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Just Services

Balancing the Scales of Legal Services Funding in Massachusetts

I. Overview

Led by the Massachusetts Legal Assistance Corporation (MLAC) and the Boston Bar Association, advocates for legal services are calling for more than a tripling of state funding of the MLAC over the next three years. The MLAC provides grants to state entities that offer legal services to the poor.

The magnitude of the request reflects the widely shared belief that “available legal services for persons of limited means are woefully inadequate to meet the need for legal assistance in significant legal matters.”¹ This is despite the fact that total funding of state legal services has grown by almost 10% annually over the last five years and is now about \$57 million per year from all sources.

Legal-services advocates point to studies that purportedly “well document the need for additional resources to provide representation in civil cases to those unable to afford private counsel.”² However, a careful examination of the data and of the history of legal services creates, in the vernacular of attorneys, reasonable doubt in the case for increased funding. From this record, it appears that the poor neither need – nor stand to benefit from – a tripling in state funding.

Contrary to the argument of legal-services advocates, existing studies do not show conclusively the existence of a significant number of unmet legal needs. Indeed, these studies show that the number of such needs is relatively small. We cannot be certain, either, that the new funds would go to meet the needs of the poor. Indeed, there is good reason to believe that they would go for purposes quite unrelated, and even antithetical, to those needs.

Background

The Massachusetts Constitution codifies the Commonwealth’s commitment to provide each citizen access to civil justice:

Every subject of the Commonwealth ought to find a certain remedy, by having recourse to laws, for all injuries or wrongs which he may receive in

¹ Supreme Judicial Court Committee on *Pro Bono* Legal Services to *Massachusetts Lawyers Weekly*, 16 March 1998 (Boston), 26.

² *Ibid.*

his person, property or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; and without delay; comfortably to the laws.³

At the federal level, Congress codified its own commitment to that same principle by establishing the Legal Services Corporation (LSC) in 1974.⁴ A quasi-public agency, the LSC distributes federal legal-services funds to local affiliates, which provide legal assistance to eligible citizens in civil matters such as divorce, child custody, landlord/tenant disputes, allegations of discrimination, income maintenance, and similar matters.⁵ In 1998, 37% of all closed cases were family-law matters; 23% landlord/tenant and public-housing matters; and 14% income-maintenance cases such as food-stamp revocation, social security and disputes over government benefits.⁶

Contrary to the argument of legal-services advocates, existing studies do not show conclusively the existence of a significant number of unmet legal needs.

In 1999, the LSC received a total of \$300 million from Congress, up 6% from 1998. For FY 2000, the LSC requested and received another 13% increase.⁷ In addition to federal appropriations, LSC grantees receive funds from an array of sources, including grants from other federal entities, states and localities, income from interest on lawyers' trust accounts (IOLTA), and private charitable contributions. Under IOLTA, attorneys place their clients' funds in special accounts, on which interest earnings are passed along to the MLAC for distribution to its grantees.

The MLAC funds its grantees with state money and with IOLTA. Figure 1 shows how federal and nonfederal funds are channeled through the LSC and the MLAC to local grantees, which, in turn, provide legal services to eligible clients. MLAC grantees also receive assistance from state and federal grants, IOLTA distributions, contributions from private charities and *pro bono* services provided by private attorneys. The data are for 1999.

³ Massachusetts Constitution, Preamble, Art. XI.

⁴ Public Law 93-355, 93rd Cong., (25 July 1974).

⁵ To be eligible for free legal assistance, a recipient must show that he or she earns no more than 125% of the poverty rate as determined by the Department of Health and Human Services and published in the Federal Poverty Guidelines each year.

⁶ Legal Services Corporation, *1997 Cases Closed by LSC-Funded Programs*, <http://www.lsc.gov/97csrtls.html> (1997).

⁷ On November 19, 1999, the United States Senate approved an omnibus appropriations bill that included \$305 million for the Legal Services Corporation for FY 2000. The amount is just \$5 million more than its FY 1999 budget. President Clinton had requested a \$40 million increase.

Figure 1 - Legal Services Providers In Massachusetts (Flow Chart)

The MLAC received \$6.94 million from the Massachusetts Legislature in FY 1998 and \$7.25 million in FY 1999. For FY 2000, funding is at \$7.53 million.

In February 2000, the MLAC asked the Massachusetts Legislature for FY 2001 funding in the amount of \$26.1 million.⁸ In its budget forwarded to the Senate, the House of Representatives approved \$9.08 million in funding for FY 2001; this represents an increase in funding of \$1.55 million.

Now the MLAC is offering a proposal to the Senate under which funding would increase by \$6 million each year for the next three years, bringing total state funding to \$25.53 million by FY 2003, or more than triple the FY 2000 level. Legal-services advocates defend this request not only on the basis of “unmet legal needs” but also on the argument that the Commonwealth can well afford to provide additional funds for legal services to deserving citizens.⁹

The Assertion of Unmet Legal Needs in Massachusetts

The assertion of unmet legal needs in Massachusetts is based on a 1996 report by the Commission on Equal Justice entitled, *Equal Access to Justice, Renewing the Commitment*.¹⁰ This report cited a national study conducted by the Institute for Survey Research at Temple University in 1994 entitled, *The Report on the Legal Needs Among Low-Income and Moderate-Income Households: A Summary of the Findings of the Comprehensive Legal Needs Study (CLNS)*. Another study cited in the report, *Legal Needs Among Low-Income Households in Massachusetts: Findings from the Comprehensive Legal Needs Study (MLNS)*, used the same methodology. The *MLNS* was conducted in 1994 by the Institute for Survey Research for the Commonwealth of Massachusetts.¹¹

Both the *CLNS* and the *MLNS* estimated the number of unmet legal needs of eligible Massachusetts citizens by conducting telephone interviews designed to gather information on the respondents’ backgrounds, income, and potential and actual legal problems. The two studies documented ongoing legal needs as well as potential legal needs in various areas. Each study used a similar methodology, with the *MLNS* adopting that used by the national *CLNS*.

⁸ <http://www.lweekly.com>, Feb. 7, 2000.

⁹ Ibid.

¹⁰ The Massachusetts Commission on Equal Justice, *Equal Access to Justice: Renewing the Commitment* (Boston: Massachusetts Legal Assistance Corporation, 1996).

¹¹ Roy W. Reese and Carolyn Eldred, *Findings of the Comprehensive Legal Needs Study* (Philadelphia: Institute for Survey Research at Temple University, 1994); and Karl Landis, Roy W. Reese, and Carolyn Eldred *Legal Needs Among Low-Income Households in Massachusetts: Findings from the Comprehensive Legal Needs Study* (Philadelphia: Institute for Survey Research at Temple University, 1994).

Citing the *CLNS* and the *MLNS*, *Equal Access* reported 336,871 income-eligible households in Massachusetts in 1990. *Equal Access* determined that these households met 112,000 of their legal needs through recourse to the legal system in 1995. Of these legal needs, 43,000 were met through LSC- and MLAC-funded programs, 5,000 through other public-service programs and 64,000 by private attorneys. Subtracting and rounding, *Equal Access* thus concluded that “225,000 individual legal needs would have remained unmet.”¹²

In March 2000, the MLAC issued a one-page release reporting that it had turned away 54,000 low-income individuals in Massachusetts in 1998.¹³ The MLAC apparently had counted and categorized the number of individuals who telephoned to request assistance but who could not be helped because of financial constraints faced by legal-services providers. Since the MLAC offered no details concerning the methodology with which it obtained this estimate, we can place no confidence in its validity.

Questioning the Claim of Unmet Legal Needs

An examination of the *CLNS* and the *MLNS* studies raises questions about the methodology used in arriving at their respective conclusions:

- *The CLNS and MLNS used too broad a definition of “legal needs.”* The *MLNS* defined legal needs indirectly as “problems that people encounter that are susceptible to a remedy through the system of justice.”¹⁴ The *MLNS* also said that an unmet legal need “touched on virtually every aspect of life and was not restricted just to those situations commonly assumed to have legal implications.”¹⁵ *Equal Access* ultimately declared that any “legal need” that did not result in a case for the LSC, the MLAC, any other public program, or for a private attorney is an unmet legal need. Reported legal needs could thus include a tenant’s problems with insects, credit denials or lack of telephone service – issues seldom addressed through the legal system. Such an interpretation constitutes so broad a definition of unmet legal needs as to be meaningless.
- *Equal Access ignored extra-judicial remedies in its calculation of unmet legal needs.* Many of the responses of those surveyed were interpreted as indicating a legal need when, in fact,

¹² This assumes an average of one legal need per household per year.

¹³ Mitchell Zuckoff, “Uneven Justice: Limited Funds for Legal Aid Can Lead to Mismatches in Civil Cases,” *The Boston Globe*, 12 March 2000, A1.

¹⁴ *MLNS*, 1.

¹⁵ *MLNS*, v.

there were remedies available from outside the legal system. These remedies include mediation, third-party negotiation, government-provided resources and assistance by nonprofit organizations.

- *The CLNS and MLNS exaggerated the number of unmet legal needs by failing to account for respondents' possible unwillingness to devote sufficient time and effort to securing a legal remedy.* Respondents were not queried with respect to their willingness to incur the personal costs commonly associated with the pursuit of legal remedies. Meeting with lawyers, doing paperwork, providing testimony and fulfilling other legal obligations are necessary elements in obtaining a legal remedy. There is no unmet legal need unless the respondent is willing to incur the personal costs associated with such activities. Merely phoning a legal-services provider and indicating a legal need does not constitute evidence that such a need exists.
- *The studies failed to ask respondents whether they would have pursued a legal remedy if they had had sufficient resources to hire a private attorney.* A legal need can be unmet not only because of financial considerations but also because the person registering the need does not consider it worth meeting. Middle and high-income people allow all manner of legal needs to go unmet because they prefer to use their financial and personal resources to meet other, more pressing, nonlegal needs. There was no determination in the *CLNS* or *MLNS* of whether respondents, if given the opportunity, would have preferred to meet other needs. In the *MLNS*, only 12% of respondents identified cost as the reason they did not pursue a legal remedy to their problems. This suggests that the remaining 88% would have left their reported legal needs unmet even if they had had the resources to meet them.
- *Equal Access exaggerated the number of legal needs by relying on data relating to the prevalence – as opposed to the incidence – of such needs.* The study implicitly used data relating to the “prevalence” of legal needs, rather than data relating to the “incidence” of legal needs. Prevalence measures all the legal needs in existence, including unresolved legal needs from previous years. Incidence measures new legal needs arising during the course of a year. Thus *Equal Access* counted as legal needs problems left over from previous years. These problems may have remained unresolved because they lacked merit in the first place.

Assessing the Real Number of Unmet Legal Needs

These questions cast doubt on the validity of the assertion in *Equal Access* that there are 225,000 unmet legal needs in Massachusetts. There is however, an even more fundamental problem. *Equal Access* appears to have greatly exaggerated the number of unmet legal needs even in terms of its own methodology. Indeed, *MLNS* and *Equal Access* themselves imply a much lower estimate.

According to *Equal Access*, there were 336,871 Massachusetts households eligible for legal services in 1990, averaging 1.0 legal needs per household, for a total of 336,871 legal needs.¹⁶ *Equal Access* declared that of these needs, 225,000 went unmet. This implies that approximately 112,000 needs were met through the legal system.¹⁷ Two out of three needs went "unmet."

We interpret the *MLNS* and *Equal Access* data to imply a significantly smaller number of unmet legal needs. Our interpretation rests on the *MLNS*'s own arguments that (a) a legal need can be considered "met" even if it is resolved satisfactorily outside the legal system; and (b) only a small fraction of all households surveyed attributed their inability to meet their legal needs to inadequate financial resources.

The current number of unmet legal needs is less than 21,000 – far less than the estimate of 225,000 supporting the argument of "woefully inadequate" legal services funding.

Consider the 112,000 legal needs reported by *Equal Access* as having been met by the legal system. Then add the 15% (50,531) that *MLNS* reports were resolved outside the legal system through third party interventions and the 19% (64,006) that they report were resolved through individual efforts.¹⁸ That brings the total number of legal needs that were met, through the legal system or otherwise, to 226,537. Subtracting from 336,871, we are left with 110,334 unmet legal needs. Using *MLNS*'s finding that 12% of respondents found costs to be an impediment to resolving their legal problems leaves just 13,240 legal needs that went unmet for financial reasons. Given that the number of income-eligible households has increased by 15.5% since 1990, there are 15,290 unmet legal needs in 2000.¹⁹

¹⁶ *MLNS*, 15.

¹⁷ *Equal Access*, 13.

¹⁸ *MLNS*, 34.

¹⁹ According to the Massachusetts Institute for Social and Economic Research (MISER), the current population of Massachusetts is 6,340,843. Using the *Equal Access* estimate of 2.07 persons per household, the number of households is 3,063,209. The fraction of Massachusetts households below the poverty level was

This estimate is arguably also misrepresentative insofar as it is based on the "prevalence," rather than the "incidence" of legal needs. That is, it counts as needs, not only those incurred during the current year, but also those left over from earlier years. *MLNS* reports 0.8 legal needs per household when needs are measured in terms of incidence, rather than prevalence.²⁰ Adjusting for this difference, we determine that the number of unmet legal needs in 2000 is 12,326.²¹

The Beacon Hill Institute Survey

During the fall of 1999, the Beacon Hill Institute (BHI) conducted a survey of low-income households to obtain our own independent assessment of the extent of unmet legal needs in the Commonwealth. Our sample, consisting of 100 respondents, was drawn from four Massachusetts subsidized housing developments. The housing developments we selected were similar to the surveys described above with respect to ethnic composition, annual income of residents and other explanatory variables.

Seventy-two of the respondents identified at least one legal problem. Twelve of these respondents reported, as "legal," problems that were not, in fact, legal in nature.²² Respondents from the 60 remaining households reported a total of 79 legal problems, yielding 0.79 problems per household. Multiplying by 389,028 (the estimated number of income-eligible households in 2000), we find the number of legal needs to be 307,332. Given that 205,912 of all legal needs will be met through the legal system or in some other way in 2000, we find 101,420 unmet legal needs.²³ Multiplying by 0.20 (the fraction of surveyed households that did not seek legal help for

10.7% in 1990 and 12.2% in 1997 (U.S. Census Bureau, *Statistical Abstract of the United States*, 1999, p. 485). Given that 11.1% (1/9) of households were below 125% of the poverty level in 1990, 12.7% were below 125% of the poverty level in 1997. Thus there were 389,028 households below 125% of the poverty level in 1997. We then estimate the number of unmet needs in 2000 to be $\frac{389,028}{336,871} \cdot 13,240 = 15,290$, where

$$\frac{389,028}{336,871} - 1 \cdot 100\% = 15.5\%.$$

²⁰ *MLNS*, 45.

²¹ Given 0.8 legal needs per household for 336,871 eligible households, Massachusetts households incurred 269,497 new legal needs in 1990. Based on the data presented in the text, eligible households accommodated 67% of these needs by through legal, extra-judicial and individual efforts. (The fraction of legal needs met through legal system was $112,000/336,871 = 0.33$. The fraction met outside the legal system through third party interventions was 0.15, and the fraction met through individual efforts was 0.19, for a total of 0.67.) That leaves 88,934 unmet needs. Multiplying by 12%, we find that 10,672 legal needs were unmet for reasons of cost. Given that the number of income-eligible households has risen since 1990 by 15.5%, we determine that there are 12,326 unmet needs in 2000.

²² For example, we determined that a reported problem of "not enough money to pay bills" was not a "legal" problem.

²³ Multiplying 307,332 by 0.67, we get 205,912 legal needs that were met in 2000.

reasons of costs), we find the number of legal needs that cannot be met for reasons of cost to be 20,284.

The best available evidence therefore suggests that fewer than 21,000 Massachusetts households are currently unable to meet their legal needs because they are poor and because of cost considerations. This is far fewer than the estimate of 225,000 supporting the argument of “woefully inadequate” legal services funding and still substantially fewer than 54,000 estimated by MLAC.

Equal Access implies that 67% of the legal needs of the poor are going unmet. MLAC claims 60% (three out of five). The foregoing analysis suggests that the correct number is no greater than 7%. Considering this discrepancy, the Commonwealth should conduct a new study before agreeing to any increases in legal services funding.

Should Massachusetts Provide the Requested Increase?

In 1999, the MLAC distributed its funds to 18 legal-services programs providing general support, disability benefits, Medicare advocacy, battered-women services and family-law services.²⁴ Despite the unquestioned value of this assistance to a large number of recipients, a number of factors argue against increased funding of the MLAC at this time.

LSC funding of Massachusetts legal services has been almost unchanged in recent years. Yet, as mentioned above, total funding, which includes state appropriations and IOLTA, has grown rapidly. Since 1990, state appropriations to MLAC have increased at a 16.2% annual compound rate. From 1995-1999, IOLTA income increased at an 18.0% annual compound rate. Legal services have by no means been the poor stepchild of state policy.

There is a long history of concern over legal-services operations and whether or not legal-services providers are adhering to their mission. Critics have charged that the LSC and its grantees have deviated from their mission of helping indigent clients in civil legal matters, becoming instead a taxpayer-funded political advocacy group for social reform.²⁵ The agenda has not been to serve the needs of the poor, say critics, but to expand the welfare state through litigated increases in transfer payments.²⁶ This has had the incidental effect of abusing defendants who are forced, at a great expense and often unsuccessfully, to prevail over the determined efforts of the legal-services bar.

²⁴ Massachusetts Legal Assistance Corporation, *Annual Report FY 1998* (Boston), 32.

²⁵ Orrin G. Hatch et al, *Legal Services Corporation: The Robber Barons of the Poor?* (Washington: The Washington Legal Foundation, 1985), 10.

²⁶ Kenneth Boehm and Peter T. Flaherty, “Legal Disservices Corp.: There are Better Ways to Provide Legal Aid to the Poor,” *Policy Review* 74 (Fall, 1995), 18.

In one instance, two tenants, assisted by a Boston-based legal-services office, remained in a Waltham woman's two-family home for almost two years without paying rent. The tenants bankrupted the woman leaving only after a judge evicted them. Another episode involved a \$400-a-week hospital worker who was left destitute after her tenant made unsubstantiated complaints resulting in continuous delays in the tenant's eviction hearing. Aided by a legal-services lawyer, the tenant eventually skipped the eviction hearing altogether.²⁷

In fact, state legal-services funds often end up being spent on lobbying efforts of questionable value to the taxpayers who are paying for them. Greater Boston Legal Services has lobbied for paid parental leave. The Massachusetts Law Reform Institute has lobbied for relaxing workfare requirements for welfare recipients. Western Massachusetts Legal Services distributed a pamphlet advising welfare recipients to spend any lottery windfalls as quickly as possible in order to retain their benefits. It is therefore disingenuous, at best, for legal-services advocates to speak of unmet legal needs of the poor when they use state funds and the court system to implement a political agenda that is often inimical to the interests of the taxpayers and, indeed, of the poor themselves.

It was exactly that concern that led Congress, in 1996, to restrict sharply the use of LSC grant money. Federal law now prohibits the use of LSC funds for redistricting efforts, for efforts to alter or revise policies arrived at by executive order, the judicial process and legislation, and for class-action and issue-advocacy suits.

Finally, there is the question of what regular audits of state legal-services providers might reveal. The federal Office of the Inspector General (OIG) performed six field audits in 1997 to ensure grantee compliance with the federal restrictions. The OIG found that all six grantees overstated their caseload on average by 32%. In 1998, an additional six grantees were audited who, on average, overstated their caseload by 30%.

According to the OIG, some local grantee organizations refused to cooperate with the audit staff, and other organizations greeted the audits with hostility.²⁸ Sadly, our efforts to get information from the LSC and other legal-services entities met with a similar reaction. We never received performance and financial data that we requested in writing and through numerous phone messages. See Appendix B.

²⁷ Small Property Owners Association, *Small Property Owners News* (Cambridge), April 1998 and June 1998.

²⁸ Statement of the Office of Inspector General, Legal Services Corporation before the House of Judiciary Subcommittee on Commercial and Administrative Law, presented September 29, 1999 by Edouard Quatrevaux, Inspector General, Statement of Inspector General Edouard Quatrevaux before the House Judiciary Subcommittee on Commercial and Administrative Law, presented September 29, 1999.

Beacon Hill Institute's Recommendations

Considering the doubtful legitimacy of the MLAC's request for expanded funding, the Beacon Hill Institute recommends that the state legislature freeze its appropriation of MLAC funds until it adopts the following measures:

1. Commission a new survey to reassess the incidence of unmet legal needs among the poor in Massachusetts.
2. Impose conditions on the receipt of MLAC funds similar to the 1996 federal guidelines imposed by Congress on LSC distributions.
3. Direct a nonpartisan office – perhaps the Inspector General – to perform frequent, irregularly-scheduled audits of MLAC grantees to ensure that caseloads are not overstated.
4. Conduct an information program aimed at alerting citizens to the existence of alternative services, such as *pro bono* attorney services, local, state and federal agencies and law-school clinics.
5. Impose enhanced disclosure requirements holding the MLAC and its grantees to the standards codified in the Freedom of Information Act.

II. Introduction

The Commonwealth of Massachusetts recognizes that equal access to the legal system is a fundamental right. So strong is that belief that the state's Constitution guarantees:

Every subject of the commonwealth ought to find a certain remedy, by having recourse to laws, for all injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; and without delay; comfortably to the laws.²⁹

Providers of legal services often say that the state has failed to fulfill its constitutional guarantee to "obtain right and justice freely." Thus, there is strong support for the effort to secure a significant increase in funding from the legislature for the Massachusetts Legal Assistance Corporation (MLAC) in fiscal year 2001.³⁰ For FY 2000, funding for the MLAC is at \$7.53 million, up from \$7.25 million in FY 1999.

In February 2000, the MLAC asked the Massachusetts Legislature for FY 2001 funding in the amount of \$26.1 million.³¹ In its budget forwarded to the Senate, the House of Representatives approved \$9.08 million in funding for FY 2001; this represents an increase in funding of \$1.55 million.

Now the MLAC is offering a proposal to the Senate under which funding would increase by \$6 million each year for the next three years, bringing total funding to \$25.53million by FY 2003, or more than triple the FY 2000 level. Legal-services advocates defend this request not only on the basis of "unmet legal needs" but also on the argument that the Commonwealth can well afford to provide additional funds for legal services to deserving citizens.³²

A 1998 survey by the MLAC is offered as evidence that "three of five persons who are eligible for legal services in Massachusetts currently are turned away due to lack of resources."³³ Another frequently-cited study is a 1996 report by the Commission on Equal Justice entitled, *Equal Access to Justice: Renewing the Commitment (Equal Access)*. This report cited a national study conducted by the Institute for Survey Research at Temple University in 1994 entitled, *The Report on the Legal Needs Among Low-Income and Moderate-Income Households: A Summary*

²⁹ Massachusetts Constitution, Preamble, Art. XI.

³⁰ <http://www.lweekly.com> (7 February 2000).

³¹ Ibid.

³² Ibid.

³³ <http://www.bostonbar.org> (8 May 2000). See Massachusetts Legal Assistance Corporation, "Turned Away: Eligible Callers Denied Legal Services" (Boston), 23 March 2000.

of the Findings of the Comprehensive Legal Needs Study (CLNS). Another study cited in the report, *Legal Needs Among Low-Income Households in Massachusetts: Findings from the Comprehensive Legal Needs Study (MLNS)*, used the same methodology. The Institute for Survey Research for the Commonwealth of Massachusetts published the *MLNS* in 1994.

The MLAC survey apparently consisted of tabulations of calls received by legal-services providers, with the aim of showing how many callers were and were not offered service. Both the *CLNS* and the *MLNS* estimated the number of unmet legal needs of eligible Massachusetts citizens by conducting telephone interviews designed to gather information on the respondents' backgrounds, income, and potential and actual legal problems. The two studies documented ongoing legal needs as well as potential legal needs in various areas. Each study used a similar methodology, with the *MLNS* adopting that used by the national *CLNS*.

Citing the *CLNS* and the *MLNS*, *Equal Access* reported 336,871 income-eligible households in Massachusetts in 1990. *Equal Access* determined that these households met 112,000 of their legal needs through recourse to the legal system in 1995. Of these legal needs, 43,000 were met through LSC- and MLAC-funded programs, 5,000 through other public-service programs and 64,000 by private attorneys. Subtracting and rounding, *Equal Access* thus concluded that "225,000 individual legal needs would have remained unmet."³⁴

Before the legislature accedes to the request for additional funding for the MLAC, it should consider the Beacon Hill Institute (BHI) analysis of three studies cited to justify the tally of unmet legal needs in Massachusetts. Our analysis of the methodology employed in the three studies suggests that instead of some 225,000 annual unmet legal needs, there are, in fact, just over 12,000 unmet legal needs. Additional support for the revised estimate is found in our survey determining the existence of fewer than 21,000 annual unmet legal needs in the state.

In addition to the faulty estimate of the number of unmet legal needs in the state, there are several other reasons to reconsider the MLAC request. First, since 1995, the state has increased MLAC funding at an annual rate of 16%. In addition, interest on lawyers' trust accounts (IOLTA) funding of MLAC increased at an annual compound rate of 18% from 1995-1998. With so many demands placed on the state budget, tripling the funding of the MLAC is plainly inappropriate.

Second, there is a long history of concern over legal-services operations and whether or not legal-services providers are adhering to their mission. Critics have charged that legal-services

³⁴ This assumes an average of one legal need per household per year.

providers have deviated from their mission of helping indigent clients in civil legal matters, becoming instead a taxpayer-funded political advocacy group for social reform.³⁵

Third, we are concerned about what audits of MLAC grantees might reveal. Audits of grantees funded by the national Legal Services Corporation (LSC) have revealed that legal-services providers overstate their caseloads and fail to keep careful records of client hours.

Finally, according to the national Office of the Inspector General, some local grantee organizations refused to cooperate with the audit staff, and other organizations greeted the audits with hostility.³⁶ Unfortunately, the OIG's experience is consistent with our own experience in performing research for this study. We never received performance and financial data requested in writing and through numerous phone messages.

³⁵ Hatch et al, 10.

³⁶ Statement of Inspector General Edouard Quatrevaux.

III. The Legal Services Corporation

History of the LSC

The Office of Economic Opportunities, established in 1965, made the first federal grants to local legal-aid societies. In 1974, Congress established the LSC to succeed the Office of Economic Opportunity.³⁷ A quasi-government agency, the LSC is the sole distributor of federal grants to local affiliates. Those affiliates provide legal assistance to eligible citizens in civil matters such as divorce, child custody, tenant complaints, discrimination, income maintenance, and many other areas, at no charge to the recipient.³⁸

Legal-services affiliates provide *pro se* (self-representation) clinics, telephone legal hotlines, legal training and education, case evaluation, brief advice and counseling, community education, mediation and/or legal representation if necessary. In 1999, the LSC received a total of \$300 million from Congress, up 6% from 1998. For FY 2000, the LSC requested another 13% increase.³⁹

Legal-services providers receive funds from LSC and from an array of sources, including other federal grants, state and local funds, money accumulated on IOLTA and private charitable contributions.⁴⁰ Figure 2 tracks funding from LSC and non-LSC sources.

Increase in Transfer Payments Through Litigation

Critics have charged the LSC and its grantees with straying from the task of helping indigent clients in civil legal matters, thus becoming a taxpayer-funded political advocacy group for social reform.⁴¹ In the view of critics, the agenda was not to serve the needs of the poor but to expand the welfare state through litigated increases in transfer payments. The LSC and its grantees, said

³⁷ Public Law 93-355, 93rd Cong., (25 July 1974).

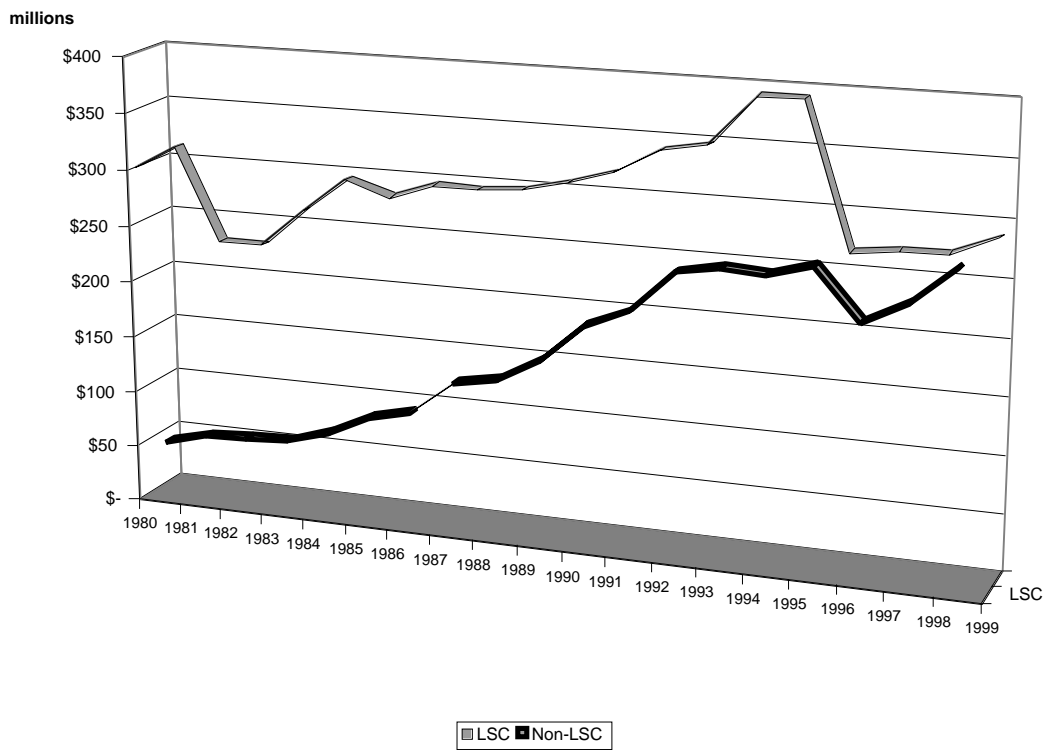
³⁸ Eligibility for free legal assistance is based upon a maximum of 125% of the poverty rate determined by the Department of Health and Human Services and published in its Federal Poverty Guidelines each year. In general, clients whose income is between 125-187.5% of poverty level may be found eligible for free legal services.

³⁹ On November 19, 1999, the United States Senate approved an omnibus appropriations bill that included \$305 million for the Legal Services Corporation for FY 2000. The amount is just \$5 million more than its FY 1999 budget. President Clinton had sought a \$40 million increase.

⁴⁰ The sources of other federal funds include the Department of Justice Violence Against Women Act, the Victims of Crime Act and the Older Americans Act.

⁴¹ Hatch et al, 10.

Figure 2 – Total LSC and Non-LSC Funding for Legal Services (1980-1999)



critics, became the general counsel of the welfare state, working to get the courts to enshrine a constitutional right to welfare.⁴²

Economists discuss two kinds of rent. There is the rent that people pay their landlords. The other kind of rent is that which, according to its critics, the LSC has sought for itself and its clients – payments for success in pursuing issue advocacy. Rent seeking causes economic waste by using scarce resources (in particular, the services of lobbyists and lawyers) to bring about social change of debatable value to society. Issue advocacy is a form of rent seeking.

According to Kenneth F. Boehm and Peter T. Flaherty:

The real agenda of the federal legal-services program is a ‘law reform.’ It is not to serve the needs of poor individuals, but to ‘rescue’ the poor as a class from poverty through litigated increases in transfer payments ... As long as the LSC dedicates itself to bolstering and expanding the welfare state, it will fail to ‘meet the needs’ even as it defines them itself.⁴³

⁴² William Mellor, “What Welfare Reform? First Fight Legal Services Corporation,” *The Wall Street Journal*, 1 February 1995, A13.

⁴³ Boehm and Flaherty, 18.

In 1996, Congress restricted the activities of LSC grantees, particularly the use of federal funds for certain purposes, including but not limited to lobbying, filing class action suits, re-districting, opposing welfare reform, and representing prisoners.⁴⁴ In addition, there are also time-keeping requirements and disclosure of case information. Congress also added special reporting requirements.

Although the 1996 law prohibits legal-services providers that take LSC funds from practicing issue advocacy, providers who use only state and IOLTA funds are free to practice such advocacy at their discretion. The MLAC acknowledges that it funds organizations that pursue class-action lawsuits and “issue advocacy” suits.⁴⁵ Additional funding at the state level will further allow these pursuits.

In 1997, however, five LSC grantees filed suit in federal court opposing the 1996 prohibition as unconstitutional. Other LSC grantees have begun to refuse federal LSC funds, relying on state financing and IOLTA money to continue their practice of issue advocacy.

The Absence of Accountability

The LSC has a history of operating without unaccountability to Congress or to taxpayers.⁴⁶ Once in the hands of private, nonprofit grantees, federal dollars become private funds and are thus not subject to federal rules. Since local grantees have various sources of funds, it is impossible to tell what kind of service is bought with one “federal” dollar. Even though the LSC charter explicitly prohibits lobbying, political advocacy and class action suits except under ex-

⁴⁴ For details on a list of restricted activities, see “Compliance Supplement For Audits of LSC Recipients” at <http://oig.lsc.gov/aud/cs98/cs98toc.htm>.

⁴⁵ Jennifer Fries Singh of the Massachusetts Legal Assistance Corporation, interview by the Beacon Hill Institute (7 March 2000). The current official MLAC policy was adopted by the board of directors on July 18, 1996. This policy says, “Programs shall not enter into or propose arrangements which violate the LSC Act or Regulations.” Ms. Singh clarified the official policy by saying that legal-services providers that accept LSC funds cannot violate the LSC Act or Regulations. However, organizations that do not accept LSC funds but do accept MLAC funds can and do engage in lobbying, class action law suits, and issue advocacy.

⁴⁶ While the President appoints board members to the 11-member board of directors, he has no authority to remove any of them. Furthermore, excluding funding, Congress exerts little control over the LSC. The corporation is exempt from any reporting or regulatory requirements imposed by the Office of Management and Budget and the Treasury Department. The LSC Act does not require that the LSC comply with the regulations set forth in the authorizing legislation. On July 28, 1999, the federal appellate court in Richmond, Virginia ruled that the LSC could not be forced through legal action to enforce its own rules. The court’s ruling said that the LSC, a government-created corporation, was not a federal agency and was thus not subject to the Administrative Procedures Act. The APA provides specific rules that federal agencies must follow in promulgating and enforcing agency regulations. The APA also provides affected members of the public legal recourse in federal court if an agency fails to follow its own regulation. *Regional Management Corp. v. Legal Services Corporation*, 98-2165, 98-2166, 1999 U.S. App. LEXIS 17826 (4th Cir.).

treme circumstances, the fungibility of revenues and inadequate oversight of grantees make these provisions easy to evade.⁴⁷

There is also no means of measuring LSC grantee performance that would reveal to taxpayers how much and what kind of services their money buys.⁴⁸ Until 1996, legal-services attorneys did not regularly maintain timesheets. This made it virtually impossible to obtain detailed cost data by type of service provided. Congress had to accept, on faith, the caseload numbers reported by the LSC – a practice that Congress came to regret.

Oversight of local grantees takes the form of field audits conducted by the Office of the Inspector General (OIG) of the LSC. Shortly after the 1996 restrictions took effect, the OIG conducted six field audits to check grantee compliance. The OIG found that the six grantees overstated their caseload on average by 32%. In 1998, an additional six grantees were found to have overstated their caseloads by 30%.⁴⁹ According to the Inspector General, some local grantee organizations refused to cooperate with the audit staff, and others were outright hostile.⁵⁰ Audits conducted by the General Accounting Office reached similar conclusions with respect to exaggerated case reporting.

Audits of five of the LSC's largest grantees revealed average over-reporting of 49%.⁵¹ Taken with the OIG audits, 11 grantees overstated their caseload by 15% in 1997.⁵²

Under current audit practices, with just ten audits conducted annually, each grantee can expect to be audited once every 27 years. Thus, under the current system, taxpayers can expect little improvement in oversight of the LSC. The probability of being audited in the current system is too small to prod local LSC affiliates to improve their recording practices.⁵³

⁴⁷ Public Law 93-355, 93rd Cong., (25 July 1974) as amended by Public Law 95-222, 95th Cong. (28 December 1977) requires that “all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from any political activity.”

⁴⁸ A recent audit by the General Accounting Office showed that five of the LSC's largest grantees over-reported the number of cases closed by 75,000, representing about 34% of all cases closed by those five grantees. See General Accounting Office, *Substantial Problems in 1997 Case Reporting by Five Grantees* (Washington, D.C.: June 25, 1999).

⁴⁹ Grantees audited in 1997 were in Northern Virginia, Gulf Coast, Wisconsin, San Diego, Prairie State, and Miami Legal Services. Grantees audited in 1998 were in Monroe County, Philadelphia, Maryland, Eastern Missouri, North Texas and Boston.

⁵⁰ Statement of Inspector General Edouard Quatrevaux.

⁵¹ General Accounting Office, *Substantial Problems in 1997 Case Reporting*.

⁵² Virginia L. Thomas and Ryan H. Rogers, “Time for Congress to Hold the Legal Services Corporation Accountable” *Background*, The Heritage Foundation (July 22, 1999), 9.

⁵³ The current compliance supplement for audits of LSC recipients is available on-line at <http://www.oig.lsc.gov/aud>. This supplement clearly spells out the regulations that LSC grantees must observe with respect to prohibited political activities and lobbying restrictions, fee-generating cases, and the use of funds from other sources. In addition, the supplement sets forth restrictions on legal assistance to aliens and prisoners, solicitation, participation in legally assisted suicide cases, and opposition to welfare reform, among others.

In addition to field audits, the LSC in 1999 required local grantees to undertake a self-inspection process to determine the accuracy of their 1998 case data. Self-inspection is to be based on newly imposed case-service reporting requirements. The General Accounting Office published a report analyzing (a) what efforts LSC and its grantees have made to correct problems associated with case-service reporting; and (b) whether these efforts are likely to resolve case-reporting problems that occurred in 1997.⁵⁴ The GAO found that although the LSC made some effort to clarify reporting requirements to grantees, many grantees still do not understand and consequently do not comply with many aspects of the new reporting system.

The GAO could not determine the accuracy of the self-inspection process for 1998 case statistics:

We do not know the extent to which the results of the self-inspection process are accurate. The validity of the results are difficult to determine because LSC did not standardize the way that grantees were to report their results, some of the grantees used samples that were too small to assess the proportion of error in their data, some grantees did not correctly follow LSC's reporting guidance, and LSC had done no verification of the grantees' self-inspection procedures. We do not believe that LSC's efforts, to date, have been sufficient to fully resolve the case reporting problems that occurred in 1997.⁵⁵

To date, just one Massachusetts LSC grantee, Volunteer Lawyers Project of the Boston Bar Association, Inc., has been audited. Although this grantee generally fared well in its evaluation, we observe that it is subject to the 1996 federal regulations.

The problems with the LSC were perceived to be so severe that the Congressional Budget Office (CBO) suggested the termination of the LSC in 1997 as a way to reduce the federal deficit. The CBO concluded that elimination of the LSC would save taxpayers \$1.4 billion from 1998 to 2002.⁵⁶ Congressmen George Gekas, Dick Armey, Henry Hyde, and Bob Inglis introduced a bill in the Committee on the Judiciary in September of 1995 to "Abolish the Legal Services Corporation and provide the States with money to fund qualified legal services."

We had our own disappointing experience in attempting to obtain data on Massachusetts legal-services providers. We never received performance and financial data that we requested, and we left numerous phone messages that were never returned. For details, see Appendix B.

⁵⁴ General Accounting Office, *More Needs to Be Done to Correct Case Service Reporting Problems* (Washington, D.C.: September 1999).

⁵⁵ *Ibid.*

⁵⁶ See <http://www.cbo.gov>.

IV. The Provision of Legal Services in Massachusetts

In Massachusetts, most publicly funded civil legal assistance to the poor is provided through local nonprofit organizations. The largest LSC and MLAC grantees in 1998 are shown in alphabetical order in Table 1.

Table 1 – Largest Fund Recipients in Massachusetts, 1998

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In 1998, six of the 13 grantees received LSC funds; all of them received additional funds from IOLTA and the state of Massachusetts. In 1999, about 150 local organizations subcontracted with the LSC, receiving federal, state, and/or IOLTA funds for serving the poor in Massachusetts. See Appendix C.

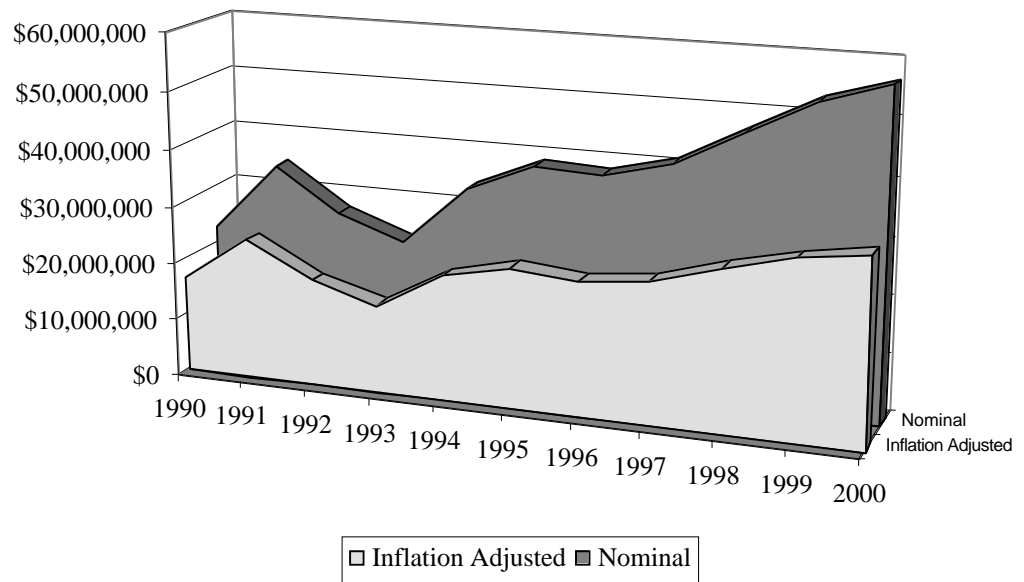
As Figure 3 shows, providers' sources of funds in 1999 range from federal funds to private charitable contributions. Since the federal government scaled back funding in FY 1995-1996, local legal-services providers have substituted other sources of support, such as state appropriations, IOLTA revenues and *pro bono* hours, for federal grants.

Figure 3- Legal Services Providers In Massachusetts (Flow Chart)

Federal Funds

While LSC funding for Massachusetts grantees declined by 50% since 1995, overall funding from alternative sources has more than tripled. As Figure 3 shows, LSC funding now represents a small fraction of total state legal-services funding. Many local providers already evidence a lessened reliance on LSC funding. Since 1990, overall funding to legal-services grantees has increased at a 9.5% nominal and at a 6.8% inflation-adjusted compound rate. See Figure 4.

Figure 4 – Legal Services Funding in Massachusetts (1990-2000)*



*Includes LSC funding, state funding of the Committee for Public Council Service, state funding of MLAC and IOLTA.

In addition to direct congressional appropriations, LSC also receives grants from various cabinet departments under federal programs such as the Violence Against Women Act, Victim Crime Act, Older Americans Act, Community Development Block Grants and Title XX of the Social Security Act. In 1998, these grants paid \$2.55 million to Massachusetts grantees. Figure 4 does not, however, include non-LSC federal sources since several federal programs have opted not to channel funds through the LSC. Thus, while other federal programs that fund legal aid to

the poor continue to exist through alternative channels, they no longer report their fund activities to the LSC.

State Appropriations

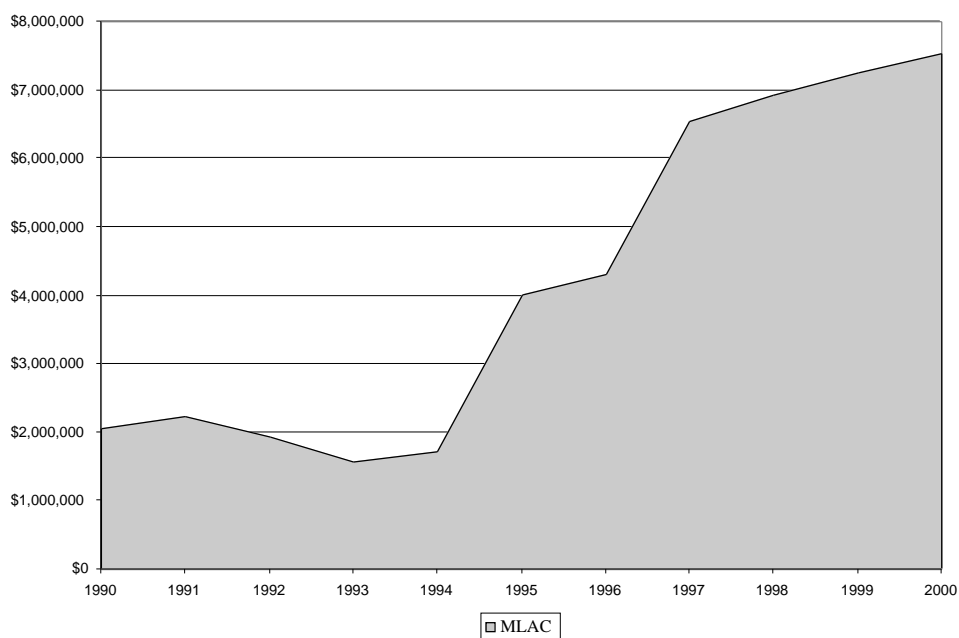
State appropriations have increased dramatically compared to the other funding sources. The state has two recipient organizations through which grants are distributed to local providers: the Massachusetts Legal Assistance Corporation (MLAC) and the Committee for Public Counsel Services (CPCS).

Responding to reduced funding for legal services in 1983, the state legislature created the Massachusetts Legal Assistance Corporation to help fund legal access of the poor to the justice system. Since then, the state's commitment to legal services has been growing at an increasing rate. Since 1990, state appropriations to MLAC increased at a 15% annual compound rate. Since 1995 they has increased at a 16% annual rate (see Figure 5). In addition, MLAC also receives 67% of all revenue from IOLTA. From 1995-1999, IOLTA income has increased at an 18% annual compound rate.

In 1998, MLAC distributed its funds to 18 legal-services programs providing general support, disability benefits, Medicare advocacy and battered women and family law services.⁵⁷ From 1997-1999, state funding for those areas rose from \$2.7 million to \$3.8 million. In FY 2000, these programs will receive \$5.4 million.

⁵⁷ Massachusetts Legal Assistance Corporation, *Annual Report FY 1998*, 32.

Figure 5 – State appropriations to MLAC (1990-2000)



In 1983, the Committee for Public Counsel Service was established to provide legal services to eligible indigent clients in both criminal and civil legal matters.⁵⁸ The Committee consists of 15 members appointed by the Supreme Judicial Court to three-year terms. In recent years, about one-third of the committee's total budget, including operating expenses, has been dedicated to helping the poor in civil matters such as family law, child welfare, and mental health. Non-criminal cases are assigned directly to qualified private attorneys. As Figure 6 shows, the committee's budget for civil legal services has grown at a 10.7% annual compound rate since 1995.

⁵⁸ Massachusetts General Laws, Chapter 211D.

Figure 6 – Committee for Public Counsel Services, Budget for Civil Matters (1990-2000)



IOLTA

Launched in Florida in 1981, IOLTA programs exist in all states and the District of Columbia. IOLTA channels interest earned on clients’ funds held by attorneys for short periods of time to local legal-services providers. The advent of interest-bearing accounts in the early 1980s, such as NOW accounts, made it profitable to pool and earn interest on relatively small sums of clients’ funds held by lawyers in trust.⁵⁹ Today 27 states, including Massachusetts, have mandatory IOLTA programs.⁶⁰

In Massachusetts, the Supreme Judicial Court (SJC) created the IOLTA program and its overseer, the IOLTA Committee, in 1985. At that time, attorney participation in the program was voluntary. In 1990, the SJC made the program mandatory. That is, each lawyer who holds client funds must open an IOLTA account at a participating financial institution and file account information with the IOLTA Committee. Failure to comply subjects lawyers to sanctions and suspen-

⁵⁹ In 1982, Congress passed the Consumer Checking Account Equity Act. The act permits interest to be paid on certain types of “available-on-demand” accounts, like negotiable order of withdrawal, or NOW, accounts.

⁶⁰ See <http://www.abanet.org/legalservices/IOLTA.html>.

sion.⁶¹ When participation in IOLTA was made mandatory, revenues rose from about \$2 million in 1985 to \$10.5 million in 1991.

Legal-services providers across the country receive an increasing percentage of their total funding from IOLTA programs. In 1983, IOLTA represented only 0.5% of total funds. By 1999, Massachusetts legal-services providers received about 22% of their total funding from IOLTA income.

IOLTA arguably consists of an unconstitutional “taking” of property. In Massachusetts, IOLTA guidelines explicitly state that *no notice is required* [to clients] when their funds are put on an IOLTA account. Nor do clients have any decision to make with respect to the distribution of funds, which cannot accrue interest for them.⁶²

IOLTA programs across the country, including Minnesota, New Hampshire, Utah, Arkansas, Florida and Massachusetts, are experiencing legal challenges.⁶³ As a result of one such challenge, the U.S. Supreme Court ruled in *Phillips v. Washington Legal Foundation*, 118 S.Ct. 1925 (1998) that, for purposes of the Takings Clause of the Fifth Amendment, interest income earned on client funds in Texas IOLTA accounts was the property of the client. Whether IOLTA constitutes a “taking” is undergoing review in a Texas court, and a decision is expected during spring 2000.

Another issue involves the kinds of programs that IOLTA money supports. Despite arguments that legal-services programs are poorly financed, all three distributing agencies of IOLTA spent more than \$1 million in the last three years on programs for the administration of justice that are unrelated to the needs of the poor.⁶⁴ In fact, the Massachusetts Bar Foundation’s IOLTA Program Priorities clearly states that the foundation is committed to supporting not just the delivery of direct civil legal services to the poor but also to the administration of justice, including education and training of judges.⁶⁵

Pro Bono or Pay?

In February 1999, the Massachusetts Supreme Judicial Court established guidelines for providing free legal services to the poor. Attorneys are urged to work at least 25 hours per year to benefit the poor. Alternatively, attorneys are encouraged to pay \$250 annually, or one percent of

⁶¹ Massachusetts Board of Bar Overseers, *Periodic Registration of Attorneys*, Rule 4:02.

⁶² Massachusetts Rules of Court, *IOLTA Guidelines, Appendix C*, 361.

⁶³ David J. Hrina. “The Future of IOLTA: Has the Death Knell Been Sounded for Mandatory IOLTA Programs?” *Akron Law Review* 32 (1999), 301.

⁶⁴ Wendy L. Pfaffenbach. “Where Does Your IOLTA Money Go?,” *Massachusetts Lawyers Weekly*, 8 November 1999, 28 M.L.W. 548.

⁶⁵ Massachusetts Bar Foundation, *IOLTA Grants Program Funding Priorities for 1998* (1998).

the attorney's taxable income. Though the rule is currently "aspirational," with no reporting requirement to the Board of Bar Overseers, there are already indications that Rule 6.1 might become mandatory in the near future.⁶⁶

In the absence of reporting requirements, no one knows exactly how many *pro bono* hours are provided to help the poor. Nevertheless, legal-services organizations declare that there has been little change in the number of hours provided. Providers clearly favor the adoption of Rule 6.1 over allowing individual lawyers to provide their services *pro bono*.

It is easy to see why. Using Florida's statistics for attorney compliance (which is 90%), we estimate that 90%, or 37,575 of 41,750 lawyers in Massachusetts would comply with the rule either by providing *pro bono* services or paying. Assuming that 30% of those attorneys would provide *pro bono* services, then 70%, or 26,303 lawyers, would pay.⁶⁷ Taking the lowest amount prescribed by Rule 6.1, legal-services providers could expect to earn an additional \$6.58 million in new income in payments by lawyers.

Private Charitable Contributions

Unfortunately, there are no comprehensive statistics available on private charitable contributions to provide legal services to the poor in Massachusetts. The Attorney General's Office does not keep computerized statistics on private charities by type of grantee activity. According to MLAC, its 18 grantees collected about \$1.6 million in private contributions in 1998.⁶⁸ Among the largest donors are United Way and private law firms. United Way alone gave about \$1 million to legal-services groups in 1998.

According to the Boston Foundation, the largest community foundation in the Boston area with assets of more than \$620 million, legal-services providers received about \$286,000 in private donations in 1999.⁶⁹ In addition, every year the Boston Bar Foundation organizes the John & Abigail Adams Benefit Ball, the proceeds of which benefit legal services. The November 1999 event raised \$620,000.

In-kind Transfers and the Economic Consequences

Legal services, like much public assistance in the United States, are provided as in-kind transfers, which are payments to individuals in terms of a commodity or service, rather than

⁶⁶ For more details, see Dick Dahl. "Pro bono rule having little effect, say volunteer organizations," *Lawyers Journal* (November, 1999).

⁶⁷ For additional information on *pro bono* hours, see the subsection entitled "Pro Bono Publico" under Section VII.

⁶⁸ MLAC, *Annual Report FY 1998*.

⁶⁹ The Boston Foundation, *Annual Report 1999*.

cash.⁷⁰ The reasons why government is often inclined to make transfers in kind rather than in cash stem from political rather than economic motives. Public finance economist David Hyman argued that the public is more likely to support assistance to the poor when the assistance meets specific needs approved by the public, as opposed to when the assistance is in cash and thus meets the needs of the recipient.⁷¹ This is largely because some forms of consumption are perceived to have more merit than other forms of consumption. In-kind transfers encourage “meritorious” consumption - housing, food, medical care and legal services.

However, the practice of making in-kind transfers runs counter to the bedrock assumption of individual rationality – the idea that the individual is the best judge of his or her own welfare. It rests on the assumption that government is better positioned than the poor to make choices for the poor. This approach is often inefficient, which is to say it serves both government and the poor less effectively than an outright cash grant.⁷²

Figure 7 illustrates this argument. Assume that the Jones household consumes legal services and non-legal services. In Figure 7, we measure the quantity (X) of legal services bought by the Jones household on the horizontal axis and the quantity (Y) of all other services on the vertical axis.

Line AB shows all the different combinations of legal services and other services that the household can buy, given its income and given the price of legal services and of other services. The slope of AB equals the price of X relative to the price of Y . As the household moves down AB from left to right, it expands its consumption of legal services at the sacrifice of other services at the rate of (OA/OB) other services sacrificed for each additional unit of legal services consumed. Here the household receives no legal assistance from government and must therefore purchase legal services, like other services, in the open market.

The point at which the household decides to consume on line AB depends on its subjective preferences: The more it prefers legal over other services the closer to B will lie its most preferred combination of both.

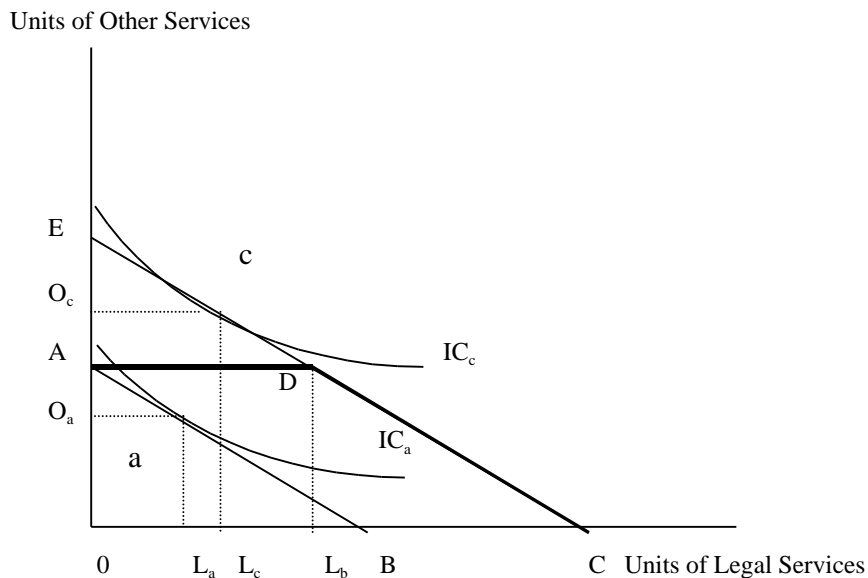
We represent the household’s preferences with “indifference curves” such as IC_a that represent given levels of satisfaction. The higher the indifference curve, the higher the level of satisfaction. Thus IC_c represents a higher level of satisfaction than IC_a . Absent government assistance in some form, however, the household cannot reach a level of satisfaction higher than that

⁷⁰ David N. Hyman, *Public Finance: A Contemporary Application of Theory to Policy* (New York: The Dryden Press, 1996), 225-226.

⁷¹ *Ibid.*, 227.

represented by IC_a . Indeed, it reaches its maximum attainable level of satisfaction by moving to point a on AB , where AB is just tangent to IC_a . There the household consumes L_a units of legal services and O_a units of other services.

Figure 7 – In-Kind Transfers and Individual Consumption



Now suppose that the government decides to provide legal services as an in-kind transfer. Specifically, it offers BC units of “free” legal services to the household. The household now faces a new set of possibilities (a new “budget constraint”) represented by the kinked line ADC .

Because the BC units of legal services are “free,” the household will consume at least that quantity of legal services, adjusting to somewhere along the DC line segment. If the household were getting more legal services than it might have purchased with a cash transfer, it would find itself at point D , consuming L_b legal services and OA , other services.

But now suppose the government gives the household a cash transfer exactly equal in value to the cost of the “free” legal services. Then the household would find itself on the budget line EC , where in this instance it would adjust to point c , consuming L_c in legal services and O_c in other services. Because the indifference curve IC_c lies above any indifference curve cutting the DC line segment, we can infer that the cash transfer leaves the household better off than the in-kind transfer.

⁷² Ibid., 228. Hyman also argues that in-kind transfers can distort an individual’s choices. For example, individuals may be discouraged from working if the benefits they receive being unemployed or from wel-

Generally, then, a household can reach at least as high a level of satisfaction (and, perhaps, as here, a higher level of satisfaction) with a cash transfer as it can with an in-kind transfer. Or the government can bring about a given increase in household satisfaction at lower cost by offering a cash transfer than it can by offering an in-kind transfer.⁷³

This argument bears directly on the concept of legal “need.” Suppose that government offers a cash grant to an eligible household rather than “free” legal services, and suppose that the household chooses to use most or all of the grant to purchase “other services” rather than legal services. Even if the household were poor, and even if it would consume some legal services if those services were offered “free,” it cannot be said to have a “need” for legal services. A need exists only if the household were willing, given the opportunity, to sacrifice some other services in order to purchase legal services.

For this reason, it is important, in ascertaining a household’s “need” for legal services, to determine if cost poses an obstacle to the household’s consumption of legal services. Insofar as a household indicates that cost does pose an obstacle, it is likely to that extent to use a cash grant to purchase legal services. Insofar as it does not indicate that cost poses an obstacle, it is not likely to use a cash grant for this purpose, suggesting that its need is not for legal services but for other, more urgently needed services.

Legal-services providers in Massachusetts argue that the demand for free legal services exceeds the supply by a margin of 3 to 1. Legal-services advocates argue that a lack of funding creates the shortage of lawyers and other legal staffers. This shortage forces legal-services providers to turn away many eligible people with legal problems. Economists, on the other hand, argue that whenever a useful good or service is provided for free, demand will exceed supply.

A related consideration has to do with other “opportunity costs” of obtaining legal services. With or without government assistance, the consumption of legal services entails costs that go beyond lawyers’ fees. These costs include earnings the household may forgo paying visits to their lawyer or keeping court appointments, time spent preparing their case and other monetary and personal costs. To the extent that a household has a “need” for legal services, it is prepared to absorb costs such as these that government cannot fully absorb by making either in-kind or cash transfers.

fare are too attractive.

⁷³ Ibid., 227-233.

V. Unmet Legal Needs: Fact or Fiction?

The *Boston Globe* and *Boston Herald* have both recently reported on the purported extent of unmet legal needs.⁷⁴ The shortage of legal-services lawyers and funding is also frequently observed in *Massachusetts Lawyers Weekly*.⁷⁵

The assertion of unmet legal needs in Massachusetts stems from *Equal Access*. Citing the *CLNS* and the *MLNS*, *Equal Access* reported 336,871 income-eligible households in Massachusetts in 1990. *Equal Access* determined that these households met 112,000 of their legal needs through recourse to the legal system in 1995. Of these legal needs, 43,000 were met through LSC- and MLAC-funded programs, 5,000 through other public-service programs and 64,000 by private attorneys. Subtracting and rounding, *Equal Access* thus concluded that “225,000 individual legal needs would have remained unmet.”⁷⁶ We will examine these studies in turn.

In addition, there have been claims by the MLAC that more than 50,000 low-income individuals in Massachusetts were turned away by legal-services providers. Although cited as fact by the *Boston Globe*,⁷⁷ the MLAC has no formal study to substantiate this.

The MLAC fact sheet, issued in March 2000, says, “[B]ased on the survey results, we estimate that 54,000 low-income Massachusetts residents with legitimate civil legal problems were turned away by legal services in 1998.”⁷⁸ They apparently counted and categorized the number of individuals who telephoned to request assistance but who could not be helped because of financial constraints faced by legal-services providers.

When we requested further information, the MLAC said that it could not provide a report based on the survey, could not explain the methodology of the survey, and could not provide any details other than those reported on their fact sheet.

⁷⁴ Zuckoff, A1; Wayne Woodlief, “Dwyer Prods Bar to Get Involved,” *Boston Herald*, 25 April 2000, 29.

⁷⁵ “SJC Pro Bono Committee Preliminary Report,” *Massachusetts Lawyers Weekly* (26 M.L.W. 1568), March 16, 1998.

⁷⁶ This assumes an average of one legal need per household per year. Below, we detail our concerns about the methodology employed by *Equal Access*.

⁷⁷ Zuckoff, A1.

⁷⁸ The Boston Bar Association, <http://www.bostonbar.org>, May 8, 2000. See also *Turned Away: Eligible Callers Denied Legal Services*, MLAC, Boston, March 23, 2000.

The CLNS and MLNS Studies

Conducted by the Institute for Survey Research at Temple University, *CLNS*'s mission was to quantify the "unmet legal needs" of low- and moderate-income households in the United States. The American Bar Association commissioned the *CLNS* to "provide the information needed to enhance access to the legal system and improve the delivery of legal services."⁷⁹ The institute also performed the *MLNS*.

CLNS researchers collected data by conducting telephone surveys and by "in-person interviewing." For the *CLNS*, interviewers conducted 2,784 telephone surveys between February and June of 1993; in addition, 303 in-person interviews were conducted between April and July of the same year. All surveyed households had at least one member aged 18 or older. All households were situated in the lower 48 states.⁸⁰

The *MLNS* virtually duplicated the *CLNS* methodology.⁸¹ Consequently, the primary objectives, guiding principles, and survey design were identical. The only important differences were that the *MLNS* did not consider the legal needs of moderate-income individuals and did not do in-person interviewing. In Massachusetts, 500 completed interviews were deemed necessary to guarantee statistical accuracy, 134 interviews came from the full sample, and 372 came from the over sample procedure described above. Though 4,906 telephone numbers were selected to be part of the initial sample, 2,133 of these declined to participate, and an additional 2,267 either were ruled ineligible or did not sufficiently complete the interview process. This left 506 completed interviews of eligible individuals.⁸²

The survey instrument used by *CLNS* and *MLNS* was a lengthy questionnaire designed to:

- identify a comprehensive range of needs;
- include threshold language to rule out situations unlikely to produce legal needs;
- ask questions with sufficient detail for respondents to appreciate the range of situations encompassed by the phrase "legal needs";
- avoid labeling efforts by referring to "situations" rather than "legal needs";
- identify individual responses to legal and nonlegal needs; and
- investigate perceptions of the legal system grounded in experience.⁸³

⁷⁹ *CLNS*, 1.

⁸⁰ *Ibid.*, 2-3.

⁸¹ *MLNS*, 5-7.

⁸² *Ibid.*, 6. However, note that on page 12 the authors of the *MLNS* report 518 completed interviews with eligible households.

⁸³ *CLNS*, 5.

The questionnaire was organized into sections that addressed a variety of legal needs, including the following topics:

- home – the survey addressed 14 different “needs,” including housing, real-estate transactions, and the community;
- family –13 needs, including domestic matters, education, estates, and guardianship;
- livelihood –14 needs, from work training to retirement and benefits programs;
- health, disability, and health care –five needs;
- serious disagreements and disputes – 11 needs, including tort and consumer matters and personal finance;
- civil liberties –four needs, including search and seizure issues, free speech and religion, and voting rights; and
- situations affecting special populations – six needs, including immigration matters and issues involving military personnel and veterans.⁸⁴

In addition, the survey asked individuals to consider a list of situations and whether they considered them to require “courts, lawyers, of administrative hearing bodies.”⁸⁵ Questions associated with this portion of the survey were designed to test what sort of knowledge individuals had about available legal resources.

Findings of the CLNS and MLNS

The most important conclusions are the estimates of the “incidence” (new needs) and “prevalence” (new plus continuing needs) of legal needs among low- and moderate-income households for the *CLNS* and for low-income households in Massachusetts for the *MLNS*.⁸⁶

Among the *CLNS* findings for 1992 are the following:

- 40% of low-income households and 46% of moderate-income households reported incurring at least one new legal need in 1992;
- 47% of low-income households and 52% of moderate-income households reported new or continuing needs;
- 13% of low- and moderate-income households with legal problems reported that they incurred a legal need having to do with “personal finance” (with personal finance representing the category in which the largest fraction of households reported a need);
- 13% of low-income households with legal need reported that they incurred a legal need having to do with “housing”;

Among the *MLNS* findings for low-income households are the following:

- 38% of low-income Massachusetts households reported incurring at least one new legal need in 1992;

⁸⁴ Ibid., 5-6.

⁸⁵ Ibid., 6.

⁸⁶ Ibid., 7. Recall that incidence is a measure of the needs that arose during a particular calendar year, while prevalence is a measure that includes both the needs that arise during a particular year, as well as the needs that were unresolved from previous years.

- 47% reported new or continuing needs;
- 14% of those with legal needs reported that they incurred a new legal need having to do with "housing";
- 13% reported that they incurred a new legal need having to do with "personal finances."

What is a "Legal Need?"

The studies failed to provide a clear definition of a "legal need." Both the *CLNS* and *MLNS* said, "The civil legal needs of interest to the study were problems that people encounter that are susceptible to a remedy through the system of justice."⁸⁷ But the question arises whether a legal need, thus defined, requires representation by an attorney. Or are there administrative or other governmental entities that pursue complaints at no cost? The *CLNS* alluded to this issue in the preface of the report: "The [*CLNS*] does not assume that the many situations encompassed by the concept of "legal need" required the involvement of the legal/judicial system for resolution. Rather it documents the many responses to need."⁸⁸

The confusion is not cleared up in the subsequent *MLNS*, which defined legal needs indirectly as "problems that people encounter that are susceptible to a remedy through the system of justice."⁸⁹ The authors of the *MLNS* noted that "no attempt was made to judge the merits of each legal need."⁹⁰ The *MLNS* added, "While not all those facing these unmet legal needs may have needed direct representation, they could have benefited from advice, counsel, and referral ..."⁹¹ The *MLNS* did not assume that the many situations encompassed by the concept of 'legal need' required the involvement of the legal/judicial system for resolution."⁹²

Elsewhere, the *MLNS* noted that an unmet legal need "touched on virtually every aspect of life and was not restricted just to those situations commonly assumed to have legal implications."⁹³ *Equal Access* ultimately declared that any "legal need" that did not result in a case for the LSC, the MLAC, any other public program, or for a private attorney is an unmet legal need. Unmet legal needs could thus include issues – tenants' problems with insects, credit denials, and lack of telephone service – that would have no merit in a court of law.

The problems with the vague definition can be demonstrated in the following scenarios in Table 2.

⁸⁷ *CLNS, MLNS*, 1.

⁸⁸ *CLNS*, ix (emphasis in original).

⁸⁹ *MLNS*, 1.

⁹⁰ *Ibid.*, 45.

⁹¹ *Ibid.*, 13.

⁹² *Ibid.*, v (emphasis in original).

⁹³ *Ibid.*, v.

Table 2 - Differing Legal "Needs"

<p><u>Scenario 1</u>: Consider question 47 of the <i>CLNS</i> questionnaire which asks, “Did (any) of you need advice or help with legal matters related to the breakup of a marriage or live-in relationship or have a dispute about a property settlement or what would happen to any children after a breakup?”⁹⁴ If the respondent answers “yes,” he or she is then asked if the problem related to a child-custody dispute, property settlement, alimony, or divorce.⁹⁵ Custody, divorce, and alimony matters almost always require representation by an attorney. In such matters, an attorney usually bills at an hourly rate or charges a flat fee. In any event, such matters are usually very costly to the client.</p>
<p><u>Scenario 2</u>: This scenario involves questions 125 to 127 of the <i>CLNS</i> survey. These questions ask whether the respondent had suffered any personal injury or harm, property damage, harm to both person and property, or financial harm. However, in most instances, there are a host of attorneys who will represent the client on a contingency basis. If the client wins, his attorney typically takes a percentage of the settlement or judgment as his fee. If the client loses, there is no fee. In either scenario, the client incurs no cost in engaging the services of a lawyer.</p>
<p><u>Scenario 3</u>: This scenario addresses issues associated with questions 27 to 29 in the survey.⁹⁶ Question 28 asks if the respondent suffered discrimination in the course of renting or buying property. Question 29 then asks if the discrimination stemmed from the prospective purchaser’s race, sex, sexual orientation, disability, etc. However, most states pursue claims of discrimination at no cost to the claimant. In Massachusetts, for example, the Massachusetts Commission against Discrimination will investigate and, if necessary, litigate a claim of discrimination. In many cases, it obtains money damages for civil rights violations. In other states, Attorneys General or other governmental entities perform the same task.</p>

Although each scenario involves the use of the legal system, there is considerable discrepancy between the legal "needs" implied by each. The client in scenario (1), for example, would require an attorney and would have to pay the attorney's fees. The client in scenario (2), on the other hand, would pay nothing, insofar as the attorney would be compensated entirely and only from any damages awarded the client. In scenario (3), the client neither needs an attorney nor pays any fee. It is thus implausible to conclude that the same “need” exists for all prospective clients. However, the *CLNS* and *MLNS* make no such distinction when presenting their statistical findings.

A second flaw of the questionnaire is that many of its questions are so vague that they cast doubt on the need to employ the legal system at all. Certainly, in many instances, characterizing the individual’s problem as a legal need defies all common sense. For example, question 26 asks if the respondent had a problem with respect to “other restrictions on [the] use” of property. What does that mean? Does the property owner consider an inability to build another house on his property a “restriction?” Consider also question 90, which asks if the respondent was denied

⁹⁴ *CLNS*, 19.

⁹⁵ *Ibid.*, 20.

⁹⁶ *Ibid.*, 12.

a promotion or raise, fired, or disciplined due to “unfair practices.” It’s likely that most people believe that failing to receive a promotion or raise is “unfair,” but they seldom resort to the legal system for a remedy.

Another question has to do with whether an individual has a legal need if he does not recognize it as such. Kenneth F. Boehm and Peter T. Flaherty noted the failure of the *CLNS* “to distinguish between ‘unmet’ and ‘unrecognized’ legal needs.”⁹⁷ Boehm and Flaherty pointed out that poor people were “asked whether they had problems in various areas, such as housing.”

If, in the *CLNS* and *MLNS* surveys, “respondents indicated a problem with roaches, they were counted as having a legal need, even if they had no intention of involving a lawyer in solving the problem.”⁹⁸ Other respondents who were denied credit or lacked telephone service for a time were also counted as having unmet legal needs, even though these individuals had no intention of pursuing remedy in the legal system. Table 3 summarizes the questions we identified as problematic.

Third, meeting with lawyers, doing paperwork, providing testimony and fulfilling other legal obligations are necessary elements in obtaining a legal remedy. There is no unmet legal need unless the respondent is willing to incur the personal costs associated with such activities. This is the economic idea of opportunity cost, previously discussed. Merely phoning a legal-services provider and indicating a legal need does not constitute evidence that such a need exists.

Fourth, the individual must sufficiently value resolution of the problem that he or she would be willing to devote income and other resources to its solution. Middle and high-income people allow all manner of legal needs to go unmet because they prefer to use their resources to meet other, nonlegal needs. Yet there was no determination in the *CLNS* or *MLNS* as to whether the respondents, if given the opportunity, would have preferred to meet other needs.

In the *MLNS*, only 12% of respondents identified financial considerations as the reason they did not pursue legal remedy to their problems. This implies that the remaining 88% would have left their reported legal needs unmet even if they had the resources to meet that need.⁹⁹

⁹⁷ Boehm and Flaherty, 2.

⁹⁸ *Ibid.*

⁹⁹ *MLNS*, 37.

Table 3 – Flawed Survey Questions

Question Numbers	Question Content	Flaw
6-15	Ask respondents about their experiences in purchasing or selling real estate, or if they owned real estate (Appendix F, pp. 5-6).	It's likely that families in a position to own housing would not satisfy the criteria for inclusion in the demographic group.
18 - 20	Attempt to identify the difficulties landlords might have encountered with their tenants (p. 9).	Including landlords raises the issue of whether landlords satisfy the inclusion criteria.
21	Asks if a respondent's household was "ever without telephone service for any reason, even for a short time?" (P. 10.)	It is not illegal to go without telephone service. This question has the odd result of including those who may not want to have phone service or who may not be able to afford it.
25	"This question concerns limits on the use of property, for example government restrictions that seriously interfere with using the property the way you want, disputes over water rights, or a property being condemned or taken for another use." (P. 11.)	Does a "legal need" arise, for example, when a restriction impedes the use of land to raise chickens or burn leaves?
27-29	Address the issue of whether the respondent ever suffered discriminated when attempting to rent an apartment or buy a house (pp. 11-12). Questions 75-77, 89-91, 114-124, and 139-141 deal with similar issues and are subject to the same criticism.	In nearly all states, attorneys general or state commissions (e.g., the Massachusetts Commission against Discrimination) pursue complaints of housing discrimination.
41-42	"Was there a problem or disagreement about putting something in your immediate neighborhood that some people didn't want, like a prison, waste treatment plant, or liquor store?" (Question 41, p. 17.)	The existence of a dump or liquor store may be unpleasant, but it's difficult to see how a personal cause of action or legal need would arise from its presence. Problems of this kind are more political than legal in nature.
43-44	These questions ask about "inadequate or inferior city or municipal services..." (p. 18).	Again, the problem here seems to be mainly political. Does a "legal need" arise from inadequate public transportation? Will a suit to require more frequent bus service survive summary judgment?
46	Addresses the respondent's satisfaction with police services (p. 19).	One question asks if "dealers/criminals were released soon after being arrested." One cannot sue judges for establishing low bail or defense attorneys for ably representing their clients.
51	"Did a situation arise in which an elderly person in the household or a close elderly relative was suspected of being abused or taken advantage of financially?" (P. 21.)	This question ignores the existence of attorneys general and other consumer-protection groups that pursue complaints without a fee.
61-66	Address the respondent's experiences with their school system, including issues of enrollment, truancy or disciplinary problems or excessive punishment (pp. 24-26).	Typically, courts will not intervene with the daily functions of public entities. With respect to the discrimination portion of question 66, this is again within the purview of an attorney general.

67 - 70	Ask about the respondent's ability to write or change a will, set up a trust, plan his estate or deal with issues of inheritance (pp. 26-27).	It is difficult to believe that families with the wherewithal to establish trusts and engage in estate planning satisfy low-income eligibility criteria.
82 -83	Ask whether the respondent has any trouble related to pension plans or retirement benefits, in particular, collecting benefits (pp. 81-82).	Pursuant to the Employee Retirement Security Act of 1974, all qualified pension plans must have a built-in appeal mechanism for aggrieved plan participants and beneficiaries. This illustrates how designers of the survey questionnaire ignored the existence of alternative means of dispute resolution.
92-93	<p>"Did ... you experience any serious threats to your privacy on the job, such as having to take a drug test, lie detector test, or AIDS test, or not being allowed to find out what's in your personnel file?" (Question 92, p. 35.)</p> <p>Question 93 identifies what type of "threat."</p>	The question assumes that drug tests, lie-detector tests, or inability to access one's personnel file represent "serious threats to [one's] privacy on the job." In fact, public- and private-sector jobs routinely and legally require drug and lie-detector tests.
94-95	Address sexual harassment, unhealthy and/or unsafe working conditions, and union problems (pp. 35-36).	There are many public agencies that investigate and pursue such claims for no fee. OSHA and the NLRB are but two of the federal agencies that encourage complainants to file complaints and pursue grievances.
125-32	Address respondents' encounters with the tort system, if any, including personal injury, property damage, financial harm, or "other harm" (pp. 49-51).	It is seldom difficult to hire an attorney who will represent a client on a contingency basis when the case has merit. In that arrangement, the attorney charges nothing for services and collects a fee only if there is a settlement or judgment in the plaintiff's favor.
150-51	Address injury to a creditor (p. 59).	In most cases, a creditor can employ the same type of contingency arrangement outlined in the criticism of questions 125-132 above. If a creditor prevails in a settlement or judgment with the debtor, the creditor's attorney typically takes a percentage of the recovered amount as a fee. For that reason, it is illogical to require the state to subsidize services that are, in effect, self-subsidizing.
167	Asks if the respondent had a "serious problem" of "being taken advantage of by an employer, landlord, or someone else" (p. 64).	This question is ambiguous. To assume that a "legal need" arises from the perception of "being taken advantage of" is unrealistic. Anybody who believes his salary is not commensurate to his effort likely believes he is "being taken advantage of." Nevertheless, the aggrieved employee in that hypothetical has no cause of action.

Critique of the Methodology and Analysis of the MLNS

Beyond the issue of how properly to define a legal need, the *MLNS* is subject to a number of methodological criticisms that cast doubt on the study's ability to provide a reliable estimate of the extent of unmet legal needs in Massachusetts.

The sampling design for the *MLNS* combined two sample sources. The first was an equal probability sample of all Massachusetts residences. The second was an over-sample. The purpose of the over-sample was to increase the productivity of the sample in terms of the numbers of low-income households reached. For the over-sample, telephone exchanges were selected that were thought to contain a proportionally large number of low-income households.

The nationwide *CLNS* supplemented telephone interviews with in-person interviews in an attempt to gain representation of households without telephones.¹⁰⁰ The *MLNS* failed to do this. As a result, it used a sample that was not necessarily representative of the entire low-income population of Massachusetts.

Although the details were absent from the report, it appears likely that the over-sample was from telephone exchanges in urban regions (as urban exchanges contain more phone numbers than rural exchanges, thereby yielding the biggest bang for the researchers' buck). It is reasonable to believe that the legal needs of the poor in urban areas are different from the legal needs of the poor in rural areas. This has serious implications for the ability to generalize, particularly given that 74% of the sample came from the over-sample.¹⁰¹

Respondents tend to lose interest or patience with a telephone interview fairly quickly. For this reason, many researchers are reluctant to field a survey instrument that lasts more than 25 minutes. The survey instrument in the legal-services study lasted about 45 minutes. Further, it asked respondents to listen to a particularly long list of descriptions (accompanied by examples). The long length and tedious nature of the survey may have resulted in respondents lapsing into "response set," thereby threatening the validity of participant responses.

While the authors report that they incorporated the lessons of cognitive research in framing questions,¹⁰² it appears that they failed to acknowledge one of the most important controversies facing the field of cognitive psychology, *viz.*, the unreliability of memory. Psychologists

¹⁰⁰ Note that the national survey did not present comparison of data from telephone interviews to that of in-person interviews. It is therefore not possible to conclude that the two populations are similar in their legal needs. The data from both groups were aggregated.

¹⁰¹ *MLNS*, A-2.

¹⁰² *CLNS*, 1.

have long documented the constructive and unreliable nature of human memory.¹⁰³ In the *MLNS*, respondents were contacted between July 1993 and January 1994. They were asked to recall the legal needs of their household during the 1992 calendar year. That is, they were asked to recall events they transpired no fewer than six months, but as many as 24 months before the interview.

Further undermining the reliability of the information gathered by the *MLNS* is the fact that “the respondent for each household was a randomly-selected adult, with the selection of either the oldest female, oldest male, youngest female, or youngest male 18 or older having been randomly determined prior to contact with the household.”¹⁰⁴ Consequently, the respondent in any given household may have no direct knowledge of the facts and circumstances applicable in situations involving household members other than the respondent. Thus, in addition to the lag between the events in question and the interview, there is the potential that much of the information collected is in the nature of hearsay.

In addition, the response rate reported in the study was a particularly liberal estimate. The researchers suggested that 506 completed interviews represented a 70% response rate, even though the study started with 9,055 telephone numbers.¹⁰⁵ It is legitimate to discount the nonresidential/nonworking numbers and the numbers of those who did not meet the income criteria from response rate calculations. However, a substantial portion of potential respondents declined to participate. It is not possible to parse out the “eligible” refusals from the “ineligible” refusals, but it is quite reasonable to believe that a large number of refusals were from “eligible” respondents (particularly given the over-sample of low-income exchanges). The calculated response rate would be far smaller if figured as a fraction of the total number of participating *and* nonparticipating eligible households.

A number of other issues concern dialing procedures. When describing the outcomes of calls (see *MLNS*, Appendix A.2), the researchers did not provide a clear definition of “uninterviewable households.” The examples given are (a) ineligible, and (b) incapable of being interviewed.¹⁰⁶ It is unclear who qualified for these categories. Given that researchers used persistent calling tactics (e.g., converting refusals), there remained a high percentage of refusals. As most social scientists know, volunteers and nonvolunteers differ on a variety of important characteristics. The potential impact of the refusals (nonvolunteers) looms significant.

¹⁰³ See, for example, F. C. Bartlett, *Remembering: A Study in Experimental and Social Psychology* (Cambridge, England: Cambridge University Press, 1932); E. F. Loftus and G. R. Loftus, “On the Permanence of Stored Information in the Human Brain,” *American Psychologist*, vol. 35 (1980), 409-420; and J. Piaget, *The Origins of Intelligence in Children* (New York: International University Press, 1952).

¹⁰⁴ *MLNS*, 5.

¹⁰⁵ *Ibid.*, A-1.

¹⁰⁶ Note that households with language barriers are categorized elsewhere.

Still another problem has to do with the distinction between "incidence" and "prevalence." According to the *MLNS*, "*Incidence* measures the legal needs that first arose during the reference period ... *Prevalence* ... also includes all legal needs beginning before [the reference period] that were not resolved" prior to the beginning of the reference period.¹⁰⁷ The *MLNS* noted that "[I]ncidence is the more important of the two measures" because it assesses the number of new legal needs arising during the year. Prevalence includes legal issues arising in the past, possibly under conditions, which would have made the individual in question ineligible for free legal services.¹⁰⁸ In addition, the legal need could be unresolved from previous years because it had no merit. Therefore, using the prevalence measure also tends to exaggerate the real extent of unmet legal needs.

However, *MLNS* implicitly ignored this logic by consistently using prevalence as the primary index of legal need. For example, it reported that "7% of low-income households report legal needs related to household members being job seekers employees, or former employees," where legal needs refers to prevalence, rather than incidence.¹⁰⁹ Because prevalence is necessarily at least equal to incidence, the results inevitably biased upward the reported number of legal needs.

The *MLNS* contains a number of factual errors. For example, in Section 4.1, 39% of households were reported to have more than one legal need. However, based on the numbers presented in Table 4.1, the actual figure was 29%.

One of the purposes of conducting quantitative studies is to draw conclusions based on statistical testing, rather than unscientific comparison and associations. In the present study, differences were not discussed in terms of statistical significance. Likewise, relationships among variables were not evaluated using statistical analysis. Thus, while the *MLNS* failed to obtain representation of certain subgroups of the population, the study apparently did generate other data that might have been subjected to formal, albeit simplistic statistical analysis (e.g., chi-squared tests, Fisher exact tests, t-tests, ANOVAs, etc.). The authors often presented their findings as if they had conducted such analysis, but the reader is left with a vacuum instead of formal statistics and critical values.

When those who chose to take no legal action were asked to describe the main reason that they chose not to get legal/judicial help, only 12% said that it was out of concern for cost. This was an open-ended question, meaning that respondents self-reported their top-of-mind (or most

¹⁰⁷ *MLNS*, 13 (emphasis in original).

¹⁰⁸ *Ibid.*, 13.

¹⁰⁹ *Ibid.*, 22.

salient) reason. The fact that cost was the most salient factor for only 12% of those who did not seek legal advocacy indicates that cost is not a strong driving factor in not seeking a lawyer. After all, cost was only a slightly stronger reason than “never got around to it” (12% vs. 10%).

Equal Access and the Estimate of Unmet Legal Needs

Equal Access performed no independent confirmation of the extent of unmet legal needs and relied entirely on the estimates provided by the *CLNS* and *MLNS* reports. Consequently, their estimates are subject to the criticisms of the *CLNS* and *MLNS* methodology discussed above. In addition, however, *Equal Access* has some serious flaws of its own.

According to *Equal Access*, the number of income-eligible households in Massachusetts was 336,871, based on 1990 U.S. Census information. Using the *MLNS* prevalence rate of 1.0 legal needs per households, *Equal Access* multiplied this prevalence rate by the number of eligible Massachusetts households, putting the estimated number of legal needs at 336,871. Subtracting the 112,000 legal needs that were met within the legal system, leaves about “225,000 unmet legal needs.”¹¹⁰

Equal Access characterized every “need” not referred to a lawyer as an “unmet legal need.” The study authors thus substituted their own judgment for that of the principals involved in the basic decision-making about the nature and importance of the problem. The reality is that most people, most of the time, including the poor, make decisions regarding the merits of various grievances, and regarding the relative costs and benefits of various alternative means of addressing those grievances. One result of this type of approach is to exaggerate greatly the “need” for legal services for the poor. This in turn inflates the estimated need for lawyers and legal-services programs that provide services to the poor.

Equal Access compounded the problem suffered by *MLNS* in relying exclusively on prevalence as a measure of legal needs.¹¹¹ As noted, this biases the measure of legal needs upward.

The analysis in *Equal Access* began with a number of references to the *MLNS*. However, between the first and second pages of Chapter 1, the focus slipped from reporting information

¹¹⁰ Citing *Equal Access*, the report of the Massachusetts Supreme Judicial Court’s Committee on *Pro Bono* Legal Services refers in its preface to “the reality that an estimated 225,000 times every year a low-income person or family in Massachusetts needs civil legal assistance that they cannot afford to obtain.”

¹¹¹ *Equal Access*, 13. This conclusion likely derives from the *MLNS* conclusion that “38% of low-income households in Massachusetts developed a legal need in 1992 and 47% experienced either a new or existing need ... Overall, we estimate that the total volume of new legal needs among low-income households in 1992 was 0.8 per household, with ongoing needs at 1.0 per household.” (*MLNS*, 45). The phrase “ongoing” clearly refers to a measure of prevalence and not incidence.

specific to Massachusetts to reporting information from the national *CLNS*.¹¹² Although clearly referring to the situation in Massachusetts, *Equal Access* cited national statistics, claiming “only one-half of all those questioned knew free legal services existed.” The report went on to state, “Of those with a legal need, only 57 percent knew the services existed. The percentage rose to 65 percent for those who contacted the civil justice system.”¹¹³

This confusion of the statistics is unfortunate, especially since the *MLNS* was a virtual methodological duplicate of the *CLNS*, and statistics particular to Massachusetts were available. However, when we made the substitutions, replacing the national statistics with the relevant Massachusetts statistics, the force of the *Equal Access* claim was greatly diminished. In Massachusetts, 58% of all those questioned knew free legal services existed. Further, of those with a legal need, 70% knew such services existed.¹¹⁴

Were the problem truly one of unmet legal needs, a natural deduction from the observation of such high levels of awareness of free legal services would be high rates of use of such services. Instead, only 21% of “legal needs” were brought to a lawyer. Though there were a number of reasons why individuals chose not to turn to a lawyer, cost concerns represented a barrier to only 12%. The *MLNS* notes that “respondents rarely cited difficulty in finding a lawyer as a reason for not turning to the legal system.”¹¹⁵ It is misleading to suggest, in the context of these numbers, that the extent of unmet legal needs among the poor is so great.

As noted above, *Equal Access* estimated the existence of 225,00 unmet legal needs in Massachusetts. In fact, the *MLNS* and *Equal Access* data can be interpreted to imply a significantly smaller number of unmet legal needs; in fact, there may well be fewer than 15,290 legitimate unmet legal needs annually in Massachusetts that result from inadequate state funding of legal services. The principal reasons for the large difference are (a) the assumption that a legal need is unmet as long as no remedy is obtained within the legal system, and (b) the fact that only a very small fraction of all households surveyed attributed their inability to meet their legal needs to inadequate financial resources.

Multiplying the estimated number of eligible households in 1990 (336,871) by the prevalence-based rate of 1.0, we find the number of legal needs to be 336,871. Of these, 112,000 were met by the legal system through legal-services providers and private attorneys.¹¹⁶ In addition, 15% (50,531) were resolved outside the legal system through third party interventions and

¹¹² *Equal Access*, 13-14.

¹¹³ *Ibid.*, 14.

¹¹⁴ *MLNS*, 42.

¹¹⁵ *Ibid.*, 46.

¹¹⁶ *Equal Access*, 13.

another 19% (64,006) through individual efforts. That leaves 110,334 unresolved legal needs.¹¹⁷ Using the *MLNS* estimate that 12% of respondents claimed finances were an impediment to resolving their legal problems, that leaves just 13,240 unmet legal needs.¹¹⁸ Given that the number of income eligible households has increased by 15.5% since 1990, the current number of unmet legal needs is 15,290.¹¹⁹

The estimated 13,240 legal needs is arguably also misrepresentative insofar as it is based on the "prevalence," rather than the "incidence" of legal needs. That is, this estimate counts as needs, not only those incurred during the current year, but also those left over from earlier years. *MLNS* reports 0.8 legal needs per household when needs are measured in terms of incidence, rather than prevalence.¹²⁰ Adjusting for this difference, we determine that the number of legal needs in 2000 is 12,326.

In other words, using the *MLNS*, as well as figures presented by the Commission on Equal Access, the "unmet need," rather than amounting to nearly a quarter of a million cases, was about 12,326 cases. Such a level of unmet need suggests no need for tripling the funding of the MLAC.

Summary Critique of the CLNS and MLNS

An examination of the *CLNS* and the *MLNS* studies raises questions about the methodology used in arriving at their respective conclusions:

1. *CLNS and MLNS used too broad a definition of "legal needs."* The *MLNS* defined legal needs indirectly as "problems that people encounter that are susceptible to a remedy through the system of justice."¹²¹ The *MLNS* also said that an unmet legal need "touched on virtually every aspect of life and was not restricted just to those situations commonly

¹¹⁷ *MLNS*, 34.

¹¹⁸ On page 38, the *MLNS* reports that 12% of those with legal needs did not pursue legal help because of cost concerns.

¹¹⁹ According to the Massachusetts Institute for Social and Economic Research (MISER), the current population of Massachusetts is 6,340,843. Using the *Equal Access* estimate of 2.07 persons per household, the number of households is 3,063,209. The fraction of Massachusetts households below the poverty level was 10.7% in 1990 and 12.2% in 1997 (U.S. Census Bureau, Statistical Abstract of the United States, 1999, p. 485). Given that 11.1% (1/9) of households were below 125% of the poverty level in 1990, 12.7% were below 125% of the poverty level in 1997. Thus there were 389,028 households below 125% of the poverty level in 1997. We then estimate the number of unmet legal needs in 2000 to be

$$\frac{389,028}{336,871} \cdot 13,240 = 15,290, \text{ where } \frac{389,028}{336,871} - 1 \cdot 100\% = 15.5\%.$$

¹²⁰ *MLNS*, 45.

¹²¹ *MLNS*, 1.

assumed to have legal implications.”¹²² *Equal Access* ultimately declared that any “legal need” that did not result in a case for the LSC, the MLAC, any other public program, or for a private attorney is an unmet legal need. Reported legal needs could thus include a tenant’s problems with insects, credit denials or lack of telephone service – issues seldom addressed through the legal system. Such an interpretation constitutes so broad a definition of unmet legal needs as to be meaningless.

2. *Equal Access ignored extra-judicial remedies in its calculation of unmet legal needs.*
Many of the responses of those surveyed were interpreted as indicating a legal need when, in fact, there were remedies available to the respondent from outside the legal system. These remedies include mediation, third-party negotiation, government-provided resources and assistance by nonprofit organizations.
3. *The CLNS and MLNS exaggerated the number of unmet legal needs by failing to account for respondents’ possible unwillingness to devote sufficient time and effort to securing a legal remedy.* Respondents were not queried with respect to their willingness to incur the personal costs commonly associated with the pursuit of legal remedies. Meeting with lawyers, doing paperwork, providing testimony and fulfilling other legal obligations are necessary elements in obtaining a legal remedy. There is no unmet legal need unless the respondent is willing to incur the personal costs associated with such activities. Merely phoning a legal-services provider and indicating a legal need does not constitute evidence that such a need exists.
4. *The studies failed to ask respondents whether they would have pursued a legal remedy if they had had sufficient resources to hire a private attorney.* A legal need can be unmet not only because of financial considerations but also because the person registering the need does not consider it worth meeting. Middle and high-income people allow all manner of legal needs to go unmet because they prefer to use their financial and personal resources to meet other, more pressing, nonlegal needs. There was no determination in the *CLNS* or *MLNS* of whether respondents, if given the opportunity, would have preferred to meet other needs. In the *MLNS*, only 12% of respondents identified cost as the reason they did not pursue a legal remedy to their problems. This suggests that the remaining 88% would have left their reported legal needs unmet even if they had had the resources to meet them.
5. *Equal Access exaggerated the number of legal needs by relying on data relating to the prevalence – as opposed to the incidence – of such needs.* The study implicitly used data

¹²² *MLNS*, v.

relating to the “prevalence” of legal needs, rather than data relating to the “incidence” of legal needs. Prevalence measures all the legal needs in existence, including unresolved legal needs from previous years. Incidence measures new legal needs arising during the course of a year. Thus *Equal Access* counted as legal needs problems left over from previous years. These problems may have remained unresolved because they lacked merit in the first place.

VI. The Beacon Hill Institute Study

During the fall of 1999, we designed and administered our own survey to assess the extent of unmet legal needs in Massachusetts. Our sample consisted of 100 respondents drawn from four low-income housing developments. We selected housing developments that were similar with respect to ethnic composition, annual income of residents and other explanatory variables.

In our sample, 60 households reported altogether 79 legal problems. This yields a rate of 0.79 problems per household. We can use this finding to develop an independent estimate of the number of unmet legal needs, based on the income-eligible population of Massachusetts.

Multiplying by 389,028 (the estimated number of income-eligible households in 2000), we find the number of legal needs to be 307,332. Given that 205,912 of all legal needs will be met through the legal system or in some other way in 2000, we found 101,420 unmet legal needs.¹²³ Multiplying by 0.20 (our estimate of those who did not seek legal help for reasons of costs), we find the number of legal needs that cannot be met for reasons of cost to be 20,284.

Methodology and Study

Participants in our study came from four low-income housing developments in Massachusetts. These developments were similar with respect to the ethnic composition of residents, the annual income of residents and other demographic variables. Therefore, we treated them as one sample. In each housing development, participants were randomly selected on an availability basis. The interviewers took extensive notes. Participants were treated in accordance with the Ethical Principles of the American Psychological Association (APA) and were given a \$5 gift certificate to a local restaurant upon completion of the interview.

We employed a 21-question face-to-face interview, with some questions having multiple parts. Appendix D provides a copy of the survey instrument. With a view toward developing a relatively standardized interview schedule, we included verbatim questions from the *CLNS* and *MLNS*. The exceptions were as follows: (1) to eliminate the possibility of a response bias, we asked the major question, in the most general terms;¹²⁴ (2) for the sake of accuracy, we restricted the problems to any experienced within the last year (e.g., an incidence measure); and (3) we

¹²³ The fraction of legal needs met through the legal system in 1990 was $112,000/336,871 = 0.33$. The fraction met outside the legal system through third party interventions was 0.15, and the fraction met through individual efforts was 0.19, for a total of 0.67. Multiplying 307,332 by 0.67, we get 205,912 legal needs that were met in 2000.

asked participants in an open-ended manner to elaborate on the ways in which they dealt with each problem, as well as to provide ratings of their satisfaction with each outcome (or lack thereof). There were four interviewers, and there were no significant differences among them with respect to participants' responses.

One hundred individuals participated. Seventy-six percent (76%) were female. There were no significant differences between males and females on any of the variables. Fifty-four percent (54%) were white, 31% black, 12% Hispanic and 3% Asian. Sixteen percent (16%) were young adults (20-29 years), 57% were middle-aged adults (30-49 years) and 27% were older adults (50+ years); the average survey participant was 30 to 49 years of age. Thirty-six percent (36%) of the sample were single, 32% divorced, 25% were married, and the rest of the respondents were "living-with" someone (1%) or widowed (6%).

With respect to education, 47% had completed high school, 25% had completed at least some junior college, (4%) had a bachelor's degree, 3% had a professional degree, and the remaining individuals had less than a high school education. Thirty-seven percent (37%) reported annual household incomes less than \$10,300, 33.3% reported an annual household income of \$10,301 to \$17,500, 25.6% reported a household income of \$17,501 to \$32,000, and 3.8% reported a household income of greater than \$32,000.

We analyzed the data with a variety of statistical tests. However, prior to more formal analysis, each problem that was identified by a respondent was evaluated by a panel of four to ascertain whether the problem did require legal assistance. A problem was deemed as a legal one if it was included in the listing of problems in the *CLNS* Study; in cases not previously included in this listing, a problem was ultimately classified as a legal one if the panel of four reached unanimous consensus following discussion.¹²⁵ Second, descriptive statistics such as means and standard deviations were calculated, and inferential tests were done of one- and two-sample chi square tests, as well as one-sample t-tests.

¹²⁴ "Now, I would like you to think about the year 1999, that is, from January 1, 1999 to present. Did you or anyone in your household have any problems that started within the last year and requires the services of a lawyer?"

¹²⁵ For example, "not enough money to pay the bills" was deemed not to be a legal problem.

Extent and Types of Legal Problems

In our sample, sixty percent (60%) of respondents were determined to have at least one legal problem.¹²⁶ The respondents from these 60 households reported a total of 79 legal problems, yielding 0.79 problems per household for all households (100).

Table 4 – Number of Legal Needs Per Household Among Low-Income Households in Massachusetts

	Number of All Households	Percent of All Households	Percent of Households with Needs
No Needs	40	40%	--
1 Need	46	46	75.6
2 Needs	10	10	17.7
3 Needs	3	3	5.0
4 Plus Needs	1	1	1.7
Total Needs	79	60%	100%

Since we were only concerned with incidence in this study, we did not ask about ongoing legal problems. In our study, 60% of households experienced a new legal problem during the 1999 year. Of those, most experienced only one legal need; however, nearly 18% experienced two legal needs, 5% experienced three legal needs, and nearly 2% experienced four or more legal needs. See Table 4.

Table 5 –Number of Legal Needs Per Household

Incidence Measures			
	BHI Study	<i>MLNS</i>	<i>CLNS</i>
Incidence Based on:			
All Households	0.79	0.8	0.8
Households With Needs	1.32	2.0	2.1

Table 5 reports the average or mean number of legal needs per household. While the BHI finding (0.79) for all households is similar to that of *CLNS* and *MLNS* (0.8), the BHI finding (1.32) for households with needs is substantially less than that of *CLNS* and *MLNS*.

¹²⁶ Seventy-two percent (72%) of the respondents identified at least one problem. However, there was unanimous consensus among the four judges that 12 of the 72 respondents identified problems that were not legal in nature (e.g., not enough money to pay their bills). That left us with 60 individuals who reported legal problems.

Our estimate suggests that the number of unmet legal needs in Massachusetts is closer to 100,000 than it is to the 225,000 reported by *Equal Access*. We argue that the relevant (for policy purposes) number is actually much smaller, given that the public has an interest in only those legal needs that went unmet for reasons of cost.

Only 20% of our sample population reported that cost concern was the reason they did not pursue a remedy to their legal problem. Multiplying 0.20 by 101,419, the number of unmet legal needs, we find that fewer than 21,000 individuals were effectively prevented from solving their legal need due to their poverty.

The most frequently reported problems were: (a) family and domestic problems (43.0%); (b) housing problems (21.5%); (c) problems with disability and health care (10.1%); (d) problems with public benefits (7.6%); and (e) personal injury problems (6.3%). The majority of family and domestic problems involved failure to pay child support following separation and/or divorce. In addition, there were three instances that involved children allegedly being unfairly expelled from school and/or not receiving special education services. Examples of housing problems included households not receiving adequate utilities (e.g., heat, hot water) and unfair eviction. All problems with health care involved disabled individuals not receiving appropriate help.

Attempted Solutions for Legal Needs

Not only is the extent of legal needs important, but the different possibilities for resolving those needs should be considered. The attempted solutions to which individuals turned, in order of frequency, were: (a) legal services (22 cases); (b) public-private, service-providing agencies (18 cases); (c) court hearings (15 cases); (d) private lawyers (8 cases); (e) consumer groups (1 case); (f) other organizations (5 cases); and (g) other professionals (1 case). The remaining nine cases were situations in which attempted solutions were being considered but not yet initiated (thus, 79 problems in total). Court hearings were the most commonly attempted solutions for housing- and disability-related needs, while private lawyers were most often engaged to help with family problems. In 48 cases (60.8% of all reported problems, 68.6% of problems with attempted solutions), respondents found alternatives to legal services for dealing with their legal needs.

As previously noted, only 22 cases – 27.8% of reported problems, or 31.4% of problems with attempted solutions – were brought to legal-services providers. Conversely, 48 cases were brought to alternative organizations. Of these, 24 (50%) were considered solved to the respondents' satisfaction. Of the 22 cases brought to legal services, 11 were solved (50%), seven were not solved (32%), and four were still in process (18%). Of the seven cases that were not solved,

respondents stated that either the legal-services provider did not handle their type of case or the legal-services provider did not show any interest in the cases. In only one reported instance did a legal-services organization inform a respondent that they could not take the case because they had too many cases (the respondent opted to wait). In four cases, respondents went to a legal-services provider after first trying other organizations; in two of those cases, the legal-services organization helped to solve the problem.

We determined that those who turned to private lawyers had the most success resolving their legal problem. Those who used legal services found that their problems were solved half of the time. Those who turned to the court or public/private services providing agencies or other organizations also found that their problems were resolved in approximately half of the cases.

In more than half of the situations reported (55%), the respondents were satisfied or fairly satisfied with the way the organizations responded to their needs. Satisfaction was greatest in situations in which a private lawyer was involved and it was least in situations in which the respondent turned to public/private service agencies (e.g., the Housing Authority). In more than half of the cases involving legal services, people were satisfied or fairly satisfied with the outcome.

Access To and Use of Legal Services Among the Massachusetts Poor

We applied the income of 125% of poverty guidelines by family size to our sample. The results indicated that of the 94 respondents who reported their income, 77 were eligible for legal services. Further, when asked if they knew they were eligible for Legal Services, 54 knew that they were eligible for legal aid. Those who were aware of their eligibility for legal aid turned to legal aid for help for most problems (22), of which 11 were resolved.

Although some of the residents were not eligible in our survey, given the 125% of income guidelines, we argue that this does not have a significant impact on our estimates. This is despite that all reported statistics in the *MLNS* do come from income-eligible individuals. The *CLNS* found that moderate-income individuals have higher incidence rates of legal needs than low-income individuals (46% of all moderate income households reported at least one legal need, compared to 40% for low-income households).¹²⁷ Consequently, our estimate of the incidence of legal needs based on the BHI survey is likely biased upward, implying that we may be overestimating the extent of legal needs among low-income households in Massachusetts.

Although the vast majority of individuals would have preferred to have hired a private attorney to resolve their legal problems (more than 80%), few (20%) actually indicated that fi-

nancial constraints were the primary reason that they chose to pursue an alternative to a private lawyer. Individuals choose to resolve their problem through one of many other legal options, such as a small claims court. Or, in many cases, individuals determined that the problem was not sufficiently problematic as to warrant the time and effort required to resolve the issue.

Further, when people were asked what they would do if they won money in a lottery, more than 60% of the sample said that they would use the money for something other than hiring a private lawyer, such as buying a house, paying bills or going on vacation. Economic theory suggests that rational individuals will devote resources or income to the goods and services that they expect to yield the highest levels of utility, or usefulness. The fact that most individuals in our survey would opt to use money won in a lottery for purposes other than hiring a lawyer indicates that they view these other goods or services as providing greater satisfaction than the resolution of their legal problem with the help of a lawyer.

Summary

It is clear that a new, comprehensive study is needed before policy makers can put stock in the claim that the vast majority of the legal needs of the poor in Massachusetts are going unmet. Even existing studies, however, show that the fraction of needs that go unmet for reasons of cost is vastly smaller than widely argued. *Equal Access* implies that two out of three needs go unmet. The Boston Bar Association puts the number at three out of five. Taking at their face value the only credible studies to date, *viz.* *CLNS*, *MLNS* and our own survey, the correct fraction is less than 7%.

Low-income individuals have adequate knowledge of a variety of ways to deal with their legal needs and alternatives to legal-services providers. These alternatives included arbitration, mediation, small claims courts and lawyers who operate on a contingency fee basis. In addition, an extensive network of governmental organizations exists, such as the Boston Housing Authority, which aids individuals with specific legal needs.

Any future study must fashion a more precise definition of “unmet legal needs.” We suggest defining a legal need as one that (a) has definable merits, (b) is one for which claimant is willing to expend personal time and energy in pursuing a solution, (c) seeks to rectify a clear individual grievance and (d) would cause the claimant to hire a lawyer but for his or her economic condition.

To identify serious legal needs, it is necessary to consider whether the claimant is willing to expend effort and money (if money were available) to reach a solution. Limiting legal-services

¹²⁷ *CLNS*, 7. Note this is a prevalence measure out of all households.

providers to such cases, and only counting such cases as legal needs, significantly reduces the number of legitimate demands. In addition, efforts should be made to distinguish carefully between incidence and prevalence, as well as not to count unrecognized legal needs as unmet legal needs.

VII. Alternative Paths to Legal Assistance

Long before the establishment of the LSC, indigent citizens had access to legal services. The organized delivery of free legal services began with the foundation of the Legal Aid Society in New York City in 1876. By the mid-1960s, about 200 private legal-aid societies operated in the United States.¹²⁸ Beyond private volunteer work, organized legal-aid societies received funding mostly from local communities, private donations, bar associations, and organized charities.

Pro Bono Publico

Today, *Pro bono*, or free, legal services are a staple. Unfortunately, there are no reliable data with respect to the amount of *pro bono* work performed in the United States.¹²⁹ In addition, there is no universally accepted definition of *pro bono*. According to a broad definition, *pro bono* is any legal work for which the attorney does not accept payment or charges a deeply discounted fee. For instance, an attorney providing one hour of free legal service to a local boy-scout organization is often deemed the equivalent of providing one hour of free legal service to an indigent fighting an eviction action. Modeling ethical rules for *pro bono* on the American Bar Association's *Pro Bono* Ethical Rule, the Supreme Judicial Court issued aspiration guidelines for Massachusetts attorneys in 1999. Those guidelines, while defining *pro bono* services broadly, urge lawyers to work at least 25 hours exclusively for indigent clients or pay at least \$250 or 1% of the lawyer's annual taxable professional income to legal-services organizations every year¹³⁰.

Alternative Dispute Resolution

The use of alternative dispute resolution (ADR) as a means of resolving disputes is growing dramatically. ADR saves time and money to parties. In 1997, ADR programs at all court departments handled about 80,500 cases, more than twice as many as Legal Services

¹²⁸ Peter T. Flaherty and Kenneth F. Boehm, "Why the Legal Services Corporation Must Be Abolished," *Backgrounder*, The Heritage Foundation (22 July, 1999), 1.

¹²⁹ According to the American Bar Association, Florida is the only state with mandatory *pro bono* rules boasting a 90% compliance rate among attorneys. Most of the states have voluntary reporting systems. Moreover, the number of *pro bono* hours estimated by local bar associations tends to exclude *pro bono* work done outside programs organized by bar associations and legal-services providers.

¹³⁰ Supreme Judicial Court of Massachusetts, *Rule of Professional Conduct 6.1 on Pro Bono*.

Corporation grantees handled in Massachusetts.¹³¹ In addition, settlement rates are high, and parties frequently report satisfaction with the process.¹³²

A study commissioned by the Supreme Judicial Court in 1997 described in great detail the success of alternative dispute resolution in avoiding lengthy and costly litigation in Massachusetts.¹³³ The Dorchester Urban Court program, founded in 1975, served as a model for the creation of about 300 community mediation programs across the county by 1995. The program handles a variety of minor criminal and civil cases including civil actions for tort, contract, divorce, abuse, child custody, landlord-tenant, and discrimination issues. As the report showed, ADR in Massachusetts courts is widely used and gaining an increasingly important role.

There are two primary forms of alternative forms of dispute resolution available in 69 district courts: community mediation and conciliation. *Mediation* is a process in which a trained, supervised third party to the dispute assists the parties in identifying and discussing issues of mutual concern, exploring solutions, and arriving at a settlement. *Conciliation* uses attorneys as providers and involves trial attorneys as primary participants. As Table 6 shows, settlement rates for both mediation and conciliation are high, and members to the dispute as well as volunteer mediators have expressed very high confidence and satisfaction with the process.

To assist the Superior Courts, the state also finances and operates its own dispute resolution center. The Massachusetts Office of Dispute Resolution (MODR) is a state agency in the Executive Office of Administration and Finance providing mediation, arbitration, case evaluation, ADR training, ADR process and system design for state agencies, municipalities, courts and citizens of the Commonwealth. MODR operates dispute resolution programs in the Superior Courts of Suffolk, Norfolk, and Plymouth counties. MODR is also an approved dispute resolution provider in the Land Court. In FY 1999, MODR had a budget of \$570,000. While MODR's services are fee-based, fee reductions and waivers are available in cases of financial hardship.

In addition, the Massachusetts Bar Association sponsors a program called Alternative Dispute Resolution Referral Service (ADRRS), a telephone hotline that assists parties in need of an experienced, qualified neutral to resolve legal problems without resorting to courts. This program offers three options: case evaluation, mediation and arbitration.

¹³¹ According to the Legal Services Corporation, Massachusetts grantees closed a total of 36,152 cases in 1998.

¹³² Supreme Judicial Court/Trial Court Standing Committee on Dispute Resolution. *Report to the Legislature on the Impact of Alternative Dispute Resolution on the Massachusetts Trial Court* (2 February, 1998), 1. Available at <http://www.lweekly.com/mitreas/A96-30.html>.

Table 6 – Alternative Dispute Resolution

	District Court	District Court	Superior Court
	<i>Mediation</i>	<i>Conciliation</i>	<i>Mediation/Conciliation</i>
Availability	50 of 69 distr.courts	22 of 69 distr. courts	17 programs
		6 bar associations	bar associations
Staff	965 volunteers	775 volunteers	Pro bono attorneys
Settlement rate	85%	up to 90%	70-75%
Types of service	SC, H, J, F, D, S, PP		CC, CR, DS, E, F, L, I
Annual case load	7000	4000	7000

	Probate & Family Ct.	Boston Municipal Ct.	Housing Court
	<i>Mediation/Conciliation</i>	<i>Mediation/Conciliation</i>	<i>Mediation/Conciliation</i>
Availability	12 of 14 divisions	Boston	5 divisions across MA
Staff	hired probate officers	200 pro bono attn	17 housing specialists
Settlement rate	65%	86%	50-90%
Types of service	J, F, A	civil and criminal	H
Annual case load	34500	2112	25900

SC = Small Claims
H = Housing
J = Juvenile
F = Family, Divorce
S = School Referrals
PP = Municipal Disputes
CC = Commercial Contract
CR = Construction
DS = Discrimination
E = Environmental
L = Labor/Employment
A = Abuse

Contingency Fees

Nearly 3% of the unmet legal needs in the *MLNS* are personal injury cases.¹³⁴ Such unmet legal needs could be resolved through the use of contingency-fee cases. Contingency fees provide the cornerstone of personal-injury law practice; these are cases in which the lawyers' fees are tied to winning a monetary settlement for their client. In such cases, lawyers agree to represent clients in exchange for a percentage – often one-third – of any award. Contingency cases have the economic effect of forcing lawyers to select cases based on whether they can win, providing a selection mechanism to eliminate unnecessary or unmeritorious cases.

¹³³ Ibid.

¹³⁴ *MLNS*, 18.

State and Local Government Assistance

An extensive network of governmental organizations exists to provide poor individuals with legal services. Many of these organizations provide specialized help for particular legal problems such as housing/rental complaint resolution, consumer protection, child protection and many others at no cost. A detailed list is provided in Appendix E.

Both the Attorney General's Consumer Complaints Office and the Consumer Affairs and Business Regulation Office provide assistance with consumer-protection issues. Landlord-tenant issues are handled by the Boston, Brookline, Cambridge, and Somerville housing agencies. In addition, the Boston Housing Authority addresses such concerns as handicap services, the elderly disabled programs, and housing inspections. The Massachusetts Tenant Organization and the Massachusetts Union of Public Housing also deal with such concerns, as does the Boston Mayor's Office of Consumer Affairs and Licensing and the Executive Office of Communities and Development. Unsafe or unsanitary conditions are addressed by the Boston Housing Inspectional Services, the Brookline Health Department, the Cambridge Health Department, and the Somerville Health Department.

Child Protection issues are addressed by the Department of Revenue, Boston Children's Services Association, the Cambridge Family and Children's Services, the Catholic Charitable Bureau, the Department of Social Services, the Massachusetts Society for the Prevention of Cruelty to Children and many other organizations. The Department of Revenue provides free legal help for women claiming child support payments and has been active and tenacious in acquiring funds for these children through its "Deadbeat Dad" program.

Another area in which individuals reported significant concern over possible legal problems was employment. In Massachusetts, job-safety issues are addressed by the Massachusetts Division of Occupational Hygiene and the US Occupational Safety and Health Administration. Wage violations and workers' compensation issues also have recourse to governmental administrations and organizations.

VIII. Conclusion

Federal Restrictions on Legal Services: The 1996 Statute

Critics of the LSC have maintained virtually from the organization's start in 1974 that it was straying from its mission of providing needed legal services to eligible citizens. As one commentator said, "Liberals have cheered LSC as a force for 'social justice,' but conservatives have criticized it as offering taxpayer funding for radical activism and expansion of the welfare state."¹³⁵

Efforts to reform or abolish LSC intensified throughout the 1980s and early 1990s under presidents Ronald Reagan and George Bush. It was not until the Republican-dominated 104th Congress took office in January of 1995, however, that such efforts took hold. Ultimately, President Clinton signed a bill imposing a number of restrictions on LSC grantees. Those restrictions include prohibitions on:

- affecting redistricting or the taking of the Census;
- influencing the issuance of an executive order;
- influencing an agency proceeding;
- affecting the passage of legislation;
- influencing oversight of the LSC; or
- filing class-action lawsuits.

An LSC spokeswoman confirmed the corporation's new emphasis on individual client service. "We're refocused on clients themselves," she said.¹³⁶ The spokeswoman said the reforms prompted LSC to "refocus our delivery systems" to individual clients.

Reaction of LSC Grantees

Failure to accept and abide by the new restrictions would result in the loss of federal funds for LSC grantees. Predictably, say critics, LSC grantees immediately sought ways to evade the restrictions and continue to receive the funds.

Said Kenneth Boehm, "The new restrictions have left legal services activists looking for new ways to continue their controversial activities. Using a variation of a strategy tried in the 1980s, grantees are seeking to evade the restrictions by setting up new closely affiliated but legally separate activities. A 1985 GAO (General Accounting Office) investigation determined that such affiliated groups often engaged in activities prohibited to LSC grantees and that the relation-

¹³⁵ Kenneth F. Boehm, *The Legal Services Corporation: New Funding, New Loopholes, Old Games, Backgrounder*, The Heritage Foundation (17 May, 1996), 1.

¹³⁶ Beacon Hill Institute interview with Singh.

ships between these two sets of groups were so close that LSC should consider them one group for purposes of complying with restrictions.”¹³⁷

Table 7 – LSC Funds Recipients in the State of Massachusetts and Cases Closed¹³⁸

	1990	1991	1992	1993	1994	1995	1996	1997	1998
Volunteer Lawyers Project of the BBA	1,206	1,002	1,472	1,178	1,312	1,676	10,496	17,015	9,847
Greater Boston Legal Services	15,892	15,346	17,210	16,906	17,196	13,373	4,070	No Funds	-
Cambridge and Smville LS	2,219	2,238	1,341	1,478	879	815	277	No Funds	-
South Middlesex LS	1,688	870	635	698	805	1,344	1,348	973	1,362
LS for Cape Cod and Islands LS	2,728	3,141	3,766	3,832	4,110	4,370	4,054	3,787	2,575
Merrimack Valley LS	2,639	3,100	2,696	2,650	2,771	2,526	1,825	2,032	2,187
Neighborhood LS	800	1,251	1,947	1,858	1,624	1,594	1,825	No Funds	-
Southeastern Mass Legal Assist. Serv.	3,143	2,682	3,965	4,388	4,120	4,879	6,774	No Funds	-
Western Mass. LS	9,046	8,846	7,503	6,078	6,036	5,563	4,757	No Funds	-
Legal Assist. Corp. of Central Mass.	4,469	5,719	6,651	6,187	6,052	4,843	4,691	No Funds	-
New Center for Legal Advocacy	Not a Grantee	-	-	-	-	-	-	3,583	4,567
Massachusetts Justice Project	Not a Grantee	-	-	-	-	-	-	8,762	8,789

Our research indicates that the Massachusetts legislature has placed no restrictions on legal-services providers that receive state funds. In addition, the MLAC significantly changed its service delivery system in response to the federal government’s 1996 regulations. Many providers in Massachusetts do not accept federal standards and cannot receive LSC funds. These providers then meet the MLAC policy of “providing a full range of services.” Consequently, MLAC

¹³⁷ Boehm, 4.

¹³⁸ Information provided by Mauricio Vivero of the Legal Services Corporation on October 7, 1999.

continues to provide state funds for issue advocacy such as Medicare-related issues, and it provides funds for class action lawsuits. Table 7 indicates the six providers in Massachusetts that have refused LSC funding.

Reform Strategy

Taking those arguments into consideration, we thus recommend that the state legislature freeze its appropriation of MLAC funds for fiscal year 2001 until it adopts the following measures:

1. Commission a new survey to reassess the incidence of unmet legal needs among the poor in Massachusetts.
2. Impose conditions on the receipt of MLAC funds similar to the 1996 federal guidelines imposed by Congress on LSC distributions.
3. Direct a nonpartisan office – perhaps the Inspector General – to perform frequent, irregularly scheduled audits of MLAC grantees to ensure that caseloads are not overstated.
4. Conduct an information program aimed at alerting citizens to the existence of services that do not require MLAC funding, such as *pro bono* attorney services and the services of local, state and federal agencies and of law-school clinics.
5. Impose enhanced disclosure requirements holding the MLAC and its grantees to the standards codified in the Freedom of Information Act.

Appendix A: Samples of Actions by Legal Service Providers in Massachusetts

- **Greater Boston Legal Services instrumental in expanding state subsidies for parental leave.**

The Clinton administration proposed an experimental program on November 30, 1999 that would allow parents to receive state subsidy while taking time off to care for their infant. The new rule would give a minimum of 12 weeks of paid leave for parents during the first year after the birth of a baby or after adoption. According to advocates, Clinton modeled his plan on the two bills advocated and introduced to the Massachusetts legislature by Greater Boston Legal Services this year. The two bills would offer workers on parental leave 50% of their weekly wage, capping compensation at about 57.5% of the average weekly wage or \$402 last year, in the state. Since such subsidies would be paid out of the states' unemployment trust funds, Clinton directed the Labor Department to change a regulation that would allow states to pay parental leave from such funds. (Adapted from Diane E. Lewis "Clinton starts program for parental paid leave" *Boston Globe*, December 1, 1999 and Anne Gearan "Subsidies Proposed For Parents On Leave" *Washington Post*, December 1, 1999.)

- **Massachusetts Law Reform Institute fights toughening welfare rules.**

The Cellucci Administration is moving towards toughening work requirements for welfare recipients. The Governor's proposal would deny cash benefits to those who have recently quit a job, reduced the number of hours they work, or refused to accept any job offered. Under the state's 1995 welfare reform law, able-bodied parents of children who are at least six years old must work at least 20 hours a week to receive welfare benefits for up to 24 months in a five-year period. The Massachusetts Law Reform Institute lobbied for allowing education and training to count for ten of those 20 hours of work. The Governor vetoed the bill containing such allowance for receiving welfare benefits. (Adapted from Michael Crowley "State Seeks to Toughen Welfare Rules, Violator Lose their Cash benefit" *Boston Globe*, November 27, 1999.)

- **Legal services helped defeat a bill requiring mandatory rent escrowing.**

Senate 541 on mandatory rent escrowing would have required tenants who claim they are withholding their rent because of alleged code violations to place the unpaid rent in an escrow account. Legal services advocates helped to defeat this statute, claiming that it was unfair to rent-

ers. Some unscrupulous tenants have abused M.G.L. Chapter 239, Section 8A, the state's rent withholding code. The way this works is that tenants who receive an eviction notice for not paying rent can call the local housing inspector and complain about sanitary or building code violations. The housing inspector cites the landlord for a violation and the tenants forego paying rent until the problem is resolved. (Adapted from Allen G. Rogers, "Annette R. Duke 'Deeply Disturbed' By Eviction-Law Proposal", *Massachusetts Lawyers Weekly*, March 1, 1999.)

- **WMLS defies workfare requirements.**

In 1994, then-Human Services Secretary Charles Baker implemented a workfare rule requiring at least one parent in two-parent families on welfare to work or perform "community service" at a nonprofit agency for at least 30 hours a week. When a female welfare recipient arrived at a Greenfield social-service agency to fulfill the service requirement, the agency turned her away. A member of the agency's board of directors – who also worked for Western Massachusetts Legal Services – said, "It's unclear to me why Mr. Baker is trying to force an agency to accept a flawed program rather than address the problem with the program itself."

(Adapted from Don Aucoin, "Some Groups Skirt Welfare Jobs Program," *Boston Globe*, January 29, 1994, p. 1.)

- **WMLS encourages spendthrift behavior.**

A welfare recipient won \$75,000 in the lottery and subsequently squandered the money on drugs and gambling. When he was denied the resumption of welfare benefits, Western Massachusetts Legal Services took his case. WMLS had previously published a pamphlet advising recipients with windfalls to "spend the money as quickly as possible" to "resume eligibility as soon as possible." (Adapted from *Massachusetts Lawyers Weekly*, "Looking Out for Their Welfare," December 6, 1993, p. 30.)

- **GBLS critical of state statute providing for eviction of drug dealers.**

A Massachusetts statute allows landlords to initiate a civil action to evict tenants who keep or sell illegal drugs in their apartments. In a five-year period, the statute was used to evict up to 2,000 drug-dealing tenants. Greater Boston Legal Services, however, criticized the statute in a *Boston Globe* article. "We want to see some flexibility, said a GBLS representative. "The problem is that tenants' rights are being abridged, and that's the bottom line." (Adapted from Matt Carroll, "Drug Dealers Beware!" *Boston Globe*, May 23, 1993, p. A1.)

- **Institute criticizes welfare-reform proposal.**

In 1992, the Weld administration proposed to replace Aid to Families with Dependent Children with an alternative plan that would have looked to absentee fathers for the brunt of payments to families. A representative of the Massachusetts Law Reform Institute criticized the proposal, saying, “Part of what we’re seeing now is a continuation of, and an outgrowth of, the Reagan-era ideology that says you should look out for yourself, and take responsibility for yourself. The government is not going to look out for people the way it has in the past. This idea that if we take the supports out from under poor people, they’ll go out and support themselves, is just ridiculous.” (Adapted from Teresa Hanafin, “Stubborn Welfare Rolls Spur Aid Alternatives,” *Boston Globe*, June 21, 1992, p. 1.)

- **Institute fights to overturn restriction in welfare benefits.**

In 1992, the Massachusetts Law Reform Institute filed a class-action suit on behalf of mothers on welfare who saw their benefits cut off after they failed to have their education or training programs approved before a September deadline. After prevailing in Superior Court, a representative of the institute said of the expected appeal by the Weld administration, “We are optimistic that the judge’s decision will be upheld and that our view of the law is correct.” (Adapted from Diego Ribadeneira, “Weld’s Cuts in Child Care Ruled Illegal,” *Boston Globe*, November 21, 1992, p. 1.)

- **Law Reform Institute backs \$1.6 billion services tax.**

In 1990, then-Governor Michael Dukakis submitted a bill calling for a five-percent tax on services in excess of \$20,000. The bill was part of a \$1.6 billion tax package approved by the legislature. Anticipating a Supreme Judicial Court analysis of the constitutionality of taxing services, the Massachusetts Law Reform Institute joined a brief supporting the service tax. (Adapted from Elsa Arnett, “Fifty Groups Weigh in on Service Tax,” *Boston Globe*, July 14, 1990, p. 1.)

- **Legal services sues INS for deporting a convicted felon.**

A Haitian immigrant who legally entered the United States in 1982 was subsequently convicted of crimes such as assault and battery, breaking and entering, and armed robbery. When the Immigration and Naturalization Service initiated deportation proceedings in 1983, Greater Boston Legal Services came to the immigrant’s defense, arguing that he lacked the requisite “moral turpitude” for deportation. A federal appellate court rejected the GBLS argument. (Adapted from *Joseph v. INS*, 909 F. 2d 605 (US App. Ct.), 1990.)

- **Law Reform Institute opposes bill linking welfare to school attendance.**

In 1990, a Democratic state senator sponsored a bill that would have limited Aid to Families with Dependent Children to teenagers with high absentee rates and eliminated altogether the benefits for teenage dropouts. According to an account in *The Boston Globe*, the bill would have “encourage[d] family responsibility.” The Massachusetts Law Reform Institute, however, opposed the bill, saying it would “only aggravate the economic difficulties that often cause drop-out problems in the first place.”

(Adapted from Reneé Loth, “Cool Reaction Faces Bill Linking Welfare, School,” *Boston Globe*, April 18, 1990, p. 26.)

- **Legal services sues city for confiscating drug dealers’ welfare ID cards**

In Lawrence, an impoverished northern Massachusetts city, then-Mayor Kevin J. Sullivan ordered the city’s police force to confiscate the welfare identification cards of residents arrested on drug charges. “If you deal drugs,” said Sullivan, “you should not be entitled to Section 8 housing, public housing or welfare.” Responding to Sullivan’s policy, Merrimack Valley Legal Services filed a class-action suit on behalf of a Lawrence woman who lost her identification card after the police searched her apartment for drugs. A representative of Merrimack Valley Legal Services said, “Everyone agrees with getting rid of drugs and crime, but we have to go about this in a rational way.”

(Adapted from Reneé Graham, “Lawrence Mayor’s Tactics on Drugs Stir Rights Fears,” *Boston Globe*, June 27, 1989, p. 13.)

Appendix B: Beacon Hill Institute's Experience with the LSC

The Information below chronicles the experiences of the Beacon Hill Institute in attempting to obtain information guaranteed under the Freedom of Information Act from the Legal Services Corporation at the federal and state levels.

BHI Communications with the LSC

Topic	Date Sent/Tried	Date Response	Who Contacted
Mass. LSC Funding	8/29/99	9/23/99	Susan Meyers fax (202) 336-8955
The Beacon Hill Institute	10/13/99	none	Susan Meyers fax (202) 336-8955
Info. From LSC	10/18/99	10/27/99*	Mauricio Viviro phone (202) 336-8862, fax (202) 336-8952
Target Performance	10/25/99	none	Anthony Benedetti phone (202) 988-8365, fax (202) 988-8495
Civil Legal Matters	11/1/99	none	Anthony Benedetti phone (202) 988-8365, fax (202) 988-8495
LSC Grantees	11/3/99	none	Mauricio Viviro phone (202) 336-8862, fax (202) 336-8952
Indigent Client Services	11/17/99	none	Anthony Benedetti phone (202) 988-8365, fax (202) 988-8495
Lack of Assistance	11/17/99	none	John McKay fax (202) 336-8955
Lack of Assistance, Info. Requests	11/17/99	none	Edouard Quatrevaux fax (202) 336-8955
Info. Request	3/6/00	none	Susan Meyers fax (202) 336-8955

* Only one of three questions answered.

Appendix C: Federal Grants (LSC and Non-LSC Funds) for the State of Massachusetts

LSC grantees for 1999

Volunteer Lawyers Project of Boston Bar Association
South Middlesex Legal Services, Inc.
Legal Services for Cape Cod and the Islands
New Center for Legal Advocacy
Merrimack Valley Legal Services
Massachusetts Justice Project, Inc.

State appropriations, IOLTA and private donations

MLAC grantees for 1998

Boston College Legal Assistance Bureau
Community Legal Services and Counseling Center
Center for Law and Education
Center for Public Representation
Children's Law Center of Massachusetts
Disability Law Center
Greater Boston Legal Services
Legal Assistance Corp. of Central Massachusetts
Legal Services for Cape Cod and the Islands
Massachusetts Advocacy Center
Massachusetts Correctional Legal Services
Massachusetts Law Reform Institute
Merrimack Valley Legal Services
National Consumer Law Center
Neighborhood Legal Services
South Middlesex Legal Services
Southeastern Massachusetts Legal Assistance Corp.
Western Massachusetts Legal Services

Massachusetts Bar Foundation grantees for 1998-1999

Bar Association of Norfolk County
Barnstable County Bar Association
Berkshire County Consumer Advocates, Inc.
Berkshire County Regional Housing Authority
Berkshire Mediation Services
Brighton High School Law Center/Gardner Elementary
Brookline Community Mental Health Center
Cambridge Dispute Settlement Center
Cape Cod Dispute Resolution Center, Inc.
Casa Myrna Vazquez, Inc.

Catholic Social Services of Fall River, Inc.
Centro Presente, Inc.
Children's Law Center of Massachusetts
City Life/Vida Urbana
Coastline Elderly Services, Inc.
Community Legal Services and Counseling Center
Disability Law Center, Inc.
Dismas of Central Massachusetts, Inc.
Dispute Resolution Services, Inc.
DOVE, Inc.
East Boston Ecumenical Community Council
Ecumenical Social Action Committee, Inc.
Essex County Bar Association
Flaschner Judicial Institute
Framingham Court Mediation Services, Inc.
Franklin Community Action Corporation
Franklin County Bar Advocates, Inc.
Gay & Lesbian Advocates & Defenders
Gerontology Institute (UMASS)
Greater Boston Catholic Charities Refugee & Immigration Services
Greater Boston Legal Services
Greater Lowell Bar Association
Greater New Bedford Women's Center
Hampden County Bar Association
Hampshire Community Action Commission
Hampshire County Bar Association
Harry H. Dow Memorial Legal Assistance Fund
HIV/AIDS Law Consortium of Western Mass.
Housing Discrimination Project, Inc.
Independence House
International Institute of Boston
Jewish Family & Children's Services
Jewish Family Service of Worcester, Inc.
Latino Health Institute
Lawyers Clearinghouse on Affordable Housing & Homelessness
Legal Advocacy and Resource Center
Legal Assistance Corporation of Central Massachusetts
Legal Resource Center, Inc.
Legal Services for Cape Cod & Islands, Inc.
Martha's Vineyard Community Services, Inc.
Massachusetts Advocacy Center
Massachusetts Association of Mediation Programs and Practitioners
Massachusetts Bar Association
Massachusetts Correctional Legal Services, Inc.
Massachusetts Environmental Justice Network
Massachusetts Justice Project, Inc.
Massachusetts Law Reform Institute
Mediation Works, Inc.
Merrimack Valley Legal Services Inc.
MMDC/MBA Conciliation Program
National Lawyers Guild, Mass. Chapter

Necessities/Necesidades, Inc.
Neighborhood Legal Services, Inc.
New Center for Legal Advocacy, Inc.
North Central Court Services, Inc.
North Shore Community Action Programs, Inc.
Northeastern University, Justice George Lewis Ruffin Society
Northeastern University School of Law
Pilgrim Advocates, Inc.
Political Asylum/Immigration Representation Project
Public Interest Law Foundation
Quabbin Mediation
Shelter Legal Services Foundation, Inc.
Small Claims Advisory Service
Somerville Community Corporation
South Middlesex Legal Services, Inc.
Southeastern Massachusetts Legal Assistance Corporation
Tri-City Community Action Program
Western Massachusetts Legal Services, Inc.
Women's Bar Foundation/Women's Bar Association
Women's Crisis Center of Greater Newburyport
Women's Lunch Place
Worcester Community Action Council, Inc.
Worcester County Bar Association
Youth Opportunities Upheld, Inc.
YWCA of Western Massachusetts

Boston Bar Foundation Grantees for 1998-1999

Alternative for Community and Environment, Inc.
Boston Bar Association
BBA Task Force on Children in Need of Services
BBA Task Force on Unrepresented Litigants
Boston Medical Center
Cambridge Dispute Settlement Center
Casa Myrna Vazquez, Inc.
Catholic Charities – Greater Boston
City Life/Vida Urbana
Centro Presente, Inc.
Children's Law Center of Massachusetts, Inc.
Committee for Public Council Services
Community Legal Services and Counseling Center
East Boston Ecumenical Community Council
Gerontology Institute, UMASS Boston
Greater Boston Association of Retired Citizens, Inc.
Greater Boston Legal Services
Guidance Center
Harry H. Dow Memorial Legal Assistance Fund
Home S.P.A.C.A. Inc.
International Institute of Boston, Inc.
Jewish Family and Children's Services

Lawyers' Clearinghouse on Affordable Housing and Homelessness
Lawyers' Committee for Civil Rights Under the Law – Boston Bar Association
Legal Advocacy and Resource Center
Massachusetts Advocacy Center
Massachusetts Association of Mediation Programs and Practitioners
Massachusetts Correctional Legal Services
Massachusetts Legal Assistance Corporation
National Consumer Law Center
Neighborhood Legal Services, Inc.
Northeastern University / College of Criminal Justice
Park Square Advocates, Inc.
Political Asylum/Immigration Representation Project
RESPOND
Shelter Legal Services Foundation, Inc.
Social Justice for Women, Inc.
Somerville Community Corporation
South Middlesex Legal Services
Tri-City Community Action Program
Volunteer Lawyers for the Arts of Massachusetts, Inc.
Women's Lunch Place

Appendix D: The Beacon Hill Institute Survey

Interviewer Initials_____

Project Name_____

Address of Resp._____

“Hello, I’m_____ from the Beacon Hill Institute at Suffolk University. We’re doing a local study of important issues facing American households today. Whatever you tell me will be completely confidential, and the study findings will only show answers from many people together.

This study is about problems that normal households have and how they solve them. The findings will suggest ways to improve available services. Taking part in the survey is voluntary, but every household that is selected is very important because it represents many others that were not chosen.

If it’s all right with you, let’s get started.”

Socio-demographic Information

For the demographic questions, the interviewer should let the interviewee answer naturally and then the interviewer can code by circling the correct answer.

1. Gender of the respondent
 - a. Male
 - b. Female

2. How old are you?
 - a. 20 – 29
 - b. 30 – 39
 - c. 40 – 49
 - d. 50 – 59
 - e. 60 +

3. Are you currently . . .
 - a. Married
 - b. Divorced
 - c. Living with a partner
 - d. Widowed
 - e. Single

4. Which is the highest grade in school that you have completed?
 - a. Less than High School
 - b. High School
 - c. Junior College
 - d. Bachelor
 - e. Graduate/Professional school
 - f. Other _____ (Please specify)

5. Which of the following best describes you?
 - a. White
 - b. Black or African-American
 - c. Hispanic
 - d. Asian or Pacific-Islander
 - e. American Indian, Aleut, or Eskimo
 - f. Others _____ (Please specify)

6. If working, please describe your present work situation and occupation?

If unemployed, when was the last time that you were employed?

The interviewer should write down what the respondents say. The interviewer can use the following options if it is necessary:

1. working full-time (that is, 35 or more hours per week),
2. working part-time (that is, less than 35 hours per week),
3. unemployed or laid off and looking for work,
4. unemployed or laid off and not looking for work,
5. retired,
6. disabled and unable to work,
7. in school,
8. a homemaker,
9. other _____ (please specify)

7. What is your weekly income? _____

8. Is your home rented or owned:
 - a. in your name alone,
 - b. by you along with someone else,
 - c. by at least one other household member, but not you?
 - Other (specify: _____)
 - unmarried partner
 - housemate or roommate
 - landlord
 - other non-relative (specify: _____)

9. Who, besides you, helps pay for your housing?

10. A. How much do you pay per month for your housing?

B. How much do you pay per month for utilities (water, heating, electricity, telephone)?_____

11. At the present time, how many people including yourself live in your household, whether they are related to you or not? Please count everyone who lives here half the time or more, including babies and small children and anyone who usually lives here but is away:

12. For the persons identified previously, ask questions 1 to 6 about each person in the household who is currently working either part-time or full-time:

1. Relationship to the respondent:

Person 1 _____

Person 2 _____

Person 3 _____

Person 4 _____

2. Gender:

Person 1 _____

Person 2 _____

Person 3 _____

Person 4 _____

3. Age:

Person 1 _____

Person 2 _____

Person 3 _____

Person 4 _____

4. Work Status:

Person 1 _____

Person 2 _____

Person 3 _____

Person 4 _____

5. Occupation:

Person 1 _____

Person 2 _____

Person 3 _____

Person 4 _____

6. Weekly Income:

Person 1 _____

Person 2 _____
Person 3 _____
Person 4 _____

13. Now think again about all the people in your household including yourself. What would you say your total combined annual household income from all sources is:
- a. less than \$10,300
 - b. \$10,301 - \$14,000
 - c. \$14,001 - \$17,500
 - d. \$17,501 - \$21,000
 - e. \$21,001 - \$25,000
 - f. \$25,001 - \$28,000
 - g. \$28,001 - \$32,000
 - h. more than \$32,000

*DO NOT include regular payments from public assistance, social security, unemployment and workers' compensation, strike benefits from union funds, veterans benefits, stipend, alimony, child support or other regular support from a family member not living with the family unit in the household.

Legal-Related Questions

For the following question, the idea is to let the respondent say what his/her problems are in his/her own words. Later, one of these problems can be categorized. For the next question, the interviewer should be prepared to give some examples concerning what the nature of the problem might be:

1. Housing

- Problems with your apartment, such as no heat
- Threat of unfair eviction

2. Family (domestic issues, children schooling, wills)

- Need to get restraining order
- Assistance with a divorce

3. Employment

- Was denied employment due to gender/race
- Suffered sexual harassment

4. Public Benefits

- Loss of welfare benefits to which the subject was entitled
- Unfair loss of food stamps

5. Disability and health care

- Denied employment due to disability
- Inability to receive needed health care

6. Personal finance, credit, consumer matters

- Creditors are suing the subject
- Loss of money due to phone scam

7. Personal Economic Injury

- Need to recover damages for personal injury (Note: if “yes,” ask if subject has consulted a lawyer who would work for a contingency fee)
- Breach of contract

8. Civil liberties

- Housing discrimination
- Denial of free speech

9. Immigration issues

- Inability to obtain employment due to immigration status
- Inability to obtain work permit or citizenship

14. Now, I would like you to think about the year 1999, that is from January 1, 1999 until the present. Did you or anyone in your household have any problems that started within the last year and required the service of a lawyer?
- a. Yes
 - b. No

If YES, please describe briefly the situation_____

15. Which one of the problems you mentioned above do you consider:
- a. The biggest problem_____
 - b. The second biggest problem_____
 - c. The third biggest problem_____

The interviewer asks the respondent first to consider the biggest problem. The following questions (16–18) are about this problem. After you finish with the first problem, you will ask the respondent to consider the second and third biggest problems, and ask him/her the same questions (16–18) for each of them.

16. A. There are a lot of things people may do to deal with a situation either on their own or with the help of a third party. For the problem that you mentioned, what did you (or your householder) do to deal with it?

After the respondent’s free recall of actions for all situations mentioned, the interviewer asks the following:

B. Did you (or your householder) turn to any of the following for help with this legal problem?

1. a legal-services office/provider ----- Go to B1
2. a private lawyer or law firm
3. a mediator, arbitrator or dispute resolution center
4. a court or a government body that holds hearings

5. a regulatory agency or a consumer group (e.g., Better Business Bureau)
6. a public or private service providing agency (e.g., family services agency)
7. a community group, leader or elected official
8. a professional (e.g., accountant, tax preparer, insurance or real estate agent)
9. a union or professional organization, or a civil rights organization (e.g., ALCU, NAACP)
10. any other person or organization
11. other (specify: _____)

B1. Did you walk in or call the office?

1. Walk in Did they help you in a timely manner?

- a. Yes
- b. No Why Not?

2. Call the office Did you receive the kind of help that solved your problem?

- a. Yes
- b. No Why not?

C. Did they help you solve your problem?

- a. Yes
- b. No
- c. Some

D. How do you feel about the way that these persons/organizations were responding to your needs?

- a. Satisfied
- b. Fairly satisfied
- c. Not very satisfied
- d. Not satisfied at all

17. A. Besides seeking outside help or advice, did you (or your householder) do anything on your own about the situation?

- a. Yes
- b. No
- c. Don't know/Can't recall

B. What was that?

18. Please tell me the most important reason for not getting a lawyer to pursue your problem:

- a. Not a problem (just the way things are)
- b. Thought nothing could be done
- c. Turned to someone else to handle
- d. Was advised the matter was not worth pursuing
- e. Help not needed yet (wait and see)
- f. Didn't know who could help
- g. Didn't want (public) dispute
- h. Didn't want hassle
- i. Worried about cost
- j. Afraid/intimidated (feared retaliation)
- k. Other (specify: _____)
- l. Don't know/ can't recall

19. A. Who do you wish you had turned to in order to solve your problem?

B. If you had money, who would you turn to for help?

C. If you had money, do you think a lawyer would be a good person to turn to?

20. If you need a lawyer in the future:

a. Do you know any services in your area that make referrals to lawyers? Yes No

b. Do you know any mediation services in your area that work out an agreement between people involved in a dispute Yes No

c. Are you aware of a small claims court where ordinary people can go to have their cases heard? Yes No

d. Are you aware of any free civil legal services for people who cannot afford a lawyer? Yes No

e. Are you eligible for free legal services? Yes No

f. Do you belong to a prepaid legal plan or have insurance that covers legal services? Yes No

g. Are you aware of other avenues that you might explore? (specify: _____) Yes No

21. If you had at least one of the kinds of problems or situations that we have just discussed and if you were suddenly to win an unexpected \$10,000 in the Massachusetts State Lottery, what would you do with the money? _____

- a. Hire a private lawyer to pursue your problem
- b. Other

Appendix E: Alternatives to Legal Services in Massachusetts

For each of the following categories of “legal needs” as defined by the *CLNS* and *MLNS*, we have identified state agencies that, as part of their mandate, offer free dispute resolution to all citizens of the Commonwealth of Massachusetts. Many of these are listed in the phone book.

Consumer Protection Problems

Attorney General’s Consumer Complaints Office

Information and Referral Services

Citizen Information Service, Massachusetts Government
Federal Information Center, federal agencies
Call for Action, WBZ
First Call for Help

Landlord-Tenant Problems

Inadequate Heat

Boston Housing Inspectional Services
Brookline Housing Department
Cambridge Housing Department
Somerville Housing Department

Issues concerning Public Housing

Boston Housing Authority
 Handicapped Services
 Elderly Disabled Program
 Leased Housing Inspections Office
Brookline Housing authority
Cambridge Housing authority
Somerville Housing authority

Tenant Organizations

Mass. Tenant Organizations
Mass. Union of Public Housing

Boston Mayor’s Office of Consumer Affairs And Licensing

Executive Office of Communities and Development

Shelter Emergency Problems

Department of Social Services/Shelter Resources Unit

Unsafe/ Unsanitary Conditions

Boston Housing Inspectional Services (with after hours access)
Brookline Health Department
Cambridge Health Department
Somerville Health Department

Child Protection

Department of Revenue
Boston Children's Services Association
Cambridge Family & Children's Services
Catholic Charitable Bureau
Children At Risk Hotline, Dept. of Social Services
Massachusetts Society for the Prevention of Cruelty to Children
National Runaway Switchboard
Parents Anonymous

Advocacy/Information/Referral

Adoption Resource Exchange
Department of Social Services
Help for Children, Office for Children

Employment Problems

Job Safety
Massachusetts Division, Occupational Hygiene
U.S. Occupational Safety & Health Administration

Unemployment Benefits
Division of Employment Security, Ombudsman

Wage Violations
Department of Labor and Industry
Minimum and Overtime
Non-payment

Workers Compensation
Industrial Accident Board
Private Employment
State Employment

Elder Services

Massachusetts Department of Elder Services
Boston Elderly Hotline
Alzheimer's Association National Chapter
Massachusetts Association of Older Americans

Welfare

Department of Transitional Assistance
Food Stamp Information Line