

2016

Costs of Law School and Costs of Legal Aid: Expanding Legal Aid and Increasing Access to Justice in Housing Law

Anne Puluka

Follow this and additional works at: <http://digitalcommons.law.msu.edu/king>

Recommended Citation

Anne Puluka, *Costs of Law School and Costs of Legal Aid: Expanding Legal Aid and Increasing Access to Justice in Housing Law* (2016), Available at: <http://digitalcommons.law.msu.edu/king/267>

This Article is brought to you for free and open access by Digital Commons at Michigan State University College of Law. It has been accepted for inclusion in Student Scholarship by an authorized administrator of Digital Commons at Michigan State University College of Law. For more information, please contact domannbr@law.msu.edu.

*Costs of Law School and Costs of Legal Aid: Expanding Legal Aid and Increasing Access to
Justice in Housing Law*

by
Anne Puluka

Submitted in partial fulfillment of the requirements of the
King Scholar Program
Michigan State University College of Law
under the direction of
Professor Wenona Singel
Spring, 2016

INTRODUCTION

The “justice gap” and dearth of legal resources for low-income individuals are not new concerns; they have been the subject of commentary for years.¹ News stories and editorials abound regarding how law schools are churning out far more lawyers than America needs, at great cost to the students.² However, this is not strictly true. Law schools are not graduating more lawyers than the country needs—in fact, the number of low-income and middle class individuals without access to the legal aid they need is staggering.³ New lawyers are not outnumbering the potential clientele for legal services, rather, they are outnumbering the openings in the legal job market and the percentage of the population with enough income to afford legal services. This justice gap between licensed attorneys and clients who can afford their services provides a great deal of space for newly-minted lawyers, as well as experienced attorneys, to re-examine how law is practiced in the technological age and harness those new technologies to create a more accessible legal market.

¹ See, e.g., Norah Rexer, Note, *A Professional Responsibility: The Role of Lawyers in Closing the Justice Gap*, 22 GEO. J. POVERTY L. & POLICY 585, 592 (2015); Anna Blackburne-Rigsby, *Ensuring Access to Justice for All: Addressing the “Justice Gap” Through Renewed Emphasis on Attorney Professionalism and Ethical Obligations in the Classroom and Beyond*, 27 GEO. J. LEGAL ETHICS 1187, 1189-90 (2014); Margaret Meriwether Cordray, *Expanding Pro Bono’s Role in Legal Education*, 48 IDAHO L. REV. 29, 39 (2011); Editorial, *Legal Education Reform*, Nov. 11, 2011), <http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html>; Vesselin Mitev, *Job Anxiety Grips Graduating Law School Students*, AM. LAWYER (April 22, 2009), <http://www.americanlawyer.com/id=1202430074803/Job-Anxiety-Grips-Graduating-Law-School-Students?slreturn=20160403165140>; Helaine M. Barnett, *Bridging the Justice Gap*, 47 JUDGES’ J. 4, (2008).

² See, e.g., David Segal, *Burdened with Debt, Law School Graduates Struggle in the Job Market*, N.Y. TIMES (April 26, 2015), <http://www.nytimes.com/2015/04/27/business/dealbook/burdened-with-debt-law-school-graduates-struggle-in-job-market.html>; Jeff Jacoby, *US Legal Bubble Can’t Pop Soon Enough*, BOSTON GLOBE (May 9, 2014), <https://www.bostonglobe.com/opinion/2014/05/09/the-lawyer-bubble-pops-not-moment-too-soon/qAYzQ823qpf4GQl2OiPZM/story.html>; Jennifer Smith, *Crop of New Law Schools Opens Amid a Lawyer Glut*, WALL ST. J. (Jan. 31, 2013), <http://www.wsj.com/articles/SB10001424127887323926104578276301888284108>.

³ See, e.g., LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 9 (2009) (finding that “for every client served by an LSC-funded program, at least one person seeking help will be turned down due to limited resources”). This study of unmet civil legal needs also underestimates the justice gap, as the data is based solely on LSC-funded organizations; only includes individuals who sought help, leaving out the population of individuals who are unaware that legal aid services exist; and did not include individuals who were financially ineligible for these legal aid services, despite not having enough personal income to spend on representation. *Id.*

These innovations in the delivery of legal services would be particularly impactful in civil cases dealing with basic human rights and needs. The idea of a “Civil Gideon” has been gaining traction, with even the American Bar Association offering an official endorsement.⁴ The Civil Gideon principle, named after the famous case of *Gideon v. Wainwright*,⁵ would provide for a right to an attorney provided by the state for indigent defendants in “adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody.”⁶ Housing law, particularly as it relates to eviction, is a fertile area for expansion of the limited civil right to counsel because shelter is one of the most basic human needs⁷ and is nearly universally viewed as essential. Further, housing cases may evoke more public empathy and support because most individuals can understand, based on their personal experience, the necessity of adequate shelter. Much like food and water, few people would choose to live a life with housing uncertainty or without housing entirely.

This paper examines various means of expanding access to justice in housing eviction cases, using the legal system in Pittsburgh, Pennsylvania as a case study. The first section outlines a basic overview of the housing court in Pittsburgh and the relevant landlord-tenant law in Pennsylvania. The Part II discusses current access to justice initiatives, developments in the delivery of legal services to better serve low-income communities, and emerging technologies that can be implemented to address the justice gap. Part III analyzes the ways in which law schools can encourage graduates to work in the legal aid or public interest sector, as well as the

⁴ AM. BAR ASS’N, *Civil Right to Counsel Resolution* (2006), available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.authcheckdam.pdf (“[T]he American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter . . .”).

⁵ 372 U.S. 335, 344 (1963) (holding that in criminal cases “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him”).

⁶ See AM. BAR ASS’N, *supra* note 4.

⁷ See *id.*

issues of law school debt and financing that prevent many from choosing this path. Part V concludes by outlining a potential path for closing the justice gap through innovations in the delivery of legal services to the poor.

I. HOUSING LAW IN PITTSBURGH, PENNSYLVANIA

Across the country, it is common knowledge that most tenants who are summoned to court for a landlord-tenant dispute must represent themselves *pro se*.⁸ Most of these tenants simply cannot afford to pay for legal counsel, and with the scarcity of funding for legal aid, few tenants win the legal aid lottery for *pro bono* representation. While exact statistics for the city of Pittsburgh are unknown, studies in various other jurisdictions show that the vast majority of the tenants in landlord-tenant disputes are low-income and unrepresented in eviction actions.⁹ Low-income families in Pittsburgh do shoulder heavy cost burdens for rental housing that increase levels of housing insecurity.¹⁰ In addition, as a metropolitan area Pittsburgh hosts several legal aid organizations and non-profits dedicated to preventing and eliminating homelessness, and the city is home to two law schools that could further increase access to justice through legal

⁸ See, e.g., CENTER FOR AMERICAN PROGRESS, *Closing the Justice Gap: How Innovation and Evidence Can Bring Legal Services to More Americans* 15 (2011), available at https://cdn.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/prose_all.pdf (finding that in Boston, 92% of tenants in housing court are unrepresented in landlord-tenant actions and 97% of tenants in Utah are similarly unrepresented); TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN N.Y., *Report to the Chief Judge of the State of New York*, 20 (2013) (finding that in New York, 98% of tenants are unrepresented in landlord-tenant disputes); Jeff Bleich, *The Neglected Middle Class*, CAL. ST. B.J., June 2008, available at <http://archive.calbar.ca.gov/%5CArchive.aspx?articleId=92107&categoryId=91968&month=6&year=2008> (finding that in California, over 90% of tenants were unrepresented in landlord-tenant disputes).

⁹ See *supra* note 8.

¹⁰ A study conducted by the Federal Reserve Bank of Philadelphia found that in the city of Pittsburgh, 19% of Low Income families, 68% of Very Low Income families, and 81% of Extremely Low Income families suffered a high cost burden for housing. See Eileen Divringi, *Affordability and Availability of Rental Housing in the Third Federal Reserve District: 2015*, 16 (2015), http://www.philadelphiafed.org/community-development/publications/cascade-focus/cascade-focus_4.pdf. “Cost burden” was defined as spending over the recommended 30% of income on housing. *Id.* at 2. The income levels referred to in the study were defined as follows: low income referred to households with an income between 51% and 80% of the median family income in Pittsburgh; very low income referred to households with an income between 31% and 50% of the median family income in Pittsburgh; and extremely low income referred to families with an income equal or less than 30% of the median family income in Pittsburgh. *Id.*

clinics.¹¹ Thus, while Pittsburgh residents face the same housing uncertainty seen in many urban centers across the country, the city also has the capacity to address these problems through expanding existing resources. This Part provides an overview of the eviction process in Pennsylvania and the relative responsibilities of landlords and tenants throughout that process. It goes on to describe the legal defenses available to tenants facing eviction actions, as well as the currently available sources of legal aid for low-income tenants.

A. Navigating the Eviction Process

The eviction process in Pennsylvania is governed by the Landlord and Tenant Act of 1951.¹² To begin the eviction process, a landlord is required to give the tenant a Notice to Quit before filing a formal complaint in the Magistrates Court.¹³ The minimum notice required by statute is ten days, required when eviction is based on non-payment of rent.¹⁴ However, the statute allows the tenant to subvert the potential eviction action by paying all owed rent in full before expiration of the notice period.¹⁵ While paying owed rent would prohibit a landlord from filing an eviction complaint, this option is unavailable to the majority of low-income tenants who simply cannot afford to pay all arrearages in one lump sum. This defense is also not available to tenants who waived the right to notice in their lease.¹⁶ When an eviction is based on expiration of the lease term or breach of conditions in the lease, the notice required depends on the length of the lease: fifteen days for leases lasting less than one year or an indeterminate period, and 30 days for leases extending beyond one year.¹⁷

¹¹ See *infra* Section I.C & Section II.B.iii.

¹² Landlord and Tenant Act of 1951, 68 PA. STAT. AND CONS. STAT. ANN. § 250.101 *et seq.*

¹³ However, tenants can waive the right to this notice in his or her lease. § 250.501 (e).

¹⁴ § 250.501(b).

¹⁵ *Id.*

¹⁶ § 250.501(e) (allowing landlords and tenants to mutually agree to waive the notice requirement by including such a term in a written lease).

¹⁷ *Id.*

After the notice period expires, a landlord must file a complaint and have a summons served upon the tenant.¹⁸ The hearing date is scheduled for between seven and ten days following the filing of the complaint, giving the tenant little time to contact legal counsel or learn about his or her rights in an eviction.¹⁹ Thus, while this procedure allows eviction cases to be handled with little delay, it also has the effect of prejudicing *pro se* tenants who are uneducated about their rights, but must learn how to defend themselves at a hearing with only a week's notice. Due to the accelerated nature of eviction proceedings, the Landlord and Tenant Act does not provide a method for a tenant who has been served with an eviction summons and complaint to file a responsive pleading with the court before the hearing. Therefore, indigent tenants are left to their own devices to research their available defenses, and, if possible, prepare evidence to present those defenses at their hearings.

B. Defenses

Pennsylvania and federal law do provide several defenses for tenants facing eviction actions. These defenses include defects in the Notice to Quit,²⁰ withholding rent because of violations of the implied warranty of habitability,²¹ and discrimination based on protected characteristics.²² However, these defenses are only useful to the extent that low-income tenants, particularly those representing themselves, are aware of their existence, know the elements required to establish the defenses, and are able to provide competent evidence to the Magistrate Judge during their eviction hearing. Any successful effort to improve access to justice for *pro se* tenants in Pittsburgh must include a method of disseminating information about these defenses to

¹⁸ § 250.502(a).

¹⁹ *Id.*

²⁰ *See* Jankowski v. Orloske, 84 Pa. D & C. 522, 524 (Pa. Ct. Common Pleas 1952).

²¹ Pugh v. Holmes, 384 A.2d 1234, 1241 (Pa. 1978) (“In order to assert a breach of the implied warranty of habitability as a defense or as a counterclaim, a tenant must prove that he or she gave notice to the landlord of the defect or condition, that the landlord had a reasonable opportunity to correct the condition, and that the landlord failed to do so.”).

²² Pennsylvania Human Relations Act, 43 STAT. AND CONS. STAT. ANN. § 955 (h)(1) (West 2016).

tenants in advance of their hearings, so they have as much time as possible to prepare for their representation.

Pennsylvania law requires Notices to Quit to include a specific amount of time within which the tenant must vacate—failing to include this information in the original Notice to Quit is grounds to have the eviction case dismissed.²³ In an eviction based on alleged lease violations, the landlord must also describe the nature of the lease violations in the Notice to Quit, so as to allow the tenant to prepare his or her response to each allegation for the hearing.²⁴ In this type of fault case, a tenant is entitled to know precisely how he or she is being accused of violating the lease and to present evidence at the hearing disproving or mitigating the Notice to Quit’s allegations.²⁵ Proper, detailed notice is crucial to building a defense and collecting the evidence necessary to present that defense to the Magistrate Judge. However, a tenant would have to first know about this particular procedural rule in order to raise it as a defense; the average low-income tenant is unlikely to be aware of the legal requirements of a Notice to Quit.

Tenants who are evicted for non-payment of rent can also raise a defense based on their landlord’s breach of the implied warranty of habitability. Not only does the landlord have an affirmative duty to maintain a rental unit in habitable conditions, but the tenant has the right to withhold rent if the landlord breached this duty.²⁶ Because of these obligations, the tenant is permitted to raise a breach of the implied warranty of habitability as a defense to an eviction action.²⁷ The tenant’s obligation to pay rent is described as “mutually dependent” on the

²³ See *Jankowski*, 84 Pa. D & C. at 524 (finding that a Notice to Quit must “clearly and unequivocally notify the tenant to remove from the premises,” specify a date by which the tenant must move out, and be served upon the tenant).

²⁴ See *id.*

²⁵ See *id.*

²⁶ *Pugh*, 384 A.2d at 1240.

²⁷ *Id.*

landlord's duty to maintain the premises.²⁸ The implied warranty of habitability applies only to require the premises are safe and healthy, not to guarantee an aesthetically perfect residence.²⁹ To successfully assert a breach of the implied warranty of habitability as a defense, a tenant must show that "he or she gave notice to the landlord of the defect or condition, that the landlord had a reasonable opportunity to correct the condition, and that the landlord failed to do so."³⁰ Since the burden of proof rests on the tenant, the tenant must have the legal savvy to ensure that notice is given to the landlord in writing, or through some other verifiable means of communication, of the substandard conditions. Otherwise, the tenant will have difficulty proving at the hearing that the landlord both received notice and had adequate time to act on that notice by remedying the condition.

In addition to the notice requirement, the more demanding requirement for asserting the implied warranty of habitability as a defense is the inspection and escrow requirement. When a public agency inspects a rental unit and deems it "unfit for human habitation," the tenant is no longer required to pay rent to the landlord; however, the tenant must continue to deposit rent into an escrow account until the uninhabitable conditions are resolved.³¹ A tenant risks losing possession of the apartment, notwithstanding uninhabitable conditions, if the tenant does not comply with this escrow requirement.³² If the landlord resolves the uninhabitable conditions documented during inspection within six months of the time the unit was certified as unfit for

²⁸ *Id.* ("A material breach of one of the obligations will relieve the obligation of the other so long as the breach continues.").

²⁹ *Id.* (quoting *Kline v. Burns*, 276 A.2d 248, 252 (N.H. 1971) ("In order to constitute a breach of the implied warranty of habitability, ' . . . the defect must be of a nature and kind which will render the premises unsafe, or unsanitary and thus unfit for living therein.'").

³⁰ *Id.* at 1241; *Allegheny Cty. Housing Auth. v. Berry*, 487 A.2d 995, 998 (Pa. Sup. Ct. 1985) ("[T]here was no basis for rent withholding in any of the cases as the Authority either had corrected the defect in the period required by law, or had not been properly notified of the defect so as to trigger the obligation to repair.").

³¹ *See DePaul v. Kauffman*, 272 A.2d 500, 505 (Pa. 1971) ("The Rent Withholding Act . . . makes clear that a tenant may in no event remain in possession without paying the required rent to the escrowee."); *City Rent Withholding Act*, 35 PA. CONS. STAT. ANN. § 1700-1 (Westlaw, Current through 2016 Regular Session Act 4).

³² *See DePaul*, 272 A.2d at 505.

human habitation, the landlord is still able to recover the rent deposited in escrow.³³ Only if the premises remain uninhabitable for over six months following inspection will the tenant be able to recoup the withheld rent paid into escrow.³⁴

A tenant can also assert discrimination under the Fair Housing Act as a defense to eviction if the tenant believes the eviction process was initiated on the basis of race, color, national origin, religion, sex, familial status, or disability.³⁵ In addition to these categories, the Pennsylvania Human Relations Act allows residents to assert discrimination based on age as a defense to eviction.³⁶ Under the Pennsylvania statute, when a tenant provides direct evidence of discrimination based on a protected characteristic, the burden shifts to the landlord to prove that he or she would have taken the same action regardless of the alleged discriminatory motive.³⁷ “Direct evidence” of discrimination can include explicit statements of the landlord that he or she is basing a housing decision on a prohibited motive³⁸ and use of racial slurs while limiting the rights of some tenants based on race.³⁹ Of course, tenants may face eviction actions based on what they suspect to be discriminatory motive even when the landlord did not make any overtly discriminatory remarks. Without direct evidence, Pennsylvania courts require that a tenant provide sufficient evidence of discrimination based on a protected characteristic to raise a

³³ *Id.*

³⁴ *Id.*

³⁵ See Fair Housing Act, 42 U.S.C. § 3604(a) (stating that it is unlawful “[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin”).

³⁶ Pennsylvania Human Relations Act, 43 STAT. AND CONS. STAT. ANN. § 955 (h)(1).

³⁷ See *New Corey Creek Apartments, Inc. v. Pa. Human Relations Comm’n*, 865 A.2d 277, 281 (Pa. Cmwlth. 2004).

³⁸ See *Allison v. Pa. Human Relations Comm’n*, 716 A.2d 689, 690-91 (Pa. Cmwlth. 1998) (finding discrimination when landlord explicitly told several prospective tenants that she would not rent to interracial couples and that she would only rent to Caucasians).

³⁹ See *New Corey Creek Apartments*, 865 A.2d at 279-80 (finding direct evidence of discrimination when landlord frequently used racial slurs against the tenant, did not allow her or her guests to use the common areas as other tenants were permitted to, and directed maintenance not to service the tenant’s apartment).

“reasonable inference” of discriminatory motive on behalf of the landlord.⁴⁰ This ambiguous test requires *pro se* tenants to attempt to interpret the standard, without the benefit of legal help or education, and gather sufficient evidence to present on the day of their hearing.

In general, tenants are more likely to know that certain types of discrimination are illegal bases for eviction than they are to recognize the implied warranty of habitability or a defect in the Notice to Quit as a possible defense. More than lack of knowledge, then, problems would likely arise when tenants attempt to collect sufficient evidence to prove a discrimination claim. Demonstrating discrimination in a hearing can be more difficult than it may seem at first blush, particularly in cases in which the only evidence that can be offered is the tenant’s testimony against the landlord’s. Even before an eviction action is initiated, an attorney would be able to advise tenants to document all instances of the discriminatory conduct, or ensure that a witness is present during all interactions with the landlord and his or her agents. After the eviction complaint is served on the tenant, a lawyer could, at minimum, counsel the tenant on the type of documents or witnesses the tenant should bring to his or her hearing to best present a discrimination defense to the judge.

C. Resources Available to Pittsburgh Residents

Currently, there are several legal aid organizations serving indigent tenants facing eviction actions in the Pittsburgh area.⁴¹ Some of these organizations include the Neighborhood

⁴⁰ See *Canal Side Care Manor, LLC v. Pa. Human Relations Comm’n*, 30 A.3d 568, 573 (Pa. Cmwlth. 2011) (quoting *Allison*, 716 A.2d at 689) (“[T]his Court has adopted the proof standards normally applied in employment cases for use in its housing discrimination claims.”); see also *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

⁴¹ Renters facing eviction can also seek non-legal help from the government or non-profit organizations dedicated to keeping tenants in their homes. The Urban League of Greater Pittsburgh, for example, provides grant money to individuals who cannot afford their rent in order to keep them in their homes. See URBAN LEAGUE OF GREATER PITTSBURGH, *Rental Assistance* (2016), <http://ulpgh.org/departments/have-a-home/rental-assistance/> (offering grants up to \$750 for families with minor children and \$500 for households without minor children). The Allegheny County Department of Health and Human Services also provides rental assistance on a case-by-case basis to individuals who receive public benefits. ALLEGHENY LINK, *Housing* (2016), <http://www.alleghenycounty.us/Human-Services/About/Contact/Link/Housing.aspx>.

Legal Services Association,⁴² the Community Justice Project,⁴³ and the Fair Housing Partnership of Greater Pittsburgh.⁴⁴ Like many other cities, however, Pittsburgh was impacted by the significant reductions in funding for the Legal Services Corporation in 1981 and again in 1996.⁴⁵ The scarcity of funding for legal aid programs has led to current estimates that less than twenty percent of low-income citizens were able to have their legal needs met, whether through a legal aid foundation or through hiring private attorneys.⁴⁶ These numbers apply generally to all legal problems that low-income Americans face, not simply to eviction actions. However, the way the justice gap plays out in housing law is quite similar, with one added complication: tenants are far more likely to be unrepresented than landlords, a disparity that further exacerbates the imbalance of power between indigent tenants and their more wealthy, legally sophisticated landlords.⁴⁷ There are simply not enough lawyers currently working in legal aid or providing services targeted toward low-income and indigent tenants to satisfy the need for attorneys within this particular area of law.

II. ACCESS TO JUSTICE INITIATIVES AND INNOVATING LEGAL PRACTICE

“Access to justice” refers broadly to initiatives and scholarship studying the ways low- and middle-income Americans can access the court system and how the needs of many of these

⁴² *Our Services*, NLSA (Jan. 16, 2016), <http://www.nlsa.us/about/services/html>.

⁴³ *Housing Issues Litigated*, COMMUNITY JUSTICE PROJECT (2012), <http://www.communityjusticeproject.org/#!services3/cdct>.

⁴⁴ *Welcome to FHP*, FAIR HOUSING PARTNERSHIP, <http://www.pittsburghfairhousing.org/default.asp>.

⁴⁵ See *Closing the Justice Gap*, *supra* note 1, at 24. Adjusting for inflation, funding was at its peak in 1980, when the Legal Service Corporation’s \$303 million budget would translate to approximately \$848 million in 2013 and \$875 million today. LEGAL SERVS. CORP., *2013 By the Numbers*, <http://www.lsc.gov/media-center/publications/2013-lsc-numbers>. Funding for the Legal Services Corporation has been on a downward slope for decades: “it was cut by 25 percent in 1981 and by another third in 1996.” See *Closing the Justice Gap*, *supra* note 1, at 24. In 2010, the Legal Services Corporation was allocated between \$450 million and \$500 million in federal funds. *Id.* at 21. Even this allocation came after a political battle in which some members of Congress attempted to defund the Legal Services Corporation all together. *Id.* at 27. Following even more cuts, Legal Services Corporation’s budget increased in small intervals between 2013 and 2015, ending with a budget of \$375 million in 2015. LEGAL SERVS. CORP., *LSC Funding*, <http://www.lsc.gov/lsc-funding>.

⁴⁶ See LEGAL SERVICES CORP., *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* (2009).

⁴⁷ See *Closing the Justice Gap*, *supra* note 1, at 19.

Americans can be better met in the future through reforms to the court system or legal service costs.⁴⁸ The call for increased access to justice for all individuals has led to several innovations in the delivery of legal services.⁴⁹ This Part outlines some of these existing innovations and offers suggestions for expansions and additions to current access to justice initiatives.

A. Supreme Court Barriers to Civil Gideon

Those advocating for a civil right to counsel in cases involving basic human needs have met resistance from the Supreme Court.⁵⁰ After *Gideon v. Wainwright*, the Court's analysis of the right to counsel hinged on the presumption that incarceration after criminal conviction was such a loss of physical liberty that the Constitution required indigent defendants be provided with counsel.⁵¹ A parent's right to the care and custody of their children, for example, was not seen as enough of a deprivation to justify appointed counsel, even though parental rights and family unity may still be viewed as a human right more generally.⁵² However, in 2011, the Court took an unprecedented step to restrict the right to counsel, holding that an individual in a civil contempt hearing who faces possible incarceration as a result of that hearing is *not* entitled to

⁴⁸ See, e.g., NATIONAL CENTER FOR ACCESS TO JUSTICE, *Mission*, <http://ncforaj.org/about-2/mission/>. The NCAJ describes its mission as follows:

Our Constitution guarantees equal justice. Yet for too many people, courts are where they will lose their children, their homes, their life savings and their freedom – outcomes many of us would consider neither just, nor justly obtained. To enable people to secure the protection of the rule of law, whether to halt domestic violence, stop unlawful foreclosures and evictions, preserve family unity, claim wages and other employment protections, challenge unfair criminal prosecutions, and more, the National Center for Access to Justice works to make our courts more accessible and fair.

Id.

⁴⁹ See Section II.B, *infra*.

⁵⁰ See *Turner v. Rogers*, 564 U.S. 431 (2011); *Lassiter v. Dept. of Soc. Servs.*, 452 U.S. 18 (1981).

⁵¹ See, e.g., *Lassiter*, 452 U.S. at 18; *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁵² *Lassiter*, 452 U.S. at 25; see also Brooke D. Coleman, *Lassiter v. Department of Social Services: Why Is It Such a Lousy Case?*, 12 NEVADA L.J. 591, 595 (2012) (criticizing the *Lassiter* Court for holding that loss of parental rights was not as compelling as loss of physical liberty when “[i]t does not seem like a giant leap to say that losing one’s child is just as fundamental an interest as losing one’s liberty, especially when the loss of liberty spans only six months”).

appointed counsel.⁵³ This additional restriction on the right to counsel has severely damaged the prospects of Supreme Court recognition of a constitutional right to counsel in civil eviction proceedings.

In 1981, the Court first rejected a plaintiff's plea for a civil right to counsel in a hearing for termination of parental rights, despite parents' strong interest in retaining parental rights.⁵⁴ The Court in *Lassiter v. Department of Social Services* affirmed that any constitutional "right to counsel" required the unrepresented party to face the possibility of incarceration as a result of the proceeding.⁵⁵ In that case, a mother was not provided with state-funded counsel at a hearing terminating her parental rights.⁵⁶ On appeal, the mother argued that the Due Process Clause of the Fourteenth Amendment required that the state provide her with counsel at the hearing to protect her strong liberty interest in retaining rights over her children.⁵⁷ The Court noted that past decisions had only found a constitutional right to state-appointed counsel in cases in which the defendant's "physical liberty" was at stake.⁵⁸ Relying on the principle that the Due Process Clause is intended to further "fundamental fairness," the Court stated that the Constitution only requires appointed counsel in cases involving physical liberty, while all other cases could only be subject to individual procedural due process analyses.⁵⁹ The Court acknowledged that several

⁵³ See *Turner*, 564 U.S. at 431.

⁵⁴ *Lassiter*, 452 U.S. at 25.

⁵⁵ *Id.* at 25.

⁵⁶ *Id.* at 21-22.

⁵⁷ *Id.* at 24.

⁵⁸ *Id.* at 25 ("The pre-eminent generalization that emerges from this Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation.").

⁵⁹ *Id.* at 26-27 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)) (noting that the procedural due process analysis involves weighing the "private interests at stake, the government's interest, and the risk that the procedures used will lead to erroneous decisions"). The Court held that the tripartite test in *Mathews* was the appropriate balancing test to determine whether any specific party had the right to state-funded counsel in a termination of parental rights hearing. See *id.*

state courts already required that indigent parents be appointed counsel in termination hearings.⁶⁰ However, the Court determined that a case-by-case procedural due process analysis is all that is *required* by the Due Process Clause, and there was no presumption in favor of appointing counsel in these cases.⁶¹ Even though there was no absolute constitutional right to counsel, the Court stated that a “wise public policy, however, may require that higher standards be adopted than those minimally tolerable under the Constitution.”⁶²

More recently, the Court applied the same procedural due process analysis to find that the Constitution does not require indigent defendants be appointed counsel in civil contempt hearings arising from failure to pay child support, even if those hearings can result in incarceration.⁶³ In *Turner v. Rogers*, the Court expressed concern over the fact that in many child support hearings, both parties would be unrepresented—in that instance, the state would be providing only the noncustodial parent with counsel, even if both parents are indigent and in need of representation.⁶⁴ This marked a departure from the Court’s precedents in which it held that any possible deprivation of physical liberty triggered a right to state-funded counsel.⁶⁵ The fact that the plaintiff in *Turner* was subject to a year of incarceration based on a ruling in a child

⁶⁰ *Id.* at 30. State courts in Ohio, Massachusetts, Oklahoma, Washington, New Jersey, Maine, and Nebraska had previously held that the state was required to appoint counsel for indigent parents at termination of parental rights proceedings. *See* State ex rel. Heller v. Miller, 399 N.E.2d 66 (Ohio 1980); Dept. of Public Welfare v. J.K.B., 393 N.E.2d 406 (Mass. 1979); In re Chad S., 580 P.2d 983 (Okla. 1978); In re Myricks, 533 P.2d 841 (Wash. 1975); Crist v. Div. of Youth and Family Servs., 320 A.2d 203 (N.J. 1974); Danforth v. Maine Dept. of Health and Welfare, 303 A.2d 794 (Me. 1973); In re Friesz, 208 N.W.2d 259 (Neb. 1973).

⁶¹ *Id.* at 31. Among the facts to consider when making this determination, the Court noted that the complexity of the proceedings, the available evidence, and whether there was an adequate opportunity to present a defense all factored into whether due process required appointed counsel. *Id.* at 32-33.

⁶² *Id.* at 33.

⁶³ *Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 2517-18 (2011).

⁶⁴ *See id.* at 2519 (noting that State intervention to provide a noncustodial parent with counsel without providing the custodial parent with counsel would “create an asymmetry of representation” that carried the possibility of “mak[ing] the proceedings *less* fair overall”).

⁶⁵ *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (“[A]bsent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.”); *In re Gault*, 387 U.S. 1, 36-37 (1967) (stating that appointed counsel “is equally essential for the determination of delinquency, carrying with it the awesome prospect of incarceration in a state institution until the juvenile reaches the age of 21”); *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

support hearing did “not *automatically* require provision of counsel.”⁶⁶ While the Court had not relied on this reasoning in *Lassiter*, the *Turner* decision was based largely on a combined reading of the Sixth and Fourteenth Amendments, with the Court emphasizing that no Sixth Amendment right to counsel exists in civil cases.⁶⁷ Given the important interests the Court has traditionally recognized when physical liberty is at stake, the fact that incarceration as a result of civil contempt is not sufficient to recognize a civil right to counsel represents a powerful loss to Civil Gideon advocates.

B. Reforming Delivery of Legal Services

Even with dedicated legal aid attorneys, lack of resources still presents a barrier to low-income individuals seeking representation in eviction cases. There are simply not enough legal aid workers currently to serve the population of poor and low-income tenants facing eviction.⁶⁸ As described in the previous section, lack of knowledge or awareness of their rights and defenses in an eviction case is a key barrier to access to justice for these tenants. Access to justice initiatives can focus not only on providing representation to indigent and low-income tenants, but also on disseminating information about legal rights and obligations in an accessible way to help tenants who do not receive legal aid prepare to represent themselves *pro se*.

i. *Technological Outreach and Innovation*

New technologies can fill the knowledge gap and help tenants, at the very least, learn their rights and obligations before blindly going into an eviction hearing. Currently, there are websites that inform tenants, in layman’s terms, of how they should prepare for a hearing, their

⁶⁶ *Turner*, 131 S. Ct. at 2520.

⁶⁷ *See id.*

⁶⁸ *See supra* note 9 and accompanying text (listing studies of unmet legal needs in various states).

legal rights in an eviction action, and what to expect when they appear in front of the judge.⁶⁹ In addition, there are smartphone apps that break down housing law jurisdiction by jurisdiction, allowing tenants to develop some familiarity with the law prior to their hearings.⁷⁰ Through using both easy to understand language and the ubiquity of the internet, these resources provide tenants with the legal tools they need to navigate a complicated, and perhaps intimidating, legal system.

More is required than simply developing and publishing these websites and apps, however. If tenants do not know these resources exist, they cannot take advantage of them to preserve their housing. The Magistrates Court is perhaps in the best position to remedy this problem. Landlords are already required to serve a tenant with a summons, including a description of the complaint and reason for eviction, in advance of the hearing.⁷¹ The court should require that a standardized list of resources is appended to each summons, so that tenants will be aware of the resources available to them. The list could include legal aid organization contact information, but should also emphasize the websites and apps available as self-help tools for those who cannot secure an attorney. The cost of such a system would be minimal, requiring

⁶⁹ The most comprehensive of these websites for Pennsylvania law is PALawHelp.org, which is maintained by Pennsylvania Legal Aid Network, Inc. and Neighborhood Legal Services Association, a non-profit organization that serves western Pennsylvania. *See About Us*, PA LAW HELP, <http://www.palawhelp.org/about-us>. PA Law Help is maintained by attorneys practicing in Pennsylvania legal aid, lending more credibility to its advice regarding hearing procedures and appearances before the court. Additional resources can also be found for a fee through websites that aggregate legal information from across the country, such as nolo.com, rocketlawyer.com, landlordguidance.com, and rentlaw.com.

⁷⁰ Landlord Tenant Law Pro, available on the Google Play store for \$1.99, is a comprehensive app that provides users with the laws in all fifty states regarding housing issues including eviction notices, discrimination, habitability, right of entry, and state civil courts. *Landlord Tenant Laws Pro*, LANDLORD.COM (2013), <https://play.google.com/store/apps/details?id=ltlaws.com.pro&hl=en>. The Ask a Lawyer app allows users to freely direct message lawyers for answers to less complex legal questions. *Ask a Lawyer: Legal Help* (2015), <https://play.google.com/store/apps/details?id=com.absmallbusinessmarketing.askalawyer&hl=en>. *See also RentRight Smartphone App*, CONSUMER AFFAIRS VICTORIA (March 25, 2016), <https://www.consumer.vic.gov.au/housing-and-accommodation/renting/rentright-app> (allowing users to learn about their “rights and responsibilities” as renters via smartphone app); Mary Ellen Podmolik, *New App Aims to Improve Landlord-Tenant Relationship*, Chicago Tribune (October 18, 2013), http://articles.chicagotribune.com/2013-10-18/classified/ct-mre-1020-podmolik-homefront-20131018_1_web-app-landlords-better-housing (allowing landlords and tenants to communicate and creating a “virtual paper trail” for communications on any unresolved issues).

⁷¹ *See* § 250.502(a).

only additional paper and ink, without any extra mailing or service fees. This simple step would go far in allowing *pro se* tenants to defend themselves effectively at hearings.

ii. *Limited Scope Representation*

Becoming more popular in legal practice is the concept of “unbundling” legal services, or providing legal representation that is restricted to a specific legal problem, task, or issue.⁷² Unbundling can vary in scope—a client may approach a lawyer simply to have the lawyer review a document the client has prepared, seek advice on self-representation or procedural rules in a matter, or to serve as stand-by counsel for a specific negotiation or mediation.⁷³ With this type of representation, the lawyer is typically compensated on a “pay-as-you-go” basis, with discrete tasks being charged separately as they arise.⁷⁴ Even though the scope of representation is more limited than in a traditional lawyer-client relationship, the attorney has the same duties of competence and confidentiality as would be required in any other type of representation.⁷⁵ Because the legal services are still offered for a fee that is often equal to the lawyer’s usual hourly rate,⁷⁶ this particular method of increasing access to justice is more suited to low- and middle-income individuals who cannot afford representation, but also do not qualify as indigent for legal aid purposes. In the eviction context, unbundling legal services could take the form of allowing lawyers to consult with and coach clients on their available defenses and representing

⁷² See M. Sue Talia, *Limited Scope Representation*, 3-4, in REINVENTING THE PRACTICE OF LAW: EMERGING MODELS TO ENHANCE AFFORDABLE LEGAL SERVICES (Luz Herrera, ed. 2014).

⁷³ See *id.* at 11, 16-17.

⁷⁴ See *id.* at 16 n.18.

⁷⁵ See *id.* at 4 (stating that the “most important aspects of the practice: it is carried out under an attorney-client relationship, with all the attendant ethical responsibilities, and the limitation is in the scope of the services provided by the lawyer, *not* in liability”).

⁷⁶ *Id.* at 6 (“Since limited-scope representation creates an attorney-client relationship with tailored, competent service, it makes quality legal assistance available to those who, if only offered the option of full service or nothing, would be forced to turn to sources of legal help that may be of inferior quality, if not downright predatory.”).

themselves competently at their hearings, without appearing on behalf of the client at the hearing. For tenants who are confident in their ability to communicate with the court or who have relatively simple defenses and evidence, this form of representation provides necessary coaching without the expense of having a lawyer prepare for and appear at the hearing.

iii. *Law School and Pro Bono Clinics*

Law school clinical programs and pro bono clinics also serve an important function in increasing the access to legal services for indigent and low-income tenants facing eviction. The ABA currently requires all accredited law schools to offer “live-client or other real-life practice experience.”⁷⁷ The benefits of these programs are two-fold: not only do indigent and low-income clients have access to representation they otherwise would go without, but law students are provided with a practical learning experience on what being a lawyer actually entails.⁷⁸ Clinical programs also serve the important purpose of teaching law students that their professional responsibility and obligations in their careers are in part linked to the services they can provide to the poor. One study found that clinical law students, working under supervision of licensed attorneys, were responsible for 2.4 million hours of legal services to over 120,000 indigent and low-income clients each year.⁷⁹ The history of law school clinical programs is deeply rooted in access to justice principles: the lawyers who originally piloted these programs and the individuals who funded them viewed law school clinics as a way to serve low-income

⁷⁷ See AM. BAR ASS’N, *Standards for Approval of Law Schools*, Standard 302(b)(1) (2011); Robert R. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 *FORDHAM L. REV.* 1971, 1972 (2003).

⁷⁸ See Peter A. Joy, *Government Interference with Law School Clinics and Access to Justice: When is There a Legal Remedy?*, 61 *CASE. W. RES. L. REV.* 1087, 1090-91 (2011) (“Under the supervision of faculty, law students interview clients and witnesses, analyze client problems, provide legal advice, negotiate with lawyers for opposing parties, conduct legal research, prepare legal documents and pleadings, perform transactional work, and represent clients before administrative agencies, courts, and other tribunals.”).

⁷⁹ See David A. Santacroce & Robert R. Kuehn, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION, *Report of the 2007-2008 Survey*, 19-20, <http://www.csale.org/files/CSALE.07-08.Survey.Report.pdf>.

communities, especially when many members of those communities could not be served through limited government funding available to legal aid organizations.⁸⁰

However, many law schools do not require that students complete a certain number of credits of hours of service at the law school's clinic or another *pro bono* organization before graduation. Given the valuable experience clinics provide to students, a clinical requirement would not only benefit the community it serves, but also students who gain practical insight into the day-to-day practice of law before graduation. In terms of serving low-income tenants in Pittsburgh specifically, two of Pennsylvania's seven law schools are located in the Pittsburgh metropolitan area.⁸¹ However, neither of these schools offer clinical programs in housing law that provide services to tenants facing eviction.⁸² The untapped potential of the hundreds of students at these law schools could provide, collectively, thousands of hours of free legal services to indigent and low-income tenants facing eviction in Pittsburgh.

To encourage this change, the Pennsylvania Bar Association, along with bar associations in other states, should follow the New York Court of Appeal's lead and implement a *pro bono* service requirement for law school graduates seeking admission to the bar. New York is the first state to implement a *pro bono* requirement for law school graduates in order to become licensed in the state.⁸³ Law students have their entire law school career to satisfy the requirement by

⁸⁰ See Stephen Wizner, *Walking the Clinical Tightrope: Between Teaching and Doing*, 4 U. MD. L.J. RACE, RELIGION, GENDER, & CLASS 259, 259-60 (2004) ("Many of the lawyers who started building and teaching in clinics were lawyers who had worked in legal aid and public defender offices, and for civil rights and other public interest organizations. It is not surprising, therefore, that clinics began at many law schools primarily as programs to enable law students to provide free legal services to the poor, under the supervision of practicing attorneys.").

⁸¹ These law schools are Duquesne University School of Law and the University of Pittsburgh School of Law. The other law schools located in the state are Penn State University Dickinson School of Law, Earle Mack School of Law at Drexel University, University of Pennsylvania School of Law, Temple University James E. Beasley School of Law, and Villanova School of Law.

⁸² See *Clinics*, PITT LAW, law.pitt.edu/clinics; *Clinical Legal Education*, DUQUESNE (2015), <http://law.duq.edu/clinical-legal-education>. Duquesne's law school offers an Urban Development Practicum that focuses on some real estate issues, but does not extend to eviction actions. *Urban Development Practicum*, DUQUESNE, <http://law.duq.edu/clinics/clinics/urban-development-pract>.

⁸³ See N.Y. Ct. App. R. § 520.16.

completing fifty hours of *pro bono* work, and must certify to the bar that they have done so in their application for admission.⁸⁴ Much like clinical programs, a *pro bono* service requirement would benefit law students as much as it would benefit the communities those students serve. Existing legal aid organizations that provide legal aid to tenants in eviction actions could recruit more law students to take on cases *pro bono*, increasing the percentage of the community's legal needs that the organizations are able to satisfy.

C. Revisiting Civil Gideon

Creating a civil right to counsel for indigent tenants facing eviction actions would greatly reduce the justice gap and protect tenants' civil rights. At its most basic form, "Civil Gideon" refers to "a growing national movement that has developed to explore strategies to provide legal counsel, as a matter of right and at public expense, to low-income persons in civil legal proceedings where basic human needs are at stake, such as those involving shelter and child custody."⁸⁵ There is evidence that a Civil Gideon standard would not only increase access to justice, but would also improve the state's economy. The Pennsylvania Interest on Lawyer Trust Account Board commissioned a study of legal aid spending and found that such spending resulted in an eleven-fold return in money into local economies through both reducing state government costs and increasing income and federal benefits for legal aid recipients.⁸⁶ The study

⁸⁴ *Id.* The Court of Appeals requires applicants to submit an affidavit of service documenting the *pro bono* hours for each of the *pro bono* service projects the student participates in during law school. *Id.*

⁸⁵ See PHIL. BAR ASS'N'S CIVIL GIDEON CORNER, *What Does Civil Gideon Mean?* (2016), <http://www.philadelphiabar.org/page/CivilGideon>.

⁸⁶ See THE RESOURCE FOR GREAT PROGRAMS, INC., *A Report on Pennsylvania's Access to Justice Act, FY 2004-2011* 2 (2012), <https://www.paiolta.org/wp-content/uploads/2014/05/Report-on-Pennsylvanias-Access-to-Justice-Act.pdf> (listing the economic impact of legal aid spending to include "\$66 million in cost savings to taxpayers and communities," "\$530 million in total income and savings for residents and communities," and "2,245 jobs for Pennsylvania workers"). See also Louis S. Rulli, *Money Well Spent: The Value of Civil Legal Assistance to the Poor*, PHILADELPHIA LAWYER 24, 25 (2012) ("[R]esearchers found that for each dollar spent on legal aid, '\$11 of quantifiable economic outcomes and savings were realized for all residents of the Commonwealth.' According to the study, a total of \$53.6 million from all sources was spent in 2011 on Pennsylvania's civil legal services programs that, in turn, yielded \$594 million in income and savings for Pennsylvanians and supported 2,643 jobs for Pennsylvania workers.").

further found that for each family for which legal aid prevented homelessness, the state saved \$14,800 per year in taxes that would have been spent on emergency shelter.⁸⁷ Quite simply, providing civil legal aid to low-income individuals is good for the state's economy.

While not yet addressed in Pennsylvania, there have been efforts in other states to implement a civil right to counsel in cases in which the defendant's basic human needs are at stake.⁸⁸ For example, in 2011 California implemented the Sargent Shriver Civil Counsel Act (the "Shriver Act").⁸⁹ Because of limited funding, the Shriver Act does not guarantee appointed counsel in all civil cases that implicate basic human needs. Only individuals whose household income "falls at or below 200 percent of the federal poverty level" are eligible for the program, and even then participating legal services providers must prioritize and make tough choices about which cases to accept or turn away.⁹⁰ There are numerous factors which providers are required to assess when choosing individual cases to ensure that their resources are allocated to the most dire cases.⁹¹ Thus, while the Shriver Act is a step forward in terms of guaranteeing state

⁸⁷ See THE RESOURCE FOR GREAT PROGRAMS, INC., *supra* note 86, at 4.

⁸⁸ See Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 245, 245-47 (2006)) (finding that state statutes guaranteeing a civil right to counsel predominantly focus on family law matters, involuntary commitment, and medical treatment). Abel and Rettig provide a comprehensive table of all state right to civil counsel laws. *Id.* at 252-70. The federal government and some states have statutes allowing the court to appoint counsel to indigent defendants in housing discrimination cases, but no states require that the court do so. See, e.g., 42 U.S.C. § 3613(b); ARIZ. REV. STAT. ANN. § 41-1491.32; COLO. REV. STAT. § 24-34-307(9.5); DEL. CODE ANN. tit. 6, § 4613(b). There are no civil right to counsel laws relating to eviction.

⁸⁹ CAL. GOV'T CODE § 68650-68651 (Westlaw through Ch. 2 of 2016 Reg. Sess. and Ch. 1 of 2015-16 2nd Ex. Sess.).

⁹⁰ § 68651(b)(1). For example, child custody cases are given the highest level of priority for funding, particularly when one party can afford an attorney while the other cannot. § 68651(b)(2)(A).

⁹¹ In full, the statute requires the organization to

collect the information necessary to assess whether a case should be served. . . . including all of the following: (A) Case complexity. (B) Whether the other party is represented. (C) The adversarial nature of the proceeding. (D) The availability and effectiveness of other types of services, such as self-help, in light of the potential client and the nature of the case. (E) Language issues. (F) Disability access issues. (G) Literacy issues. (H) The merits of the case. (I) The nature and severity of potential consequences for the potential client if representation is not provided. (J) Whether the provision of legal services may eliminate or reduce the need for and cost of public social services for the potential client and others in the potential client's household.

funding to civil legal services for the poor, it does not, in turn, guarantee representation to *all* indigent civil defendants—only the very low-income qualify, and even then service providers are not able to represent everyone in need.⁹²

At least one Pennsylvania appeals court recognized that loss of housing could implicate an indigent tenant’s constitutional rights, particularly the right to counsel. In *Commonwealth v. Real Property and Improvements at 2338 N. Beechwood Street*, the court acknowledged that, at least in a forfeiture action, “[w]hen a person’s home and homelessness are at stake . . . the risk of erroneous decision or deprivation is not minimal.”⁹³ The court also suggested that a case involving possible deprivation of one’s home would “skirt the boundaries of due process implicating the right to counsel.”⁹⁴ The court thus noted what advocates of Civil Gideon have argued for years: even when the case is civil, rather than criminal, there are certain basic human rights that are societally considered to be more sacred than others.⁹⁵ Loss of shelter is devastating for an individual tenant, to say nothing of a family of tenants, and is at least somewhat comparable to the possible loss of freedom at stake in criminal cases.

As discussed above, the Supreme Court has not recognized an absolute right to counsel in any type of civil case, even when incarceration for civil contempt is possible.⁹⁶ Based on the Court’s precedent, the individual state legislatures are a more feasible battleground for establishing Civil Gideon. While the short-term results will be scattered and inconsistent across jurisdictions, the influence of the several states could create growing pressure in Congress and new political norms in society. As noted above, several states have created a statutory right to

§ 68651(b)(7).

⁹² *See id.*

⁹³ 65 A.3d 1055, 1067 n.24 (Pa. Cmwlth. 2013).

⁹⁴ *Id.*

⁹⁵ *See id.*

⁹⁶ *See Turner v. Rogers*, 564 U.S. 431 (2011); *Lassiter v. Dept. of Soc. Servs.*, 452 U.S. 18 (1981).

counsel, particularly in child custody cases.⁹⁷ Because society recognizes a due process right to counsel in criminal cases when the indigent defendant's freedom is on the line, legislatures should also recognize the tremendous risk faced by indigent, *pro se* tenants in eviction proceedings.

In addition to protecting the rights of indigent tenants, a Civil Gideon standard would financially and ethically benefit the court system. The large number of *pro se* litigants in general has led to "slower court procedures, inefficient court operations, overuse of staff time, the lack of fair presentation of relevant facts, and ethical dilemmas for judges who may compromise their impartiality to avoid injustice."⁹⁸ These facts, together with the well-documented justice gap between legal needs and legal services available to low-income individuals, led the ABA to endorse a Civil Gideon model and urge all levels of government to provide publicly-funded legal assistance to indigent defendants in cases involving shelter, among others.⁹⁹ The Pennsylvania Bar Association followed suit soon after, issuing a similar resolution urging the state government to fund a civil right to counsel in cases where shelter, among other things, was at stake.

However, while Civil Gideon principles have found support in professional organizations and some states, indigent defendants in Pennsylvania still face the challenge of convincing the state legislature that there are, in fact, civil cases in which indigent defendants should be entitled to counsel. Further, even after recognizing such a right to counsel, legislatures would have to find funding for lawyers working in civil legal aid. Given the volume of unmet civil legal needs, the cost of such a program would be quite high and would likely require that the legislature generate funds elsewhere, such as through additional filing fees on court documents. Still, Civil

⁹⁷ See *supra* note 88 & accompanying text.

⁹⁸ See ABA COALITION FOR JUSTICE, *Report of the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts*, 1-4 (July 12, 2010).

⁹⁹ See AM. BAR. ASS'N, *Recommendation 112A* (Aug. 7, 2006).

Gideon is an important aspect of access to justice, well worthy of the profession's and the legislature's attention. If the legal profession is dedicated to closing the justice gap, it should make every effort to confront the legislature and turn the various bars' resolutions into reality.

Currently, access to justice in civil cases is patchwork throughout the country, with no unifying federal statute or principle and the individual states taking different approaches to the legislation. While advocates have attempted to address access to justice in civil cases at the Supreme Court level, this method has not yielded any fruit. Advocates' time would be better spent, then, addressing the problem on a state and local level, through encouraging use of technology, expanding legal clinics presently providing services to indigent individuals, and lobbying for legislation mandating appoint counsel in civil cases involving basic human rights.

III. THE COST OF LAW SCHOOL

Even beyond the use of technology and increased legal services funding to shrink the justice gap, the legal profession can also address the incongruity between the number of lawyers and the number of unrepresented low-income and indigent tenants by reforming law school funding and curriculum. Current law school culture, particularly among students, values jobs with high salaries, often working for wealthy individuals and corporations, over jobs in government or non-profit organizations that pay comparatively less. High-paying jobs are considered more prestigious both to law schools and their graduates, and much emphasis is placed on chasing these jobs to improve the school's public image. This emphasis on high-paying, private sector jobs combines with the heavy debt burden with which many students leave law school to reduce the numbers of law students who pursue careers in public interest or government.¹⁰⁰ Strategic changes in law school funding coupled with a dedicated effort by law

¹⁰⁰ ABA/YLD TRUTH IN LAW SCHOOL EDUCATION TASK FORCE, *Report 3* (Dec. 11, 2013), http://www.americanbar.org/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_a

schools to emphasize the professional importance of public service can motivate more graduates to pursue careers that would allow them to help to close the justice gap.

According to the American Bar Association, students at public law schools borrowed an average of \$84,600 for law school, while students at private schools borrowed \$122,158.¹⁰¹ These averages were derived purely from loans covering law school tuition and living expenses, not taking into consideration interest on those loans or any additional loans students may take out while studying for the bar exam.¹⁰² The ABA's Young Lawyers Division highlighted the impact that these numbers have on the legal aid and public interest sector:

Additionally, the burden of law school debt can distort the employment choices of young attorneys. Small firms, particularly those in rural areas, face greater difficulty hiring and retaining competent attorneys. Fewer lawyers are able to sustain a career working in low-paying public interest jobs . . . The overall result is that the quality of legal services that the legal profession provides, particularly to low and middle-income Americans, suffers.¹⁰³

Given the high debt burden of the average law school graduate, it is understandable, if not disheartening, that many graduates feel as if they cannot afford to work in legal aid. By one survey's estimation, law school debt prevented approximately two-thirds of law school graduates from considering careers in public service.¹⁰⁴ The ABA/YLD proposed that Congress regulate in this arena by imposing certain requirements on law schools before they are permitted to enroll

nd_resolutions/march2014councilmeeting/2014_march_young_lawyers_division_report.authcheckdam.pdf
[hereinafter *Report*]

¹⁰¹ AM. BAR ASS'N, *Average Amount Borrowed, 2001-2012*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/avg_amnt_brwd.authcheckdam.pdf.

¹⁰² *See id.*

¹⁰³ *See Report, supra* note 100.

¹⁰⁴ *See* Equal Justice Works, NALP, & Partnership for Public Service, *From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service* (2002), <http://new.abanet.org/marketresearch/PublicDocuments/lrapurvey.pdf>.

students who are financing their education with federal student loans.¹⁰⁵ The reporting requirements would include attempt to quantify the value of legal education earned at a particular institution, allowing the federal government to refuse to fund law school education at schools with unsatisfactory employment outcomes.¹⁰⁶ Congress could require that the average student's monthly loan payments not exceed a specific percentage of the student's income or could impose a cap on the percentage of the school's graduates who default on their student loans.¹⁰⁷ Regardless of the details of the regulations, they would require law schools to become more mindful of the costs of attendance and to reevaluate their tuition schema to rely less on federal loans.¹⁰⁸ By confronting the cost of law school at its source, the government could ensure that more graduates are financially able to close the gap between the number of low-income and indigent clients and the number of lawyers available to them.¹⁰⁹

The Public Service Loan Forgiveness (PSLF) Program for qualifying federal student loans is another important tool for encouraging law school graduates to pursue careers in public service, and maintaining funding for the program is critical to closing the justice gap.¹¹⁰ PSLF is

¹⁰⁵ See *Report*, *supra* note 100, at 4.

¹⁰⁶ See *id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 5 (“[L]aw schools should not be allowed to increase their tuition indiscriminately on the backs of taxpayers without facing some accountability for their use of funds.”); see also ILL. STATE BAR ASS’N, *Final Report, Findings and Recommendations on the Impact of Law School Debt on the Delivery of Legal Services* 39-40 (2013), <http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%202013-8-13.pdf> (“The market pressure on law schools to keep tuition affordable is significantly blunted . . . by the generous lending policies of the federal government. To date, the federal government has allowed nearly any student enrolled in a recognized educational program to borrow amounts limited only by the cost of attendance.”).

¹⁰⁹ See *Report*, *supra* note 100, at 5 (“With their debt burden lightened, graduates would then be freer to accept jobs in government or with legal aid agencies, who would then have an easier time retaining talented lawyers. As a result, the quality and quantity of legal services that the profession provides to the public would increase.”); see also Phillip G. Schrag & Charles W. Pruet, *Coordinating Loan Repayment Assistance Programs with New Federal Legislation*, 60 J. LEGAL EDU. 583, 584 (2011) (quoting John R. Kramer, *Will Legal Education Remain Affordable, by Whom, and How?*, 1987 DUKE L.J. 240, 242-43 (1987)) (noting concerns among law school administrators in the 1980s that “by 2000, law schools would ‘be filled with many more students who, as they become lawyers, do so with the single-minded objective of milking the profession for all it is worth in order to pay retrospectively for their legal education’”).

¹¹⁰ See U.S. DEP’T. OF EDU., *Public Service Loan Forgiveness*, <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service>; see also AM. BAR ASS’N, *American Bar Association Supports Preserving Federal*

one of several federal funding programs aimed at making higher education more accessible and increasing the percentage of college graduates in the country.¹¹¹ The program is available to lawyers who work in any level of government, for not-for-profit, tax-exempt organizations, or for private, not-for-profit organizations that provide certain qualifying public services.¹¹² Qualifying attorneys can enroll in a federal loan repayment plan that bases monthly payments on the attorney's income, rather than paying in the standard ten-year period.¹¹³ After making 120 timely payments, which need not be consecutive or for the same employer, toward their student loan balance, the remainder of the loan is forgiven.¹¹⁴ Detractors of the program cite concerns that the program unduly influences students' career choices, makes private sector employment seem less attractive or noble, and could result in the government favoring some non-profit organizations over others.¹¹⁵ However, for the time being, PSLF is one of the most attractive incentives for law students who are interested in working in government or non-profit law after graduation, but have high student loan debt that would otherwise prohibit pursuing those careers.

Also beneficial, though slightly less common, are Loan Repayment Assistance Programs (LRAPs) offered directly to students by some law schools.¹¹⁶ Under these programs, the individual law school determines its own criteria for eligibility, often based on income and type

Public Service Loan Forgiveness, 37 BIFOCAL 24, 24-25 (2015) (“When coupled with income-driven repayment plans that tie monthly repayment obligations to a percentage of actual income, PSLF provides a critical tool for employers to fill necessary positions with motivated persons who make a lasting commitment.”).

¹¹¹ *Ensuring that Student Loans are Affordable* (2014), <https://www.whitehouse.gov/issues/education/higher-education/ensuring-that-student-loans-are-affordable>.

¹¹² *Public Service Loan Forgiveness Program*, 3 (2015), <https://studentaid.ed.gov/sa/sites/default/files/public-service-loan-forgiveness.pdf>. Qualifying public services under the third category include emergency management, military service, public safety, law enforcement, public interest law services, early childhood education, public service for individuals with disability or the elderly, public health, public education, public library services, and school library or other school-based services. *Id.*

¹¹³ *Id.* at 2.

¹¹⁴ *Id.*

¹¹⁵ See Howard Husock, ‘Public Service’ Loan Forgiveness: A Flawed White House Aid Plan (Aug. 27, 2013), <http://www.forbes.com/sites/howardhusock/2013/08/27/public-service-loan-forgiveness-a-flawed-white-house-aid-plan/#220d31a85bd7>.

¹¹⁶ Of the approximately 200 ABA-accredited law schools in the United States, 102 report having an LRAP. See STANDING COMM. ON PRO BONO & PUBLIC SERV., *Law School Public Interest Programs – Loan Repayment Assistance Programs (LRAPs)*, https://apps.americanbar.org/legalservices/probono/lawschools/pi_lrap.html.

of employment, and subsidizes a portion of the loan repayment for qualifying graduates.¹¹⁷ Like PSLF, the programs are targeted at graduates employed in “low-paying public service jobs,” though law schools may have differing criteria as to the types of non-profit organizations or government jobs that qualify for the program.¹¹⁸ Because they allocate only a set amount of funds to their LRAPs each year, law schools would at times have to lower the payments based on the number of graduates who were found eligible or adjust payments based on applicants’ relative costs of living.¹¹⁹ Because these programs are funded entirely by the law school, schools with larger endowments, such as Harvard, Yale, Stanford, and Georgetown, have more generous LRAPs.¹²⁰ As a result, students interested in public service may attempt to limit their student loan debt by attending less expensive public law schools, the attendant trade-off being that these schools offer less in the way of loan forgiveness.

PSLF and LRAPs are certainly a step in the right direction in terms of making legal careers in public service more manageable and realistic for law school graduates with high levels of debt. Still, even if law students are aware that these programs exist, the sheer magnitude of one’s debt and anxiety surrounding repayment may discourage interested graduates from pursuing public service positions. One scholar proposed adopting the “Teach for America” model to provide low-cost or pro bono legal services to individuals living in traditionally underrepresented communities.¹²¹ To alleviate some of the pressure caused by high levels of debt, the government could restructure some educational funding programs to provide scholarships or grants for tuition up-front, rather than deferring all aid until after a student has

¹¹⁷ See Schrag & Pruett, *supra* note 109, at 587.

¹¹⁸ See *id.*

¹¹⁹ See *id.* at 587-88.

¹²⁰ See *id.* at 588.

¹²¹ See Angela M. Burton, *Underemployed Attorneys and Underserved Communities: Getting to the Corps of the Problem*, 43 HOFSTRA L. REV. 157 (2014).

graduated.¹²² The federal government already commits to paying higher education costs for members of the military, for example, contingent on those members serving in the military after or while earning their degree.¹²³

Students with a demonstrated strong interest in pursuing public interest work could be granted full or partial scholarships for law school tuition, contingent on their pursuing a career in public interest for a set number of years after graduation. In essence, a student could enter into a contractual agreement to work for one of the approved employers qualifying for PSLF for five years following graduation, and in return, he or she would not be required to take out extensive loans to cover the cost of law school tuition. Much like any contract, failure to perform the required public service after law school would be a breach, perhaps requiring the student to pay back the borrowed tuition in full. This type of up-front funding scheme would greatly benefit the student who applies to law school with the intent to work in public service, but over the next three years is dissuaded from that goal as his or her debt increases.

Increased funding for law school and loan forgiveness, however, is not sufficient—it needs to be accompanied by a “cultural shift” in the way law schools view public service careers and encourage their graduates to pursue this work.¹²⁴ Few law schools, and only one state bar,¹²⁵ require students to complete pro bono work as a graduation or entry prerequisite.¹²⁶ Law students

¹²² This proposal is not entirely unprecedented. See *Military Tuition Assistance*, MILITARY, <http://www.military.com/education/money-for-school/tuition-assistance-ta-program-overview.html>.

¹²³ See *id.*; Serviceman’s Readjustment Act, P.L. 78-346, 58 STAT. 284, 288 (1944). Some law students already take advantage of the military funding through enlisting with the Judge Advocate General (JAG) Corps. See *Army JAG Corps*, GOARMY, <http://www.goarmy.com/jag/about.html>.

¹²⁴ See Emily A. Spieler, *The Paradox of Access to Civil Justice: The ‘Glut’ of New Lawyers and the Persistence of Unmet Need*, 44 U. TOL. L. REV. 365, 392 (2013) (“[T]he culture of law schools is simply not focused on the core issues surrounding access to justice or the delivery of legal services.”).

¹²⁵ See Daniel Wiessner & Joseph Ax, *NY Announces First-in-Nation Pro Bono Mandate for Lawyers*, THOMSON REUTERS NEWS & INSIGHT (Sept. 19, 2012), http://newsandinsight.thomsonreuters.com/Legal/News/2012/09_-_September/NY_announces_first-in-nation_pro_bono_mandate_for_lawyers/.

¹²⁶ See Spieler, *supra* note 124, at 392 (citing Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 LOY. L.A. L. REV. 869, 906-07 (2009)); STANDING COMM. ON PRO BONO & PUBLIC SERV., *Chart of Law School Pro Bono*

tend to focus on the competition to acquire the most prestigious, highly-paid positions post-graduation, despite the fact that a relatively small percentage of graduates will end up working in these coveted, large law firm positions.¹²⁷ In addition to skills, values, doctrine, and analysis,¹²⁸ some critics of law school curriculums advocate for a “third apprenticeship” focused on ethics, access to justice, and the responsibilities of members of the legal profession in ensuring that low-income members of society have their legal needs met.¹²⁹

Law schools can help foster a commitment to access to justice by requiring that even doctrinal classes touch on these issues throughout the semester, creating a long-term emphasis on access to justice that goes beyond what is typically offered in a single professional ethics course. Importantly, any coursework or discussion concerning access to justice should challenge the view that human rights are limited to those enumerated in the Bill of Rights, and instead conceptualize human rights in the “basic needs” framework used by Civil Gideon advocates.¹³⁰ Regardless of the type of law a student goes on to practice, his or her sense of professional responsibility should include a commitment to using the considerable education and prestige that comes with the license to practice law to aid to individuals who cannot afford a lawyer. Law schools should encourage, or even require, that students complete a minimum number of *pro bono* work hours before graduation or participate in one of the school’s legal clinics aimed at

Programs, https://apps.americanbar.org/legalservices/probono/lawschools/pb_programs_chart.html (listing 41 of 183 reporting schools as having a *pro bono* graduation requirement).

¹²⁷ *See id.*

¹²⁸ *See id.* at 394.

¹²⁹ *See, e.g.*, William M. Sullivan et al., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 8-11 (2007).

¹³⁰ *See supra* note 48 & accompanying text.

serving low-income Americans.¹³¹ At a minimum, students should not be leaving law school without any experience serving disadvantaged populations.

Ultimately, high levels of law school debt prevent otherwise motivated law school graduates from pursuing careers in public service. Students who enter law school aspiring to work as public defenders after graduation may, as they continue to take out tens of thousands of dollars in loans over the intervening three years, feel that taking a relatively low-paying job after graduation would be too irresponsible to justify. The culture of law schools, often revolving around competition for the prestige that comes with high-paying, “Big Law” jobs, may only serve to further alienate students who came to law school with the original intention of pursuing a career in public service. In addition to current PSLF and LRAPs, Congress can incentivize non-profit and legal aid work for incoming law students by offering up-front funding for law school contingent on the student’s commitment to work in public service for a set number of years after graduation. The combination of these various funding programs would allow more students to pursue public service careers, without feeling weighted down by their loans. Refocusing law school curricula to emphasize more strongly the professional commitment to furthering access to justice and to require pro bono work would also help foster a stronger sense of professional responsibility to the public, as well as provide much-needed legal services to the community.

CONCLUSION

The abysmal state of civil access to justice for low- and middle-income individuals cannot be remedied by relying on standard full-service representation or through existing sources of funding for legal aid. The individual states must pass Civil Gideon statutes guaranteeing the

¹³¹ See Spieler, *supra* note 124, at 395 (“Expansion of *pro bono* activities and requirements may not ultimately have a systemic effect on the challenge of unmet needs, but it will ensure that new lawyers understand the justice gaps and the need to address them.”).

right to appointed counsel for indigent individuals in eviction actions. The American Bar Association, state bar associations, and law schools must also contribute to this reform by adapting to and encouraging the use of new technologies to counsel tenants who ultimately represent themselves, by unbundling the services offered to low-income tenants in eviction actions, and by taking more responsibility for providing *pro bono* legal services to disadvantaged communities. Additionally, law schools should recognize that the importance of public service must be stressed early and often throughout law school, so as to instill a sense of responsibility for public service in law school graduates. Finally, the legislature should provide increased funding to law school students who make a commitment to work in public service, increasing the number of law school graduates who view lower-paying public service jobs as a viable way to pay off law school debt. For many low-income tenants facing eviction, a lawyer is a luxury they cannot afford—but their basic human rights should not be neglected, by lawyers, communities and legislators, when there is an overabundance of newly-minted, qualified lawyers entering the profession each year.