

AMERICAN JOURNAL
of LAW and EQUALITY

ACCESS TO JUSTICE

Martha Minow*

A senior citizen named Yu Chu Huang relied on fixed public benefits and rented an apartment in Chinatown, San Francisco, for over a decade. His landlord raised the rent beyond the limits set by law in the city. He and his wife thought they had to move or even face eviction and maybe homelessness if they could not find an alternative home. The Asian Law Caucus brought his case to the city's Rent Board. The Board not only lowered the monthly rent but also awarded Mr. Huang \$12,000 in excess payments that he paid contrary to the law.¹

Sam is a third-grade student with autism. His mother had sought assistance and accommodation from the school without success ever since Sam was in kindergarten. Because Sam's academic skills are above average, the school kept Sam in a general education classroom even though the stimulation was excessive for Sam, leading him to refuse engagement with academic work and also giving rise to multiple tantrums each day. As a result, Sam was unable to participate academically and was falling behind in school. Sam's mother encountered delay tactics from school personnel, and they even tried to intimidate her to halt her advocacy for Sam. Sam's mother turned to a legal services organization. The lawyer successfully advocated for an evaluation of Sam seven months earlier than the school had planned and argued for an intensive behavioral support plan on a trial basis. When the school district refused to hold a team meeting to address Sam's placement due to COVID-19 school closure, the attorney demanded a virtual meeting. Sam's needs for a

*300th Anniversary University Professor, Harvard University. This talk was presented as the Open Mind Heffner Lecture at Rutgers University on April 3, 2017; I also presented a version of it at the Hawai'i Access to Justice Conference, June 12, 2012. I give thanks to Paloma O'Connor and Matthew Ryan for research assistance; to Hannah Hilligoss and Randy Kennedy for their valuable suggestions; to Rutgers University and the Heffner family; and to John Levi, Ron Flagg, James Sandman, and the board and staff of the Legal Services Corporation for their advice and their constant efforts to advance access to justice.

1 See *Letter from Executive Director*, E-NEWSLETTER (Asian L. Caucus, S.F., Cal.), Fall 2012, <https://archive.constantcontact.com/fs123/1103244704062/archive/1111427924523.html>.

smaller, highly structured academic setting were established at the meeting, and the school and Sam's mother agreed that Sam would start third grade in a substantially separate classroom while having an option to join a mainstream classroom for subjects where he excels. The legal services attorney's help ended the impasse that was harming Sam's academic progress.²

A military veteran with serious mental health issues applied for disability benefits but was repeatedly denied over the course of a decade. Like many veterans, she did not understand why the claim was denied or how to appeal, so she repeatedly filed the same claim. No one ever requested her medical records from the base where she served. She eventually found help from a legal services attorney, who obtained her records. The records showed resistance by the military doctors to consistently reported symptoms. The new inquiry resulted in a retroactive disability compensation award dating back to the initial application in the mid-1990s, with back payments totaling almost \$250,000.³

In New Jersey, a twenty-four-year-old, single mother ("Janet") faced imminent homelessness after she fled abuse by the father of her toddlers. She came to New Jersey to live with her brother, only to learn that her brother's landlord would not allow him to house her and her children. Janet applied for emergency shelter assistance but was denied help on the ground that she caused her own homelessness. A lawyer from Northeast New Jersey Legal Services stepped in and showed that Janet was forced to leave her home or be subjected to further abuse, and that she did have a plan of action in place when she left. She also showed that Janet's abuser continued to threaten her.

An administrative law judge immediately overturned the denial and granted Janet emergency assistance. Janet and her children were placed in a shelter and subsequently found an apartment, where they are safe. Janet is free from domestic violence and working to ensure opportunities for her children.⁴

These are success stories. They reflect how legal help made the difference for people facing crises in housing, education, and benefits, despite their rights. Consider the experiences of veterans trying to navigate the system to obtain the health and education benefits they have earned. It can take more than half a year for veterans' benefits complaints even to be heard. Lawyers help. One study showed that when veterans get legal assistance, their claims are 144% more likely to be successful than are claims filed without assistance.⁵ Legal assistance improves the accuracy and completeness of benefits applications, which,

2 *Client Stories*, CHILD'S L. CTR. OF MASS., <https://www.clcm.org/client-stories/#story-3> (last visited June 6, 2022).

3 Margaret Middleton & Timothy D. Bleasdale, *Legal Aid Can Slice Through Veterans' Benefits Backlog*, HARTFORD COURANT (Conn.) (June 6, 2014, 6:03 PM), <https://www.courant.com/opinion/op-ed/hc-op-middleton-legal-aid-helps-veterans-get-benef-20140606-story.html>.

4 *Client Stories*, NE. N.J. LEGAL SERVS., <https://www.northeastnjlegalservices.org/client-stories> (last visited Apr. 15, 2022).

5 Middleton & Bleasdale, *supra* note 3.

in turn, makes the application review process more efficient, easing the administrative burden faced by state governments.

Others are not so fortunate. Many Americans who cannot afford legal help routinely forfeit these basic rights because they are unable to access free or subsidized legal assistance. The fact that individual rights can often be realized only with the help of expensive legal advice means that inequality is hard-wired in the American legal system.

Many people know this fact when it comes to criminal law,⁶ but far less attention is paid to unequal access and barriers to justice involving issues of civil law: contracts, torts, employment law, veterans' benefits, housing, family law, medical insurance, education rights, debt collection, and anything else that is not a criminal matter. Civil law affects many more people than are ever directly involved in the criminal process. These issues affect the daily lives of people even when they do not know their rights or do not have the means to claim them. The law does not enforce itself.

Indeed, for every success story, many more people are turned away from help, and still more never made their way to a legal services office, court, or agency. In 2021, three of four low-income households experienced one or more civil legal problems, and a majority said these problems had substantial effects on their finances, their relationships, their safety, or their mental or physical health.⁷ Further, 92% of those low-income individuals surveyed reported receiving no or inadequate legal assistance related to the civil legal problems substantially affecting them.⁸ The need for legal assistance has been exacerbated by the global pandemic: access to civil justice has been crucial for low-income people dealing with job loss; insecure housing; access to educational accommodations, most notably for students with disabilities; and domestic violence exacerbated by the stress of living in isolation in close quarters.

Access to civil justice is an ideal betrayed by practice in the United States for millions of low-income Americans. Ensuring access to the machinery of the law should be a bigger part of the equality agenda for the United States and hence for advocates. Just as criminal legal processes and systems have defects, the civil justice apparatus both reflects and aggravates inequalities in society. Despite this, there is surprisingly little support for civil legal assistance. Perhaps people think that access to justice is just a problem for lawyers to solve.⁹ Perhaps policy makers see legal assistance as a Band-Aid and prefer to spend

6 See REIMAGINING JUSTICE: THE CHALLENGES OF VIOLENCE AND PUNITIVE EXCESS, 151 DÆDALUS, no. 1, Winter 2022, <https://www.amacad.org/daedalus/reimagining-justice-challenges-violence-punitive-excess>.

7 LEGAL SERVS. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 7 (2022), <https://justicegap.lsc.gov/the-report/> (prepared by Mary C. Slosar, Slosar Research, based in part on a survey conducted by NORC at the University of Chicago).

8 *Id.* at 8.

9 Lincoln Caplan, *The Invisible Justice Problem*, 148 DÆDALUS 19 (Winter 2019), <https://www.amacad.org/publication/invisible-justice-problem>.

their capital on more radical change. Or perhaps the lack of support reflects deeper issues of language and compassion fatigue. Whatever the reason, legal assistance for those who cannot afford other legal services is a necessary component of a just society. Meaningful change calls for detailed considerations of the scope and origins of the situation, arguments for reform, explanations of why reforms do not happen, and reasons to believe the situation can improve.¹⁰

I. THE ARGUMENTS FOR ACCESS TO CIVIL JUSTICE ARE PLENTIFUL

To someone without money and without legal training, asserting legal rights is a mystery and an obstacle. Our justice system is inaccessible to millions of poor people. Every day, we fail to keep the “equal justice under law” promise engraved on the front of the grand United States Supreme Court building. Legal help matters whether or not a case goes to court. Senior citizens are caught in unscrupulous scams. Disaster survivors struggle to get back on their feet. Small business owners are stymied by debt. Even knowledge that law can help is often inaccessible in these circumstances.

Individual rights often cannot be realized without laws meant to protect those rights. And laws do not enforce themselves. Those without money and legal training are often unaware that their problems involve legal rights. Even when armed with that knowledge, too many individuals lack the specific knowledge and time needed to assert those rights. Assistance can make all the difference.

Despite contributions from private and public sources, legal services offices for low-income people turn away half to two-thirds of those eligible for help because the offices simply do not have enough resources.¹¹ Some communities have responded with innovations, such as self-help kiosks in their housing and municipal courts to assist people without lawyers, legal advice hotlines, high-volume legal services clinics staffed by law schools,

10 A symposium on the subject appears in *Access to Justice*, 148 DÆDALUS 1 (Winter 2019), <https://www.amacad.org/daedalus/access-to-justice>. This symposium, a data collection project, and a report with recommendations are products of a project of the American Academy of Arts and Sciences that I cochair with John Levi and Ken Frazier. See *Data Collection and Legal Services for Low-income Americans*, AM. ACAD. OF ARTS & SCIS., <https://www.amacad.org/project/data-collection-and-legal-services-low-income-americans>; *Civil Justice for All*, AM. ACAD. OF ARTS & SCIS., <https://www.amacad.org/publication/civil-justice-for-all>; *Making Justice Accessible*, AM. ACAD. OF ARTS & SCIS., <https://www.amacad.org/project/making-justice-accessible>.

11 BOS. BAR ASS'N STATEWIDE TASK FORCE TO EXPAND CIV. LEGAL AID IN MASS., *INVESTING IN JUSTICE: A ROADMAP TO COST-EFFECTIVE FUNDING OF CIVIL LEGAL AID IN MASSACHUSETTS* (2014), <https://www.bostonbar.org/docs/default-document-library/statewide-task-force-to-expand-civil-legal-aid-in-ma---investing-in-justice.pdf>. I served on this effort. *Boston Bar Launches Statewide Task Force to Expand Civil Legal Aid in MA*, BOS. BAR ASS'N (June 3, 2013), <https://www.bostonbar.org/public-policy/public-policy-archive/2013/06/04/boston-bar-launches-statewide-task-force-to-expand-civil-legal-aid-in-ma>.

and lawyer-of-the-day programs available in courts.¹² But many other places lack these resources.¹³ Americans living in rural communities or on Indian reservations, elderly people, and others in many states effectively have little or no ability to find legal advice or assistance.¹⁴

My focus here is on civil justice, but the risk of jail time due to unpaid civil fines and fees blurs the distinction between civil and criminal law. Debtors' prison is supposed to be banned in the United States, but in practice, an inability to pay fees results in loss of liberty for thousands of people.¹⁵ Such fines and fees do not efficiently raise revenues for government.¹⁶ Some states suspend driver's licenses for unpaid fees and fines, which increases economic distress and emotional stress and puts jobs, school attendance, and transportation to medical appointments in jeopardy for affected families.¹⁷

Here's the bigger picture. Nearly one in five Americans now qualify for federally supported civil legal assistance because they live at or below 125% of the poverty level.¹⁸ Americans who cannot afford legal help or who are otherwise unable to make use of civil legal assistance routinely forfeit basic rights. It is neither the facts of their cases nor the governing law that is to blame. It is their poverty—and the accompanying lack of legal assistance. When people forfeit their rights simply due to absence of counsel, we all suffer; the law does not enforce itself. In civil cases, the law requires litigants to act.

By a conservative estimate, fewer than twenty percent of the legal problems experienced by low-income people receive legal representation. All around the country, legal services offices are routinely turning away eligible clients. One office I visited in 2016 had to close intake of new cases after two days each month. Who is turned away? Victims of the financial crisis, innocent tenants whose housing is in buildings subject to foreclosure, veterans, people with disabilities, people vulnerable to domestic violence (which itself increases when the economy is difficult), and people whose disability, race, ethnicity, or national origin exposes them to the daily assaults of direct and indirect bias.

12 REBECCA L. SANDEFUR & AARON SMYTH, *ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT* 73–74 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1962790 (reporting data from 2009).

13 *Id.* at 31.

14 See, e.g., Lisa R. Pruitt et al., *Justice in the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence-Based Solutions to Alleviate It*, 37 U. ARK. LITTLE ROCK L. REV. 573 (2015); Lisa R. Pruitt & Bradley Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S. DAKOTA L. REV. 466 (2014); SANDEFUR & SMYTH, *supra* note 12.

15 Joseph Shapiro, *Supreme Court Ruling Not Enough to Prevent Debtors Prisons*, NPR (May 21, 2014, 5:01 AM EST), <https://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons>; Christopher D. Hampson, *The New American Debtors' Prisons* (Harvard Law School 2015 Stephen L. Werner Prize: Criminal Justice, Aug. 4, 2015), <https://dash.harvard.edu/handle/1/17840773>.

16 MATTHEW MENENDEZ ET AL., BRENNAN CTR. FOR JUST., *THE STEEP COSTS OF CRIMINAL JUSTICE FINES AND FEES* 5 (2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fines-and-fees>.

17 *Id.*

18 LEGAL SERVS. CORP., *supra* note 7.

Legal advice and advocacy can make all the difference for people at risk of eviction or foreclosure, unemployment, hunger, and domestic violence. Returning veterans, parents in child-custody disputes, and small-business owners having difficulty meeting the terms of creditors are deeply affected by the lack of access to civil legal assistance. Legal services needs are much greater than the available funding. Reports from local offices that provide civil legal assistance to low-income clients indicate that between fifty percent and eighty percent of clients are turned away due to a lack of resources.¹⁹

The sole federal source of funding, the Legal Services Corporation, is a nonprofit created and funded by Congress. Its federal appropriations fall far short of what it would take simply to keep up with inflation and population growth, and the “justice gap” is even larger in light of increased legal needs due to economic dislocations, medical crises, and natural disasters.²⁰

Local communities, especially in poor states, may depend on the federal funding even as many try to find other sources of support for the lawyers, paralegals, and tech resources. In fact, most legal aid funding in the United States comes from non-federal sources, but those other sources have been strained.

One very creative source is Interest on Lawyers Trust Accounts (IOLTA). Ordinary lawyers often hold funds in trust for clients, and through this program, the interest earned on funds in client trust accounts strengthens justice by serving those who cannot afford to pay for legal representation. It represents an ingenious idea, but it works well only when interest rates are substantial. When interest rates and client funds held in trust decline, the funds available to support legal services fall dramatically.

States and local governments, in addition to the federal government, provide support for civil legal services for low-income Americans, but the level of state and local support varies widely.²¹ Agricultural workers and Native American service areas in particular depend on federal dollars for more than half of the dollars contributed to civil legal assistance.²² Women make up about seventy percent of the low-income clients served by the legal aid programs receiving federal aid, and perhaps women’s political and economic

19 During my ten years serving on the board of the Legal Services Corporation, reports from executive directors of the 132 independent legal aid programs in every state underscored these shortfalls with data and memorable stories.

20 Brian Fitzpatrick & Mary Kay Scanlon, *It’s Time for Congress to Step Up Funding for the Legal Services Corporation*, THE HILL (Feb. 15, 2022, 9:00 ET), <https://thehill.com/blogs/congress-blog/politics/594244-its-time-for-congress-to-step-up-funding-for-the-legal-services#:~:text=In%20July%2C%20the%20House%20Appropriations,million%20increase%20from%20current%20funding>.

21 LEGAL SERVS. CORP., BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS 13 (2019), <https://lsc-live.app.box.com/s/xjztcphiu3cr9yb7o9rd9996pyvwi3i>.

22 *Id.* at 15.

disadvantages help to explain the limited support and attention to civil legal aid.²³ Over half of those served by these programs identify as members of racial and ethnic groups that are not white/Caucasian, and this fact, too, may help explain the chronic underfunding of the programs.²⁴

Despite the enormous needs, legal services programs supported by the federal government have had to lay off attorneys and paralegals. Scores of legal services programs have closed offices over the past ten years. When an office in a rural area closes, the next-closest office may be two days away by car, literally inaccessible to a poor person who lacks transportation. Without legal help, even those who make it to court face steep problems. In a survey of trial judges from across this country, more than sixty percent of the responding judges reported that unrepresented litigants failed to present necessary evidence, committed procedural errors and ineffective cross-examination, and failed to present enforceable orders to the court.²⁵ Judge Griffin Bell, former Attorney General of the United States, reflected that “it does not matter how fair our laws may be, if access to their enforcement is denied or unavailable.”²⁶

For example, being represented by a lawyer in landlord-tenant disputes results in dramatically better outcomes for tenants.²⁷ In Boston, ninety percent of landlords have lawyers in housing court, and ninety percent of tenants do not.²⁸ The Boston Bar Association reported on a randomized controlled study that showed that compared with those without legal representation, tenants with full legal representation fared twice as well in terms of retaining possession and almost five times as well in terms of rent waived and monetary awards.²⁹ Indeed, across a wide range of problems, having access to a lawyer is

23 See *id.* at 16.

24 *Id.* at 62. For reflections on the relationships between political power allocations and entrenchment of inequality, see Jennifer Hochschild, *Commentary: Political Inequality, “Real” Public Preferences, Historical Comparisons & Axes of Disadvantage*, 148 DÆDALUS 164 (Summer 2019), <https://www.amacad.org/publication/political-inequality-real-public-preferences-historical-comparisons-axes-disadvantage>.

25 LINDA KLEIN, REPORT ON THE SURVEY OF JUDGES ON THE IMPACT OF THE ECONOMIC DOWNTURN ON REPRESENTATION IN THE COURTS (2010), <https://legalaidresearch.org/2020/02/04/report-on-the-survey-of-judges-on-the-impact-of-the-economic-downturn-on-representation-in-the-courts/>.

26 Griffin B. Bell, Attorney General, Keynote Address Before the National Center for State Courts 4 (Mar. 19, 1978), <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/03-19-1978.pdf>.

27 BOS. BAR ASS’N TASK FORCE ON THE CIV. RT. TO COUNSEL, THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND PREVENTION OF HOMELESSNESS (2012), <https://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf> (analysis by D. James Greiner; Cassandra Wolos Pattanayak; Jonathan Hennessy; and Tarek Austin, and report drafted by Russell Engler).

28 Martin Frankel et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment*, 35 L. & SOC’Y REV. 419 (2001), <https://legalaidresearch.org/2020/02/11/the-impact-of-legal-counsel-on-outcomes-for-poor-tenants-in-new-york-citys-housing-court-results-of-a-randomized-experiment/>.

29 BOS. BAR ASS’N TASK FORCE ON THE CIV. RT. TO COUNSEL, *supra* note 27, at 15–16.

associated with better outcomes.³⁰ So those without such access face compounded problems: their underlying legal problems compounded by the lack of better outcomes that access to counsel facilitates.

Access to counsel varies across states. Fordham Law School's National Center for Access to Justice developed the Justice Index.³¹ The Index assesses four categories—attorney access, self-representation, language access, and disability access—and produces a score for each state on a scale of 0 to 100, with 100 representing full access to justice. Massachusetts, with a score of 63.79, performed significantly above the national average score of 39.41. New Jersey is ranked twenty-third nationally in overall access to justice, with a score of 39.03; New York scored similarly at 39.09; Mississippi performed the worst, scoring 14.70. And in rural regions and on Indian reservations, the prospects of finding cell-phone service, mass transportation, or any avenue to legal advice are shockingly dim.

The United States overall makes a poor showing in comparison with other countries with respect to access to civil justice. On access to justice in civil matters, the United States is ranked thirty-sixth internationally, behind most high-income countries as well as behind Rwanda, Poland, and Malaysia.³² The United States is far from the exemplar that many claim it to be.

Getting the help of a lawyer is one way to access justice, and it is crucial when the laws are complex and when courts and agencies are opaque and cumbersome. The benefits at stake are not just those for the people most directly affected, because unmet legal needs spiral into high social costs. A tenant who cannot resolve a conflict with a landlord may well end up homeless. A domestic violence victim who lives in fear may be unable to show up for her job. A veteran who cannot access preventive health care may well develop acute and debilitating medical conditions. A task force of the Boston Bar Association found that every dollar spent on legal assistance for low-income individuals returns between one and five dollars to the Commonwealth in savings to foster care, emergency housing, emergency health care, and other social services.³³ Civil legal aid service providers in Georgia helped their clients obtain \$36.3 million in Social Security benefits, and programs provided by similar organizations in Tennessee helped secure \$1.3 million in cost savings from a reduction in the need for emergency homeless shelters.³⁴ In 2015, civil legal aid recipients

30 Emily S. Taylor Poppe & Jeffrey J. Rachlinski, *Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes*, 48 PEPPERDINE L. REV. 881 (2016), <https://digitalcommons.pepperdine.edu/plr/vol43/iss4/1/>.

31 *Justice Index*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/state-rankings/2021/justice-index> (last visited Apr. 15, 2022).

32 WORLD JUST. PROJECT, WORLD JUSTICE PROJECT RULE OF LAW INDEX 2020, at 28 (2020), https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.

33 BOS. BAR ASS'N STATEWIDE TASK FORCE TO EXPAND CIV. LEGAL AID IN MASS., *supra* note 11, at 23–24.

34 TODD GABE, MAINE'S JUSTICE GROUP, ECONOMIC IMPACT OF CIVIL LEGAL AID SERVICES IN MAINE (2016), <https://www.justicemaine.org/wp-content/uploads/Gabe-Report-Submitted-November-14-2016.pdf> (citing studies).

in Maine spent fewer nights in the state’s emergency and homeless shelters, which saved an estimated \$2.6 million.³⁵ All these studies show a simple truth: legal-aid representation benefits us all.

We all save money when other people can pay their bills, avoid foreclosure or eviction, prevent foster care placements for their children, and obtain health care and social services that let them contribute to their communities. In Florida, one study estimated savings of \$4.24 million due to legal services responding to domestic violence and homelessness risks.³⁶ In Nebraska, legal aid clients received more than \$2.5 million in parental child support, alimony, unemployment, and other financial awards in one year.³⁷ These victories keep kids in school, prevent homelessness or domestic violence, reduce the cost of one child in foster care, and improve access to health care.

II. ACCESS TO CIVIL JUSTICE SHOULD BE GUARANTEED

Ensuring access to justice reduces suffering and saves money. It is also a stated commitment of the United States. James Sandman, the former president of the federal Legal Services Corporation, explained that one of the most fundamental of American values is “equal justice for all, without regard to economic status.”³⁸ The Supreme Court of the United States has “Equal Justice for All” etched above its doors. In the federal judicial oath, every judge taking the bench promises to “administer justice without respect to persons, and do equal right to the poor and the rich.” Schoolchildren recite the Pledge of Allegiance to a nation that promises “justice for all.”

In contrast, any person excluded from the court system is politically degraded. “Such a person has no rights—not even the right to have rights . . . [meaning] the most basic of all rights: the ability to appear before a government official and argue that one is entitled to recognition as a potential holder of rights.”³⁹ So wrote law professor Alexandra Lahav in her important book, *In Praise of Litigation*.⁴⁰

Despite our shared values, access to civil justice is not an issue high on political agendas or even in the consciousness of people who are not directly affected. Access to

35 *Id.* at 13 (“This estimate is based on cases that closed with successful outcomes of dismissing an eviction notice, securing additional time in an eviction case, dismissing a housing foreclosure, or securing additional time in a foreclosure case.”).

36 FL. TAXWATCH, THE ECONOMIC IMPACT OF LEGAL AID SERVICES IN THE STATE OF FLORIDA (2010), <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15766/The-Economic-Impact-of-Legal-Aid-Services-in-the-State-of-Florida>.

37 ROD FEELHAVER & JEROME A. DEICHERT, THE ECONOMIC IMPACT OF LEGAL AID OF NEBRASKA: 2007 (2008).

38 Email from James Sandman to Martha Minow (Apr. 2, 2017, 9:25 AM) (on file with author).

39 ALEXANDRA LAHAV, IN PRAISE OF LITIGATION 113 (2017).

40 *Id.*

justice is never going to be equal if “equal” here means identical experiences, regardless of the wealth of the individuals involved. But this country could assure a minimum threshold of accessibility, and doing so would considerably close the gap between our country’s stated ideals and reality.

Stepping back from our immediate situation in the United States, it is worth seeing how rights are building blocks of the rule of law, and the rule of law produces stability and security for entire nations. A sturdy rule of law strengthens the climate for businesses and serves workers, their families, and consumers. It avoids the risks of unrest and promotes trust in basic institutions and society. Former Chief Judge Hunstein, who served on the Supreme Court of Georgia for twenty-six years, put it this way:

Equal access to justice contributes to healthy communities and a vibrant economy. No community thrives when people are homeless, children are out of school, sick people are unable to get health care, or families experience violence. Likewise, when a person’s legal problem is addressed in a timely and effective way, the benefit ripples out and helps that person’s family, neighbors, employer and community.⁴¹

Work with societies emerging from violent conflict—for example, in parts of the former Yugoslavia and in Rwanda—underscores the importance of building or rebuilding trust in legal systems.⁴² Economic investments will not come to communities that lack functioning courts and widely held perceptions that the rule of law is in force. Without those practices, rights are not secure. Laws do not matter if people cannot enforce them. Even more fundamentally, access to justice means strengthening our own best selves and avoiding our worst. Justice Thurgood Marshall once said, “In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute.”⁴³ That is what access to justice is all about, and that is what we can advance if we all work together.⁴⁴

41 CONF. OF CHIEF JUSTICES, THE IMPORTANCE OF FUNDING FOR THE LEGAL SERVICES CORPORATION FROM THE PERSPECTIVE OF THE CONFERENCE OF CHIEF JUSTICES AND THE CONFERENCE OF STATE COURT ADMINISTRATORS, https://ccj.ncsc.org/__data/assets/pdf_file/0013/23251/lsc_whtpr.pdf (quoting Chief Justice Hunstein, *Legal Aid to Poor Can’t Take More Cuts*, ATLANTA J. CONST. (May 26, 2011)).

42 See Elizabeth Anderson, *Transitional Justice and the Rule of Law: Lessons from the Field*, 47 CASE W. RES. J. INT’L L. 305 (2015), <https://scholarlycommons.law.case.edu/jil/vol47/iss1/21/>.

43 9 *Powerful Quotes by Thurgood Marshall*, BIOGRAPHY (updated Jan. 28, 2021), <https://www.biography.com/news/thurgood-marshall-quotes>.

44 Justice Thurgood Marshall also talked of courts as the protectors of the powerless. See, e.g., *Payne v. Tennessee*, 501 U.S. § 808, 856 (1991) (Marshall, J., dissenting).

III. THEN WHY IS THERE NOT MORE SUPPORT FOR LEGAL SERVICES FOR THOSE WHO CANNOT AFFORD THEM?

The case for expanding access to the law in the United States is strong whether justified by cost savings, national ethos, social stability, or merely respect for individuals—or by concern about inequality as an issue of morality, law, and even security. Alleviating suffering, delivering on the promises made by law and the nation itself, saving money, promoting social stability, enacting shared values—these are pretty darn good reasons. And yet the shortfall in community support for legal assistance is persistent and chronic. Since the economic downturn of 2008, exacerbated by the pandemic and its attendant economic dislocations, legal needs of people who are poor or risk sliding into poverty have skyrocketed, and yet funding sources for legal services have diminished.

When the administration of President Donald Trump called for ending all federal funding for legal services, the head of the Office of Management and Budget, Mick Mulvaney, responded by twice introducing legislation to terminate the Legal Services Corporation.⁴⁵ Luckily, those efforts failed, but so too have efforts to expand funding for legal services. Law school deans have urged Congress to keep and expand the funding for legal services, and so did general counsels of leading U.S. corporations. But the shortfall between need and funding persists even with a change in political administrations.

Political contests over federal funding for lawyers for poor people are not new. Growing from the War on Poverty work of the 1960s, the federal Legal Services Corporation was enacted as a bipartisan commitment. The law was signed in 1974 by President Richard M. Nixon. President Nixon's message described the federal legal services program as "a workhorse" in the effort to secure equal rights in America. President Nixon explained, "[E]ach day the old, the unemployed, the underprivileged, and the largely forgotten people of our Nation may seek help. Perhaps it is an eviction, a marital conflict, repossession of a car, or misunderstanding over a welfare check—each problem may have a legal solution. These are small claims in the Nation's eye, but they loom large in the hearts and lives of poor Americans."⁴⁶

45 Tom McCarthy, *Draft of First Trump Budget Would Cut Legal Aid for Millions of Poor Americans*, *GUARDIAN* (Feb. 21, 2017), <https://www.theguardian.com/us-news/2017/feb/21/trump-draft-budget-legal-aid-low-income>.

46 President Nixon's message also emphasized that the lawyers in the program should have full freedom to protect the best interests of their clients in keeping with the Canons of Ethics and the high standards of the legal profession in pursuit of justice. (Yet behind the scenes, President Nixon had vetoed a previous bill and also demanded presidential control over appointments to the Legal Services board.) Before the year ended, however, the President decided to veto a large package of legislation that Congress had approved that would have established the Legal Services Corporation (LSC). The veto was aimed at a national childcare program that the president opposed, but President Nixon also signaled that he strongly disagreed with a legal services provision that would have limited his power over appointments to the LSC Board. *Who We Are*, *LEGAL SERVS. CORP.*, <https://www.lsc.gov/about-lsc/who-we-are/our-history>.

Opponents of federally funded legal services in the 1960s included then-Governor Ronald Reagan, perhaps due to clashes with lawyers representing Cesar Chavez and farmworkers; as President, Reagan sought to eliminate all federal funding for legal services.⁴⁷ Congress joined in a pitched political battle and, with the support of the American Bar Association, preserved the Legal Services Corporation but reduced its funding and placed restrictions on the work that could be done with federal support.⁴⁸

Funding for civil legal assistance remained steady during the administration of President George H.W. Bush, and funding even grew substantially during the presidency of Bill Clinton, whose wife Hillary Clinton had previously served as chair of the Legal Services Corporation board. But when President Clinton's administration agreed on reforms to public assistance in signing the 1996 Personal Responsibility and Work Opportunity Act, that meant accepting further restrictions on the types of work permitted to LSC grantee legal services organizations. LSC-funded organizations could no longer bring class action lawsuits challenging the administration of public benefits, and they could no longer represent immigrants lacking legal authority to be in the United States.⁴⁹ The Supreme Court rejected one specific restriction on advocacy on behalf of an individual client challenging welfare benefits.⁵⁰ Nonetheless, organizations receiving federal funds remain barred from engaging in or encouraging others to engage in political or election-related activities.⁵¹

Why do people oppose support for civil legal assistance for poor and often desperate people? I have been trying to understand the sources of the opposition, because simply saving money is an insufficient motivation. As Americans, we spend more money on Halloween costumes for our pets than we do to support legal services for poor people.⁵²

47 Stuart Taylor Jr., *House Panel Rebuffs Reagan and Backs Keeping Legal Aid for Poor*, N.Y. TIMES (May 14, 1981), <https://www.nytimes.com/1981/05/14/us/house-panel-rebuffs-reagan-and-backs-keeping-legal-aid-for-poor.html>; Bennett H. Beach, *Law: One More Narrow Escape*, TIME (Nov. 23, 1981), <https://content.time.com/time/subscriber/article/0,33009,922707,00.html>.

48 Stuart Taylor Jr., *House Action Near in Fight Over Legal Aid*, N.Y. TIMES (Jun. 16, 1981), <https://www.nytimes.com/1981/06/16/us/house-action-near-in-fight-over-legal-aid.html>; Taylor, *supra* note 47.

49 William Booth, *Attacked as Left-Leaning, Legal Services Suffers Deep Cuts*, WASH. POST (Jun. 1, 1996), <https://www.washingtonpost.com/archive/politics/1996/06/01/attacked-as-left-leaning-legal-services-suffers-deep-cuts/caee36f5-114e-4068-899e-5e559ab7954a/>; see 45 C.F.R. § 1626.3 (providing that recipients may not provide assistance to or on behalf of ineligible aliens); 45 C.F.R. § 1626.5 (defining aliens who are eligible for assistance); 45 C.F.R. § 1626.4 (regarding aliens eligible for assistance under anti-abuse laws).

50 Legal Servs. Corp. v. Velazquez, 531 U.S. 533 (2001).

51 Neither LSC nor the recipient may be identified with any partisan or nonpartisan political activity or a candidate for office or encourage others to be. 45 C.F.R. § 1608.4. Staff attorneys may not use their position or authority to influence elections or coerce anyone to contribute to a political cause, 45 C.F.R. § 1608.5; run for office, 45 C.F.R. § 1608.5(c); or register, transport to polls, or otherwise assist voters in election-related activities, 45 C.F.R. § 1608. See generally LSC Regulations 45 C.F.R. ch. 16.

52 Joseph Kennedy III, *Access to Justice for All*, N.Y. TIMES (Mar. 3, 2016), <https://www.nytimes.com/2016/03/03/opinion/access-to-justice-for-all.html> (citing study by National Retail Federation that found Americans spend \$350 million on Halloween costumes for their pets but only \$335 million on civil legal assistance).

Adjusted for inflation, the federal grant for civil legal assistance has remained lower in recent decades than it was in 1976 when the program was founded.

Two oddly contradictory reasons may offer some explanations of the persistently inadequate support in the United States for legal assistance for those who cannot afford it. The first is general dislike of law, rights enforcement, and lawsuits in general; the second is a view of injustices as too large to be met simply by increasing legal assistance to individuals, given the existing state of laws and institutions. Some even deeper explanations will then be explored.

A. *Lawyers Are Trouble; Lawsuits Are Problems; Law Is a Burden*

It is not hard to find cultural objections to lawyers, lawsuits, and law. William Shakespeare's line "First thing we do, let's kill all the lawyers," though often ripped from its context, summarizes familiar attitudes.⁵³ Lawyers are not well-liked. Think of all the jokes about lawyers. Critics complain that law and regulation are burdens on freedom.⁵⁴ Lawsuits are particularly understood as burdensome due to the time, money, stress, and reputational risks involved. Classic author Voltaire supposedly said, "I was never ruined but twice, once when I lost a lawsuit and once when I won one."⁵⁵ Law as inaccessible and inscrutable may be nowhere more hauntingly portrayed than by lawyer-author Franz Kafka in his parable "Before the Law," which depicts a person being told by the doorkeeper not to enter, bribing the doorkeeper to no effect, and waiting years for the door to the court to open before dying before the closed door.⁵⁶

53 WILLIAM SHAKESPEARE, *HENRY VI* pt. 2. The line is said, as part of a humorous exchange, by Dick, a murderer and villain; Shakespeare, though, often contrasted lawyers and justice. Seth Finkelstein, *First Thing We Do, Let's Kill All the Lawyers*, *ETHICAL SPECTACLE* (1997), <https://www.spectacle.org/797/finkel.html>.

54 See, e.g., Bayless Manning, *Too Much Law: Our National Disease*, 33 *BUS. LAWYER* 435 (Nov. 1977), <https://www.jstor.org/stable/40685801>; NPR/TED Staff, *Is the Law Making Us Less Free?*, *PUB. RADIO E.* (TED talk by Phillip K. Howard) (Mar. 14, 2014, 12:00 PM EDT), <https://www.publicradioeast.org/us/2014-03-14/is-the-law-making-us-less-free>. Although many critics identify with conservative or right-wing politics, others identify more with liberal or left-wing views. For a recent collection of essays spanning the range, see *REGULATORY BREAKDOWN: THE CRISIS OF CONFIDENCE IN U.S. REGULATION* (Cary Coglianese ed., 2012). In addition, especially with growing numbers of conservative federal judges, some conservatives now welcome litigation and increasing use of courts—to achieve their ends. See Jeff Shesol, *So Sue Me: Republicans Learn to Love Litigation*, *NEW YORKER* (July 17, 2014) <https://www.newyorker.com/news/news-desk/so-sue-me-republicans-learn-to-love-litigation>.

55 Attributed to Voltaire, but first used by Evelyn Beatrice Hall writing under the pseudonym Stephen G Tallentyre in the book *THE FRIENDS OF VOLTAIRE* (1906).

56 In Kafka's *Before the Law*, a man from the country seeks the law and wishes to find entrance to the law through an open doorway, but the doorkeeper says repeatedly that the man cannot go through at the present time. The man waits at the door until he is about to die. Right before his death, he asks the doorkeeper why, even though everyone seeks the law, no one else has come in all the years. The doorkeeper answers, "No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it." FRANZ KAFKA, *Before the Law*, *FRANZ KAFKA ONLINE* (Ian Johnston, trans.), <https://www.kafka-online.info/before-the-law.html> (last visited Apr. 16, 2022).

A world papered with law is the opposite of an ideal society, suggested the accomplished law professor Grant Gilmore, who ended his book on legal history this way:

The better the society, the less law there will be. In heaven there will be no law, and the lion shall lie down with the lamb. The values of an unjust society will reflect themselves in an unjust law. The worse the society, the more law there will be. In hell there will be nothing but law, and due process will be meticulously observed.⁵⁷

If this world actually were heaven, perhaps there would be no need for law. But, given our less-than-heavenly world, the objections to law seem to arise when people imagine burdens if they are on the receiving end of legal claims, rather than considering their own potential need for law's protections. Maybe people imagine law as burdensome, as red tape, as obligation without conveying desires for less justice. Or maybe some people desire less justice for other people but not less for themselves.

Periodic political fights over whether the federal government should finance lawyers for poor people reveal opposition to two forms of lawyering for the poor. First, full-service lawyering includes the possibility of bringing class action lawsuits, which are more efficient than bringing a series of similar individual cases—yet this form of action is off-limits for federally funded legal services. Second, law reform through legislative action and elections are means foreclosed to legal services offices funded by the federal government. Those restrictions may reflect views that government funds should not be used to sue or change the government. Other restrictions reflect political opposition to the rights of farmworkers, people receiving public assistance, and undocumented immigrants.

There also may be expectations of under-enforcement baked into many government budgets. The Veterans Administration, for example, would have to pay out more in benefits if the processes were more easily navigated and enforced by eligible individuals. The barriers to enforcement, though, mean that benefits remain beyond reach for many who have valid legal claims. When laws are not enforced, perhaps they were not meant to be real. Saving money is given greater priority than enforcing the rights of the poor.

Insufficiencies of law enforcement fall disproportionately on those with fewer resources. Perhaps not surprisingly, then, respect for law is in jeopardy, especially among those who lack access to it. While president of the American Bar Association, Justice Lewis Powell noted that “it has been correctly said that respect for the law is at its lowest with underprivileged persons. There is a natural tendency for such persons to think of courts as symbols of trouble and lawyers as representatives of creditors and other sources of

57 GRANT GILMORE, *AGES OF AMERICAN LAW* 110 (1979). But in the same passage, he stressed that law is not the source but the reflection of values in a society. He argued that “[t]he values of a reasonably just society will reflect themselves in a reasonably just law.” *Id.*

harassment.”⁵⁸ That may explain why he fervently supported public funding of legal services and pro bono work: to redeem the promise of justice for all.

Seeing that rights for others could be rights for oneself requires a certain amount of empathy, or capacity to think abstractly, or ability to imagine the good of the larger society rather than only one’s own interests. Perhaps people skeptical about extending legal services to those who cannot afford them would be helped by considering what law does every day for those who can find legal protection against an abusive spouse, against a scam artist targeting elderly individuals, and against bureaucratic barriers to benefits promised to a veteran or a child with disabilities. Lawyers negotiate terms with creditors that leave both the homeowner and bank better off if the alternatives are foreclosure, forced sale, declining property values, vandalism, and community destruction. Law is essential to property rights and freedoms of all kinds; law organizes human relationships, it is the means for resolving disputes, and it protects against corruption and oppression.⁵⁹ Imagining the people harmed when law is not enforceable and calculating harms to society as a whole might be responses to the skeptics.

B. Preference for Radical Change?

Another possible source of resistance to access to law may be people wanting more radical and more systemic reforms. Some may think that the system of courts and laws is illegitimate and unfair or that worsening conditions would fuel radical reforms. It is certainly fair to note that access to enforcement of laws that are themselves unfair does little to produce fairness. Expansive reforms—changing the substantive laws—could in many ways help the poor more directly than would providing access to lawyers or legal advice. But there is even less traction politically for reforms of this nature than for efforts to increase enforcement of existing legal rights.

For example, in many jurisdictions a tenant can defend nonpayment of rent by proving that a landlord has violated the housing code. The law could be changed such that a landlord could not evict a tenant without demonstrating compliance with the housing safety code. This would require shifting the burden to the landlord—but landlords are more likely than tenants to have the political clout needed to change the law.⁶⁰

Having access to legal assistance would at least help a tenant assert a defense to nonpayment of rent and proffer evidence of housing code violations. Providing legal assistance means, most ambitiously, access to lawyers, but even access to law students or nonlawyers with relevant training would help.⁶¹ Here the organized bar is itself often the biggest

58 Lewis Powell, Speech to ABA House of Delegates (Aug. 14, 1964), *quoted in* JOHN CALVIN JEFFRIES, JUSTICE LEWIS F. POWELL: A BIOGRAPHY 197 (2001).

59 JOSEPH WILLIAM SINGER, *NO FREEDOM WITHOUT REGULATION: THE HIDDEN LESSON OF THE SUBPRIME CRISIS* (2015).

60 Thanks to Joe Singer for this example.

61 See JEANNE CHARN & RICHARD ZORZA, *CIVIL LEGAL ASSISTANCE FOR ALL AMERICANS* (2005), <https://www.courts.ca.gov/partners/documents/bellow-sacks.pdf>; Scott Cummings & Deborah Rhode, *Access to Justice: Looking Back, Thinking Ahead*, 30 GEO. J. LEGAL ETHICS 485 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3045369.

source of resistance, as the bar authorities are the source of unauthorized-practice-of-law rules constraining nonlawyer assistance. Renovating courts and agencies to be navigable without expert assistance, also a worthy alternative, would require even more political and financial investment. Political disinterest in law reforms to help the poor is a problem, but even greater challenges come with pursuing more expansive reforms of laws to benefit low-income people and more systematic alteration of legal processes to make expert legal assistance less necessary.

C. *Deeper Issues: Language, Polity, Hopelessness?*

Perhaps even deeper than resistance to addressing the civil justice access gap is the language used to describe law, justice, or anything of value. There is such a powerful hold in English, for example, on primacy of the individual that it is difficult to say or even see how much each of us is implicated in the lives of others.⁶² Much suffering, injustice, and unfairness go unseen, unknown by others, and maybe even unnamed by those most immediately affected. A further deep challenge some may call “compassion fatigue” or, maybe more aptly put, feeling overwhelmed by the scale of the problem and defending against that feeling.

IV. REASONS FOR HOPE

Combatting the lack of support for legal assistance will require creative and vigorous efforts to see and describe how each of us is implicated in what works and what does not work in the civil justice system. This means identifying what is and what is not working, gathering and analyzing data to make such assessments, and highlighting in vivid and memorable ways promising and exciting initiatives and innovations that expand access to justice. Let’s try countering ignorance about the problems with information; let’s counter hopelessness about change with examples of change.

Consider these initiatives:

- Tennessee’s Access to Justice Commission is working with churches and other religious organizations to offer legal clinics, community legal education, and efforts to recruit lawyers and paralegals to assist low-income individuals and families.⁶³

62 See ROBERT BELLAH, *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (2007). For a contrast between East and West on this dimension, see GISH JEN, *THE GIRL AT THE BAGGAGE CLAIM* (2017).

63 *Expand Access to Justice Through Places of Worship*, HAMILTON CNTY. HERALD (Chattanooga, Tenn.) (July 14, 2017), <https://www.hamiltoncountyherald.com/Story.aspx?id=8776&date=7%2f14%2f2017>.

- Texas courts have devised fill-in-the blank forms for divorce, consumer, and other civil matters to assist pro se litigants, and public libraries offer access to such forms for free.⁶⁴
- An experiment allowing trained and supervised nonlawyers to assist low-income litigants in housing court in New York demonstrated effective results—underscoring how results in eviction cases depend less on the details of a case and more on access to legal assistance.⁶⁵
- West Virginia Legal Aid staff worked with the state’s largest law firms to bring pro bono lawyers into a legal clinic based at a public elementary school in a community with one of the highest concentrations of poverty in the state. The project enlists volunteers to bring legal assistance to low-income people where they live, so they don’t have to leave their community or their workplaces to get to a legal aid office.⁶⁶
- Maine’s Pine Tree Legal Assistance, under the leadership of Nan Heald, developed an interactive website that assists military veterans across the country and their families as they try to access veterans’ benefit programs, child support, and other legal issues.⁶⁷
- Suffolk Law School houses a lab to devise uses of artificial intelligence and machine learning–powered digital tools, including interactive court forms, to help individuals resolve their legal problems.⁶⁸
- The Veterans Legal Clinic at the Legal Services Center of Harvard Law School created a website that includes an online calculator to help veterans in Massachusetts determine whether they are eligible for benefits they are not receiving.⁶⁹

64 See *Del Dehay Law Library: Information and Forms*, TARRANT CNTY., <https://www.tarrantcounty.com/en/law-library/forms.html?linklocation=Iwantto&linkname=Forms> (last visited Apr. 16, 2022).

65 REBECCA L. SANDEFUR & THOMAS M. CLARKE, NAT’L CTR. FOR ST. CTS., *ROLES BEYOND LAWYERS: EVALUATION OF THE NEW YORK CITY COURT NAVIGATORS PROGRAM* (2016), https://www.srln.org/system/files/attachments/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf.

66 *Lawyer in the School*, LEGAL AID OF W.V., <https://legalaidwv.org/our-programs/legal-services/lawyer-in-school/> (last visited Apr. 16, 2022).

67 STATESIDE LEGAL, <https://www.statesidelegal.org/> (last visited Apr. 16, 2022).

68 *Technology to Solve the Access to Justice Gap*, SUFFOLK L. SCH. LIT LAB: LEGAL TECH CLASS, <https://suffolkitlab.org/legal-tech-class/docs/a2j/a2j-technology> (last visited Apr. 16, 2022).

69 HLS Clinical and Pro Bono Programs, *A Simple Online Legal Tool Helps Reduce Poverty for Military Veterans* (June 28, 2019), <https://clinics.law.harvard.edu/blog/2019/06/a-simple-online-legal-tool-helps-reduce-poverty-for-military-veterans/>.

- During the pandemic, courts and agencies devised remote-access tools and demonstrated that systems that seemed immovable can innovate and enhance access.⁷⁰

Other lessons from outside the United States can be instructive. A nonprofit organization named Namati trains people to serve as community paralegals in countries from Sierra Leone to Bangladesh.⁷¹ Facing significant deficits during the global financial crisis, England cut public support for legal aid by sixty-two percent and also spurred innovations, but thus far the results are mixed. England has seen the opening of some two thousand “advice centres” in courts, prisons, and hospitals, along with grants and legal assistance offered online, by telephone, and through the mail.⁷² Such developments are not solutions, and they risk either pushing low-income individuals toward inadequate alternatives or further burdening courts with unprepared pro se litigants.⁷³ But there is much to learn from the effort to rethink and redesign systems.

More dramatic reforms would require the design and resources of government and private programs for poor individuals and families that include what it takes to make access real and to ensure enforcement, with legal assistance, when necessary. An expert in the field of civil legal assistance, Tanina Rostain, noted, “Tools for intermediaries that address housing, employment, or consumer-debt problems might be embedded in a range of community institutions, such as churches, libraries, tenant associations, or bodegas and nail salons.”⁷⁴ Discerning and responding to instances when the essential need is for direct assistance of a lawyer as opposed to other approaches remains a problem produced by inadequate data, regulations restricting who can provide legal assistance, active and passive resistance to enforcing the rights of low-income people, and the low salience of civil justice issues in American politics.⁷⁵

70 PEW CHARITABLE TRS., *HOW COURTS EMBRACED TECHNOLOGY, MET THE PANDEMIC CHALLENGE, AND REVOLUTIONIZED THEIR OPERATIONS* (2021), <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations>.

71 *Building Power, Deepening Democracy*, NAMATI, <https://namati.org/> (last visited Apr. 16, 2022).

72 Frances Ryan, *Remember When Legal Aid Was Slashed? The Awful Effects Are Taking Hold*, *GUARDIAN* (Feb. 9, 2017, 4:00 AM EST), <https://www.theguardian.com/commentisfree/2017/feb/09/legal-aid-slashed-effects-law-centre-manchester-advice-services>; ROGER SMITH & ALAN PATERSON, *FACE TO FACE LEGAL SERVICES AND THEIR ALTERNATIVES: GLOBAL LESSONS FROM THE DIGITAL REVOLUTION* (2013), https://strathprints.strath.ac.uk/56496/1/Smith_Paterson_CPLS_Face_to_face_legal_services_and_their_alternatives.pdf.

73 See Stephen Cobb, *Legal Aid Reform: Its Impact on Family Law*, *J. SOC. WELFARE & FAM. L.* 1, 9 (2013), <https://www.tandfonline.com/doi/full/10.1080/09649069.2013.774607?src=recsys> (noting difficulties for courts dealing with pro se litigants); Hilary Sommerlad & Peter Sanderson, *Social Justice on the Margins: The Future of the Not for Profit Sector as Providers of Legal Advice in England and Wales*, *J. SOC. WELFARE & FAM. L.* 305 (2013), <https://www.tandfonline.com/doi/pdf/10.1080/09649069.2013.802108?needAccess=true>.

74 Tanina Rostain, *Techno-Optimism & Access to the Legal System*, 148 *DÆDALUS* 93 (Winter 2019), <https://www.amacad.org/publication/techno-optimism-access-legal-system>.

75 Rebecca L. Sandefur, *Access to What?*, 148 *DÆDALUS* 49 (Winter 2019), <https://www.amacad.org/publication/access-what>.

When legendary football coach Jim Harbaugh spoke out for funding for legal services for the poor, some people asked him why he cared. He explained,

Some people say, “Why is a football coach concerned?” I explained I’m an American first and all Americans should care about justice. The idea, as you learn about our legal system, [is] the danger of not being able to have access to justice. From what I can see it’s that, if you have money you have access to justice. If you don’t, it’s becoming increasingly less and less access for low-income Americans and that’s the crux of it. I mean, to have a society that has liberty and justice for all, it’s right there in the constitution.⁷⁶

Because, remember, “in recognizing the humanity of our fellow beings, we pay ourselves the highest tribute.”⁷⁷

76 Daniel Strauss, *Why Jim Harbaugh Took a Shot at Trump’s Budget*, POLITICO (Mar. 25, 2017), <https://www.politico.com/magazine/story/2017/03/jim-harbaugh-politics-michigan-football-coach-trump-budget-214948>.

77 See 9 *Powerful Quotes by Thurgood Marshall*, *supra* note 43.