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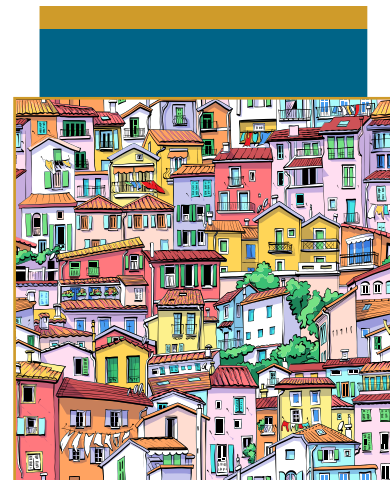
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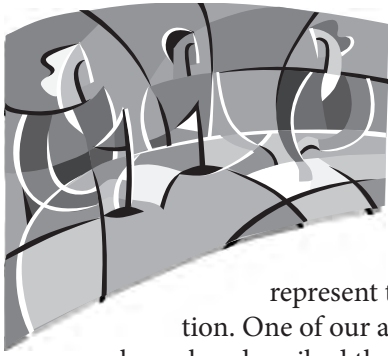
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**SPECIAL FEATURE:
 TENANT RIGHT
 TO COUNSEL —
 MANAGEMENT &
 IMPLEMENTATION**



FROM THE JOURNAL COMMITTEE

Welcome to the latest edition of the *MIE Journal*, with a special feature on legal aid work to represent tenants facing eviction. One of our authors, Sue Wasserkrug, has described the new programs that were developed in response to increased evictions during COVID as the “silver lining to the pandemic cloud.” The COVID lockdown came at a moment when our culture was beginning to document the trauma and costs of eviction, particularly on minority populations, and to recognize the difference that representation in eviction proceedings could make. Suddenly, people were losing jobs and income and threatened with losing their homes at a time when staying in our homes was more important than ever. But new programs were developed to help. In jurisdictions across the country, lawyers, tenant organizations, public officials, funders, and others stepped up to establish new ways to provide legal assistance to tenants, including guarantees of a “right to counsel” in a number of states and cities.

This *Journal* includes a collection of articles describing some of the programs that were developed to provide legal assistance and other services to tenants facing eviction; they discuss not just the successes, but also the challenges that have been faced along the way. The articles cover a wide range of approaches: an overview of the three programs in states where a right to counsel has been established by law; a more in depth description of the program in Washington State; descriptions of local representation programs where there is no right to representation — in Fort Wayne, Indiana and Los Angeles; a description of a system to pay local private attorneys to provide representation across rural Montana; and a model eviction diversion-through-mandated-mediation program in Philadelphia. Legal aid programs have dreamt of, worried about, and worked on Civil Gideon and eviction right to counsel projects for almost two decades. We now have programs up and running and are learning that, as feared, there are challenges with providing high quality representation and access for all litigants, with hiring and retaining staff, and with building big eviction operations within an existing legal aid organization. But it can be done, it is being done, and it keeps thousands of vulnerable families in their homes, avoiding the many harms and trauma caused by eviction. We offer kudos to the authors and all the advocates across the country taking on this significant work

and hope that sharing these articles will be helpful as this work proceeds.

Besides the special feature, we have other exciting articles to share. Five executive directors discuss their experience with going through strategic planning processes; not all were thrilled at adding this process to their workload, but all learned how it could be useful. A new Equal Justice Fellow shares their research into how programs can develop medical legal partnerships with hospital programs on gun violence interventions, a project they are now undertaking in Washington D.C. Jeff Harvey and Nadia Soulouque of mid-Florida describe the leadership training program they have established in their legal aid agency, designed to develop an overall organizational culture of leadership.

MIE Journal Committee members have three contributions. Jan May interviewed California Rural Legal Assistance’s outgoing executive director Jose Padilla, who is retiring after 44 years in his program and with an established history of aggressively standing up for vulnerable populations in the face of political pressures. Merf Ehman reviews a “Conflict Resolution Playbook” which provides concrete and step by step advice on managing conflicts. And crossword puzzle guru Pat McIntyre provides a neighborly puzzle for your enjoyment.

The special feature’s housing theme is also reflected in an article by Rasheedah Phillips, a legal aid housing leader who is also an AfroFuturist interdisciplinary artist. She writes here on how time and temporality frame eviction and housing practices, noting that the future of housing policies must be capable of repairing the many harms of the past.

This fall issue is a bit late in arriving. But cuddle up with it if you are in the cold, or take it to the beach if you are not. We hope it is both useful and inspiring.

—Catherine C. Carr
MIE *Journal* Committee



MISSION: MIE’s mission is to promote excellence in management to ensure high quality advocacy on behalf of low-income people. MIE advances best practices and innovation in leadership, management, supervision and fundraising by supporting a full and free exchange of ideas and providing training, consulting and a flagship journal for the legal aid community.



THE ESSENTIALS OF STRATEGIC PLANNING — A DISCUSSION

By Sam Abel-Palmer, Executive Director,¹ Legal Services Vermont; Jim Cook, Executive Director,² Idaho Legal Aid Services; Jon Laramore, Executive Director,³ Indiana Legal Services; Leslie Powell-Boudreaux, Executive Director,⁴ Legal Services of North Florida; Maria Thomas-Jones, Executive Director,⁵ Legal Aid of Northwest Texas



Top row:
Sam Abel-Palmer (L);
Jim Cook (C);
Jon Laramore (R); 2nd row:
Leslie Powell-Boudreaux (L);
Maria Thomas-Jones (R).

turn it into a value for our agencies. We don't want our strategic plans to be an exercise in bureaucratic gymnastics that sits on the shelf until it's time to write the next one. The plan should be an opportunity for creative and visionary thinking, building staff and board cohesion, and creating a living tool to guide our work through difficult times.

For context, I'd also like to call your attention to the recently revised ABA Standards for the Provision of Civil Legal Aid.⁶ While the new standards do not prescribe a specific procedure for strategic planning, they do emphasize the central importance of strategic thinking in determining how a legal services agency delivers legal assistance to its clients. We encourage you to make use of this resource as you create your own plans.

Please give a brief overview of your organization and the status of your current strategic planning efforts.

In September 2022, the Legal Services Corporation (LSC) hosted a meeting of all the executive directors of LSC-funded agencies. Among the many valuable sessions, five members of the group presented on a panel discussing our experiences with the process of strategic planning: how we engaged in the strategic planning process, why we created a strategic plan for our agencies, and what we learned during the journey. Our agencies represent a wide range of size and complexity, but we all found common themes in our experiences. Sam acted as moderator, while Maria, Leslie, Jim, and Jon were our presenters. The following is a (somewhat edited) summary of our discussion. Thanks to Lynn Jennings at LSC for putting together the panel and helping focus our discussions.

Sam: Welcome to our discussion of strategic planning. Most of us, frankly, started the process of strategic planning because we were told we had to do it. But our goals have all been to take that requirement and

Leslie: Legal Services of North Florida (LSNF) covers the Florida panhandle with about 80 full-time equivalent (FTE) staff. Like the other programs on this panel, we did not have a true strategic plan until I took over as executive director. When I started, our board wasn't particularly engaged; so, for our first plan, I looked for a low-cost "path of least resistance" way to engage the board and staff. Rather than a longer organic process, the consultant we hired used some computer polls for feedback during the retreat. The retreat ended up happening just weeks after Hurricane Michael struck, which really drove the discussion. For this plan, about 50% of the board and staff engaged in the process. Ultimately, the strategic plan from this process was unrealistic in its goals, requiring significant staff time to create a plan that was achievable. The LSNF board has a standing committee on strategic planning, and progress is tracked regularly. The plan

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was a three-year plan, which our Board extended for an additional year so that we could complete a needs assessment in advance of our next strategic plan creation, which will happen at the end of 2022.

Jon: Indiana Legal Services (ILS) is a statewide program with a staff of about 170 FTEs. When I took over as Executive Director, ILS did not have a history of strategic planning. During my tenure, I have overseen two strategic planning processes. The first strategic plan was generally successful, developed with the help of a consultant. For the second planning process, ILS engaged the same consultant, who conducted community outreach and surveying of staff and board. With the consultant, we developed a new strategic plan with four overarching goals accompanied by strategies and measurable outcomes that are tracked regularly. Some examples of goals include attracting and retaining great staff and assessing the organization's advocacy goals through a race and equity lens.

Maria: Legal Aid of NorthWest Texas (LANWT) is a large program that covers both urban and rural areas and has a staff of about 290 FTEs. Prior to my being named executive director at LANWT, the program did not engage in strategic planning. Since then, we've undertaken a comprehensive planning process that included senior management. We also have a long-range planning committee on the board. They also looked at a lot of data to incorporate into the process. Our plan started out with 14 major goals, which we realized was far too many, and so we reduced them to a manageable size. To track progress against strategic goals, we have focus teams comprised of staff from across the organization. The teams look at each goal and who is responsible for doing specific tasks.

Jim: Idaho Legal Aid Services (ILAS) is a statewide program that covers a large, mostly rural state with a staff of 52 FTEs. We have had three strategic plans in our 50 years of existence, all developed and implemented in the last 15 years. ILAS used a volunteer facilitator from a local hospital to help develop our first strategic plan. For the most recent strategic plan, which expires in 2022, we hired an outside consultant to develop a more comprehensive plan to help drive the process, as well as survey stakeholders, staff, and board members for their anonymous feedback. ILAS will be going through a similar process to develop our next plan.

Sam: Legal Services Vermont (LSV) is statewide, but the smallest of these programs, with only 15 FTEs. Prior to my arrival, we also did not have a history of strategic planning. I would characterize our first plan as strategic triage — it was a band aid plan. This process focused more on building an infrastructure for the program. For our current plan, LSC's Program Quality Visit report proved to be a helpful catalyst to get us moving in the right direction. Since we couldn't afford to pay for a consultant, we gathered the staff at the Deputy Director's house to discuss what the organization ought to be and our vision for the future. At that time, the board wasn't very engaged in the process, though once it was in place, we established a board subcommittee, and those people have been more active contributors.

All of you are relatively new executive directors whose organizations did not have an extensive history of strategic planning, so why did you choose to move forward with strategic planning in your organization?

Leslie: When I started as executive director, the organization needed a culture shift, and strategic planning was a way to include staff in the change process. The initial process was helpful to me and the agency in several ways. Even though I came as an existing staff member of LSNF, I didn't have a clear understanding of the direction of the organization. Strategic planning helped the organization to set out a roadmap. It was also a mechanism to motivate and increase engagement by our board. I had served on other non-profit boards and saw the power and benefit of strategic planning.

Jon: I was hired at ILS as a change agent. The strategic planning process helped with that. I was able to seek the input of staff and bring them on board for our first planning process. Our second strategic planning process has been an even better experience, and we were able to get genuine input from inside and outside about what the organization's priorities should be. It was a process that helped to get staff buy-in.

Maria: Like others, the strategic planning process was a great way to empower me as a new executive director to make needed changes. At first the board was hesitant, but it is a great tool to help shift organizational culture. One of the issues that was a challenge for the staff was incorporating more strategic advocacy — that issue was something we had to work on with the union. I was fortunate to have a strong board chair leading the effort and supporting me. The board came

to understand the importance of strategic planning, as well as the imperative to do it on a regular basis.

Jim: Well, the first reason we did strategic planning was because we were told to, but we are glad we did. The program I took over had stagnated, and a lot of changes needed to be made. The strategic planning process was a good vehicle to empower me as a new executive director to institute much needed change in the organization on several levels from staff-related issues to service delivery models. The process let me obtain buy-in on many of my long-term goals such as improving efficiency, salaries, etc. The strategic planning process also helped reduce internal resistance to some of the changes we were making.

Sam: Even though we are small, our staff size has nearly doubled in recent years. Having a strategic plan has been crucial for navigating the massive changes that growth entails.

To what extent did you engage external stakeholders and incorporate other data sources (updated needs assessments, intake data, census information, etc.) in developing your strategic goals?

Leslie: We are in the planning process now and intend to engage with the stakeholder community. We will also use the feedback we have received through our needs assessment process. Our consultant reminded us that our donors are important stakeholders to reach out to, so we are incorporating that into the process.

Maria: We worked with our community liaison partners to solicit feedback from community stakeholders. We were also able to incorporate several outside data sources in addition to data from our case management system.

Jon: Our consultant had some conversations with partners and funders, but this plan was generated mostly with internal input.

Jim: Our strategic planning consultant used surveys and outreach to both internal and external stakeholders. For the next effort, we will be looking closely at population/demographic trends as Idaho has been experiencing high population growth. This growth has resulted in issues affecting our client community such as increased housing prices. We are also trying to determine how to factor in global warming. For example, Idaho's agricultural economy (and thus our farmworker community) has been impacted by ongoing drought as we have broken many heat records in 2022. Our Indian Reservations are also

vulnerable to these changes.

Sam: Vermont is a small state, so we are in regular contact with our partner agencies already. We also performed a statewide legal needs assessment shortly before our most recent strategic planning process, and that study helped to inform the plan.

What challenges, if any, did you encounter in developing and/or implementing your strategic plan?

Maria: Of course, the pandemic has been a challenge. We couldn't conduct the stakeholder outreach we were hoping to conduct. It is always a challenge to keep progress focused. Turnover among staff who have been working on the focus teams has been an issue, as well as cultural resistance of staff to participate.

Leslie: During our process four years ago, neither our board nor staff knew what to expect. We chose a light and easy process that took less time and, as a result, the product was limited by not focusing on achievable goals. With the help of our Strategic Planning Committee, we made revisions to create goals and activities that were within reach, while still challenging. The process of reviewing the plan has also required much deliberate effort to keep it on everyone's mind as we take on our day-to-day responsibilities. Finally, with the breadth and diversity of our service area, we had to make sure the ideas of our larger, more urban areas didn't shadow the needs of our rural communities. As we start the process again, we hope to take these lessons learned to improve our process moving forward.

Jim: Our biggest obstacle in the last strategic planning effort was overcoming a degree of cynicism that the plan would simply be put on a shelf. That had happened, to a degree, with our first two strategic plans. To overcome this for the third version, I made it clear that if we were going to go through the process and hire an outside consultant, we were going to take it more seriously. I also let the participants know to take the process seriously and to contribute if they wanted to have influence on the program's future direction.

Jon: There weren't as many challenges as I anticipated in the drafting stage. Making ILS an anti-racist organization is a focus of our plan, and that will be a challenging process.

Sam: While our plan's goals have remained the same, we have had to shift a lot of our strategies for implementing those goals in our current rapidly changing landscape.

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MEDICAL-LEGAL PARTNERSHIPS AS A TOOL FOR GUN VIOLENCE PREVENTION: AN OPPORTUNITY FOR CIVIL LEGAL AID PROVIDERS TO ASSIST GUN VIOLENCE SURVIVORS AND SUPPORT ABOLITIONIST EFFORTS

By M.J. Smith, *Equal Justice Works Fellow*,¹ *Legal Aid of the District of Columbia*²

Background

America's gun violence epidemic requires an all-hands-on-deck approach. Currently, solutions to gun violence center carceral solutions—solutions that do



nothing to address underlying problems associated with gun violence, like poverty, trauma, and systemic racism. In fact, carceral solutions often exacerbate violence and perpetuate cycles of generational trauma and poverty.³ In this article, I hope to introduce you to

some of the strategies that legal services providers can employ to assist gun violence survivors on their path towards greater stability, and, in doing so, can support abolitionist efforts to create a real alternative to our country's harmful and oppressive approach to public safety.

I have three goals for this article. First, I want to introduce you to hospital-based violence intervention programs, which provide wraparound social services to gun violence survivors and are considered by policy experts to be an effective and just way of addressing community violence.⁴ Second, I want to share two examples of legal services providers that are already partnering with such programs—Legal Services of Eastern Missouri and the Rebuild, Overcome, and Rise (ROAR) Center at the University of Maryland Carey School of Law. Third, I want to offer suggestions to help your organization better support gun violence survivors and expand its involvement in survivor-informed abolitionist efforts to develop non-carceral approaches to public safety—approaches that center healing, equity, and justice.

What is a hospital-based violence intervention program?

Hospital-based violence intervention programs (HVIPs) all share a simple common goal: to reduce violence in the communities they serve. The HVIP model involves approaching survivors of community violence, predominately boys and men of color, during hospitalization, to offer culturally competent, trauma-informed wraparound services. The model has two key elements. First, HVIP first response providers are credible messengers—they have experienced community violence and the criminal legal system firsthand. Second, HVIP providers focus their energy on helping survivors to address risk factors for reinjury and retaliatory violence as well as strengthen protective factors. Common services offered include intensive case management, referrals to other community providers, and mental health, education, employment, financial, and social supports. The Health Alliance for Violence Intervention (HAVI), a national coalition of HVIPs, points to several studies suggesting that gun violence survivors are particularly receptive to an intervention and supportive services while hospitalized for violent injuries.⁵

Youth ALIVE! (Oakland, California) and Project Ujima (Milwaukee, Wisconsin) launched the nation's first HVIPs in the mid-1990s.⁶ In 1996, the American Academy of Pediatrics published a report stating that “comprehensive care of violently injured adolescents must address their psychosocial needs as well as their physical injuries... [and that such an approach] is likely to promote full recovery and reduce the risks of reinjury and reactive perpetration.”⁷ That same year, the Department of Justice's Office for Victims of Crime assembled a Victims of Gang Violence Planning Group that recommended, “hospital-based counseling

and prevention programs... be established in medical facilities that often provide services to gang violence victims.”⁸ Following these reports and calls to action, dozens of new HVIPs began to emerge around the country, and HAVI estimates that there are now more than 40 HVIPs across the country.⁹ Several health studies have concluded that HVIPs are effective at reducing survivors’ future incidences of violent injuries, violent crime convictions, and misdemeanor offense convictions, as well as increasing survivors’ utilization of community and medical providers and resources.¹⁰

How are hospital-based violence intervention programs addressing participants’ legal needs?

From 2020–2021, I worked with a multidisciplinary research team composed of students and practitioners of law, medicine, and social work to conduct a national survey of partnerships between HVIPs and civil legal services providers (LSPs).¹¹ We issued our survey to all of the US-based members of HAVI—35 HVIPs in the spring of 2020. Of the 32 HVIPs that responded to our research team’s Qualtrics survey, 88% (28 HVIPs) reported screening for civil legal needs, 81% (26 HVIPs) reported providing contact information for LSPs to participants, 66% (21 HVIPs) reported providing “warm handoff” referrals to LSPs, 66% (21 HVIPs) reported holding trainings with LSPs, and no HVIPs reported formal medical-legal partnerships (MLPs) with LSPs.¹² My research team’s follow-up interviews with 22 of the surveyed HVIPs revealed that these self-reported practices were more limited than the survey data suggested. Nonetheless, our interviews also

revealed that several HVIPs have strong working relationships with LSPs and provided our team with excellent examples of how LSPs can support HVIP clients. Below, I offer case studies of two of these partnerships, which essentially function as MLPs despite the lack of a formal agreement between the two partners, co-location of services, and dedicated funding for the partnership.

Case Study 1: Baltimore, Maryland¹³

The Violence Intervention Program (VIP), an HVIP housed in the R Adams Cowley Shock Trauma Center at the University of Maryland Medical Center (“Shock Trauma”), began working with the Rebuild, Overcome, and Rise Center (ROAR), an LSP housed at the University of Maryland Carey School of Law, soon after ROAR launched in 2019. VIP serves survivors of violent injuries who present for treatment at Shock Trauma. The vast majority of VIP’s clients are Black men (54%) and Black women (36%). ROAR was established with funding from the Maryland Governor’s Office of Crime Prevention, Youth, and Victim Services to provide free legal services to low-to-moderate-income survivors of crime who live in Baltimore, Maryland. Erin Walton, the program manager of VIP, said that VIP refers about a quarter of its clients to ROAR for civil legal assistance. While the most common civil legal needs of VIP clients are in the areas of housing, divorce, custody, child support arrears, and identification documents, Walton explained, “If [our clients] say they have [any] legal issues—even if they have, like, pending criminal charges—we’ll still refer them [to ROAR] because they can [get] better advice [from ROAR attorneys] than



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we're going to be able to give them." VIP screens for these civil legal needs during initial client intake, and also monitors for civil legal needs for as long as a client remains enrolled in VIP's services.

VIP and ROAR began meeting monthly in 2019 once they "figured out how much overlap there was going to be." The need for these meetings initially stemmed from a common phenomenon observed by VIP staff: the police taking their clients' identification without a warrant or the clients' consent and refusing to return the identification when the clients or VIP staff contacted the Baltimore Police Department. Walton explained, "[The ROAR attorneys] were shocked to learn that the police take our clients' identification, and we were like, that happens to every client." ROAR attorneys responded in two ways. First, they have helped individual clients get their identification returned by engaging in informal advocacy with the Baltimore Police Department. Second, they partnered with the Lawyers' Committee for Civil Rights Under Law and Orrick, Herrington & Sutcliffe LLP to file a first of its kind class action lawsuit against the Baltimore Police Department. The case was filed in the United States District Court for the District of Maryland on April 1, 2021. The complaint focuses on the "[Baltimore Police Department's] pattern and practice of unconstitutionally searching, seizing, and retaining the personal property of victims of violent crimes in Baltimore."¹⁴

While VIP and ROAR do not have a formal MLP, the structure of their informal partnership mirrors many of the qualities of a formal MLP. Since tackling the identification issue, the VIP and ROAR teams have continued to meet monthly—a practice common among fully integrated MLP partners—to conduct case reviews, provide cross-trainings and presentations, and discuss current events and topics that impact their mutual client communities. The two programs are practically co-located in that they are both part of the University of Maryland network, and they are only a three-minute walk apart. Walton commented, "We can literally... walk over there with clients." Like a typical MLP, ROAR (the LSP) does not turn away VIP clients, and VIP (the medical partner) works to ensure they do not overwhelm ROAR with cases. VIP's referral process, allowing clients to contact ROAR on their own time while also notifying ROAR staff via email of an incoming referral, helps to ensure, much like an MLP, that there is a warm handoff of clients between

VIP and ROAR. Both programs encourage clients to sign consent releases that allow providers to freely communicate with one another in support of clients' goals—another practice routinely employed by MLPs. Finally, VIP tracks the legal outcomes of each clients' engagement with ROAR in case notes, a practice that is embraced by MLP advocates.

Case Study 2: St. Louis, Missouri¹⁵

The Victim of Violence (VoV) program at St. Louis Children's Hospital (SLCH) is unique in that all of its clients—approximately 40 per year—are youth below the age of 18. The majority of the youth served by VoV are Black boys (65%). My research team spoke with two social workers who help lead the program, Warren Hayden and Stephenie Whitaker, in late 2020 when SLCH was seeing a record number of patients—infants, children, and teenagers—presenting with gunshot wounds. Hayden and Whitaker explained that these young survivors, like their adult counterparts, often have a number of unmet legal needs. The VoV team uncovers some of these civil legal needs through the psychosocial assessment tool they use to screen all clients of the program. Oftentimes, these young clients' legal needs surface only after VoV has been working with them for an extended period of time.

Hayden and Whitaker indicated that, at the time of our interview, they had only recently begun to fully grapple with and work toward addressing their clients' unmet civil legal needs. In March of 2020, they launched an informal partnership with Legal Services of Eastern Missouri (LSEM). The partnership came about primarily as a result of Hayden's prior collaborations with LSEM while he was working with a different youth services provider in St. Louis. In addition, Hayden explained that a mutual funder of the VoV and LSEM—the Children's Service Fund of St. Louis County—actively encourages collaboration among its grantees. This encouragement helped drive a mutual desire by both programs to quickly begin working together to address the legal needs of VoV's clients.

In July of 2020, LSEM conducted a comprehensive online training for the VoV, detailing the various legal services they offer to youth clients. These services include helping youth clients obtain identifications; supporting LGBTQIA+ youth; obtaining federal financial aid for unaccompanied youth; helping unaccompanied youth access other public benefits like TANF, SNAP, health coverage, and child care assistance; supporting youth with special education and school discipline matters; assisting with criminal record

expungement; addressing outstanding municipal tickets and warrants; helping with family law issues such as custody, paternity, and protection orders; assisting with landlord-tenant issues; and addressing youth credit problems, debt collection, and identity theft. Identity theft, Hayden explained, is quite common among VoV's older clients who are attempting to begin life on their own: "They discover that their Social Security Number has been used by somebody in their family... and so they now have a bill [in their name] that they're responsible for." All of these issues, Hayden and Whitaker opined, interfere with the ability of their clients to recover from their traumatic experiences with violence and stay on a path towards stability and independence.

By December of 2020, VoV was referring close to 20% of its clients to LSEM for assistance with a civil legal need. According to Hayden, the July training coupled with the establishment of close relationships between case managers at VoV and LSEM have been hugely beneficial for VoV staff and clients. He said, "[Our] case managers are much more knowledgeable about recognizing... legal issue[s] [and are now] able to refer properly once they recognize one." He expressed pride in the team's increased confidence in making referrals, adding that "legal stuff can be very intimidating for social workers." Whitaker was also enthusiastic about the progress made. She explained, "Even having been... in the emergency room for 20 years [and giving out] the phone number... for legal services quite a bit, [I] was completely uneducated to what [LSEM could] offer." She added that the training alone was "hugely beneficial for our team." When discussing the future, the team said they would like to add more legal screening questions to their intake tool and to look into launching a formal MLP with LSEM.

What are some things your organization can do to get involved in similar efforts?

First, the importance of a trauma-informed approach to working with gun violence survivors of violence cannot be understated. Many gun violence survivors have experienced high levels of community, police, and intrafamily violence as well as a number of traumatic experiences in the legal system, the culmination of which is a deep distrust for lawyers and the legal system more broadly.¹⁶ Existing resources on trauma-informed lawyering offer helpful guidance—I particularly like what Vivianne Mbaku (Justice in Aging)¹⁷ and Lorilei Williams (formerly with the Shriver Center)¹⁸ have to say on the topic. Also consider asking local HVIP providers to train your staff on trauma-informed

care practices and conflict de-escalation tactics. They are experts in these areas.

Second, LSPs can increase outreach to HVIPs and consider co-facilitating community legal education events with HVIPs. I learned through my research team's interviews that, like many people, HVIP providers and their participants often struggle to identify needs as legal in nature and lack familiarity with the availability of free civil legal assistance.¹⁹ Use Google to find local HVIPs in your service area and start attempting to build a relationship. Almost every HVIP provider I spoke with was excited to hear about the availability of local, free civil legal assistance to help with housing, family, and public benefits issues. You can let HVIPs know that you can accept referrals for certain case types and help co-facilitate know your rights and other legal trainings for their staff and participants.

Third, ensure that your organization's case acceptance criteria and legal expertise includes the unique legal needs that are prevalent among gun violence survivors. These needs, which I compiled based on my research team's interviews, include child support arrearages,²⁰ criminal record expungements, identity documents, debt from fines and fees, issues with Social Security disability benefits,²¹ access to crime victims compensation,²² and civil rights issues related to unlawful police behavior.²³ It is not necessary that your organization handle all of these case types, but keep in mind that you are far more connected to other legal providers (*e.g.*, other legal nonprofits, law school clinics, and pro bono attorneys from the private bar) than HVIPs or their participants. You can therefore act as a bridge to other needed legal help for gun violence survivors.

Fourth, consider forming an MLP with a local HVIP. An MLP that is co-located, facilitates cross-training, and has information sharing agreements, formal funding, and dedicated staff is an ideal format for partnering with an HVIP. LSPs and HVIPs should work in conjunction to secure funding to establish MLPs. There are several potential avenues for obtaining funding to support such an endeavor, including: legal aid fellowship programs (*e.g.*, Equal Justice Works Fellowship, Justice Catalyst Fellowship, and Skadden Fellowship, among others);²⁴ local and state funding;²⁵ hospital funding;²⁶ and federal grants.²⁷

Fifth, to best support gun violence survivors in your community, increase your organization's involvement in other local and national violence prevention and intervention efforts—particularly

© MEDICAL-LEGAL PARTNERSHIPS,
Continued from page 9

abolitionist efforts that do not rely on coercive mechanisms that perpetuate the conditions that drive gun violence. I highly recommend surveying your staff and local HVIPs to learn of local efforts in your service area. Also, check out Interrupting Criminalization's library of materials,²⁸ the Working Group on Policing and Patient Rights's toolkit, *Police in the Emergency Department: A Medical Provider Toolkit for Protecting Patient Privacy*,²⁹ and the video recordings from the University of Pennsylvania Leonard Davis Institute's symposium, *When Health Care and Law Enforcement Overlap: Policy and Practice*.³⁰ I know this work may seem disconnected from your traditional practice, but I implore you to leverage your relationships, your wisdom, your financial resources, your status, and your power to support survivors of gun violence and help break the cycle.

- 1 M.J. Smith (they/them) is an Equal Justice Works Fellow funded by Greenberg Traurig LLP at Legal Aid DC. Their fellowship project is focused on helping survivors of gun violence navigate the legal system and educating lawyers, judges, and lawmakers on systemic barriers to stability faced by gun violence survivors. M.J. is a 2022 graduate of Georgetown University Law Center. During law school, they interned at Legal Aid DC and Bread for the City; conducted and published research with the DC Access to Justice Commission, the Georgetown Health Justice Alliance, and the Civil Justice Data Commons; and served as Senior Staff Editor on the Georgetown Journal of Poverty Law and Policy. Prior to law school, M.J. worked at Legal Services Corporation, where they helped to identify and promote best practices in civil legal aid. M.J. may be reached at msmith@legalaiddc.org.
- 2 This article is based on research done prior to my joining Legal Aid DC. All recommendations and opinions are mine and not those of Legal Aid DC.
- 3 See, e.g., Sarah Jones, *We Are Asking the Police to Do too Much*, N.Y. Mag: *Intelligencer* (JUNE 2, 2020), <https://nymag.com/intelligencer/2020/06/killing-of-george-floyd-shows-our-over-reliance-on-police.html>; German Lopez, *One of the biggest problems with American policing: we rely on cops way too much*, Vox (Jan. 24, 2016), <https://www.vox.com/2016/1/24/10816536/police-reliance-melvin-russell>; Betsy Pearl, *Beyond Policing: Investing in Offices of Neighborhood Safety*, Ctr. for Am. Progress (Oct. 15, 2020), <https://www.americanprogress.org/issues/criminal-justice/reports/2020/10/15/491545/beyond-policing-investing-offices-neighborhood-safety/>; *Alternatives to Police Services*, Black Lives Matter, <https://defundthepolice.org/alternatives-to-police-services/> (last visited Oct. 14, 2022).
- 4 See, e.g., *Violence Intervention Programs*, Everytown for Gun Safety Support Fund, <https://everytownresearch.org/solution/violence-intervention-programs/> (last visited Oct. 14, 2022); *Community Violence Intervention Programs, Explained*, Vera Inst. of Just. (Sept 1., 2021), <https://www.vera.org/community-violence-intervention-programs-explained>; *Reducing Violence Without Police: A Review of Research Evidence*, John Jay Rsch. & Evaluation Ctr. (Nov. 9, 2020), <https://johnjayrec.nyc/2020/11/09/av2020/>.
- 5 See *What is a Hospital-based Violence Intervention Program (HVIP)?*, Health All. for Violence Intervention, <https://www.thehavi.org/what-is-an-hvip> (last visited Oct. 14, 2022).
- 6 Nat'l Network of Hospital-based Violence Intervention Programs, *Hospital-based Violence Intervention: Practices and Policies to End the Cycle of Violence* (Mar. 2019), <https://static1.squarespace.com/static/5d6f61730a2b610001135b79/t/5d83c0d9056f4d4cbdb9acd9/1568915699707/NNHVIP+White+Paper.pdf>.
- 7 *Id.* at 991.
- 8 U.S. Dep't of Just. Off. for Victims Crime, *Victims of Gang Violence: A New Frontier in Victim Services; A Report, Recommendations, and Action Plan of the Victims of Gang Violence Planning Group 6* (October 25, 1996), <https://www.ncjrs.gov/pdffiles1/Digitization/163389NCJRS.pdf>.
- 9 *Membership Directory*, Health All. for Violence Intervention, <https://www.thehavi.org/directory-by-state/#directory-by-state-detail> (last visited Oct. 14, 2022).
- 10 See, e.g., Carnell Cooper et al., *Hospital-Based Violence Intervention Programs Work*, 61 J. Trauma: Injury, Infection, & Critical Care 534 (2006), https://journals.lww.com/jtrauma/Abstract/2006/09000/Hospital_Based_Violence_Intervention_Programs_Work.2.aspx.
- 11 THANK YOU to the amazing members of my research team, Kate Gallen (Georgetown University School of Medicine), Dr. Erin Hall (MedStar Washington Hospital Center), Prof. Vicki Girard (Georgetown University Law Center Health Justice Alliance), Carly Loughran (Legal Aid Chicago), Dr. Kirsten Schuster (MedStar Washington Hospital Center), Millie Sheppard (MedStar Washington Hospital Center), Prof. Ji Seon Song (University of California, Irvine School of Law), and Jake Sonnenberg (UCSF School of Medicine).
- 12 Qualtrics Survey by Kate Gallen, Erin Hall, Vicki Girard, Carly Loughran, Kirsten Schuster, Millie Sheppard, and M.J. Smith of hospital-based violence intervention programs (July 2020 – Sept. 2020) (survey results on file with author).
- 13 Video Interview with Erin Walton, Program Manager, Violence Prevention Program, R Adams Cowley Shock

- Trauma, University of Maryland Medical Center (Sept. 16, 2020).
- 14 Complaint, *Cottman v. Baltimore Police Department*, No. 1:21-cv-00837-SAG (D. Md. Apr. 1, 2021). *See also Supporting Patients Through Advocacy, Organizing, and Social Services: How Communities are Responding to Law Enforcement in Hospitals*, When Health Care & L. Enforcement Overlap Virtual Symp. (Sept. 24, 2021), <https://www.youtube.com/watch?v=aLANJdiTNR0> (Lydia Watts, Executive Director, Rebuild, Overcome, and Rise (ROAR) Center at the University of Maryland Carey School of Law discussing the complaint).
 - 15 Video Interview with Warren Hayden, Consultant, Victims of Violence Program, St. Louis Children's Hospital and Stephenie Whitaker, Social Work Supervisor, St. Louis Children's Hospital (Sept. 23, 2020).
 - 16 The providers my research team interviewed also indicated a strong distrust of the police among their clients. One interviewee said, "not trusting police is . . . a survival instinct for people of color." Another interviewee stated, "Why are we not engaging in legal services?... [Lawyers are] not aligned with [] how we see supporting patients... It's not many people we trust." Some interviewees reported specific concerns about local LSPs. According to one interviewee, "Sometimes some [legal aid lawyers] talk too fast... and [our clients] get kind of frustrated." Another interviewee reported, "We have the legal aid place here, but you know, people aren't that confident in them." Speaking generally about external providers, a different interviewee said, "If they don't know you, that's the biggest barrier. If they don't know you or know of you, you ain't getting nothing."
 - 17 *See* Vivianne Mbaku, NAT'L. CTR. ON L. & Elder Rts., Trauma-Informed Lawyering (n.d.), <https://nclcr.acl.gov/Files/Trauma-Informed-Lawyering.aspx>.
 - 18 *See* Lorilei Williams, *An Antiracist Approach to Trauma-Informed Lawyering*, Shriver Ctr. on Poverty L. (June 29, 2021), <https://www.povertylaw.org/article/trauma-informed-lawyering/>.
 - 19 *See* Legal Servs. Corp., The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans 30 (June 2017), <https://lsc-live.app.box.com/s/6x4wbh5d2gqxwy0v094os1x2k6a39q74>.
 - 20 Several of the HVIP providers my research team interviewed cited client challenges with child support arrears. One interviewee mentioned that, "a lot of times, our guys will . . . get in this outrageous child support situation that they can't afford." Another program described an alarming—but common—practice of police officers running searches on a violence survivor, finding that the survivor has a bench warrant for child support arrears, and handcuffing the survivor to their bed prior to or immediately following life-saving surgery.
 - 21 Two of the HVIP providers my research team interviewed noted that their clients struggle to obtain access to Supplemental Security Income (SSI) benefits. One provider said, "people are denied off the bat." I experienced this firsthand as a public benefits intern with the Legal Aid Society of the District of Columbia. I worked with one gun violence survivor who was deemed ineligible for SSI after the Social Security Administration determined that he would be able to work again within a year—a stance that was contested by my client, his doctor, and his case manager.
 - 22 A number of interviewees also spoke about challenges clients faced with accessing crime victims compensation (CVC), a benefit offered by every state and funded through federal Victims of Crime Act (VOCA) formula grants. While the eligibility requirements for and benefits offered by each state's CVC program vary, most programs offer reimbursement funds to any victim of crime with crime-related expenses (e.g., medical expenses, mental health treatment, and lost wages). However, many interviewees flagged that some of their participants are unable to access CVC benefits due to their criminal records, their refusal to speak with the police (a requirement imposed by all states on individuals seeking to access CVC funds), or inaccurate police reports suggesting that the participant refused to cooperate with law enforcement.
 - 23 One HVIP provider interviewed by my research team tragically reported, "I had a situation where a young man was assaulted by the police. . . . A 15 year old, and they knocked out his teeth." Unfortunately, these kinds of experiences are not uncommon among HVIP clients—almost every HVIP provider my research team spoke with discussed witnessing police abuses of their participants.
 - 24 Each of these programs regularly provides funding to establish new medical-legal partnerships. *See Become a Fellow*, Equal Just. Works, <https://www.equaljusticeworks.org/become-a-fellow/> (last visited Oct. 14, 2022); *Justice Catalyst Fellowship*, Just. Catalyst, <https://justicecatalyst.org/fellowship/jc-fellowship/> (last visited Oct. 14, 2022); *About*, Skadden Found., <https://www.skaddenfellowships.org/> (last visited Oct. 14, 2022). In September 2022, I began an Equal Justice Works Fellowship, sponsored by Greenberg Traurig LLP, to develop an MLP between Legal Aid of the District of Columbia and Washington Hospital Center's Community Violence Intervention Program. A colleague from my research team, Carly Loughran, also received an Equal Justice Works Fellowship, sponsored by Pfizer Inc., to launch an MLP between Legal Aid Chicago and University of Chicago Medicine's HVIP.
 - 25 In 2021, the Council of the District of Columbia allocated \$450,000 to establish a medical-legal partnerships (MLPs) between local legal services providers and hospital-based violence intervention programs (HVIPs). D.C. Off. of Victim Servs. & Just. Grants,

Hey There, Neighbor

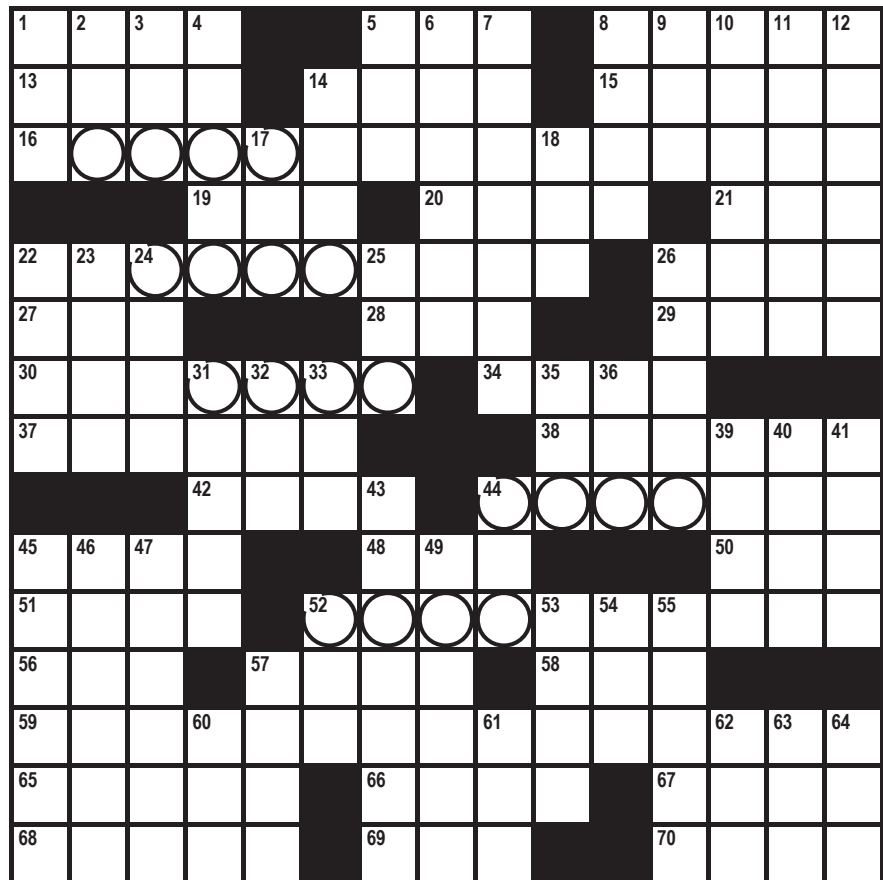
— A Puzzle

ACROSS

- 1 Flea or fly, or younger sibling stereotypically
- 5 Part of a pickup line?
- 8 Weight right here?
- 13 “That’s...never gonna happen” (2 wds.) (2,2)
- 14 Unwakeupable sleep that may be medically induced
- 15 Heavenly glows
- 16 Point at which a football runner’s or receiver’s advance toward the opponent’s goal has ended and the ball is officially spotted (2 wds.) (7,8)
- 19 Geologic time period
- 20 Eyelid problem
- 21 Grp. known for travelers checks? (abbr./acron.)
- 22 Like one who speaks three languages [not counting Legalese!]
- 26 Nautical greeting
- 27 Elementary particle
- 28 Police alert, for short (abbr./acron.)
- 29 Talk back to
- 30 With “the,” a sobriquet for the C.I.A.
- 34 As done for as a doomed frigate, say
- 37 Like limburger cheese
- 38 Detroit record label founded by Barry Gordy, Jr.
- 42 Late “Jeopardy!” host Trebek
- 44 “No worries; it’s all good with me over here” (3 wds.) (1,2,4)
- 45 “But _____, what light through yonder window breaks? (from “Romeo and Juliet”)
- 48 Vie for political office
- 50 “Home to India” author Santha Rama _____
- 51 Nondairy spread
- 52 Largest diving duck species found in N. Amer.
- 56 Mal de _____
- 57 Brewery containers
- 58 Part of w.p.m.
- 59 Abutting territorial divisions...or a hint to the circled letter groups in 16-, 22-, 30-, 44- and 52-Across (2 wds.) (9,6) (GOBI DESERT RANTS anagram)
- 65 Poet T. S. _____
- 66 Partner of rank and serial number
- 67 Meh (2-2)
- 68 Musical pauses
- 69 Direction and routes device (abbr./acron.)
- 70 Inscription in ancient Rome (Lat. abbr./acron.)

DOWN

- 1 Sta-_____ (fabric softener)
- 2 Angry music genre
- 3 Last yr. student (abbr.)
- 4 Dry (off)



- 5 New England catch (and Cape)
- 6 Increases the volume or power level, informally (2 wds.) (4,2)
- 7 The thirstier you are, the higher these get (2 wds.) (3,4)
- 8 Shortest herb mentioned in Simon and Garfunkel’s “Scarborough Fair”
- 9 Mangy mongrel, briefly
- 10 Late so-called Queen of Soul Franklin who — surprisingly — never recorded for 38-Across
- 11 Ropes for cowpokes
- 12 College application parts
- 14 Start of some juice portmanteaus
- 17 The Diamondbacks, on scoreboards (abbr.)
- 18 Olive : _____ :: Betty : Boop
- 22 Nervous twitches
- 23 Critical need for claustrophobes
- 24 “You’ve Got a Friend _____” (Sheriff Woody “Toy Story” number) (2 wds.) (2,2)
- 25 Oscar and Tony Award-winning actress Marcia _____ Harden
- 26 _____ Buy (iphone setting allowing parent to remotely okay or reject a child’s request to purchase/download content) (2 wds.) (3,2)
- 31 Socrates mentored _____ who mentored Aristotle
- 32 Pledge of Allegiance and Three Musketeers’ Motto ender
- 33 Bill _____, TV’s Science Guy
- 35 Actress Thurman
- 36 _____ de plume (literary alias) (Fr.)
- 39 Creole vegetable
- 40 Female W.W. II server (abbr./acron.)
- 41 When repeated, a Three Stooges laugh sound
- 43 Only two films with this (“Midnight Cowboy” and “A Clockwork Orange”) have ever received best picture Oscar nominations (1-6)
- 44 Bill (abbr.).
- 45 Like the expression of one who is very serious and perhaps even melancholy
- 46 Repetitive cheer at World Cup games (2 wds.) (3,3)
- 47 Fairground big wheel’s name?
- 49 Open, as some shirts or jackets
- 52 Henry Ford named one after his son, Edsel
- 53 Church nook
- 54 Word that may precede or follow “up”
- 55 Admirals, generals and suchlike, informally
- 57 November honorees
- 60 What’s frequently heard before “com,” “gov,” “net” and “edu”
- 61 Baseball V.I.P.’s (abbr./acron.)
- 62 Summit
- 63 Abbr. on an attorney’s shingle
- 64 Frat.’s counterpart (abbr.)

Thanks to Pat McIntyre, whose puzzles also appear in the New York Times, for this crossword. The solution appears on MIE’s website, www.mielegalaid.org, in the Library with this issue of the Journal.



INTERVIEW: JOSE PADILLA RETIRES FROM CALIFORNIA RURAL LEGAL ASSISTANCE AFTER A LONG CAREER IN LEGAL SERVICES

By Jan Allen May, MIE Journal Committee Member¹

Jose Padilla, Executive Director of California Rural Legal Assistance (CRLA) has served in that role for 38 years. He has announced his retirement effective at the end of this calendar year. CRLA has been a national leader in legal services advocacy, especially with regard to the rights of farm workers. Also in that national role, he served on the NLADA Board of Directors including some time serving as Board Chairperson. In total, Jose has devoted 44 years to legal services at CRLA. In light of this enormous commitment, the MIE *Journal* Committee asked Jose a number of questions about his career, the answers to which we thought might be of special interest to our readers.



Jan: Jose, first of all, congratulations on the completion of a lifetime of commitment to the rights of low-income people and the well-being of the client community. We know your career in legal services has been a long one and hope that you will share some highlights with us today. Tell us a little about how you got started in legal services.

Jose: After graduating from the University of California, Berkeley, I began as a CRLA staff attorney in the El Centro border office. Providing basic legal aid was where we all started. But then as a community lawyer, I became counsel to migrant farmworker parent groups. This work led me to assist them with the legislation of California's Migrant Education Law which continues to this day.

Jan: What was your motivation for this type of work?

Jose: I was motivated because my grandparents and parents had been farmworkers in Imperial County where the El Centro CRLA office was located. My family established residence there as immigrants from Mexico in the 1920's. The other motivation was the United Farmworker Movement that I became involved with during my Stanford University years. Also, meeting Cesar Chavez inspired me to pursue farmworker advocacy, especially knowing that he knew my family. Our families migrated together in following the crop harvests. That was a personal motivator.

Jan: Looking back over your years of commitment, what are the most significant changes that you have experienced?

Jose: The most difficult change has been to advocate within the Federal Legal Services Corporation (LSC) restrictions, which limit our advocacy in significant ways, one way being the inability to serve all farmworkers in rural California. But, over time, we learned to successfully work within that challenge. In particular, the private bar has supported the work we have referred to it. For example, private attorneys serve ineligible workers CLRA is unable to serve.

Jan: Did you have any mentors or people who provided you with guidance over the years?

Jose: Learning that both Cesar Chavez and Cruz Reynoso were founding board members of CRLA inspired me to see CRLA as a perfect employer. At the same time, knowing that the first Latino California Supreme Court Justice Cruz Reynoso had been an Executive Director of CRLA in that early history also inspired me and, on occasion, I met with them both regarding our work priorities.

Jan: The vision statement of CRLA has been used by MIE frequently as a model vision statement for a

© INTERVIEW: JOSE PADILLA,
Continued from page 13

legal services program, especially because it places clients front and center as partners in the quest for justice. Tell us about how you developed that vision statement and how it has served to guide your program over the years.

Jose: The vision statement, along with our mission statement, were developed as part of a strategic planning process we went through with our board and CRLA staff many years ago. The idea was to identify what made CRLA advocacy unique among legal aid programs and what resulted were those statements. Also, we were able to articulate systemic change concepts which have allowed us to push statewide advocacy, even legislative, despite federal restrictions.

Jan: What do you regard as some of your greatest accomplishments as head of CRLA?

Jose: One is our participation in the passage of the **Immigration Reform and Control Act of 1986**, again, before LSC restricted what programs could do legislatively. It is estimated that some 2.7 million residents legalized their immigration status as a result, many of them farmworkers. Another accomplishment was CRLA's collaboration with the federal government Equal Employment Opportunity Commission (EEOC) to bring sexual harassment cases, which have brought multi-million-dollar settlements for farmworker women. Another accomplishment was creating new programs at CRLA that serve specific marginalized groups like LGBTQ clients as well as Indigenous farmworker clients.

Among such new programs is one program that helps rural families who live under the jurisdiction of county government rather than a municipal government. The Community Equity Initiative (CEI) assists

The lesson is that political interference prompted by aggressive and successful legal aid litigation must be responded to forcefully, especially when a client interest is at stake.

CRLA Mission Statement

To fight for justice and individual rights *alongside* the *most exploited communities* of our society.

CRLA Vision of Justice

A rural California where *all* people are treated with dignity and respect, and guaranteed their fundamental rights.

CRLA Theory of Change

The legal system can either protect the rights of marginalized populations, or maintain and deepen control of the powerful. CRLA works with low-income communities in varying ways that utilize our legal system to create a more just society. We fight together to *protect and expand rights, ensure access to resources, and create opportunities in rural California.*

rural families residing in unincorporated communities whose housing is primarily in mobile homes. Among the problems faced by these families include lack of parks, paved roads, and sidewalks. There is also a lack of rural transportation and access to clean drinking water. CRLA advocacy has led to many of these communities seeing these conditions improved because of CRLA advocates representing their interests before government agencies. In other cases, CRLA has helped the park residents form cooperatives as a self-help measure.

Jan: What were some of your greatest challenges over the years, and how did you address them?

Jose: One challenge, already identified, was working within the LSC framework of restrictions that prohibit class action litigation, legislative advocacy, as well as representing undocumented immigrants. One remedy was to partner with groups that could represent the undocumented. Another was to collaborate with the CRLA Foundation, which has a legislative arm, but is not LSC-funded. Another has been to work with pro bono counsel in limited advocacy efforts where we need them to represent immigrant families we cannot serve. Another challenge was opposition by industry groups like the dairy industry, who interfered with successful litigation by complaining to LSC and putting us through audits that have wasted time and resources.

Jose: I think that Directors need to manage programs, with the client interest at the heart and center of all we do, always asking what is in the best interest of the client we serve, not the program's best interest. Protecting our programs politically is one thing, but, as I said earlier, that should never override the goal of bringing aggressive litigation against powerful interests. We can be as successful in our advocacy as the legal counsel that wealth buys, and we need to leave leadership behind. That is, we must give new leaders the space to grow within our programs as substantive leaders as well as program leaders. We should not let rules and process get in the way of their development. I have lost great advocates because of excessive process. We need to identify passion in those who bring that to this work, and we need to create the space for those advocates to thrive.

Another part of the philosophy is to be a risk-taker when client interests are at stake. In our binational health network, I thought it important to work with the Mexican government in assisting migrant workers and to inform their government of what we, as a legal aid, do for Mexican citizens while they work in our country. I was fully aware that other legal aids had been investigated for doing cross-border work, yet I traveled to Mexico and participated in a Mexican Migrant Conference to do exactly that, educate Mexican government officials about the American legal aid system. The risk was having LSC investigate us for expending resources that would benefit a foreign government as it deals with its own migrants upon their return to Mexico. I add that one of the more personal awards I have been given actually came from the Mexican government in 2003 when I received the Ohtli Award, an award given to persons of Mexican heritage who have assisted Mexican nationals abroad or promoted Mexican culture.

Jan: What do you think currently is the greatest challenge facing CRLA and legal services generally?

Jose: It continues to be inadequate funding. We should be able to provide our advocates, especially

Another part of the philosophy is to be a risk-taker when client interests are at stake.

attorneys, with competitive salaries, and the limited funding we receive prohibits that. We should be able to have offices staffed with a minimum of five attorneys, we cannot do this with the current funding we receive.

Jan: What advice would you give a law student who is considering a career in legal services?

Jose: As I used to say in my speech-making to law students, follow your heart not your mind. What I mean is that the best-paying jobs may not be the employment which will give you the most satisfaction as an attorney. Saving a worker's home from being foreclosed may be the most satisfying work you will ever do in a 40-year career. To this day, I still can remember the face of the gardener from my rural hometown whose home I saved from foreclosure. The wrinkled, sad face that was dejected when I advised that there was insufficient proof of his having entered a contract with the home seller. And yet, at the end, we saved his home.

Jan: Do you have any further thoughts you would like to share with the legal services community across the country?

Jose: It has been an honor to have worked alongside so many national friends, like Don Saunders and the NLADA bunch, Patti Papp at MIE, and the Jon Ashers and César Torreses of our community. I am honored to have been on the NLADA Board those many years ago. As a son of farmworkers, I never thought my career would take me to that space where I would testify before Congress on behalf of working families that raised me.

- 1 Jan Allen May is the recently retired Executive Director of AARP Legal Counsel for the Elderly in Washington, D.C. He is a member of the MIE *Journal* Committee, a member of the MIE Board of Directors, and frequently writes articles for the *Journal*. He has often conducted the MIE New Executive Director training. Jan may be reached at mayjandenise@verizon.net.

As I used to say in my speech-making to law students, follow your heart not your mind. What I mean is that the best-paying jobs may not be the employment which will give you the most satisfaction as an attorney.



LAWYERS AS LEADERS: HOW TO DEVELOP THE NEXT GENERATION OF LEGAL AID LEADERS

By Jeffrey Harvey, Esq., Chief Executive Officer,¹ Community Legal Services of Mid-Florida and Dr. Nadia Soulouque, SHRM-CP, PHR, Chief Human Resources Officer,² Community Legal Services of Mid-Florida

Dear fellow Executive Directors, CEOs, and heads of legal aid organizations,

I write to you on an issue of great importance—leadership, particularly developing the next generation of leaders. Many of us, upon reflection, will



realize that we have spent a significant portion of our careers attempting to change the world for the better.

Despite this valiant cause, you may find yourself in this current role spending more time dealing with personnel and business matters than

making the impact that drove you to choose a career in legal aid. As a CEO, it's easy to feel lost and alone, which is why a focus on leadership is so very important for us and for those we lead.

Warren Bennis, a pioneer in the field of leadership studies, once said, “becoming a leader is synonymous with becoming yourself. It's precisely that simple, and it's also that difficult.” As executive directors, we must stay true to our calling, no matter the depth of daily grind, and help others do the same. It requires dedicated focus and practice to become a better leader—to become a better “you.”

In my own journey, as a person constantly worried about the future and extinguishing fires (some preventable), I have said to myself, “am I the only one around here who understands or cares

about _____?” There were times that I struggled to imagine organizational success. I'm sure many of you have felt the same. That is normal. It means you care about the mission and the organization's role in fulfilling that mission. You are not there to guarantee success, but to foster it.

Unfortunately, we can't tell you how to be a better leader. That is on you. True leadership is a discipline that requires continual practice, and you are responsible for your own development and practice. But the framework discussed below can help you apply leadership principals to your practice and help bring others into a leadership way of thinking.

This article is about one way to implement a program and a culture that ensures whatever good things you have brought to your organization continue long after you and I have moved on to other things. It will also ensure that whatever things can be improved are in fact identified and improved.

Simply put, if we are not focused on cultivating both ourselves and the next generation of leaders, we are failing ourselves, our organizations, and our communities. That is why leadership is so very important. It not only helps us pull our heads up and reconnect to our commitments; it helps define a better future. We hope sharing this information helps you on your journey.

Sincerely,
Jeff

Simply put, if we are not focused on cultivating both ourselves and the next generation of leaders, we are failing ourselves, our organizations, and our communities.

Lawyers as Leaders

As lawyers, we don't primarily think of ourselves as leaders. Yet, we find ourselves in leadership positions by the very nature of our work. Lawyers advise leaders across industries, helping to qualify risk and identify how to mitigate it when making decisions. Lawyers



Dr. Nadia Soulouque

often work with decision makers so closely that we could stand in for them if ever needed. Lawyers actively lead clients through the court system as they seek justice and resolution. In legal aid specifically, our work should bring prosperity and growth. It improves the communities in which we live and the lives of those we represent.

Legal aid *is* leadership.

Leadership techniques are often not directly taught in law school.³ Too few legal aid organizations have purposefully built a foundation on which they could successfully practice the art of leadership. That reality means we often find ourselves leading blindly, feeling things out along the way. We want to lead, but often manage instead, with mixed results. How do we as legal aid leaders prepare ourselves and our future leaders to embrace the mantle of leadership with confidence? It takes focus and a willingness to first develop oneself, with the understanding that leadership is an art that requires practice. Like any artist, a leader will use the tools available to them, intertwining style, personality, and culture as they execute vision. Only if you've developed yourself as a leader can you effectively bring leadership opportunities to others around you.

It's a tall order, but essential. Developing a culture of leadership is the most imperative aspect of creating healthy productive organizations that will achieve a better future for our profession and our world. This effort is especially important due to the ever-present reality that legal aid always has limited resources. A culture of leadership will yield the optimal opportunity to get the most out of each precious resource. Legal aid programs are frequently limited in opportunities for upward growth, and a leadership culture will create opportunities for outward growth through an environment of continuous development. This concept applies to organizations with two employees as well as those with 500.

Because leadership, at its core, is about people, all the ideas in this article can be scaled or adapted to the size, talent, strengths, limitations, and structure of any

organization. A leadership development program that is not in some way tailored to the organization and all the people in it inherently misses the mark.

At Community Legal Services of Mid-Florida (CLS), the Emerging Leaders Program we've developed is for a staff of approximately 120, spread across twelve counties in central Florida. As an organization, we are deliberately and continuously focused on developing leaders. In our first year of the program,⁴ which has nine employees participating, it has yielded invaluable impacts. Individual and organizational morale has significantly improved. Productivity and impact in our community and for our clients has noticeably increased. We better understand our organizational needs and developed a stronger ability to identify problems and find solutions as a team.

While our program was designed for an organization of 120 and the concepts are fixed, the structure can be modified. It can easily be applied to smaller organizations — even a staff of two. The key is to make leadership training a priority and invest in it as such.

Differentiating between being *The* Leader and being *A* Leader

Before beginning a program, it is important to understand how leadership is different than management. Just because one is in charge does not mean they are a leader. In his 1989 book "On Becoming a Leader," Warren Bennis composed a list illustrating how leadership differs from management.⁵ The theme is a leader's focus on relationship with people they influence, enriched by a deep passion for organizational, team, and self-improvement.

At CLS, we have sought to move past management practices and truly create a culture of leadership. We have studied trends and considered how this culture of leadership would look as applied to the uniqueness of our program. From that assessment, we have implemented this framework as it best fits our program structure based on the concept of inclusive leadership.

*Harvard Business Review*⁶ defines inclusive leaders as having six signature traits, which we used as themes to build our program:

1. **Visible commitment:** They articulate authentic commitment to diversity, challenge the status quo, hold others accountable, and make diversity and inclusion a personal priority.
2. **Humility:** They are modest about capabilities, admit mistakes, and create the space for others to contribute.
3. **Awareness of bias:** They show awareness of personal blind spots, as well as flaws in the system, and work hard to ensure a meritocracy.

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4. **Curiosity about others:** They demonstrate an open mindset and deep curiosity about others, listen without judgment, and seek with empathy to understand those around them.
5. **Cultural intelligence:** They are attentive to others' cultures and adapt as required.
6. **Effective collaboration:** They empower others, pay attention to diversity of thinking and psychological safety, and focus on team cohesion.

We look for people with the willingness to develop themselves as inclusive leaders based on this definition, and then we provide them means to learn and practice leadership through four main pillars of our Emerging Leaders Program.

Pillar 1: Have the desire and willingness to develop as a leader

Foremost, a developing leader must have the desire and willingness to become a leader and also understand the multiple roles a leader fulfills daily. This sounds easy, but it often is not. Why? Being willing to be a leader requires giving up the need to be right.

At CLS, we often say, "I don't need to be right, but I need to have the right answer." The right answer is one that has included multiple perspectives and has been arrived at through engaging others in the search for what is "right." Having the "right answer" also means applying critical analysis to a situation to identify what makes that situation unique in order to best address it. As Marcus Aurelius, a renowned Roman Emperor, once said, "A leader ought to be someone who's reliable and does the most sensible thing at the time." Learning how to do to that is not easy, and it requires courage and desire.

When identifying potential leaders in your organization, start with an acknowledgement that they do not need to know everything. Instead, they must show their willingness to humbly work through issues with others. They must have the capacity to recognize the impact of their actions and words within a situation. Our Emerging Leaders Program does this through an application process that invites everyone in the organization to apply to the limited seats for the year. The application requires a minimum of 250 words explaining why they are interested in the program and what they hope to gain from participating. The essay provides both initial reflection and an initial demonstration of commitment

on behalf of the applicant.

When inviting staff to participate, we note that the Emerging Leaders Program is a leadership development program that enables employees in non-management roles to participate in problem-solving work groups, network with peers, gain insight into CLS structure, become a CLS mentor for new hires, and have an opportunity to serve the organization in a leadership capacity. Once accepted, participants go through 12 months of a planned curriculum that (1) teaches them the science of leadership, (2) invites them to participate in practicing the art of leadership through problem solving and mentorship for new hires, and (3) encourages self-reflection—the three remaining pillars in a leadership program.

Because of limited space, not everyone is accepted to the CLS Emerging Leader Program. However, there is an opportunity to apply or re-apply each year.

Pillar 2: Learn the science of leadership

The second pillar of our leadership program is learning the science of leadership through academic study. This helps participants understand the logic behind what works and what does not.

The program offers participants a variety of materials to read and watch that cover topics such as the difference between leadership and management, qualities of effective leaders, better ways to have conversations, etiquette, verbal and nonverbal communications, and how to avoid micromanagement. Much of the content is free online and curated through the program's learning management system, but could easily be administered in a monthly email to participants.

The science of leadership also serves as a common language of leadership. Shared language and concepts help participants understand what they are learning and strengthens their self-reflection. It allows them to converse in meaningful ways and deepen their understanding of what leaders do and why. Within the CLS program, after review of the material, participants discuss how the science of leadership was used in past decisions with which they are familiar. They have a chance to see and understand how the science was applied in real world situations that are meaningful to them. Without access to this science and discussion, growing leaders would be more prone to making leadership mistakes. Exposure to the science of leadership gives them the foundation they will need to succeed in the same way case discussions in law school built the foundation for legal practice. The experience is meant

to inspire critical thinking in preparation for use in practice when leading a team of their own.

Pillar 3: Practice the art of leadership

With an understanding of the science of leadership, participants in the CLS Emerging Leaders Program are provided opportunities to practice the art of leadership—putting concepts into action, building relationships, and making decisions. To truly become effective leaders, they will need a variety of experiences to help them practice and reflect on those experiences. While our program provides limited opportunities for Emerging Leaders to practice the art, it exposes them to the practice of practicing leadership, our program's ultimate goal.

This means our organization must provide them opportunities to be a leader—and to make mistakes. This may take the form of mentoring new hires or sitting in on strategic conversations. These experiences also provide them with opportunities for self-reflection, the fourth pillar of our leadership program. Smaller organizations may need to outsource opportunities for their emerging leaders. This can be done through volunteer opportunities, community partnerships, formal networking programs or participation in conferences. This is an opportunity where any organization can get creative in offering ways for leaders to practice what they are learning.

Pillar 4: Engage in Self-Reflection

The fourth and most important pillar of the CLS Emerging Leaders Program is the opportunity for self-reflection, where the lessons learned are really internalized. Can a person truly give up the need to be right, in pursuit of the right answer? Can they deepen their understanding of their own emotional intelligence and of those around them? Can they understand what worked in certain scenarios but not others, and why?

The most important reason we must engage in self-reflection as leaders is because knowing how we work with people is essential to our role as leaders. Leaders must garner followers, not create clones of ourselves and our opinions. Dominant personalities will often coerce others to behave in the ways they want them to, using fear and punishment to reinforce “correctness.” But that is not the pursuit of the right answer, nor is it inclusive of thinking that may differ from our own. True leaders will not dominate, but earn trust. The only way to truly achieve the goal is through consistent, constant self-reflection and the opportunities to practice it.

This process is something we can all practice every day, reflecting on what worked well in our relationships, what happened that was expected and unexpected, understanding what we can and what we cannot control, and how our own role in creating dynamics impacted results.

Remember to Start with Yourself

The most valuable component to developing a leadership program is to start with yourself. You must be a good leader to bring others into a leadership way of thinking. The reason for setting this example is that real leadership is a practice. Consider any instructor you have ever learned from. Could a person who has never practiced karate, or who has stopped practicing, truly teach you how to practice karate? The same is true in the practice of leadership.

To develop yourself as a leader, find your willingness to lead and to build trust to work toward common goals. Learn, practice, and reflect. Set the standards for your team, and communicate those standards with your vision. But also let yourself be influenced by your team. They need to have the courage to be innovative and to come to you with ideas that challenge the standards and vision when it's needed. You need the courage and vulnerability to listen and to explore their ideas, to be influenced by them. Then, as change happens and the group grows, you must embody that newness that they helped to create. That skill, in and of itself, requires all of the pillars of leadership: willingness, learning, practicing, and, most importantly, reflecting. For Executive Directors, consider a coach.

In her 2011 Ted Talk “On Being Wrong,”⁷ Kathryn Schulz illustrated why self-reflection is so very important. When reflecting on why we all have a deep need to avoid feeling wrong, she became aware that this feeling is caused by the *realization* that we were wrong about something. These bad feelings encourage us to hold on to being right, even when it is clear we might be wrong. Because of this, we get trapped in a state called error-blindness. As Schulz explains, we have no way of

The most valuable component to developing a leadership program is to start with yourself.

You must be a good leader to bring others into a leadership way of thinking.

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feeling the difference between what is right or wrong until, oftentimes, it's too late. As lawyers, we have helped clients navigate that exact feeling. As managers, we have helped staff navigate that exact feeling. As leaders we need to be aware that we are also subject to that same error-blindness, and self-reflection can help us develop that awareness.

So, when you begin to design or redesign your leadership training program, remember two things. Most importantly, start with yourself – exemplify the practice of leadership and bring others into a leadership way of thinking. Second, invest in leadership development that creates opportunities for education, practice, and reflection. Great leaders don't happen by accident. They have the willingness to learn, to lead, to include others, to practice, and, most importantly, to improve through self-reflection. However big or small your budget may be, make sure leadership development is included and identified in your strategic plan. Commit to dedicating both time and money. The investment will yield dividends now and into the future.

- 1 Jeffrey D. Harvey, Esq. is the CEO of Community Legal Services of Mid-Florida (CLS), the largest legal aid program in Florida. He is a decorated military leader. Service to his country spanned deployments in both Iraq and Afghanistan from 2001–2009, and response in Florida to Hurricanes Irma, Michael, and Ian. In addition to a JD from Stetson University, he has an MBA from American Military University, a Master's in Leadership from Murray State University, and an undergraduate degree from Boston College in Political Science and Theology. His leadership within CLS has resulted in the Orlando Business Journal naming him a "Veteran of Influence" in 2019 and "CEO of the Year" in 2021, as well as CLS being honored as "Best Place to Work" as voted by staff three years in a row from three different publications.
- 2 Dr. Nadia Gauthier-Soulouque has over 15 years of human resources and leadership experience in the health care, construction, non-profit, and technology industries. Graduating in 2000 from the University of Central Florida with a Bachelor of Science in Healthcare Administration, she entered into management in various healthcare settings. With the desire to continue her education, Nadia began her coursework for her Master's

in Business Administration with a concentration in Human Resources Management from the University of Phoenix. Upon graduating, Nadia was offered a Director of Human Resources position for a construction firm. Her career in Human Resources continued for the next 15 years as she held various leadership positions. Nadia decided to continue her education and returned to the University of Phoenix for her Doctorate in Management and Organizational Leadership with a research study topic on intragroup discrimination in the workforce. In 2014, Nadia began working for a large healthcare organization in Florida spanning 7 counties with 900 employees where she served as the Director of Education and Professional Development. As of July 2020, Nadia is the Chief Human Resources Officer for Community Legal Services of Mid-Florida.

- 3 This article contrasts study of law, which is "about the head," with leadership, which is both about the head and about the heart. <https://www.lisac.org/blog/embracing-leadership-development-legal-education>
- 4 The Emerging Leaders Program is one of two leadership programs at CLS. Our other program follows a similar format and structure, but is required for existing managers. We found that the addition of the Emerging Leaders Program for non-managers has provided an essential aspect of establishing a leadership culture within the organization. It is also important to make sure that those the organization expects to become leaders have the same exposure. This ensures that they are adequately prepared for the responsibility. <https://www.wsj.com/articles/what-is-the-difference-between-management-and-leadership>
- 5 *Harvard Business Review*, 2020: <https://hbr.org/2020/03/the-key-to-inclusive-leadership>
- 6 https://www.ted.com/talks/kathryn_schulz_on_being_wrong?language=en.

With an understanding of the science of leadership, participants in the CLS Emerging Leaders Program are provided opportunities to practice the art of leadership—putting concepts into action, building relationships, and making decisions.



GOT CONFLICT?

CONFLICT RESOLUTION PLAYBOOK: PRACTICAL COMMUNICATION SKILLS FOR PREVENTING, MANAGING, AND RESOLVING CONFLICT BY JEREMY POLLACK (ROCKRIDGE PRESS 2020)

Reviewed by Merf Ehman, Executive Director,¹ Columbia Legal Services

As leaders and as humans, one of the most challenging aspects of working with other humans is conflict. The complex nature of people and their interactions can lead to conflicts large and small. Many of us have different relationships to conflict depending on many factors, including our family history, culture, life experiences, and personal preferences. At Columbia Legal Services, we have been engaging in different ways to address conflict — informal “difficult conversations,” learning about and practicing principles of restorative justice (healing, accountability, and repair), as well as practicing giving and receiving direct feedback. In developing a deeper understanding of conflict at our organization, our human resources director suggested that folks might find the book “Conflict Resolution Playbook: Practical Communication Skills for Preventing, Managing, and Resolving Conflict by Jeremy Pollack (2020) helpful.



This book gives step by step instructions on how we can learn and practice various behaviors when engaging with others to, avoid conflict first; and then if conflict occurs, either manage the conflict or try to resolve it. The book also explains why we need conflict. The book is set up as a guide rather than text driven. There is lots of space on the page, colorful lettering, and text boxes throughout. The playbook theme is part of each chapter. There are “strategy sessions” which set out how to approach a different aspect of conflict by walking through it step by step and considering the different aspects of it. At the end of most chapters, there is a “Keep in Mind” text box with three or four bullets that

summarize the material and provide practical tips. This is a great book to understand why we have strong reactions to other people, and what to do about those reactions when they happen. The book is easy use, and easy to understand. It can be read, and then picked up again and again as issues arise.

Although most of the text is practical and hands on, the author spends some time at the beginning on psychological theory to set a framework for what conflict is and why it happens. I appreciate the simplification of a complex topic to better understand the underpinnings of conflict. He discusses our core psychological needs, and defines conflict as a threat to those core needs, as well as a threat to one’s goals or values. He also spends a bit of time on the biological response. This was helpful in understanding why we have such strong reactions. As he says, “Most of the time other people are not actually threatening our lives, yet our minds and bodies respond in ways that suggest they are. We can’t prevent this response, but we can learn to effectively manage it.” And after discussing this, he has some practical advice to these strong reactions – breathe! And remind ourselves that we are safe.

Two teachings of this book stand out for me. The first one now seems obvious – the author’s advice to rarely engage in conflict resolution, including apologies, by email or text. I had done that regularly! If I made a mistake, I would apologize through email. Or if someone raised an issue, I would generally respond by email. He points out that “text and emails are potent set-ups for communication-style conflicts. Some people use exclamation points and emojis to brighten the tone of their messages. However, others reply with curt answers and no punctuation.” This can cause conflict. The replies can be interpreted as mean or dismissive,

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or there can be a misreading of an emoji. Since reading the book, I have communicated less in emails and texts about issues that are more complex. Instead, I engage by phone, video, or in person. This has helped me to be more direct and to avoid miscommunications or misinterpretations. If we are engaging in written communication, the author offers great advice: “get to know their style; don’t assume their intent; fight the urge to read into some underlying meaning.”

The second lesson is that some conflict cannot be resolved; it must be managed. This was helpful in thinking about how to manage people who had conflict, and either could not resolve it, or were not willing to resolve it. For me, that was a missing piece in our organizational approach to conflict. We needed to have ways to not just resolve conflict, but to manage it. Pollack sets the strategy out very concisely: “Conflict management involves the establishment of processes and systems that are designed to minimize the negative effects of conflict and to support the safety and autonomy of the parties involved, despite the persistence of their conflict.” In the specific chapters that focus on continuing conflicts (4 and 6), Pollack points out that most strategies in the book can be applied to both managing and resolving conflict. There are skills and exercises that we can either teach people to use in these situations, or remind them about if they already know them. For example, the “Clearing” exercise on page 32 is meant to help us understand why we resent someone, and to separate someone’s behavior from the judgements we place on it and the meanings we give it. It can be done individually, or worked through with the other person.

Pollack does not go into depth on issues around race, class, gender, and power dynamics. Also, much of the advice is focused on one-on-one conflict. Some additional resources include the workbook “Embracing the Gifts of Conflict for Social Change” by Jovida Ross and Weyman Ghabdian and the essay “Letting Go of Innocence” by Prentis Hemphill (both are available online).

If you are looking for step by step practical skills to prevent, manage, or resolve conflict, then this is the book for you. I have spent time practicing some of the skills around listening, paying attention to my own triggers, and setting up the right conditions for difficult conversations. I found it extremely helpful. Most folks have a basic understanding of some of these tools and many are intuitive. It’s just a matter of practicing the playbook!

© THE ESSENTIALS OF STRATEGIC PLANNING,
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What advice would you give your fellow executive directors who are undertaking strategic planning?

Leslie: Understand the importance of planning for developing your strategic plan. You must schedule the time for things to get done.

Jon: As you go through the process, ensure that board members and staff have sufficient time to provide feedback. It exposes them to the contents of the plan and helps them internalize the goals and values, even before the plan is formally adopted.

Maria: Make sure all of your stakeholders—especially the union—are on board.

Jim: Understand the importance of keeping the plan’s concept front and center for staff. You do not want the plan to sit on a shelf. I keep a copy of the plan on my desk. When I send communications to the board and our staff, I use the goals of the strategic plan as the headings of my messages. It’s vital to keep the board and staff regularly updated on progress toward the goals.

Sam: Don’t underestimate the importance of getting staff buy-in. It should be a bottom-up process.

- 1 Sam Abel-Palmer is the Executive Director of Legal Services Vermont, Vermont’s LSC grantee, a position he has held since 2016. He previously served as Director of Intake for Vermont Legal Aid, as a staff attorney in Vermont Legal Aid’s Disability Law Project, and as a civil rights investigator with the Vermont Human Rights Commission. He is a member of the Vermont Board of Bar Examiners, and of the NLADA Civil Council. In a previous lifetime, he taught theater history and dramatic literature at DePauw University, Dartmouth College, and the University of Vermont. Sam may be reached at sabelpalmer@legalservicesvt.org.
- 2 Jim Cook is the Executive Director of Idaho Legal Aid Services (ILAS), a statewide non-profit law firm serving low-income Idahoans. He joined ILAS in 1999 and became executive director in 2013. Jim has worked for years to transform the way that ILAS delivers services. The underlying goal is to obtain the biggest client benefit from every dollar ILAS receives. To reach that goal the program implements continual enhancements to policies, procedures, training, and technologies. Strategic planning is a part of these efforts. Jim has participated in three strategic planning processes at ILAS and plans on a fourth in 2023. Jim may be reached at jimcook@idaholegalaid.org.
- 3 Jon Laramore has been executive director of Indiana Legal Services since 2015. ILS is an LSC-funded, statewide program with eight offices and about 180 employees. Before joining ILS, Jon was a legal aid lawyer, state govern-

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COLONIZED TIME, RACIAL TIME, AND THE LEGAL TIME OF PROGRESS

By Rasheedah Phillips, Director of Housing, PolicyLink¹

This article was adapted from a law review article in Vol. 9 No. 1 (2022): *Afrofuturism and the Law in Critical Analysis of Law: An International & Interdisciplinary Law Review*.

The relationship between Black people, clock time, and its embodiment of Western linear time has always been contentious. Linear time, as Carol Greenhouse notes, “provides a reservoir of symbols with which the legitimacy of hierarchies can be defended and reproduced.” The entanglement of clock time and labor is pronounced in the plight of victims of chattel slavery, where enslaved Africans’ bodies and their time, through labor, were commodified, demonstrating how “the rise of capitalism and the work-clock... went hand-in-hand: time became a quantifiable measure of exchange-value in the marketplace for trading in the commodity of human labour, the currency in which the workers’ lives—their time, reified— was bought and sold.” (Giordano Nanni, 2012). Regarded as no more human than a watch or clock, enslaved Africans, considered property, were denied full humanity under the law and thus were forbidden access to the temporal domain of their pasts. They were also forbidden access to the temporal domain of the Western progressive future, where, as Charles W. Mills observes, “[w]hites are self-positioned as the masters of their own time, as against those mastered by time.”

Practices of temporal oppression and uses of clocks, watches, and nature as instruments of surveillance, labor regulation, objectification, and punishment were perfected during slavery and persisted in different forms post-liberation. Under these circumstances, clock time was transformed into what Michael Hanchard calls “racial time... the inequalities of temporality that result from power relations

between racially dominant and subordinate groups... produc[ing] unequal temporal access to institutions, goods, services, resources, power, and knowledge.” This racial time was very literal. On most plantations, “the masters ha[d] complete control over the distribution of the negro’s time.” (Slavery Meeting at Colchester, Essex County Standard, January 19, 1838). As Black people sought more control over their own time and labor after the Civil War, the tropes would later morph into “negro time” and an evolution of the phrase “colored people’s time,” co-associating Black time and Black people with lateness and laziness.

Racial time was also used to catalyze and perpetuate systemic oppression, denying Black communities’ access to and agency over the temporal domains of the past, present, and future. Evolving alongside the struggle for emancipation were legacies of de facto and legalized discrimination in public spaces, housing, and land in the United States, always keeping true freedom in check. Known as slave codes, Jim Crow laws, and Black Codes, and showing up in the form of redlining and racially restrictive covenants in the real estate realm, these laws were commonly thought of as spatial segregation that restricted Black people’s movements through space.

However, the laws that were designed to deny Black people the right to vote, restricting where they could live, learn, and work, were just as much a project of temporalized segregation. Charles W. Mills called such laws a “racial regime (racial slavery, colonial forced labor, Jim Crow, or apartheid polities) [that] imposes, inter alia, particular dispositions and allocations of time that are differentiated by race: working times, eating and sleeping times, free times, commuting

Time inequities show up at every step of the process leading to evictions and in its aftermath.



© COLONIZED TIME, RACIAL TIME, AND THE LEGAL TIME,
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times, waiting times, and ultimately, of course, living and dying times.” Defiance or challenge of these laws often resulted in arrest or imprisonment, hefty fines, or extreme punishments of death and violence against Black individuals or entire communities.

One particularly pernicious form of racialized temporal oppression and spatialized segregation are Sundown Towns (Loewen, 2005). Sundown towns are towns all over the United States where strict racial segregation and exclusion against Black people were practiced and reinforced by threats and physical violence. Black people traveling through a town had to be outside its limits by dusk and were not allowed to settle down or live in these areas. The towns also extended into entire “sundown counties” and “sundown suburbs.” These towns were often demarcated by signs: “Whites only within city limits;” advertised in newspapers: “Don’t let the sun set on you here, you understand?;” signified by actions such as blowing a loud whistle to indicate the time that Black people needed to leave; or through violent, physical attacks such as shootings, beatings, and lynchings of Black people. People who did not obey the signs were subject to state violence and death, while the average white citizen was allowed to enforce the law without consequence.

The temporal and legal legacies of sundown towns, redlining, and other forms of spatial-temporal control and displacement continue into the present. The timeline from the so-called ending of chattel slavery to the present reflects a society designed to systematically leave Black families and other marginalized people behind. Today, more than fifty years after the passage of the Fair Housing Act of 1968’s prohibition against housing discrimination, exploitative real estate practices, racial exclusion from housing opportunities, and the deep inequities flowing from them are not historical artifacts. They appear in the form of realtors and property managers showing Black renters and those

When we envision equitable and liberatory housing futures . . . there is no value placed on a past that would prevent one from having a roof over one’s head.

seeking homeownership fewer options in neighborhoods cut off from adequate transportation, grocery stores, or green space. They appear in the form of policing practices and extralegal violence. They appear as exclusionary zoning practices and redevelopment that displace Black residents from their homes and communities in favor of neighborhoods that become whiter and/or wealthier. *Housing, displacement, time, and the temporal domain of the future are inextricably linked.*

Revisiting the Past, Reshaping the Future: Policy Advocacy on Access to Eviction Records

Time inequities show up at every step of the process leading to evictions and in its aftermath — from the short periods of time included in notice to vacate, severely out of line with the time needed to secure new housing, to the eviction filing that can permanently blemish a tenant’s records. Eviction records are snapshots in time of an individual’s past that are often used to prevent people from accessing housing far into the future. These records remain easily accessible to the public and to tenant screening companies for indeterminate lengths of time, even when the filing does not lead to an eviction or when an eviction filing is resolved in a tenant’s favor.

Decision makers, such as landlords and judges, are positioned to determine the relationship of the past to the present, and the present to the future for a tenant. Landlords may refuse to rent to tenants who have even one eviction filing on their record, regardless of the outcome of the case or other details that may offer additional context on a prospective tenant’s past rental circumstances, and often irrespective of how remote in time that record occurred. Likewise, criminal records that may bear no relationship to a renter’s ability to be a good or responsible tenant are used as a means of denying people with remote or unrelated criminal histories access to housing. In addition, tenant screening companies’ scoring algorithms are opaque, leaving tenants with little recourse to contest a bad score. The tenant screening companies running background checks cannot always ensure that eviction records are completely accurate. These companies often use algorithms based on these incomplete records to make suggestions to landlords about whom to accept for housing. And even if the information on the record is accurate, a payment that is late by a few days becomes a record that lasts years into the future, punishing tenants by locking them out of decent housing for years to come.

It has been shown around the country that eviction

records have a disparate impact on Black women and their families, causing dangerous cycles of generational poverty and instability. This grim reality is reflected in cities like Philadelphia, where over 71% of annual evictions are filed in Black and Brown communities. The COVID-19 pandemic significantly exacerbated disparities facing Black communities and other communities of color, seniors, people with disabilities, and LGBTQ+ people. These communities are the most likely to have lost income during the pandemic, putting them at greater risk of eviction filings, and therefore putting them at risk of homelessness and instability beyond the pandemic.

And yet, eviction records are often just a brief snapshot of a person going through a difficult period. These difficult times do not last forever — tenants may recover from an illness, job loss, family death, or domestic violence issues that lead to an eviction — but the eviction record will still follow them, trapping them in substandard housing or preventing access to better job opportunities that require them to relocate. Tenants are often punished for exercising their legal right to withhold rent for repairs, resulting in an eviction filing. The tenant ends up with a permanent blemish on their record because the landlord failed to uphold their end of the agreement by providing a safe and habitable home. As a result, renters are kept in dangerous cycles of poverty because of policies that make these records easy to incur and difficult, if not impossible, to get rid of.

Policymakers around the country are exploring options that will work to dismantle the significant barriers that eviction records place on accessing stable and healthy housing by regulating access to such records and how they can be used in rental decisions. For example, a protection that requires landlords to consider additional information about a tenant, instead of relying solely or primarily on eviction records to make rental decisions, allows the tenant to shift the relationship of the past to the present and the present to the future. Adding information and context to the past record unlocks it and breaks the record's temporal hold over the present and future.

In October 2020, Philadelphia City Council successfully passed Resolution #200531, introduced by Councilmember Isaiah Thomas, on the matter of eviction record sealing. The resolution, co-written by community organizers and housing advocates who are impacted by eviction records called, in part, on “the First Judicial District to institute administrative rules that allow the court to seal evictions and corresponding

civil matter between a landlord and a tenant in the interest of justice, and without consent from the opposing party as well as invest in alternative processes of resolving landlord-tenant disputes.”

In November 2020, working with the tenant organizers who got the resolution passed, I co-authored a report called “Breaking the Record: Dismantling the Barriers Eviction Records Place on Housing Opportunities,” exploring the ways in which eviction records cause long-term harm for a tenant’s ability to access housing. The report became the catalyst for an eviction records coalition that has met monthly since it was released. The group is composed of over forty-five housing advocates, impacted tenants, organizers, and landlords advocating for laws and protections that diminish the negative impacts that eviction records disproportionately have on Black women and other marginalized communities. The coalition was formed with the mission to advocate for the enactment of eviction sealing legislation in the state of Pennsylvania and tenant screening legislation in the City of Philadelphia to equalize power between landlords and tenants, regardless of gender, race, disability, and income. As a coalition, we believe in centering the leadership of those most affected by eviction histories and rejecting the false dichotomy of deserving and undeserving tenants when it comes to housing protections. We are grounded in the work of resisting racism, gender-based violence, ableism, economic oppression, and we believe in building life-affirming alternatives. We understand that eviction and the impact of having an eviction history is one of many housing-related injustices. This coalition engages in transformational systems-change work in a collective fashion.

Through our coalition work, we achieved several of our objectives in a very short period of time. In April 2021, Philadelphia City Councilmember Kendra Brooks introduced the Renter’s Access Act, and it was passed nearly unanimously in June 2021, going into effect 90 days later on October 13, 2021. The Renter’s Access Act (“RAA”) seeks to address the harm caused by eviction records, which make it harder for tenants to find safe and affordable housing. The RAA has several new protections: landlords must provide uniform written rental screening criteria to each tenant applying to their unit, and if a tenant is rejected, they must provide a written statement why, including any third-party information they used to make their decision, increasing transparency around what criteria is being used to evaluate applicants. In addition, landlords are required to go through an individualized review and to give

© COLONIZED TIME, RACIAL TIME, AND THE LEGAL TIME,
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weight to other circumstances besides just an eviction record. It also prohibits policies that reject applicants solely based upon their credit score or eviction record. The RAA gives applicants the right to dispute inaccurate information or to seek reconsideration in the case of mitigating circumstances, while requiring landlords to give time for consideration of new information.

Because eviction filings disproportionately affect Black communities and communities of color, the policy is an important race equity tool and solution for decreasing those racial impacts and increasing access to safe, healthy, and affordable housing futures.

Such measures are the bare minimum for achieving housing equity; however, when we arrive at our liberated housing futures, records are no longer useful because all humans have access to housing, no matter what has happened in their past. When we envision equitable and liberatory housing futures that are accessible for all, and that are capable of reaching back to repair the past, there is no value placed on a past that would prevent one from having a roof over one's head, and no one is denied access to housing stability. We must design our legal policies firmly believing that this is not only possible, but that it is already true.

Conclusion

Equitable and liberatory housing futures calls for dismantling or realigning systems that deprive people of temporal and spatial equity and that raise irreparable conflicts in timelines. The pandemic underscored the need for approaches to housing access, development, and infrastructure building that not only address the immediate crisis, but that accounts for the roots of systemic racial inequities and how they have operated over time.

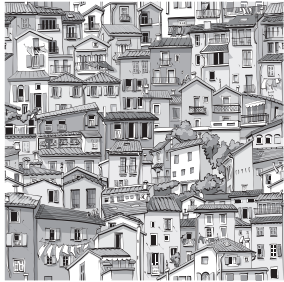
Being conscious of time's impact, challenging its ubiquity, and using Afrofuturist approaches to design legal policy, we can practically and actively address how future(s) are made inaccessible to Black communities and other marginalized communities. According to Charles W. Mills, such "chronopolitical contestation by its very nature is likely to encompass past, present, and future, since as we have seen from the beginning, group time will typically identify itself with historical narratives that also seek to explain the present and stake particular claims on the future." Including Afrofuturist principles and time awareness into housing policy design can help disrupt time's linear flow, recasting and

opening up access to futures where Black and Brown people are housed, healthy, joyful, and thriving.

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Implementing a Statewide Right to Counsel for Tenants: Learning from Washington, Maryland, and Connecticut

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Top: Karen Wabeke (L); Natalie Wagner (C); Philippe Knab (R); Bottom: John Pollock (L); Maria Roumiantseva (R).

Introduction

Evictions are devastating civil legal proceedings, deeply injuring tenant families' lives, housing stability and opportunity, and futures. Tenant representation is a proven, effective intervention in eviction matters,

lessening the negative impacts on tenant lives in several different ways.⁶ Yet the vast majority of tenants navigate these cases on their own. Nationwide, only 3% of tenants have representation, compared to 81-82% of landlords,⁷ and up until five years ago, not a single tenant anywhere in the US had a *right* to counsel in these cases.

In 2017, after a long and powerful tenant organizing campaign, New York City became the first US jurisdiction with a right to counsel (RTC) for tenants facing eviction. Prior to enactment, New York City had more eviction filings than any jurisdiction in the country, coupled with a 1% tenant representation rate. The successful enactment in a place with such a massive crisis both demonstrated the power of community organizing and proved that right to counsel is potentially achievable in any location. This, in turn, galvanized a nationwide movement that today spans 15 cities and three states. In Spring 2021, Washington State, Connecticut, and Maryland became the first three states to enact a *statewide* RTC for tenants facing eviction.

While much thought and planning went into the design and implementation of these programs, right to counsel coordinators in these three states are still learning as they implement. In this article, they have

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taken time to share some of the lessons learned from implementing a statewide right to counsel for tenants facing eviction. While every implementation is unique in some ways, there are some common issues and solutions that, if known, can help newly enacted jurisdictions avoid reinventing the wheel in developing their implementation approach.

1. Who administers the right to counsel in your state, and why?

Washington: The Washington State Office of Civil Legal Aid (OCLA), an independent judicial branch agency that administers and oversees funding for civil legal aid services throughout the state, was directed by the legislature to administer the appointed counsel program for indigent tenants. As a judicial branch agency, OCLA has a somewhat peer-to-peer relationship with courts, the Administrative Office of the

About the Programs

- Connecticut passed the statewide right to counsel in June 2021. Eligible tenants (those who are at or below 80% of the state's median income, adjusted for household size, or received a specified form of public assistance) have a right to counsel in judicial actions to evict and administrative proceedings to preserve a housing subsidy or prevent a termination of the lease.
- Washington State passed legislation in April 2021 establishing the right to appointed counsel for indigent tenants (those receiving a specified form of public assistance or whose annual income does not exceed 200% of the Federal Poverty Level minus taxes) facing unlawful detainer actions.
- Maryland passed the Access to Counsel in Evictions law in May 2021. Eligible tenants (those whose income is not greater than 50% of the median state income, as adjusted for household size) must be provided access to counsel⁸ in specified judicial and administrative proceedings, and first appeals as determined by legal services provider.

Courts, court administrators, and court clerks (local executive branch leaders). OCLA's status as a judicial branch agency — coupled with strategic guidance from the Attorney General's office on issues of statutory interpretation — has cemented common understandings of and expectations about how all courts should treat tenants entitled to appointed counsel, and helped OCLA ensure broad interpretation and enforcement of tenant rights to appointment of and effective assistance of counsel in unlawful detainer (eviction) cases.

Connecticut: The Connecticut Bar Foundation (CBF), a nonprofit organization that administers the state's Interest on Lawyer Trust Accounts (IOLTA) program and is the state's largest legal aid funder, administers RTC in Connecticut. The legislation specified that the judicial branch was to contract with an "administering entity," and CBF was selected by the judicial branch through a competitive process. As the IOLTA administrator, CBF has significant knowledge of the state of legal aid funding, staffing and infrastructure, and has relationships with the legal aid providers and all three branches of government, which position it well to administer the statewide RTC program.

Maryland: Maryland Legal Services Corporation (MLSC) was named as the administrator of the statewide Access to Counsel in Evictions (ACE) program in the statute. MLSC was also designated by the Baltimore City Department of Housing and Community Development as the administrator of the City's Right to Counsel (RTC) program. MLSC is Maryland's IOLTA program and the state's largest funder of civil legal aid services. MLSC is well-suited for this role and has the experience, infrastructure, and relationships to administer these programs effectively.

2. What is, or will be, the rollout process and why? If the right to counsel is already rolled out, what has worked well and what hasn't?

Washington: Less than 60 days after passage of the Right to Counsel (RTC) legislation, OCLA issued an implementation plan outlining staffing, intake processes, conflict protocols, and case expectations. OCLA then proceeded to contract with 13 different legal services providers to hire and train staff specifically for RTC eviction defense work; and by function of the eviction moratorium, jurisdictions were not able to begin hearing eviction cases until OCLA certified the jurisdiction as ready to proceed. This was not a controversial position as the State Attorney General's office issued guidance interpreting the right to counsel law to mean that "no unlawful detainer proceeding

may lawfully go forward against an indigent tenant who has not been offered appointed counsel by the superior court.” OCLA required each jurisdiction to establish a protocol for appointing counsel both in filed and unfiled unlawful detainer matters, and required that each jurisdiction establish an appointment counsel protocol that provided a meaningful opportunity for the tenant to meet with their counsel. OCLA issued the first certifications of readiness, allowing counties to start appointing RTC attorneys on October 1, 2021. The majority of Washington State was able to begin appointing counsel in eviction cases by October 15, 2021. The counties that remained unable to appoint counsel and unable to hear eviction cases were primarily rural, and the delay stemmed from an inability to hire staff. The entire state was certified on January 22, 2022. Perhaps most importantly, OCLA was able to ensure that newly appointed counsel would receive, at minimum, a one week adjournment at the initial hearing to meet with the tenant and develop a defense.

Connecticut: The RTC law went into effect in Connecticut on July 1, 2021, and the law required notice of the program to be provided to tenants beginning on October 1, 2021. The RTC legislation prescribes a phase-in of the program, and the first phase of the program officially launched on January 31, 2022. The law requires CBF, in consultation with a statutory working group and the legal aid providers, to determine how to phase in the RTC program based on certain factors.⁹ RTC is being phased in by zip code to allow tenants to easily determine whether RTC services are being offered where they live, and for intake staff to easily determine whether a tenant requesting representation lives in an RTC-eligible area. Zip codes are added to the program as attorneys are hired and trained to provide representation. Recruitment and the capacity of experienced attorneys to train and supervise new hires while handling their own cases have proven to be consistent challenges.¹⁰ Efforts to attract more experienced attorneys and to create a pipeline of new attorneys who are already trained to represent tenants facing eviction will hopefully ease these challenges.

Maryland: Implementation will be phased in over the next three years, with a goal of full implementation by October 1, 2025. The legislation requires MLSC to prioritize those local jurisdictions that provided “significant additional local funding to effectuate access to counsel in eviction proceedings” in the jurisdiction. Accordingly, we are rolling out services in 11 counties this year, and hope to expand services to the remaining 13 counties in FY24.

3. What is the current funding source, and what are the long-term funding plans? Is the funding adequate?

Washington: The appointed counsel program is funded with general state dollars; the funding is ongoing. The legislature has been responsive to OCLA’s budget requests as the program continues to evolve over time. Current state funding is at \$12.5 million per year; OCLA is requesting an additional \$2.5M per year in the coming biennium to address needs and capacity requirements unanticipated at the time the program was first funded.

Connecticut: The state legislature allocated \$20M in federal American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds (SLFRF)¹¹ to begin phasing in the RTC. The CBF also partnered with the Connecticut Fair Housing Center to secure an additional \$2.3 million in HUD Eviction Protection grant funding to support program efforts, including the establishment of an eviction prevention clinic at University of Connecticut Law School to develop a pipeline of trained attorneys. The CBF also secured almost \$500,000 to fund quantitative and qualitative research regarding the program’s implementation and impact. The funds have been sufficient to cover the staff recruited and onboarded to date, but are not sufficient for full implementation, as additional staff is required. Additional public funding will be necessary to support full implementation and long-term stability of the program.

Maryland: For the first year (FY23) of ACE, we are working with a patchwork of funding sources totaling \$11.8 million. The patchwork is made up of Emergency Rental Assistance Program (ERAP) funds from the Maryland Department of Housing and Community Development and a state budget appropriation, and \$1.8 million in Community Development Block Grant — Coronavirus funds from Baltimore City. MLSC also continues to administer a small pot of SLFRF funding designated for eviction prevention, but not specifically for ACE. This mix has been challenging administratively for MLSC and our grantees, as each funding source has different eligibility criteria, required forms and documentation, and reporting requirements. An additional \$14 million has been secured in funding for FY24 from the state’s Abandoned Property Fund. The original, pre-pandemic estimates for fully implemented ACE totaled approximately \$30 million, with a phase-in plan through 2025.

4. What does tenant outreach entail (or how do tenants become aware of the right to counsel in

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the state)? Are there multiple points of contact (notice to quit, summons, text messages, etc.)? How are tenants coming in contact with legal services most frequently? Is your tenant outreach approach working well, and do you have any recommendations?

Washington: Washington's law establishes an enforceable personal right to appointed counsel for all indigent tenants in eviction cases. The statutory summons includes language that informs that they may be eligible for court-appointed counsel, and includes the number for the statewide screening line to determine eligibility. Some contractors have established clinics and a regular presence in courts at eviction dockets to inform tenants of their potential right to counsel, and to conduct in-court screenings for eligibility. OCLA has funded programs to conduct outreach and provide services to tenants at risk of eviction to help respond to issues such as landlord harassment, illegal lockouts, threats of law or immigration enforcement, and other pre-summons coercive actions designed to facilitate tenant "self-eviction." With COVID (not RTC) funding, OCLA funded a modest outreach campaign when the eviction moratorium ended, targeted at Limited English Proficiency (LEP) and black, indigenous people of color (BIPOC) communities, informing tenants of the new right to counsel.

Connecticut: Connecticut's law mandates that a one-page plain language notice of the RTC program, which includes a hotline number to call, is provided to tenants with a notice to quit, a court summons, a lease termination notice for public or subsidized housing, and a notice of housing subsidy termination. The RTC notice is also available on the judicial branch's website for tenants to view, and for landlords and public and subsidized housing providers to download and deliver to tenants. Landlords are, in fact, notifying tenants as scans of the document are often included in the docket information online. Community providers and United Way's 211 system also refer tenants to the RTC hotline as appropriate. Tenants most frequently come in direct contact with RTC support through the centralized hotline, although some will contact their local legal aid program directly, or will encounter a legal aid attorney when they go to court. With tenants receiving notice of the RTC program at the notice to quit stage, more tenants have been reaching out to legal aid earlier in the eviction process. Requiring the notice to be

received by all tenants facing eviction statewide prior to the program being fully implemented has resulted in far more tenants requesting services than the program can currently serve. However, when RTC is fully implemented, this requirement will ensure that all tenants facing eviction receive multiple notices of the program prior to their court date.

Maryland: Beginning this fall, tenants facing eviction in Maryland will receive an informational pamphlet created by MLSC that describes their legal rights and the ACE program, and provides information on resources available to tenants. A sheriff or constable will provide a copy of the pamphlet to tenants when serving process in a Failure to Pay Rent case, a Breach of Lease case, or a Tenant Holding Over case. The pamphlet links through a QR code to the ACE website (www.legalhelpmd.org), which has contact information for legal services providers working in each county across the state. Once a new statewide coordinated intake system has been developed, the pamphlet will be updated to direct tenants to that telephone hotline and website. In addition to pre-trial intake, some MLSC grantees will also offer same-day representation at courthouses in several counties. MLSC will be issuing a request for proposals for a tenant outreach and education pilot in Baltimore City as well. We will contract with community groups to conduct outreach and provide education to tenants regarding their rights and the ACE program. This tenant outreach and education pilot will expand to the rest of the state during the implementation period. Our goal is to increase the number of tenants who are connecting with counsel prior to the day of their trial.

5. What happens when tenants appear without counsel, or haven't been able to connect with or do intake with a lawyer before an initial appearance?

Washington: Each superior court was required to adopt a standing order or memorandum of understanding outlining the process by which indigent tenants will be advised of their right to be screened for appointed counsel. These require courts to begin unlawful detainer dockets by announcing that each tenant may be eligible for appointed counsel, and providing an opportunity to be screened for eligibility. The standing orders also provide for a mandatory continuance for tenants to get screened for eligibility by RTC providers. Courts typically provide a one- or two-week continuance for tenants to be screened.

Connecticut: Tenants who show up to court

without counsel may request a continuance for additional time to obtain counsel, although this is met with mixed responses from the courts. At times this request is not received favorably, specifically because the courts are aware of the RTC program and therefore expect the tenants to have connected with the RTC program prior to the first hearing. However, there are many reasons why a tenant may not reach out to the program despite receiving notice of it and, even if they do reach out, they may not be connected with a lawyer, either because they are in an area where the program is not yet operating, or the program is at capacity in their area.

Maryland: MLSC grantees will be building staffing capacity during the three-year implementation period so that we are in position to offer representation to any eligible tenant facing eviction in Maryland by October 1, 2025. As mentioned above, some legal services providers will offer same-day representation at courthouses for tenants who do not contact a provider in advance of their trial date. Our hope is that coordinated intake and tenant outreach and education will increase the number of tenants who connect with counsel earlier.

6. In general, what is the intake procedure? (Are there standardized forms, a central phone number, in court attorney presence for intake?) Is the intake procedure working well, and do you have any recommendations?

Washington: Washington State has a statewide Eviction Defense Screening Line (EDSL) which must screen and refer tenants within two days of receiving a call. Approximately 50% of RTC-eligible tenants are screened through this central intake line. The remaining tenants are screened by local programs, either in court or by phone. Local intake seems to be preferred by courts and local organizations because it helps ensure that counsel is appointed the day of the first hearing, but the central intake is an important catchall.

Connecticut: There is a centralized hotline for RTC in Connecticut, although tenants who are otherwise aware of their local legal aid program may still reach out to the provider directly. When a tenant calls the hotline, they first answer a prompt asking if anyone in their household has served in the armed forces. If they answer yes, the phone system automatically routes them to the Connecticut Veterans Legal Center for intake. Otherwise, a caller is asked to enter their zip code to determine if they live in a zip code currently being serviced by the RTC program. If so, they are

placed in the queue to speak to an RTC intake specialist. If not, they are transferred to the regular Statewide Legal Services queue for intake to receive phone advice. The hotline system has been effective. The challenge has been longer wait times due to high demand and pauses in intake for certain areas when they are over capacity.

Maryland: MLSC has made a grant to the United Way of Central Maryland to partner with Civil Justice and A2J Tech in developing a statewide coordinated intake system over the next three years. The system will begin as a pilot in Baltimore City, and then expand to the rest of the state during the implementation period. The coordinated intake system will include (1) one centralized telephone number for tenants facing eviction across the state of Maryland to connect with counsel, (2) a web-based client portal for intake and to guide people to the appropriate help, and (3) an electronic referral system among all participating organizations that creates a closed loop for data and reporting, with the ability to track a tenant from the time they enter the coordinated intake system through the termination of services. While this system is being developed and rolled out statewide, tenants will continue to contact legal services providers in their jurisdiction directly for intake. MLSC has created an ACE website (www.legalhelpmd.org), which has contact information for legal services providers working in each county across the state.

7. How many legal services providers are involved, and how are they building capacity and a pipeline of attorneys? Can you briefly discuss the challenges with capacity for the programs, and do you have any recommendations?

Washington: OCLA initially contracted with 13 legal aid organizations to accept appointments and provide effective assistance of counsel for indigent tenants. OCLA contractors had to hire more than 70 attorneys during the first year of operations. These programs have had differing experiences finding, hiring, and retaining attorneys, with rural providers having significantly more trouble finding and retaining attorneys. OCLA has heard from providers that the high paced defense practice leads to attorney burnout. OCLA is working with providers to address retention issues in this context. OCLA has also partnered with Seattle University School of Law to create the Housing Justice Collaborative, a partnership intended to provide law students clinical and course work relevant to appointed counsel eviction defense work and help mint new attorneys ready for the unique legal challenges of this work.

Connecticut: Five legal aid providers are

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participating in the RTC program in Connecticut. The providers have been hiring new attorneys and shifting current staff from other areas to increase capacity for RTC since the summer of 2021. There have been numerous obstacles to recruitment expressed by candidates, including the low salary-range for legal aid attorneys, the fact that job seekers are looking to work remotely, and the fact that our neighboring states of New York and Massachusetts are also hiring in this area for their own robust RTC and eviction prevention efforts. To help address the hiring difficulties in this area, the Connecticut Fair Housing Center, CBF, two legal aid providers, and UCONN Law School are participating in a HUD grant, which includes the creation of a housing clinic at UCONN Law School to develop a pipeline of new in-state attorneys trained to represent tenants who are facing eviction.

Maryland: MLSC has made grants to eight legal services providers for eviction defense through the ACE and RTC programs. We heard early on from other jurisdictions about the importance of building the pipeline of future eviction defense attorneys, so MLSC has also made grants to both Maryland-based law schools. One of the law schools is launching an Eviction Prevention Clinic in Spring 2023; the other law school has launched a Housing Justice Fellowship Program to place second- and third-year law students in externships at legal services providers participating in the ACE and RTC programs. Through other funding, MLSC is also partnering with Equal Justice Works (EJW) to expand its Housing Justice Program into Maryland with a \$1.5 million grant. With this funding, EJW will place nine attorney fellows with legal services providers participating in the ACE and RTC programs for two years. (EJW has secured foundation funding to support one additional legal fellow and four organizing fellows.) MLSC's grantees are looking to onboard a significant number of attorneys in a difficult hiring market, but we hope these and other efforts will assist them in building capacity and a robust pipeline of attorneys committed to access to counsel in evictions.

8. If your state requires court appointed counsel, how is that system working? If it doesn't, would that help implementation in your jurisdiction?

Washington: Washington State has an appointment system. For the most part, courts have taken the obligation to appoint counsel seriously and are

complying with applicable standing orders. One of the keys to our program is that the court has a statutory duty to appoint counsel for indigent tenants. Availability of counsel (staff or volunteer) is irrelevant. If no attorneys are available, the court may not proceed to hear eviction cases involving indigent tenants. Our appointment process works because it ensures that each tenant eligible for representation has a lawyer, and compels the court to continue matters in the relatively rare instances that RTC providers are not immediately available.

Washington State has a non-unified court system, with 37 regional superior court judicial districts, which creates unique challenges. OCLA required a standing order or memorandum of understanding from each of the 37 judicial districts to outline the way that attorneys will be appointed for indigent tenants in unlawful detainer cases. OCLA also worked with the Superior Court Judges Association (SCJA) and rental housing industry representatives to develop uniform training materials, including a bench card to help ensure uniform practices among districts. OCLA regularly communicates with the SCJA through memoranda, addressing emerging issues, and meets regularly with SCJA and local court leadership. Under this system, conflicts of interest can become a challenge. Since eviction cases move quickly and each jurisdiction has its own unique processes—some requiring in-person court appearances and filings—when providers have a conflict of interest, finding available conflict counsel on short notice can be difficult. However, OCLA-contracted providers work hard to coordinate and help each other in these scenarios, and so far, no tenant screened as eligible for court-appointed counsel has gone unrepresented.

Connecticut: Connecticut does not have an appointment system. Such a system might aid in recruitment efforts and strengthen recognition by the courts that defendants to an eviction action should be granted a continuance until they have had a chance to exercise their right to access counsel. Any appointment system would have to include reasonable caseload standards, however, to ensure that tenants not only have the right to access counsel but to be represented by counsel who have the time to assess the claims available to each tenant and provide the appropriate level of representation based on the facts of each case.

Maryland: Maryland does not have an appointment system. It is too early to know whether this would aid in implementation in Maryland.

9. What is the judiciary's view of or attitude toward the RTC for tenants in your state? Any recommendations for working with the courts?

Washington: Again, requiring the court to appoint counsel has been the most important factor. Eviction defense attorneys operate as civil public defenders, akin to attorneys appointed to represent children and parents in child welfare cases or defendants in involuntary treatment cases. That said, the change in culture has been difficult in some locations where courts have been reluctant to embrace rebalancing of tenants' rights, and still hold a landlord's private property right as sacrosanct. Yet even with philosophical or other policy-based objections, courts have almost universally appointed attorneys and provided time to prepare. Where they have not, OCLA-contracted attorneys are taking cases on appeal. True to our commitment to ensure proper implementation and respect for the new right, OCLA is actively participating as amicus in one, and will likely participate in future appellate cases.

Connecticut: CBF is frequently in contact with central court operations staff regarding the administration of the RTC program. However, reception of the RTC program has been uneven across the various courthouses. Recent decisions about what constitutes reasonable attorney fees in cases where RTC attorneys have provided representation has varied dramatically, for instance. The awarding of \$1 in attorney fees, for instance, will do little to dissuade the filing of unnecessary eviction claims. The court system has also increased reliance on housing court mediators to screen and evaluate cases and to reach resolution between the parties without the need to appear before a judge. The ability of RTC attorneys to have an impact on a clients' dispositional outcomes can be severely limited when a mediator doesn't understand or fails to consider the jurisdictional claims of the parties. Reports on the experience of tenants and their attorneys during mediation vary dramatically depending on the mediator. Ways to strengthen the training and tools available to mediators are being contemplated to standardize the understanding and identification of subject-matter jurisdictional claims during the mediation process so that tenant rights are adequately considered during negotiations regardless of the mediator involved.

Maryland: While Maryland has a unified district court, differences in case volume and local practice mean that rent court works differently in each jurisdiction. MLSC has met with district court staff who have offered to make connections in various jurisdictions

and work together on system-wide issues. Same-day representation has existed in several jurisdictions for some time now, and once provided with information about the program, many judges have incorporated announcements or referrals into their dockets.

10. What is your plan to evaluate the RTC program? If you've already evaluated the program, what worked well and what didn't?

Washington: OCLA contracted with researchers and the University of Washington's Evans School of Public Policy and Governance to undertake a longitudinal study of RTC outcomes. OCLA coordinates data capture with researchers and RTC providers to ensure accurate and responsive review of the effectiveness of the program in accordance with legislative reporting requirements. OCLA requires regular tracking and reporting on a range of data points that allow the agency to evaluate program needs and effectiveness, and to allocate resources on an ongoing basis.

Connecticut: CBF retained Stout Risius Ross, LLC (Stout) through a competitive selection process to evaluate the statewide RTC program during the first two-years of the program. Stout has assisted with the identification of the data elements to be collected, worked with program staff to establish and strengthen data collection processes, and developed a series of dashboards in the Tableau platform to provide program staff with a monthly review of the effectiveness of implementation efforts. CBF and Stout also engaged qualitative researchers from Yale University, whose research focuses on the relationship between housing policy, poverty, housing insecurity and racial health equity, to conduct focus groups and individual interviews with various stakeholders in the eviction process. The purpose of the qualitative research being conducted throughout the summer and fall of 2022 by Stout, the Yale researchers and community partners, is to develop and provide a robust understanding of how the eviction process works from the perspective of the various actors who are involved in it, to better understand the impact and limitations of the RTC program to improve outcomes for tenants, and to identify additional policy and implementation efforts that could further improve the process for all involved. Stout will produce annual reports to the legislature summarizing the implementation efforts over the previous year, the impact of the program as demonstrated by the data collection and analysis, successes achieved, challenges encountered, and future implementation plans.

Maryland: MLSC has retained Stout to evaluate the

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statewide ACE program during the three-year implementation period. Stout will perform process evaluation to identify opportunities for improvements in efficiency and effectiveness of the program, including evaluating attorney caseload and identifying barriers to program success. Stout will also perform outcomes evaluation, studying and reporting on data points such as effectiveness in preventing evictions or otherwise preventing disruptive displacement, effectiveness of outreach and education efforts, and demographic information necessary for equity analyses. MLSC is also contracting with a local organization to conduct a series of three tenant focus groups in the second half of FY23 as part of the evaluation of the ACE program. The goal of the focus groups is to understand participants' experiences with the ACE program, learn what is working well, and where there are opportunities for improvement.

11. Is there anything you know now about implementing a RTC for tenants facing eviction that you wish you knew prior to enactment or implementation?

Washington: Zealous tenant defense takes more time than the volunteer-based housing justice model that preceded our RTC implementation. Appointed counsel representation requires more attorneys, as tenant defense cases take longer than traditional discretionary legal aid tenant defense services. Staff believe that the appointed counsel model is the only reason these services can be delivered effectively within a relatively modest budget.

Connecticut: If we had been aware of the significant recruitment challenges the legal aid providers would encounter prior to the passage of the law, more reasonable expectations about the phase-in timeline could have been established before the program went into effect. In addition, more attention could have been spent earlier in the process developing pipeline programs and determining ways to encourage experienced attorneys to join the program.

Maryland: We did not fully appreciate the administrative burden, for MLSC and the grantees, that would come with multiple funding sources. Had we understood the complexity this would add to the first year of implementation, we may have pushed harder for a single funding source.

- 1 Karen Wabeke joined the Maryland Legal Services Corporation (MLSC) as Program Manager for Access to Counsel in Evictions in March 2022. She is responsible for coordinating implementation of the statewide Access to Counsel in Evictions Program and managing grantmaking to legal services providers participating in the program. Karen joined MLSC after ten years with the Homeless Persons Representation Project (HPRP), first as a staff attorney representing tenants facing eviction or termination of their housing subsidy and then as Director of Housing Justice. In the latter role, she oversaw HPRP's eviction prevention legal services for tenants in Baltimore City. Prior to HPRP, Karen served as an AmeriCorps attorney and in private practice. She is a graduate of Wellesley College and the University of Michigan Law School. Karen may be reached at kwabeke@mlsc.org.
- 2 Natalie Wagner is the Executive Director of the Connecticut Bar Foundation (CBF), which is the primary administrator of funding for legal aid services across the state. CBF was selected as the administering entity for the Connecticut Right to Counsel program in September 2021 and is responsible for phasing-in a statewide implementation of the program by legal aid organizations and other partners. Prior to joining the CBF in 2019, Natalie had previous experience overseeing the implementation of statewide initiatives as an Undersecretary at the Connecticut Office of Policy and Management and as the Director of Legal and Governmental Affairs at the Connecticut State Department of Education. Natalie previously held numerous other roles in state government in CT, NY and MA and has worked as both a public defender and in private practice. She is a graduate of Mount Holyoke College and UConn School of Law. Natalie may be reached at natalie@ctbarfdn.org.
- 3 Philippe Knab is the Reentry and Eviction Defense Program Manager with the Washington State Office of Civil Legal Aid. Philippe is excited to support implementation of the nation's first statewide appointed counsel model of right to counsel in eviction defense proceedings. He brings a varied background in direct service and program development, including fifteen years as a public defender and civil legal aid attorney. Philippe has practiced in a variety of roles to enhance access to justice, including positions as a public defender at the Bronx Defenders, Supervising Attorney at the Legal Aid Society, and Supervising Civil Rights Prosecutor with the New York City Commission on Human Rights. Most recently, Philippe served as Managing Attorney for the Northwest Justice Project's Vancouver Office. Philippe holds an undergraduate degree in Philosophy, with honors, from Macalester College in St. Paul, MN. Philippe may be reached at Philippe.Knab@ocla.wa.gov.
- 4 John Pollock is a Staff Attorney for the Public Justice Center who has served since 2009 as the Coordinator of the National Coalition for the Civil Right to Counsel



The History and Current Status of Philadelphia's Eviction Diversion Program

*By Sue Wasserkrug, Esq., Director of Mediation,¹
Counseling or Referral Assistance Services, Inc.*

Introduction

Two and a half years ago, COVID appeared. Schools, businesses, and courthouses closed their doors, and we all began to hunker down.

When Philadelphia Municipal Court went dark in



March of 2020, several weeks' worth of eviction hearings were postponed indefinitely. By the time the Court reopened in September 2020, the backlog was estimated to be as many as 5,000 cases. Every day during that time of emergency, Philadelphians were losing their jobs,

and therefore their ability to pay their bills. Individuals who had been model tenants saw reductions in their income; and as the pandemic progressed, these individuals went through their savings until they could no longer pay their rent. The unemployment rate in Philadelphia soared to 18% during the summer of 2020. Statewide, some 40% of renters felt they were at risk of eviction due to loss or reduction of their income because of COVID-19.

Not surprisingly, Philadelphia City Council was concerned about the negative impact of a rush to the courthouse on the part of landlords eager to evict when the Court reopened. Philadelphia, with the highest poverty rate of the 10 largest cities in the US, already was plagued by one of the highest eviction rates of any city in the US, hovering around nearly 20,000 per year. (See Mayor's Taskforce on Eviction Prevention and Response, Report and Recommendations.)²

In the hopes of heading off a disaster, City Council passed the Emergency Housing Protection Act (EHPA),³ a package of bills that amended the Landlord and Tenant chapter of the City Code (Title 9, Chapter 9-800) "to ensure residents are able to remain in their homes, and small businesses are able to stay

in business" (Bill No. 200294, Section 1, paragraph 20).⁴ This Ordinance created the Eviction Diversion Program (EDP), a novel approach to the problem of evictions. It was signed into law by Philadelphia Mayor Jim Kenney in July of 2020.

Background

The idea for eviction diversion had its roots in the mortgage foreclosure diversion program and, more recently, in the work of the Mayor's Task force on Eviction Prevention and Response, established by Mayor Jim Kenney in 2017. One of the task force's 17 recommendations, described in its 2018 Report, was "two new alternate opportunities for resolution within the eviction process, both before and after an eviction filing" (p.41). Specifically, the task force recommended a program for landlords and tenants to meet in advance of a court filing to try to negotiate a plan for repayment of unpaid rent without court involvement, thereby saving court costs and missed work income for both parties. The second opportunity involved pre-hearing mediation, in which the parties would meet prior to the hearing date, again, to try to negotiate a repayment plan. Both of these recommendations included supports, such as financial counseling for tenants, to assist them in reaching feasible and sustainable repayment agreements. Because of the burden of getting to court, these alternative processes could be conducted remotely.

Armed with the task force's recommendations, the city received a small grant from the American Association of Retired Persons (AARP) and, after issuing a request for proposals, contracted with Good Shepherd Mediation Program, now known as CORA Good Shepherd Mediation ("GSM"), in the fall of 2019, to conduct a small pilot program offering pre-filing landlord-tenant mediation. The idea was to encourage landlords and tenants to open the lines of communication

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when a problem arose to avoid issues from escalating to the point where a landlord would file an eviction complaint.

After a few successful mediations, COVID hit. Interestingly, with Municipal Court closed, landlords became more interested in the project because they now had no other option for resolving disputes with their tenants. GSM began offering virtual mediations, giving participants the choice of Zoom or conference call.

Undoubtedly city council was aware of the success of this pre-filing project and saw it as a model for mitigating the eviction-filing crisis that would otherwise accompany the reopening of Municipal Court in September 2020.

The Emergency Housing Protection Act: The Ordinance

The EHPA contained three primary provisions: mandatory diversion before a landlord could file an eviction complaint in cases where the basis of the complaint was nonpayment of rent due to a COVID-related financial hardship; a waiver of certain fees imposed on tenants (e.g., late fees, interest on back rent, or similar charges resulting from nonpayment); and two repayment plans allowing tenants to repay their rent arrears over the course of at least nine months. (The eviction diversion program described throughout this article is for residential tenants only, not commercial tenants.)

As described in the EHPA, the diversion program consisted of a "conciliation conference" (a.k.a., mediation session), during which a trained volunteer mediator facilitates a conversation between the landlord and the tenant to assist them in reaching and refining a sustainable agreement. Another component of the program was a housing counselor who works with the tenant before the mediation session and serves as a resource during the mediation.

The city contracted with GSM to oversee the mediation portion of the program. In anticipation of hundreds, if not thousands, of requests for mediation, GSM recruited and trained more than 100 volunteer mediators and implemented a system for scheduling and conducting 50-60 virtual mediations every week. The mediation sessions are held via conference call for two reasons: the logistics of operating so many Zoom meetings was overwhelming, and there was concern

that many participants might not have access to or comfort level with Zoom or similar technology.

Housing counselors are a key part of the EDP. Certified by the U.S. Department of Housing and Urban Development, housing counselors offer free counselling on such issues as credit repair and maintenance, budgeting and money management, tenant/landlord issues, and fair housing rights. The housing counselors' knowledge of rental assistance options benefits landlords in their efforts to collect back rent. Consequently, while they are assigned to and work directly with tenants, they serve as a resource to the overall landlord-tenant dispute resolution process.

The goal of the diversion program is to enable landlords and tenants to reach mutually beneficial and sustainable resolutions to their disputes without having to go to court. Mediations generally were scheduled within 30 days, whereas an eviction hearing might not be scheduled for four to six months after a landlord filed a complaint because of the COVID-related backlog.

EHPA Logistics

To start the EDP process, landlords were required to send tenants a Notice of Rights explaining the EDP prior to applying for diversion. The city's Fair Housing Commission promulgated a sample Notice of Rights using language from the ordinance (rather than everyday English). After sending the notice, the landlord applied for diversion by completing a form on the EDP website (<https://eviction-diversion.phila.gov/#/>). Landlords were (and still are) required to provide, among other things, proof of delivery of the notice, current rental license number, and contact information (cell phone and/or email address) for their tenant, as well as for themselves. All information about the program is provided to tenants and landlords by text and/or email.

Once the application was complete (and approved), a housing counselor was assigned, a mediation date was set, and a volunteer mediator was assigned. After the mediation session, the volunteer would email the agreement to GSM staff for proof-reading, editing, formatting, filing, and coding. After the agreement was processed, it was sent to the landlord, the tenant, and the housing counselor. If no agreement was reached, the volunteer reported the outcome to GSM staff for coding.

The Mediation Session

Mediation works because it allows participants (1) to openly express their concerns in a safe space and

(2) to hear each other's perspectives. The mediator can guide the parties to a resolution by clarifying the issues, including what is at stake and what the parties' options are. To do this, volunteer mediators complete training on both mediation skills and landlord-tenant law. GSM continues to train volunteers.

Because the "dispute" in EHPA cases was nonpayment of rent due to a COVID-related loss of income, "resolution" generally meant a repayment agreement that the tenant could afford and that the landlord could accept. Occasionally, a resolution involved a timetable for the tenant to move out of the unit if it became clear that remaining was not possible. Certain assumptions built into the EHPA turned out to be unrealistic. For example, landlords were required to accept a plan allowing a minimum of nine months for repayment of all arrears that had accrued from the start of the pandemic (March 2020) through August 2020. The nine months were expected to begin on September 1, 2020, and end on May 31, 2021, at which point the landlord could require a balloon payment of any remaining arrears. The tenant was expected to also pay full rent beginning on September 1, 2020. Clearly, this sort of plan is premised on the tenant returning to work, which was the expectation in the early days of the pandemic. Obviously, that turned out not to be the case. Thus, in the absence of rental assistance, even a nine-month repayment plan was impossible for many of Philadelphia's low-income renters.

Rental Assistance

In the early days of the program, minimal amounts of rental assistance were available, with certain restrictions that caused some landlords to forego the assistance. Philadelphia offered rental assistance in "phases," with each successive phase becoming more generous and less restrictive. For example, Phase 1 offered landlords a maximum of \$750 per month for no more than six months; the landlord had to agree to forgive any remaining arrears, and the landlord could not evict for six months after receiving the funds.

With the passage of the American Rescue Act in early 2021, hundreds of millions of dollars became available to tenants and landlords, with significantly fewer restrictions. Dubbed, "Phase 4," the program provided up to \$2,000 per month in rent, plus \$2,000 per month in utilities, both for up to a year's worth of arrears (with the possibility of some future rent), and landlords needed to wait only 90 days after receipt of the funds before they could file an eviction. These funds were critical to the success of the program in

2021. However, the complexity of the Phase 4 application process required additional training for volunteer mediators who sometimes needed to guide landlords and tenants through the process and facilitate their working together to complete the application.

EDP Today

Back in the summer of 2020, Philadelphia City Council anticipated that the EHPA would sunset on December 31, 2020. After all, everyone expected that the pandemic would be over by then. Of course, the pandemic persisted, and the legislation was extended through March of 2021. From April 1, 2021 through December 31, 2021, the program continued thanks to a series of Philadelphia Municipal Court orders, starting with MC Administrative Order #15,⁵ issued on April 1, 2021. The order noted that "the Eviction Diversion Program... has saved the court's resources, prevented negative consequences of eviction during a pandemic, and benefited landlords and tenants in coming to agreements in lieu of lawsuits" (Paragraph c). Subsequent court orders extended the program through December 31, 2021.

Then, in December of 2021, city council passed another ordinance, Bill No. 210920,⁶ again amending Chapter 9-800 of the Philadelphia City Code. This ordinance authorizes the city "to continue operating a pre-filing residential eviction diversion program to facilitate dispute resolution between landlords and tenants."

The parameters of the program are less concretely defined than they were in the previous ordinance. Whereas the 2020 ordinance mandated diversion prior to the filing of an eviction complaint only in cases where the basis of the complaint was non-payment of rent due to a COVID-related financial hardship, the current ordinance imposes no such restriction. Now, landlords must request diversion prior to filing any residential eviction complaint. There is an exception if eviction is necessary "to cease or prevent an imminent threat of harm by the person being evicted."

As in the previous iteration of EDP, landlords must apply for diversion before filing for eviction, and they must participate in diversion in "reasonable good faith" for 30 days before filing for eviction. Interestingly, the current ordinance does not explicitly define "diversion." Consequently, because of the volume of applications, the definition of "diversion" was expanded to include other "pathways." As explained on the EDP website,⁷ "applications are assigned appropriate pathways depending on the amount of back rent and fees

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that the landlord says is owed and additional factors. A tenant may be assigned a housing counselor, mediation session or additional resources like a webinar.”

Similarly, the ordinance does not define “reasonable good faith.” As a result, the city and its partners came up with a checklist of sorts to determine good faith participation. Items on the list are mostly objective, for example, provide required documentation and contact information for tenants; respond “timely” to outreach from tenants, housing counselors, etc.; attend mediation sessions (or send a representative with full authority to negotiate); and address all lease issues that could lead to eviction (e.g., repairs as well as arrears). As is evident, the bar is quite low and, unfortunately, open to interpretation. One often wonders if parties are, indeed, participating in good faith. (The full checklist is available on the city’s EDP website.)

Current Challenges and the Future

The EDP has benefited the city in many ways: tenants are able to remain in their homes; landlords do not incur the costs of turnover and they receive the back-rent they need to continue to offer rental housing; the burden on Philadelphia Municipal Court is alleviated; and homelessness and its accompanying societal impacts are greatly reduced. Positive resolutions are reached in upwards of 85% of cases when both parties participate in the program. Thousands of landlord-tenant disputes have been successfully resolved through diversion since the program began.

However, the program is not without its challenges. For example, although EDP sounds relatively simple and straightforward, it has many moving parts that necessitate extraordinary collaboration among many individuals and entities:

- The city needed to engage its software specialists to create a complex web portal for landlords to use to apply for diversion. Protocols were devised and implemented, and documents were created and distributed. The software is revised on an ongoing basis to reflect changes to the program itself.
- Landlords need a place to go when they have questions about the application process, as well as about the entire diversion process.
- Volunteer mediators need to be recruited and retained, trained, and supervised. They need to communicate their schedules with GSM staff, who assign them to mediation sessions weekly. They

need to follow precise protocols so that GSM can ensure that landlords and tenants are notified of the outcome of their cases in a timely manner.

- Tenants need to be counseled and referred to appropriate resources if their diversion pathway does not include mediation, or they need to be scheduled for an appointment with a housing counselor.
- Mediation sessions need to be scheduled within 30 days in a way that does not present a conflict for the landlord, tenant, and housing counselor. If their schedules are not considered, then those sessions likely will need to be rescheduled. Currently, the sessions are scheduled based on the housing counselor’s availability, which is provided to GSM’s lead scheduler. If known, the availability of the landlord (or their representative) is also considered. Volunteers are assigned after the session has been confirmed.
- All parties must be notified of the call-in information since each mediation session is conducted by conference call. GSM has a dedicated conference line, so everyone always calls the same phone number and then participants dial one of about 20 different five-digit pass codes to access their call.
- Mediation/diversion outcomes need to be recorded and provided to the parties in a timely manner.

Furthermore, not all of the 15,000–20,000 eviction complaints filed in Philadelphia Municipal Court annually are appropriate for mediation, which is an alternative dispute resolution process that values communication and self-determination. Mediation is most successful when there is room for negotiation, a level playing field, and a willingness to listen to the other party. It is particularly useful when the parties have some sort of relationship, such as neighbors, co-parents, co-workers, or landlord and tenant. In some cases, mediation can replace litigation; in other situations, mediation supplements litigation. The goal here is to divert cases to the EDP in situations where alternative dispute resolution is likely to succeed, thereby saving parties the need to appear in court and reduce the court’s burden.

Even when mediation is appropriate, the fact that it is mandated in these cases can cause some animosity. There will always be those who see the process as an obstacle rather than an opportunity. After the EHPA was passed, a landlord attorney in Philadelphia challenged the ordinance, but the challenge was tossed out of court, and there have been no further lawsuits.

While some landlord attorneys continue to grumble about diversion, most see the value of it for their clients, who stand to save money since the diversion program is free and court is not. In addition, unrepresented landlords often express gratitude at having the opportunity to open the lines of communication with their tenants.

One unintended consequence of the program has been that mediation has become synonymous with diversion. Since the alternate diversion pathways were implemented, more and more landlords who are assigned to non-mediation diversion actually reach out and request mediation. We like to think it is because they want to communicate with their tenants, but in some cases, it might be that landlords think mediation is a requirement. The complex and constantly changing nature of the program has made effective outreach difficult.

The EDP was scheduled to sunset on December 31, 2022. In September, at the Philadelphia Bar Association's annual Bench-Bar Conference, a judge in Municipal Court called the diversion program "wildly successful" and characterized diversion as a useful judicial management tool. On October 13th, City Council passed Bill 220655, extending EDP for 18 months — through June 2024. Shortly thereafter, the city announced that it would support limited, targeted, financial assistance to landlords seeking arrears through the EDP. That assistance is expected to be available in early 2023.

The Eviction Diversion Program is a work in progress. Ironically, the COVID-19 pandemic provided the opportunity for Philadelphia to tackle the eviction crisis head on, resulting in an innovative and successful approach to addressing landlord-tenant conflict in one of the nation's largest and poorest cities.

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- 2 <https://www.phila.gov/media/20210805121804/Mayors-Taskforce-on-Eviction-Prevention-and-Response-final-report.pdf>.
- 3 <https://phlcouncil.com/city-council-enacts-emergency-housing-protection-act/>.
- 4 <https://phila.legistar.com/LegislationDetail.aspx?ID=4432672&GUID=7D6E72DD-DD5B-40A7-B1CA-D07248C81B06>.
- 5 <https://www.courts.phila.gov/pdf/regs/2021/15-of-2021-PJ-ORDER.pdf>.
- 6 <https://phila.legistar.com/LegislationDetail.aspx?ID=5219258&GUID=4CDBA4CE-9794-40F3-B16D-21A6A87C2CD5&Options=ID%7CText%7C&Search=210920>.
- 7 Philadelphia EDP website: <https://eviction-diversion.phila.gov/#/About>.

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- Approved Fiscal Year 2022 Budget, https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/fo_vsjs_chapter_2022s.pdf. Many states already award annual grants to HVIPs. *See Lawmakers*, Health All. for Violence Intervention, <https://www.thehavi.org/for-lawmakers> (last visited Oct. 14, 2022). Funding for MLPs should supplement, not replace, these existing expenditures.
- 26 *See generally* Jennifer Trott, Nat'l Ctr. for Med.-Legal P'ship, Financing Medical-Legal Partnerships: View from the Field (April 2019), <https://medical-legalpartnership.org/wp-content/uploads/2019/04/Financing-MLPs-View-from-the-Field.pdf>.
 - 27 *See, e.g.*, Off. for Victims of Crime, U.S. Dept. of Just., <https://ovc.ojp.gov/funding/awards/list> (last visited Oct. 14, 2022); *HHS Grants*, U.S. Dept. of Health & Hum. Servs., <https://www.hhs.gov/grants/index.html> (last visited Oct. 14, 2022).
 - 28 *See Recent Publications*, Interrupting Criminalization, <https://www.interruptingcriminalization.com/publications> (last visited Oct. 14, 2022).
 - 29 *See* Working Group on Policing and Patient Rights, Police in the Emergency Department: A Medical Provider Toolkit for Protecting Patient Privacy (2021), <https://www.law.georgetown.edu/health-justice-alliance/wp-content/uploads/sites/16/2021/05/Police-in-the-ED-Medical-Provider-Toolkit.pdf>.
 - 30 *See When Health Care and Law Enforcement Overlap: Policy and Practice*, U. Penn. Leonard Davis Inst., <https://ldi.upenn.edu/events/when-health-care-and-law-enforcement-overlap-policy-and-practice/> (last visited Oct. 14, 2022).



Los Angeles Right to Counsel Coalition History & Codification Efforts

By Barbara Schultz, Director of Housing Justice,¹ Legal Aid Foundation of Los Angeles

The Los Angeles Right to Counsel Coalition is made up of tenants, tenant organizing groups and advocates, academics, and legal services organizations.



The coalition formed in June 2018 to call for a Renters' Right to Counsel for tenants facing eviction, including legal representation, eviction prevention services, and emergency rental assistance. Together, the coalition developed a Right to Counsel Proposal for the city and county of Los Angeles.

We regularly met with both jurisdictions to develop a pilot program that would phase in eligible areas by zip code based on various housing vulnerability tools. When the pandemic hit in early 2020, political will changed, and the county fast tracked an expanded eviction defense model, which became Stay Housed Los Angeles (SHLA).

Los Angeles County is home to 88 separate political jurisdictions, with the city of Los Angeles being the largest. Therefore, the Coalition is targeting the city of LA, and unincorporated Los Angeles County, which is the only political jurisdiction the County Board of Supervisors have legislative authority over, absent a state of emergency. The Coalition is also looking to the county to incentivize smaller jurisdictions to adopt tenant protections, including right to counsel. The city of Long Beach contributes funding to the county for SHLA. The city of Santa Monica has its own modest program with SHLA.

From the onset, the coalition has worked towards codification by meeting with elected officials, getting allies onboard, commissioning a Stout cost-benefit analysis,² and drafting phase in proposals. Both political jurisdictions made clear that, absent a permanent source of funding, they were uninterested in codifying the right, even while expanding the program.

In summer 2022, a city voter initiative gathered enough signatures for the November 2022 ballot to include a measure entitled “United to House LA.”³ If approved by voters, it will provide funding for affordable housing development and a right to counsel program, among other things. A motion was introduced into City Council to begin looking at implementation of this measure, should it pass. The measure would collect funds via a tax on multi-million-dollar property sales.

A California state bill was just passed that will create a county-wide agency that, if funded, will provide money for affordable housing development and a right to counsel program in the next few years, likely through a taxing mechanism similar to United to House LA. Additionally, the County Board of Supervisors recently passed a motion that requests a study to expand SHLA to “universal access.”

While neither of these jurisdictions has proposed codifying a right to counsel, the coalition believes that they will do so once the funding mechanism is in place.

Stay Housed Los Angeles (SHLA)

SHLA is a collaboration between ten legal service providers (LSPs), a foundation, and twelve community-based organizations (CBOs). When the county of Los Angeles first funded SHLA in summer of 2020, we had two separate contracts — one for LSPs, led by Legal Aid Foundation of Los Angeles (LAFLA), and one for CBOs, led by the Liberty Hill Foundation. Since that time, both have been combined into contracts with LAFLA. LAFLA subcontracts to each LSP, and to Liberty Hill, who in turn subcontracts to CBOs. LAFLA takes on all program administration and has several “program-wide” positions, including a part-time Director to oversee the program as a whole, a program manager, accountant, volunteer coordinator, and five receptionists to answer the SHLA toll-free

phone line. Separate foundation funding allowed LAFLA to hire two dedicated intake paralegals, and an attorney to oversee them, a data manager, stipends for law clerks, and a training consultant. One of those grants also provides funds to revamp the website and attorney pipeline and recruitment efforts.

SHLA began representing tenants in evictions in September of 2020. The city program began in May 2021. The present SHLA budget is approximately \$30 million a year, now funded primarily by federal COVID-19 relief funds, but also includes state and local funds. The SHLA program includes outreach efforts by CBOs, numerous weekly educational workshops, tenant navigation services, both limited and full scope legal services, and rental assistance. Since its inception, SHLA has made contact with over one million tenants via phone, text, or in-person outreach. SHLA held over 1100 educational workshops with 15,000 participants. We have provided legal services to 12,400 tenants, about 25% of those were full scope representation. Tenants access SHLA by the website www.stayhousedla.org, the toll-free phone line, or via any of the SHLA partners.

SHLA implementation challenges & lessons learned:

1. **Infrastructure issues** — The coalition has stuck together surprisingly well, but that's not to say there aren't issues, and resolving them takes a great deal of time. SHLA formed an SHLA steering committee to help monitor the program, and there is an MOU that all partners sign that lays out the values and processes for SHLA. We hold several weekly meetings, both for SHLA and for the Right to Counsel Coalition, as we continue to improve effectiveness of SHLA while advocating for a codified right to counsel. LSPs and CBOs are of varying sizes and sophistication in dealing with government contract requirements. We continue to have issues with getting timely invoices and data. LAFLA has adjusted our program-wide staffing to try to provide more assistance to subcontractors. For example, initially the project manager was in charge of both invoicing and data; we eventually hired a separate data manager through foundation funding.
2. **Multiple fund sources and eligibility requirements** — Both our funders are using multiple funding sources (state, local, federal) to fund SHLA. Some funding sources have different eligibility standards. This complicates contracts,

subcontracts, invoicing, client intake, data tracking, and deliverables. On top of this, many LSPs have other, non-SHLA eviction defense funds. Luckily, most LSPs are using the same case management system, so we have been able to share tech tips to make data reporting easier, and SHLA was able to pay for some resources, like geographic information system (GIS) mapping, through the contract. LAFLA technology staff is available to meet with subcontractors to help them figure out data reporting. The LAFLA accountant has created invoice templates that break out funding by source and meets with subcontractors to offer invoicing assistance. We have recently changed billing so that city and county are both on a payment reimbursement model. We are working with outreach staff and funders to try to increase applications by tenants with specific funding sources.

3. **Hiring & training staff** — It has been extremely difficult to hire even the current level of staff, particularly attorneys, when the job market is so competitive for nonprofit employers. At the beginning of the pandemic when everyone else, including legal services programs, were working remotely, attorneys still had to physically go into court. Courthouses were notorious for failing to provide a COVID safe environment, and there were several outbreaks. Many LSPs had high turnover, if we were even able to hire in the first place, and the constant training alone took a toll on managers. Since then, the state of the job market has prevented many LSPs from fully hiring, when applicants have their choice of higher paying positions. Attorneys have also balked at high workloads (which have in fact been lower caseloads than pre-pandemic, but also more complex because of the myriad of new and changing laws.) The influx of new staff has required more onboarding and training. As a result, we contracted with the SHLA training consultant, who now provides weekly training and mentorship. Some LSPs faced the hiring challenge by hiring classes of post-graduate fellows. Our training consultant recently completed an eviction training bootcamp for ten fellows who got substantive training, watched court proceedings, and even spoke to an eviction judge. We are also working on improving the pipeline by hiring law students as clerks, providing clinic opportunities, and giving presentations to law schools. SHLA hopes to create a pipeline whereby law students (and law schools) recognize the importance of eviction defense in the broader housing justice movement, work as a paid law clerk during law school, opt in to a post-graduate fellowship in

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their 3L year, and then move into staff attorney positions.

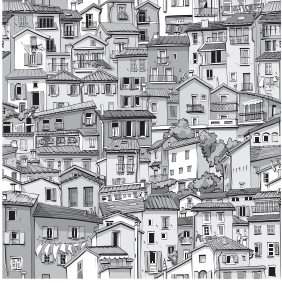
4. **Rental Assistance Funds** — LA City and County incorporated a rental assistance component into SHLA with a focus on stabilizing housing, not merely paying down rental debt. One of the LSPs administered the review of applications and release of funds after LSP partners submitted requests for funding on behalf of its full-scope clients. Given the objective of the program — keeping tenants housed — rental assistance was contingent on a tenant being able to sustain rental payments following receipt of any funds, as well as the cooperation of the landlord in providing proof of ownership documents. For clients with other COVID-19-related hardships, funds were also used to address areas that were the basis for eviction, like breach of lease for failure to pay increased security deposit, as an example; or certain notices that required a tenant to address issues within the unit, such as hoarding or storage issues. Due to the eligibility criteria, clients often faced uncooperative landlords looking to displace long-term tenants from rent controlled units, and many tenants faced difficulty recovering from the devastating economic impact that the pandemic inflicted on their families, limiting the availability of such funds. Going forward, we have expanded the program to also concentrate on pre-eviction rent payment, in order to avoid the eviction altogether. We also received funding that specifically pays future rent for a limited number of tenants.
5. **Managing expectations** — Because SHLA is a county-wide eviction prevention and defense program, rather than phase-one of a right to counsel program, millions of tenants are eligible. Los Angeles had very strong tenant protections in the first two years of the pandemic, and the eviction filing rate was greatly reduced from the 40,000+ evictions in 2019 to approximately 13,000 in 2020. Therefore, particularly in the first year, SHLA was able to provide legal assistance of some kind to most tenants who asked for it. However, the eviction rate started steadily increasing, and by June 2022, hit pre-pandemic levels of over 3,300 filings each month. Tenants with evictions asking for SHLA legal assistance went from 391 tenants in January of this year to 1,542 in September. SHLA is only able to represent a few hundred tenants each

month. Even our CBO workshops have had to impose limits of 150 participants. Despite our clear inability to handle all of these cases, elected officials, tenants, and even our funders seem to believe that we have a full right to counsel and expect us to take on more cases. It is very frustrating for all involved, and is also causing LSP and CBO staff burnout. We are facing this challenge by talking to our funders about returning to geography-based eligibility, particularly in the face of potential rapid expansion. We are also exploring ways to ensure front line staff connect more to the movement.

6. **Growing pains** — LSPs have varying commitments to growing their eviction defense work. Some worry it will subsume other substantive areas. Most worry about the funding and staffing recruitment and sustainability. Due to LA's size, and the extent of the housing crisis which results in high eviction numbers, any phase in will likely take several years. We estimate we will need approximately 400 attorneys, which is quite a daunting task. SHLA has been looking at models across the county, and, along with city and county partners, is presently enrolled in the national Advancing Housing Justice: Right to Counsel for Tenants Sprint Cohort, organized by the National Coalition for a Civil Right to Counsel and others. We have been meeting internally to develop a multi-year phase-in plan for full right to counsel, whether codified or not.

Implementing SHLA has been, and continues to be, a challenge. However, as the last four years of advocacy efforts have proven, Los Angeles is up to the task.

- 1 Barbara J. Schultz is the Director of Housing Justice and oversees Legal Aid Foundation of Los Angeles' (LAFLA's) work on housing, houselessness, and community empowerment. As a proponent of a community lawyering model, Barbara works closely with community-based organizations. She has been a key member of the Los Angeles Renters Right to Counsel Coalition, leading the effort for LAFLA by securing the first government contracts for Stay Housed LA. Prior to becoming a director, her litigation and policy efforts focused on issues affecting Skid Row residents. The 2006 settlement in *Wiggins v. Los Angeles Community Redevelopment Agency*, still in effect, ensures the affordability and preservation of residential hotels in downtown Los Angeles.
- 2 https://info.stout.com/hubfs/PDF/Eviction-Reports-Articles-Cities-States/Los%20Angeles%20Eviction%20RTC%20Report_12-10-19.pdf.
- 3 https://unitedtohousela.com/app/uploads/2022/05/LA_City_Affordable_Housing_Petition_H.pdf.



The Montana Eviction Intervention Project: Legal Relief for Montana Tenants in the Wake of the COVID-19 Pandemic

By Emily McLean, Housing Navigator,¹ Montana Eviction Intervention Project at MLSA; Brittney Mada, Staff Attorney,² MLSA; William F. Hooks, Director of Advocacy,³ MLSA



Top: Emily McLean (L); Brittney Mada (R); Bottom: William F. Hooks (L).

Getting from There to Here

a reflective look at how MLSA responded to 2020

Accessible, affordable housing has long been a debated topic in the state of Montana. Before the COVID-19 pandemic, Montana Legal Services Association (MLSA) had one designated staff attorney who would advise tenants statewide on their housing-based legal issues. As in many states throughout the country, the COVID-19 pandemic sparked an unprecedented eviction crisis in Montana. In March of 2020, 31% of our completed intakes were COVID-19 related, and these cases involved 232 clients and their family members. From March 13 to September 1, 2020, 49% of MLSA's completed intakes were COVID-19 related, affecting 2,556 clients and their family members.

Access to lawyers and representation in eviction proceedings is a privilege that comes at a cost many Montana tenants cannot afford. At MLSA, we found ourselves inundated with applicants facing evictions far beyond the capacity of one full-time attorney. Amid quarantining and transitioning our staff to work fully remote, we were also actively strategizing how we could best meet our clients' essential needs for comprehensive eviction legal support. Many of MLSA's other nineteen staff attorneys jumped in to take on housing cases alongside their specific area of practice. It was an all-hands-on-deck, firm-wide response.

In October of 2020, an opportunity presented itself in the form of the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act. MLSA partnered with the Montana Department of Commerce (MDOC) to use an allotment of the CARES Act funding to support increased civil legal assistance to Montanans facing pandemic-related evictions. With this funding, we formed the Montana Eviction Intervention Project (MEIP).

MEIP works to address the financial barriers of hiring a private attorney by eliminating the tenant's out-of-pocket cost. We do this by covering the cost of the attorney. Through our grant with MDOC, we contract with private attorneys to take eviction cases at a modest means rate of \$75.00 per hour. We refer tenants who qualify based on financial eligibility guidelines⁴ facing eviction⁵ to these attorneys. As of October of 2022, we contract with over twenty-five private attorneys. The assistance they offer is in addition to the work of three full-time housing staff attorneys, and a team of seven non-attorney support staff hired to help facilitate the MEIP. These combined efforts have

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enabled MLSA to provide legal advice or counsel to 966 tenants in cases, which includes 150 federal subsidized housing cases, 604 private landlord/tenant cases, and 100 mobile home cases in 2022 thus far.⁶

The MEIP Explained *the “nuts and bolts” of the project*

Advice Calls

When a client facing eviction applies for legal assistance, MLSA staff schedules them for a one-hour advice call with a staff or contract attorney. This has become an important first step in the MEIP. While Montana laws apply set rules and procedures for the eviction process, every tenant comes to us with a unique situation. Prioritizing individual advice calls for our MEIP clients allows us to acknowledge the particular case facts and distinct legal needs of tenants navigating these laws.

More often than not, the client’s eviction issue requires a level of service that goes beyond what one advice appointment can accomplish. For example, a client may have unaddressed counterclaims to assert related to repairs or habitability. An unfortunately common trend in these cases is that the conversations and negotiations necessary to prevent the eviction may be impossible for a client to navigate *pro se* given the fractured state of the relationship with their landlord. As such, MLSA reviews each case post-advice to ascertain what assistance, both legal and non-legal, may prevent the eviction.

Continued Legal Assistance

The MEIP connects many clients with an attorney who can work with them through each part of the eviction process—whether that be letters to landlords, settlement agreements, or appearance in court. Given the high volume of cases, our contract attorneys help us provide representation to clients beyond the limits of what our staff attorney capacity would otherwise allow. Each week, we send out a statewide referral list to the contract attorneys. The contract attorneys then volunteer for the cases they are available to handle. While this method does not ensure representation in every client’s case, it is the best way for us to place the most cases possible throughout the state.

Non-Legal Resources

For many of our clients, there are very real non-legal circumstances impacting the client’s housing stability. The ability to afford a monthly rent payment is a great difficulty for them. Many Montana counties saw an increase in rent higher than the national average from 2020 to 2022. Missoula County and Gallatin County, two of the state’s more populous counties, saw an 18% increase in rent. Lewis and Clark County, the location of the state capitol of Helena, saw a 36% increase and ranked fifth in the nation overall for highest rent increase.⁷ At the current minimum wage of \$9.20 per hour, affording a monthly rent payment of \$800-\$2,000 becomes a daunting task. Connecting our clients with the COVID-19 rental assistance money has been a critical resource for keeping tenants housed.

To better serve our clients’ need for timely access to rental assistance, MLSA and the Department of Commerce expanded the MEIP in July of 2021 with a provision for MLSA to directly administer rental assistance funds to tenants and landlords via the Montana Emergency Rental Assistance Program (MERA). MLSA obtained a determination from the Montana Supreme Court that our rental assistance project would not be deemed a violation of Montana Rule of Professional Conduct 1.8(e), which prohibits lawyers from providing financial assistance to a client in connection with pending or contemplated litigation. We issued our first MERA payment on April 21, 2022. As of October 1, 2022, we have distributed approximately \$298,500 in rental assistance for our clients.

Challenges in the Here and Now *navigating the ongoing road blocks*

As with all projects, the MEIP has been met with its fair share of challenges to address. In the infancy of the MEIP, a lot of conversations were had around how to structure and implement an effective legal eviction prevention program in Montana. Many factors played an important role in those conversations.

Geography

Montana is the fourth largest state, with an area of slightly more than 147,000 square miles. The state is divided into 56 counties, and each county has a Justice Court which has jurisdiction over eviction cases. MLSA staff attorneys often have to travel hundreds of miles for a court hearing. When the pandemic hit, we realized we would be unable to meet the needs of residents with staff alone. Available contract attorneys

quickly became a critical need, but also posed a challenge as there was no established large group of attorneys already actively practicing landlord/tenant law. The small number of attorneys who were practicing in this area primarily only represented landlords.

MLSA addressed this challenge by recruiting private attorneys to participate in MEIP. This effort also brought challenges. Montana is, by any definition, a rural state. A consequence of Montana's unique geography is that approximately 81% of the state's active attorneys are in the six most-populated judicial districts. Less than 20% of Montana's active attorneys serve the state's remaining 16 judicial districts.⁸ This posed a particular challenge to MEIP as it was imperative to connect the attorney and the client promptly and meaningfully. In Montana, a tenant who has been served with a complaint for eviction must file an answer to the complaint within ten business days or there will be a default judgment for possession and costs. Most applicants contact MLSA on or around the time they are served with the court documents. The attorneys still have the ethical obligation to conduct capacity evaluation and due diligence, which includes meeting the client in a substantive way. This can result in a very small window of time for the attorney to litigate the case.

Recruitment of private attorneys is an effective response to the challenges posed in accessing rural areas of the state. In contracting with private attorneys based throughout the state, we are able to connect MEIP clients with an attorney who may be fifteen miles away rather than 250.

Attorney Availability & Durability

In recruiting contract attorneys, comprehensive and flexible training and mentorship opportunities were a necessity. As such, we organized a series of Continuing Legal Education opportunities, developed a brief bank, and held weekly peer calls with our housing staff attorneys to answer questions and brainstorm case specific legal and non-legal strategies. The content of these peer calls is yet another reminder of the complexity of issues presented. Daily, the MEIP comes up against social and cultural challenges embedded in the legal conflict. These are the realities we face that are not simple to overcome, and we continue to strategize the most effective ways to address them.

Social and Cultural Challenges

It is critical to acknowledge that the roots of the housing crisis are societal and systemic.

Housing, at its core, is about people. The individuals faced with being unhoused feel the impact of the housing crisis most deeply. Our potential and current clients are our neighbors; they are fellow Montana tenants facing a life trauma. Within that shared construct, the circumstances activating their eligibility for our services are vast and unique. They are the partner of a disabled spouse, the child of an aging parent. They are the parents of a child who was just lost to suicide. They are someone trafficked who just discovered what it feels like to be home for the first time. They are veterans facing new and life-impacting medical diagnoses. They are parents of young children filling their safe place with joy and comfort. And then they are unhoused. These are the lives whose stories fill our applications.

Housing vulnerability compounds and is compounded by other systemic imbalances.

Montana experienced one of the highest population growth rates in the country during the pandemic. Between July 2020 and July 2021, the state's population grew by slightly more than 18,000 people, or 1.6%.⁹ Most of those new residents moved to the most populous counties. On average, new residents earned more in calendar year 2020 than Montana residents. Data indicate those who moved to Montana acquired similar paying jobs in Montana or were able to bring their jobs with them.¹⁰

Income Disparity. Lower-income renters typically work in the service sector where job and wage cuts early in the pandemic left them with even less income to pay for housing.

Cost burdens.¹¹ Somewhere between 40 to 44 percent of renters in Montana are cost-burdened, meaning they pay more than 30% of their income for housing.¹² The amount of income renters have left over after paying for housing drops as rents increase.

Lack of Available Rental Housing.¹³ Housing has not kept pace with population growth. Montana experienced a 10% growth in population between 2010-2020, but only a 7% increase in housing units over that same time. In 2020, 14.5 in every 10,000 people in Montana experienced homelessness.

The Legal Framework of Housing Law

It is also important to note that housing law is about real property ownership, productivity, and profit, and this has a profound effect on tenants in Montana.

When introduced to property law, it is commonly referred to as the bundle of sticks. Each 'stick' is a deeply rooted ownership right. The five major sticks

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are: right of possession, right of control, right of enjoyment, right of exclusion, and right of disposition. When a property owner elects to make the business decision to voluntarily offer some of these sticks to another, it creates the landlord-tenant relationship. In exchange for cost, the tenant gets to temporarily hold a portion of the right of possession. The property owner, a.k.a. landlord, maintains the bulk of all the other rights associated.

When viewing it in that frame, it is no surprise that, while it feels like all clients *should* have defenses, when rubber hits the road, the landlord maintains the position of power and legal authority over the property.

MEIP has revealed the fundamental tension between the legal backdrop of property ownership and a common-sense recognition that shelter is a human need. Sometimes clients believe they have defenses that in fact do not exist as protections in Montana. For example, there is a common, but incorrect, notion that someone in Montana cannot be evicted in our late October – early May winter months. MEIP clients, and all those facing eviction without connection to MEIP, fight for their dignity in an uphill legal battle. In this context, the outcomes may seem inevitable, but our commitment to forge a different result is powerful.

Persisting Forward *a call to community*

It often feels like the work we are doing with MLSA's MEIP is triage. The MEIP clients who are facing eviction call our helpline, and we assign degrees of urgency—assessing the level of service needed to prevent that eviction and calculating the resources needed to realize that goal. Through MEIP, MLSA has assisted hundreds of Montana families facing housing insecurity, and facilitated thousands of dollars of rental assistance to tenants and landlords. However, more often than we would like, the numbers don't always add up. Sometimes, there are not enough days to answer court summons for a client, or hours to sort through rental listings to seek out alternative housing. And the reality is, there are not enough staff and contract attorneys to represent every eviction client that seeks our help.

That's why we show up as much as possible—even when we might lose. Because if not, we enable a justice system inaccessible to the most vulnerable among us.

We allow society to continue to function with having a home not being a human right, and we reinforce a culture that makes hope seem like a privilege for only those who can afford it. This work is how we show our neighbors we care, and prove that the justice system is as much for them as it is for all of us. It's how we ensure people know they deserve to have a home, if for no other reason than they are human.

At times, it feels like we are in the midst of a housing apocalypse—the rental market pre-COVID-19 is gone, and in its place is something uncertain and unsettled. The word apocalypse derives from the Greek word *apokálypsis* which translates as an “uncovering.” In many ways, the pandemic uncovered the state of housing in Montana. It exposed a system tip-toeing along the edge of crisis long before March of 2020, and it left the most marginalized of our population to survive and navigate the fallout.

This moment in time is a call to community. There is harm in our communities when we are complacent or indifferent to our fellow neighbors' needs. To build communities that provide support, opportunity, and equity for all, we have to collectively acknowledge our responsibility to be active collaborators and co-creators of these communities we share. We all have the knowledge and potential to transform our housing systems into something secure and abundant for all. The question isn't *can* we show up, it's, *will* we?

- 1 Emily McLean (she/her) is a Housing Navigator for the Montana Eviction Intervention Project at Montana Legal Services Association. She works directly with tenants facing eviction to connect them with resources and legal assistance to promote housing stability. She received a Bachelor of Arts (B.A.) in Sociology and a B.A. in Spanish from Carroll College in 2021. Emily is a part of the generation just beginning to enter into these spaces and conversations, and she looks forward to being a contributing voice and advocate for social justice throughout her professional career.
- 2 Brittney Mada (she/her) holds space for and promotes the interests of those denied access, experiencing acute or enduring capacity limitation(s), and/or who are otherwise restricted from meaningful involvement in legal processes. Mada is curious, consistent, and committed to active resistance of oppressive power structures with a demonstrated history of working alongside all stages of the criminal justice system, prioritizing client autonomy, agency, informed self-determination, and participation. Mada is an Executive Committee Board Member for Court Appointed Special Advocates (CASA) of Yellowstone County, Executive Committee Board Member for the New Lawyer Section

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Building the Plane While We Fly It — Implementing Year One of Washington State’s Right to Counsel in Evictions

By Scott Crain, Statewide Advocacy Counsel,¹ Northwest Justice Project; Michelle Lucas, Eviction Prevention Unit Managing Attorney,² Northwest Justice Project; and Abigail G. Daquiz, Director of Advocacy,³ Northwest Justice Project⁴



Top: By Scott Crain (L); Michelle Lucas (C); Abigail G. Daquiz (R).

In Washington State we are in a unique moment in legal aid history. We have momentum to address the long-understood need for legal representation when an individual’s basic needs are in jeopardy. The COVID-19 pandemic and the anticipated end of a two-year eviction moratorium provided the necessary push to make a right to counsel (RTC) real for tenants. Implementation of this new statewide program has been a journey. Some describe it as building this plane while we fly it—but it’s important to take the time to step back, look at this plane, and assess. Are we building what clients need? Are we delivering on our mission to our clients and communities as we build this plane?

How RTC Became Law in Washington

In 2021, as part of a package of tenant protections related to the COVID pandemic, the Washington Legislature created an RTC for low-income renters being evicted from their homes. The RTC law passed in the same session as a number of laws that assisted tenants: a fiercely debated Just Cause Eviction Statute that protected the rights of renters to be evicted only

for good cause, COVID-19 rental assistance, a law ending the eviction moratorium, and protections from eviction for late or unpaid rent during the pandemic. Unlike other tenant protections that took years of advocacy and many iterations, the RTC statute passed and was funded in the first session it was considered.⁵ In

Northwest Justice Project (NJP)

Northwest Justice Project (NJP) is Washington State’s largest publicly-funded civil legal aid organization and the state’s only LSC-grantee. NJP is the largest partner within the RTC program, hosting a statewide Eviction Defense Screening Line that screens and refers tenants to the providers statewide and runs the Eviction Prevention Unit, providing lawyers for appointment, and providing contracting services. NJP also hosts the statewide Housing Task Force. The other providers of contract lawyers are the King County Bar Association/Housing Justice Project, Tacoma probono Community Lawyers Housing Justice Project, LAW Advocates of Whatcom County, Skagit Legal Aid, Snohomish Legal Services Housing Justice Project, Kitsap Legal Services, Thurston County Volunteer Legal Services, Clark County Volunteer Lawyer Program, Yakima County Volunteer Attorney Services, Benton-Franklin Legal Aid, Spokane County Bar Association Housing Justice Project, and Chelan-Douglas County Volunteer Attorney Services.

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recognition of the unprecedented housing crisis caused by the COVID-19 pandemic, the law took effect immediately upon signing by Governor Inslee on April 22, 2021.

The RTC law tasked the Washington State Office of Civil Legal Aid (OCLA), a state agency responsible for the administration of state funding for civil legal aid, with the role of administering the new program. OCLA had a 90-day window to present an implementation plan to the legislature,⁶ with full implementation to be completed within 12 months of the bill's passage. By January 18, 2022, OCLA was able to certify that every one of Washington's 39 counties had trained lawyers in place to meet the statutory RTC requirements, thus permitting eviction actions to proceed.

While passing RTC, the legislature also ended the governor's moratorium on residential evictions for nonpayment of rent. After July 2021, landlords slowly started to evict tenants again. In October of 2021, programs around the state began to hire RTC staff to represent tenants in this new scheme. At the end of 2022, statewide eviction filing numbers are at approximately 50 percent of pre-pandemic levels, and there are approximately 64 attorneys to provide eviction defense around the state.

Who is eligible, and who is helping them?

RTC is limited to low-income tenants who have been served with an eviction summons, or against whom a complaint has been filed. Tenants who are below 200% FPL, after taxes, or renters who use means-tested public benefits are eligible.⁷

The vast majority of attorneys providing RTC services work for a legal aid provider in Washington State. NJP is one of the largest providers, offering RTC services in nearly every county. In some counties, we are the minor partner, with fewer staff than the local legal aid program. In others, we are the only game in town. To complement this network, attorneys in private practice contract to provide additional coverage.

Eligibility Begins with the Commencement of Litigation

The statute puts the onus on the court to appoint an attorney to a tenant facing eviction. While every indigent tenant has a right to appointment of counsel, the courts do not simply run down a list of available attorneys and appoint the next person in line. Instead, a

tenant calls the screening line and qualifies for appointment of counsel. The screening line refers them to one of the contracted providers, and they go to the court with their attorney. Or, as is more often the case, the tenant appears unrepresented at the first court hearing, the court advises them on their right to appointed counsel, and the hearing is set-over to allow the tenant to be screened for program eligibility and connect with an attorney. In both cases, the court eventually issues an order appointing the attorney.

Other statutory changes to the eviction process gave tenants the information and direction to seek appointment of counsel prior to the first appearance (called a show cause hearing in Washington State). This system presents opportunities for renters seeking earlier intervention to find counsel, but it places the burden on the legal aid providers to implement a screening system, screen for conflicts, and find counsel.

Local Intake Paired with Centralized Intake Connects Litigants with Counsel

The legislature modified the statutory eviction summons and the statutory pay or vacate notice to include information about RTC and encouraged tenants to call and ask for appointment of counsel. Before the launch of RTC, a technical advisory workgroup engaged providers across the state and determined that both an intake and placement model where local programs could conduct local intake, and a centralized intake system should be made available to all tenants facing eviction. As the statewide partner with an existing hotline and experienced screeners, NJP created a central screening phone line—the Eviction Defense Screening Line—to answer those calls. Our dedicated screeners respond to phone calls, voicemails, online applications, and call-back requests to evaluate each tenant's eligibility and refer them to the appropriate contracted provider. These changes have increased the ability of renters to reach counsel prior to the show cause hearing. The centralized intake system connects tenants to the appropriate RTC provider in each county to avoid having renters make multiple calls to find help.

Caseloads and Estimating the Demand

OCLA was charged with administering the program with the appropriated funds. The estimated rate of utilization (the number of tenants who would have appointed counsel) was 60 percent of 2016 case filings, or 11,000 statewide. The state budget used estimates from existing court-based eviction defense programs and legal aid providers to estimate an average of four

hours per case and a standing caseload per attorney of approximately 25 cases.⁸

Due to a confluence of factors, the estimate in the state budget for attorneys was low. As described above, when the legislature passed the RTC statute, it also passed game-changing tenant protections. Most important among these is the Just Cause Statute for residential evictions. Before the Just Cause Statute, a landlord could give a notice terminating a tenancy for no reason—concealing discriminatory or retaliatory reasons for evictions. After the passage of Just Cause, a landlord must give one of approximately 17 different justifications. They must also give specific facts, such as dates, names, and details for their justification, providing new avenues for tenants to prepare their defense.

These changes rewrote the rules of unlawful detainer defense. What was once a same-day hallway consultation and a brief appearance became a substantive fight with robust defenses and prevention of eviction for illegal or false reasons. Additional protections for tenants led to increased complexity of cases, resulting in more time invested on cases than was previously experienced in the courthouse-based tenant advocacy programs that predated RTC.

Our state funder has recognized the new normal of how long cases take, lowering the target of active and annual cases for contracting attorneys. As the legislature takes up the state budget again in 2023, the state funder is factoring in the increased workload of unlawful detainer cases.

RTC in Practice: A Dedicated Team of RTC Providers is Transformative in Eviction Courts

In most jurisdictions in Washington, RTC is provided through one of our dedicated nonprofit legal aid providers. Well-trained groups of eviction defense experts are changing the culture of eviction courts and saving tenants from homelessness. Because our state's RTC delivery system relies on many different legal aid providers and private contract attorneys, the RTC program created a full-time position to coordinate the advocacy of the smaller programs providing RTC. The Statewide RTC Advocacy Coordinator is housed at the King County Housing Justice Project. In coordination with the statewide Housing Task Force, convened by NJP, the RTC Advocacy Coordinator can coordinate trainings, provide guidance, and unify advocacy across the smaller organizations throughout the state who are contracted to be appointed counsel in eviction cases.

Challenges in Implementation

a. Tenant defaults

The goal of RTC is not just access to the courts for indigent renters, NJP is here to preserve tenancies and prevent homelessness. Consistently high rates of eviction decisions made by default against tenants, when tenants simply fail to appear in court, undermine this goal. Tenant default rates in 2022 are as high as 80 percent in some counties.

OCLA and NJP collaborated to create a media campaign about RTC and tenant protections at the outset of the program in hopes of encouraging tenants to show up in court and retain attorneys, thus reducing default judgments. NJP coordinated with locally based community groups to get the word out to those unlikely to see a social media campaign, such as farmworkers and other rural communities.

In addition, default judgments are being addressed through other avenues. Ongoing judicial education related to RTC processes and procedures, regular stakeholder meetings, targeted trainings, and advocacy through in-court litigation are making an impact that we can see in many courtrooms every day. While each courtroom operates differently, advocates are observing changes in the way courts handle eviction cases – from proactively offering tenants the opportunity to be screened for an RTC attorney to denying possession to a landlord even when the tenant did not appear at the hearing because not all appropriate steps were taken. This is an ongoing effort that needs to be paired with additional outreach and tenant education, especially to reach vulnerable communities with historically less access to resources.

One hurdle in creating consistent processes for the administration of RTC is that Washington does not have a unified court system. This disjointedness creates a landscape where all 39 counties have local policies for how appointed counsel eviction cases are handled. While model procedures were provided during the initial implementation, many of these examples were tweaked to conform to local practice, making the ability to counsel clients in numerous jurisdictions more difficult.

b. Last minute requests for appointment

The threat of eviction sometimes does not feel real for a tenant until the sheriff posts a writ of restitution on their door and tells them they have three days to leave or they will be forcibly removed and their property placed on the street. Accordingly, we get many cases where renters have not appeared in court and are only now seeking

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legal assistance, well after the court's decision to evict. Due to many factors impeding their ability to be proactive (e.g., disability, language, fear of an outcome), renters find themselves in this situation. The burden on the RTC program is immediate. An advocate must drop everything, race to the courthouse to seek a stay, and then prepare a case on extremely short notice.

State law provides limited authority for a court to order a stay in these circumstances. An affirmative step NJP took to address this issue was to petition our state Supreme Court for a court rule directing trial courts 1) to advise litigants of their right to an appointed lawyer, 2) to grant automatic stays for tenants in default who seek appointment of an attorney, and 3) to provide continuances of hearings for tenants. This proposed rule has been published for comment on an expedited basis and could become law in early 2023. Any statewide implementation of RTC would be challenging without anticipating the impact on the program of last-minute requests for representation and the need for court rules or policy changes that reflect the reality of late requests for assistance.

c. Confusion in court and screening eligibility

In order to maintain confidentiality and promote accurate eligibility determinations, one goal of the system is to avoid conducting eligibility screening in open court. Aside from the privacy issues, the opportunity for error is high. Thus, trained RTC providers and Eviction Defense Screening Line staff complete telephonic or in-person screenings. As this often relies on a phone call to the Eviction Defense Screening Line, wait times, and potential confusion, some tenants have misunderstood their eligibility and how to connect with appointed counsel. The combination of local and centralized screening continues to be a work in progress that will require time, flexibility, and continued collaboration to fine tune.

d. Adequate coverage for conflicts, vacations, and absences

RTC differs vastly from intake at most legal aid programs where the process often requires assessing whether the case has merit, meets priorities, or otherwise checks a box. RTC providers ask two questions: (1) do you have a summons? and (2) are you indigent? If the answer to both questions is yes, they are appointed counsel. LSC eligibility issues and conflicts

may determine which legal aid organization ultimately provides representation, but the right to appointment is clear. As a result, the case volumes are higher, and intake is demanding. To meet the demand for appointed counsel, RTC programs must have significant redundancy built into the intake and attorney appointment model.

Another reason for redundancy is the presence of conflicts inherent in multi-tenant households. While some multi-tenant households will not have conflicts and all members can participate in the litigation with the same attorney, NJP has seen a significant number of cases involving tenants who do not share the same goals in representation and therefore require separate counsel. One common example is where one tenant is accused of the behavior resulting in the eviction, but lives with another tenant who has different interests in resolving the case. One eviction filing quickly consumes attorney resources when the tenancy involves three or more different tenants, each potentially requiring appointment of separate counsel. We have spent training time and had difficult conversations with our partners to ensure that firms do not unnecessarily determine a conflict exists when joint representation possible. Not every law firm handles conflicts in the same way, and without training and attention to this issue, inequities and inefficiencies can result from unnecessary referrals due to nonexistent conflicts.

Imagining the Future of RTC

The speedy implementation period of RTC in Washington has been a huge benefit to tenants, many of whom would have been unable to access full representation before the law passed because of the limited resources available. As we continue to develop and adapt the statewide systems for RTC, we also recognize several areas where the law could develop to impact how RTC in Washington will function going forward.

RTC creates opportunities to develop landlord-tenant law that never existed before. Prior to RTC, appeals of adverse decisions were relatively rare. The risk of an adverse decision often resulted in a tenant avoiding trial or declining to pursue an appeal. With RTC, we have increased the number of opportunities to appeal bad decisions and challenge courtroom practices that harm tenants. After one year of RTC, our program has generated more eviction-related appeals than in the past 10 years combined.

With a new civil RTC, analogies are often drawn between appointed counsel for tenants and criminal defense, yet the two types of representation operate in

the separate silos of the criminal and civil legal systems. Bedrock rights within the criminal system, such as the right to effective assistance of counsel and the related right to continuances to be able to effectively prepare, are not automatic within a civil RTC model. Washington courts seem to be in agreement that a RTC is meaningless unless it is a right to effective assistance, but this leaves open the question of what “effective assistance” means. Another issue to be developed is what constitutes the knowing and voluntary waiver of defenses by unrepresented litigants, especially under a statute that requires action by the court to appoint counsel, leaving an opportunity for a defendant to appear unrepresented without counsel if the court fails to make such an offer.

Our program does not have to be limited to the rights and remedies delineated in the RTC statute. NJP has developed a housing practice that prioritizes housing stability and fighting discrimination in housing. Through this experience, we are able to advance the rights of tenants beyond evictions and build on these new tenant protections. One example is in wrongful evictions. Our RTC lawyers spot emerging issues, such as landlords misrepresenting their basis for eviction to more easily evict tenants. These cases are handed-off to our field offices that file wrongful eviction lawsuits to recover the client’s property or obtain damages.

RTC is creating a system in which legal aid is present in every court, every day. This system means the bench has a growing recognition of tenants’ rights and is building relationships with civil legal aid lawyers who represent the tenants. Judges can no longer rubber-stamp writs for possession or judgments in favor of landlords, knowing that the tenant may obtain an attorney and seek to vacate the writ and dismiss the case.

An example in one county shows the proof of concept. Previously in this county, legal aid attorneys appeared only sporadically in eviction cases, and many landlords routinely obtained default relief. Even if a tenant appeared, the judges rarely administered the hearing in a way that would elicit a defense. Since RTC



Eviction Prevention Unit, NJP, June 2022.

and dozens of hearings with counsel for tenants, these same judges are now closely scrutinizing even requests for default judgments to ensure that the landlord has complied with the law and that no procedural defenses are apparent from the pleadings. Today, some courts in the county are making records on behalf of a tenant who did not appear to preserve their rights and sometimes even denying landlords the relief they requested.

Conclusion

The landlord-tenant relationship will always involve a massive power imbalance. Washington has made vast improvements in tenant law—outlawing “source of income” discrimination, requiring just cause for eviction—but these rights are not enforced if tenants lack representation. RTC creates more opportunities for tenants to have their basic housing rights upheld. Although just over one year into full implementation of RTC, we can see incredible change in the way these cases move through the legal system now that tenants have dedicated advocates. As we noted at the beginning, this has been like building a plane as we fly it. But, through some turbulence this plane is on its way, and the course is set to transform this system for a more just and equitable world.

- 1 Scott Crain is a statewide advocacy counsel for Northwest Justice Project (NJP) in Seattle, Washington. Currently, Scott’s work focuses on the rights of low-income people to live in safe and stable housing, free from discrimination. Prior to working as an advocacy counsel, Scott helped found NJP’s Medical Legal Partnership (MLP). With MLP, Scott litigated public benefit issues on behalf of Medicaid-eligible children to prevent statewide reductions in Temporary Assistance for Needy Families (TANF), expand autism services, and enhance EPSDT services for kids with chronic health conditions. Scott also worked as a staff attorney for NJP in rural



Macy Disney and Ali Kingston, NJP, presenting on right to counsel at the Housing Justice Network Conference, October 2022.

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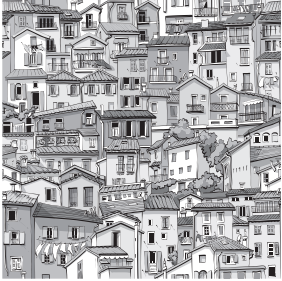
- Washington, and was previously a research fellow for the Institute on Race and Poverty. Scott received a J.D. *cum laude*, from the University of Minnesota, where he was the editor-in-chief of the *Journal of Law and Inequality*, and has a B.S. in Mathematics from Seattle University. Scott may be reached at scottc@nwjustice.org.
- 2 Michelle Lucas (she/her) is the Managing Attorney for the Eviction Prevention Unit at the Northwest Justice Project. Prior to joining NJP, Michelle was the Directing Attorney at the Tenant Law Center in Seattle, WA, working to increase housing stability for low-income tenants, provided holistic legal assistance to sexual assault survivors in Washington State with Sexual Violence Legal Services (now the Sexual Violence Law Center), and served as a judicial clerk in Snohomish County Superior Court. Michelle is a graduate of Seattle University School of Law and has a background in social services and victim advocacy. She is a current member of the Washington State Access to Justice Board. Michelle may be reached at Michelle.Lucas@nwjustice.org.
- 3 Abigail Daquiz is the Director of Advocacy at the Northwest Justice Project, where she serves as part of the executive team supporting 21 offices and numerous statewide teams. Before coming to NJP, Abigail was a senior trial attorney at the Office of the Solicitor of the U.S. Department of Labor, enforcing federal labor and employment laws in partnership with agency investigators and compliance officers. Her work has involved complex litigation, administrative advocacy, and community and partner engagement in cases involving workers in the Western Region (CA, OR, AZ, WA, ID, AK, HI, and the U.S. Protectorates in the Pacific). Abigail is a board member of Benefits Law Center in Seattle, WA, a legal aid nonprofit serving community members experiencing homelessness and living with disabilities in social security advocacy. She has served on the Board of the Northwest Immigrant Rights Project, and was the founding president of the Filipino Lawyers of Washington. Abigail earned her J.D. (2004) and B.A. (2001) at the University of Washington.
- 4 Edits to this article were provided by Catherine Brown, Managing Attorney of the Screening Unit and Eviction Defense Screening Line and Eva Wescott, Senior Managing Attorney for Client Access. Catherine and Eva are invaluable resources for anyone working with a statewide intake/hotline considering the implementation of an eviction defense screening line. Catherine may be reached at Catherine.Brown@nwjustice.org. Eva may be reached at Eva.Wescott@nwjustice.org.
- 5 While the legislature funded a prior effort to study the impact of access to attorneys in certain counties, the COVID pandemic stopped that effort before it could be completed.

- 6 OCLA Implementation Plan — Right to Counsel for Indigent Tenants at <https://ocla.wa.gov/wp-content/uploads/2021/07/Implementation-Plan-Right-to-Counsel-for-Indigent-Tenants-7-15-21-Final.pdf>
- 7 LSC programs will note that having “after taxes” added to the eligibility questions would create hurdles to adapting existing systems to RTC. In Washington, we engaged LegalServer to implement updates to intake to facilitate income screening with tax deductions.
- 8 These caseload guidelines have been revised over time and should continue to be reviewed as the RTC program evolves.

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- of the Montana State Bar, and a small business owner. Mada earned her Juris Doctorate from the Alexander Blewett III School of Law in 2020 with a certificate in Alternative Dispute Resolution and a Pro Bono Honors designation. She is admitted to practice in the State of Montana, Fort Peck Tribal Court, and Northern Cheyenne Tribal Court.
- 3 William F. Hooks (he/his) is the Director of Advocacy for Montana Legal Services. He was in private practice and served as the state's Chief Appellate Public Defender and Chief Public Defender of the trial division prior to joining MLSA.
- 4 A client's household income must be at or below 80% of the Area Median Income (AMI) of their county of residence. For instance, the household income for a family of four in Missoula County must be at or below \$65,300 to be eligible for the MEIP.
- 5 MLSA's definition of eviction for MEIP purposes is those tenants who received a notice to vacate, have been served with a complaint for possession, are in the middle of an eviction proceeding, or are the subject of a self-help eviction by the landlord.
- 6 The data for 2022 are current as of October 7, 2022. Case data for housing cases handled by MLSA staff attorneys and MEIP contract attorneys are derived from MLSA's internal reports.
- 7 https://www.washingtonpost.com/business/interactive/2022/rising-rent-prices/?utm_campaign=wp_main&utm_medium=social&utm_source=twitter
- 8 Article: Spreading Justice to Rural Montana: Rural-ity's Impact on Supply and Demand for Legal Services in Montana, 76 Mont. L. Rev. 225, 245-246 (Summer 2015).
- 9 <https://www.mtpr.org/montana-news/2022-01-03/as-u-s-population-stayed-relatively-flat-montanas-grew-1-6-during-the-pandemic>.
- 10 Sam Schaefer, Individual Income Tax: Analysis of CY2020 New Residents, and Income Trends After Moving a Report Prepared for the Financial Modern-

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Lessons Learned from Starting an Eviction Clinic During a Pandemic

By Andrew Thomas, Housing Resource Attorney and Tenant Assistance Legal Clinic (TALC) Director,¹ Indiana Legal Services

In 2020, Indiana Legal Services was asked to provide assistance to tenants facing eviction in the City of Fort Wayne, despite state and federal eviction moratoriums.



The clinic started, with generous funding through the City of Fort Wayne, in a meeting room large enough to accommodate social distancing, at the City Building where some eviction hearings were held during the scariest heights of the pandemic.

The clinic was even held virtually for some time as pandemic shutdowns became prevalent. As society reopened, the clinic housed itself at the small claims court where most evictions are filed. Today, the clinic has served over 650 tenants, and has been cited as an innovative model for providing tenant defense. The pandemic was likely a once in a lifetime experience. But out of the fear and uncertainty of the pandemic, there was also hope for change and the ability to put action to what formally were just meetings about what could be. I wish to share some of what I learned from my experience.

1. Little Steps for Big Results

The first lesson we learned is that a lot comes from a small first step. Putting up a table on eviction day. Taking on more housing cases. Talking to the court clerks and judges about having a clinic at the courthouse. Tiny steps can lead to a long walk; small goals

Three services are required to avoid eviction and stabilize housing: 1) rental assistance, 2) social services, and 3) legal representation.

lead to bigger accomplishments. It may seem corny, but the clichés about taking a leap of faith are true for starting a legal clinic. Patience is key, and advocates should expect that the clinic may take some time to be successful.

2. Coalitions Are Vital to Housing Stability Programs

Second, landlord-tenant defense requires coalition building and cooperation with other organizations. Our clinic involves cooperation with local government, social service organizations, nonprofits, legal aid organizations, and pro bono service providers. It became clear that the city's collaboration was working well, better than was hoped. We believe this success is because the various organizations looked up from their "silos" and welcomed communications and initiatives to provide services quicker and more robustly than the organizations could separately. In an eviction action in Indiana, a tenant can be evicted very quickly, often within a couple of weeks after the filing of the eviction claim. By having open communications between different service providers, tenants had a much better chance of receiving the services when they actually needed them.

3. Three Requirements for Housing Stability in Evictions

Third, three services are required to avoid eviction and stabilize housing: 1) rental assistance, 2) social services, and 3) legal representation. It is clear that the robust rental assistance provided to tenants was as, or more, effective at avoiding evictions than eviction moratoria. Conversely, as rental assistance has waned, evictions have increased, in some places very shortly after rental assistance programs shuttered. Not every tenant can avoid eviction. Oftentimes, legal services can only buy more time or lessen the consequences of eviction. This is where social services can be critical. Our

© LESSONS LEARNED,
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clinic model has insisted on the availability of all three required services at the courthouse, and that guidance must be available to a tenant in real-time, as delay can assure housing instability. So, Indiana Legal Services and the Volunteer Lawyer Program can provide legal advice and representation with an attorney available onsite on eviction trial days. Social services are made available through a partnership with nonprofits, including Just Neighbors and the United Way, and rental assistance help was made available to tenants at the courthouse at both initial hearings and trials.

4. Without Help, The Eviction Process Is Rigged Against Tenants

Fourth, the process is rigged against tenants, especially if the tenant does not seek help. Tenants facing eviction rarely have legal representation in Indiana, even after factoring in eviction clinics, legal aid, and pro bono initiatives. No jurisdiction in Indiana provides a right to counsel in eviction cases. Tenants have few protections under the law, and some legal protections are so defective that they are useless. For example, an Indiana statute provides that tenants must receive 10 days' notice if they will be evicted for nonpayment of rent. However, many exceptions exist to the requirement, including that the lease can simply state that no notice is required, rendering this statute useless.

5. Change Is Possible

Fifth, we can make change—this is a lost cause, but cause for opportunity. For example, the eviction avoidance work in Fort Wayne has provided rental assistance to over 6,700 households, given legal assistance to over 650 clients, and transformed the way that the courts approach evictions. Before the pandemic, the eviction court provided little assistance directly to tenants, therefore tenants could be evicted in as little as 10 days. Every case must now be reviewed and presented to an Eviction Diversion Facilitator, a full-time court employee. Cases take longer to go to hearing, requiring at least 20 days and a mandatory initial hearing before seeking trial. Eviction cases are also focused on problem-solving, inviting legal aid and social service organizations to work with tenants at the courthouse. One magistrate has freely admitted that, before the pandemic, he did not like the idea of having such service available at the courthouse for various practical

reasons. Now, however, he is a stalwart defender of the reforms made in his court and the strides made in filling in the justice gap. Further, while there is no right to representation in Indiana, clinics have sprung up across the state to fill some of the justice gap, each tailored to its community's needs.

Lacking a right to representation does not mean that representation cannot be made available to all who want it. Indiana's eviction clinics (Fort Wayne's program is just one example) show this model can make sustained and real impact even without the explicit right to counsel. Our efforts protect some of the most vulnerable people in society: the common profile of a tenant facing eviction is a minority, single woman with children, often with a physical or mental disability. It has been my privilege to help create and expand the clinic in Fort Wayne which promotes housing stability and protects vulnerable people from homelessness.

1. Andrew Thomas is the Housing Resource Attorney for Indiana Legal Services and the director of the Tenant Assistance Legal Clinic in Fort Wayne, Indiana. He began his career as an AmeriCorps fellow at the Department of Housing and Urban Development (HUD). Andrew may be reached at Andrew.thomas@ilsnet.net.

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© IMPLEMENTING A STATEWIDE RIGHT TO COUNSEL FOR TENANTS, *Continued from page 34*

- (NCCRC). The NCCRC works in 41 states at the state and local level to establish the right to counsel for low-income individuals in civil cases involving basic human needs such as child custody, housing, safety, mental health, and civil incarceration. He is the recipient of the 2018 Innovations Award from the National Legal Aid and Defender Association (NLADA). Previously, John worked as the Enforcement Director for the Central Alabama Fair Housing Center and as a law fellow/consultant at the Southern Poverty Law Center. He graduated from Northeastern University School of Law, where he was a recipient of a Public Interest Law Scholarship (PILS). He is the author of many law review articles, including Appointment of Counsel for Civil Litigants: A Judicial Path to Ensuring the Fair and Ethical Administration of Justice, *Court Review*, Vol. 56 Issue 1 (2020). John may be reached at jpollack@publicjustice.org.
- 5 Maria Roumiantseva is the Associate Coordinator of the National Coalition for a Civil Right to Counsel (the NCCRC) and a Staff Attorney at the Public Justice Center. Before joining the NCCRC in 2020, Maria worked at Legal Services of Central New York, Inc. (LSCNY) as a staff attorney where she primarily practiced housing law and eviction defense. Maria began her legal career as an Attorney for Children at the Legal Aid Society, Juvenile Rights Practice in Brooklyn, New York. She graduated from the City University of New York (CUNY) School of Law in 2013 and is licensed in New York and Maryland. She is the author of *A Nationwide Movement: The Right to Counsel for Tenants Facing Eviction Proceedings*, *Seton Hall Law Review* (2022). Maria may be reached at RoumiantsevaM@publicjustice.org.
- 6 For an elaboration on this, see ACLU and NCCRC, *No Eviction Without Representation: Evictions' Disproportionate Harms and the Promise of a Right to Counsel* (2022), <https://www.aclu.org/report/no-eviction-without-representation>.
- 7 National Coalition for a Civil Right to Counsel, *Eviction representation statistics for landlords and tenants absent special intervention*, http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats__NCCRC_.pdf.
- 8 While the Maryland law uses the phrase “access to counsel,” it is still a right to counsel because the enacted law specifies that covered tenants “shall have access to legal representation...”
- 9 These factors include but are not limited to: (1) The prioritization of certain groups of individuals by income, zip codes, census tracts or other priority criteria; (2) the availability of program funding; (3) the number of trained legal services attorneys available to provide legal representation; and (4) the scope of the need for legal representation.

- 10 Even with careful phasing in of the program, in certain RTC zip codes, demand for program services often outpaces staff capacity in certain RTC zip codes during periods where filings surge or staff are absent due to planned or unexpected leave. As a result, intake is sometimes paused to allow staff to catch-up on their active caseloads. When intake is reopened, tenants who had previously reached out earlier in their eviction process are in more immediate need of assistance.
- 11 ARPA funding can be expended through December 31, 2026 on obligation incurred by December 31, 2024.

© THE ESSENTIALS OF STRATEGIC PLANNING, *Continued from page 22*

- ment lawyer, and private practitioner. He is a member of the MIE board and an elected member of the American Academy of Appellate Lawyers and American Law Institute. Jon may be reached at jon.laramore@ilsi.net.
- 4 Leslie Powell-Boudreaux is the Executive Director of Legal Services of North Florida (LSNF). Leslie has worked as Senior Attorney of LSNF's Pensacola office, where her primary areas of practice were housing and consumer issues and representation of victims, including children within the dependency system and victims of domestic and sexual violence. She was also a Senior Attorney with Legal Services of Greater Miami's Employment and Economic Security Unit. Leslie serves as President of the Florida Civil Legal Aid Association and is Past President of United Partners for Human Services. She is also appointed to the Florida Courts Technology Commission and the Judicial Management Committee's Access to Justice Workgroup by the Chief Justice of the Florida Supreme Court and to the Voluntary Bar Liaison Committee of the Florida Bar. Leslie may be reached at Leslie@lsnf.org.
- 5 Maria Thomas-Jones is the Chief Executive Officer of Legal Aid of North West Texas (LANWT), serving in that capacity since December 2016. She has worked for LANWT (or its predecessor entity) since April 1999. Maria has served in various roles while at LANWT: Staff Attorney at a domestic violence shelter assisting clients with family law and protective services and as Supervising Attorney of the family law unit in Dallas, Texas. Ms. Thomas-Jones joined LANWT's administrative team as Deputy Director until selected as CEO. Ms. Thomas-Jones oversees the operation and direction of the firm consisting of over 340 dedicated staff providing civil legal services to a low-income individuals, families, and communities in 114 counties in North and West Texas. She is a graduate of Miami University (Oxford, Ohio) where she received a B.A. in Political Science with a minor in Economics. She attended Case Western Reserve University Law School in Cleveland, Ohio and is licensed to practice law in Ohio (inactive) and Texas.
- 6 The ABA Standards for the Provision of Civil Legal Aid are available at https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/.

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