

Executive Branch Support for Civil Legal Aid

Karen A. Lash

Abstract: For government, access to justice is about more than legal justice. Legal services are essential tools to enable government programs to achieve a wide range of goals that help to provide an orderly, prosperous, and safe country. Recent efforts have transformed how some federal and state government officials think about and use civil legal aid to get their work done. Key in convincing them has been empirical evidence about the effectiveness and cost-efficiency of including legal services alongside other supportive services.

Ensuring justice is a fundamental purpose of government. The Preamble to the Constitution proclaims its goal to “establish Justice,” among other aims, and proponents of civil legal aid rightly focus on that imperative.

An initiative called the Legal Aid Interagency Roundtable— created at the federal level and now in play in a handful of states around the country— takes another tack. This model uses access to justice to support other core purposes of government outlined in the Constitution: domestic tranquility,

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helps ensure that government programs intended to assist people meet their basic needs actually do. More policy-makers, funders, service providers, and people

*Karen A.
Lash*

However, during my tenure as a political appointee in the U.S. Department of Justice Office for Access to Justice and as the executive director of the White House Legal Aid Interagency Roundtable, we turned our focus to the third branch of government: the executive. Our aim was to identify programs, policies, initiatives, and law-enforcement goals that could be more effectively accomplished if their implementation included civil legal aid. To illustrate with one example, while it may seem counterintuitive, effective health care often requires legal services. A doctor can get a child's asthma attack under control. But to prevent traumatic and costly repeat emergency room visits, the doctor needs to prescribe legal help to enforce housing codes and eradicate the underlying rodent infestation in the family's apartment that triggers the asthma. At medical-legal partnerships, health care and legal professionals join forces to promote health. That's why the Health Resources and Services Administration (HRS) of the U.S. Department of Health and Human Services designated legal services as an "enabling service": meaning that HRS-funded health centers can use federal dollars to pay for legal assistance for patients.⁶ The HRS supported the new policy with training and technical assistance that helped cultivate and support medical-legal partnerships at community health centers across the country, contributing to the rise in medical-legal partnerships nationally and, more important, to improvements in people's health.⁷

Instead of focusing on legal aid for its own—or justice's—sake, this approach shifts the terms of discussion, focusing on the tools that most effectively achieve government goals with already appropriated funds. When the government has already chosen to act, the questions for executive-branch experts involve how

best to effectuate that mandate. By the time the White House roundtable published its first annual report to then-President Barack Obama, twenty-two executive agencies and partners—from the Administrative Conference of the United States to the U.S. Department of Veterans Affairs—were involved.⁸

Executive agency personnel were often persuaded to embed legal services in their programs by empirical evidence demonstrating that it works. Executive agency staff—lawyers and nonlawyers, political appointees and career public servants—learned about how legal aid can improve programs as varied as housing homeless veterans and helping families impacted by the opioid crisis. Ideological opposition to lawyers sometimes heard elsewhere or disagreement about the proper role of the federal government evaporates when the main topic is the executive branch's duty to meet policy goals and produce the best outcomes possible.

The sailing is not always smooth. Congress, the courts, and outside watchdog groups can constrain the actions of risk-averse federal agencies, which tends to preserve the status quo. Each agency has its own mandate and concerns, so broad generalizations about the value of legal services are not persuasive. Many factors make each agency unique, including its authorizing law, the nature of its mandate, the agency's structure and culture, and the values and personalities of career staff and political appointees. Discovering the person to persuade is not always easy; sometimes it is unclear who has the authority to make necessary changes within an agency. A project's success at the federal level depends on accommodating all of these differences.

The roundtable and its new counterpart at the state level—The Justice in Government Project at the American University Justice Programs Office—reach for the

lower-hanging fruit, avoiding big questions about the reach, source, and implications of agency authority. The work stays in the uncontroversial zone: helping state executive branch agencies and actors use legal aid to help them reach their established goals and objectives, on which they have clear authority to act, and incorporating legal services informed by a solid evidence base.

The roundtable grew out of efforts to

responded to studies showing that providing legal assistance to people who cannot afford it addresses root problems that keep people from climbing up the economic ladder and often provides substantial return on investment by preventing harm and financial waste.¹¹

A small but growing body of research connects legal help to many core agency objectives. Civil legal aid significantly reduces incidents of domestic violence by helping victims obtain child custody arrangements and child support payments that enable them to leave abusive relationships. Legal help increases tenants' chances of keeping their homes when facing eviction.¹² It positively impacts individual and public health while driving down health care costs.¹³ It addresses unmet needs of homeless veterans.¹⁴ It improves efficiency and cuts costs in public programs by helping children leave foster care faster.¹⁵ It increases income and job opportunities for people who have a criminal record expunged. Resolving these problems can reduce government expenditures in responding to crime, injuries, and homelessness, as well as individual, family, and community social, emotional, and financial harms.

The Legal Services Corporation's *The Justice Gap* report demonstrated that current funding for civil legal aid covers only a fraction of the civil legal needs of low-income Americans.¹⁶ As agency personnel often realized with surprise, these statistics describe only those at 125 percent of the poverty line or below: they leave out the tens of millions of moderate-income Americans who need legal help but cannot afford a private lawyer. It was news to many that four out of five Americans will experience some kind of economic hardship, such as relying on a government program for the poor or living at least one year in poverty or close to it.¹⁷

In 2015, the roundtable was elevated to a White House initiative when President Obama issued a Presidential Memorandum about its work. He called on the federal agencies to work together "to help the most vulnerable and underserved among us. . . . By encouraging Federal departments and agencies to collaborate, share best practices, and consider the impact of legal services on the success of their programs, the Federal Government can enhance access to justice in our communities."¹⁸ This endorsement made the roundtable a mandated activity, elevating its work to the highest level of each agency. It called on the attorney general and the director of the White House Domestic Policy Council or their designees to cochair three meetings per year. When invitations for the first meeting went out from Attorney General Loretta Lynch and Domestic Policy Council Director Cecilia Muñoz, they attracted top-level leaders from each agency.

By this stage, the agencies' accomplishments included: getting legal services designated as fundable services in at least two dozen major federal grant programs, such as those involving reentry into society for people with criminal records, access to health care, applications for citizenship, and services for homeless veterans; clarifying that other federal programs should allow legal services that would further their goals; new training and technical assistance opportunities; new research about civil legal aid; and strategic partnerships between agencies and legal-aid programs to achieve enforcement and outreach goals.¹⁹

In 2018, Attorney General Jeff Sessions closed the Office for Access to Justice and transferred its duties to the Justice Department's Office of Legal Policy.²⁰ But the work continues. Federal agencies are still thinking about and incorporating legal aid into their work. For example, the

*Karen A.
Lash*

its own rules, regulations, formulas, and degrees of flexibility, the Project's work builds on the roundtable's efforts at the federal level, which includes cataloging the federal block grant funds that allow state spending on civil legal services.

Two approaches launched as part of the Project show how support for civil legal partners can be made more consistent and pervasive: one focuses on a specific block grant that allows spending on legal aid and its role in advancing particular state policy goals; the other focuses on a specific issue relevant to state policymakers and legal aid— for example, helping people with criminal records get a second chance to succeed— which can tap several different federal block grants as well as local funding streams.

Consider the Victim Assistance Formula Grant Program under the federal Victims of Crime Act (. . .). It directs funding allocations to state agencies that make awards to direct service providers assisting crime victims. Since Congress passed the act in 1984, its funds have dramatically increased services to crime victims.²³ The Department of Justice has documented the importance of civil legal assistance to many types of crime victims. Legal help is one of the most critical yet too often unmet needs of domestic violence victims, who are typically the largest group of crime victims that states serve using these funds.

Three considerations made . . . ideal for demonstrating how to connect good government with access to justice: a solid evidence base documents unmet civil legal needs among crime victims and the importance of civil legal help to solve myriad problems related to victimization; Congress consistently supports the act and recently increased funding; and a new rule clarifies that these funds can be used for comprehensive legal assistance for legal needs that flow from

victimization, including domestic violence, child abuse and neglect, elder abuse, human trafficking, financial and consumer fraud, identity theft, and other issues routinely asTer ting and3

set-asides for eligible arrests and convictions, child support order adjustments, drivers' license reinstatement, and other civil legal needs can stabilize lives in ways that support getting a job while reducing recidivism.²⁶

Arizona is following the lead of other states like Maryland, Illinois, and South Carolina and cities like Los Angeles that are already working to deploy legal aid in efforts to remove obstacles to employment. Two Maryland and multiple Illinois American Job Centers have embedded legal-aid lawyers alongside other social-service providers to help people get jobs. South Carolina's Department of Employment and Workforce Director of Policies and Procedures issued guidance urging local workforce administrators to provide legal services consistent with a 2016 Workforce Innovation and Opportunity Act federal rule that lists legal aid among the supportive services considered "necessary to enable an individual to participate" in workforce activities.²⁷

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government's existing priorities, generally without the need for new funding or legislation. These efforts seek to improve government policies, programs, and initiatives by incorporating civil legal services, leveraging research and data to achieve better results, and, sometimes,

even saving public dollars. More people can get or stay housed, healthy, in school, and employed. More families and communities can find and sustain stability.

And, as an added bonus, it also brings us all a little closer to the promise of establishing justice for all.



Access to Justice Middle-Income Karen A. Lash

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Fordham Law Re-

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Victims of Crime Act Victim Assistance Formula Grant Program:
Fiscal Year 2016 Data Analysis Report

The Arizona Republic

Washington Post

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