

WILLIAM REECE SMITH, JR. DISTINGUISHED LECTURE

“JUSTICE FOR ALL”*

Helaine M. Barnett**

I. INTRODUCTION

Thank you for inviting me to be the 2011 William Reece Smith Jr. Distinguished Lecturer. I am honored to be among leaders of the bar, the judiciary and academia, and professors and students of Stetson University College of Law, who are here this

* Presented as the William Reece Smith, Jr. Distinguished Lecture on January 25, 2011, at Stetson University College of Law Inns of Court Banquet.

William Reece Smith, Jr. is a Distinguished Professorial Lecturer at Stetson University College of Law. He also has been a member of Carlton Fields since joining the firm in 1953. He has served terms as President of The Florida Bar, President of the American Bar Association, and President of the International Bar Association. He has also served as President of the University of South Florida. In addition, he has been involved in numerous public-service activities and has received many awards, including honorary LL.D., D.C.L., D.H.L., and D.B.A. degrees from eleven colleges and universities, as well as the first annual William Reece Smith Jr. Public Service Award from Stetson University College of Law. He is also the recipient of the American Bar Association's Gold Medal, which is "rarely given," for "exceptionally distinguished service to the cause of American jurisprudence" and the ABA Pro Bono Publico Award for enhancement of legal services to the poor. He is a current member of the Council of the American Law Institute.

** © 2011, Helaine M. Barnett. All rights reserved. J.D. New York University School of Law, 1964; B.A. Barnard College, 1960. Ms. Barnett is the longest-serving President of the Legal Services Corporation (LSC), having served from 2004 to 2009. Prior to her appointment as President of LSC, Ms. Barnett devoted her entire thirty-seven-year professional career to providing legal services to the indigent at The Legal Aid Society in New York City and headed the Society's multi-office Civil Division from 1994 until 2003. Ms. Barnett was the first and only legal services attorney on the American Bar Association Board of Governors and its Executive Committee. Since retiring from LSC, Ms. Barnett has been appointed an Adjunct Professor of Law at the New York University School of Law and appointed by the Chief Judge of the State of New York as Chair of the Task Force to Expand Access to Civil Legal Services in New York. She has spoken extensively regarding the need for access to justice. Ms. Barnett gave the 2004 Bellwood Lecture published in the *Idaho Law Review*. Helaine M. Barnett, *Justice for All: Are We Fulfilling the Pledge?* 41 *Idaho L. Rev.* 403 (2005).

evening to pay tribute to Reece Smith and the significant role he has played in pursuing equal access to justice.

Selecting a topic for my remarks was fairly easy for me because I have spent my entire career providing legal services to the poor. Equal access to justice is a fitting topic for an address honoring Reece Smith, who has devoted his career to enhancing the availability of legal services to the poor and the disadvantaged. It is also a timely topic, as our nation continues to experience the worst economic downturn in recent memory.

We all see the headlines each day—the highest rates of unemployment we have seen in thirty years,¹ record numbers of foreclosures,² and increased homelessness of individuals and families.³ These economic shifts have pushed millions of Americans into poverty for the first time and put in greater jeopardy those Americans who were already struggling.⁴ Lost jobs, lost homes, and disappearing healthcare have resulted in many more Americans in need of legal help to meet their basic needs.⁵

While the need for civil legal assistance is increasing, the same economic forces have put a great strain on the resources that support legal services. For instance, Interest on Lawyers' Trust Accounts (IOLTA) funds, which have been a very important source of funding for legal services and which first began in Florida in 1981,⁶ are dwindling as interest rates approach zero.⁷ In

1. U.S. Dept. of Lab., *Bureau of Labor Statistic; Databases, Tables & Calculators by Subject; Labor Force Statistics from the Current Population Survey*, <http://www.bls.gov/data/>; select Employment, select "TOP PICKS" icon next to Labor Force Statistics, select Unemployment Level—Civilian Labor Force—LNS13000000, select Retrieve data, search From: 1980 To: 2011, select include graphs, select "GO" icon (accessed Apr. 12, 2011).

2. Dennis Norman, *Record Number of Foreclosures in 2009*, <http://realestateinvestordaily.com/foreclosures/record-number-of-foreclosures-in-2009/> (Jan. 14, 2010).

3. See Sarah Finnane Hanafin, Student Author, *Legal Shelter: A Case for Homelessness As a Protected Status under Hate Crime Law and Enhanced Equal Protection Scrutiny*, 40 *Stetson L. Rev.* 435, 436 (2011) (noting that the homeless population is rising and discussing increased violence against the homeless).

4. Carol Morello & Dan Keating, *Recession Has Thrust Millions More into Poverty, Census Statistics Show*, *Wash. Post A1* (Sep. 11, 2009) (available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/10/AR2009091001637.html>).

5. D.C. Access to Just. Commn. & D.C. Consortium of Leg. Servs. Providers, *Rationing Justice: The Effect of the Recession on Access to Justice in the District of Columbia* 1 (Nov. 2009) (available at <http://www.legalaiddc.org/documents/RationingJusticeReport..pdf>).

6. See *In re Matter of Interest on Trust Accounts*, 402 So. 2d 389, 393 (Fla. 1981) (adopting "a voluntary program designed to generate interest on lawyers' trust accounts").

7. Karen Sloan, *National Law Journal*, *Perfect Storm Hits Legal Aid: Struggling*

Florida, IOLTA revenues that have been as high as \$44 million in the past will amount to only \$5.43 million in the current year, and interest rates are not expected to go up until the first quarter of 2012.⁸ Charitable organizations and private donors are unable to contribute as much to legal aid as in the past.⁹ State and city budgets for social services are being slashed and the safety net provided by these services continues to shrink.¹⁰

The result is that one of our country's bedrock ideals, the principle of "justice for all," is under great pressure. All of us here, as attorneys, judges, law professors, and law students, have special responsibilities to uphold this core belief in our system of government. So this evening, I would like to speak with you about the concept of "justice for all"; highlight the history of how the American legal system has strived to meet that ideal, and the special role Reece Smith, as President of the American Bar Association (ABA), played; discuss the current challenges to ensuring equal access to justice; and talk about what we need to do as a profession and as a country to make real our promise of "justice for all."

II. ORIGINS OF "JUSTICE FOR ALL"

"Equal justice under law" is a phrase with which everyone here is familiar and which is inscribed on the West Pediment of the United States Supreme Court building and on other courthouses throughout the country. United States Supreme Court Justice Lewis Powell stated: "Equal justice under law is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status."¹¹

Programs Face Grim Forecast As the New Year Opens, IOLTA Declines, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202476843961&Perfect_storm_hits_legal_aid&slreturn=1&hblogin=1 (Jan. 3, 2011) (noting that interest rates in September 2007 were at 5.25% but have since fallen to 0.25% or less).

8. Email from Jane Curran, Exec. Dir., Fla. Bar Found., to Author (Jan. 18, 2011, 4:33 p.m. EST) (copy on file with Author).

9. Sloan, *supra* n. 7 (noting that donors are not giving "at the same levels they have in the past, and some have unfortunately had to stop giving completely").

10. *Id.*

11. Francis J. Larkin, *The Legal Services Corporation Must Be Saved*, 34 Judges J. 1, 1 (Winter 1995) (quoting Justice Powell's comments made when he was the President of

The legal origins of “justice for all” go back to the year 1215 and the Magna Carta. The most famous, and perhaps most enduring, of its clauses concludes as follows: “To no one will we sell, to no one will we refuse or delay, right or justice.”¹² The clause is echoed in the Preamble to our own Constitution, which affirms that its central purpose is to “establish Justice.”¹³ One of our founders, Alexander Hamilton, said, “The first duty of society is justice.”¹⁴ For generations, we have concluded our pledge of allegiance to our flag by saying, “[W]ith liberty and justice for all.”¹⁵

While our country was founded on our “unalienable Rights” to “Life, Liberty, and the Pursuit of Happiness,”¹⁶ securing these rights can require individuals to use legal claims or defenses and interact with our courts. But the procedures of our legal system are complicated; the language of our laws is often opaque and subject to multiple meanings and interpretations.

Complexity means that the specialized skills of a lawyer often are required to access and effectively navigate our justice system. In its 1932 decision in *Powell v. Alabama*,¹⁷ the United States Supreme Court noted that “[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.”¹⁸

For the poor, the right to be heard with the assistance of counsel comes at a cost that is generally beyond reach. And, as you know, unlike in criminal cases, there is no explicit right to publicly funded counsel in civil cases under the United States Constitution or any state constitution.¹⁹ Although there has been litigation in several states asserting a constitutional right to counsel in certain limited categories of civil cases, as of yet there

the ABA).

12. Magna Carta, cl. 40 (1215).

13. U.S. Const. preamble.

14. Miles McGrane, *The First Duty of Society Is Justice*, 77 Fla. B.J. 8, 8 (Dec. 2003).

15. 4 U.S.C. § 4 (2006); see *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 6–7 (2004) (discussing the adoption of the pledge of allegiance into positive law).

16. *Declaration of Independence* [¶ 2] (1776).

17. 287 U.S. 45 (1932).

18. *Id.* at 68–69.

19. See George Biram, *The Indigent's Right to Counsel in Civil Actions: Historical Foundation for the Poor Person's Right to Counsel in Civil Litigation*, 12 S.U. L. Rev. 85, 86–87, 90–91 (1985) (“Indigent civil litigants have no constitutional or statutory right to be represented by a lawyer.” (quoting *Merritt v. Faulkner*, 697 F.2d 761 (7th Cir. 1983), and discussing how states are not required by the Constitution to provide the indigent a civil right to counsel)).

has not been a determination of a right to counsel in civil cases under the federal or state constitutions.²⁰

The federal government funds civil legal services for the poor to some extent through the Legal Services Corporation (LSC)—the organization that I was privileged to lead for six years, from January 2004 through December 2009. LSC was created thirty-seven years ago to address the reality that the poor often have no representation in civil cases in which fundamental rights are at issue.²¹ The creation of LSC was the culmination of nearly one hundred years of efforts to provide civil legal services to poor Americans.

III. HISTORY OF LEGAL SERVICES IN THE UNITED STATES

The first organized effort in the United States to help the poor with their civil legal problems began in New York City in 1876, with the formation of The German Legal Aid Society, which addressed the exploitation of German immigrant workers.²² The Society, funded exclusively by charitable donations, was the predecessor to the United States’ oldest nonprofit organization providing legal aid to the poor—The Legal Aid Society in New York City,²³ where I spent my entire career prior to my appointment as President of LSC. Similar legal aid societies were created most often in large cities.²⁴

In the 1960s, President Lyndon Johnson launched a “War on Poverty,” which, in 1964, included the creation of a new federal agency—the Office of Economic Opportunity (OEO)—to operate various programs designed to serve poor and disadvantaged populations.²⁵ The head of the OEO, Sargent Shriver, was persuaded

20. See e.g. *Frase v. Barnhart*, 840 A.2d 114, 129–130 (Md. 2003) (refusing to decide whether a civil litigant who was unable to afford counsel, but who was represented by counsel during her appeal, had a common law right to appointed counsel because the issue was moot).

21. The Legal Services Corporation Act of 1974, 42 U.S.C. § 2996 (2006).

22. Reginald Heber Smith, *Justice and the Poor: A Study of the Present Denial of Justice to the Poor and of the Agencies Making More Equal Their Position before the Law with Particular Reference to Legal Aid Work in the United States* 134–139 (2d ed., Merrymount Press 1919).

23. *Id.* at 135, 139.

24. *Id.* at 140.

25. Earl Johnson, Jr., *Justice and Reform: The Formative Years of the American Legal*

to include legal services as an activity that could be, and later was, funded by the OEO.²⁶ The OEO Legal Services Program began operating in 1965 and began distributing grants to legal services organizations across the country.²⁷

Not surprisingly, there was political opposition to federally funded legal services from those whose interests were adversely affected by the poor having legal representation.²⁸ Proponents of legal services realized that in order for federally funded legal services to survive politically, it would be necessary to form an independent entity.²⁹ What was recommended was the creation of a private, nonprofit corporation that would receive federal funds and distribute them to private, nonprofit legal services programs.³⁰ After a few unsuccessful attempts, a bill creating the Legal Services Corporation was signed into law on July 25, 1974, by President Richard Nixon³¹—his last act before resigning.

The Legal Services Corporation Act established LSC's mission: "[T]o provide equal access to the system of justice . . . [and] provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel"³² To secure congressional support for the creation of LSC, the Act also included certain restrictions on LSC to prohibit activities likely to cause controversy. Among the restrictions on LSC-funded organizations were prohibitions on participating in and organizing political activities, litigation concerning non-therapeutic abortions, and proceedings involving desegregation of public schools or military service.³³

Debate over the role of LSC flared up during the 1980s, when President Ronald Reagan proposed to eliminate LSC.³⁴ Reece Smith, as President of the ABA, played a critical role in opposing President Reagan's plan and in advocating for the pressing need

Services Program 40 (2d ed., Russell Sage Found. 1978).

26. Alan W. Houseman & Linda Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States* 7, <http://www.clasp.org/admin/site/publications/files/0158.pdf> (Jan. 2007).

27. *Id.*

28. *Id.* at 10.

29. *Id.* at 19.

30. *Id.*

31. Pub. L. No. 93-355, 88 Stat. 378 (1974) (codified and amended at 42 U.S.C. § 2996).

32. 42 U.S.C. § 2996(1)–(2).

33. *Id.* at § 2996f(b)(6), (8)–(10).

34. Houseman & Perle, *supra* n. 26, at 29.

of federal funding of legal services to the poor, urging Congress to oppose policies hostile to LSC. In response to efforts to abolish LSC, a group of bipartisan Congress members, led by Senator Warren Rudman of New Hampshire, effectively resisted such efforts in support of LSC.³⁵ LSC was saved, but Congress cut its funding for 1982 by twenty-five percent.³⁶

A significant factor in gaining support from the private bar, which was crucial to LSC's survival, was greater involvement of private attorneys in the actual delivery of legal services to the poor. In 1985, LSC adopted a regulation to provide opportunities for private attorneys to deliver legal assistance to eligible clients and to stimulate private-attorney involvement with LSC programs by requiring programs receiving its funds to allocate at least 12.5 percent of its LSC grant to this cause.³⁷ Reece Smith has always been a champion of pro bono legal services and has always believed that voluntary pro bono services are a key component to providing legal access to the poor.

Funding for LSC began to increase in the early 1990s, and in 1994, Congress appropriated four hundred million dollars for LSC.³⁸ But soon thereafter, LSC again became a target for elimination by Congress. In 1996, LSC again survived elimination with the help of important ABA and state bar leaders, and bipartisan support in Congress, who fashioned a compromise providing \$278 million in funding and additional restrictions on how legal aid programs may use their funding.³⁹

Federal funding for LSC has slowly recovered from the deep cut in 1996. Today, it operates on a budget of \$420 million and provides grants to 136 independent legal aid programs with more than 900 offices, which handle more than 900,000 cases each year.⁴⁰

35. Joseph A. Dailing, *Their Finest Hour: Lawyers, Legal Aid and Public Service in Illinois*, 16 N. Ill. U. L. Rev. 7, 22–23 (1996).

36. Leg. Servs. Corp., *Annual Report for Fiscal Years 1982 and 1983*, at 10 (1984).

37. 45 C.F.R. § 1614.2(b)(1) (2010).

38. Leg. Servs. Corp., *Fact Book 2003*, at 3 (July 2004).

39. *Id.*

40. Pub. L. No. 111-117, 123 Stat. 3148 (2009); Leg. Servs. Corp., *2009 Annual Report* 17, 20, 46–47, http://www.lsc.gov/pdfs/annual_report_2009_35_years_as_americas_partner_for_equal_justice.pdf (accessed Apr. 12, 2011).

IV. ACCOMPLISHMENTS

Despite the many challenges, the history of civil legal services in the United States includes important accomplishments. The biggest accomplishment was expanding federally funded legal services from a handful of urban programs to a system that provides civil legal services in every county in the nation, including its territories.

Although legal aid attorneys have litigated landmark cases that have created important legal rights,⁴¹ it is the millions of individual cases that attorneys in legal services programs handle day to day that are especially noteworthy. A legal aid attorney resolves pressing problems in the lives of his or her clients, such as keeping a family with children from being evicted and falling into homelessness; protecting a battered woman from a violent and abusive relationship; helping a young mother regain custody of her child or gain access to necessary healthcare or food; preventing a grandmother from losing her home to foreclosure; and overturning an improper denial of disability benefits.

The work of legal aid attorneys is critical to their clients' economic and personal survival and to that of their families. Their clients include the most vulnerable in our society, who have nowhere else to turn. They are children, the elderly, survivors of domestic violence, persons with disabilities, families facing evictions and foreclosures, the uninsured, the unemployed, low-wage workers, homeless families with children, returning veterans and their families, Native-Americans on reservations, and migrant farm workers. Legal services programs help clients attain security, stability, and self-sufficiency by helping them obtain or maintain basic necessities, making a significant difference in the clients' lives. Throughout the United States, the well-being of communities is aided by the help legal services programs provide to these clients.

41. See e.g. *Sullivan v. Zebley*, 493 U.S. 521, 541 (1990) (striking down certain regulations that were resulting in denial of disability determinations in Supplemental Security Income cases); *Goldberg v. Kelly*, 397 U.S. 254, 270–271 (1970) (determining that due process is required when the government seeks to terminate benefits); *Shapiro v. Thompson*, 394 U.S. 618, 641–642 (1969) (holding that welfare recipients could not arbitrarily be denied benefits).

V. CURRENT CHALLENGES

While LSC encourages its grantees to leverage the federal dollars with other sources of funding, LSC remains the largest single source of funding for civil legal services.⁴² Given the millions of low-income individuals and families in need, the adequacy of funding for civil legal services remains a problem, especially in the midst of a severe economic recession.

The economic crisis has resulted in more Americans meeting the definition of poverty and, therefore, more Americans eligible for LSC-funded assistance. To be eligible, a person can earn no more than 125 percent of the federal definition of poverty,⁴³ which is by no means generous. For instance, a family of four in 2010 could qualify only if its household income was no more than \$27,563.⁴⁴ Today, more than sixty-three million people are eligible for LSC-funded services.⁴⁵ This figure includes twenty-two million children living in poverty⁴⁶—nearly thirty percent of the nation’s children.⁴⁷

The need for LSC-funded legal services greatly exceeds the supply. In 2005, LSC conducted an extensive study of the gap between the need for legal services and available resources, and issued a report entitled *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*.⁴⁸ This report defined the problem facing the nation, shaped the dialogue with LSC and Congress, and helped bring about the higher levels of funding.

The LSC “unable to serve” study demonstrated that there is a significant shortage of civil legal assistance available to low-

42. Leg. Servs. Corp., *Press Releases, LSC Sends Fiscal Year 2011 Budget Request to Congress*, http://www.lsc.gov/press/pressrelease_detail_2010_T261_R1.php (Jan. 29, 2010).

43. 45 C.F.R. at § 1611.4(c).

44. *Id.* at § 1611, app. A.

45. Leg. Servs. Corp., *Press Releases, Fiscal Year 2011 Bill Would Cut Legal Aid by \$15.8 Million*, http://www.lsc.gov/press/pressrelease_detail_2011_T274_R12.php (Apr. 12, 2011) [hereinafter *\$15.8 Million Cut*].

46. *Id.*

47. See Childstats.gov, *Child Population: Number of Children (In Millions) Ages 0–17 in the United States by Age, 1950–2009 and Projected 2010–2050*, <http://www.childstats.gov/americaschildren/tables/pop1.asp> (accessed Apr. 12, 2011) (projecting 75.6 million children up to age seventeen for year 2011).

48. Leg. Servs. Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* 2–4, <http://www.lsc.gov/pdfs/JusticeGapReportOverview120105.pdf> (Sept. 2005).

income Americans. It established that for every client who receives service from an LSC-funded office, one applicant is turned away, indicating that fifty percent of the potential clients requesting assistance from an LSC grantee, or close to one million people, were turned away for lack of resources.⁴⁹ Considering that LSC grantees were instructed to count only the potential clients who actually came to an LSC office, the need is even greater than the study indicates. LSC updated the Justice Gap Report in 2009, which confirmed the continuing crisis.⁵⁰ Further, state legal needs studies from at least fifteen states indicate that the percentage of individuals who are unable to obtain assistance might be closer to eighty percent.⁵¹

Obviously, current economic conditions are widening the justice gap. As more Americans lose their jobs and fall into poverty, and as millions face the effects of the subprime mortgage crisis, programs are besieged with increased requests for assistance. In foreclosures alone, the numbers are vast. Since the crisis began, about five million foreclosures have occurred, and many millions more are predicted to occur in the next few years, with estimates of foreclosures as high as one in eight homes. In the past ten years, over six million foreclosures have occurred and it has been predicted that the United States could face at least three million more through 2013.⁵² Foreclosures are an area in which legal assistance is especially important because of the complex state and federal laws involved, as we have seen from the recent litigation concerning irregularities in the foreclosure process.⁵³ A large number of individuals facing foreclosure do so without the benefit of counsel.⁵⁴

49. *Id.* at 4–5.

50. Legal Servs. Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* 6, http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf (Sept. 2009).

51. *Id.* at 13–18.

52. Alan Zibel & Louise Radnofsky, *Only 1 in 4 Got Mortgage Relief: Republicans Now Want to Kill HAMP Program That Made Only a Small Dent*, Wall St. J.A4 (Feb. 28, 2011) (available at <http://online.wsj.com/article/SB10001424052748704692904576166982594828812.html>).

53. Zachary A. Goldfarb, *Foreclosure Alarms Rang Months Ago*, Wash. Post A1 (Oct. 10, 2010) (available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/09/AR2010100904237.html>).

54. Laura K. Abel, *Evidence-Based Access to Justice*, 13 U. Pa. J. L. & Soc. Change 295, 311 (2010) (stating that “most low-income people facing the loss of their homes as a result of eviction or foreclosure do so without a lawyer”).

The recession's impact also includes increased need for legal assistance with unemployment claims, late payments on medical bills, credit cards, and delinquent child-support payments.⁵⁵ Another unfortunate effect of financial strain is an increase in domestic violence.⁵⁶ The most effective way to reduce domestic violence through a public service is to provide the victims access to legal aid.⁵⁷

VI. NEED FOR ACTION

The current challenges facing our country mean that the struggle to achieve the ideal of "justice for all" is more important than ever before and requires action from all of us. The most significant group that can help, of course, are the lawyers. The bar has played a critical role in LSC's creation and survival and has been LSC's strongest supporter for increased funding. It has also played an important role in providing pro bono legal representation to the poor.

In Florida, there are current efforts underway to revitalize pro bono legal representation. For example, the Florida Bar Foundation has recently developed a pilot pro bono grant program designed to expand legal services.⁵⁸ The program seeks to encourage and promote further volunteerism by Florida attorneys, and to demonstrate successful strategies and techniques to address barriers and challenges to the expansion and improvement of pro bono services in Florida.⁵⁹

The courts are another important partner, especially with the enormous growth in the number of pro se litigants. Because legal

55. Anne Erickson, *Empire Justice Testimony: Ensure Funding for Legal Services in New York*, "Changing Legal Needs," <http://www.empirejustice.org/policy-advocacy/testimony/empire-justice-testimony-1.html> (Feb. 9, 2011).

56. *Id.*

57. See Emily Savner, *The Economy and Civil Legal Services, The Impact of the Recession on the Ability of the Poor and Working Poor to Obtain Help with Pressing Civil Legal Needs*, "Areas Where Legal Need are Rising Most & Likely to Rise Further," http://www.brennancenter.org/content/resource/the_economy_and_civil_legal_services/ (June 25, 2010) (noting that "[e]conomic deterioration is known to be coupled with a rise in domestic violence," and reporting a twenty-one percent increase in calls at the National Domestic Abuse Hotline between the third quarter of 2007 and the third quarter of 2008).

58. Gabrielle Davis, *The Florida Bar Foundation, Newsroom, Foundation Launches Pilot Pro Bono Program*, <http://www.flabarfdn.org/about/news-publications/newsroom/PilotProBronoGrantProgram.aspx> (Oct. 15, 2009).

59. *Id.*

services providers are not able to assist all the eligible individuals who need it, more and more poor Americans go to court unrepresented.⁶⁰ Although some individuals may choose to go to court without counsel, most pro se litigants have no choice. Court-houses across the country are seeing double-digit increases in the percentage of civil cases in which individuals are representing themselves.⁶¹ Last year in New York alone, for example, more than 2.3 million individuals appeared in court unrepresented in civil proceedings.⁶² We clearly need to work with the courts to find more ways to support pro se litigants. This includes encouraging more court-required and supervised mediation when appropriate, and providing more information and assistance to enable unrepresented litigants to navigate the court system effectively without a lawyer at their side.

The nation's law schools also play an essential role in providing legal assistance to the poor. Stetson University College of Law's pro bono requirements are extensive.⁶³ It "was one of the first law schools in the country to establish a pro bono service requirement for graduation."⁶⁴ As you know, all Stetson University College of Law students are now required to complete sixty hours of pro bono public service, at least thirty of which must be completed in legal-related activities, such as providing pro bono service for the indigent. Stetson University College of Law's requirement of mandatory pro bono public service, the highest of any law school in the country, goes a long way toward instilling a likely life-long dedication by its graduates to doing pro bono work.

60. *Supra* nn. 49–51 and accompanying text (discussing the shortage of legal assistance for low-income Americans).

61. See Jonathan D. Glater, *Amateur Hour in Court: In a Downturn, More Act as Their Own Lawyers*, N.Y. Times B1 (Apr. 10, 2009) (available at http://www.nytimes.com/2009/04/10/business/10lawyer.html?_r=1&ref=jonathandglater) (discussing increases in the number of pro se litigants in New York and California).

62. Task Force to Expand Access to Civ. Leg. Servs. in N.Y., *Report to the Chief Judge of the State of New York* 1 (Nov. 2010) (available at <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>).

63. "All J.D. students who enter the College of Law in or after Fall 2010 . . . are required to complete [sixty] hours of pro bono public service. At least [thirty] hours must be completed in legal-related activities; the [thirty] remaining hours may be completed in non-legal-related activities." Stetson U. College of L., *The Stetson Experience, Pro Bono Service*, <http://law.stetson.edu/tmpl/about/internal-1.aspx?id=9713> (accessed Apr. 12, 2011).

64. *Id.*

Stetson University College of Law's extensive clinical programs and internships are the source of thousands of hours of legal assistance to poor clients. This is in addition to the law students providing pro bono services as part of their mandatory graduation requirements. Internships with legal services organizations give law students opportunities to contribute and are an important means of helping to address the justice gap. The programs also expose law students to the fulfilling experience that comes from representing the disadvantaged.⁶⁵

Stetson University College of Law has embraced the important mission to instill and nurture an ethic of public service among its students so that no matter what type of career the students ultimately pursue, they carry the public-interest ethic throughout their professional lives. I know from my friend Professor Ellen Podgor, with whom I worked closely on an ABA Law School Accreditation team, the important emphasis the law school places on professional responsibility. By training lawyers to embrace the responsibility to serve people without means and to ensure equal access to justice, Stetson University College of Law plays an important part in moving us closer to the ideal of "justice for all."

Since retiring as President of LSC, I am teaching a third-year seminar at the New York University School of Law on Access to the Civil Justice System and Delivering Civil Legal Services to the Poor.⁶⁶ It is a course I created and developed based on my career of providing legal assistance to low-income persons, and I hope to instill in my students the desire throughout their careers to work to achieve equal access to justice for all.

In addition, I was appointed by the Chief Judge of the State of New York to chair a thirty-one member Task Force to Expand Access to Legal Services in New York. We issued a comprehensive

65. Stetson University College of Law students have the opportunity to provide legal services to the disadvantaged through internships such as the Elder and Disability Law Internship and the Homeless Advocacy Internship, or by participating in clinics such as the Civil Elder Law Clinic, the Civil Poverty Clinic, the Immigration Law Clinic, or the Public Defender Clinic. Stetson U. College of L., *The Stetson Experience, Clinics and Internships—Program Outlines*, <http://law.stetson.edu/tmpl/academics/internal-1.aspx?id=11023> (accessed Apr. 12, 2011).

66. N.Y.U. Sch. of L., *Academics, Course Descriptions, Access to the Civil Justice System and Providing Civil Legal Services to the Poor: Policies, Practices and Current Challenges Seminar*, <https://its.law.nyu.edu/courses/description.cfm?id=8097> (accessed Apr. 12, 2011).

report at the end of November 2010, in which we documented the following key findings, which I believe are applicable in many other states, including Florida:

- **Finding 1:** The substantial number of unrepresented litigants in civil legal matters adversely impacts the quality of justice for all parties in the [c]ourts . . . , increases the amount of litigation, and undermines the rule of law.
- **Finding 2:** Providing civil legal assistance increases federal benefit payments for low-income [state residents], and reduces the need for [s]tate and local government assistance payments.
- **Finding 3:** The unmet need for civil legal assistance . . . is profoundly impacting vulnerable [state residents] and costing taxpayers millions of dollars by increasing homelessness, failing to prevent domestic violence, and increasing poverty.
- **Finding 4:** In these difficult economic times, current funding is inadequate to meet the critical need for civil legal assistance⁶⁷

These findings were based on an extensive record of evidence gathered by the Task Force. The Chief Judge has included in his Judiciary Budget substantial funding for civil legal services, and based on the Task Force's findings that providing legal assistance is good for the bottom line of businesses and others who use the courts, we hope for a favorable outcome.⁶⁸

67. Task Force to Expand Access to Civ. Leg. Servs. in N.Y., *supra* n. 62, at 2 (first emphasis in each bullet point in original, emphasis in succeeding text removed).

68. N.Y. St. Unified Court. Sys., *Press Releases, Court Leaders Submit Reduced Operating Budget for Fiscal Year 2011–2012, Civil Legal Services*, http://www.courts.state.ny.us/press/pr2010_16.shtml (Dec. 1, 2010). Subsequent to the date of delivery of this speech, New York State Chief Judge Jonathan Lippman announced that the 2011–2012 Judiciary Budget included a \$12.5 million allocation of new funding for civil legal services for low-income New Yorkers. Interview by Richard Zora with Hon. Jonathan Lippman, C.J., St. of N.Y. (Apr. 4, 2011) (transcript available at <http://accessjustice.net/2011/04/04/newsmaker-interview-cj-lippman-on-new-york-foreclosure-settlement-representation-project/>).

VII. CONCLUSION

The ideal of "justice for all" was, for one of our Founders, of the highest importance. Thomas Jefferson spoke of what he termed "the essential principles of our Government" in his first Inaugural Address.⁶⁹ The very first was "[e]qual and exact justice to all"⁷⁰

My belief that providing the poor with civil legal services is of central importance to due process, fundamental fairness, and equal protection of the law is what motivated me to become a legal aid lawyer decades ago and to continue in this endeavor for as long as I have. This ideal acknowledges the value and importance of providing a voice to those who are unable to represent themselves, and whose most important concerns are not always foremost in the minds of policymakers and the public. In order to promote respect for the law, we must ensure that access to justice is not denied to any segment of society and that resolution of an individual's civil legal problems is not determined by his or her financial status. As aptly noted by Judge Learned Hand: "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."⁷¹

If we are serious about our commitment to equal justice for all, we need the help of everyone in this room—the judges, lawyers, law school deans, law professors, and law students—in following Reece Smith's lead in uncompromisingly pursuing justice for all Americans regardless of economic means, and championing the need for, and the value of, equal access to justice.

We must insist on an ongoing and robust federally funded legal services program⁷² and work together to develop effective

69. Thomas Jefferson, Speech, *First Inaugural Address*, (Sen. Chamber of the Capitol, Mar. 4, 1801) (transcript available at http://avalon.law.yale.edu/19th_century/jefinau1.asp).

70. *Id.*

71. Leg. Aid Socy. of N.Y.C., *Homes, Thou Shalt Not Ration Justice*, <http://www.legal-aid.org/en/homes/thoushaltnotationjustice.aspx> (accessed Apr. 12, 2011).

72. Subsequent to the date of delivery of this speech, Congress proposed a funding bill for the remainder of fiscal year 2011 that would cut appropriations to LSC by 15.8 million dollars. *\$15.8 Million Cut*, *supra* n. 45. Congress passed the bill on April 14, 2011, and President Obama signed the bill into law on April 15, 2011. Alan Silverleib, *Obama Signs 2011 Budget Deal into Law*, CNNPolitics, http://articles.cnn.com/2011-04-15/politics/obama.signs.budget_1_obama-signs-government-shutdown-budget-agreement?_s=PM:POLITICS

pro se initiatives; support enhanced pro bono assistance; secure financial assistance from state and local governments and private funders; expand the efficient use of technology to increase access to legal information to those unable to obtain legal assistance; improve the efficiency of legal services programs; and create and strengthen successful partnerships and strategic collaborations, such as medical–legal partnerships that improve health outcomes of low-income children in order to meet the civil legal needs of low-income individuals and families and make justice available to everyone—not just to those who can afford to pay for it.

Everyone here has the privilege of living in this great democracy and serving in a profession that enables us to preserve and improve that democracy. We must embrace the responsibility that comes with those privileges and follow the lifelong example of Reece Smith by working to ensure that justice is not just for some, but truly for all.