

People Without Lawyers:
**New Jersey's Civil Legal
Justice Gap Continues**



A Report from
Legal Services of New Jersey
October 2006

Introduction

This report updates a similar 2005 study of the extent to which low-income New Jerseyans cannot get lawyers for their civil legal problems: the *civil justice gap*. It reveals some narrowing of the justice gap, but the chasm remains huge.

For 40 years, Legal Services has constituted New Jersey's system for providing free legal assistance in civil cases to those afflicted by poverty. Coordinated by Legal Services of New Jersey (LSNJ), the Legal Services system consists of six regional programs plus LSNJ, with 25 offices serving all 21 counties. More than 550 staff, including nearly 300 lawyers, provide the bulk of the representation. A network of nearly 2,000 private lawyers take referred cases on a pro bono (no fee) basis, supplementing the staff efforts.

Legal Services regularly assesses the civil legal needs of low-income people. In 2002, LSNJ released *Legal Problems, Legal Needs – The Legal Assistance Gap Facing Lower Income People in New Jersey*. The study concluded that 5 out of 6 indigent New Jerseyans cannot secure a lawyer's help for their civil legal problems, and that more than one-third of all those in poverty have a civil legal problem each year. This scientific study will be updated next year.

Last year, LSNJ for the first time gathered data concerning unrepresented people in the courts, and supplemented it with information on those turned away by Legal Services programs because of inadequate funding. This report tracks similar statistics, and also looks at additional indicators from Legal Services programs' own experience.

New Jersey's situation mirrors the national experience. In 2005, the national Legal Services Corporation (LSC), funded by Congress, revealed a national civil justice gap: conservatively, at best only 1 in 5 low-income Americans actually have access to civil legal counsel.¹ Based upon this finding, the LSC launched a new five-year campaign seeking to double its appropriation. On reaching that milestone, it will begin to close the remainder of the national justice gap. The LSC has called on its major partners – state governments, the private bar and the private sector – to match its efforts.

This report has three sections: an examination of the most recent New Jersey Administrative Office of the Courts (AOC) statistics, a presentation of Legal Services statistics and related information, and a concluding overview.

¹ See "Documenting the Justice Gap in America." Legal Services Corporation, 2005.

PART I – AOC (COURT) DATA CONCERNING UNREPRESENTED LITIGANTS

Only a fraction of the civil legal problems of low-income people result in litigation before a court or administrative agency. LSNJ looked at four types of legal cases where low-income people are frequently involved, and then contrasted these cases with the General Civil docket, which mostly involves litigants who are not eligible for Legal Services representation. It is to be noted that the AOC does not collect or have information concerning the actual incomes of litigants, so these case types must serve as proxies for direct income information. All statistics were secured from the AOC in September 2006, and are for the July 2005 – June 2006 court year.

1. Landlord – Tenant.

The vast majority of summary evictions involve defendants eligible for assistance from Legal Services (incomes below 200% of the federal poverty line). There were 165,943 tenancy summary evictions closed, up 2,210 (1.3%) from the prior year. A staggering 99% of the cases had defendants who were not represented, the same percentage as last year; 42% of these cases had defaults entered.

2. Special Civil Part.

This civil court is for cases involving small amounts in dispute, under \$15,000 – typically consumer and contract matters which frequently include low-income defendants. *Excluding* Small Claims matters, which are designed to be resolved without attorneys, there were 284,548 Special Civil cases closed, up 38,346 (15.6%) from the prior year. Of these, 98% involved unrepresented defendants, up 3% from last year.

3. Family Division.

A. Dissolutions (divorces).

A very significant number of low-income people are engaged in matrimonial proceedings. There were 31,498 cases resolved, down slightly (468 cases, 1.4%) from the prior year. Of these, 30% of plaintiffs had no attorneys, and 68% of defendants were unrepresented (51% of these went by default); the comparable figures last year were 30% (same), 67%, and 51%.

B. Non-Dissolution.

These include custody, support and other domestic matters not arising as part of a divorce. Last year, 70% of plaintiffs and 96% of defendants were unrepresented. The comparable preceding year figures were 71% and 96%.

Analyzing the data.

Overall, with the exception of Special Civil, which showed marked increases in the number of cases and percentage of unrepresented, the figures are remarkably similar to last year's, and thus reveal little change in the amount of representation of low-income people in the civil courts – a continuing, and huge, civil justice gap. The numbers present a striking contrast to those for the General Civil docket – typically populated by litigants of means – where 95% of plaintiffs and 98% of defendants *were* represented.

PART II – LEGAL SERVICES DATA

According to the 2005 national LSC report, across the country roughly two-thirds of those seeking help from Legal Services must be turned away. In New Jersey, Legal Services regional programs turned away just over 119,000 who had sought help, down slightly from some 126,000 last year, a very modest improvement. In addition, Legal Services programs reported a variety of restrictions on intake during the year. Typical examples include:

- Essex-Newark Legal Services' Elder Law Unit was closed completely to intake for 40 business days during the year, and its Consumer Law Unit was closed to intake for 20 business days. It currently has 60 clients on its divorce waiting list.
- Legal Services of Northwest Jersey, covering the five northwest counties, was closed entirely to divorce intake for several months during 2005.
- South Jersey Legal Services, which covers the seven southernmost counties, closed some of its six offices to intake during the year. The Camden Housing Unit had reduced intake most of the year (February to November), and Bridgeton accepted no SSI cases for the last four months of the year.
- Northeast New Jersey Legal Services continues to open its divorce intake for only one or two days a year, by publishing an ad in local papers.

Beyond turnaways and intake restrictions, Legal Services programs for many years have had to limit their services – because of limited resources – in several other ways:

- They frequently will provide only advice, not extended representation, in several types of cases, even though full representation may be necessary and desired by the client.
- They may decline to take an appeal, even though meritorious.
- They may offer only a general legal information clinic in a particular area of law, instead of specific advice (or more extended representation) to each individual about their particular case.
- They may refer callers to printed legal educational materials, or the LSNJ Web sites, instead of providing actual representation.

While each of these avenues provides people with some legal help, they fall well short of offering necessary full representation.

PART III – INTERPRETING THE INFORMATION

CONTINUING JUSTICE GAP – SOME PROGRESS, BUT STILL HUGE

The AOC data makes starkly apparent the consequence of inadequate resources for civil legal assistance. Most of Legal Services' funding sources have been flat or even slightly reduced over the past three years. Only the New Jersey Supreme Court's IOLTA program has increased. The IOLTA increases, due to a combination of a rise in bank interest rates, a late 2005 "agreement" with banks requiring IOLTA to be treated the same as the bank's "best customer," and a booming housing market, produced sharply increased revenue (\$18.1 million by the end of 2005, and perhaps as much as \$30 million in 2006), although it is now showing signs of leveling off as interest rates have plateaued and the housing market deflates. Because IOLTA funding is unpredictable and can vary widely from quarter to quarter, typically the effects of such increases take months or more to show up in increased caseloads, as other staff must be hired and additional office space secured. LSNJ projects that statewide caseload will rise by roughly 10% in 2006 (from roughly 51,000 in 2005 to 55,000 or more this year) with a further increase – if the higher funding continues to hold – in 2007.

During the past several years, Legal Services in New Jersey has made many major changes to increase efficiency: merging fourteen programs down to six in 2003, building a streamlined technology infrastructure to reduce costs of service, launching an interactive clients' Web page to provide additional assistance (currently receiving over 8,000 visits per week, on top of over 6,000 per week at our organizational site), increasing print and video informational materials, and expanding our statewide legal hotline (expected to assist over 15,000 in 2006). These efforts alone, however, will not close the justice gap.

Based upon the increased IOLTA funding, it is hoped that the proportion of low-income people not having access to lawyers may decline slightly – perhaps from 5 out of 6 to 4 out of 5 – by the time of the 2007 comprehensive legal needs study. But the gulf – the number not getting a lawyer – will remain enormous. Reliance on IOLTA increases will not close it significantly more: the potential is simply not there for similar future order-of-magnitude increases. Most legal disputes involving low-income people arise under state law, and occur in state courts and forums. Ultimately, it will be up to the state to provide the bulk of the necessary financial support. As LSNJ advised concerned and supportive state legislators during hearings in December 2005 and April 2006, only a deliberate, multi-year state commitment holds any promise for significantly closing this justice gap over time. While these are difficult budget times, the journey must start somewhere – the recent IOLTA increases provide a strong platform from which to launch a ten-year state effort to bridge the justice gap.