



2018

A Fraction of a Percent: A Call to Legal Service Providers to Increase Assistance to Community Nonprofits Using Biglaw Pro Bono

Rebecca Nieman

Follow this and additional works at: <https://lawrepository.ualr.edu/lawreview>



Part of the [Law and Society Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Rebecca Nieman, *A Fraction of a Percent: A Call to Legal Service Providers to Increase Assistance to Community Nonprofits Using Biglaw Pro Bono*, 40 U. ARK. LITTLE ROCK L. REV. 355 (2018).

Available at: <https://lawrepository.ualr.edu/lawreview/vol40/iss3/2>

This Article is brought to you for free and open access by Bowen Law Repository: Scholarship & Archives. It has been accepted for inclusion in University of Arkansas at Little Rock Law Review by an authorized editor of Bowen Law Repository: Scholarship & Archives. For more information, please contact mmserfass@ualr.edu.

A FRACTION OF A PERCENT: A CALL TO LEGAL SERVICE PROVIDERS TO INCREASE ASSISTANCE TO COMMUNITY NONPROFITS USING BIGLAW PRO BONO

*Rebecca Nieman**

I. INTRODUCTION

The Legal Services Corporation (LSC) is one of the largest grantors to legal aid organizations in the country.¹ In 2014, LSC grantees closed a total of 757,983 cases, of which 80,953 were completed with the involvement of pro bono attorneys.² On average, approximately 36.5% of each legal aid organization's overall funding was provided by LSC.³ The types of cases completed fall into the following LSC-created categories: Consumer/Finances, Education, Employment, Family, Health, Housing, Income Maintenance, Individual Rights, Juvenile, and Miscellaneous.⁴ Housing and Family categories take up a collective 60% of LSC-eligible cases that are closed each year.⁵

The LSC categories and the types of cases handled are clearly important and vital to the overall legal health of low-income communities. However, LSC seems to have turned a blind eye to the notion that legal aid to low-income, community nonprofits should be part of the robust assistance provided by LSC-funded organizations.⁶ In its 2014 LSC report, out of 758,689 cases closed, only 290 of those cases consisted of legal assistance to nonprofit organizations.⁷ That amounts to just 0.00038% of all cases!⁸ LSC allows its grantees to provide legal assistance to nonprofits, but it appears that those types of cases are merely an afterthought.⁹

* Assistant Clinical Professor and Director of the Nonprofit + Business Law Clinic at Thomas Jefferson School of Law. I am grateful for the supportive feedback from my law school faculty colleagues: Associate Dean Susan Bisom-Rapp, and Professor Steve Berenson. Love to my amazing husband and son for always cheering me on!

1. *Grantee Guidance*, LEGAL SERVS. CORP., <http://www.lsc.gov/grants-grantee-resources/grantee-guidance> (last visited Mar. 21, 2018).

2. *2014 Legal Services Corporation By the Numbers: The Data Underlying Legal Aid Programs*, LEGAL SERVS. CORP. 1 (2015), <http://www.lsc.gov/sites/default/files/attach/2015/08/LSC2014FactBook.pdf> (hereinafter *2014 Legal Services Corporation*).

3. *Id.* at 7.

4. *Id.* at 20.

5. *Id.*

6. *Id.*

7. *Id.*

8. *2014 Legal Services Corporation*, *supra* note 2, at 20.

9. *Id.*

LSC is remiss in not encouraging its grantees to focus their attention on assisting low-income, community nonprofits with their legal needs. This assistance is necessary and logical for three distinct reasons. First, the low-income, community nonprofits assist many of the same clients as LSC-funded legal aid organizations.¹⁰ Therefore, to help the nonprofit would be to help the legal aid client. Second, working with low-income, local nonprofits will take LSC and its grantees back to its community roots while supporting community organizations that create wealth and address other poverty-related problems identified by community members.¹¹ Third, finding meaningful pro bono projects that large firm volunteers are comfortable in handling is difficult because most of the legal needs of nonprofits involve business transactional work.¹² Helping a nonprofit with its legal needs is oftentimes within the legal knowledge base of large firms that have business transactional departments. Many attorneys who work in larger law firms may not have experience or be comfortable with family or eviction cases, which often make up the majority of LSC-funded organizations' cases, and, therefore, find it difficult to volunteer.¹³ However, having the option to assist with local, small nonprofits that cannot afford legal representation will further utilize the large firms' legal skills in a meaningful way, both for the legal aid organization and for the big law firm.

For the purposes of this article, the focus is on low-income, community nonprofits that qualify for free legal services under the LSC regulations that pertain to groups.¹⁴ Under the current Code of Federal Regulations, LSC-

10. In order to qualify for various federal programs through the Department of Health and Human Services (HHS), an individual's income level is evaluated, and HHS has put into place poverty guidelines to determine if an individual is eligible. *Poverty Guidelines*, U.S. DEP'T OF HEALTH AND HUM. SERVS. OFF. OF THE ASSISTANT SECRETARY FOR PLAN. AND EVALUATION, <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 21, 2018); in the same manner, the federal government has set income guidelines for LSC funded legal services organization's clients as well. 45 C.F.R. pt. 1611, App. A; The numbers for LSC eligibility represent 125% of the Federal Poverty Guidelines by household size as determined by DHHS. *Civil Legal Aid 101: Who provides civil legal aid?*, U.S. DEP'T OF JUST., <https://www.justice.gov/atj/civil-legal-aid-101> (last updated Oct. 21, 2014).

11. Laurie A. Morin, *Legal Services Attorneys as Partners in Community Economic Development: Creating Wealth for Poor Communities Through Cooperative Economics*, 5 U.D.C.L. REV. 125, 128 (2000).

12. See Wash. Attorneys Assisting Cmty. Orgs., *The Legal Needs of Nonprofits Serving Low Income Communities*, WAYFIND 4-5 (Jan. 2012), <https://wayfindlegal.org/wp-content/uploads/2014/03/The-Legal-Needs-of-Nonprofits-Serving-Low-Income-Communities-FINAL.pdf> (hereinafter *Legal Needs*).

13. The ABA Standing Committee on Pro Bono and Public Service, *Supporting Justice III, A Report on the Pro Bono Work of America's Lawyers*, Am. Bar. Ass'n 21, 25 (Mar. 2013), https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lb_pb_Supporting_Justice_III_final.authcheckdam.pdf (hereinafter *Supporting Justice*).

14. Financial Eligibility, 45 C.F.R. § 1611.6 (2017).

funded organizations are authorized to provide free legal assistance to groups as long as those groups qualify.¹⁵ One way groups can qualify is by meeting the requirement that the group “is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance.”¹⁶ Another way in which a group can qualify is if the principal activity of the group is the delivery of services to individuals “who would be financially eligible for LSC-funded legal assistance, and the legal assistance sought relates to such activity.”¹⁷ In order to make a determination that a group, corporation, association, or other entity is eligible for legal services, consideration must be given to “the resources available to the group, such as the group’s income and income prospects, assets, and obligations.”¹⁸ Under the first option for qualification under 45 C.F.R. § 1611.6(b)(1)(i), consideration is given to “whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance.”¹⁹ Under 45 C.F.R. § 1611.6(a)(2), consideration is given to whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.²⁰

This article encourages LSC and the legal service providers it funds to increase the level of legal assistance given to low-income, community nonprofits. Doing so will serve to further assist LSC’s own client base by helping the other nonprofits that also serve those clients, as well as creating another meaningful avenue for volunteer attorneys from large firms to provide pro bono hours. Moreover, this article specifically focuses on pro bono work provided by large law firms, as opposed to small and medium firms or solo practitioners. This is so because LSC-funded organizations receive a large part of their pro bono work from large firms, and those same firms usually have the expertise and comfort level in business transactional areas of practice, which, as will be shown, is the area of law in which most nonprofits need legal assistance.²¹

Part II of this article discusses the history of legal aid programs and LSC funding.²² Part III addresses the history of private law firm involvement and the Private Attorney Involvement (PAI) programs at LSC-funded

15. *Id.*

16. *Id.* § 1611.6(a)(1).

17. *Id.* § 1611.6(a)(2).

18. *Id.* § 1611.6(b)(1).

19. *Id.* § 1611.6(b)(1)(i).

20. 45 C.F.R. § 1611.6(b)(1)(ii).

21. *See Legal Needs*, *supra* note 12, at 4–5.

22. *See infra* Part II.

organizations.²³ Part IV analyzes how PAI programs at LSC-funded organizations can solve the problem of access to justice for nonprofits.²⁴ Part V discusses two important reasons for LSC-funded organizations to provide legal assistance to low-income, community nonprofits.²⁵

II. HISTORY OF LSC AND LEGAL AID

The history of LSC is fraught with drama, as is the creation and history of most large government agencies.²⁶ It is wise to look first at the larger picture, which is the historical root of the United States' system for providing free legal aid to the poor.²⁷

A. Early Legal Aid Programs

Arguably, the first entity to undertake an organized effort to provide free civil legal aid to the poor was the German Immigrants' Society in New York City in 1876.²⁸ Beginning in the early 1900s, incremental progress was made as many worked to provide lawyers for the poor.²⁹ By 1917, most of the large cities in the United States had established legal aid societies, many of which provided both criminal and civil legal services to the poor.³⁰ This provision of legal services to the poor encompassed legal advice, counsel, and representation in individual cases, primarily in areas of domestic relations, wage, and contract disputes.³¹

At the time, many still believed that the legal system functioned properly, yet poor people still could not find a way to access it, and

23. See *infra* Part III.

24. See *infra* Part IV.

25. See *infra* Part V.

26. See *infra* Part II.A.2.c.

27. This article uses Alan Houseman's explanation of the difference between "legal aid" and "legal services." Alan W. Houseman & Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*, CTR. FOR LAW AND SOC. POLICY 9 n.1 (3rd rev. ed. 2013), <https://repository.library.georgetown.edu/bitstream/handle/10822/712951/Securing-Equal-Justice-for-All-2013-Revision%281%29.pdf?sequence=1&isAllowed=y> (The term "legal aid" refers to "those programs that provided legal assistance to the poor prior to the advent of federal funding in the mid-1960s. In describing the programs that were established after federal funding was instituted in 1965, we generally use the term 'legal services.'"); See *infra* Part II.A.1–2.

28. Houseman & Perle, *supra* note 27, at 11.

29. William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation from the 1960's to the 1990's*, 17 ST. LOUIS U. PUB. L. REV. 241, 244 (1998).

30. *Id.*

31. *Id.*

therefore, something needed to be done.³² In 1919, Reginald Heber Smith wrote a controversial report to the Carnegie Foundation, entitled: *Justice and the Poor*, which concluded:

[T]he administration of American justice is not impartial, the rich and the poor do not stand equally before the law, [and] the traditional method of providing justice has operated to close the doors of the courts to the poor, and has caused a gross denial of justice in all parts of the country to millions of persons.³³

Smith was an advocate for change and believed there was a need to increase the number of legal aid lawyers for the poor, as well as more legal reforms using experienced legal aid societies to mount that effort.³⁴

Urban areas moved quickly in providing free legal aid to the poor, as approximately thirty new legal aid organizations were created between 1920 and 1930, mostly in urban areas.³⁵ These organizations increased their caseloads from 171,000 cases to 307,000 between 1920 and 1932, demonstrating the vast need for low-income legal services.³⁶ “By 1965, virtually every major city in the United States had some kind of legal aid program, and the 157 legal aid organizations employed more than 400 full-time lawyers with an aggregate budget of nearly \$4.5 million.”³⁷

Although a variety of localized legal aid programs existed throughout the country, it is interesting to note that no nationwide legal aid structure existed other than the National Alliance of Legal Aid Societies, which was founded in 1911.³⁸ Even with the National Alliance, there was little collaboration among legal aid programs, with most operating in isolation.³⁹ Not only was there no national program, but there were also no models or commonly shared constructs amongst these organizations, creating a “legal aid world that was very heterogeneous.”⁴⁰ Many of these programs were freestanding private corporations with paid staff; others were run as committees of bar associations, which relied primarily on private lawyers who donated their time.⁴¹ Some were units of municipal governments, divisions of social service agencies, or were run by law schools.⁴²

32. *Id.*

33. *Id.*

34. *Id.*

35. Houseman & Perle, *supra* note 27, at 11.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. Houseman & Perle, *supra* note 27, at 11.

42. *Id.*

However, these legal aid providers shared common characteristics.⁴³ First, none of the programs were properly funded or had access to enough resources.⁴⁴ Though large cities seemed to provide access to legal aid, albeit insufficient, “many areas of the country were without any type of legal aid, and if it was present, it was woefully underfunded.”⁴⁵ In 1963, the national ratio of legal aid lawyers to eligible persons was 1-to-120,000.⁴⁶ Second, because of the limits of resources, these programs could “only provide services in a limited range of cases and only to clients who were thought to be among the ‘deserving poor.’”⁴⁷ These “deserving poor” were those who were thought to be in their financial predicament through no fault of their own.⁴⁸ What these people were “deserving” of was some sort of assistance, whether from government or private charity.⁴⁹ Not too much, of course, for this would jeopardize “incentive”: the poor’s incentive to rise above their station and the working class’ incentive to keep their jobs and not go on the dole.⁵⁰ The “deserving poor” was largely a negative description, referring to those who were deemed to want to work and able to work, as opposed to those who appeared lazy or disabled.⁵¹ As Thomas Halper noted, “[c]ertainly, they were not poor because they rejected the virtues of hard work or the sanctity of private property.”⁵²

Unfortunately, at the start of the legal aid movement there was no nexus between legal aid organizations and the organized bar, and therefore, it was not until 1909 that the organized bar became involved in establishing a legal aid society.⁵³ The publication of *Justice and the Poor*, which denounced the glaring inequality in legal services,⁵⁴ greatly hurt the bar and pushed it to take on a larger role in funding legal aid,⁵⁵ and stimulated the

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. Houseman & Perle, *supra* note 27, at 11.

48. Thomas Halper, *The Poor as Pawns: The New “Deserving Poor” & the Old*, 6 POLITY, 71, 72 (1973).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. See JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 53, 57 (1976).

54. REGINALD HEBER SMITH, *THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, JUSTICE AND THE POOR A STUDY OF THE PRESENT DENIAL OF JUSTICE TO THE POOR AND OF THE AGENCIES MAKING MORE EQUAL THEIR POSITION BEFORE THE LAW WITH PARTICULAR REFERENCE TO LEGAL AID WORK IN THE UNITED STATES* 8 (1919) (asserting that “the rich and poor do not stand on an equality before the law”); see also Scott Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 12 (2004).

55. Cummings, *supra* note 54, at 12.

notable expansion of legal aid over the next forty years.⁵⁶ Programs and initiatives created by the American Bar Association (ABA) included the Standing Committee on Legal Aid, with local bars and state bars starting or sponsoring their own legal aid projects.⁵⁷ Once again, inadequate resources and the high number of poor needing legal assistance caused these new programs to only make a small amount of progress in the attempt to provide equal access to justice.⁵⁸ Legal aid lawyers rarely went to court, appeals were unheard of for clients, and administrative representation, lobbying, or community legal education to address clients' problems were not used.⁵⁹

1. *Law Reform and the Legal Services Program*

In the 1960s, changes began taking place, and a new model developed to provide civil legal assistance to the poor.⁶⁰ The National Association for the Advancement of Colored People Legal Defense Fund and the American Civil Liberties Union had a history of using litigation to change the law, and many of the legal aid organizations sought to use this model to help push more reform.⁶¹ Additionally, private foundations became involved with funding legal services, based on their overall focus and vision that legal services could be a part of the anti-poverty effort.⁶² Things began to change for the better in the 1960s as the federal government also became focused on eliminating poverty, thus further energizing the nationally organized legal aid movement.⁶³ With its interest on serving the poor, the legal reform movement fit within the larger framework of President Johnson's War on Poverty.⁶⁴

In the 1960s, the War on Poverty benefited from the creation of the Office of Economic Opportunity (OEO).⁶⁵ This office was established as part of the Economic Opportunity Act passed by Congress, which created the OEO and tasked it with developing and implementing these War on

56. *Id.*

57. Houseman & Perle, *supra* note 27, at 12.

58. *Id.* at 11-12.

59. *Id.* at 12.

60. *Id.*

61. *Id.* at 12.

62. *Id.*

63. Andrew Haber, Note, *Rethinking the Legal Services Corporation's Program Integrity Rules*, 17 VA. J. SOC. POL'Y & L. 404, 410 (2010).

64. See generally John Kilwein, *The Decline of the Legal Services Corporation: "It's Ideological, Stupid!"* in THE TRANSFORMATION OF LEGAL AID 41, 45 (Francis Regan et. al., eds., 1999); Haber, *supra* note 63, at 410-11.

65. Haber, *supra* note 63, at 411.

Poverty programs.⁶⁶ The Legal Services Program, the first federally funded low-income legal assistance program, was formed under the OEO in 1969.⁶⁷ The OEO leadership established the Legal Services Program not simply to expand upon the work conducted by the legal aid societies of old, but also to incorporate the empowerment principles of the legal reform movement and the War on Poverty.⁶⁸ “The Legal Services Program’s funding mechanism diverged from that of other countries in that it directly funded private legal aid organizations that operated under a federal umbrella.”⁶⁹ The British system was different in that it largely relied on the system of *judicare*, and a number of advocates during this period supported adopting a similar approach in the United States.⁷⁰ Interestingly, the word “*judicare*” derives from “Medicare,” as the original idea behind *judicare* required the federal government to pay private attorneys on a fee-for-service basis to provide legal services to indigent individuals, thus emulating the Medicare program, which pays private doctors for their services.⁷¹

The Legal Services Program’s mechanism instead broke from both the legal aid model⁷² and the *judicare* model by combining national organization with local advocacy.⁷³ These support centers provided integral services such as “set[ting] national strategy for local programs, train[ing] and organiz[ing] advocates, and participat[ing] in influential litigation.”⁷⁴ The Legal Services Program grantees helped to reshape the American welfare system through

66. See SCOTT J. MYERS-LIPTON, *SOCIAL SOLUTIONS TO POVERTY: AMERICA’S STRUGGLE TO BUILD A JUST SOCIETY* 18 (2006) (outlining the mission of the War on Poverty and summarizing its major programs); Haber, *supra* note 63, at 411.

67. See Earl Johnson, Jr., *Justice Reform: A Quarter Century Later*, in 9 *THE TRANSFORMATION OF LEGAL AID: COMPARATIVE AND HISTORICAL STUDIES*, 18 (Francis Reagan et al. eds., 1999) (“In just two years the OEO Legal Services Program increased federal government funding of civil legal services for the poor from zero to \$42 million”); Haber, *supra* note 63, at 411.

68. Roger C. Cramton, *Crisis in Legal Services for the Poor*, 26 *VILL. L. REV.* 521, 524 (1981); Haber, *supra* note 63, at 411–12.

69. Haber, *supra* note 63, at 412.

70. Houseman & Perle, *supra* note 27; Haber, *supra* note 63, at 413.

71. Lindsay Davis, *Judicare: The ‘Low Bono’ Option You May Not Know*, *BENCH & B. MINN.* (Feb. 5, 2016), <http://www.mnbenchbar.com/2016/02/judicare>; Michael A. Millemann, *Diversifying the Delivery of Legal Services to the Poor by Adding a Reduced Fee Private Attorney Component to the Predominantly Staff Model, Including Through a Judicare Program*, 7 *U. MD. L.J. RACE RELIGION, GENDER & CLASS* 227 n.1 (2007) (citing Larry R. Spain, *The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities*, 28 *WM. MITCHELL L. REV.* 367, 377–78 (2001)).

72. See Jerome B. Falk, Jr. & Stuart R. Pollack, *Political Interference with Publicly Funded Lawyers: The CRLA Controversy and the Future of Legal Services*, 24 *HASTINGS L.J.* 509, 601–04 (1972-1973); Haber, *supra* note 63, at 413.

73. Houseman & Perle, *supra* note 27, at 15; Haber, *supra* note 63, at 413.

74. Deborah J. Cantrell, *A Short History of Poverty Lawyers in the United States*, 5 *LOY. PUB. INT. L.* 11, 18 (2003); Haber, *supra* note 63, at 413–14.

high-profile court cases, representing not only individuals but also interests of the community at large.⁷⁵

2. *Creation of LSC*

As the 1960s neared to an end, those who supported the Legal Services Program were considering the creation of an independent entity that would not be beholden to the OEO.⁷⁶ They hoped creating a separate entity that was not part of the executive branch would minimize political interference and persuasion.⁷⁷ At the beginning of Nixon's presidency, he supported the Legal Services Program, more so than other War on Poverty projects.⁷⁸ However, after his re-election, Nixon became less supportive of the Legal Services Program.⁷⁹ Once again, the executive branch sought to assert more control over the Legal Services Program, particularly in order to decrease the controversial law reform litigation that continued to increase in the Legal Services Program.⁸⁰ At the time, the ABA had initially been on board with the OEO Legal Services Program, but as funding and composition began to flesh out, fewer ABA cohorts were in agreement with the Legal Services Program.⁸¹ Out of this conflict, the LSC was created. President Nixon sought to distance his administration from Legal Services Program by extracting it from the OEO and placing it in this new federally funded agency, a proposal that had been building support across the political spectrum.⁸² The President hoped he could be insulated from the mounting local conflicts in which legal services organizations were becoming embroiled if the LSC were independent from the executive.⁸³ Nixon signed the Legal Services Corporation Act of 1974, enacting the change.⁸⁴

The Act created the LSC so that it would be bipartisan and independent from political influence.⁸⁵ Not surprisingly, LSC was a compromise between two parties; the President, who wanted to ensure grantees were restricted "from engaging in law reform, and the Democratic Congress, which wished to preserve law reform."⁸⁶ The goal was to provide equal access to justice.⁸⁷

75. Haber, *supra* note 63, at 414.

76. Quigley, *supra* note 29, at 251.

77. *Id.* at 251–52.

78. Haber, *supra* note 63, at 415–16.

79. *Id.* at 416.

80. *Id.*

81. EARL JOHNSON, JR., *TO ESTABLISH JUSTICE FOR ALL: THE PAST AND FUTURE OF CIVIL LEGAL AID IN THE UNITED STATES* 263–64 (2013).

82. *Id.*

83. *Id.*

84. *Id.*; *see also* Legal Services Corporation Act, 42 U.S.C. § 2996 (1974).

85. Haber, *supra* note 63, at 416.

86. *Id.* at 417.

The Act sought to continue the important work of legal services programs, and it stated, “attorneys providing legal assistance must have full freedom to protect the best interests of their clients.”⁸⁸ The first chairman of the board of LSC, Roger C. Cramton, felt the Act was too much of a compromise in an effort to gain equal access to justice.⁸⁹ Therefore, in the beginning of the life of LSC, provision of legal services for the poor were designed to help the masses but still preserve support for law reform.⁹⁰ However, LSC was not free from the usual government restrictions, guidelines, and funding issues.⁹¹ All three played a vital role in the growth of LSC and the type of work taken on by LSC grantees in the years to come.⁹²

a. Restrictions for LSC Grantees

As things progressed, politics still played a role, and restrictions were placed on the types of cases and clients LSC-funded organizations could assist. Since the inception of the LSC, there has been an ebb and flow in the types of restrictions placed on grantees, at times seeming to tie in with the political climate.⁹³ Ultimately, in order to receive funding from the LSC, there are numerous restrictions placed on the grantees, many of which originated with legislative and regulatory reforms in the 1980s and 1990s that reduced legislative advocacy, administrative representation, and training.⁹⁴

Legislation in 1996 increased the restrictions on how LSC funds could be used.⁹⁵ The new restrictions prohibited the use of funds for programs which engaged in redistricting; lobbying; class action lawsuits; legal assistance for many aliens; training for political activities, including picketing, boycotts, strikes, or demonstrations; attorney fee claims; abortion litigation; prisoner litigation; any activities to reform federal or state welfare systems; or defending persons facing eviction from public housing because

87. *Id.*

88. *Id.*

89. *Id.*

90. Quigley, *supra* note 29, at 254.

91. *See infra* Part II.A.2.a–c.

92. *See infra* Part II.A.2.a–c.

93. *See infra* Part II.A.2.b.

94. Quigley, *supra* note 29, at n.110.

95. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134; § 501-508, 110 Stat. 1321, 1321-50 to -59 (1996). The appropriations for LSC were part of a larger bill, the Omnibus Consolidated Rescissions and Appropriations Act of 1996, simply called OCRAA. The law took effect October 1, 1996. *Id.* While organizations receiving LSC funding were prohibited from engaging in activities aimed to reform state or federal welfare policies, they were still permitted to represent individuals attempting to obtain benefits so long as that assistance did not seek to change the rule or law involved. *Id.*

they were charged with the sale or distribution of drugs.⁹⁶ In 1998, additional restrictions prohibited the expenditure of LSC funds for legislative or administrative lobbying,⁹⁷ grassroots lobbying,⁹⁸ public demonstrations,⁹⁹ training to advocate particular public policies,¹⁰⁰ and organizing.¹⁰¹ In the 2010 Consolidated Appropriations Acts (Pub. L. 111-117), Congress removed the 1996 restrictions on the ability of LSC grantees to claim, collect, or retain attorney's fees.¹⁰²

b. Priorities for LSC Grantees

LSC not only restricts how its grantees can use the funds it allocates to them, but it also suggests the priority that must be given to certain types of cases.¹⁰³ The suggested list of priorities includes support for families; preserving the home; maintaining economic stability; safety, stability, and health; and populations with special vulnerabilities.¹⁰⁴ What is important to note is that the LSC's guidelines on priorities do not stop there. They state that "[t]he Legal Services Corporation recognizes that different communities have different needs and will respect the autonomy of every grantee to make decisions that reflect the resources available to it and the demographics and particular circumstances of its client populations."¹⁰⁵ It encourages LSC-funded organizations to have programs that place a high priority on

96. *Id.*

97. Restrictions of Lobbying and Certain Other Activities 45 C.F.R. § 1612.3 (1998). It is important to note that LSC-funded organizations and their clients sued LSC, arguing these restrictions were unconstitutional. *See* Legal Servs. Corp. v. Velazquez 531 U.S. 533, 537–38 (2001). For more information and analysis of the case, *see* Christopher Gozdor, *Legal Services Corp. V. Velazquez: A Problematic Commingling of Unconstitutional Conditions and Public Forum: An Analysis Yields a New Grey Area for Free Speech*, 61 MD. L. REV. 454 (2002); Jessica Russak Sharpe, *Legal Services Corp. v. Velazquez: Tightening the Noose on Patients' Rights*, 81 N.C. L. REV. 1312 (2003); Jay C. Johnson, Note, *The Interaction Between Statutory and Constitutional Arguments in Legal Services Corp. v. Velazquez*, 17 J.L. & POL. 353 (2001).

98. 45 C.F.R. § 1612.4 (1998); *see also* H.R.J. Res. 738, 99th Cong., 100 Stat. 1783 (1986) (enacted); H.R.J. Res. 738, 99th Cong., 100 Stat. 3341 (1986) (enacted).

99. 45 C.F.R. § 1612.7.

100. *Id.* § 1612.8.

101. *Id.* § 1612.9. For a current list of LSC restrictions, *see* *LSC Restrictions and Other Funding Sources*, LEGAL SERVS. CORP., <http://www.lsc.gov/lsc-restrictions-and-funding-sources> (last visited Mar. 21, 2018).

102. *About Statutory Restrictions on LSC-Funded Programs*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-statutory-restrictions-lsc-funded-programs> (last visited Mar. 21, 2018).

103. *Suggested List of Priorities for LSC Recipients*, LEGAL SERVS. CORP. (May 20, 1996), <http://www.lsc.gov/suggested-list-priorities-lsc-recipients>.

104. *Id.*

105. *Id.*

activities designed to involve the entire community in sharing the responsibility for facilitating access to justice.¹⁰⁶ The restrictions and guidelines promulgated by LSC are a key component in how grantees structure their programs and the services offered.¹⁰⁷ Therefore, in order to obtain the best possible funding from LSC, grantees tailor programs to fall within the guidelines laid out by LSC.

c. Funding

Funding for LSC has often been fraught with drama and, not surprisingly, has been quite political.¹⁰⁸ In 1976, Congress appropriated \$116,960,000 to LSC.¹⁰⁹ In the short years that followed, funding increased dramatically to \$321 million, and by 1981, over one million clients were given legal assistance through the use of more than 6,000 attorneys.¹¹⁰ However, with the election of Ronald Reagan, the political climate for LSC abruptly became harsher, and the controversy over law reform began anew.¹¹¹

Critics argued that defunding federal legal services were needed because they were “radical” and were promoting a “socialist” agenda.¹¹² The Reagan administration agreed with critics of the program and the President’s 1982 budget planned to terminate LSC funding.¹¹³ Such an attempt to terminate funding was not easy and ultimately failed because of the support of numerous groups including past presidents of the ABA, local bar associations, deans of law schools, and judges.¹¹⁴ However, this did not stop the push to severely hamper the organization and its work.¹¹⁵

Even though overall funding was not terminated, the administration continued to hammer away at the program, using other strategies such as reduced funding, increased restrictions, and implementation of unsupportive leadership to try to slowly bring LSC to its knees.¹¹⁶ Funding dropped in 1982 by almost one-third from the previous year, from \$321 million to \$241 million.¹¹⁷ Fluctuations in funding were common over the next decade, but another enormous change occurred under the Clinton administration in

106. *Id.*

107. *Id.*

108. Quigley, *supra* note 29, at 255.

109. 2014 Legal Services Corporation, *supra* note 2, at 3.

110. *Id.*; Quigley, *supra* note 29, at 254–55.

111. Quigley, *supra* note 29, at 255.

112. *Id.*

113. *Id.* at 256.

114. *Id.*

115. *Id.*

116. *Id.*

117. 2014 Legal Services Corporation, *supra* note 2, at 3.

1996. Even under a democratic presidency, appropriations to LSC in 1996 reduced funding by 30% from \$400 million to \$278 million, which when adjusted for inflation, resulted in the lowest amount of federal funding since 1977, the third year LSC was in existence.¹¹⁸ Currently, LSC is again facing draconian cuts, if not complete elimination, under the Trump administration, harkening back to the Reagan and Clinton eras.¹¹⁹

LSC funding arguably plays a role in the access to justice gap. LSC defined this gap in its 2017 Justice Gap Reports as “the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.”¹²⁰ In the programs funded by LSC, which amounts to 134 grantees,¹²¹ LSC funding accounted for 39.6% of the average, combined overall budget.¹²² State and local grants accounted for 22.7%, other non-LSC funds at 10.3%, other federal grants at 9.5%, private grants at 8.1%, IOLTA at 5.2%, and filing fees at 4.5%.¹²³ Even with all of the LSC support and other support, the justice gap remains broad.¹²⁴ In its 2017 Justice Gap Report, LSC noted that in the past year, “86% of civil legal problems reported by low-income Americans received inadequate or no legal help.”¹²⁵ Furthermore, in 2017 alone, low-income Americans have approached LSC-funded legal aid organizations for support with an estimated 1.7 million legal problems.¹²⁶ The lack of legal services resources will mean that nearly half of those qualified for assistance will receive little or no legal help.¹²⁷

Attempting to alleviate this problem, in 1981, LSC began requiring that grantees of its funds must make a “substantial amount” of those funds available for Private Attorney Involvement (PAI).¹²⁸ PAI programs are intended to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both pro bono and compensated mechanisms.¹²⁹ Although the PAI program resulted in some direct payments to private practitioners, its major effect was to stimulate the expansion of

118. Quigley, *supra* note 29, at 261.

119. Debra Cassens Weiss, *Trump Budget Eliminates Legal Services Corp. Funding*, AM. B. ASS’N J. (Mar. 16, 2017), http://www.abajournal.com/news/article/trump_budget_eliminating_funding_for_legal_services_corp.

120. 2017 JUSTICE GAP REPORT, MEASURING THE CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS, LEGAL SERVS. CORP. 6, <http://www.lsc.gov/media-center/publications/2017-justice-gap-report> (hereinafter JUSTICE GAP REPORT).

2014 *Legal Services Corporation*, *supra* note 2, 1–2.

122. *Id.* at 5.

123. *Id.*

124. *See* JUSTICE GAP REPORT, *supra* note 120.

125. *Id.* at 30.

126. *Id.* at 39–40.

127. *Id.* at 44.

128. Scott Cummings, *The Future of Public Interest Law*, 33 U. ARK. LITTLE ROCK L. REV. 355, 362 (2011).

129. Private Attorney Involvement 45 C.F.R. § 1614.2(a) (2014).

programs designed to recruit, train, and connect pro bono volunteers with low-income clients.¹³⁰ LSC requires that 12.5% of the basic fieldwork funds it grants to each legal aid organization be allocated to a PAI program.¹³¹ Because of this mandate, the number of pro bono programs rose from about fifty in 1980 to more than 500 in 1985.¹³² Currently, there are thousands of pro bono programs throughout the country.¹³³ As part of this discussion, it is important to understand how these pro bono programs within law firms came about.¹³⁴

III. HISTORY OF PRO BONO IN LARGE FIRMS

Pro bono work is now part of a large law firm's sales pitch both to clients and in recruiting new associates.¹³⁵ BigLaw¹³⁶ is integral in most legal service organizations' overall case work and provision of services to the poor.¹³⁷ However, it was not always so central to the practice of law; the build up to an institutionalization of pro bono took many years and much convincing.¹³⁸

A. The Rise of Large Firm Pro Bono

1. *Competition Drives Law Firms to Expand Pro Bono Practice*

In the 1990s, large firms began to recognize the importance of pro bono work and incorporated it into their firm culture.¹³⁹ Pro bono's prominence in large firms came at a time of increased concern about the direction of the legal profession, which was undergoing a dramatic economic expansion.¹⁴⁰ The 1990s saw some of the largest firms grow even larger and more profitable.¹⁴¹ As law firms grew, more associates needed to

130. *Id.*

131. *Private Attorney Involvement: National Data*, LEGAL SERVS. CORP., <http://www.lsc.gov/national-data-private-attorney-involvement> (last visited Mar. 21, 2018).

132. *Id.*

133. *See Directory of Pro Bono Programs*, AM. BAR ASS'N (2007), <https://apps.americanbar.org/legalservices/probono/directory.html#>.

134. *See infra* Part III.

135. Cummings, *supra* note 54, at 39.

136. Brook Gotberg, *Technically Bankrupt*, 48 SETON HALL L. REV. 111, 114 (2017).

137. Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American Style Civil Legal Assistance*, 41 LAW & SOC'Y REV. 79, 96–97 (2007); Scott Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know—and Should Know—About American Pro Bono*, 7 HARV. L. & POL'Y REV. 83, 97–99 (2013).

138. *See infra* Part III.A.1.

139. Cummings, *supra* note 54, at 36.

140. *Id.*

141. *Id.*

be hired, which drove up starting salaries for incoming associates.¹⁴² This increase in starting salaries then pushed the need for more billable hours, creating a decrease in hours devoted to pro bono.¹⁴³ Interestingly, though time devoted to pro bono decreased, the culture of pro bono continued to grow within these same firms.¹⁴⁴ In a period of increasing competition, the provision of pro bono by a large firm could “shore up its public image and gain competitive edge in the recruiting wars.”¹⁴⁵

In the 1990s economic boon for law firms, prioritization of profits over pro bono work was still taking place, which was not exactly surprising as this seemed to always be the trend.¹⁴⁶ However, it was actually the fact that pro bono services were being provided in a different way that constituted the real change in big firms during this time.¹⁴⁷ The history of pro bono involved a majority of the work being done by small firms and solo practitioners, but as the 1990s came to a close, pro bono became more structured and institutionalized “in a way that was designed to provide free legal services by law firm volunteers.”¹⁴⁸

The National Association for Law Placement and law schools began to publish information about law firm pro bono activity, which suddenly made firms consider and take steps to place a level of importance of pro bono as a recruitment device.¹⁴⁹ Because of this, firms started seeing the importance of documenting pro bono work, and actually budgeted resources, including marketing and recruiting, into its pro bono efforts.¹⁵⁰ Around this same time, the legal trade press also began reporting this information, and the *American Lawyer* began reporting data on the pro bono activity of AmLaw 100 firms in 1992.¹⁵¹ The ABA-sponsored Law Firm Pro Bono Project launched the “Law Firm Pro Bono Challenge” in 1993, which called on big firms to contribute three to five percent of their billable hours to pro bono and then published which firms succeeded or failed.¹⁵²

This increased publicity of pro bono hours caused firms to expand their pro bono programs in order to draw in interested law students, improve their rankings, and facilitate compliance with the challenge.¹⁵³ More resources were devoted to expanding pro bono within firms, including establishing pro

142. *Id.* at 37.

143. *Id.* at 37–38.

144. *Id.* at 39.

145. Cummings, *supra* note 54, at 39.

146. *Id.* at 4.

147. *Id.*

148. *Id.*

149. *Id.* at 39.

150. *Id.*

151. Cummings, *supra* note 54, at 40.

152. *Id.*

153. *Id.* at 40–41.

bono committees, creating formalized pro bono policies, and hiring pro bono coordinators to work solely on facilitating pro bono projects.¹⁵⁴ Firms also increased their marketing efforts in demonstrating their pro bono achievements, which further helped in solidifying relationships with legal services and public interest groups.¹⁵⁵

2. *Law Firm Pro Bono Programs: More Lawyers but More Problems*

This increase in pro bono seems to benefit all parties. As low-income individuals obtain free legal assistance, PAI programs see an increase in large firm volunteers, thus the ability to report to LSC an increase in overall pro bono hours.¹⁵⁶ However, because of this, behind the scenes issues of quality began to arise.¹⁵⁷ Some public interest attorneys complain about the need to closely monitor the quality of the work of pro bono volunteers, who can abruptly turn back to their paying clients and may lack law firm supervision on the pro bono work.¹⁵⁸ Another concern is that large firm pro bono lawyers may not necessarily have social justice experience or understand the context of the cases in providing overall legal reform or even political organization.¹⁵⁹

Moreover, depending on the type of pro bono case, certain types of cases may not be accepted for pro bono work by a law firm as quickly as a higher publicized case, for instance.¹⁶⁰ Potential conflicts can play a role in the desirability of a pro bono case, given some cases may pose a conflict with a big firm's client or their interests, which can then have a large economic impact on the firm itself.¹⁶¹ Legal services groups may, in turn, organize their in-house programs around their appeal to private firm volunteers who will ultimately help staff the cases.¹⁶² Similar business constraints affect the ability of public interest groups to find pro bono counsel in impact cases against corporate defendants.¹⁶³

154. *Id.* at 41.

155. *Id.*

156. *Id.* at 39–41.

157. Cummings, *supra* note 54, at 39–41.

158. *Id.* at 41.

159. *Id.* at 139.

160. *Id.* at 125.

161. *Id.* at 123.

162. *Id.*

163. Cummings, *supra* note 54, at 134.

3. *Current Trends in Large Firm Pro Bono*

During the Great Recession in 2008, the lack of billable work allowed for more time to be spent on pro bono cases, causing an increase in pro bono work, but that small bump has not changed in recent years.¹⁶⁴ In 2015, U.S.-based lawyers spent an average of 54.1 hours on pro bono projects annually, slightly less than firms in the previous two years.¹⁶⁵ Of those surveyed, 47.3% acknowledged they volunteered more than 20 hours, which signified a bit more pro bono work than in 2014 and 2015.¹⁶⁶

In the decade leading up to the Great Recession, there was a steady increase in the number of hours devoted to pro bono work.¹⁶⁷ To demonstrate the significance of those hours, “[i]n 2001, lawyers logged an average of 38.4 pro bono hours per year, and 31% contributed more than 20 hours.”¹⁶⁸ As mentioned previously, the Great Recession decreased the amount of billable hours, but pro bono hours increased and the greatest number of pro bono hours were documented in 2008 and 2009, but currently the hours roughly mirror those of 2007.¹⁶⁹

How much help are these large law firms really giving as it relates to pro bono work? One study estimates that in 2005, pro bono contribution to civil legal aid was worth at least \$246 million, three-quarters of the total congressionally funded LSC grants (\$310 million) in the same year.¹⁷⁰ It appears that LSC funding is here to stay, so the focus should now be on what amount is sufficient to provide adequate funding for services.¹⁷¹ In the past two decades, BigLaw has demonstrated its importance in providing pro bono services, as well as its know-how in coordinating large numbers of attorneys who offer these crucial services when needed.¹⁷²

Since BigLaw has become so entrenched in the pro bono experience and closely aligned with assisting legal services providers, decisions on the types of clients and cases accepted for pro bono by BigLaw has become a process unto itself, and quite institutionalized, thus making the simple referral of a client from a legal service provider to a large law firm not so simple.¹⁷³ The process of the identification, selection, referral, and

164. Neil Gluckman, *Exclusive Survey: Pro Bono Rankings*, AM. LAW., 4 (June 27, 2016), <http://www.probonoinst.org/wpps/wp-content/uploads/06.27.16-Exclusive-Survey%E2%80%A2-Pro-Bono-Rankings-%EF%80%A7-The-American-Lawyer.pdf>.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. Cummings & Sandefur, *supra* note 137, at 96–98.

171. *Id.* at 83–84.

172. *Id.* at 84.

173. *Id.* at 83.

completion of pro bono cases involves multiple system stakeholders, including “lawyers who own and manage organizations, lawyers who work in them, pro bono counsel inside law firms and legal departments, and non-profit legal groups and their clients on the outside.”¹⁷⁴

In Cummings and Rhode’s 2010 Study of pro bono counsel, one firm chose to focus on developing first and second year associates’ legal skills by using pro bono cases.¹⁷⁵ Pro bono cases were strategically chosen not only for the social justice cause as a whole, but also as a learning tool for associates.¹⁷⁶ Additionally, corporate clients also influence the types of cases firms take on in a pro bono capacity; as large corporate clients have also turned towards more socially responsible activities, with an eye toward volunteerism.¹⁷⁷ In a recent report prepared for the Law Firm Pro Bono Project of the Pro Bono Institute, Esther F. Lardent wrote:

In making the case for why lawyers—and legal institutions—should undertake pro bono work, supporters of pro bono service typically focus on the compelling need for such assistance. Countless national, state, and local studies have detailed the appalling gap that exists between the millions who need, but are unable to afford or obtain, the specialized knowledge and skills of legal professionals to protect and vindicate basic human needs and fundamental rights versus the shockingly limited resources available to meet those needs.

Others focus on the ethical underpinnings of pro bono service—every lawyer’s fundamental responsibility to ensure equal access to justice. Linked to this ethical imperative is the pivotal role played by pro bono in maintaining the professionalism of the legal profession. As lawyers seeking to preserve the highest ideals of our profession, we must concern ourselves not only with the bottom line, but also with the greater public good.

Given the profound changes in and enormous pressures of law firm practice today, however, it is essential that pro bono supporters, without abandoning the moral and ethical principles at the heart of pro bono service, can confidently identify those elements of pro bono practice that, when appropriately structured and integrated into the fabric of the firm,

174. *Id.* at 103.

175. Scott Cummings & Deborah Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 *FORDHAM L. REV.* 2357, 2426 (2010); Cummings & Sandefur, *supra*, note 137, at 110.

176. Cummings & Rhode, *supra* note 175, at 2426; Cummings & Sandefur, *supra* note 137, at 110.

177. Cummings & Sandefur, *supra* note 137, at 111.

result in positive benefits for the law firm and its attorneys, as well as for the clients and communities serviced.¹⁷⁸

Pro bono has essentially become institutionalized both in our society and in the large law firm.¹⁷⁹ The local and national bar organizations have been integral in advancing pro bono work by inculcating it as part of the very fabric of legal professionalism.¹⁸⁰ Public service is a central feature of legal professionalism, thus supporting the notion of a lawyer assisting the underserved, while also handling their own caseloads.¹⁸¹

The truth is, this “institutionalization” of pro bono has become more prevalent as the law firms have increased in size, thus increasing their commitment to pro bono.¹⁸² This is not to discount the work being done by small firms or solo practitioners, but big firms have provided the resources and prestige to promote pro bono as a central professional goal.¹⁸³ The overall structure of pro bono is to engage as many volunteer lawyers as possible to provide free legal services, thus the reliance on big law firms and their numerous attorneys is central to this structure.¹⁸⁴ In addition, big firms usually have large amounts of capital and resources, so they can generally handle the costs associated with pro bono more readily than a small firm or solo practitioner who depends on every billable hour for his or her livelihood.¹⁸⁵ Not to mention that big firms have large administrative teams that can coordinate large-scale pro bono efforts that their smaller counterparts simply cannot.¹⁸⁶

This increase and institutionalization of BigLaw pro bono work is a key component of how LSC-funded organizations can increase their legal assistance to nonprofits in a meaningful manner. The following section will focus on how to take those pro bono components from BigLaw and use them to increase the provision of legal services to low-income nonprofits.¹⁸⁷

178. Esther F. Lardent, *Making the Business Case for Pro Bono*, PRO BONO INST. 1 (2000), http://www2.nycbar.org/mp3/DoingWellByDoingGood/pbi_businesscase.pdf.

179. See Cummings, *supra* note 54.

180. *Id.* at 7.

181. *Id.*

182. *Id.* at 33.

183. *Id.*

184. *Id.*

185. Cummings, *supra* note 54, at 33.

186. *Id.*

187. *Id.*

IV. USE PAI ATTORNEYS TO INCREASE BUSINESS TRANSACTIONAL WORK PROVIDED TO COMMUNITY NONPROFITS

As discussed above in Part III, there is strong support for pro bono work by the private bar, which includes large law firms.¹⁸⁸ LSC-funded legal services organizations continue to need assistance in the form of pro bono help for their clients.¹⁸⁹ So, why aren't nonprofits and their legal needs easily included in that pro bono assistance? The answer is twofold.

A. LSC Does Not Mention Providing Assistance to Nonprofits

First, the priorities of LSC and its funded organizations do not specifically mention providing assistance to nonprofits.¹⁹⁰ However, as noted previously, there is no restriction on helping nonprofits, either.¹⁹¹ In fact, LSC-funded organizations have reported their help to nonprofits in their annual reports to LSC, and such numbers are recorded as part of the "miscellaneous" legal work provided.¹⁹² Additionally, LSC recently commissioned a study to provide recommendations on how it can more effectively provide legal services.¹⁹³ This report listed recommendations, with numerous subparts within each.¹⁹⁴ One suggested change was to further engage all segments of the bar, including corporate counsel.¹⁹⁵ The report noted:

There has been a significant increase in the number of in-house departments engaging in pro bono work over the past few years. Engaging corporate counsel can have many benefits beyond the client services they provide, as corporate counsel can leverage their law firm contacts to bring even more lawyers into the fold. Some corporate law departments even include specific questions about pro bono when soliciting law firms for billable work and in their overall evaluation of

188. *See supra* Part III.

189. *The Unmet Need for Legal Aid*, LEGAL SERVS. CORP., <https://www.lsc.gov/what-legal-aid/unmet-need-legal-aid> (last visited Mar. 21, 2018).

190. *Suggested List of Priorities for LSC Recipients*, LEGAL SERVS. CORP. (May 20, 1996), <http://www.lsc.gov/suggested-list-priorities-lsc-recipients>.

191. *Id.*

192. *2014 Legal Services Corporation*, *supra* note 2, at 20.

193. *The Legal Services Corporation and Its Grantees*, LEGAL SERVS. CORP., <http://www.lsc.gov/recommendations-legal-services-corporation-and-its-grantees> (last visited Mar. 21, 2018).

194. *Id.*

195. *Id.*

law firms. Many legal departments also provide financial support for civil legal services.¹⁹⁶

By re-thinking LSC's priorities, and further encouraging its grantees to expand their nonprofit work through use of pro bono attorneys, this recent recommendation could be implemented.

B. Legal Aid Staff Lack Requisite Transactional Experience

The second reason nonprofits are not obtaining the legal assistance they need from LSC-funded organizations is that legal aid staff attorneys lack the experience necessary to assist the organizations with their transactional needs.¹⁹⁷ Most staff attorneys at legal service providers have devoted their careers to social justice lawyering. Business transactional work is not an area of practice traditionally aligned with those goals.¹⁹⁸ However, the nonprofits that would receive that business transactional help generally focus on low-income populations and their needs, which align with the goals of LSC-funded organizations.¹⁹⁹

The nature of business transactional work is outside of the area of expertise of many of the staff attorneys, but ironically, the converse is true in large law firms. There, the attorneys are actually more comfortable taking on business transactional work as opposed to the traditional legal aid work that focuses on family, consumer, and housing issues.²⁰⁰ Arguably, this is because a good portion of large firm practice involves business transactional work in some way. If these two barriers can be crossed, nonprofits could begin to access the legal help they desperately need, and large law firms would be able to assist on matters that are close to their area of expertise, which would also provide their new associates with relevant legal experience in business transactional work.

196. *Id.*

197. This is because almost none of the cases handled by legal aid staff attorneys are transactional related. *See 2014 Legal Services Corporation, supra* note 2, at 18–20.

198. Laurie Hauber, *Promoting Economic Justice Through Transactional Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3, 18–20 (2007).

199. In order to qualify for various federal programs through the Department of Health and Human Services, an individual's income level is evaluated and HHS has put into place poverty guidelines to determine if an individual is eligible (*Poverty Guidelines*, U.S. DEP'T OF HEALTH AND HUM. SERVS. OFF. OF THE ASSISTANT SECRETARY FOR PLAN. AND EVALUATION, <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 21, 2018)).

200. *Supporting Justice, supra* note 13, at 29.

C. Opportunities for BigLaw to Meet the Legal Needs of Nonprofit Organizations

Charities or nonprofits are part of the ABA's approved description of entities/individuals to which pro bono services are encouraged to be provided.²⁰¹ Specifically, ABA Model Rule 6.1(a)(2) states:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono public legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational *organizations* in matters *which are designed primarily to address the needs of persons of limited means . . .*²⁰²

By reviewing LSC's list of priorities, as well as the types of cases its grant recipients closed in 2014,²⁰³ it is clear that there is an opportunity for the private bar to meet the legal needs of nonprofit organizations or groups.²⁰⁴

With so many nonprofits needing legal assistance and with few and scattered legal programs currently available to assist—particularly in rural areas—the time for increased use of LSC-funded program volunteer attorney resources is now. Many large firm attorneys who work as part of the PAI programs at LSC-funded legal organizations are more comfortable with assisting in a business transactional setting than with a housing eviction, for example. By utilizing skills in which they are more comfortable, the gap that currently exists in legal aid assistance for nonprofits can be met on a grander scale.

There is a strong link between pro bono work and the charities that a law firm financially supports.²⁰⁵ More directly, “a firm’s charitable dollars follow its pro bono participation.”²⁰⁶ The more vested a firm gets in the work they do, the more likely they are to also want to donate monetary

201. MODEL RULES OF PROF'L CONDUCT r. 6.1 (AM. BAR ASS'N 2016).

202. *Id.* (emphasis added).

203. *2014 Legal Services Corporation*, *supra* note 2, at 20.

204. *See Cummings & Rhode*, *supra* note 175, at 2408.

205. *Id.* at 2390.

206. *Id.*

contributions to that same organization.²⁰⁷ Though it can be difficult for LSC-funded legal organizations to sell BigLaw on assisting one individual with an eviction defense case, selling transactional assistance to a nonprofit that provides mentoring to low-income, racially diverse elementary students in impoverished communities does sell.²⁰⁸ Consequently, as the firm continues to assist the nonprofit with the pro bono legal transactional work, naturally it will learn more about that nonprofit, and, as is evidenced by the above research, the firm will be more inclined to financially donate to the nonprofit.²⁰⁹ It seems clear that the more LSC-funded legal service organizations can match pro bono nonprofit transactional work with BigLaw, numerous parties can be better serviced. LSC-funded legal services organizations increase the reporting of pro bono hours provided by their volunteers, BigLaw feels it has provided effective pro bono legal work in an area it is competent, and the nonprofit obtains not only legal assistance but potentially a corporate partner.

An additional way to increase pro bono participation in BigLaw is to offer pro bono cases that are interesting, compelling, and provide training for associates that is relevant to other work the firm is doing. When a firm makes a choice as to the type of pro bono cases it will take on, it considers whether those cases are good opportunities for associates to gain experience, as well as whether associates would even be interested in the legal issues of the case itself.²¹⁰ Further, law firms consider the type of nonprofit from which it obtains pro bono cases, and appreciates a close referral relationship.²¹¹ This maintenance of a relationship with a nonprofit goes to the discussion above, where pro bono legal services to nonprofits often is followed by monetary contributions.²¹²

When polled in 2011, attorneys noted that the number one factor that deterred them from providing pro bono service was time constraints.²¹³ The next two most common factors were family obligations, especially among attorneys ages thirty-five to forty-four, and “lack of skills or experience needed in the practice areas.”²¹⁴ In a 2013 ABA study, both corporate and government attorneys were likely to have concerns about taking on a case outside of their expertise, particularly because as isolated, volunteer attorneys they lack the support that legal aid staff attorneys receive (38%

207. *Id.*

208. *See* Cummings & Sandefur, *supra* note 137, at 100–01.

209. Cummings & Rhode, *supra* note 175, at 2390.

210. *Id.* at 2392.

211. *Id.*

212. *Id.* at 2390.

213. *Supporting Justice*, *supra* note 13, at 29.

214. *Id.*

and 44% agree, respectively).²¹⁵ Attorneys who declined to provide pro bono service were asked why they did not take advantage of pro bono opportunities that were presented to them.²¹⁶ The number one reason pro bono opportunities were declined, was simply lack of time to work on the case.²¹⁷ The second reason was that the attorney was concerned that the pro bono case did not align with their legal expertise.²¹⁸

In Cummings and Sandefur's 2013 study of the pro bono activities of the nation's 200 largest law firms, firms usually supported causes that included civil rights and liberties and issues related to children; thus firms prefer to partner with "cause" organizations.²¹⁹ There were few firms that partnered with nonprofits that pursued issues such as labor, poverty, or assistance to veterans and the elderly.²²⁰

In Cummings and Rhode's 2010 study of pro bono counsel, one firm had restructured its first- and second-year associate program to focus on skills development through pro bono representations.²²¹ In the program, one-third of the associate's caseload was comprised of pro bono service.²²² Firms were looking at more than one factor in taking on pro bono cases; that is, whether there was a social impact and were associates' skills being enhanced.²²³ Because of this, some believe that pro bono cases will be chosen in a much more precise manner in order to cater to the individual's professional developmental needs.²²⁴

The benefits of this pro bono service are reciprocal. The large law firm assisting a nonprofit can ensure its associates are mastering necessary skills without tremendous cost in lost billable hours to the firm.²²⁵ And, by providing assistance in areas in which their attorneys are most familiar, law firms ensure the recipient organization is receiving competent legal help.²²⁶ As evidenced by the ABA Report on the Pro Bono Work of America's Lawyers, one of the top reasons lawyers at firms will not handle a pro bono case is their lack of skills or substantive law experience.²²⁷ This is why LSC-funded legal service organizations need to capitalize on BigLaw's comfort with transactional work. Nonprofits generally need transactional legal

215. *Id.* at 21.

216. *Id.* at 24.

217. *Id.*

218. *Id.* at 25.

219. Cummings & Sandefur, *supra* note 137, at 100–01.

220. *Id.*

221. Cummings & Rhode, *supra* note 175, at 2426.

222. *Id.*

223. *Id.*

224. Cummings & Sandefur, *supra* note 137, at 110.

225. Cummings & Rhode, *supra* note 175, at 2426.

226. *Id.* at 2392, 2429, 2393.

227. *Supporting Justice*, *supra* note 13, at 29.

services, so because BigLaw desires pro bono work in their area of expertise, it is much easier to “sell” a pro bono referral if the work entails business transactional services.²²⁸ Further, by handling pro bono cases that involve business transactional work, newer associates can also take part, and the skills they learn also help the firm overall.²²⁹ In the end, this allows more nonprofits to receive legal help that is so drastically missing from the current grouping of cases and assistance provided by LSC-funded organizations.²³⁰

The focus is honed on LSC-funded organizations, because nonprofits who receive funding for civil legal aid receive a vast majority of their financial resources from LSC.²³¹ Those grantees receive millions of dollars from LSC each year to assist low-income individuals with their legal needs.²³² Additionally, 12.5% of the money awarded to each organization must support a PAI (pro bono) program.²³³ In 2014, 83% of cases closed by LSC grantees were handled by pro bono attorneys.²³⁴ Leveraging this funding, along with the massive pro bono work being done, can help alleviate the large gap that nonprofits have found when seeking assistance with their legal needs.

In a time where LSC funding is again up for debate, and significant cuts in Congress are being negotiated, it is even more important to make sure that nonprofits obtain the legal services they need from LSC-funded providers.²³⁵ Assisting nonprofits will help stabilize them, which in turn will help stabilize the continuous flow of needed social services to the low-income population that LSC-funded organizations serve.²³⁶

V. WHY BIGLAW IS THE LINCHPIN IN PROVIDING LEGAL ASSISTANCE TO COMMUNITY NONPROFITS

There are numerous reasons that LSC-funded legal services organizations should provide legal assistance to low-income nonprofits. This article focuses on just two of those reasons. The first argument notes that by

228. *Legal Needs*, *supra* note 12, at 4; Cummings & Rhode, *supra* note 175, at 2426.

229. Cummings & Rhode, *supra* note 175, at 2426.

230. *2014 Legal Services Corporation*, *supra* note 2, at 18–20.

231. *About LSC*, LEGAL SERVS. CORP., <http://www.lsc.gov/about-lsc> (last visited Mar. 30, 2018).

232. *See 2014 Legal Services Corporation*, *supra* note 2, at 2–13.

233. Cummings, *supra* note 128.

234. *2014 Legal Services Corporation*, *supra* note 2, at 27.

235. Ryan J. Reilly, *Trump Budget Would Gut Legal Aid for Veterans, Domestic Abuse Victims and Disaster Survivors*, HUFFINGTON POST (Mar. 16, 2017), https://www.huffingtonpost.com/entry/legal-services-corporation-trumpbudget_us_58cabca5e4b00705db4cef22.

236. *See infra* Part V.

providing legal assistance to nonprofits, those organizations are strengthened, which then allows them to continue to provide critical social services to low-income members of the community.²³⁷ Those community members also happen to be the same clients of LSC-funded legal services organizations, thus further supporting those individuals.²³⁸ The second argument notes that assisting low-income nonprofits in the community where the LSC-funded legal services organizations reside is exactly the foundation on which LSC-funded services were built.²³⁹ A return to those roots is important to further support the low-income community members who seek legal services from LSC funded organizations.²⁴⁰

A. Legal Assistance to Low-Income, Community Nonprofits Equals Assistance to LSC-Funded Organizations' Clients

Nonprofit organizations and charities that are small and focus on their immediate communities are central to American life and culture.²⁴¹ Small nonprofits are now integral to delivering basic human and social goods and services to the public.²⁴² These small nonprofits do not exist on large margins, and the small donations and volunteer time is what keeps them going; therefore, there is little if any extra money to be used to hire an attorney to assist with business transactional matters.²⁴³

Since the early 1900s, nonprofit organizations have added tremendous value to civil society and American life.²⁴⁴ They allow residents to engage in the delivery of critical resources and services to needy individuals in their communities.²⁴⁵ They offer health care, education, human services, job training, and religious activities, as well as “social services, advocacy, cultural opportunities, [and] monitoring of government and business

237. See *infra* Part V.A.

238. See *infra* Part V.A.

239. See *infra* Part V.B.

240. See *infra* Part V.B.

241. Nicole S. Dandridge, *Choking Out Local Community Service Organizations: Rising Federal Tax Regulation and its Impact on Small Nonprofit Entities*, 99 KY. L.J. 695, 695 (2011) (For purposes of this discussion, the term “small nonprofit” will align with Nicole Dandridge’s definition as detailed in her article, which is annual revenue of less than \$25,000).

242. See Avner Ben-Ner, *Who Benefits from the Nonprofit Sector? Reforming Law and Public Policy Towards Nonprofit Organizations*, 104 YALE L.J. 731, 734 (1994) (reviewing *Who Benefits from the Nonprofit Sector?* (Charles T. Clotfelter ed., 1992)).

243. Dandridge, *supra* note 241, at 695.

244. Penelope McPhee & John Bare, *Introduction to Building Capacity in Nonprofit Organizations*, URBAN INST. 1 (Carol J. De Vita & Cory Fleming eds., 2010), http://www.urban.org/UploadedPDF/building_capacity.PDF.

245. *Id.*

practices,” among many more initiatives.²⁴⁶ Those working on behalf of these nonprofits assist those most vulnerable, in need, including the underprivileged; they are educators and researchers, provide medical care, and bring us a diverse array of arts, culture, and religion.²⁴⁷ Nonprofits are also called upon to collaborate with government entities in the implementation of public programs and services.²⁴⁸

It is now estimated that small nonprofit organizations make up 75% of the nonprofit sector.²⁴⁹ Nearly half of the nonprofit organizations in the United States saw annual gross receipts of less than \$25,000.²⁵⁰ If you exclude organizations with gross receipts below the \$50,000 filing threshold, small organizations composed the majority of public charities in 2013.²⁵¹

Small, grassroots nonprofit organizations are more familiar with the needs of local communities, are more adaptable to changing community and organizational needs, and are more able to employ a wide range of services models.²⁵² The largest percentage, 26%, of small nonprofits engage in local, direct-impact human services, such as “homeless shelters, soup kitchens, senior centers, athletic clubs, little leagues, meals on wheels, boys and girls clubs, scouting groups, summer camps, rescue squads, and many more.”²⁵³ The second largest group of small nonprofits is comprised of “civil rights

246. *Id.*

247. Sarah Hall Ingram, Comm’r, Tax Exempt and Gov’t Entities, IRS, *Remarks at Georgetown University Continuing Legal Education: Nonprofit Governance—The View from the IRS*, 1 (June 23, 2009), https://www.irs.gov/pub/irs-tege/ingram_gtown_governance_062309.pdf.

248. *Tax-Exempt Charitable Organizations: Hearing Before the Subcomm. On Oversight of the H. Comm. On Ways and Means*, 110th Cong. 26 (2007) (statement of Stanley J. Czerwinski, Director, Intergovernmental Relations, Strategic Issues, Government Accountability Office), <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg38087/pdf/CHRG-110hhrg38087.pdf>.

249. Suzanne E. Coffman, *Half a Million Nonprofits Could Lose Their Tax Exemptions*, GUIDESTAR (Jan. 2009), <http://www.2guidestar.org/rxa/news/articles/2009/half-a-million-nonprofits-could-lose-their-tax-exemptions.aspx>.

250. Katie Roeger, *Small Nonprofit Organizations: A Profile of Form 990-N Filers*, URB. INST. 1 (Aug. 20, 2010), <http://www.urban.org/uploadedpdf/412197-nonprofit-form990-profile.pdf> (of the estimated 1.6 million nonprofits in the United States, 714,000 had annual gross receipts of less than the current \$25,000 IRS exemption).

251. *Id.*

252. Gwen I. Walden, *Who’s Watching Us Now? The Nonprofit Sector and the New Government by Surveillance*, 35 NONPROFIT & VOLUNTARY SECTOR Q. 715, 718 (2006), <http://nvs.sagepub.com/content/35/4/715>.

253. Brice McKeever, *The Nonprofit Sector in Brief 2015: Public Charities, Giving and Volunteering*, URBAN INST. 5 (Oct. 29, 2015), <https://www.urban.org/research/publication/nonprofit-sector-brief-2015-public-charities-giving-and-volunteering>.

groups, neighborhood block associations, and veterans' organizations," groups which are dedicated to public and societal benefit.²⁵⁴

Due to limited financial resources, small nonprofit organizations operate with thin budgets and little-to-no capital.²⁵⁵ Coupled with board leaders who usually do not have the requisite legal and financial knowledge and skills to effectively govern and comply with IRS tax exemption rules,²⁵⁶ these organizations are far less likely to have the benefit of representation and guidance from lawyers and accountants with knowledge and experience in the nonprofit sector.²⁵⁷

Small nonprofits generally operate with funding that is restricted to activities that further their tax-exempt purposes, leaving little, if any, funding to hire professionals who may assist them in complying with increasing federal reporting and compliance requirements.²⁵⁸ As compared to large nonprofits that have sophisticated leadership and access to effective legal counsel, smaller nonprofits have limited capacity and little-or-no contact with a lawyer.²⁵⁹ It is likely that a small nonprofit will secure counsel only in response to an emergency or other distressful circumstance.²⁶⁰

As Daniel Grunfeld, former president and CEO of Public Counsel Law Center, said:

The role nonprofits play or fail to play is crucial. In dealing with legal issues, especially those of established nonprofits, when you get beyond incorporation and setting up 501(c)(3) status, you're getting into areas where nobody but lawyers can do the work, both by business practice standards and the law.²⁶¹

One such example of nonprofits requiring the assistance of lawyers is Public Counsel, a community-based health clinic which serves those who are at or near homelessness, or those in poverty.²⁶² Each nonprofit must carefully navigate convoluted health standards regulations and multiple

254. *Id.*

255. Roeger, *supra* note 250, at 3.

256. *Id.*

257. ADVISORY COMM. ON TAX EXEMPT & GOV'T ENTITIES, THE APPROPRIATE ROLE OF THE INTERNAL REVENUE SERVICE WITH RESPECT TO TAX-EXEMPT ORGANIZATION GOOD GOVERNANCE ISSUES 57, 2 (2008), http://www.irs.gov/pub/irs-tege/tege_act_rpt7.pdf.

258. *See* McKeever, *supra* note 253, at 5.

259. Shelly Crocker, *Counseling the Nonprofit Debtor in Financial Distress*, AM. BAR ASS'N (July/Aug. 2009), https://www.americanbar.org/publications/blt/2009/07/03_crocker.html.

260. *Id.*

261. Allen R. Bromberger, *When Help is Hard to Find, Hooking up Nonprofits with Pro Bono Legal Aid*, 12 BUS. L. TODAY 11, 13 (Sept./Oct. 2002).

262. *Id.*

layers of statutory framework in order to properly operate and maintain its status.²⁶³ This example and numerous others exhibit the high level of knowledge and understanding required in order to effectively provide services.²⁶⁴

Though there is a financial strain on small nonprofits and a continual fight to stay operational, the services being provided to the community shed light on their vital importance and need for preservation.²⁶⁵ Approximately 35% of public charities are considered human services groups, which can further be categorized as family/legal services, food banks, homeless shelters, youth services, and sports organizations.²⁶⁶ Education organizations come in a distant second place, comprising only 17.1% of all public charities.²⁶⁷

Why is this important? Because health and human services organizations generally provide services to low-income individuals.²⁶⁸ Those same individuals, based on their income level, are those accessing the LSC-funded legal services programs.²⁶⁹ The clients of the low-income, community nonprofits are the clients of the LSC-funded organizations.²⁷⁰

Next, turning to the consideration as to whether these same nonprofits actually have legal needs. In 2012, the State of Washington put together a report based on a survey of the state's nonprofits to determine their legal needs.²⁷¹ Overall, 92% of nonprofits surveyed stated they needed transactional legal help.²⁷² Further, the nonprofits surveyed were those that specifically provided services to low-income individuals.²⁷³ The transactional legal needs of nonprofits serving low-income individuals broke down into nine subject areas: (1) Employment; (2) Contracts; (3) IRS 501(c)(3) filings and maintenance; (4) Board Governance (bylaws in

263. *Id.*

264. *Id.*

265. Crocker, *supra* note 259.

266. McKeever, *supra* note 253, at 5.

267. *Id.*

268. *Poverty Guidelines*, U.S. DEP'T OF HEALTH AND HUM. SERVS. OFF. OF THE ASSISTANT SECRETARY FOR PLAN. AND EVALUATION, <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 21, 2018) (Federal program qualification under HHS defers to the poverty guidelines using an individual's income level to determine eligibility).

269. *Id.* (In the same manner, the federal government has set income guidelines for LSC funded legal services organization's clients as well); Financial Eligibility, 45 C.F.R. § 1611 (e-CFR—Code of Federal Regulations 2018), https://www.ecfr.gov/cgi-bin/text-idx?node=pt45.4.1611&rgn=div5#ap45.4.1611_19.a (citing Appendix A) (codified at 42. U.S.C. § 2996g(e)) (The numbers for LSC eligibility represent 125% of the Federal Poverty Guidelines by household size as determined by HHS. *Id.* at § 1611.3(c)(1)).

270. *See supra* text accompanying notes 266–67.

271. *Legal Needs*, *supra* note 12, at 4-5.

272. *Id.*

273. *Id.* at 5.

particular); (5) Intellectual Property; (6) Risk Assessment and Insurance; (7) Real Estate; (8) Start Up; and (9) Miscellaneous.²⁷⁴

Nonprofits without a doubt have transactional legal needs.²⁷⁵ Nonprofits also work within a tight budget that does not allow for paid legal assistance.²⁷⁶ A large portion of nonprofits work in the health and human services field, thus allocating their work to low-income populations.²⁷⁷ LSC-funded organizations also serve low-income populations but focus on legal needs.²⁷⁸ The clients receiving help from the health and human services nonprofits are usually the same groups who would qualify for and receive services from LSC-funded organizations.²⁷⁹ Helping the nonprofits with legal issues can only help to solidify the services those nonprofits offer, thus solidifying the well-being of the same low-income groups that access LSC-funded organizations.

B. Helping Nonprofits Gets Legal Service Providers Tied Back in with Their Communities

The Legal Services Program, created by the OEO in 1965, held out the promise of radical transformation.²⁸⁰ Part of a larger socio-political movement to eradicate poverty, the Legal Services Program was designed to marshal “the forces of law and the powers of lawyers in the War on Poverty to defeat the causes and effects of Poverty.”²⁸¹ An important part of the underlying philosophy of the Legal Services Program was its commitment to serving poor people as a “community.”²⁸² The Legal Services Program

274. *Id.*

275. *Id.* at 10.

276. Tom Chalkley, *Lining Up Free Legal Help for Your Nonprofit*, CHRON. OF PHILANTHROPY (Feb. 1, 2002), <https://www.philanthropy.com/article/Lining-Up-Free-Legal-Help-for/18371.3>.

277. McKeever, *supra* note 253, at 5.

278. *What We Do*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/what-we-do> (last visited Mar. 30, 2018).

279. In order to qualify for various federal programs through HHS, an individual’s income level is evaluated and HHS has put into place poverty guidelines to determine if an individual is eligible. *See supra* text accompanying notes 266–67.

280. Morin, *supra* note 11, at 125.

281. Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 YALE L. & POL’Y REV. 369, 374 n.11 (1998) (quoting Clint Bamberger, the first Director of the Office of Legal Services within the Office of Economic Opportunity). The structure and mission of the Office of Legal Services was carried over fundamentally unchanged by the Legal Services Corporation when it began to function in 1975. *Id.* at 375.

282. Morin, *supra* note 11, at 125 n.3. *See* Raymond H. Brescia, Robin Golden & Robert A. Solomon, *Who’s in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831, 834 (1998).

model was different than the norm, as it sought to have clients engage in the decisions relating to their case and to support those clients in actually controlling solutions to their legal problems.²⁸³ Essentially, this model created more of a partnership between lawyers and the community.²⁸⁴ Unfortunately, this model has not lived up to expectations.²⁸⁵

LSC's national reach was evident, as legal service providers began cropping up in almost every county in the United States, with programs receiving additional support like training and leadership.²⁸⁶ In the beginning, the goal was to create greater equality for those in poverty by helping secure a redistribution of goods, services, and power.²⁸⁷ Community involvement and empowerment was another central tenant of this movement.²⁸⁸ Even though funding continues to be cut or remain stagnant, legal service providers remain committed to their vision.²⁸⁹ Legal services offices have withdrawn from their communities, both physically and politically.²⁹⁰ The impact of these funding cuts is monumental. In its 2017 Justice Gap report, LSC noted that the 133 LSC-funded legal aid organizations across the United States, Puerto Rico, and territories will serve an estimated 1 million low-income Americans in 2017 but will be able to fully address the civil legal needs of only about half of them.²⁹¹

Not surprisingly, this withdrawal makes the needs of the community less in tune with the goals of the legal service providers, thus potentially eliminating certain services that are lawyer-driven and only open to a limited pool of clients.²⁹² There is widespread agreement in the legal

283. Morin, *supra* note 11, at 125.

284. *Id.* at 125–26.

285. *Id.* at 126.

286. *Id.* at 148; Houseman, *supra* note 281, at 374 n.8.

287. Houseman, *supra* note 281, at 374. *See, e.g.,* Edgar S. Cahn, *Reinventing Poverty Law*, 103 YALE L.J. 2133, n.2 (1994) (quoting KEVIN PHILLIPS, *THE POLITICS OF RICH AND POOR* 82–85 (1990)) (“The poverty percentages recorded over the past three years are higher than any time during the 1970’s [sic]; and the number of Americans living in poverty in 1992 was greater than any time since 1962, when 38.6 million (21 percent) of Americans were poor.”); *see also* Peter R. Pitegoff, *Urban Revitalization and Community Finance: An Introduction*, 27 U. MICH. J.L. REF. 613, 617–18 (1994) (“Urban poverty has grown at a disturbing rate since 1980, with almost three-quarters of the nation’s poor now residing in cities.”).

288. Morin, *supra* note 11, at 148.

289. *Id.* at 159.

290. *Id.* *See also* Houseman & Perle, *supra* note 27, at 12–13 (Houseman states that many legal services programs and staff are isolated from the communities they are supposed to serve. Few legal services staff actually live in the communities they serve; many do not relate to community efforts and have not established effective working relationships with community groups; few programs undertake intake at community institutions; and efforts at community education and outreach are spotty, at best).

291. *See* JUSTICE GAP REPORT, *supra* note 120, at 8.

292. Morin, *supra* note 11, at 159.

services community that the legal services delivery system must change to correspond to modern realities.²⁹³ However, with limited funding to assist the millions who need it, prioritizing services remains a fundamental hurdle to overcome.²⁹⁴ Alan Houseman, former Executive Director of the Center for Law and Social Policy, conducted an important study relating to the changes in legal services since its inception, which sets forth a set of recommendations for a new civil legal assistance system that “will achieve substantially increased access to justice through an integrated, comprehensive state delivery system addressing changing legal needs in new and innovative ways.”²⁹⁵ Important components of that system would include increased legal services involvement in the communities that they serve; use of a full range of providers, including private lawyers and students; and provision of a full range of services, including transactional and community economic development work.²⁹⁶

By providing increased legal service to low-income nonprofits in their communities, LSC-funded legal services providers will go back to the root reason legal services were created in the first place: further supporting the overall needs of the community in which the low-income individuals who also access legal services live. Not only will the individual community members be helped, but the nonprofits that are entrenched in those communities that also provide services to low-income individuals will be supported, thus providing strength and community development as a whole. Further, though LSC-funded legal organizations may be hamstrung by the regulations tied to its grants, particularly their policy and legislative work, helping to provide strong legal support for community nonprofits will then allow those nonprofits who can advocate for policy change to use their resources in a way LSC-funded legal organizations cannot. Arguably, it is an effective work around for policy changes that are needed, but cannot be advocated by LSC-funded legal organizations.

VI. CONCLUSION

There is still a great disparity between funding for civil legal aid and the low-income individual’s demand for assistance. That fact is one that appears to be only getting worse. Therefore, it is time to be smarter with how funding is used for civil legal aid and capitalize on large firms’ willingness and desire to take on pro bono work.

293. *Id.* at 156. *See generally* Houseman & Perle, *supra* note 27.

294. Morin, *supra* note 11, at 156–157.

295. *Id.* at 157.

296. *Id.* at 157–58.

Nonprofits are the forgotten social service providers that serve low-income Americans as much, if not more, than any legal service provider. Failing to assist nonprofits with their legal needs can do more harm than good for LSC-funded organizations and their clients. By providing a strong foundation for its clients through legal assistance to nonprofits, those organizations can better help the community as a whole. Legal services are not provided in a vacuum. There are other moving parts like the pro bono attorneys, funders, and community nonprofits that also work with low-income clients. LSC-funded legal services organizations need to get creative in matching pro bono legal services to BigLaw. If BigLaw demands pro bono work in their level of expertise, namely business transactional work, then provide it! After all, there's a plethora of community nonprofits that need pro bono legal assistance. In the end, it allows LSC-funded legal services organizations to increase the pro bono work they can offer to BigLaw, which increases the overall number of clients it can help; BigLaw is able to tout its pro bono involvement in an area in which it's already familiar; and ultimately, a community nonprofit is strengthened by receiving that free legal help.