

Written Testimony of Hon. Nathan L. Hecht  
Chief Justice, The Supreme Court of Texas  
Before the Committee on the Judiciary  
United States Senate

*Closing the Justice Gap:  
How to Make the Civil Justice System Accessible to All Americans*

July 9, 2024

Chairman Durbin, Ranking Member Graham, Members:

Thank you for convening this hearing on what has come to be called the justice gap: the divide between the justice system haves and the have-nots, between people with the means to access basic civil legal services and people who need them but cannot afford them, the poor and people of limited means.

I am Nathan Hecht, Chief Justice of the Supreme Court of Texas, a position I have held for 10 years. I have been a Member of the Court for 35 years, since 1989—longer than anyone in Texas history.

The highest-ranking judge in each state, the District of Columbia, and the territories—58 of us in all—are members of the national Conference of Chief Justices. CCJ meets regularly to consider the administration of justice in state courts and conducts projects to improve the justice system, such as on opioid cases, bail, fees and fines, guardianships, juveniles, mental health, technology, AI, and admission to the bar, to name but a few. I was CCJ president from late 2019 to mid-2021, during the beginning of COVID. CCJ and the state justice systems are supported by the National Center for State Courts. NCSC, like the Legal Services Corporation, the major provider of legal services throughout the United States, is more than 50 years old.<sup>1</sup>

I know I speak for all my CCJ colleagues when I say the justice gap—the denial of justice to those to whom it has been promised merely for want of means—is a crisis for the country that we must address with our full energy.

*The pervasive need for legal assistance*

Since the U.S. Supreme Court’s 1963 decision in *Gideon v. Wainwright*,<sup>2</sup> criminal defendants in federal and state courts have a constitutional right to legal counsel. No such right exists in civil cases except as occasionally provided by state law. A person who cannot afford a lawyer—and there are millions of people who fall into that category—may have no choice but to try to represent himself *pro se*. But as Abraham Lincoln is famously credited with saying, “a man who represents himself has a fool for a client.” The *pro se* litigant, who rarely understands the rules and procedures of the law, or even its language (which is sometimes barely English), is not likely to achieve a favorable result, even with a meritorious position. Having a lawyer makes all the difference in the world.

In 2022, state courts handled some 18 million general civil, domestic relations, and juvenile cases (out of 64.6 million total, including criminal). That number is down about 22% from 2019, before COVID, but is on the rise.<sup>3</sup> Although numbers are hard to come by, state court judges (by one count, some 30,000<sup>4</sup>) commonly report that at least one party is *pro se* in well over half of all domestic relations cases. Tenants in eviction cases and debtors in collection lawsuits rarely have lawyers. Bottom line, most parties in millions of civil cases each year in state courts do not have lawyers.

This is a relatively new phenomenon. I served on a Texas district court in Dallas—a civil trial court—for five years in the early 1980s. If I had even one case a month in the courtroom with a *pro se* litigant, I was tempted to think it was divine punishment for some misdeed. The person rarely understood what was happening, how to answer, what to say, even when to stand and sit. When I thought the person might be right but was not helping himself, I was barred from trying to assist. Judges can't help one side or the other, even if they need it, even if one might think they deserve it. There were more *pro se* litigants in the family courts then, but not like now, in over half the cases. The increase in *pro se* litigation not only produces results without regard to the merits of the claims presented but makes court processes less efficient.

The problems of lack of access to legal assistance are not confined to the courtroom. Self-help with even simple legal matters often fails, with disastrous consequences. Seaman Chester Robey, who served in World War II and the Korean War, called the local tax office for a homestead exemption on two small lots with the trailer and shed he called home. When it was denied, he simply paid the additional taxes without questioning. A good military man. But as years passed, facing utter destitution, he called a legal aid lawyer who, with a few hours' work, got him the homestead exemption he had been wrongly denied as well as veterans benefits he was due. What was impossible for Seaman Robey was a light lift for the lawyer.<sup>5</sup>

There are millions of Seaman Robeys. At a hearing on state funding for access to justice years ago in the Texas Legislature, a victim of domestic violence recounted how she was in fear for her life when she finally called legal aid for help. A lawyer whisked her before a judge and obtained a protective order, then helped her move on and find a job and housing to care for her children. At the hearing, looking at the legislators present, she said, "You saved my life." A small step for legal aid, a new world for her.

Basic civil legal needs run the gamut. Some are more complex. Many are very simple. But all are critical to the people who need them. Without legal assistance, they lose jobs, homes, and lives when they shouldn't. Studies in many states, including Texas, show that the burden of unmet legal needs falls on society, adversely impacting communities, economies, businesses, and taxpayers. I understand that such a study in New York years ago helped ignite efforts to publicly fund legal aid that continue to this day. Stories of the difference basic civil legal services make in people's lives are powerful. So is the community improvement that results.

Unmet needs for basic civil legal services—the justice gap—direly impact people’s lives, court processes and efficiency, the economy, and society. I must add, as a steward of judicial office, that the justice gap also threatens the integrity of the rule of law itself, suggesting that it applies not to all and not equally, as promised, but only to people of means.

*One response: pro bono publico*

For more than a century, local bar associations have encouraged lawyers to provide legal services to clients without compensation *pro bono publico*—Latin for *the public good*. Free services benefit the client, of course, but more broadly, the public. Texas lawyers, like those in every state, are generous contributors of *pro bono* services. Texas’ 114,000 lawyers annually contribute over 2.7 million hours in free legal services plus another 1 million hours in reduced fees hours<sup>6</sup>—at \$250 an hour, a paltry fee these days, worth two-thirds of a billion dollars.

Still, *pro bono* contributions meet only a small fraction of the need for legal services. The legal profession simply cannot meet the demand. Nor should it have to. Grocers are not expected to feed the poor for free, or builders to house them for free, or doctors to treat them for free (though many do). Providing legal representation to those who can’t afford it has been a noble tradition of the bar for centuries.<sup>7</sup> But while lawyers continue to stand to the challenge of providing basic civil legal services to all, all their efforts can’t begin to meet the need.

*Another response: legal aid*

The employment of lawyers to provide legal services to the poor was not widespread before Congress created the Legal Services Corporation in 1974. Since then, LSC has been the principal provider of free legal services in the United States, with offices in every state. Texas has three LSC providers: Texas RioGrande Legal Aid, Lone Star Legal Aid, and Northwest Texas Legal Aid. To be qualified, a client’s annual income must not exceed 125% of federal poverty guidelines—in 2024, \$18,225 for an individual and \$37,500 for a family of four—just above the federal minimum wage. In addition, charitable, religious, civic, and humanitarian groups provide free legal aid. But without LSC, the justice gap would be much wider than it is.

*Funding*

Providing legal aid requires funding. LSC is, of course, federally funded. In the 50 years of LSC’s existence, that funding has gone up and down. Each year, LSC submits a budget request to Congress with compelling evidence that much good is wrung out of every dollar appropriated and that more funding is desperately needed.

Some states fund basic legal services through direct legislative appropriation, case filing fees, and other revenue sources. Local bar associations across the country often have annual drives to raise money for legal aid. In Texas, the Chief Justice Jack Pope Act,<sup>8</sup> named for my predecessor four times removed, authorizes the Attorney General to designate settlement amounts in state-filed

lawsuits, usually consumer-type cases, for basic civil legal services instead of depositing them in the general treasury. Every year since the Act was passed in 2013, the Attorney General has designated all amounts remaining after payment of fees and expenses to go for basic civil legal services. The amounts vary but can sometimes reach \$50 million in a year. The designations demonstrate the faith of the Attorney General and his office that funding for basic civil legal services is needed and will go to good end.

Beginning in the late 1970s, changes in the law required payment of interest on lawyer trust accounts holding client funds for distribution. A client's funds are usually on deposit only a short time, so the amount of interest per client is small, but the total for all such accounts can be significant. IOLTA programs—interest on lawyer trust accounts—have been developed (and upheld by the U.S. Supreme Court) requiring lawyers to remit trust account interest to an agency for use in funding legal aid. The amounts generated fluctuate with interest rates. In the 2008-2009 national economic downturn, rates fell to zero. In Texas, IOLTA funds went from around \$20 million per year to almost nothing, and continued to exist at all only because some banks continued to pay interest on lawyer trust accounts despite the market. The decline in IOLTA had a silver lining in Texas: to make up the lost revenue, the Legislature for the first time passed a general appropriation for basic civil legal services.

### *Making the case*

The argument for increased funding for basic civil legal services is often too abstract. What services, *exactly*? For whom? Why?

The argument needs a face. Like a veteran's face. Veterans' willingness to serve their country, leave family and community, and put themselves in harm's way, only to return to job-searching, stressed families, and civilian life, deserve help with basic civil legal problems. People get that. In Texas, legislators have been anxious to increase legal aid funding earmarked for veterans. Or the funding argument can take the face of a sexual assault victim. However distant that problem may seem to those blessed not to have experienced it first-hand, it is readily understood. In Texas, Legal Aid for Survivors of Sexual Assault—LASSA—is strongly supported with funding from policymakers. Or the funding argument's face may be that of a survivor of a storm, pandemic, or other disaster. The need to rally around the distraught—children, the elderly, families—with legal assistance amidst calamity is easily appreciated. In each of these instances, the need for funding for basic civil legal problems is not vaguely someone else's problem far removed but real and pressing

The established, undisputed need for funding for basic civil legal services continues and is growing. The justice gap cannot be bridged without it.

### *Bridging the justice gap*

Day-to-day, access to basic legal services depends on the availability of lawyers and their assistants to provide them. But delivery and staffing are always being improved.

*Technology.* Computer-assisted meetings increase efficiency. Training for lawyers and staff need not be in person. In a state as large and rural as Texas, this is critical. Legal aid providers in busier, urban areas can share procedures and updates with offices across the state at once. Clients with similar issues can be counseled together. Participation in court proceedings is often remote—one product of the pandemic—saving lawyers and clients alike the time and expense of traveling to the courthouse. Forms and other documents can be processed and stored more easily and dependably. Legal aid offices do not typically have IT departments. In Texas, large law firms have provided their own IT personnel to consult without charge

*AI.* The benefits of AI are emerging and quickly becoming part of legal aid. Meetings, documents, and depositions can quickly be summarized. Initial clients interviews can be analyzed to identify likely problems and solutions. Court proceedings can more easily be arranged and changed. Many legal aid cases—like evictions and debt collections—can be categorized and common processes established. AI is not about to replace humans, and it cannot (yet?) dependably supply accurate briefing or client advice, but it can help in the process.

*Fairer court procedures.* The civil justice system in the United States is largely the product of the 1935 Federal Rules of Civil Procedure. Most states' rules replicate or draw on the FRCP, which are designed to provide fairness and order in the most complex cases but not economy and simplicity in the vast majority of the 18 million civil cases in state courts. Rules developed for categories of cases—like evictions, debt collection, and simple employment and contract cases, for examples—can be more navigable for litigants who choose to be *pro se* and more efficient for legal aid providers. Fairness should never be compromised for the sake of simplification,<sup>9</sup> but neither should it be denied by complexity.

*Expanding providers.* Practicing law requires a law license. Legal services to the poor, like all legal services, must be guided by lawyers, but much of the work can be done by trained paraprofessionals without a law license. The Texas Supreme Court has just approved a certification program for paraprofessionals that allows them to perform specified tasks previously limited to lawyers.<sup>10</sup> The programs began in Washington, Utah, and Arizona but have now spread to a dozen or so states. Enlisting paraprofessionals can increase legal aid services while reducing the cost. Additionally, community justice workers can help people recognize legal needs and find help.<sup>11</sup>

*Recruiting, training, and licensing legal aid lawyers.* There is currently a shortage of lawyers desiring a legal aid practice. Those who do find the wonderful client connections and the work to help them professionally and personally rewarding. But the current system does not make their choice easy. A law license generally entitles the holder to handle any matter—from complex class actions, antitrust cases, and billion-dollar transactions, to small claims and drafting simple wills. As if an M.D. degree would entitle the bearer to do brain surgery or fix hangnails, his choice. Medical education and training have long been differentiated for the intended practice. The largely standardized law school education and bar exam are not well-suited to produce lawyers who want a more limited practice, like legal aid lawyers, and their costs pressure those who cross the finish line to seek more remunerative rewards. The Conference of Chief Justices has formed a Committee

for Legal Education and Admission Reform—CLEAR—which will look at the process of becoming a lawyer from beginning to end—high school and college preparation, law school admission, law school training, and licensure. One prospect is for a student to choose a more specialized course of study and limited licensure at much less expense and aimed at a particular type of practice the lawyer will find rewarding. A legal aid practice can become a more desirable, attainable goal.

*Evangelism.* The justice gap, consequential as it is on so many different levels—human, judicial, societal, justice—is not widely recognized. I was seated in a group of older doctors listening to a judge talk about access to justice. They’d never heard it was a problem. Why didn’t lawyers do something? Lawyers are trying, but bridging the gap must be a public priority. A House Appropriations Committee chair once told me that legal aid is underfunded because it’s only a priority for lawyers. If a used car salesman in my district was worried about it, he said, I’d be more concerned. Efforts to engage people outside the legal community can improve support for funding for access to justice. LSC’s Leaders Council does just that, involving business people, professionals, sports figures, and others to understand the need and make the case. In Texas, Exxon and AT&T, as well as others in the business community, have supported funding for basic civil legal services. Recently, the American Academy of Arts and Sciences devoted its first open issue of its regular *Daedalus* publication to informing its largely non-legal readership of the challenges in achieving access to justice.<sup>12</sup> For the Senate Committee on the Judiciary to conduct this hearing today will only help bring attention to the need to bridge the justice gap.

### *Bipartisan*

I have saved one of the most important points for last. Bridging the justice gap is humanitarian and principled, it is good government, it benefits all of society. It is not partisan and should never be seen in that light, blinding in today’s environment.<sup>13</sup> The Conference of Chief Justices is absolutely nonpartisan, its members sworn to a person to uphold the rule of law and administer justice fairly and equally to all. CCJ has regularly, dutifully, and ardently unanimously adopted resolutions supporting access to justice.<sup>14</sup> The U.S. Department of Justice, sometimes seen through partisan lenses, has established a distinctly nonpartisan and very effective Office for Access to Justice, led by Rachel Rossi. Director Rossi and I have collaborated on matters, always to very good end. And LSC, directed by a bipartisan board required by statute,<sup>15</sup> has long resisted any concerns that its efforts could be partisan.

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Justice for only those who can afford it is neither justice for all nor justice at all. I’ve imagined a *Twilight Zone* episode in which a hungry traveler in a strange town goes from eatery to eatery trying to find food. One is closed, another has a steep admission fee, a third is for members only, a fourth has an order form written in gibberish. In the end, he’s still hungry.<sup>16</sup> For many Americans, the justice system is too expensive, too hard to navigate, too far removed from real people, as closed as if the doors were locked. Justice to them seems as far out of reach as food for my traveler.

This justice gap can be bridged with adequate funding, innovation, and public commitment. I appreciate this Committee's interest in that goal. The integrity of the rule of law is at stake.

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