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THE BROAD REACH OF LIMITED SCOPE REPRESENTATION: A
PATHWAY TO ACCESS TO JUSTICE

*Krista A. Hess**

The promise of a fair and free society, of equal access to courts and of justice for all cannot be met when most of the citizens in many of our courts are deprived of access to the advice, counsel and guidance that a lawyer can provide. Working together, we must find a way to match supply with demand for competent, affordable and essential legal services.¹

INTRODUCTION

Nearly every article written about the aspirational quest for equal access to justice for all, at some point or another, cites the rising number of self-represented parties in our courts as one of the primary barriers to achieving justice.² This access to justice barrier does not discriminate when the conversation turns to how this divide manifests itself. Logically, we know that self-represented parties may yield an adverse result in their court case because they neglected to present a key piece of evidence or committed a fatal procedural error that subsequently barred them from further proceedings. Attorneys are unjustly affected too, not only because they are not reaching potential clients, but also because the court

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1. Kimberly A. Knox & William H. Clendenen, Jr., *Lack of Legal Aid Undercuts Promise of Equal Justice*, HARTFORD COURANT (July 26, 2013, 6:57 PM), <http://www.courant.com/opinion/hc-op-knox-connecticut-must-supply-lawyers-for-20130726-story.html> [<https://perma.cc/C82K-BVNK>].

2. MARK H. TUOHEY III, ET AL., ABA, HANDBOOK ON LIMITED SCOPE OF LEGAL ASSISTANCE: A REPORT OF THE MODEST MEANS TASK FORCE 8-9 (2003).

process and the day-to-day adjudication of court business slow down and become less efficient for everyone to accommodate those who need more help. And, of course, there is the impact on the court. As a neutral finder of fact and a fair and just decision-maker, it is the court's obligation to ensure the justice system provides a just forum where all aggrieved parties, regardless of their representation status, are afforded a fair and equal opportunity to have their voices heard.

Current data published by the American Bar Association (ABA) indicates there are 1,315,561 licensed attorneys in the United States.³ In Connecticut, the ABA reports there are 21,517 resident active attorneys⁴—a 15.8% increase from 2006⁵—and yet the number of self-represented parties in Connecticut courts seems to be holding steady at an alarmingly high rate. Eighty to eighty-five percent of family cases and over a quarter of civil cases filed in Connecticut courts in Fiscal Year 2014/2015 have at least one party who appears self-represented.⁶

The rising number of self-represented parties directly correlates to an increasing level of unmet legal needs among Connecticut individuals and families. People need attorneys to help and advocate for them. Attorneys need access to a viable revenue stream and clients who have unmet legal needs. With the ever-increasing demand for legal services,⁷ the broad reach of Limited Scope Representation (LSR) can span the divide between the need for legal help and the growing demand for legal services. LSR can provide stability and sustenance for both attorneys and clients, while providing much-needed relief to resource strapped courts. Attorney James T. Shearin, chairman of Pullman & Comley and president of the Connecticut Bar Foundation, pointedly observed in his *Connecticut Law Tribune* article published in January 2016:

3. ABA, LAWYER DEMOGRAPHICS (2016), http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2016.authcheckdam.pdf [<https://perma.cc/3PU8-CEDP>].

4. ABA, ABA NATIONAL LAWYER POPULATION SURVEY: 10-YEAR TREND IN LAWYER POPULATION BY STATE (2016), http://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-2006-2016.authcheckdam.pdf [<https://perma.cc/JY9J-JJMW>].

5. *Id.*

6. On file with Connecticut Judicial Branch.

7. Quintin Johnstone, *An Overview of the Legal Profession in the United States, How That Profession Recently Has Been Changing, and Its Future Prospects*, 26 QUINNIPIAC L. REV. 737, 738 (2008).

We cannot, as a modern society, allow the ills of poverty to define us, especially when such basic human rights as food, shelter, education and health care are denied to people not because they are unavailable, but because our legal system is inaccessible to those too poor to hire a private lawyer to represent them.⁸

In order to effect true change in the fight for access to justice, the legal profession must broaden its view of what traditional legal services look like and consider how best to help those most vulnerable among us.

I. THAT WAS THEN, THIS IS NOW

We are change averse. As a people and a society, we tend to entrench ourselves in that which has always been and that which is familiar, comfortable, and reliable. We hail institutions; celebrate tradition; memorialize convention. Our legal system is no different. Nowhere, in fact, are ritual and tradition more deeply rooted than in the administration of justice, the practice of law and the art of lawyering. Lawyers are counselors and confidants. They are advocates and advisors whose ethical and professional responsibility is to assess and zealously advocate for their client's position under the rules of an adversarial system.⁹ The legal profession is, after all, governed by rules and statutes, precedent and first impression, and, above all else, the duty to uphold the rule of law.

How then can a profession so steeped in history and tradition and so wedded to the rule of law effectively advocate for anything less than full representation for the entire life of a client's case? Can an attorney reasonably limit the scope of his or her representation and still uphold their professional responsibility to be competent, prompt, and diligent?¹⁰ Further, can advocacy that is discrete and limited by definition and by practice ever be zealous and competent? The answer is an emphatic "yes!"

Limited Scope Representation refers to the practice of

8. James T. Shearin, *State Faces Continued Crisis in Legal Aid Funding*, CONN. L. TRIB. (Jan. 15, 2016), <http://www.ctlawtribune.com/id=1202747261949/James-T-Shearin-State-Faces-Continued-Crisis-in-Legal-Aid-Funding> [https://perma.cc/6XLE-XE83].

9. RULES OF PROF'L CONDUCT, Preamble 1-2 (CONN. COMM'N ON OFFICIAL LEGAL PUBL'NS 2016).

10. *Id.*

breaking legal representation into separate and distinct tasks.¹¹ Instead of handling an entire case from start to finish, the lawyer may apportion certain tasks in a case to the client, as appropriate.¹² For example, a lawyer may provide legal advice and prepare pleadings, while a client handles all other tasks in the case, including filing court documents and appearing at hearings.¹³ LSR is also known as “unbundling,” “disaggregated legal services,” “limited assistance representation,” and “discrete task representation.”¹⁴ The terms are often used interchangeably, and all refer to the same practice.¹⁵

We are in a time when funding shortages have reached critically low levels on both the state and federal fronts. Many states and state bar associations, including Connecticut, are exploring the feasibility of access to justice initiatives beyond LSR, such as civil Gideon efforts for both indigent and moderate means litigants.¹⁶ The term “civil Gideon” refers to *Gideon v. Wainwright*, which established, in general, a defendant’s right to counsel in criminal matters.¹⁷ The civil Gideon movement seeks to establish this same right for civil litigants.¹⁸

To exacerbate matters further on the financial front, 2007 and 2008 saw the U.S. housing and financial markets experience a catastrophic course correction in part because of the large volume of outstanding subprime loans and variable rate mortgages.¹⁹ Subsequently, interest on lawyers trust accounts (IOLTA) funds, in turn, fell to record lows.²⁰ The IOLTA crash created historically

11. ABA, STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., UNBUNDLING FACT SHEET (2011), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_fact_sheet.authcheckdam.pdf [<https://perma.cc/CW32-YMJG>] [hereinafter UNBUNDLING FACT SHEET].

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. Robert J. Derocher, *Access to Justice: Is Civil Gideon a Piece of the Puzzle?*, ABA B. LEADER, July–Aug. 2008, at 11, http://www.americanbar.org/publications/bar_leader/2007_08/3206/gideon.html [<https://perma.cc/9FCX-8JJA>].

17. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

18. Derocher, *supra* note 16.

19. Sheree R. Curry, *5 Contributing Factors in Housing Market Crash*, WASH. POST (Aug. 31, 2013), https://www.washingtonpost.com/realestate/5-contributing-factors-in-housing-market-crash/2013/08/29/8532ddb6-0f60-11e3-85b6-d27422650fd5_story.html [<https://perma.cc/Z8NB-B59K>].

20. Robert J. Derocher, *The IOLTA Crash: Fallout for Foundations*, ABA B. LEADER, Sept.–Oct. 2012, at 1, http://www.americanbar.org/publications/bar_leader/

low funding levels for legal services organizations that relied on the infusion of IOLTA funding to provide legal services to the poor.²¹ This precipitous drop in funding for legal services has resulted in significant cuts to legal aid services and reduced grants, making successful civil Gideon initiatives in most states a financial impossibility. As a result, LSR is perhaps the simplest, most cost-effective avenue available right now to improve the goal of access to justice by making more legal services available to more people who need them.

If the aspirational goal of a lawyer for every person who needs one is not immediately obtainable, Limited Scope Representation can help bridge the gap for so many who need critical help for their civil legal matter. While LSR would not provide an attorney for every single indigent or near-indigent person embroiled in an adversarial proceeding, if utilized properly, it could increase the number of parties who are represented by attorneys at critical junctures in their court case.

II. LIMITED IS NOT DILUTED

LSR services are not shortcut or second-class services.²² Lawyers who provide LSR services must provide competent, zealous representation, and must comply with all other ethical and procedural rules of professional conduct including the duty of competence; the duty to keep clients reasonably informed regarding matters relating to their case; a requirement that legal fees be reasonable; the duty to safeguard confidential client information; and the duty to avoid conflicts of interest.²³ Even though the duration and scope of the legal services provided may be more narrowly defined and abbreviated, the full ethical and professional obligations still exist as they do with full representation. This is one of the primary educational elements for attorneys who want to engage in LSR services.

A healthy and, frankly, natural fear exists among attorneys

2012_13/september_october/iolta_crash_fallout_foundations.html
[<https://perma.cc/X9GM-RYBN>].

21. *Id.*

22. UNBUNDLING FACT SHEET, *supra* note 11.

23. STEPHEN J. CONOVER ET AL., CONN. BAR ASS'N, REPORT OF THE CBA TASK FORCE ON LIMITED SCOPE REPRESENTATION 4 (Sept. 24, 2012), http://c.ymcdn.com/sites/www.ctbar.org/resource/group/641186f5-de53-4d42-87c6-bf25a3280c29/Litigation_Section/Report-of-Task-Force-on-Limi.pdf?hhSearchTerms=%22limited+and+scope+and+representation%22 [<https://perma.cc/UP46-YY9B>].

that LSR will somehow prevent them from fulfilling their professional duties as advisors and advocates and, subsequently, cause an irreparable misstep that may result in a grievance or a claim of malpractice.²⁴ For these reasons, attorneys who wish to undertake LSR must be wholly educated on the practicalities and requirements of this “consumer-driven” model of delivering legal services and must adhere to the traditional principles of competence, skill, thoroughness and preparation.²⁵

Nationally recognized expert Attorney M. Sue Talia, an advocate for LSR, perhaps said it best in her 2005 paper, *Roadmap for Implementing a Successful Unbundling Program*:

[Education is] a critical and indispensable part of the [implementation] strategy. Many elements of the established bar are still extremely traditional and resistant to change, and despite overwhelming evidence that this is no longer their grandfather’s (or great-grandfather’s) law practice, cling to the old ways as the exclusive method of delivering legal services. Sometimes this attitude is driven by entrenched habit and tradition, sometimes by a sincere belief that anything other than traditional full service representation is a disservice to the client and a breach of professional responsibility.²⁶

Additionally, Attorney Talia hinted at perhaps a larger, more pervasive sentiment among the establishment bar regarding LSR: the trepidation that no one will uphold their end of the LSR agreement. We can all safely assume the court would far prefer to have before it a represented party than a self-represented party. As a result, there is anxiety among the bar that judges will not permit an attorney to withdraw his or her limited appearance at the successful conclusion of the representation as memorialized in the limited appearance and as explicitly defined in the retainer agreement. Past being prologue, the concern is likely not without basis. It is only through education and adherence to the rules and governing principles of LSR that a legal culture can embrace the nuances of an LSR practice and transition to a place where LSR is viewed as an acceptable method of delivering legal services.

Further, there has historically been a concern that clients who

24. M. SUE TALIA, ROADMAP FOR IMPLEMENTING A SUCCESSFUL UNBUNDLING PROGRAM (2005), <http://www.courts.ca.gov/partners/documents/Roadmap.pdf> [<https://perma.cc/7TCF-XFYD>].

25. *Id.* at 6–7.

26. *Id.* at 6.

enter into an LSR agreement with an attorney may not fully understand or comply with the parameters of the limited engagement agreement, and may place the attorney in a potentially precarious or grievable situation.²⁷ Once again, the critical component of education applies. In their roles as advisors and evaluators, attorneys must assess each case and each client individually and determine whether the client, the facts, and the circumstances are appropriate for a limited scope representation structure. Not all clients or types of civil actions lend themselves favorably to a LSR method of delivering legal services.²⁸ A client must understand the nature and scope of the services being provided by the attorney, and, just as importantly, fully understand the parts of the legal matter that he or she is responsible for.²⁹

III. THE EVOLUTION OF LIMITED SCOPE REPRESENTATION IN CONNECTICUT

The topic of Limited Scope Representation has long been a subject of discussion and debate in Connecticut. In June 2004, the Connecticut Bar Association (CBA) appointed an Unbundled Legal Services Study Committee to study the practice of Limited Scope Representation. The Committee concluded that while LSR would “help alleviate the increasing burden placed on the Connecticut Courts by pro se litigants[,]”³⁰ the issue warranted further study to address potential ethical issues raised during the Committee’s work.³¹

Subsequently, in 2006, the CBA convened the Task Force on the Future of the Legal Profession to study the different ways in which the profession of lawyering was changing, particularly in light of the increasing numbers of litigants who were representing themselves. The Task Force issued its final report in May 2006, which included, among other possible approaches to the “pro se”

27. Alejandra Navarro, *Law à la carte: Unbundled Services Increase Access to Justice and Courtroom Efficiency*, 18 QUINNIPIAC U. SCH. OF L. MAG. 13, 14 (2012).

28. *Id.*

29. BOARD OF BAR OVERSEERS, OFFICE OF THE BAR COUNSEL, LIMITED ASSISTANCE REPRESENTATION, <http://www.mass.gov/obcbbo/limitedassistance.pdf> [<https://perma.cc/H5BN-3ALT>].

30. CBA UNBUNDLED LEGAL SERVS. STUDY COMM., PRELIMINARY REPORT TO THE HOUSE OF DELEGATES 1–2 (June 7, 2004), https://c.ycdn.com/sites/ctbar.site-ym.com/resource/resmgr/annual_reports/CBA_Unbundled_Legal_Services.pdf [<https://perma.cc/CEX2-LRZA>].

31. *Id.*

issue, the topic of LSR. The Task Force concluded that LSR benefited both the client and the lawyer.³² It benefited the clients, by affording them the opportunity to pay a reduced fee for the discrete tasks performed by a lawyer;³³ the lawyers, by providing them with access to clients who would not otherwise be able to retain the services of counsel.³⁴ In fact, the Task Force conducted a survey of Connecticut lawyers on the practice of LSR and the attorneys that responded had a favorable opinion of the practice.³⁵ However, just as in the earlier 2004 report, this CBA Task Force concluded there were potential ethical and legal risks associated with the practice of LSR.³⁶

While the debate over LSR never really went away entirely; the discussions enjoyed newfound vigor with the adoption of the Connecticut Judicial Branch's first-ever Branch-wide Strategic Plan in 2008. Under the implementation of the Strategic Plan, the Self-Represented Parties (SRP) Committee, and later, the smaller Workgroup, were charged with exploring the feasibility of LSR in Connecticut and the impact it might have on Connecticut attorneys, self-represented parties, and the courts.³⁷

Over the course of the next two-and-a-half-years, members of the SRP Workgroup met with local bar associations and CBA sections to discuss the Judicial Branch's proposal on Limited Scope Representation. This outreach was designed to directly address any attorney's concerns and reservations about LSR and to consider stakeholders' feedback as the Branch moved forward with the proposed LSR rule changes.

In October 2011 the Judicial Branch, in cooperation with the CBA and the Connecticut Bar Foundation, presented a Limited Scope Representation Symposium at Quinnipiac University School of Law. This symposium was attended by members of the bench and bar and included a presentation from nationally recognized LSR expert, M. Sue Talia from California. The symposium also

32. CONN. BAR ASS'N, TASK FORCE ON THE FUTURE OF THE LEGAL PROFESSION, FINAL REPORT 26 (May 26, 2006), https://cymcdn.com/sites/ctbar.site-ym.com/resource/resmgr/annual_reports/CBA_Final_Report_on_Task_For.pdf [<https://perma.cc/T4U5-PTBN>].

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 26–27.

37. PUBLIC SERV. & TRUST COMM'N, CONN. JUDICIAL BRANCH, STRATEGIC PLAN FOR THE JUDICIAL BRANCH 48 (2008).

empaneled a diverse group including Superior Court judges, local and out of state attorneys, and experts in the areas of malpractice and grievance for an enlightened and impassioned debate on the issue of LSR in Connecticut.

The panel brought to light many of the arguments in favor of and in opposition to LSR and, more importantly, illuminated the notion that while much progress had been made in this area, there was still widely held mistrust and anxiety about just what this discrete practice meant for the future of Connecticut's legal profession. Connecticut Chief Justice Chase T. Rogers addressed the symposium attendees and responded to concerns that had been vocalized by sections of the Connecticut bar regarding LSR. In delivering her remarks, Chief Justice Rogers turned to the words of former New Hampshire Chief Justice John T. Broderick, Jr. and former California Chief Justice Ronald M. George who jointly penned a *New York Times* article in January 2010:

[W]e believe that limited-scope-representation rules will allow lawyers—especially sole practitioners—to service people who might otherwise have never sought legal assistance If we are to maintain public trust and confidence in the courts, we must keep faith with our founding principles and our core belief in equal justice under the law.³⁸

In order to address and mitigate the concerns of the bar regarding LSR, the Connecticut Bar Foundation convened a CBA Task Force to further study limited scope representation from the perspective of the practicing bar. In October 2012, nearly a full year after being convened and after meeting with various sections of the CBA, the CBA Task Force on Limited Scope Representation presented a comprehensive, articulate and well-reasoned report to the Judicial Branch and to the CBA House of Delegates for consideration. In evaluating the Branch's proposal, the report of the Task Force explored the history of Limited Scope Representation and examined, in detail, the Judicial Branch's proposed revisions to the Connecticut Practice Book and the Rules of Professional Conduct.³⁹ In the end, the Task Force endorsed the Judicial Branch's proposal for Limited Scope Representation in

38. John T. Broderick & Ronald M. George, Opinion, *A Nation of Do-It-Yourself Lawyers*, OPINION PAGES: N.Y. TIMES (Jan. 1, 2010), http://www.nytimes.com/2010/01/02/opinion/02broderick.html?_r=0 [<https://perma.cc/YBZ9-TQPQ>].

39. CONOVER ET AL., *supra* note 23, at 1.

Connecticut, with suggestions for several additional rule changes.⁴⁰

IV. LIMITED SCOPE REPRESENTATION IN SLOW, SILENT MOTION

After nearly a decade of collaborative work by the private bar, state and local bar associations, the Connecticut Bar Foundation and the judiciary, a set of rules permitting an attorney to file an appearance limited to a specific court event or proceeding for any family matter became effective on January 1, 2014. Further, upon completion of the representation, as defined in the limited scope appearance, the rules provided for the filing of a certificate of completion with the court.⁴¹ In an effort to address the concerns of the bar regarding the withdrawal of a limited appearance, the filing of the certificate of completion constitutes a full withdrawal of the attorney's limited appearance in accordance with Connecticut Practice Book § 3-9(c).

The success of LSR for family matters became the impetus for the Judicial Branch's second proposal, this time to the Judicial Branch's Civil Commission and Rules Committee of the Superior Court to further amend Connecticut Practice Book § 3-8 to include all civil cases. The amended rules permitting an attorney to file a limited appearance in all civil matters became effective on January 1, 2016.

It has been difficult to measure the relative success of the LSR rules of practice in Connecticut since their initial passage in 2014. Perhaps the difficulty lies in the radio silence that has accompanied the nearly two years of family and one year of civil court proceedings. There has been no fanfare. No outrage by the bar that a judge refused to permit the withdrawal of a limited appearance and ordered an attorney to remain counsel of record for the life of a case. No cries of foul by clients who entered into limited scope arrangements that the attorney did not fulfill his or her professional or ethical obligation. No evidence that attorneys are losing general representation clients in favor of LSR, and no evidence that the legal culture in Connecticut has become corrupted by a "piece-meal," "watered down" delivery of legal services.

40. *Id.*

41. CONN. PRACTICE BOOK, R. SUPER. CT. Sec. 3-9(c) (CONN. COMM'N ON OFFICIAL LEGAL PUBL'NS 2016).

In fact, most in Connecticut's legal community would be hard-pressed to even notice the trickle of limited appearances that have been filed in civil and family Superior Court cases since the adoption of the rules permitting the filing of limited appearances. It is important to note, though, that despite its seeming inertia, LSR has still managed to slowly and quietly lay the groundwork for the changing pro bono legal culture in other states.⁴² Likewise, in Connecticut, the culture shift appears to be most noticeable and most impactful on the pro bono front.

V. LIMITED SCOPE REPRESENTATION AND PRO BONO

Limited Scope Representation provides an additional layer of allure for many attorneys who may not be comfortable with a long-term commitment to an individual client or case, but still want to do their part to provide pro bono services to those in need. Established in 2011, the Connecticut Judicial Branch's Pro Bono Committee endeavored to reach out to the diverse and talented population of attorneys in Connecticut and encourage them to create sustainable pro bono programs that are easily replicated in other states and by other organizations.⁴³ The Committee opined that the ideal pro bono program ensured sustainability by training volunteers to become subject-matter experts in the substantive area of law relevant to the program, whereby creating a new pool of attorneys who could, in turn, train other pro bono volunteers.⁴⁴ The Connecticut-based firm Robinson & Cole is one such example of this ideal; it utilized the LSR rules to make pro bono more attractive to their own attorneys and more advantageous to clients.

Utilizing Connecticut's LSR rules, Robinson & Cole established the Domestic Violence Restraining Order Program (DVRO) in two Superior Court locations.⁴⁵ In partnership with area domestic violence centers, the pro bono attorneys provide legal assistance and representation to Temporary Restraining Order (TRO) applicants in family matters, including securing restraining orders after hearings for clients with complicated

42. See, e.g., Susan Kostal, *Limited Scope*, S. F. ATT'Y MAG., Spring 2006, at 32, 34 (writing how San Francisco Bar Association is using limited scope representation to reduce the costs of divorces).

43. PRO BONO COMM., CONN. JUDICIAL BRANCH, ANNUAL REPORT 13 (2014), <https://www.jud.ct.gov/committees/pst/probono/ProBonoAnnualReport2014.pdf> [<https://perma.cc/5D42-9PQ9>].

44. *Id.*

45. *Id.* (Hartford and Middlesex judicial districts).

service issues and assisting victims who would otherwise face the system alone by drafting petitions and representing clients at the hearings on those petitions.⁴⁶

The ability to file limited scope appearances for these pro bono matters enabled the Robinson & Cole attorneys to provide help to a larger number of applicants over a defined period of time. The success of the program and the discrete nature of the representation and pro bono obligation have sparked interest from other Connecticut law firms, including Carmody Torrance Sandak & Hennessey, LLP and Updike, Kelly & Spellacy, P.C.

Another pro bono initiative born out of Connecticut's adoption of LSR rules is the New Haven Judicial District Foreclosure Motion Calendar Attorney for the Day Program. This initiative is a joint endeavor between the Connecticut Fair Housing Center (CFHC) and Yale Law School.⁴⁷ Based on the "lawyer for the day" advice-only model of discrete legal services, CFHC attorneys, in cooperation with Yale law students, consult with defendant mortgagors at the foreclosure motion calendar.⁴⁸ Volunteer attorneys and law students advise homeowners regarding their pending foreclosure actions and, if appropriate, file limited scope appearances to provide representation at a motion hearing that same day.⁴⁹

Other states have made use of LSR rules in order to boost pro bono participation and provide legal assistance to disadvantaged populations. The Bar Association of San Francisco (BASF) has taken tremendous advantage of rules permitting LSR through participation in a range of pro bono endeavors, including its Courthouse Project where qualified landlords and tenants receive legal representation during settlement conferences in unlawful detainer cases.⁵⁰ Other initiatives include the Homeless Advocacy Project of the BASF Volunteer Legal Services Program and the

46. Michele Waldner, *Partnering with Robinson & Cole, LLP to Serve Victims in Family Court*, COALITION CHRON. (Conn. Coal. Against Domestic Violence), Summer 2013, at 3, <http://www.ctcadv.org/files/7013/8247/6300/NewsletterSummer2013.pdf> [<https://perma.cc/H7JU-2PVH>].

47. Flyer from the Jerome N. Frank Legal Services Organization, Yale Law School, on New Haven Foreclosure Short Calendar Attorney for the Day Program (on file with author).

48. *Id.*

49. *Id.*

50. Kostal, *supra* note 42, at 29.

City of San Francisco's Project Homeless Connect.⁵¹ LSR rules lend themselves to already discrete, short-term types of civil matters such as eviction and housing cases.⁵²

Additionally, the U.S. District Court for the Central District of California launched a limited scope pilot program in July of 2014 for self-represented parties in civil cases.⁵³ The program provides judges with the opportunity to appoint pro bono attorneys to represent parties for discrete tasks such as appearing at depositions, filing objections to dispositive motions, and providing representation at settlement conferences.⁵⁴ Positive effects of LSR and pro bono are also felt by judges, and the impact of LSR and pro bono on the bench cannot be overstated.

In Massachusetts, First Justice for the Western Division of the Massachusetts Housing Courts and former special advisor to the Trial Court for access to justice initiatives, Dina Fein, has espoused the notion that LSR "really is a win-win-win."⁵⁵ Additionally, "Fein notes that many lawyers report that [LSR] has enhanced their ability to provide legal representation on both a pro bono and a fee-for-service basis. It allows a pro bono attorney to provide meaningful assistance while making a limited and predictable commitment."⁵⁶ These real-world examples of the practical application of LSR demonstrate the day-to-day utility and expansive use of LSR rules of practice for attorneys. The need for pro bono services for the poor and near-poor cannot be understated. Simply put, LSR helps make the provision of pro bono services more feasible for attorneys who want to help but cannot commit to a case or a client for an unspecified and unpredictable period of time.

VI. LIMITED SCOPE REPRESENTATION: NARROWING THE JUSTICE GAP

There are many self-represented parties who are unable to take the legal advice given to them by a volunteer attorney and

51. *Id.*

52. *Id.*

53. *Pro Bono Limited-Scope Representation Pilot Program*, U.S. DIST. COURT, CENT. DIST. CAL., <https://www.cacd.uscourts.gov/attorneys/pro-bono/pro-bono-limited-scope-representation-pilot-program> [<https://perma.cc/L334-SXVQ>].

54. *Id.*

55. Christina P. O'Neill, *Law à la Carte: Limited Assistance Representation's Impact on the Court System and Lawyers*, 17 MASS. LAW. J. 5 (2010).

56. *Id.*

appropriately apply that advice in proper form and context in a courtroom setting where they must then advocate for themselves. There may be several possible reasons for this: perhaps English is not their first language; perhaps they suffer from a physical or cognitive disability that prevents them from being able to process complicated, unfamiliar information; or possibly, they are too scared and emotionally invested to effectively act as their own advocate before the court. It is here that we find the most dire access to justice gaps and the need for something more than Court Service Centers and Volunteer Attorney Programs. LSR is a proven tool that can help narrow the access to justice gap.

Even before LSR became an access to justice issue in Connecticut, the Judicial Branch was fully committed to making our courthouses and our court process accessible to all. Since the establishment of the first Court Service Center in 1998, Connecticut has done a remarkably thorough job of demonstrating this commitment. Today, there are fourteen Court Service Centers⁵⁷ and eleven Public Information Desks⁵⁸ in our civil, family, and criminal courts that assist self-represented parties with their paperwork, answer procedural questions, and provide valuable community resource information. For those court patrons who need more than procedural assistance, but something less than representation by an attorney, Connecticut has also established eighteen Volunteer Attorney “Lawyer for the Day” Programs in the areas of family, foreclosure, small claims, and contract collections.⁵⁹ These programs provide self-represented parties with an opportunity to meet one-on-one with an experienced attorney to obtain legal advice at no cost. While the volunteer attorneys do not file appearances or go to court with the clients, the programs afford self-represented parties with the opportunity to discuss their legal problems with pro bono attorneys who are experts in their given subject-matter.

Regardless of the underlying reasons or motivating factors for self-representation, we know not all of the self-represented parties in our civil courts are indigent. We know that while some litigants

57. *Court Service Centers*, CONN. JUD. BRANCH, <http://www.jud.ct.gov/csc/loc.htm> [<https://perma.cc/JK3S-2J85>].

58. *Public Information Desks*, CONN. JUD. BRANCH, <http://www.jud.ct.gov/pid/default.htm> [<https://perma.cc/568Q-VSZ4>].

59. *Volunteer Attorney Program*, CONN. JUD. BRANCH, http://www.jud.ct.gov/volunteer_atty_prgm.htm [<https://perma.cc/X4M3-UVGG>].

do possess the means to retain an attorney, they instead choose to represent themselves. An even greater number of self-represented parties possess some modest ability to retain the services of an attorney for a discrete portion of their case, but do not. It is this latter group of litigants for whom LSR would be most helpful. These litigants will never be able to obtain full representation, but attorneys who are willing to file LSR appearances can provide representation for these clients' needs. As Massachusetts Judge Dina Fein noted, it is not only a win for the client who has received competent, zealous advocacy for his or her legal matter; it is also a win for the attorney who is exposed to a new client source previously unknown, paid by that client for each discrete task, and a win for the court as a neutral arbiter to preside over cases with a greater number of represented parties.

VII. LIMITED SCOPE REPRESENTATION AND CIVIL GIDEON

In 2006, the ABA passed a resolution that urged state and federal courts to provide legal representation to indigent parties as a matter of right in instances where basic human needs were at risk of being lost. In pertinent part, the resolution calls for:

[G]overnments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.⁶⁰

The difference, as former New Hampshire Chief Justice John T. Broderick, Jr. noted, is not only have the numbers of self-represented parties in our state courts increased, but the population of people who go at it alone ventures far outside our traditional definition of those the legal system would have historically defined as indigent.⁶¹ For many working families, self-representation is the only feasible, viable option and it is a necessity, not a choice. Further, the abstract notion of discretionary income is often an urban myth like the Loch Ness Monster or Big Foot for so many parties who find themselves embroiled in our adversarial system. They have heard stories of

60. ABA, REPORT TO THE HOUSE OF DELEGATES, RESOLUTION 112A (August 7, 2006), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.authcheckdam.pdf [<https://perma.cc/RN2X-QX5E>].

61. Derocher, *supra* note 16, at 12.

such things and seen pictures, but have never personally experienced the phenomenon themselves. The access to justice gap is now enveloping an entirely new class of self-represented party—those who are modest and/or of moderate means.⁶² Those now affected are the working poor, who live, work, and go to school among us every day.

Consider, then, the demographic termed “ALICE” by the United Way.⁶³ In November 2014, the United Way released a report illustrating the struggles of Connecticut’s working poor. The report stated thirty-five percent of Connecticut households earn more than the Federal Poverty Level (FPL) but fall short of a basic cost of living standard.⁶⁴ The United Way calls these households “ALICE”—an acronym for Asset Limited, Income Constrained, Employed.⁶⁵

So, can the discussion about LSR in the context of the ALICE demographic and a similar moderate means population then turn into a discussion about civil Gideon? If the goal is to provide an attorney for every person who needs one for their civil matter, it is logical that LSR and civil Gideon should become part of the same conversation. LSR can make it more feasible to provide an attorney for a party who needs one at a particularly critical point in their case, and, as a result, it seems natural that LSR and civil Gideon should be contemplated together on some level.

Consider the indigent or near-indigent party who can be represented by an attorney at a custody hearing, eviction, or foreclosure proceeding, or the person who can retain the services of an attorney to draft and file a motion for alimony or child support to sustain a working household. Could we not argue the LSR/civil Gideon discussion is worth having for this population of people? The legal community and the judiciary may very well be obligated to have this discussion in light of the access to justice crisis in our courts. In 1919, Reginald Heber Smith, one of the first in the legal community to call attention to the unmet legal needs of the poor, wrote in his book, *Justice and the Poor*, that, without equal access

62. *Id.*

63. UNITED WAY, ALICE REPORT: CONNECTICUT, STUDY OF FINANCIAL HARDSHIP 1 (2014), http://www.unitedwayalice.org/documents/14UW%20ALICE%20Report_CT_Lowres_10.24.15.pdf [<https://perma.cc/Q7EB-8SKR>] (explaining that ALICE stands for: Asset Limited, Income Constrained, Employed).

64. *Id.*

65. *Id.*

to the law, “[t]he system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented.”⁶⁶

Limited Scope Representation as a pre-cursor to civil Gideon is definitely better, but quite far from ideal. Further, those of us engaged in the ongoing fight for access to justice cannot sit idly by and watch the embattled among us be deprived of the basic needs and due process that so many of us take for granted. LSR and civil Gideon together have the unbridled potential to create a jumping off point that casts a wide safety net over the rapidly widening crevasse of access to justice.

Connecticut attorney and chair of the ABA Standing Committee on Professionalism, and past president of the National Conference of Bar Presidents and the CBA, Frederic S. Ury, is a nationally recognized speaker on the future of the practice of law and the “disruptive change” that the legal profession is experiencing. Attorney Ury observes:

We as lawyers—as the profession of law—now have the opportunity of a lifetime to shape the emerging legal services delivery landscape in a way that better serves a vast, unmet public need for access to justice, while preserving lawyers’ essential place in the justice system. Only by seizing that opportunity can we hope to remain an independent, relevant, and self-regulated profession in the twenty-first century.⁶⁷

CONCLUSION

The legal community and the judiciary are bound only by the possibilities they are willing to contemplate in the pursuit of access to justice. Squarely on the table should be the pledge to explore the unexplored and create that which we have only historically imagined to be possible.

We need only look at some of the innovative access to justice initiatives undertaken in Connecticut and in other states to illustrate the reality of this point. Court Navigators have been established in New York in Brooklyn and the Bronx;⁶⁸ Limited

66. REGINALD HEBER SMITH, *JUSTICE AND THE POOR* 9 (Boston, Merrymount Press 1919).

67. Frederic S. Ury, *Saving Atticus Finch: The Lawyer and the Legal Services Revolution*, in *THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION* 3, 12 (Paul A. Haskins ed., 2015).

68. *Court Navigator Program*, N.Y. COURTS, <http://www.courts.state.ny.us/>

Licensed Legal Technicians are being employed in Washington State;⁶⁹ Court Service Centers, Volunteer Attorney for the Day Programs, self-help videos, and, of course, Limited Scope Representation are innovations being utilized in Connecticut and elsewhere.

Limited Scope Representation can become the next momentous wave in the access to justice movement. Consider LSR as a day-to-day, fee-generating practice model for attorneys,⁷⁰ as a boon for pro bono,⁷¹ and, as discussed here, as a precursor to civil Gideon. As a judiciary and a legal profession, we must continue to imagine the unimaginable and push back against the ills of complacency or the often-heard argument of “this is how it has always been done.”

Once again, Connecticut Attorney Frederic S. Ury effectively argues:

The time is now for leaders in the legal profession to join the dialogue on—and thus be able to influence—how legal services will be delivered over the next five to ten years, and what roles lawyers, judges, and the courts will play in the delivery of those legal services We cannot afford to stand still and think that if we just wait long enough, business will return to the way it was conducted ten years ago. Unfortunately, the fact of the matter is that our current business model is, in key respects, dead or dying.⁷²

In the pursuit of access to justice, the legal community so often speaks in terms of its “aspirational” goals to afford every person who needs an attorney and cannot afford one the opportunity to be represented by competent counsel for their civil legal matter. We have made, and continue to make, slow and incremental progress on this front, and yet our access to justice challenges remain virtually unmitigated despite our independent, collective, and sustained efforts.

While warding off a sense of discouragement, we must force ourselves to remember that every achievement in history was

COURTS/nyc/housing/rap_prospective.shtml [https://perma.cc/D4H2-FJ3D].

69. *Limited License Legal Technician Program*, WASH. STATE BAR ASS'N, <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians> [https://perma.cc/L6XG-5MV7].

70. TUOHEY III, ET AL., *supra* note 2, at 41.

71. Kostal, *supra* note 42.

72. Ury, *supra* note 67, at 5.

aspirational by a singular person or some organized body of people at some point in time. The vote to adopt the 19th Amendment giving women the right to vote in 1920 was aspirational before it was a reality; the 1963 Supreme Court decision upholding the 6th Amendment's guarantee of a fundamental right to counsel in *Gideon v. Wainwright*⁷³ was aspirational before it was a reality; and the 2015 Supreme Court decision to legalize same sex marriage in our country started its court battle in the early 1970s.⁷⁴

While there is no suggestion LSR should be contemplated with the same gravity as these aforementioned revolutionary events, consider instead the single mother who is facing eviction and homelessness or the limited English proficient litigant who is facing contempt charges because he did not understand the court's order. The argument could effectively be made that for this population of people and so many others like them facing homelessness or loss of liberty because they did not have access to an attorney, perhaps LSR does indeed rise to historic levels and *can be* that impactful, momentous, and life changing.

The point is that any historic event, regardless of grandeur or diminutive stature, began its ascent as a mere aspiration, undoubtedly plagued by bad timing and a general unpopularity for the furtherance of its cause. Progress is often slow, but even a cursory glance into history quickly reminds us that when perseverance, education, and patience are extolled over defeatism, fatalism, and stagnant thinking, progress almost always wins out, and, in the end, access is enabled and justice prevails.

73. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

74. Andrew Gumbel, *The Great Undoing?*, *ADVOCATE* (June 20, 2009, 12:00 AM), <http://www.advocate.com/news/2009/06/20/great-undoing> [<https://perma.cc/X69F-KADK>].