research, Evaluation & Statistics** provides statistical data on SSA programs and conducts policy research and evaluation.

APPENDIX E: INDICATOR FORMATION PROCESS FOR GLOBAL GOAL 16

On September 24, 2015, the United Nations unanimously adopted the 2030 Agenda for Sustainable Development, which includes 17 Global Goals to end extreme poverty.

Global Goal 16 states: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

16.1 Significantly reduce all forms of violence and related death rates everywhere

16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children

16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

16.5 Substantially reduce corruption and bribery in all their forms

16.6 Develop effective, accountable and transparent institutions at all levels

16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels

16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance

16.9 By 2030, provide legal identity for all, including birth registration

16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

16.a Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

16.b Promote and enforce non-discriminatory laws and policies for sustainable development

The Agenda states:

75. The Goals and targets will be followed-up and reviewed using a set of global indicators. These will be complemented by indicators at the regional and national levels which will be developed by member states, in addition to the outcomes of work undertaken for the development of the baselines for those targets where national and global baseline data does not yet exist. The global indicator framework, to be developed by the Inter Agency and Expert Group on SDG Indicators, will be agreed by the UN Statistical Commission by March 2016 and adopted thereafter by the Economic and Social Council and the General Assembly, in line with existing mandates. This framework will be simple yet robust, address all SDGs and targets including for means of implementation, and preserve the political balance, integration and ambition contained therein.

The White House Legal Aid Interagency Roundtable will participate in the development of national level indicators for the United States. As of the printing of this report, that timeframe was still being finalized.

**White House Legal Aid Interagency Roundtable:
Civil Legal Aid Research Workshop Report**



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