

The State of Access to Justice in Oregon

Part I: Assessment of Legal Needs

Sponsored by

The Oregon State Bar

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Appendix B: Research Methodology

There is a great need for civil legal services for low and moderate income people in Oregon that is not adequately met by the existing legal services delivery network.

EXECUTIVE SUMMARY

This report, commissioned by the Oregon State Bar, examines the civil legal needs of low and moderate income Oregonians. The survey was also sponsored by the Oregon Judicial Department and the Office of Governor John Kitzhaber, M.D. The primary source of data used in this study is a legal needs survey of 1,011 low and moderate income persons conducted with the assistance of Portland State University throughout Oregon during the fall and winter of 1999-2000. Additional information was provided by judges, lawyers, social service workers, community leaders and legal services providers through focus groups, interviews and surveys.

Summary of Findings from Judges, Lawyers, Social and Legal Services Providers

- There is a great need for civil legal services for low and moderate income people in Oregon that is not adequately met by the existing legal services delivery network.
- More services are needed in the area of family law, particularly in child custody and domestic violence cases. Part of that need can be met by providing advice and other limited services short of full representation. Court representation is needed in cases where the opposing party is represented or there is an imbalance of power.
- Housing advocacy to increase the quantity and quality of housing for low income people, reduce the incidence of unlawful discrimination, enforce the residential landlord tenant act and provide sufficient self-help information to assert defenses in eviction actions is a priority need that is insufficiently unmet.
- Employment law issues such as collection of wages, wrongful discharge, discrimination, and unsafe working conditions are an important emerging area of unmet legal need.

- The unmet need for services is not limited to the foregoing substantive areas, but includes a wide range of other issues discussed in this report.
- There is a need to provide targeted services to particular client groups who often encounter unique substantive legal issues or face special barriers to access to the legal system, such as the disabled, the elderly, farm workers, immigrants, Native Americans, the non-English speaking, and youth.
- There is a significant unmet need for outreach, community education and access to easily used, high-quality self-help materials.
- A full range of legal assistance should be available to low and moderate income Oregonians, including community education, outreach, advice, transactional assistance, direct representation of individuals in court, multi-party and class litigation, lobbying and administrative advocacy. These services should be available to all, without regard to legal status or remote geographical location.

Summary of Findings: Oregon Legal Needs Survey of Low and Moderate Income Oregonians

- The highest needs for legal assistance arise in housing, public services, family, employment and consumer cases.
- Other areas of high need for particular population groups include elder abuse, education, farm worker statutory, and immigration issues.
- Lower income people obtain legal assistance for their problems less than 20% of the time. 9.6% of all cases are handled by legal aid attorneys, 4.3% are handled by the private bar on a *pro bono* or reduced fee basis, and 3.8% are handled for full fees.
- Particular population groups examined in the study have unique legal needs that often require specialized services or approaches.

People obtaining representation have a much more favorable view of the legal system and are satisfied with the outcome of the case 75% of the time when represented by a legal services lawyer.

- Most people who experience a legal need and don't obtain representation feel very negatively about the legal system and about 75% are dissatisfied with the outcome of the case.
- People obtaining representation have a much more favorable view of the legal system and are satisfied with the outcome of the case 75% of the time when represented by a legal services lawyer.
- Lack of legal information, ignorance of resources and remedies, unavailability of convenient services and fear of retaliation are the most significant factors causing lower income Oregonians not to seek legal representation when they have a legal problem.

Capacity of Existing Services to Meet Needs of the Low and Moderate Income

A network of existing resources currently addresses the civil legal needs of low and moderate income Oregonians. Legal services are provided at no cost by basic and specialized legal services entities. Private lawyers also provide free, or *pro bono*, services through a range of programs, and assist with low cost representation through the Modest Means Program of the Oregon State Bar. Unrepresented litigants are assisted by court staff, social and educational institutions, the Oregon State Bar's Tel-Law program, libraries and the legal services programs. Agencies of the state assist with resolution of some legal problems of lower income Oregonians.

Six legal services programs comprise the basic legal services network in the state, Legal Aid Services of Oregon (LASO)(12 field offices); Oregon Law Center (OLC)(four field offices); Center for Nonprofit Legal Services (Medford); Marion-Polk Legal Aid Services (MPLAS); Lane County Legal Aid Services (LCLAS); and Lane County Law and Advocacy Center. Among the field offices are three that serve special populations, the LASO Native American Program and the Farm Worker Programs of LASO and OLC. Farm worker attorneys from both programs also work at office sites throughout the state.

Among the specialized providers in the nonprofit legal services network are the Oregon Advocacy Center, St. Andrew Legal Clinic, St. Matthew Legal Clinic, Juvenile Rights Project, Immigration Counseling Service, Catholic Charities Immigration Program, Lutheran Family Services, SOAR, Jewish Family Services, Law School Clinics, and the Fair Housing Council of Oregon.

This system is augmented by the efforts of private lawyers working on a *pro bono* or reduced fee basis through the Modest Means Program of the Oregon State Bar. Staff of the Oregon Judicial Department play a key role in assisting unrepresented parties through formal courthouse facilitator programs, conciliation services and other informal help. The Attorney General, through the Division of Child Support, and the county district attorneys assist in establishing paternity and in collecting and modifying child support obligations. The Justice Department also works effectively on consumer fraud issues. The Bureau of Labor and Industries enforces wage and discrimination laws.

Key Findings Regarding Existing Services

- The current legal services delivery system cannot meet the critical legal needs of lower income Oregonians without additional funding.
- The current legal services delivery system is meeting the legal needs of low income people in 53,650 (or 17.8%) of the 301,944 cases a year that require a lawyer's assistance. The unmet need is estimated to be about 250,000 cases a year.

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I. INTRODUCTION

This report is about fairness and equality, about justice. About how those with scarce resources in our society can gain access to the legal system and about who gets left out and why. The report is about the core American value of pursuing justice for all and our shared responsibility to serve our community. It will assist the efforts of citizens, lawyers and public officials to improve the ability of low income Oregonians to correct the injustices they encounter.

This is the first comprehensive look at this issue since 1971, when the Oregon State Bar Committee on Legal Aid published its landmark report “Statewide Legal Aid Feasibility Study” written by Don Marmaduke, Steven Lowenstein, Douglas Green and Charles Williamson.¹ That report recommended the creation of a statewide legal services system. As a direct result, the Oregon Legal Services Corporation was organized, and in a matter of a few years, offices opened in places like Ontario, Roseburg and McMinnville. Existing urban programs in Eugene, Salem and Portland were strengthened. The few small local rural offices that previously existed were organized into an effective program encompassing the non-urban areas of the state. Following that early blueprint from the Oregon State Bar, a great deal has been accomplished over the past twenty-nine years.

In many parts of the state, poor people for the first time had a real chance to be heard in the courts. In addition to representing hundreds of thousands of low income people in countless divorces, evictions or consumer fraud schemes, legal aid lawyers played a critical role in developing fair rules for how the poor were treated in Oregon in areas such as domestic violence, landlord tenant law, and agricultural employment. They have helped community groups construct hundreds of new low-cost homes. Building on an existing tradition of serving

¹The 1996 Oregon State Bar Civil Legal Services Task Force examined many of the issues raised by this report, as well, but did not have the benefit of a needs survey.

the low income, private attorneys increased their efforts at providing free or low cost services.

However, the system envisioned by those bar leaders nearly thirty years ago faces daunting challenges today. Legal services funding keeps falling, relative to inflation. Local offices have closed. Types of advocacy and categories of clients have been placed off-limits to programs that receive any funding from the Legal Services Corporation. The unavailability of legal services is such that many in the low income community have lost faith in the ability of legal services, or indeed, of the legal system, to address the severe legal problems they face.

Experience has shown that lower income families just above the poverty level in need of legal assistance have been left out. Legal services programs have always been restricted to representing those who are below 125% of the poverty level. (For a family of four, this would be a yearly income of \$20,875.) The 1990 Census shows that 17% of Oregonians fall below 125% of poverty level. Those who are not quite poor enough are ineligible for any help from a legal services program. Another 15% of Oregonians fall between 125% and 200% of the poverty level. Yet, even at 200% of the poverty level (\$33,400 for a family of four) families have little practical ability to afford legal help for any but the simplest legal issues.

At a time of unprecedented prosperity, stubborn pockets of poverty remain in Oregon. Although the economy has created thousands of jobs, many of those working full time still can't raise their families out of poverty.² The United States Department of Agriculture recently published a report³

²See, "Oregon Families Diverted from TANF: Self-Sufficiency and Family Well-Being Outcomes," Interim Report, Morgen, Acker and Heath, University of Oregon, Center for the Study of Women in Society (January 14, 2000), finding that, although sixty percent of former recipients diverted from welfare were working, about two-thirds remained below the poverty line.

³"Nord, M., Jemison, K., Bickel, G., "Measuring Food Security in the United States: Prevalence of Food Insecurity and Hunger by State, 1996-1998," Food Assistance and Nutrition Research Report Number 2, United States Department of Agriculture (September 1999), at 13.

Access to effective legal representation can benefit the economy by allowing its bounty to be shared more broadly, permitting those now in need of society's help to become productive consumers and taxpayers.

showing that Oregon's poor are more likely to suffer hunger than those in any other state in the nation. Housing costs, particularly in the rapidly growing areas of the state, have risen far faster than income. Low-paying jobs and high housing costs are causing an unacceptable level of homelessness.⁴ Forty-nine percent of Oregon's homeless are families with children, and 68% of the members of those homeless families are children.⁵ Some areas of the state, both urban and rural, have been left behind by the recent prosperity.⁶ Access to effective legal representation can benefit the economy by allowing its bounty to be shared more broadly, permitting those now in need of society's help to become productive consumers and taxpayers.

It is, therefore, an appropriate time to revisit the status of access to justice in Oregon. This report, sponsored by the Oregon State Bar, the Oregon Judicial Department and the Office of the Governor, examines the civil legal needs of low (up to 125% of poverty) and moderate income (between 125% and 200% of poverty) households. Part I of this report explores legal needs in Oregon and assesses the ability of legal services programs, partner agencies, the bar and the courts to meet them. Part II discusses the implications of the large unmet legal need found and suggests steps that might be taken to improve access to justice in the state.

⁴“A Status Report on Hunger and Homelessness in America's Cities,” 1999, The United States Conference of Mayors, at 14.

⁵Id., at 72.

⁶Novak, “Suburbs thrive, cities, rural areas fall behind,” A PORTRAIT OF POVERTY IN OREGON, Oregon State University Extension Service (February 2000), at 11.

II. LEGAL NEEDS OF THE LOW AND MODERATE INCOME IN OREGON

A. Methods Used to Determine Need.

1. Oregon Legal Needs Survey

The primary source of data used in this study is a legal needs survey of 1,011 low and moderate income persons conducted throughout Oregon during the fall and winter of 1999-2000. This survey was conducted with the assistance of Portland State University, under the supervision of Professor Grant Farr, Chair of the Sociology Department. The survey asked questions about ninety-seven common circumstances giving rise to a need for civil legal services. Where the respondent's household had experienced such a situation within the last year, additional questions were asked to determine whether the respondent sought or obtained legal help, the reasons for not seeking assistance, and attitudes about the legal system as a result of the experience.⁷ Since many of the interviewers were not lawyers, the survey forms were reviewed to assure that the situation described did, indeed, represent a likely legal problem.

The study was designed to assure collection of information about a broad cross-section of the lower income population, but also to include specific segments that face particularly acute legal needs or special barriers to access to the legal system. Since many in these target populations do not have telephones and would not likely respond by mail, the surveys were conducted primarily in person. At least 100 surveys of each specific demographic group were sought and the overall survey results adjusted to reflect the demographic characteristics of the general population. The groups particularly targeted in the survey included African Americans, disabled persons (both physically and mentally disabled), domestic abuse

⁷The survey used a simplified version of the survey instrument employed in earlier work studying legal need at Temple University. See, Reese, Roy W., and Eldred, Carolyn A., REPORT ON THE LEGAL NEEDS OF THE LOW-AND MODERATE-INCOME PUBLIC, Institute for Social Research, Temple University (American Bar Association 1994).

There is a need to provide targeted services to particular client groups who often encounter unique substantive legal issues or face special barriers to access to the legal system, such as the disabled, the elderly, farm workers, immigrants, Native Americans, the non-English speaking, and youth.

survivors, the homeless, immigrants, persons in mental hospitals, youth facilities, jails or prison, Latinos (both farm workers and those not engaged in agriculture), migrant and seasonal agricultural workers, Native Americans, non-English speakers, isolated rural poor, vulnerable senior citizens, and vulnerable youth who are not likely to have an

Region	Percent
Central	3.2%
Northeast/Gorge	8.3%
Northwest/Coast	3.1%
Mid-Willamette	32.2%
Southeast	6.0%
Southwest	11.1%
Tri-County	36.2%

Fig. 1: Regional Distribution

effective parent advocate. Surveys were taken in all regions of the state, and in both metropolitan and non-metropolitan settings. Fig.1 displays the regional distribution. 55.4% of respondents lived in a metropolitan city of more than 25,000 inhabitants, while 44.6% were from non-metropolitan areas. 20.8 % of survey respondents were seniors (3.7% older than 80), and 10.8% were 19 or younger. 64% of respondents were working. 15.8% were veterans. Household size ranged from 1 to 10, with the mean household size at 2.8 persons. Since earlier research found that moderate income persons had legal needs similar to those with low incomes,⁸ a separate survey was not conducted of their needs. However, a cluster of more than one hundred moderate income households was taken to verify the earlier findings.

2. Focus Groups and Interviews

Additional information was provided by judges, lawyers, social services workers, community leaders and legal services providers. During the last three months in 1999, twenty focus groups composed of such individuals were conducted around the state in Bend, Coos Bay, Eugene, Hillsboro, Hood River, Medford, Newport, North Bend, Ontario, Oregon City, Pendleton, Roseburg, The Dalles, and Vale. In some cities, separate focus groups were arranged for lawyers and for social services providers. In other places, both groups were included in the same focus group. Twenty-two additional individual interviews with

⁸Reese and Eldred, *supra*, n. 7.

lawyers, judges, court personnel, and community leaders were held in Albany, Corvallis, Eugene, Klamath Falls, McMinnville, Pendleton, Portland, and Salem. The president of each local county bar association, the presiding judge of each Circuit Court, and all federal district court judges were surveyed by mail. In all, twenty-three judges, one hundred seven lawyers and eighty-one social services providers and community leaders expressed their viewpoints through these various means.

In-depth interviews were conducted with each of the general legal services providers, as well as other specialized non-profit programs engaged in meeting the legal needs of the target population.⁹ These agencies were asked to discuss their perspectives and to submit any formal priorities for services they had adopted.

3. Documentation of Requests for Services

Legal services providers were asked to document for a one-week period the number of requests they had to turn away or to which they were only able to respond with less than the needed level of service. The OSB lawyer referral service provided statistics about the inquiries it receives seeking legal assistance. In addition, for a three-month period, OSB staff tracked requests for referrals under the modest means program, and conducted follow-up interviews with applicants who did not return an application.

⁹Including the Consumer Justice Alliance, the Fair Housing Council, the Juvenile Rights Project, the Oregon Advocacy Center, St. Andrew and St. Matthew Legal Clinics, the clinics at the University of Oregon, Lewis and Clark and Willamette law schools, and the voluntary agencies providing immigration counseling (Immigration Counseling Service, Catholic Charities Immigration Counseling Service, Jewish Family Services, Lutheran Family Services, SOAR).

A full range of legal assistance should be available to low and moderate income Oregonians, including community education, outreach, advice, transactional assistance, direct representation of individuals in court, multi-party and class litigation, lobbying and administrative advocacy. These services should be available to all, without regard to legal status or remote geographical location.

B. Findings: Focus groups and survey of providers

Summary of Key Findings

The focus groups, interviews and survey responses of judges, lawyers, social and legal services providers point to the following conclusions:

- ◆ There is great need for civil legal services for low and moderate income people in Oregon that is not adequately met by the existing legal services delivery network.
- ◆ More services are needed in the area of family law, particularly in custody and domestic violence cases. Part of that need can be met by providing advice and other limited services short of full representation. Court representation is especially needed in cases where the opposing party is represented or there is an imbalance of power.
- ◆ Housing advocacy to increase the quantity and quality of housing for low income people, reduce the incidence of unlawful discrimination, enforce the residential landlord tenant act and provide sufficient self-help information to assert defenses in eviction actions is a priority need that is largely unmet.
- ◆ Employment law issues such as collection of wages, wrongful discharge, discrimination, and unsafe working conditions are an important emerging area of unmet legal need.
- ◆ The unmet need for services is not limited to the foregoing substantive areas, but includes a wide range of other issues discussed in this report.
- ◆ There is a need to provide targeted services to particular client groups who often encounter unique substantive legal issues or face special barriers to access to the legal system, such as the disabled, the elderly, farm workers, Native Americans, immigrants, the non-English speaking, and youth.

- ◆ **There is a significant unmet need for outreach, community education and access to easily used, high-quality self-help materials.**
- ◆ **A full range of legal assistance should be available to low and moderate income Oregonians, including community education, outreach, advice, transactional assistance, direct representation of individuals in court, multi-party and class litigation, lobbying and administrative advocacy. These services should be available to all, without regard to legal status or remote geographical location.**

The results discussed reflect a compilation of perspectives expressed by all informants, whether provided in a focus group, an individual interview, or a written survey response. Of course, as a composite of the various views expressed, such a compilation will not necessarily reflect the individual views of each participant. Rather, it is an attempt to portray, as fairly and completely as possible, the varying viewpoints expressed.

1. Legal Needs as Identified by the Judiciary

In each community, the presiding circuit court judge was asked to provide perspectives from the bench. Most did so, or asked another judge to respond for the court. In several communities a number of judges participated.

a. Greater Representation in Family Law

Judges noted the tremendous advance in the ability of the legal system to accommodate *pro se* (unrepresented) family law litigants over the last several years. All of the circuit courts are now requiring or encouraging the increased use of alternative dispute resolution. Following the recommendations of the Oregon Task Force on Family Law, the legislature now requires that separating or divorcing parents develop a formal parenting plan. As suggested by the Oregon Family Law Legal Services Commission,¹⁰ it has authorized the use of courthouse facilitators

¹⁰“Report to the Oregon Legislative Assembly,” Oregon Family Law Legal Services Commission, (January, 1999).

Statewide, Judges thought that the role that legal services lawyers play in the legislative process and in helping the courts to work out the problems faced by low income persons is critical.

to assist unrepresented litigants by providing procedural assistance and court-approved forms. Pioneering work in this area in Marion and Deschutes Counties has been very well received, and proposals for implementing facilitator positions in other courts have been successful, at least for the remainder of this biennium.

Yet, these steps are not an adequate substitute for the timely assistance of counsel, when needed. Judges overwhelmingly reported a need for greater representation in family law, especially dissolutions and child custody disputes. Two main concerns about access to counsel were commonly expressed by the judiciary. First, there is great unmet need for advice, review of documents, and drafting decrees without the lawyer necessarily appearing for the client in court.¹¹ Today, most family law litigants in Oregon courts are unrepresented. Indeed, several judges noted that they believe that a significant percentage of litigants in family matters are appearing *pro se* by preference, not economic necessity. Judges reported that efforts by the courts, the legislature and practitioners to make family law dispute resolution less adversarial through mediation, parenting classes and other means are working, at least to some extent. When these devices do work, a better, more durable resolution of disputes may be achieved than was typical of the traditional domestic relations practice. In this context, judges reported that in many cases it was not necessary to have attorney representation in the courtroom. Nonetheless, judges expressed frustration at how to handle poorly drafted pleadings, or how to deal with situations in which a party is obviously unaware of important rights that might be vulnerable. Greater participation by attorneys would help in these cases. Several judges also expressed a desire to have more information upon which to base custody determinations in cases where attorneys are not available to bring information before the court.

¹¹This form of representation has been called “discrete task representation” or “unbundled” legal services. See, Stevens, “Understanding Unbundling,” 59 Or. St. B. Bull. 2 (November, 1998); Mosten, “Unbundling of Legal Services,” 57 Or. St. B. Bull. 9 (January, 1997).

Second, while feeling that the system generally works fairly when both parties are unrepresented (and there isn't a power imbalance¹²), judges were troubled by cases in which one spouse is unrepresented and unable to present evidence in the courtroom, but the other has counsel. Although several judges noted that the lawyer for the represented party is very often helpful and considerate to the unrepresented party, the latter is often at a significant disadvantage. The court is then faced with the dilemma of either assisting the unrepresented spouse, thereby losing the appearance of objectivity, or allowing the parties to present their cases as best they can, and deciding on whatever evidence is adduced. Neither choice is satisfactory.

b. Other Needs

The other unmet need most frequently identified by judges was representation in Forcible Entry and Detainer ("FED" or eviction) cases. Generally, judges thought that tenants in most cases can represent themselves reasonably well in court, but often need advice about possible defenses to eviction, how to enter an appearance, and how to present evidence at trial.

Several judges also mentioned the need to streamline and coordinate the administrative and judicial systems for adjudicating paternity and child support. See the Oregon Family Law Legal Services Commission's "Report to the Oregon Legislative Assembly," *supra*, recommending that the judicial and administrative systems be better integrated.

When asked about legal needs that might not reach the court because of the lack of a lawyer's assistance, judges tended to say that their institutional role gave them little information about such needs. However, other needs mentioned by judges included consumer fraud, collections for medical bills (most of which go to judgment uncontested), post-decree modifications in family law cases, and concern about the manner in which

¹²A power imbalance might occur, for example, where the parties do not have the same economic leverage, or in cases involving domestic violence.

Private Lawyers supported the proposition that low and moderate income people should have access to the full range of legal services without legislatively imposed limitations on scope of representation. ...The ability to use resources efficiently and effectively to achieve the greatest possible impact on problems encountered by the poor was supported as a fundamental principle.

non-citizens sometimes appear to be detained and jailed by state officials essentially for immigration law violations. Outreach to seniors and to others in need of legal information and assistance was also identified as a need.

c. Perspective on Legal Services

Judges in Klamath County strongly urged the re-establishment of a local legal services office to serve low income clients in Klamath and Lake Counties. They noted not only the large unmet need for services, but also the great distance and lack of affordable public transportation to the closest legal services office.

Statewide, judges thought that the role that legal services lawyers play in the legislative process and in helping the courts to work out the problems faced by low income persons is critical. While sympathetic to funding problems, judges noted a need for legal services offices to be more accessible to the public and to the courts, and to accept a broader range of cases.

2. Legal Needs Identified by Private Lawyers

Like judges, lawyers see a great need for increased assistance with family law issues, particularly contested custody cases and representation in contested restraining order hearings under the Family Abuse Prevention Act. It was felt that better self-help materials for dissolutions are needed, but *pro se* litigants still need access to good advice and the opportunity to have documents reviewed by a lawyer. Because of the difficulty in completing a self-help divorce, and the comparatively easier process of obtaining a temporary restraining order in domestic violence cases, temporary custody awarded in a FAPA restraining order often becomes the basis for future adjudication of custody matters. This makes the contested TRO hearing extremely important in the ultimate adjudication of custody between the parties, especially since an adverse determination can create a presumption of unsuitability as a parent.

There was a split in opinion among lawyers as to whether the most critical unmet need is for advice or for direct representation in court. Many attorneys expressed the view that with adequate advice and support—particularly in counties that provide custody evaluations—most family law litigants do not need attorneys in court to arrive at just results. Others felt strongly that, if lawyers are not available in the court room for poorer litigants, the inevitable result is an unacceptable dual system of justice based upon wealth.

Other substantive areas of unmet legal need frequently identified by members of the bar included landlord and tenant, social security disability cases, consumer (especially for seniors and youth), immigration matters, abuse of elderly and conservatorships. Mentioned, but less often, were wills and estate planning, contracts, workers' compensation, employment, juvenile cases (including the need to have ancillary matters resolved quickly so appointed cases can be closed efficiently), civil forfeitures, migrant worker cases, civil rights abuses, Medicaid, access to medical and dental services, economic development, education, representation of the disabled (especially the mentally disabled), administrative law, land use planning advocacy and the effective representation of Spanish-speaking Latinos in civil cases.

Generally, attorneys supported the increased use of alternative dispute resolution techniques, such as mediation and arbitration, as a means of making the justice system more accessible to lower income Oregonians. Attorneys (and some judges) in smaller counties expressed frustration at the limited funds available for mediation, and at the need to meet the same extensive program standards required of much larger (and better funded) metropolitan counties. Other lawyers stated that they have difficulty obtaining payment of arbitrators for low income litigants. Further, it is often difficult to find a *pro bono* arbitrator. When the arbitrator's fee cannot be waived, mandatory arbitration poses a significant barrier to low income litigants.

Private lawyers supported the proposition that low and moderate income people should have access to the full range of legal services without

Social services providers strongly valued the ability to collaborate with advocates about problems of low income clients on a systemic, as opposed to case-specific basis.

legislatively imposed limitations on scope of representation. Specifically, support was expressed for the availability, in appropriate cases, of assistance in the forms of community education, outreach, advice, transactional assistance, direct representation of individuals in court, multi-party and class litigation, lobbying and administrative advocacy. The ability to use resources efficiently and effectively to achieve the greatest possible impact on problems encountered by the poor was supported as a fundamental principle.

3. Legal Needs Identified by Social Services Providers and Community Leaders

Social services providers and community representatives identified housing as the single greatest unmet legal need. While lawyers and judges tended to state this primarily as a question of FED representation, social services providers saw the issue in broader terms, identifying a need for representation with respect to housing quality and affordability. The effectiveness of legal services lawyers advocating for new construction and the preservation of low cost housing was emphasized. In some communities, housing discrimination was also seen to be an important unaddressed problem.

Assistance with employment issues was identified by social services providers as a critical need. Assistance is needed with collecting wages, wrongful discharge, arbitrary discipline, discrimination, sexual harassment, and unhealthy working conditions, such as pesticide exposure. An emerging unmet need concerns illegal wage practices and unfair treatment of workers employed by temporary agencies.

Domestic relations problems identified were similar to those discussed earlier. Custody cases, representation in TRO hearings, and child support collection were noted. Conflicting responsibility between court and administrative systems of support collection was also discussed by this group.

Representation of migrant workers was identified in those regions where agricultural work is common. Unmet needs include minimum wage and

other wage problems, unfair discharge and discipline, poor housing conditions, workers' compensation, and fraudulent recruitment of workers.

Other significant areas of need identified include income maintenance, immigration, guardianships, representation of non-English speaking clients (especially those without documents), consumer, wills and financial planning (especially for the elderly), lack of adequate transportation, police harassment, better juvenile representation (foster care issues, education, and lack of services for youth older than twelve), social security disability cases (SSI and SSD), access to medical care (provider discrimination and access to dental care specifically), and resolution of the problems of the mentally ill prior to their involvement in the criminal justice system.

Social services providers saw community education and individual advice as essential, but felt that without access to actual, direct representation, particularly for certain classes of clients, these services alone would not be effective. The full range of services, including outreach, community education, representation of undocumented clients, lobbying, class actions and appellate work was seen as necessary. Social services providers strongly valued the ability to collaborate with advocates about problems of low income clients on a systemic, as opposed to case-specific, basis.

4. Legal Needs as Seen by Legal Services Providers

Basic civil legal services programs periodically review and revise priorities for their services.¹³ Programs regularly undertake a comprehensive assessment of the most pressing legal problems and, based upon this assessment, set explicit priorities, goals and objectives. This process includes soliciting input from the client community, social service providers, judges, the local bar, staff and program boards.

¹³A detailed description of the basic legal services organizations in Oregon is found in section IIIA, *infra* at 38.

All priorities concern the basic necessities required to provide families with stability and an adequate standard of living.

Although the service priorities may vary slightly in different areas of the state, all priorities concern the basic necessities required to provide families with stability and an adequate standard of living. The priorities include income maintenance (welfare, SSI and SSD disability cases, Medicare, Medicaid, and food stamps); housing (federal and other subsidized housing, low income housing development and preservation, fair housing, landlord tenant, homelessness, foreclosure, public utility policies); family law (domestic violence, child custody cases, child support and parenting time); consumer (repossession, garnishments, attachments); unemployment/employment (wage claims, unemployment benefits); health issues (coverage issues, provision of services, nursing homes); civil rights; and education. Three statewide specialized units, LASO's Native American Program and the Farm Worker Programs at OLC and LASO, have priorities directed at the specific needs of their target communities. The Native American Program priorities focus on issues of tribal sovereignty, while the Farm Worker Program priorities focus on issues that arise out of its clients' status as temporary seasonal agricultural workers.

For this study, legal services programs conducted an assessment of unmet legal need by tracking the number of clients turned away from their offices. To determine the number of cases accepted, as compared to individuals who were turned away, staff in a sampling of offices were required to record *all* client contacts for a one-week period and to note how the contact was handled. The participating offices included urban and rural offices located in diverse geographical areas. The methodology instructed offices to compile data only for clients who were eligible for services and who appeared to have a legitimate legal problem. Different offices conducted the study during different weeks to account for any variations within the intake cycle.¹⁴

¹⁴For example, more evictions occur in the beginning of the month while financial problems or acute hunger appear more frequently as the month progresses.

During the trial period 479 clients with civil legal services problems sought the services of participating offices. Of the 479 applicants, 182 (38%) received some direct help. Of the 182 clients served, thirty received only self-help booklets and 48 received brief advice insufficiently to meet their legal needs. Thus, only 104 individuals (21%) seeking services were fully served. Even within that percentage, individuals sent to *pro se* classes were considered fully served.

Several of the agencies providing specialized services¹⁵ make a compelling case for the need for increased services. The directors of St. Andrew and St. Matthew Legal Clinics note that there are inadequate resources to fill the family law needs of low and moderate income clients in the communities in which they operate. Although these agencies serve over 2,000 low and moderate income clients in the Portland metropolitan area each year, many low income clients cannot afford to pay the sliding scale fee charged by these programs. Outside those communities, few services are available for moderate income clients. All of the voluntary agencies that provide immigration counseling services report an enormous unmet demand for services. Immigration counseling services are mostly located in the Portland area, and scarce services are available in the rural areas to meet this need. Immigration law is specialized and there is only a small immigration bar in Oregon; *pro bono* representation available is therefore quite limited. The Juvenile Rights Project (“JRP”) reports that nearly all of its funding is tied to direct juvenile court representation in Multnomah County, leaving scarce resources to work on specialized juvenile law work in the balance of the state. In JRP’s one-week survey period, its statewide hotline received nine calls involving a range of cases including emancipation, guardianship to facilitate school registration or housing qualification, custody of the child of a minor, and racial harassment and assault. The Oregon Advocacy Center reports they are able to only open one case for every seven people who call for assistance.

¹⁵The purpose, structure and function of these specialized agencies is described in section IIIB, *infra* at 41.

Private lawyers also provide free, or pro bono, services through a range of programs, and assist with low cost representation through the Modest Means Program of the Oregon State Bar.

5. Data from the OSB Lawyers Referral Service¹⁶

In 1999, the OSB received 84,922 calls requesting information. While callers are not solely low or moderate-income, they are overwhelmingly middle-income or below. Accordingly, these calls provide at least some insight into the concerns of a broad cross-section of the public. These calls were directed as follows:

<i>Referral to government or community service Program</i>	5,787
<i>Referral to legal aid, legal clinic</i>	4,850
<i>Referral to OSB resource (Tel-Law, fee arbitration, etc.)</i>	3,499
<i>Lawyers referral service, Modest Mean Program, etc.</i>	45,625

The 45,625 calls to Lawyers Referral and Modest Means can be broken down by subject area:

<i>Administrative</i>	1,922
<i>Bankruptcy</i>	1,141
<i>Business</i>	952
<i>Consumer</i>	3,325
<i>Criminal</i>	3,767
<i>Debtor/Creditor</i>	2,628
<i>Family</i>	8,838
<i>Family-modest means</i>	1,306
<i>General Litigation</i>	8,488
<i>Labor and Employment</i>	4,171
<i>Real Property</i>	5,059
<i>Landlord Tenant/Modest Means</i>	30
<i>Wills and Trusts</i>	1,657
<i>Workers Compensation</i>	1,071
<i>Other</i>	1,320

¹⁶Lawyers Referral Service is a public service program funded by the Oregon State Bar. It is promoted statewide through the yellow pages, advertising, fliers, business cards, and other marketing. A reference to LRS is included in Oregon’s civil summons form.

C. Findings: Results of the Oregon Legal Needs Survey

Key Findings from the Oregon Legal Needs Survey

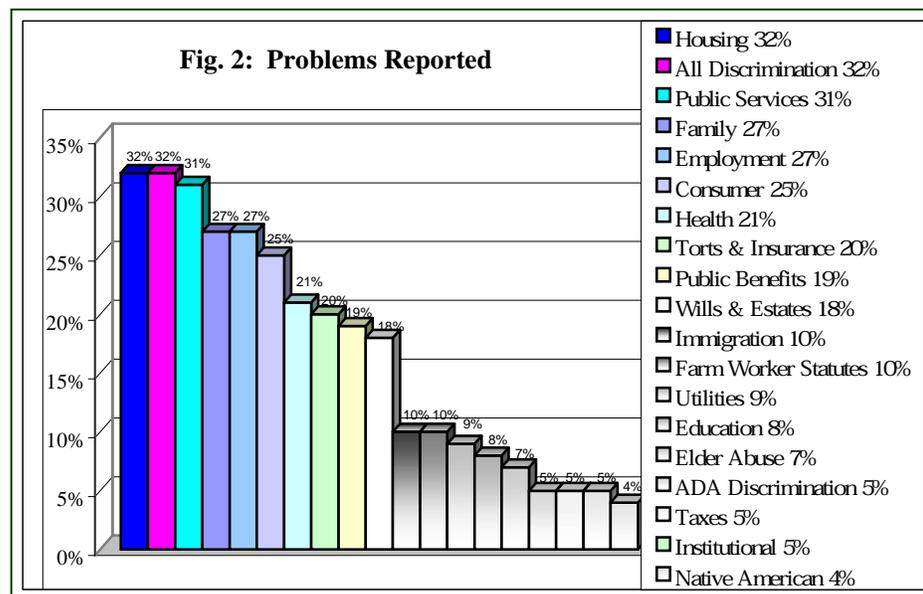
- ◆ **The highest need for legal assistance arise in housing, public services, family, employment and consumer cases.**
- ◆ **Other areas of high need for particular discrete population groups include farm worker, immigration, education and elder abuse issues.**
- ◆ **Lower income people have a lawyer's help with their legal problems less than 18% of the time—9.6 % of all cases are handled by legal aid attorneys, 4.3% are handled by the private bar on a pro bono or reduced fee basis and 3.8% are handled for full fees.**
- ◆ **The particular population groups examined in the study have unique legal needs that may require specialized services or approaches.**
- ◆ **Most people who experience a legal need and don't obtain representation feel very negatively about the legal system and about 75% are dissatisfied with the outcome of the case.**
- ◆ **People who were represented have a much more favorable view of the legal system and are satisfied with the outcome of the case 75% of the time when represented by a legal services lawyer.**
- ◆ **Lack of legal information, ignorance of resources and remedies, unavailability of convenient services and fear of retaliation by the opposing party are the most significant factors causing lower income Oregonians not to seek legal representation.**

The highest need for legal assistance arise in housing, public services, family, employment and consumer cases.

1. Legal Needs in General

Survey respondents experienced a wide range of legal needs in the past twelve months, most of which were unmet. Figure 2 details the percentage of respondents with legal problems who reported a particular type of problem.¹⁷ Family (27%) and housing (32%) problems, the two key areas of need identified by the focus groups, are significant needs. However, note that employment (27%), public services (31%), and consumer (25%) problems are reported about as frequently. In addition, the reported levels of farm worker (10%), immigration (10%) and elder abuse (7%) issues are notable.¹⁸ The discrimination category (32%) reflects all forms of discrimination, such as housing, employment, etc., and overlaps with the others categories.

The kinds of housing problems experienced by the survey respondents are



¹⁷ Each category of legal issue represents one or more survey questions within the particular category. For example, the “family” category includes questions about divorce, child custody, child support, domestic violence, parenting time, etc. The percentages do not total to 100% because some legal problems may entail two or more legal issues and respondents may have more than one legal problem.

¹⁸ As those needs affect only a small percentage of the total population, one would not expect that they would be very prevalent as a percentage of all legal problems of the general population. Yet these issues were reported at significant levels in the overall survey.

broken down in Fig. 3. The highest reported needs were for representation in remedying bad conditions, other landlord disputes and discrimination.

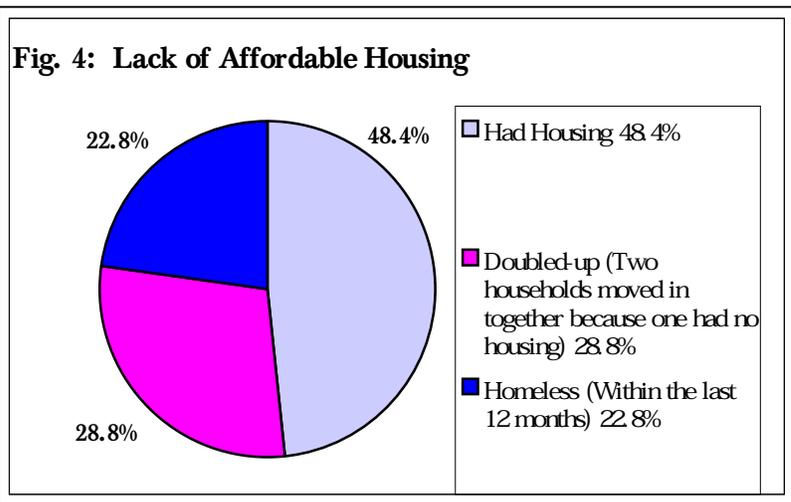
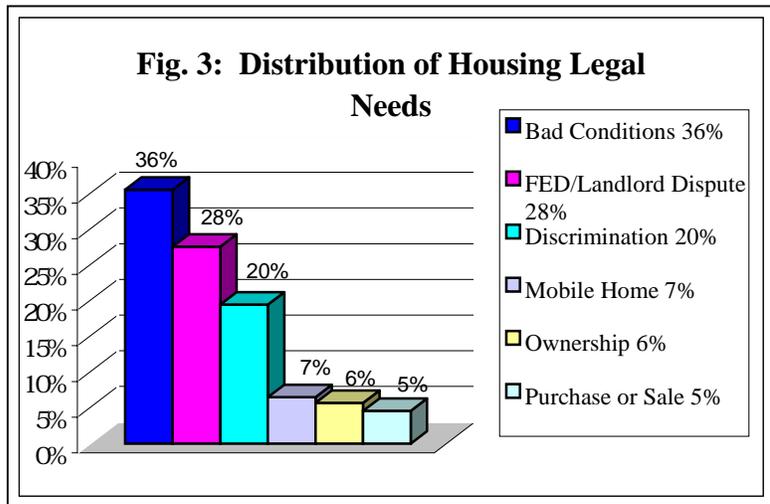
The survey did not ask direct questions about housing availability and affordability. But the survey provides strong indirect evidence that these are severe problems for low income

Oregonians. One hundred surveys of homeless respondents were deliberately sought in Albany, Eugene, Hillsboro, Portland, and Salem—all areas where one would expect to find a high incidence of homelessness. However, homelessness was reported in virtually every community surveyed. 22.8% of survey

respondents reported that they had been homeless in the past year, and even after excluding surveys from the targeted cities, a remaining 14.9% of the respondents reported they had been homeless. Other questions on the survey asked whether two or more households had moved into a single housing unit to avoid homelessness of one of the

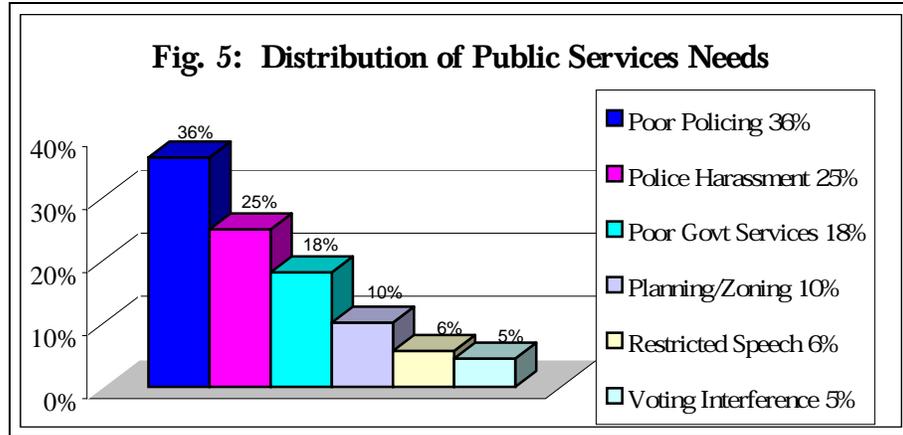
households. Excluding those households who reported that they became homeless, another 28.8% of households had to double up to avoid becoming homeless. See Fig. 4.

The high level of need for legal services regarding public services appears primarily to derive from the respondents' dissatisfaction with police services—because of not being able to obtain adequate police protection or

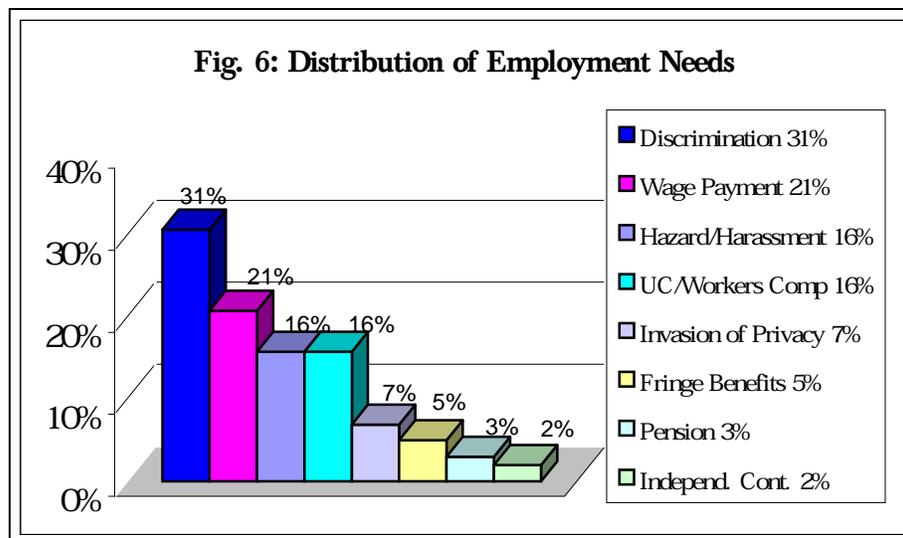


High incidence of legal needs in the employment arena may be a direct result of the fact that welfare reform and the booming economy have moved significant numbers of low income people into the work force.

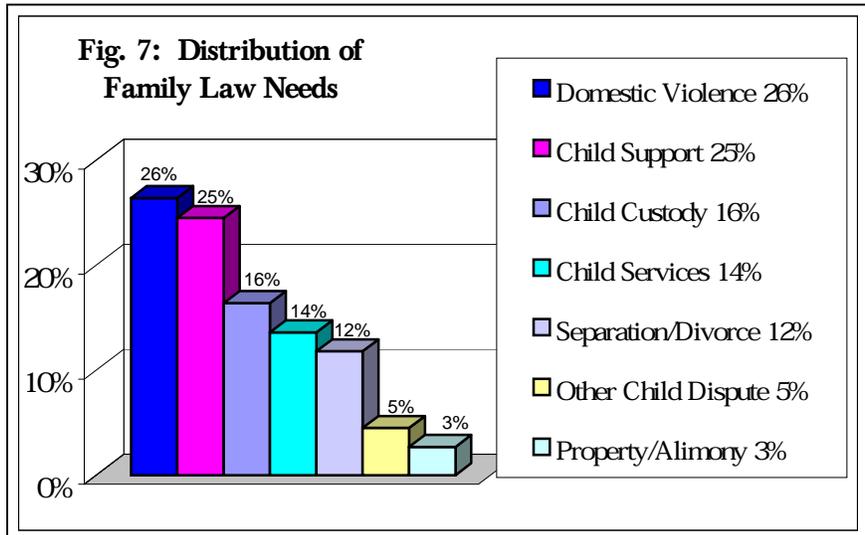
reported police harassment. Fig. 5 shows a distribution of the legal needs identified with respect to public services.



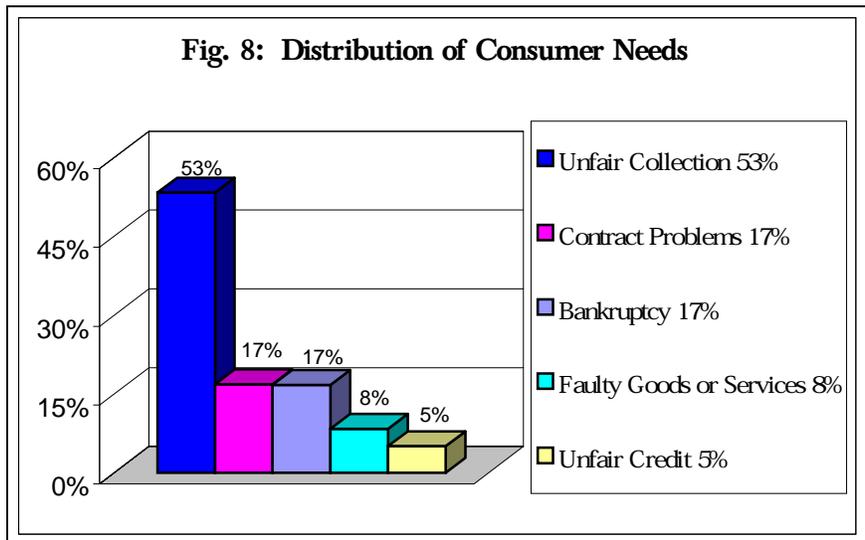
High incidence of legal needs in the employment arena may be a direct result of the fact that welfare reform and the booming economy have moved significant numbers of low income people into the work force. However, once at work, they are encountering discrimination based upon age, race, sex, and disability. They are finding it difficult to collect wages and face unlawful harassment and dangerous working conditions. When injured or unemployed, they experience problems with collecting workers' compensation or unemployment insurance. See Fig. 6.



Family problems are among the most commonly encountered legal problems of low income households. Domestic violence tops the list, with child support and child custody also frequently encountered. See Fig. 7.



The consumer problems reported by the survey respondents are illustrated in Fig. 8. By far the most common problem is with unfair debt collection practices, followed by contract problems, bankruptcy, claims for defective goods and services and unfair credit practices.



2. Legal Needs of Particular Populations

Since different groups may experience different kinds of legal needs, the Oregon Legal Needs Survey examined the particular needs of the populations likely to experience unique legal problems. To the extent that those needs varied significantly from the needs of the general low income population reflected in Fig. 2, they are described below.

As noted above, a sample of interviews was taken from **moderate income** households. Very little difference in legal need was found in this group, except slightly lower levels of need for family, public benefits, torts and immigration representation. Because of this strong similarity, the data

Particular population groups examined in the study have unique legal needs that often require specialized services or approaches.

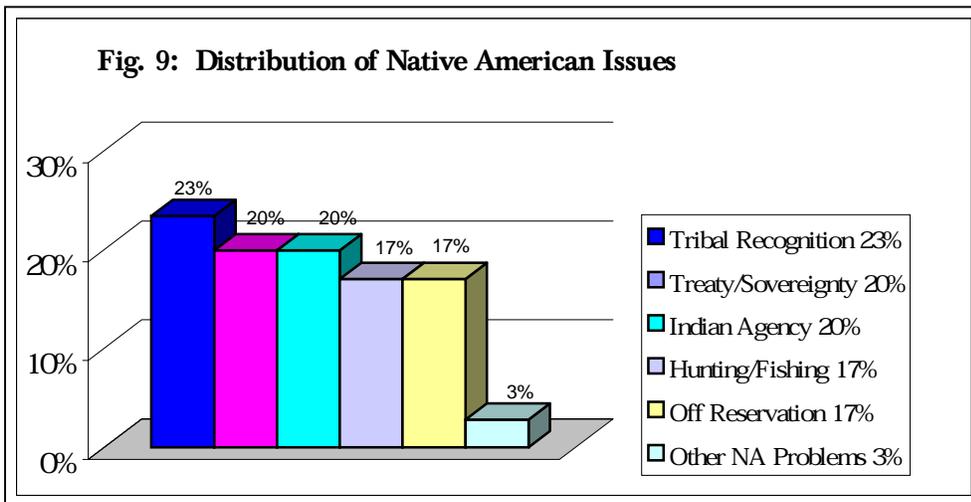
given in this report includes the moderate income households unless otherwise specifically noted.

The **homeless** were found to have had many more legal problems with public services (55.7%), housing (55.1%), employment (45.8%), family law (43.3%), torts and insurance (32.3%), public benefits (29.6%) and discrimination based upon disability (9.5%). The higher incidence of public services issues is largely attributable to dissatisfaction with police services. In addition, the homeless encountered elevated need with respect to farm worker, consumer, institutions, public benefits, health, torts, taxes, utilities and Native American law problems.

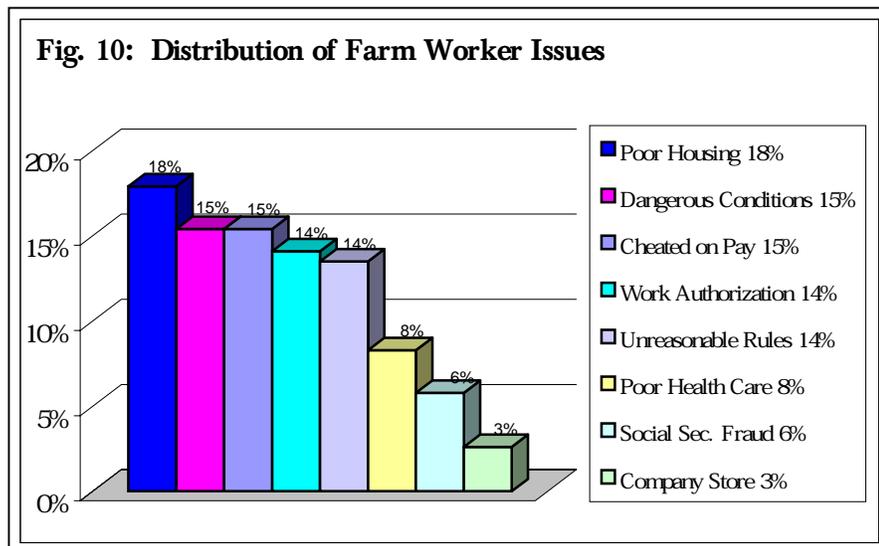
Survivors of domestic violence recorded very high need for representation with family (100%), public services (43.7%), housing (43.2%), consumer (36.2%) and public benefits (28.6%) cases. They had more education, health, torts and insurance problems, as well.

African Americans reported legal needs at a much higher level than the general population in cases involving public services (55.1%), housing (48%), consumer (39.8%) and education law (15.3%). Need for representation in public benefits, health, utility, torts and insurance cases exceeded the norms for the general population.

The legal needs of **Native Americans** were very high in the areas of Native American issues (94.3%), public services (61.9%), discrimination (50%), employment (42.7%), consumer (39%), public benefits (35.7%), health (31.2%), torts (30.9), education (17.6%) and institutional (13.7%) issues. Native American law problems include disputes with agencies like the Bureau of Indian Affairs or the Indian Health Service, difficulties with tribal recognition, hunting and fishing rights, use of tribal lands, other treaty rights and tribal sovereignty issues, and issues that arise from living off-reservation. See Fig. 9. Other needs of Native Americans that exceeded those of the general population were for assistance with housing, utility, wills and estates, farm worker and family cases.



Farm workers encounter significantly more problems arising under farm labor statutes (70.1%) and with discrimination (63.2%), employment (56.6%), housing (45.3%), immigration (44.3%) and taxes (11.3%). Farm worker statutory issues involve employment problems such as pay, recruitment, working conditions, poor employer-provided housing, and migrant health and education programs. See Fig. 10. Farm workers also reported slightly higher levels of need with respect to public services, health and consumer problems¹⁹.



Latinos who were not engaged in agriculture experienced very high needs for representation with respect to discrimination (44.1%) and immigration

¹⁹Because the survey took place in the late fall and early winter, only about 21.5% of the farm workers surveyed were migrants. Since experience has shown that migrant workers tend to have more severe legal problems than settled-out seasonal farm workers, these figures may understate the need.

The areas of high need for particular population groups include elder abuse, education, farm worker statutory and immigration issues.

(28.8%), but only slightly elevated need for help with employment cases compared to the general public.

Immigrants²⁰ experienced very high levels of need for legal assistance with discrimination (54.9%), immigration (45.6%), employment (44%), housing (43.3%) and farm worker (35.8%) cases.²¹

The needs of the **non-English speaking** coincided very closely with the needs of immigrants.

The **physically disabled** recorded very high levels of need for representation in cases involving all forms of discrimination (47.4%), health (35.6%), public benefits (34.9%), consumer law (34.6%) wills and estates (30.9%) and discrimination on the basis of disability (16.8%). Problems with cases involving abuse or neglect of the elderly for this group were somewhat higher than average.

Legal assistance with public benefits (47.4%), family law (43.5%), education (16.2%) and disability discrimination (9.6%) were very high needs of the **mentally disabled**. Also notable were needs in the areas of housing, public services, elder abuse, utilities, health, torts and insurance, problems with confinement in an institution and all forms of discrimination.

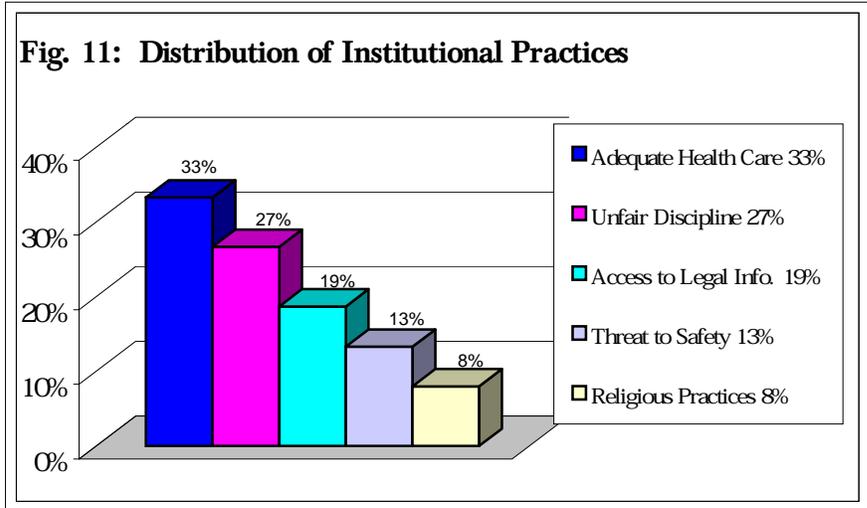
Persons who had been **institutionalized** reported high relative levels of need with respect to public services (56.2%), all forms of discrimination (50.9%), institutional problems (45.5%), employment (40.2%), consumer (35.1%), torts and insurance (35%), public benefits (32.2%), health

²⁰Including those both from Latin America and the rest of the world. 27.1% of the immigrants interviewed were from non-Latin countries.

²¹The needs of this group, especially for immigration assistance, may be understated for at least two reasons. Many come from societies without a robust tradition of public expression and may be fearful of disclosing sensitive matters to interviewers. It was reported that immigrant respondents who were known to the surveyor to have active immigration cases did not discuss them in the survey. Further, it is likely that someone who had an urgent unmet need for immigration assistance in the past twelve months may no longer be in Oregon to be interviewed.

(32%), education (17.7%), Native American problems (9.1%) and disability discrimination (7.2%). Institutional problems include access to health care and legal materials, threats to physical safety, interference with religious practice, and unfair discipline. Fig. 11. In addition, this group experienced elevated levels of need for assistance with housing, utilities and family issues.

Vulnerable elderly legal need reported at very high levels included wills and estates (42%) and elder abuse and neglect (31.7%).²²



Vulnerable youth indicated high incidence of legal need with regard to family (53.8%), public services (49.9%), discrimination (49.7%), housing (46.5%) employment (39.6%), education (38.1%) and torts and insurance (33.4%) problems. These youth also experience elevated levels of need in their households for representation on utility, health, consumer and institutional problems.

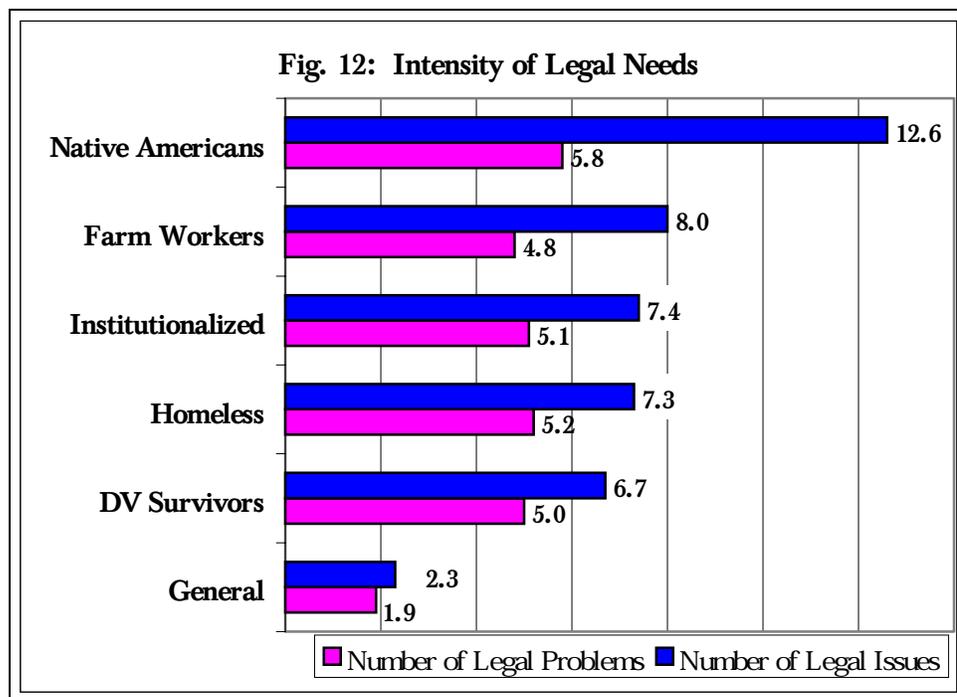
Persons who are not included in any of the subgroups discussed above experienced lower than average legal needs in all problem areas, with the exception of a slightly elevated need for wills and estates, health and abuse and neglect of the elderly.

In addition to providing information about the substantive needs these populations experienced, the Oregon Legal Needs Survey provides data as to the relative amount of need these groups encounter. The average household that does not include any of these populations reported an

²²The legal needs of this group is probably understated. Interviewers found it extremely difficult to gain access to care facilities to conduct interviews, and when able to do so, found residents reluctant to discuss problems with the care facility for fear of reprisal. Further, the elderly, in general, were found to be less likely to raise legal issues than the general population.

The homeless, survivors of domestic violence, farm workers, Native Americans, and the institutionalized each had an average of nearly 5 legal problems in the year.

average of 1.9 legal problems in a year. The 1.9 legal problems of the average household involved an average of 2.3 substantive legal issues.²³ However, the homeless, survivors of domestic violence, farm workers, Native Americans, and the institutionalized each had an average of nearly 5 legal problems in the year. These problems involved an average for each of these groups of roughly 7 or more substantive legal issues. See Fig. 12.



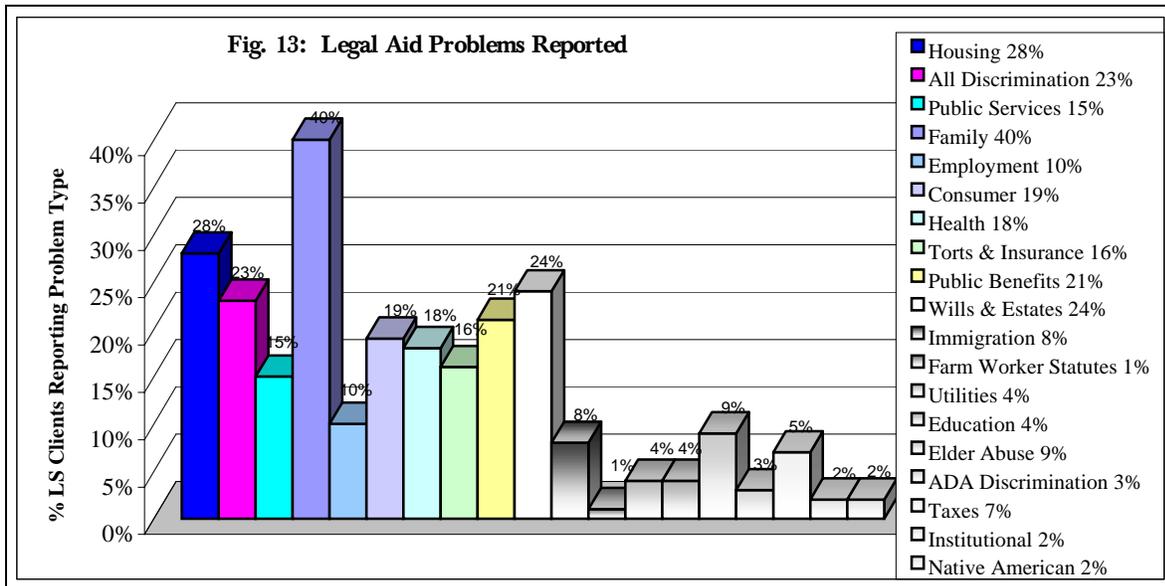
3. Are these Legal Needs Being Met?

The charts that have been discussed so far represent all reported needs, met or unmet. To understand the degree to which the current delivery system is meeting client needs, one must ask two questions: 1) what kinds of substantive problems are addressed by the current legal services

²³ If a particular dispute involved more than one type of substantive law, it was treated, nonetheless, as a single legal problem. At least a rough measure of the complexity of such a legal problem is the number of substantive law questions the problem entailed.

delivery system; and 2) to what degree are the total needs—regardless of substantive area—being met?

Legal services programs are, for the most part, addressing the broad range of problems identified in the survey. However, there are exceptions. Fig. 13 represents the substantive problems involved in those cases in which the respondent was able to obtain a legal services lawyer.²⁴



Legal services accepted housing, elder abuse, disability discrimination, public benefits and tax cases, as a percentage of total legal services cases, in about the same percentages as those needs occurred among survey respondents. Compare Fig. 2 and Fig. 13. Legal services lawyers appear to accept a substantially higher percentage of their cases involving family and wills and estates law than the percentage that those cases represent of total legal need, no doubt because of the degree to which these problems involve very basic household needs. Programs addressed the reported legal needs for assistance with public services, employment, farm worker,

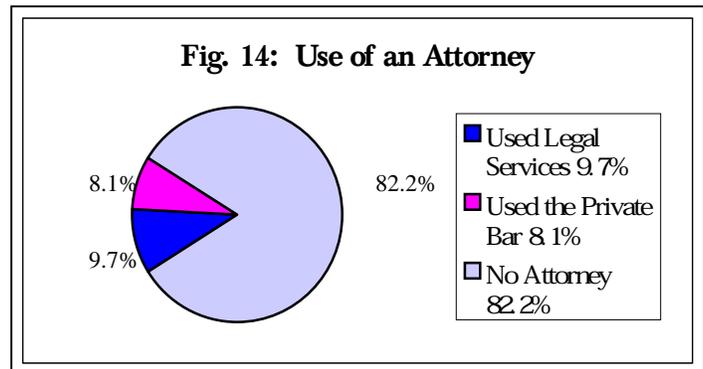
²⁴Of course, some low and moderate income needs are addressed by private attorneys, as well. However, the number of reported cases of *pro bono* representation are insufficient to draw reliable conclusions as to the types of substantive problems being addressed. Generally, the highest numbers of cases reported involved family, wills and estates and housing issues.

Survey respondents reported that they obtained legal representation for fewer than 20% of their legal problems.

education and institutions cases at less than one-half of the rate at which they arise.

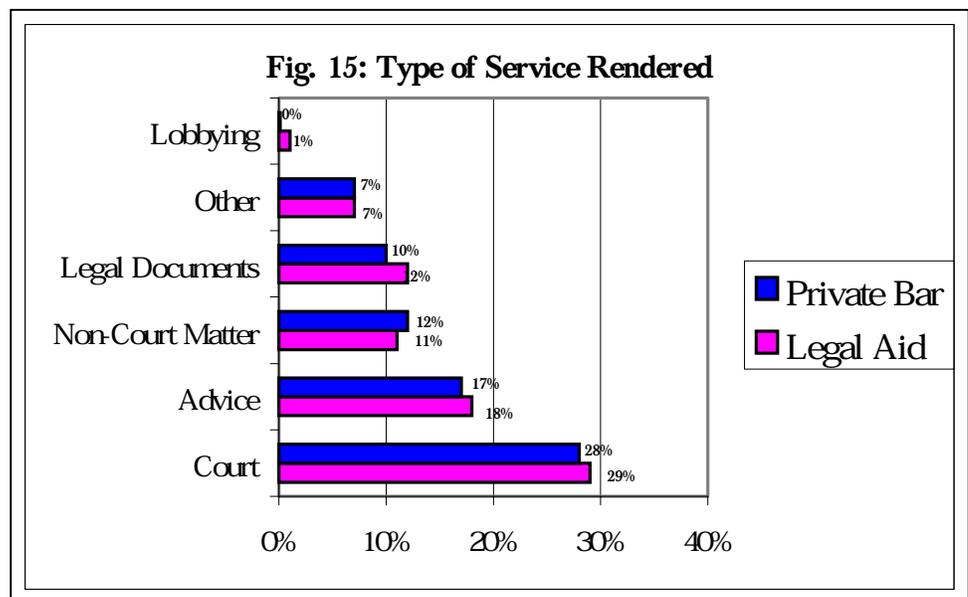
Regardless of subject area, however, most legal needs of low and moderate income households in Oregon go unmet. Survey respondents reported that they obtained legal representation for fewer than 20% of their legal problems.

They obtained help from a legal services program in about 10% of all problems, and from a private attorney in about 8.1% of their legal



needs—4.3% *pro bono* or for a reduced fee and 3.8% for full fees. See Fig. 14. Combining these figures, it appears that free or below market representation was available about 13.9% of the time.

The types of services that legal services lawyers and the private bar rendered were comparable. See Fig. 15.

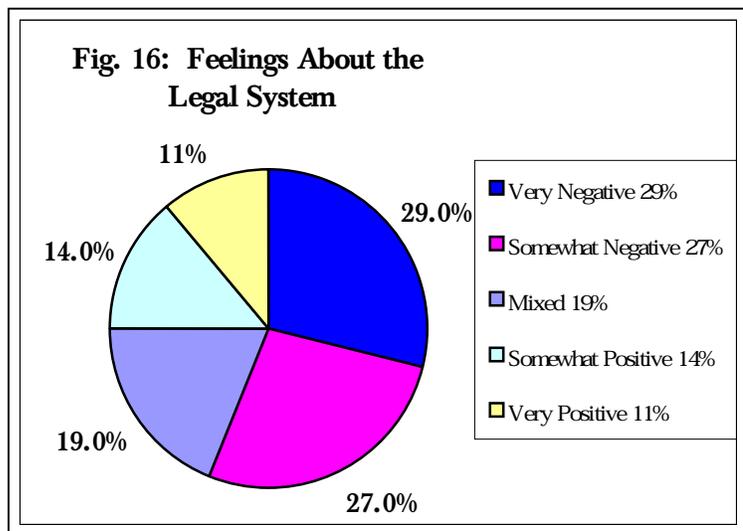


4. Attitudes Towards Lawyers and the Legal System

The Oregon Legal Needs Survey reveals significant information about how lower income Oregonians view their experience with the legal system. Respondents reporting that they experienced legal problems were asked if they were satisfied with the outcome of the dispute, and about their resulting feelings toward the legal system.

Most survey respondents do not hold a favorable view of the legal system. Of those responding, 29% felt very negatively, 27% were somewhat negative, and only 26% had very positive or somewhat positive feelings.

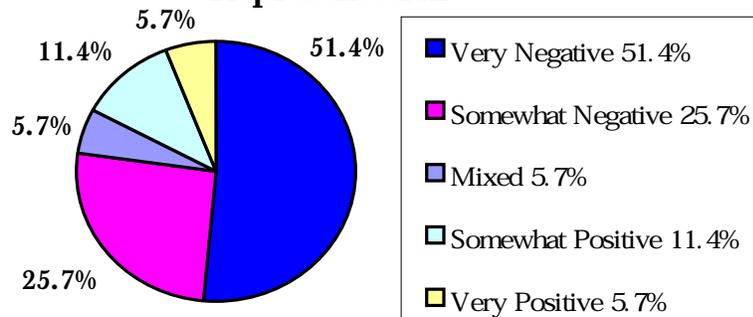
See Fig. 16. Even stronger negative feelings about the legal system were reported by some of the particular populations. African Americans, farm workers, immigrants, Latinos, those who do not speak English and youth all reported significantly higher negative feelings about the legal system than the general low income public.



If the respondent had not sought any legal assistance at all for the problem, her resulting feelings about the legal system were slightly more negative than the average. However, if the respondent sought, but was unable to obtain, legal assistance, feelings about the legal system were extremely negative. Of respondents who were denied help from a legal services program, 35% were very negative, 35% were somewhat negative and 25% had any positive feelings about the legal system. On the other hand, if assistance was denied by a private lawyer, 51% were very negative, 26% were somewhat negative and 17% had very positive or somewhat positive feelings. See Fig. 17.

Most people who experience a legal need and don't obtain representation feel very negatively about the legal system and about 75% are dissatisfied with the outcome of the case.

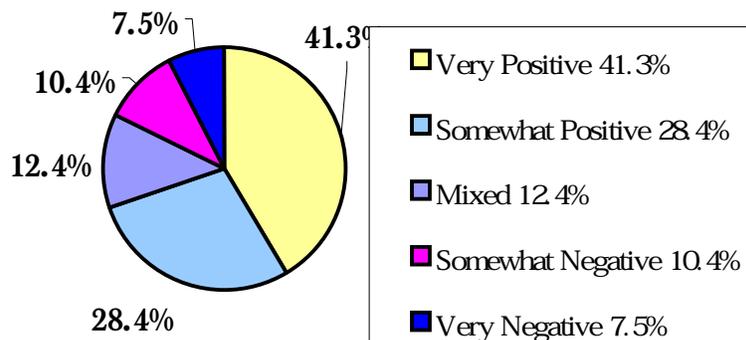
Fig. 17: Feelings About the Legal System When Sought, But Denied Private Bar Representation



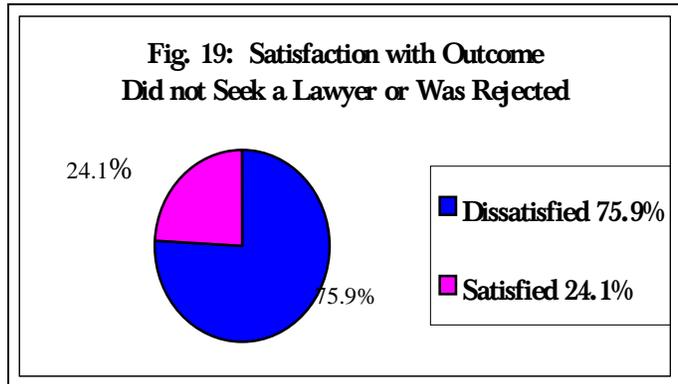
However, representation by a lawyer does make a significant difference in how respondents react to having a legal problem. When a respondent was able to obtain a lawyer, feelings were much more positive. The negatives fall to 16% very negative and 14% somewhat negative, while 58% had positive feelings and nearly a third of respondents expressed very positive feelings.

If the respondent was represented by a legal services lawyer, feelings about the legal system are more positive. Fig. 18. Now, the very negative reaction is reduced to 8%, and somewhat negative is at 10%. Very positive reaction is 41%, and 28% are somewhat positive.

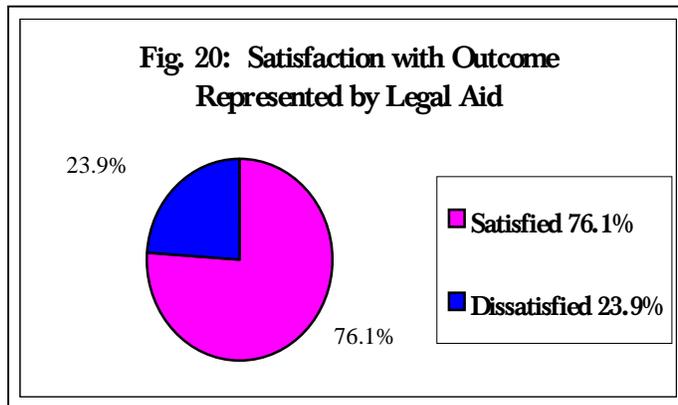
Fig. 18: Feelings About the Legal System When Represented by Legal Services Lawyer



A significant part of the reason that respondents feel better about the legal system when they have had access to a lawyer may well be that they are much more satisfied with how the legal problem worked out in those cases in which a lawyer was involved. Analysis of the satisfaction of respondents with the outcome of the case (as opposed to how they feel about the legal system) indicates that unrepresented lower income people are very dissatisfied with the resolution of their legal problems. When they did not seek a lawyer, or were refused representation, respondents were **dissatisfied** with the outcome 76% of the time. See Fig. 19.



However, when represented by an attorney, the level of satisfaction changes dramatically. Nearly 70% are **satisfied** with the outcome when they have been represented. When respondents were represented by a legal services lawyer, their level of satisfaction is higher. More than three quarters of the respondents were satisfied when they were represented by legal services. Fig. 20.



It is evident that providing a means for more lower income people to obtain representation would have an extremely positive effect on how the legal system is viewed by this population.²⁵

²⁵Indeed, even in cases where the client is ultimately dissatisfied with the outcome, it appears that slightly more positive feelings about the legal system result. When a person is dissatisfied with how a problem has been resolved, one would expect a much more negative reaction to the system. The study data are consistent. On the other hand, when represented by legal aid, even among the 25% of respondents who continue to be dissatisfied with the outcome, feelings about the legal system are 17% less negative than with the dissatisfied unrepresented respondents, and those who feel positive doubles.

Lack of legal information, ignorance of resources and remedies, unavailability of convenient services and fear of retaliation by the opposing party are the most significant factors causing lower income Oregonians not to seek legal representation.

5. Why the Lower Income People Don't Get Lawyers

The most obvious reason that low and moderate income people don't have legal assistance with more than 80% of their problems is that insufficient services are available on a free or reduced fee basis. Yet the question is more complex than this, since most respondents did not seek legal assistance. There are a variety of reasons for this.

Sometimes satisfactory solutions to legal problems can be worked out by lay people themselves. In other cases they may get help from non-lawyers. These situations may or may not represent an unmet legal need, since the resolution of the problem could represent a fair compromise or could involve the unknowing waiver of important rights. Ordinarily, though, disputes which are resolved in a way that leaves the disputants satisfied are probably less important as a matter of public policy.²⁶

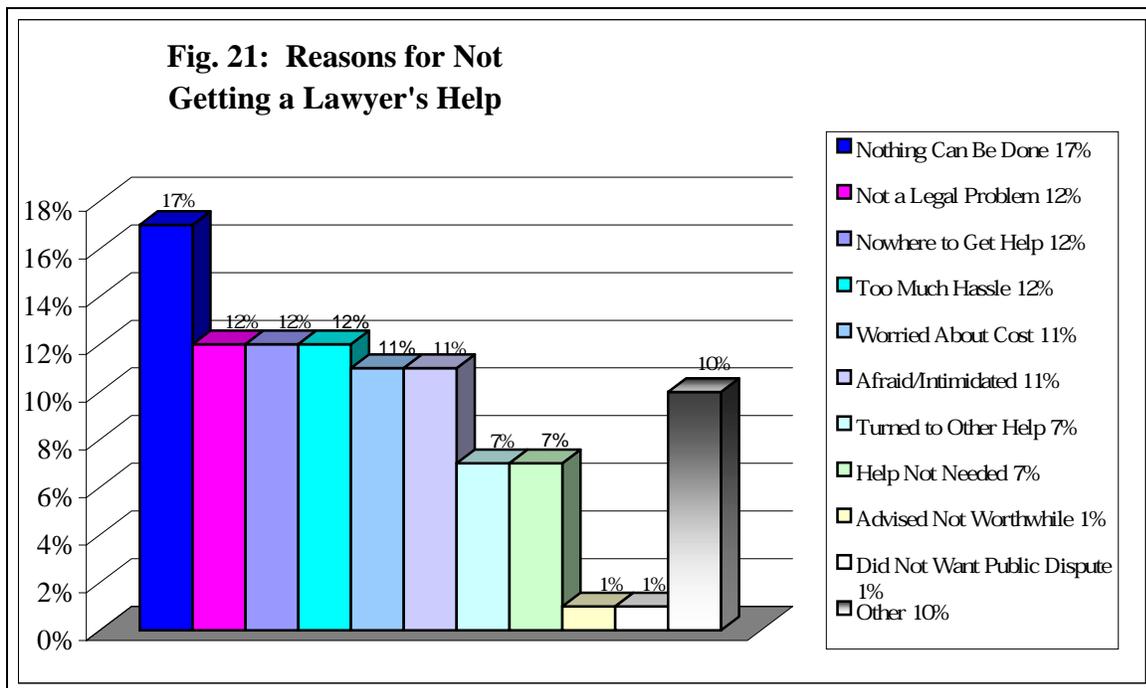
Sometimes, a person may not care enough to expend time, energy, or money to seek a remedy. So long as the person knows what is at stake and what rights and remedies the law affords, and does not choose to waive rights because he faces unreasonably difficult barriers to a remedy, such cases are likewise not a matter of public concern.

On the other hand, a person facing a serious problem may not know what protections the law provides or what resources are available to resolve the problem. There simply may not be any means reasonably available to the person to address the problem through the legal system. This could be because of cost, distance, cultural barriers, fear of reprisal or lack of information. Such cases are a core concern of this study.

To understand better why lower income people do not seek assistance from lawyers, the Oregon Legal Needs Survey asked respondents who were not represented to explain why not.

²⁶Of course, this is not always the case. For example, if a parent agrees to an amount of child support that is far less than she is entitled to receive, important public policy interests remain, even if the caretaker parent is satisfied.

The single biggest reason given by respondents was that nothing could be done about their legal problems. Fig. 21. Those respondents who gave this answer, as well as the 12% of respondents who thought that they did not have a legal problem, apparently lacked basic information about their rights and remedies.²⁷ The vulnerable elderly and isolated rural poor were more likely to report these reasons for not obtaining legal help. A high percentage (22%) of African Americans believed that nothing could be done about their problems. This may suggest cynicism about the efficacy of legal remedies for this population.



Since most of the survey respondents are eligible for free legal services,²⁸ the 11% who were worried about cost is surprising. This response must

²⁷ As noted above, each survey form was reviewed by an attorney to assure that the problem identified presented a likely legal issue of substance. If the response did not present such an issue or if there was no likely effective remedy for the problem, the response was not considered.

²⁸ Although this graph includes the small sample of moderate income respondents, who would not be eligible for free legal services, excluding them from the data does not significantly affect the response to this question.

African Americans, the mentally disabled and the isolated rural poor were the least likely to know where to find legal help.

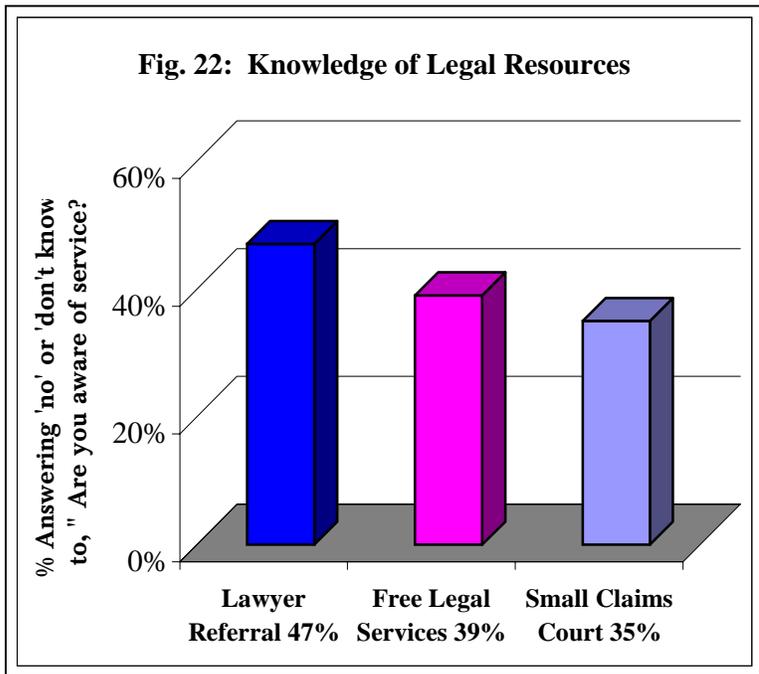
reflect either a lack of knowledge about the availability of free legal services, an assumption of ineligibility for free legal services, or an assumption that free services would not be available for the type of problem encountered. Aliens, the vulnerable elderly, farm workers, Native Americans, Latinos, the physically disabled, isolated rural poor, and youth expressed high concern with cost.

Since 12% of the respondents did not know where to get help, lack of knowledge of legal services may account for at least part of the worry about cost. African Americans, the mentally disabled and the isolated rural poor were the least likely to know where to find legal help.

Fear or intimidation was a factor for 11% of the respondents. The frequency of this response was higher among survivors of domestic violence, farm workers, language minorities, Latinos, immigrants and youth. Fear appears to be of particular concern in domestic violence, employment, housing, institutional and police abuse cases.

12% of respondents said that they did not obtain a lawyer because they “didn’t want the hassle.” This response could mean that the legal problem was not sufficiently important to warrant much effort at resolving it. However, statements by survey respondents, and discussion in social services focus groups suggested a different interpretation of the respondents’ choice of this answer. The “hassle” of getting a lawyer, especially through a legal services program, may be perceived to be so great that it is not worth the trouble even if the problem is felt to be quite significant. Analysis of the surveys of those who gave this reason indicates that they are as likely to be dissatisfied with the resolution of their problems, and slightly more negative in their feelings about the legal system than average. This, at the very least, warrants consideration of ways to make it easier for clients with needs to obtain legal services representation.

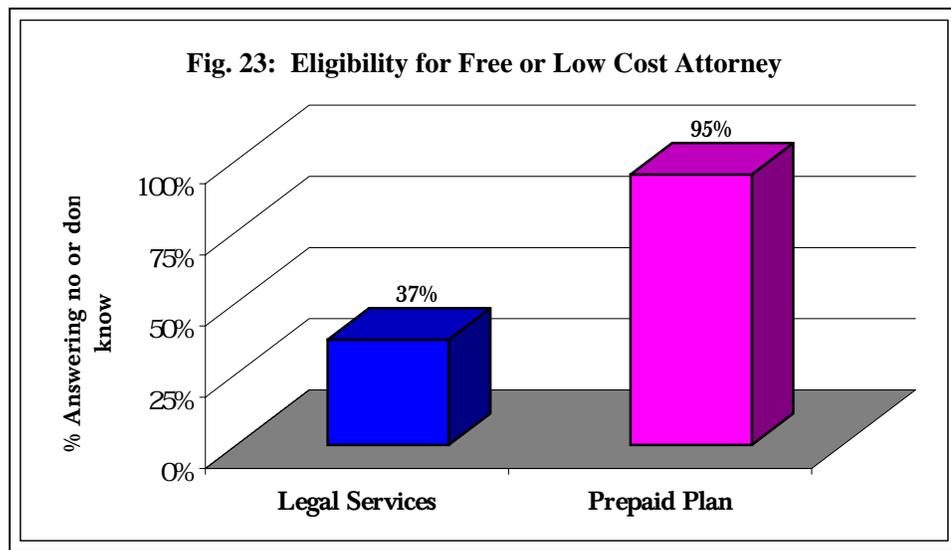
The survey contains additional information regarding the knowledge of low and moderate income people about where to get legal assistance or otherwise obtain a legal remedy. Respondents were asked whether they knew about the OSB Lawyers Referral Service (which is also the point of access for the Modest Means Program), whether they knew about a program providing free civil legal services in their area, and whether they were aware of a small claims court where they could proceed on their own without a lawyer. Fig. 22 presents the percentages of respondents who indicated they did not know about these services. That 39% of lower income Oregonians did not know about the existence of legal services programs in 1999 is a striking figure. Lack of awareness of the availability of free legal services is highest among farm workers (57%), youth (53%), Latinos (53%), immigrants (57%), language minorities (49%), African Americans (47%), the physically disabled (47%) and the vulnerable elderly (44%). Low income people in northeastern Oregon are most aware of legal services, while the lowest level of awareness occurs in southeastern Oregon and the tri-county area. Respondents in rural Oregon were much more likely to know about the lawyer referral service than those in the tri-county region.



Even among those who know about the availability of free legal services, many may not seek representation because they do not believe that they are eligible for services. Almost 40% of respondents said that they either do not believe that they are eligible to receive free legal services, or don't know. Residents of the Mid-Willamette valley, the tri-county area and Southeastern Oregon are most likely to think that they are ineligible for free legal services.

Even among those who know about the availability of free legal services, many may not seek representation because they do not believe that they are eligible for services.

An important source of legal representation in other states, especially for people of moderate income, is counsel provided through a prepaid legal plan, usually obtained through a union or other membership organization such as AARP. This is not true in Oregon. Fewer than 5% of respondents thought that they were covered by such a plan. Only two of the 1,011 respondents in the survey reported actually receiving assistance through a prepaid legal plan. See Fig. 23.



III. ASSESSMENT OF THE CAPACITY OF EXISTING PROGRAMS AND SERVICES TO MEET THE NEEDS OF THE LOW AND MODERATE INCOME

Summary of Key Findings

- ◆ **The current legal services delivery system cannot meet the critical legal needs of lower income Oregonians without additional funding.**
- ◆ **It is estimated that the total number of unmet needs for services for low income households in Oregon is approximately 250,000 cases per year.**

When considering the capacity of Oregon's justice system to provide access for low and moderate income people, the May 1996, Final Report of the OSB Civil Legal Services Task Force should be read as a companion to this study. This report outlines in detail performance standards for legal service delivery, discusses issues related to statewide capacity, and touches on other issues relevant to this report. (A copy of the report summary can be found in the Appendix.) The system for affording access to justice for low and moderate income people in Oregon is complex. In addition to the basic legal services programs, it includes a network of specialized legal services providers who focus on particular client communities or issues. These programs are augmented by the efforts of private attorneys providing free or low cost services. Court staff, libraries, and educational institutions assist those who are representing themselves, and state agencies play a role in resolving some legal problems. This section of the report will explore the existing state of these resources.

A. The Basic Legal Services Programs

Six staffed legal services programs comprise the basic legal services network in the state, Legal Aid Services of Oregon (LASO)(12 field offices), Oregon Law Center (OLC)(4 field offices), Center for Non-profit Legal Services (Medford), Marion-Polk Legal Aid Service (MPLAS)

21% of individuals seeking help were fully served. Even within this percentage, individuals sent to pro se classes were considered fully served.

(1 office, with a satellite office in Independence), Lane County Legal Aid Service (LCLAS), and Lane County Law and Advocacy Center (LCLAC). Among the field offices are three that serve special populations, the Native American Program of LASO and the Farm Worker Programs of LASO and OLC. LASO and OLC Farm worker attorneys also work at office sites throughout the state.

The combined budget of these programs is approximately \$10.2 million. Approximately 30% are federal LSC dollars, 26% state court filing fees, 10% other federal grants, 8% Oregon Law Foundation,²⁹ and 4.3% from the Campaign for Equal Justice.³⁰ The remaining funds come from non-annualized grants for particular types of representation.³¹ To serve an estimated 425,000 low income Oregonians, there are ninety-two (92) attorneys and twenty-six and one-half (26.5) paralegals employed by the six staffed programs. Of the 92 attorneys thirty-three (33) are sited in the Tri-county area, seven (7) in Marion County, six (6) in Jackson County, and ten (10) in Lane County. The rest are in more rural areas. Figure 24 shows the current configuration of offices.

The Oregon Law Center and the Lane County Law and Advocacy Center receive no federal Legal Service Corporation (LSC) funds. LASO, MPLAS, and LCLAS receive LSC funds and are therefore “restricted” programs and cannot provide the full spectrum of representation to clients or represent all categories of clients.³²

²⁹The Oregon Law Foundation is a bar-related foundation. Its primary source of revenue is interest on lawyers’ trust accounts.

³⁰The Campaign for Equal Justice is the principal means by which Oregon’s lawyers support equal access to justice through financial contributions to an annual fund drive.

³¹Much of this funding is currently being devoted to providing assistance in family law, especially domestic violence.

³²Funding riders on recent appropriations for the Legal Services Corporation have prohibited grantees of that entity from engaging in certain activities, regardless of the source of funding used to pay for those activities. The most important of these restrictions are prohibitions against most lobbying or administrative advocacy, class

The six staffed programs served 22,760 clients in the past year. Clients received a range of services including brief advice (help with *pro se* cases, self-help materials), representation in administrative hearings and full representation at the trial and appellate level in state and federal courts.

Examined as a whole, this system is subject to a number of limitations in its capacity to provide a full range of legal services to all lower income Oregonians. Since the late 1970s funding shortfalls have forced the closing of offices in St. Helens, East Portland, North Portland, The Dalles and Klamath Falls. This has left several geographic areas with relatively large poverty populations that are not within the capacity of the existing offices to serve effectively. The most under-served areas are the north coast, including Astoria, Tillamook and surrounding towns, the Columbia Gorge, including Hood River and The Dalles, and Klamath County.

In the major urban areas, the number of lawyers available in comparison to the demands for services permits the acceptance of only the highest priority cases. This leaves many clients with important needs unserved, and perhaps disillusioned. In rural areas, the offices are very small, again limiting the scope of available representation. There are currently three offices that have only one attorney, although the programs hope to bring staffing up to at least two lawyers by the end of the year. A large number of clients face travel times of more than an hour to reach the nearest legal services office, and transportation facilities are limited. Either lawyers must travel, circuit-riding, or clients may have no effective means of access to a legal services office.

The OSB Civil Legal Services Task Report emphasized the importance of providing comprehensive services in all areas of the state. However, insufficient revenue has resulted in making that goal more aspirational than a practical reality for most Oregon communities. Outside of the few areas served by LCLAC, the Center for Non-Profit Legal Services and the

action litigation, litigation challenging any aspect of welfare reform, asserting a claim for attorneys fees (which frequently strengthens a client's claim for relief), representation of most non-citizen clients who are not lawful permanent residents or representation of anyone who is incarcerated.

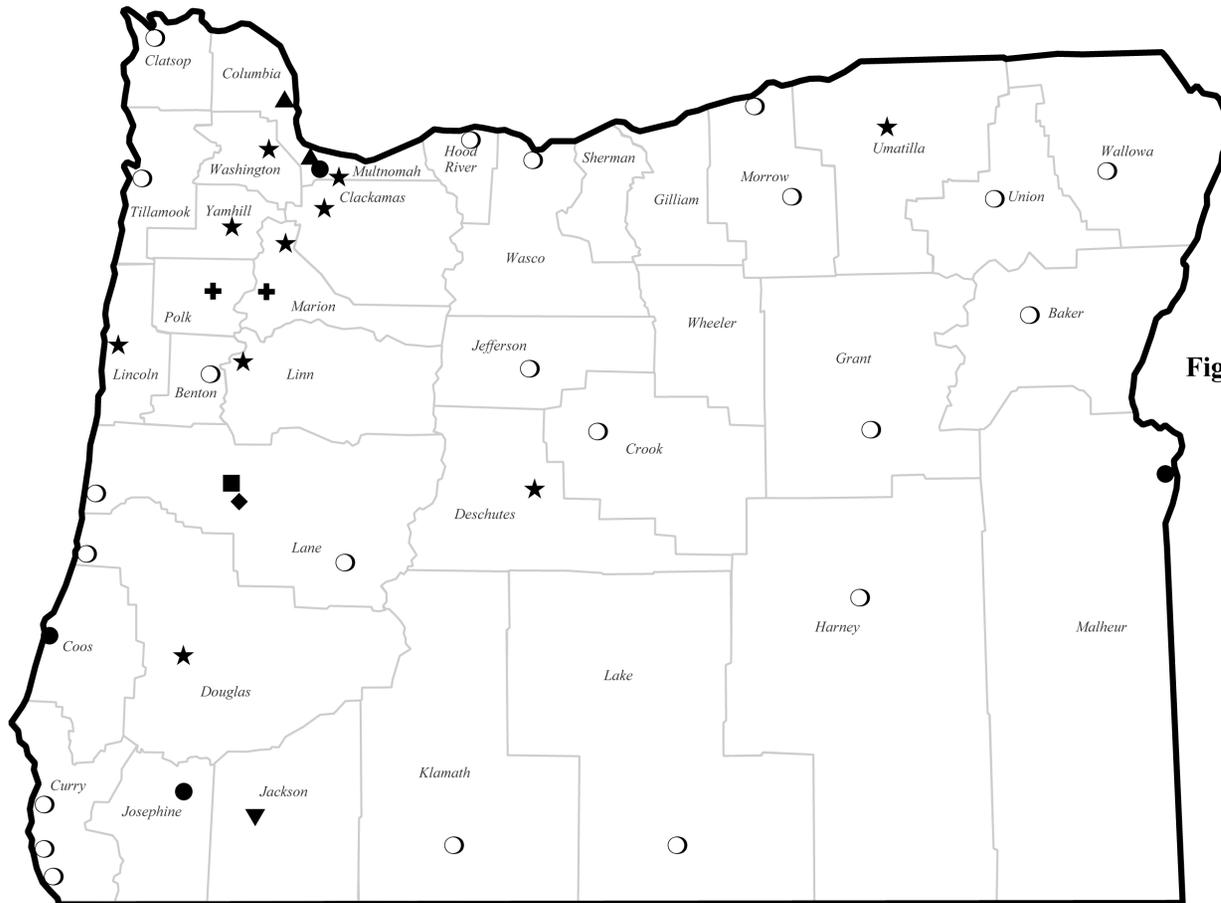


Fig. 24

- Oregon Law Center (*unrestricted*)
- ★ Legal Aid Services of Oregon (*restricted*)
- ▲ Pro Bono Program
- ⊕ Marion Polk Legal Aid Services (*restricted*)
- Lane County Legal Aid Services (*restricted*)
- ◆ Lane County Law & Advocacy Center (*unrestricted*)
- ▼ Center for Non-Profit Legal Services (*unrestricted*)
- Population Centers with no legal services office

Behind the numbers and charts there are real people

Desperately striving to hold his family together, a disabled Vietnam veteran in The Dalles wanted to know what to do about his situation. His wife was out of the house due to family problems, his veterans' pension was recently cut off, so he was behind on the rent, and his electricity was disconnected. He was afraid to seek help, because his teen-age son, upset over family problems, was having trouble at school, had been cutting classes despite his best parental efforts, and difficulties with Services to Children and Families loomed in the background. Since his father, who had recently passed away, had owned a home, some financial relief might be available from an inheritance, except that his hostile stepmother wouldn't give him any information about probate. He wanted legal advice, but there is no legal services office closer than eighty miles away. A legal services lawyer could have helped him to appeal the termination of his veteran's pension, if warranted, or advised him about other forms of assistance available, stabilized his housing situation, negotiated an agreement with SCF about his son, and helped him find out about his inheritance.

Note: To protect the confidentiality of the individuals in the examples, some of the details of location, sex, or race have been changed. The fundamental details of the accounts reflect real circumstances encountered by interviewers for the Oregon Legal Needs Study.

Oregon Law Center, most parts of the state do not have local access to most of the services that are prohibited by federal funding restrictions. Statewide legislative advocacy is available.

None of the programs provide significant levels of service to the moderate income. A few of the attorneys at LASO and OLC participate in the Modest Means program. However, given the staff size it is difficult for them to accept more than a few cases each year. Offices that receive funds under the Older Americans Act through local Area Agencies on Aging have a limited capacity to serve seniors without regard to income. The LASO office in Multnomah County and Marion Polk Legal Aid Services coordinate *pro bono* programs that provide brief advice to seniors without regard to their income.

Notwithstanding these limitations, a large quantity of high quality, high priority legal work for very needy families is carried out by these programs.

B. Specialized Programs

These programs play critical roles in attempting to meet the legal needs of low and moderate income people. All are inadequately funded and are forced to limit client services as a result.

1. Oregon Advocacy Center

Oregon Advocacy Center (OAC) employs seven and one-half lawyers. OAC's overall budget is slightly less than \$1 million. Over 71% of the organization's funding comes from federal grants that are annualized. The remaining income is provided by foundation grants, the Oregon Law Foundation, and the Campaign for Equal Justice, as well as a variety of other sources. OAC's

mission is to provide legal services to people with mental or physical disabilities on a statewide basis. It accepts education cases on behalf of disabled children and their parents, fair housing cases where discrimination was based on a disability, disability benefit cases, cases concerning state and federal services provided to the disabled, and a variety of other cases. Approximately 90% of its clients are low income.

2. St. Andrew Legal Clinic

St. Andrew Legal Clinic operates in the Portland metropolitan area and has an office in Northeast Portland and one office in Washington County (St. Matthew) that specialize in family law matters. It operates with nine attorneys and an overall budget of approximately \$810,000 from client fees, grants and charitable giving. Clients are charged a fee based on a sliding scale beginning at \$45 per hour. Fees provide about 70 % of its income. St. Andrew uses *pro bono* attorneys extensively in its program, principally to screen and provide initial advice and assessment of new clients.

St. Andrew fills an important gap in services for family law cases that do not fit into the stringent case acceptance criteria of legal aid programs, or for clients whose income exceeds the legal services income limits. The principal limitations are that representation is only available for family law, and only if the client is able to pay a reduced fee.

3. Juvenile Rights Project

The Juvenile Rights Project's (JRP) primary activity is the representation of juveniles in delinquency and dependency hearings in Multnomah County as court-appointed counsel through contracts with the State Court Administrator's office. More analogous to the public defender system, these cases are beyond the scope of this study. JRP has a program that includes five part time attorneys (2.3 FTE), a part time para professional and a part time social worker working on civil justice issues on behalf of juveniles. That program is funded at about \$215,000, from the OLF, other grants, attorney fees and contracts for services. JRP runs a statewide hotline for juveniles in need of civil legal assistance, engages in litigation

***Behind the numbers
and charts there are
real people ...***

A sixteen year old Native American from Madras in juvenile detention was in trouble for fighting in school. Since she moved with her family six years ago, the new neighbors have been constantly harassing her family because of their race. There have been curses and insults and rocks thrown. The neighbor's dogs were set on the family's livestock. Although they had complained repeatedly to the police, nothing was done, and the last incident was an outbuilding being set on fire. The daughter thinks her parents don't defend themselves well, and she is determined not to be pushed around. The family needs legal assistance to resolve the root problem of racial harassment. The child needs independent legal assistance to insure that she receives the education services she is entitled to by law and that the conditions and length of her confinement in the juvenile facility are lawful.

on behalf of juveniles, frequently in conjunction with other legal services providers, and engages in statewide policy advocacy on behalf of youth. The hotline responds to 600-700 callers per year.

3. The INS Accredited Agencies

The agencies recognized by INS to provide immigration representation before INS and the Bureau of Immigration Appeals all function in a similar manner. All provide legal assistance free, or for a nominal fee, to needy immigrants in a range of immigration matters such as visa petitions, refugee or asylum matters, and deportation defense. Most provide community education programs to immigrants concerning the laws of the United States of relevance to immigrants. Programs include the Immigration Counseling Service, Catholic Charities Immigration Program, Lutheran Family Services, SOAR (a project of Ecumenical Ministries of Oregon), Jewish Family Services, and IRCO (One-Stop Immigration Services recently closed). Collectively, these agencies have a staff of four and one-half attorneys and about twelve accredited paralegal representatives.

4. Law School Clinics

Northwestern School of Law at Lewis and Clark, University of Oregon Law School and Willamette University Law School each operate a legal clinic in which upper division law students have the opportunity to assist in the representation of low income clients under the supervision of an experienced poverty law attorney. The Lewis & Clark Legal Clinic represents clients in the areas of family, landlord-tenant, unemployment compensation, bankruptcy and consumer, income tax, and small business issues. The Clinic works closely with the Oregon Law

Center and Legal Aid Services of Oregon in cross-referrals, training, and support. The University of Oregon's clinic is housed in the local legal aid office, and students assist in representing legal aid clients. Additionally, the school offers a domestic violence clinic in which students work with low income domestic violence survivors to help resolve their legal problems. In the Willamette Clinical Law Programs, students assist in representing clients primarily in consumer and family law cases. Students also participate in representing individuals in the Grand Ronde Tribal Court. The Clinic receives referrals from Marion Polk Legal Aid and the local shelter for survivors of domestic violence.

5. Fair Housing Council of Oregon

The Fair Housing Council of Oregon, located in Portland is focused on issues of discrimination in housing throughout the state. With a staff of one attorney, this organization provides training, conducts fair housing tests and engages in various educational and enforcement activities. It frequently refers clients to private counsel for representation in these cases.

C. The Private Bar: *Pro Bono Publico* and Modest Means

1. Pro Bono

The institutional capacity to provide legal services is significantly augmented by *pro bono* work by lawyers throughout the state.³³ Most of the legal services providers listed above have *pro bono* components associated with their programs that are certified by the Oregon State Bar.³⁴ These components significantly extend the capacities of sponsoring programs to reach more clients with a broader range of legal services.

³³ For the purposes of the reporting system, *pro bono* means work done by lawyers on behalf of low income people without expectation of compensation, not civic activities.

³⁴ To promote *pro bono* representation by the private bar for low income Oregonians, the Oregon State Bar implemented a program that certifies *pro bono* programs and recognizes attorneys who provide 40 hours or more of representation in one year.

Behind the numbers and charts there are real people ...

The twenty-two year old from Medford had just become homeless again. She had finally found a place to stay at her job site. She didn't get paid in cash, she cleaned the industrial site in return for being allowed to sleep there at night.

Unfortunately, the arrangement broke down when the supervisor insisted on sexual favors as well. A pro bono lawyer could help her obtain the wages the law says she is entitled to collect, pursue a claim for sexual harassment, if she wished, and refer her to any available housing resources. Is she entitled to the protections of the law?

The range of cases accepted and types of *pro bono* services provided is quite broad. For example, there are clinics in Multnomah County that provide complete services for clients or services targeted to address specific legal problems (domestic violence, landlord and tenant, senior citizens), as well as “advice only” clinics. Throughout the state, individual attorneys provide full representation to individual clients. In addition, some *pro bono* lawyers co-counsel with legal services lawyers on cases where either the private expertise is valuable to the legal services attorney or the poverty law expertise is valuable to the private attorney. Occasionally, private attorneys provide representation to legal services entities on a *pro bono* basis.

Columbia County Legal Aid is a program that relies solely on *pro bono* representation by the local bar. Volunteer attorneys provide supervision to a part time staff person who refers eligible clients to local bar members for representation.

The Active Emeritus program of the Oregon State Bar has 32 attorneys who each provide 40 hours or more per year to clients from certified programs. For example, E.L.V.I.S. (Emeritus Lawyers Volunteer In Service) provides outreach service to seniors in Marion and Polk Counties. Other emeritus attorneys provide the equivalent of .2 to .5 of a staff attorney for other legal services providers.

Although there are *pro bono* programs in each community where a legal services program is sited, the availability of *pro bono* lawyers to augment the system is not evenly distributed throughout the state. Urban areas tend to have a higher availability of advocates, probably as a result of the economics of law practice. Many rural lawyers interviewed in the focus groups said that, while they were quite willing to continue to accept *pro bono* cases, they felt that they

were nearly alone in their communities in doing so. As a result they feel unwelcome pressure to accept more non-paying cases than they can really afford.

Statistics from the reporting program (1998) show that 17,482 hours were expended by private lawyers in the past year. However, these figures represent fewer hours than actually provided because there is no formal reporting requirement. Although it is an estimate, OSB staff and legal services staff who work closely with the *pro bono* programs believe that 35,000 hours is a more accurate assessment of participation in *pro bono* work. The hours worked converts into the equivalent of about 14 additional lawyers available to provide services to lower income clients.

2. Modest Means

An important contribution of the bar to meeting the needs of moderate income clients is the Oregon State Bar's Modest Means Program. Participating lawyers agree to accept referrals of persons with incomes up to 200% of the poverty level at a reduced fee of \$60.00 per hour. Currently, referrals are being made only in criminal, landlord-tenant and family law cases. In 1999, 1,306 family law cases and 30 landlord tenant cases were referred through the Modest Means Program.

During a three-month period, OSB tracked the number of calls received requesting modest means assistance. Where an application for the program was requested, but the client did not return a completed application form, efforts were made to identify the reasons. On a daily basis, the OSB mailed an average of 55 applications, and received 23 completed forms back. Of these, 65% qualified for a referral under program guidelines. Of those who did not qualify the reasons were as follows: 1) over income/assets-29%; 2) unable to pay anything-46%; 3) wrong area of law-11%; 4) no available attorney-6%; 5) other-8%. Reasons given for requesting, but not returning the application, in order most cited were: 1) referral process inconvenient, not enough time; 2) rates too high, could not afford; 3) found attorney another way; 4) changed mind, resolved problem.

Behind the numbers and charts are real people...

What can the 85 year old living in an adult foster home in Salem do when he hasn't been fed for two days, and the staff hasn't even checked on him? Where does he find help?

Lawyers interviewed in the focus groups who have participated in the Modest Means Program reported dissatisfaction. Complaints included that the allowable fee did not cover their costs in providing the service, and that Modest Means clients were often very demanding, did not have a realistic view of their legal position and lacked sufficient economic incentive to seek quick resolution. Some felt that the clients referred were inappropriate, because they lacked the limited means to pay the Modest Means fee, or alternatively, because they had sufficient resources to pay regular rates.

The most basic limitation of the Modest Means Program is the small number of lawyers who participate. Since there are few participants in many smaller communities, it may sometimes be impossible to obtain a meaningful referral. Another limitation is that representation for civil cases is only available in landlord tenant and family law. Finally, even at reduced rates, many people find that they cannot afford representation.

While some lawyers have been providing “unbundled” legal services (representation for discrete tasks only) as a means to reduce costs to low and moderate income clients, there is uneasiness about this approach to representation. Discomfort stems from concerns about whether quality services can be delivered in this way and about potential liability arising from anything less than full representation.

D. State Agencies

While not directly representing low income clients, significant activities undertaken by state agencies are helpful in resolving certain legal problems. The Attorney General, through the Division of Child Support, and District Attorneys around the state play a key role in establishing paternity and collecting and modifying child support. The Department of Justice also has a consumer fraud unit that is particularly active in working to protect

seniors and other vulnerable populations from abusive practices. The Bureau of Labor and Industries assists workers in collecting unpaid wages and investigating discrimination claims.

E. The Courts

The Oregon courts have recently undertaken major efforts to make the system of justice in Oregon more open, affordable and equitable to all. See, e.g., “Report of the Oregon Supreme Court-Oregon State Bar Task Force on Gender Fairness” (May 1998); the “Report of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System” (May 1994); “Progress Report of the Oregon Supreme Court Implementation Committee: A Commitment to Fairness” (January 1996), “Justice 2020: the New Oregon Trail” (Oregon Judicial Department 1995) and the “Report to the Oregon Legislative Assembly,” Oregon Family Law Legal Services Commission (January 1999).

Invaluable assistance is provided to *pro se* litigants by formal courthouse facilitator programs, mediation and conciliation services and court clerks on an informal basis. The facilitator program in Marion County has been the forerunner of such efforts and another comprehensive program operates in Deschutes County. Other court facilitator projects will begin operation over the next biennium. Court-appointed interpreters assist disabled and non-English speaking litigants and witnesses. These, and other ongoing efforts, are important additions to the overall effort of providing access to justice for those who cannot afford a private lawyer.

F. Summary

In critiquing the existing delivery system it should be emphasized that the shortcomings noted are the result of insufficient resources. A large number of dedicated individuals are doing excellent work to assist lower income Oregonians. The point is simply that the delivery system, notwithstanding these efforts, falls far short of meeting the goal of equal access to justice.

***The unmet need
is estimated to
be about
250,000 cases
per year.***

It is clear from the first sections of this report that a large need for legal services for low and moderate income persons is not being met by the current legal system. A key question is the dimension of this unmet need. The Oregon Legal Needs Survey provides insight into this question. The survey shows that 82.1% of low income households had at least one legal problem last year. Those households that do have legal problems have a mean number of 3.86 problems each year. Thus the 102,656 households³⁵ that have problems would experience 396,252 legal needs a year. Of course, some of these matters can be handled successfully without a lawyer. Respondents who were not represented reported that they were satisfied with the outcome of the problem in 23.8% of the cases. If one assumes that no lawyer is needed to reach a satisfactory outcome 23.8% of the time, then a lawyer would be needed to handle 301,944 cases a year.

The basic legal service programs provided legal services to 22,760 clients last year, with a staff of 92 lawyers. If the 26 lawyers available through the specialized programs handled a comparable number of cases per attorney, those agencies handled an estimated 6,432 cases.³⁶ The contribution of private lawyers, calculated using the percentage of *pro bono* and reduced fee cases (4.3%) that was reported in the survey to have been handled by private lawyers, would account for another 12,984 cases on a free or reduced fee basis. Totaling these figures, it appears that legal needs are currently being met in 42,176 cases a year on a no cost, or reduced fee basis. Another 3.8% of the legal needs, or 11,473 cases are being handled by the private bar at full fee. Thus, the current system is estimated to be meeting the legal needs of low income people in only 53,650 (or 17.8%) of the 301,944 cases a year that require a lawyer's assistance. The unmet need is estimated to be about 250,000 cases a year.

³⁵Derived from the 1998 State of Oregon Population Survey, the Office of Economic Analysis, State of Oregon.

³⁶The total of these two figures—29,192—is remarkably close to the number the survey would predict legal services had done. Respondents say they had a legal aid lawyer in 9.6% of all cases. 9.6% of 301,944 is 28,986.

Conclusion

As we begin the 21st Century, this report provides a snapshot of the unmet legal needs of hundreds of thousands of low and moderate income Oregonians. Most of these Oregonians are fully employed, but do not earn enough to leave the ranks of the poor. Most are single parents struggling against enormous odds to find a livable purchase in our society – a warm and dry place to sleep, a safe neighborhood, enough to eat and, when necessary, medical care for themselves and their children. All deserve a legal system that is fairly accessible to them when they encounter injustices and need a practical remedy,

We have found that low income people obtain legal assistance for their problems less than 20% of the time. We have also found that most of the people who experience a legal need and do not obtain representation feel very negative about the legal system; the vast majority (75%) are dissatisfied with the outcome of their case. This includes the homeless and families struggling to avoid homelessness. It includes disabled veterans, survivors of domestic violence, victims of consumer fraud, and parents seeking much needed child support from absent parents. It includes victims of racial discrimination and sexual harassment in housing and employment in a land where the vast majority of citizens believe such basic civil rights should be enforced by law.

We must acknowledge the countless individuals who have endeavored to increase access to justice in Oregon during this past century. In recent decades, the effort to do so has included a large number of the poor, advocates for the poor, lawyers, and public officials. But in an increasingly complex society, the legal needs of low income Oregonians are greater than ever.

How can we improve the ability of low and moderate Oregonians to correct the injustices they encounter by finding solutions that work for all of us?

Part II of this Report answers that question.

OSB CIVIL LEGAL SERVICES TASK FORCE FINAL REPORT

**Stephen S. Walters, Chair
May 24, 1996**

Introduction; Task Force Charge

In the summer of 1995 Oregon, like every state in the United States, faced a crisis in its delivery of civil legal services to low-income residents. The new Congress was considering legislation which would ultimately eliminate the Legal Services Corporation, the federal entity which provides funding to local legal services programs (including four programs in Oregon). At the very least, it appeared inevitable that 1996 federal funding for legal services would be reduced by as much as 35 % from 1995 levels. Congress was also prepared to impose severe restrictions on the activities of all programs receiving LSC funding, which would have a serious impact upon the ability of LSC program attorneys to provide a full range of high quality legal services to their clients.

In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice Wallace P. Carson, appointed the OSB Civil Legal Services Task Force. Stating that "the organized bar has an important role to play in assisting our programs in planning for the future and in assuring the continuing availability of legal assistance to all of the people of our state," the OSB gave the Task Force the general charge to "develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources." Steve Walters of Portland was appointed Chair of the Task Force; its members were Judge David Brewer, Neil Bryant, Ned Clark, Mike Haglund, Judge Jack Landau, Jim Massey, Katherine McDowell, Katherine O'Neil, Larry Rew, and Martha Walters. Barrie Herbold served as liaison to the BOG. Ann Bartsch was the OSB staff liaison and reporter. Ira Zarov of Oregon Legal Services served as the liaison to the legal services programs.

Following its initial meeting in September, the Task Force organized itself into four subcommittees, each with a separate charge. Each subcommittee was asked to invite participation and otherwise to secure information from other interested persons, including program board and staff, representatives of the Multnomah Bar Association, and the OSB Low Income Legal Services Committee. (A complete list of all participants is attached to this report as Appendix 5.) The full Task Force met periodically to review the recommendations as they were developed by the subcommittees.

Task Force participants contributed hundreds of volunteer hours to the consideration and final drafting of the reports and recommendations which follow. Complete reports from all of the Task Force subcommittees are included as appendices to this report. The following is a digested description of each subcommittee's activities, along with a listing of its key findings and recommendations.

Subcommittee 1: Client Need/Priorities; Delivery System

This subcommittee was chaired by Judge David Brewer of Eugene. The subcommittee was asked to gather information on Oregon's existing civil legal services delivery system, for use by the other subcommittees, addressing the following questions:

What legal needs of client community are programs currently addressing? Are there any areas of need which are not being addressed, and which should be incorporated into Oregon's legal services delivery system?

What delivery systems are in place in Oregon to meet these needs? What systems could be developed or expanded?

The subcommittee was also asked to develop an overall mission statement for Oregon's civil legal services delivery system, for adoption by the full Task Force and ultimately by the Board of Governors, as well as by other entities concerned with civil legal services (e.g. the Oregon Law Foundation).

The subcommittee's initial report and Mission Statement were presented to the full Task Force in December and to the Board of Governors in January, 1996. That document is attached as Appendix 1 to this report. The Mission Statement was also adopted by the Board of Directors of the Oregon Law Foundation in February.

Key Findings:

1. Not more than one third of the legal needs of Oregon's low income population were being addressed by legal services programs before the funding cuts.
2. However, as of December, 1995, Oregon did have in place a legal services delivery system capable of providing a full range of civil legal services to low income Oregonians. Key components of that system were federally funded LSC programs and a network of locally based volunteer attorney programs providing supplemental services to the staffed offices. That system will be undercut by the adoption of pending federal legislation providing for severe funding cuts to LSC programs, and for severe restrictions on the activities of those programs which were inconsistent with the Task Force's mission statement for civil legal services.

Subcommittee 2: Structure and Organization

This subcommittee was chaired by Jim Massey of Sisters. It was asked to address the following questions:

Will existing legal entities and organizations be able to perform or facilitate the performance of the work identified by the previous working group? Are there

opportunities for resource savings through reconfiguration of existing programs? If the existing structure will not be able to perform the work, what other entities can be developed to perform it?

This subcommittee met five times in the fall and winter of 1995-96. It invited board and staff representatives of Oregon's existing, and developing, legal aid and volunteer attorney programs to meet with the full Task Force to share their plans for necessary restructuring in light of the anticipated LSC funding cuts and restrictions on program activities. The subcommittee made no recommendations on questions it considered to be internal to the programs and their boards of directors, e.g. whether particular programs should or should not merge. However, subcommittee members did participate in ongoing discussions which were taking place among the programs, and the subcommittee's meetings provided an opportunity for strategizing and planning among the programs, bringing in the expertise of the broader legal community.

The subcommittee's full report is attached as Appendix 2. Its key findings and recommendations are as follows.

Key Findings:

1. In late April, 1996, Congress enacted HR 3019, the fiscal year 1996 appropriations bill which includes funds for the Legal Services Corporation. The legislation incorporated a long-anticipated series of restrictions on activities of LSC funded programs, including prohibition of most legislative and administrative advocacy, participation in class actions or welfare reform litigation, and representation of undocumented aliens (including undocumented migrant workers). The legislation further provides that LSC recipient programs may not use non-LSC funds, including state generated funds, to undertake any of these activities.

The 1996 restrictions on LSC funding and substantive work threaten the historic commitment to key Oregon legal services delivery system values.

2. Oregon's four LSC funded programs (Oregon Legal Services, Multnomah County Legal Aid Service, Marion-Polk Legal Aid, and Lane County Legal Aid) will continue to receive LSC funding, and will comply with the new restrictions in conducting their work on behalf of low-income Oregonians.

Consistent with the Task Force's mission statement for Oregon's civil legal services delivery system, Oregon's legal community must take responsibility for developing and nurturing other non-LSC entities capable of providing services which fill in the gaps which the new Congressional restrictions will otherwise impose.

3. As of the date of this report, the following structural changes have been made (or are in the process of being made) in Oregon's civil legal services delivery system.

Organization of Full Service Law Centers In response to the imposition of restrictions on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated in Portland and will receive funding from OLF and other sources. The Lane County Law and Advocacy Center has been established in Eugene. A similar "Full Service Law Center" may be established to serve Marion and Polk counties.

MCLAS/OLS Reconfiguration Effective May 13, 1996, Oregon Legal Services' Central Support Office and Multnomah County Legal Aid Service are sharing office space (at-the former MCLAS office), resulting in an estimated savings of about \$100,000 per year. The two programs are discussing possible merger later this year.

Marion-Polk There have been no structural changes so far at Marion-Polk Legal Aid, although the question of merger with other entities is on the table. One attorney position has been lost because of resource limitations.

Jackson County There have been no structural changes so far in Jackson County (Center for Non-Profit Legal Services). A ballot measure which would have provided county funding for the Center and other social service agencies, was defeated by the voters on May 21. It appears that it will be necessary for the program to continue to receive LSC funding as a subgrantee of Oregon Legal Services for its private attorney involvement program.

Campaign for Equal Justice The Campaign for Equal Justice is now separately incorporated, free-standing 501 (c)(3) corporation.

Volunteer Lawyers Project The Volunteer Lawyers Project in Multnomah County considered a merger with Multnomah County Legal Aid, but declined to do so in light of the restrictions which would be placed on its activities. It now appears that parts of VLP's program will be taken up by MCLAS (along with financial support from the Multnomah Bar Association), and others will pass to the newly organized Oregon Law Center:

Staffing losses Programs report various levels of staff attrition in the wake of the Congressional action. So far, one local office -- Oregon Legal Services' branch office in Klamath Falls has been closed. Most full-time staff at Multnomah County Legal Aid Service have been reduced to 80% time.

Key Recommendations:

1. Three fundamental premises should drive organizational and structural issues:

A. Quality and Independence

Legal services delivery in Oregon should not be driven by or be dependent on LSC funding or mandates. Legal services programs will continue to be an important and vital resource -- of many -- for providing access to the justice system for low income Oregonians.

B. Preservation of Funding Allocation

Funding levels for service to low-income client groups no longer eligible for LSC funded services, and for all other restricted forms of legal services representation, including welfare reform, class litigation, legislative and administrative advocacy, group representation and client education and training, must be maintained at levels sufficient to provide adequate representation to low-income clients.

C. Independence and Access

Planning and selection of substantive work, and prioritization of delivery to particular client groups or populations, should be based upon sound commitment to principles of equal access to justice consistent with DR 7-101 and EC 2-26, 27 and 28 of the Code of Professional Responsibility, and without regard to the disfavored social, political or economic status of any eligible client.

2. Consortium for Delivery of Services

There should be an ongoing independent consortium of Oregon legal aid providers. Membership would be open to any organization providing legal services to low income Oregonians, as well as any organization which sponsors the delivery of such services (e.g. the MBA). The consortium would provide a forum for ongoing identification of unmet client needs to which resources should be targeted, while avoiding duplication of efforts by member programs. The consortium would allow for coordination and integration of key functions across program lines, and facilitate communication among program funding sources.

The consortium should include:

- Current LSC recipient programs
- Non-profit legal centers
- Public Interest Law Firms
- Law school clinics
- Campaign for Equal Justice

Bars, particularly OSB and MBA

3. Reorganization/Restructuring for Efficiency of Delivery

The existing legal services programs should continue the ongoing process of internal evaluation to identify means of streamlining, reducing costs and gaining new efficiencies. The programs should continue to evaluate, within the consortium context, whether program mergers, consolidation or sharing of particular functions or services or development of new means or methods of access and delivery are appropriate. Areas of continued discussion and evaluation should be:

- Merger;
- Consolidation of programs/services/shared systems; and
- Appropriate use of technology.
- Intake and referral improvements;
- Coordination among programs with the Bar;
- Coordination with ADR programs.

The various programs should continue to inform and advise one another as this process continues.

4. Development of Non-Restricted Entities

In response to the imposition of restrictions (on and after April 26, 1996) on programs which receive Legal Services corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated and will receive funding from OLF and other sources; the Lane County Law and Advocacy Center has been established in Eugene. The Task Force makes the following recommendations regarding these "Full Service Law Centers:"

Should be an entity or entities capable of performing legislative and administrative advocacy.

Should be an entity or entities capable of providing representation to underserved populations with cultural barriers, language barriers, or local access programs, e.g. migrant workers. Should be capable of providing services all over the state.

Should develop pro bono capacities of the bar statewide -- not just as supplement (to take individual cases overflowing from legal services programs), but in such areas as class actions, legislative advocacy, policy development, low income housing development, etc.

Should include all LSC restricted work, particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.

As indicated above, the question whether there should ultimately be one such program, with branch offices in key locations (e.g. Salem) was left for study by the OSB legal aid oversight group.

5. Development/Expansion of New Resources

The Subcommittee recommends development and expansion of new and non-legal services resources to complement consortium activities:

There are currently some regional hotlines operated by all legal services programs. Development of additional hotlines could be beneficial; a prime topic would be a (statewide) Child Support hotline.

Local and statewide bar groups should expand their pro bono efforts, working in cooperation with offices statewide. As a corollary, all programs should consider using emeritus attorneys in their area, on the model of the "ELVIS" program in Marion-Polk Legal Aid Service.

There should be strategic, thoughtful reassignment of OLF funding, filing fee surcharge resources, and other available funds to provider programs.

Courts, Bar and OLF should continue to support efforts to increase ADR resources (e.g. farmworker mediation program) and self help mechanisms (Oregon Family Law Task Force is investigating the Maricopa County model).

The OSB should expand its existing Tel-Law program to cover new topics.

The OSB Order Desk/Pamphlet distribution efforts could include legal aid brochures, which are already available from the programs.

OSB should expand its Modest Means program as far as possible.

6. OSB Oversight and Support

The Oregon State Bar should take on an expanded role in oversight and provision of technical assistance to legal aid programs. This oversight/technical assistance role should be assigned to a small group (not more than five persons) who would be directly accountable to the Board of Governors. Members of the group should be OSB members who are knowledgeable in the areas of law office-management and legal services/pro bono delivery, and who are independent of the programs. The group should develop defined standards for ongoing assessment of the programs' operations based on existing national standards (e.g. ABA's SCLAID standards, LSC Performance Criteria, Code of Professional Responsibility). Their assessments should concentrate on outcomes, with the-emphasis on achieving quality results for clients.

If the Oregon legislature is willing to delegate allocation of filing fee surcharge revenues to the Oregon State Bar Board of Governors, this group would be an appropriate entity to take on this task, or at least, to evaluate and make recommendation to the BOG. (A significant minority of Task Force members believe that, while it is critically important that the OSB assume an oversight/technical assistance role with respect to civil legal services programs, this role should be separated from that of allocation of actual amounts of filing fee surcharge funding.)

Subcommittee 3: Funding

This subcommittee was chaired by Katherine O'Neil of Portland. The subcommittee was asked to address the following questions:

What current funding sources are in place to support legal services delivery, in Oregon?
How can they be expanded to meet future needs? What new financial resources can be developed to support a reconfigured delivery system?

The subcommittee gathered information from each of the programs on their present financial base components and mounts, short term and long term financial prospects. The subcommittee gathered similar information from the major non-LSC funding sources for legal services and volunteer attorney programs in Oregon, specifically the Campaign for Equal Justice, the Oregon Law Foundation, the Multnomah Bar Association, and the legislature (the source of the filing fee surcharge legislation). Members of the group also researched funding mechanisms which have had success in other states, using information supplied by the American Bar Association's PERLS (Project to Expand Resources for Legal Services) Project. The goal was to develop insights for the BOG on how the organized bar could best step in and help alleviate the anticipated shortfalls.

The subcommittee's full report is attached as Appendix 3. Its key findings and recommendations are as follows.

Key Findings:

1. In FY 1996, funding to the Legal Services Corporation (the federal agency which funds local legal services programs across the country, was cut by approximately 30 percent, to a total of \$278 million. This translates into a loss of approximately \$1 million (of total 1995 funding of approximately \$6 million from all sources) for Oregon's civil legal services programs. There are proposals in the current Congress to reduce LSC funding to \$141 million in FY 1997 (\$1.5 million shortfall for Oregon) and to eliminate it entirely by FY '98. If these proposals are successful, states like Oregon will be charged with all responsibility for providing civil legal services-for their low income residents.
2. Oregon programs report the following projected shortfalls in their geographic service areas for 1996:

Jackson County (Center for Nonprofit Legal Services): \$70,000

Lane County (Lane County Legal Aid Service, Lane County Law and Advocacy Center): \$125,000

Marion and Polk Counties (Marion-Polk Legal Aid): \$125,000

Multnomah County (Multnomah County Legal Aid Service): \$440,000

Remaining Oregon counties (Oregon Legal Services): \$210,000

3. Oregon is relatively fortunate in having developed significant sources of non-federal funding for civil legal services at the state and local level. Non-federal funding constituted approximately 51% of the resources available to the legal aid/volunteer attorney programs in 1995. The most significant sources of in-state funding are:

Campaign for Equal Justice Now incorporated as an independent 501(c)(3) entity, the Campaign solicits contributions from Oregon attorneys and law firms, and solicits grants and other assistance from a wide variety of private sector sources, on behalf of legal services programs. In 1995, a total of \$322,000 was raised.

Filing Fee Surcharge Pursuant to ORS 21,480-.490 (appendix 3A to this report), circuit and district courts collect a surcharge on filing fees paid by moving parties in civil suits, which is paid to the legal aid program in that county by the State Court Administrator. This mechanism produces approximately \$1.5 million annually.

Oregon Law Foundation/IOLTA Programs providing civil legal services to low income Oregonians have been (and should continue to be) the major recipients of funding from OLF's IOLTA (Interest on Lawyers Trust Accounts) program. In 1996,

OLF will make a total of \$599,000 in grants, with approximately \$496,000 going to programs in the legal services category.

Without assistance from the Oregon State Bar, the courts, and the legal community generally, these funding sources will not be able to make up the shortfall in federal funding in the foreseeable future.

Key Recommendations:

1. **Filing Fees surcharge** Oregon's circuit and district courts will be consolidated effective January 15, 1998. Currently, legal services programs receive a surcharge on each filing fee-paid into circuit court in the amount of \$22.00. In cases currently being filed in district court, the surcharge is \$8.50.

The BOG should urge Chief Justice Carson to exercise his discretion to maintain the \$22 filing fee for all courts after merger of Circuit and District courts in January, 1998.

Alternately, the BOG should make its #1 Legislative agenda for the '97 Legislature a revision in the laws related to filing fees with the fees going to the OSB for distribution.

2. **OSB dues assessment** The FY '96 shortfall could be met by a \$100 per attorney contribution made with the annual OSB dues. Subsequent Congressional cuts would require a greater per attorney contribution.

The BOG should exercise its leadership and chose a method of per capita contribution among the following:

- a. Voluntary contribution collected with OSB dues: "\$100 or other."
- b. Voluntary first year or so and then make it compulsory: "\$100".
- c. Compulsory contribution collected with OSB dues: "\$100" FY '97, "\$250" in subsequent years to make up for continued cuts in Congressional funding. With an option to do 40 hours (or another figure) of pro bono work in an OSB certified pro bono program.

Any compulsory contribution should first be approved by 'the new OSB House of Delegates with a referral to the general membership following the meeting at which it is approved.

3. **Greater OSB/local bar support for Campaign for Equal Justice** The CEJ would greatly benefit from open, public, frequent support for CEJ from the BOG and other

bar leaders. The BOG members can mention the campaign in stump speeches, write about it in all publications. Make CEJ the "lawyers' charity," a part of the legal culture. If BOG members and the county bar presidents did an hour of intake at a legal aid office, they would gain a perspective that would fire their support of the CEJ.

4. **Increase income to OLF/IOLTA** The Oregon Law Foundation should be asked to pursue various mechanisms, for which national models exist, to increase IOLTA income. These include "sweep" accounts for IOLTA funds (cash management or sweep account which Sweeps all or pan of the IOLTA balance that is over a specified threshold amount from low-yield checking accounts into an investment in Treasury backed securities on a daily basis, producing higher yields for the IOLTA account); ongoing negotiations with banks for higher interest rates, and lower service charges, paid on IOLTA accounts.

The Oregon State Bar should assist OLF in investigating mechanisms for increasing income to the Foundation through legislation providing for, among other possibilities direction of interest on funds in the hands of title insurance companies to OLF; direction of a portion of state abandoned property funds to OLF; direction of unclaimed client trust funds to OLF.

5. **Potential funding sources for consideration by legal services programs** include implementation of sliding scale fees for service to clients in the moderate income range (125% - 200% of poverty guidelines); local and county bond issue funding (Jackson County example); retainer contracts with Indian tribes and social service agencies; and gaming revenues.

Subcommittee 4: Ethical Responsibility/Quality Assurance/Transition.

This subcommittee was chaired by Judge Jack Landau of the Court of Appeals. It was asked to consider how the bar could best assist the LSC programs' attorneys in meeting their ethical responsibilities to clients in light of the restrictions imposed by Congress.

The subcommittee also reviewed a memorandum from James N. Gardner of Portland, outlining a potential 10th Amendment challenge to the conditions and restrictions imposed on the Legal Services Corporation and its grantees by Congress'.

The subcommittee's full report is attached as Appendix 4. Its key findings and recommendations are as follows.

Key Findings:

1. **ABA Formal Opinion 96-399** In February, 1996, the American Bar Association Standing Committee on Ethics and Professional Responsibility released Formal

Opinion 96-399, "Ethical Obligations of Lawyers Whose Employers Receive Funds for the Legal Services Corporation to their Existing and Future Clients When such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions." At approximately the same time, Oregon Legal Services prepared its own proposed response to the anticipated funding and practice restrictions. Rather than duplicate the foregoing efforts, the subcommittee focused on a review of the analysis and recommendations of the ABA Standing Committee and OLS.

In general, the OLS policy appears to follow from, and is entirely consistent with, the formal opinion of the ABA Standing Committee.

Copies of ABA Formal Opinion 96-399, and of OLS' internal memorandum "Implementing New Restrictions," are attached to the full subcommittee report at Appendices 4A and 4B.

Key Recommendations

1. The ABA Standing Committee's formal opinion is, of necessity, based on the Model Rules and not on the rules of professional responsibility governing any particular jurisdiction. So far as the Task Force is aware, however, the Oregon Code of Professional Responsibility is consistent with the Model Rules in all respects material to the questions before the ABA Standing Committee. The Task Force has little reason to believe that the ethical obligations of Oregon legal services lawyers will be substantially different under the Oregon Code and, therefore, regards the ABA Standing Committee's formal opinion as a useful source of advice to legal services lawyers in this state. Nevertheless, the Task Force believes that it may be of value to Oregon lawyers to have the Oregon State Bar Legal Ethics Committee review the ABA Standing Committee's formal opinion in the light of the particular requirements of the Oregon Code, to determine the extent to which the obligations of Oregon legal services attorneys are anticipated to be different than those of lawyers generally in the context of the Model Rules. Accordingly, the Task Force has prepared an opinion request to that effect.
2. The Task Force has considered, at least preliminarily, the possibility of other responses to the anticipated funding and practice restrictions than accommodation through modification of legal services policies and practices. Of particular note is the suggestion that the constitutionality of the restrictions be challenged in federal court. Although the Task Force expresses no opinion on the likelihood of success of such a challenge, it does recommend that the option be explored by the appropriate authorities.

In essence, the theory of the proposed lawsuit is that the imposition of federal restrictions on the provision of legal services violates the Tenth Amendment to the federal Constitution. The major premise of the argument is that the operation of state

court systems is at the core of powers reserved to the states by the Tenth Amendment and that the operation of state court systems includes the promulgation and enforcement of rules of professional responsibility. The minor premise of the argument is that the anticipated restrictions on legal services practice will necessitate a modification of such rules of professional responsibility. The key, of course, is the minor premise, namely, whether the expected practice restrictions actually require a modification of state professional responsibility rules or other matters properly regarded as core areas of state sovereignty.

Assuming the potential viability of a Tenth Amendment claim, the question arises: Who would be the proper plaintiff(s)? In all likelihood, the proper party plaintiff would be the State of Oregon, or the Chief Justice, or both; in all events, the matter would be subject to the advice and representation of the Attorney General. The Task Force recommends that the Attorney General be requested to evaluate the possibility of initiating a lawsuit to challenge the constitutionality of the anticipated funding and practice restrictions.

Conclusion

Hundreds of hours of volunteer effort, energy, and emotion have gone into the creation of this final report. The issues with which the Task Force has wrestled with are critically important to the future of access to justice for low-income Oregonians, both in the short and the long term. The Task Force members urge the Board of Governors to put these issues at the head of the bar's agenda for this year and the years to come. As the BOG's original charge to the Task Force stated, the organized bar has a critically important role to play in assuring the continuing availability of legal assistance to all of the people of our state. We urge the Board to take up this work.

Appendix: Research Methodology

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This section discusses the methodology used to conduct the Comprehensive Legal Needs study. Discussions include descriptions of the sampling techniques, the profile of the sample (demographics characteristics of the sample), the data gathering process and the analysis techniques used.

The purpose of this study was to examine the unmet civil legal needs of low and moderate income Oregonians. Most of the data was collected by interview surveys using a fixed interview protocol. Additional data included in the report was collected from focus groups and open-ended interviews. This qualitative data not only acts as a support to the survey data, but also provides a more in-depth understanding of the legal needs of Oregon poor. Some of the significant comments from these interviews and focus groups have been incorporated in the report.

Sampling Technique

Data was gathered by establishing sampling quotas based on preexisting information on the composition of the population in Oregon below or near the poverty level. The first step was to identify the major components of the target population. A quota was established for each component sub-population to ensure that adequate numbers of each component group would be selected in the sample. Once the sub-populations had been identified and the quotas established, the responsibilities for identifying and interviewing respondents was assigned. Respondents were interviewed by volunteer interviewers around the state. The assistance of social agencies in identifying and interviewing respondents was also sought. In some situations, data were gathered directly by Portland State University graduate students.

Some Demographic Groups	Definition
Disabled Persons	Mental or Physically disabled. Family members are interviewed in some circumstances.
Immigrants who are not Latino	Includes a mix of various Southeast Asian, African and eastern European communities.
Institutionalized Persons	Persons in jail, hospitals, youth institutions or prisons.
Latinos not engaged in agriculture	Includes jobs in construction, landscaping, hotel and restaurants, seafood processing, etc.
Migrant and Seasonal Agricultural Workers	AWPA definition: includes fieldwork, nurseries, seasonal food processing and forestry.
Native Americans	On-reservation and off-reservation
Rural Poor & Isolated Rural Poor	Those in rural communities with a local legal services office and those communities without such offices.
Immobile Seniors	Home bound elderly and those living in nursing homes.
Urban Poor	Cities of Portland, surrounding suburbs, and areas greater than 250,000.
Youth who Lack Effective Parent Advocates.	As a result of being institutionalized, are in foster care, are in serious conflict, are homeless, are in dysfunctional families or are parentless.

The target sample size for this study was 1500, and the obtained sample size (N) was 1011. Volunteers throughout Oregon personally administered the survey, and judges, lawyers, social service workers, community leaders and legal services providers conducted the focus groups and interviews. The principal investigator was D. Michael Dale, and the research consultant was, The Department of Sociology, Portland State University. The research analysts were graduate students Amy Arnett and Priya Sukumaran, under the supervision of Dr. Grant Farr, Chair of the Sociology Department at Portland State University. The data was collected throughout Oregon during the fall and winter of 1999-2000. The respondents' participation was voluntary and was not compensated.

1 - Methodology

Characteristics of the Sample

The sample (N=1011) consisted of low and moderate-income persons in Oregon. Moderate-income persons were included in this sample to verify that moderate-income persons had legal needs similar to those with low incomes (Reese and Eldred, *supra*, n.7). The definition of both these categories in regards to income and poverty levels is as follows:

	Income Range	Poverty Level
Moderate Income Households		125% - 200% of poverty
Low Income Households		Up to 125% of poverty

The sub-populations identified for this study included African Americans, disabled persons (physically and mentally disabled), domestic abuse survivors, homeless, immigrants, institutionalized (persons in jails, prisons, or mental hospitals), Latinos (farm workers and those not engaged in agriculture), migrant and seasonal agricultural workers, Native Americans, non-English speakers, isolated rural poor, vulnerable senior citizens and youth who are not likely to have an effective parental advocate.

At least 100 respondents for each demographic category were sought and the final survey results were weighted to adjust for their actual proportion of the Oregon population in their income levels. The actual number of respondents that were obtained for each demographic group is listed in the table below. The sub-population categories are not exclusive, so that a single respondent might be in two or more sub-populations. For example, an interview with a disabled African American homeless male could count in all three categories. This overlap was adjusted for in the data analysis.

Key Demographic Group	Total Number Obtained	Percent of Sample (%)
Homeless	223	22.8
60 or Older	233	23.8
Low-Income	801	82.1
Moderate-Income	158	16.2
Victims of Abuse	126	12.9
Farm Workers	106	10.9
Migrant Farm Worker	23	2.4
Native Americans	145	14.9
Veterans	145	14.9
People who spoke another language in their homes other than English	193	19.8
Someone in house born outside the U.S.	202	20.7
Hispanic or Latino	195	20.0
White	601	61.6
African American	98	10
Asian or Pacific Islander	9	0.9
Other Races ¹	141	14.4
Physical Disability	168	17.2
Mental Disability	96	9.8
Immobile Senior Citizen	81	8.3
Youth Lacking Effective Parent advocate	78	8.0
Individuals who did not fit any of the key demographic groups	147	15.1

¹ Individuals who selected the other category on the race question.

The majority of the quotas were met for the identified sub-population. Quotas were not met for Youth, Immobile Seniors, Mentally Disabled, and African Americans. However, in these sub-populations sufficient numbers were reached to ensure adequate representations in the final sample.

The sample was gathered in various regions of the state, including metropolitan and non-metropolitan areas. The table below illustrates the regional distribution, the distribution of the respondent's age and household size.

Age Distribution (N=1011) <i>(Percent of total population)</i>		Household Size (N=1011)		Distribution of Respondents by Region	
19 or younger	10.8%	Range	1 to 10	Central	3.2%
Seniors	20.8%	Mean	2.8 persons	Northeast/Gorge	8.3%
Older than 80	3.7%			Mid-Willamette	32.2%
Veterans	15.8%			Southeast	6.0%
				Southwest	11.1%
				Tri-County	36.2%

Most of the respondents (55.4%) lived in a metropolitan area. For this study metropolitan areas were defined as a city with more than 25,000 inhabitants. Also, sixty-four percent of the low and moderate-income people in the study were working.

Survey Instrument

The interview protocol was developed by modifying a survey instrument used by Temple University in a similar study. The original instrument was edited to better reflect the situation in Oregon and to shorten it. The survey instrument consists of two parts:

Part I: Consisted of the primary survey at 110 questions. This section also included supplement questions that asked the respondents to describe briefly what legal problems they have encountered in the last 12 months.

Part II: Consisted of a short survey (approximately 15 questions) that probed whether or not the respondents sought legal help (legal aid, private lawyer, etc) and if they were satisfied with the services provided. Satisfaction concerning the resolution of the legal problem was also asked.

If legal problems were identified in Part I of the interview, a separate supplement was filled out for each legal problem identified, except that interviewers were asked to complete only a maximum of five Part II supplements. If the respondent identified more than five problems, based on the total number of supplements (problems) identified, the interviewer refers to a random-numbers sampling table to select the questions that require the supplement in Part II to be filled out.

The primary survey asked questions pertaining to about ninety-seven situations that give rise to a need for civil legal services. Some of these situations include family and housing problems, employment, public services and consumer problems, immigration, elderly abuse, and discrimination. Since many of the interviewers were not lawyers, the principal investigator reviewed the survey forms to assure that the situation described did indeed represent a legal issue.

The survey was designed to gather information about a broad cross-section of lower and moderate-income population. The survey also focused on specific segments of population that encounter acute legal needs or experience special barriers to access the legal system. The survey also included questions pertaining to whether or not the respondents had knowledge about where to get legal assistance or obtain a legal remedy. Most of the surveys were conducted through face-to-face interviews since many of the target populations do not have telephones, and a mail out/mail-back survey would be problematic.

3 - Methodology

Appendix B: 3 of 4 – Part I: Assessment of Legal Need

The interview generally took approximately 45 minutes to conduct. For those respondents who related additional stories or experiences, their signature for consenting to the use of their narrative was sought. Directions regarding the nature of the survey and an instructors manual, which were written by the Portland State University research consultants, were provided to assist the interviewer in conducting the survey. Special care was taken to inform the interviewers of the possible definitions of "household in specific population groups. The definitions are as follows:

Migrant workers	People in your life you are supporting
Juveniles	Immediate family
Homeless	Members of your immediate family with whom you are in continual contact.
Institutionalized (people in jail, mental institutions, etc)	Immediate family with whom you are in continual contact.

For the other demographic groups a general description (definition) of "household is mentioned in the survey. Finally, a translation of the survey into Spanish was done, as some of the respondents did not speak English. These interviews were also conducted in Spanish.

Focus groups were also conducted in the cities of Bend, Coos Bay, Eugene, Hillsboro, Hood River, Medford, Newport, North Bend, Ontario, Oregon City, Pendleton, Roseburg, The Dalles, and Vale. In some areas, separate focus groups were organized for lawyers and social services providers.

In addition to this, twenty-two individual interviews with lawyers, judges, court personnel, and community leaders were also held; this was mostly in cities like Albany, Corvallis, Eugene, Klamath Falls, McMinnville, Pendleton, Portland, and Salem. The president of each local county bar, the presiding judge of each Circuit Court and all federal district court judges were surveyed through mail. In-depth interviews were also conducted among general legal services providers and other specialized non-profit programs that are involved in meeting the legal needs of the target population. The following non-profit programs participated in the interview sessions: Consumer Justice Alliance, the Fair Housing Council, the Juvenile Rights Project, the Oregon Advocacy Center, St. Andrew and St. Matthew Legal Clinics, the clinics at University of Oregon, Lewis and Clark and Willamette law schools, and the voluntary agencies providing immigration counseling (Immigration Counseling Service, Catholic Charities Immigration Counseling Service, Jewish Family Services, Lutheran Family Services, SOAR).

Data Analysis

Data were analyzed both quantitatively and qualitatively. The interview results were numerically coded and entered into a data matrix by the team at Portland State University. The principle investigator reviewed each finished questionnaire to ensure that the legal issues were properly coded and that each respondent met the criteria.

When analyzing the sample as a whole, sub-populations that had been over- or under-sampled were assigned weighting based on their proportion of the population of Oregon in these economic ranges. By this method the sample is made to properly represent the people of Oregon.

The analysis mostly consisted of frequency tables, descriptive analysis (means, ranges) and cross tabulations. The results (apart from the means) were mostly reported in percentages, and were illustrated by bar graphs, histograms and pie charts. The final touch to the report was the inclusion of real life stories (experiences) of the respondents that enriched the study and supported the quantitative data.

It is our belief that the Comprehensive Legal Needs Study will add valuable information to the growing body of literature on the unmet civil legal needs of low and moderate-income people.

Authored by Priya Sukumaran and Amy Arnett, Portland State University. Feel free to contact us with any questions: (503) 725-8198.