

WORKING ON THE OUTSKIRTS OF HOPE: ONE INDEPENDENT LEGAL SERVICES ORGANIZATION’S STRUGGLE TO SURVIVE AND SERVE RHODE ISLAND’S LOW INCOME COMMUNITIES

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I founded and run the non-profit, tax exempt, public interest, civil legal services agency called the Rhode Island Center For Law And Public Policy (RICLAPP).¹ RICLAPP was ambitious in trying to meet the never-ending needs of low income Rhode Islanders. We served clients at or below 300% Federal Poverty Level (FPL) on a variety of civil legal issues: housing/eviction defense, domestic relations (child custody/support, nominal divorce, domestic violence), public benefits, employment issues, credit collection defense, school-based issues, and business formation for low-income entrepreneurs.

† JD, New England Law. My deep thanks to my wife Kathleen and daughter Jeanine for their strength and support over the years; the paid and volunteer RICLAPP staff who worked so hard to make life a little more gentle for those in need; the City University of New York School of Law and the *CUNY Law Review* staff for their support and hard work in publishing this piece; and a profound thanks to Emily Farrell, who guided and nudged me, and worked so hard to make this piece the best it could be.

¹ *RICLAPP President’s Page*, RHODE ISLAND CENTER FOR LAW AND PUBLIC POLICY, <http://www.riclapp.org/president.html> (last updated 2013), available at <http://perma.cc/QPN3-L2BE>.

RICLAPP is largely funded by private donations, with state and federal dollars all but incidental to our organization's income. Simply stated, because of the way RICLAPP is funded, I'm on the hustle quite a bit. The following paper recounts our efforts to financially survive through a down economy, in a politically charged environment, in a culture that neither understands nor cares about the plight of poor people. I can't state this strongly enough—things exist the way they do because the people in power want them that way.

This paper has two goals. The first is to inform those who seek to begin their own agency of particular financial, political, and social obstacles they may confront. The second goal is to at least generate an honest discussion as to how we can provide legal services to those most underserved and vulnerable in our society. Running my organization is the most important work that I've ever done. I would like to think that our efforts, coupled with this paper, will make things a little easier for those who follow me in this work by highlighting the challenges of trying to procure increasingly scarce funds. This paper addresses the challenges that a non-profit legal services agency such as RICLAPP faces situated during the most dysfunctional economy since the 1930s, trying to raise money not merely to survive, but to stabilize and continue to serve its underserved clients. As of this writing, the outcome of our nearly seven year efforts remains in doubt.

This paper is not a "how to" on raising money for a legal services organization. In short, as Basketball Hall of Famer Charles Barkley once famously said, "I am not a role model."² Moreover, whatever one concludes from some of our successes and failures, there is no fungibility in any approach to fundraising or development. It always takes place in a unique environment that cannot be automatically replicated in time and place. In other words, I'm not attempting to act as a consultant, telling you to apply boilerplate approaches to a given situation. The location in which an organization exists is unique, and the overall political, social, and particularly economic climates are unique. So the cautionary statement here is to look at your own organization, assess your own climate, take what is useful and applicable, and ignore the rest.

If there are two things that I have learned over the past seven years, they are that there is an ever-expanding number of people

² Larry Platt, *Charles Barkley*, SALON (May 30, 2000, 3:24 PM), <http://www.salon.com/2000/05/30/barkley/>, archived at <http://perma.cc/T8YP-2GHA>.

who are underserved or unserved by the legal community, and that legal service organizations, particularly those like RICLAPP, face a variety of impediments to survival, let alone to serving those most in need. The “justice gap” has been well documented over the years.³ It has been over fifty years since President Lyndon Johnson, in his 1964 State of the Union address, told the nation that there were millions of people who lived on the “outskirts of hope.”⁴ Fifty years later, millions still live on the outskirts of hope.

In this paper, I will detail one effort to meet the legal needs of traditionally underserved people. Part I will describe the Founding of RICLAPP and the milieu in which it was founded. Part II discusses our organizational structure, with a focus on the availability and limitation of resources, and the role of “leadership” in trying to overcome those limitations. Part III further details the challenges which I believe are, because of its size, unique to Rhode Island. Part IV looks at the challenges to obtaining funding for RICLAPP. Part V puts focus on the nature of poverty. Part VI discusses the need for a robust Access to Justice program if we are ever to be serious about ensuring that everyone, no matter their station in life, has an equal opportunity to the justice promised to them. Part VII contains some final thoughts.

I. FOUNDING RICLAPP

RICLAPP was organized as a Rhode Island non-profit corpora-

³ See generally LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS: AN UPDATED REPORT OF THE LEGAL SERVICES CORPORATION (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf, available at <http://perma.cc/34MS-SGHL>; Justice Earl Johnson Jr., *50 Years of Gideon, 47 Years Working Toward a “Civil Gideon”*, 47 CLEARINGHOUSE REV. J. OF POVERTY L. AND POL’Y 35 (May-June 2013), available at http://civilrighttocounsel.org/uploaded_files/33/47_Years_Working_on_Civil_Gideon_Johnson_.pdf, archived at <http://perma.cc/ZRS3-BFHN>; Stephen Sachs, *Seeking a Right To Appointed Counsel In Civil Cases In Maryland*, 37 U. BALT. L. REV. 5 (2007); Russell Engler, *Reflections On A Civil Right To Counsel And Drawing Lines: When Does Access To Justice Mean Full Representation By Counsel, And When Might Less Assistance Suffice?*, 9 SEATTLE J. SOC. JUST. 97 (2010); But see, Mark Walsh, *A Sour Note from Gideon’s Trumpet: Playing the Blues for the Right of Counsel in Civil Cases*, 97-SEP A.B.A. J. 14 (2011); Lawrence J. Siskind, *Civil Gideon: An Idea Whose Time Should Not Come*, AMERICAN THINKER (August 6, 2011), http://www.americanthinker.com/articles/2011/08/civil_gideon_an_idea_whose_time_should_not_come.html, archived at <http://perma.cc/944C-T5K4>; Turner v. Rogers, 131 S. Ct. 2507 (2011); *In re Hester-Bey*, No. 14–CV–3903 (CBA)(LB), 2014 WL 6771975 (E.D.N.Y. Dec. 1, 2014).

⁴ Lyndon B. Johnson, *State of the Union*, MILLER CENTER, (Jan. 8, 1964), <http://millercenter.org/president/speeches/speech-3382>, archived at <http://perma.cc/PPE3-X9UA>.

tion on March 31, 2008 and received its I.R.C. § 501(c)(3) designation the same year.⁵ We started with a five-member Board of Directors, comprised of diverse individuals who, save for one member who became our Chair, had little governing experience, particularly with a start-up grassroots non-profit legal services agency. That said, the one thing they all shared was a desire to serve those in need and a passion for that elusive of all concepts, justice.

From its inception, RICLAPP was to be a pro-active public interest law office. We aggressively partnered with community hosts, mostly senior and community centers, along with one pediatric hospital. This approach enabled us to engage in the implementation of “preventative law.” Not an unusual concept, the idea is to get to a client early enough in the process to resolve an issue before it blows up and goes super nova.⁶ Early is better than later. It’s better for the client, and it allows us to conserve resources so that we can assist more people.

Our goal was and remains to bring real value to our hosts and their clients. Based on the feedback we’ve received over the years, we were successful. For us, we had a regularly scheduled monthly or bi-weekly presence in eleven venues located in nine Rhode Island communities. For our hosts, their clients received legal services that they otherwise would not have received. A quintessential win/win.

I was RICLAPP’s incorporator and the first, and so far only, President and Chief Executive Officer. Although I had experience serving with other grassroots non-profit agencies, I had no desire to serve on the Board. Two reasons lead me to this decision. First, the functions of a governing Board are distinctly different than those of management.⁷ The Board is charged with defining the big picture, ensuring the integrity of the corporation’s finances, and raising money.⁸ Management’s focus has to be on the day-to-day operations, including the supervision of staff, oversight and participation in cases, moving the mission to serve more people, and raise money.⁹ Being the manager and a Board member seemed to me to

⁵ *Welcome, RICLAPP*, <http://www.riclapp.org/about.html> (last visited January 29, 2015), archived at <http://perma.cc/QK4N-DJL8>.

⁶ *See, e.g., Welcome to the NCPL, NAT’L CENTER FOR PREVENTIVE LAW*, <http://www.preventivelawyer.org/main/default.asp?pid=overview.htm> (last visited Mar. 12, 2015), archived at <http://perma.cc/7MYZ-ELQ7> (explaining that the center is dedicated to “preventing legal risks from becoming legal problems”).

⁷ NGO CONNECT, GOVERNANCE, MANAGEMENT AND THE ROLE OF A BOARD OF DIRECTORS 1 (2009).

⁸ *Id.*

⁹ *Id.*

be an inherent conflict of interest.

Second, if possible, I wanted to get paid. Under Rhode Island's Non-Profit Corporations Act, I couldn't receive any financial inurement from any service on the Board, even though I worked seven days a week running the agency.¹⁰ At its first post-incorporation meeting, the Board did vote to pay me a wage, "if funding was available." There was never any funding available that would not have had to come out of programming, so since 2008 I have worked as the *volunteer* President/CEO of RICLAPP.

You might be asking yourself, "why?" A RICLAPP associate of mine asked me the same question: why do you continue to do this? My answer, without even thinking about it, was a blurred "because I have to."

In 2006, I ran for the Rhode Island State Senate. The district that I sought to represent was economically diverse, comprising many of Cranston, Rhode Island's most distressed neighborhoods with the city's most affluent.¹¹ For nearly five months, I walked door-to-door to meet voters and discuss issues on their minds. Running for office is a great educational experience in that you learn about the challenges others face in their daily lives. Of course I was aware of much of this, but not in the personal way I became aware by standing at someone's door and listening to these folks tell their stories one-on-one. Over those five months I had acquired a wealth of knowledge that I wanted to draw on to help those in need. And then I lost. With all the information I acquired, it was similar to being all dressed up with nowhere to go.

Compounding the information derived from my race was the exposure to people in need through my private practice. I often ran into those without resources but in need of legal assistance. Unless it was outside the scope of my practice, I did what I could for people, either receiving no money or (and this happened) getting paid in cookies. To be totally frank, they were *great* cookies.

These experiences informed me that, first, there was a seri-

¹⁰ R.I. Gen. Laws Ann. § 7-6-4 (West 2014) ("Corporations may be organized under this chapter for any lawful purpose or purposes subject to the condition that no part of the net income or profit of any corporation will be distributable to its members, directors, or officers.").

¹¹ This was Rhode Island Senate District 26. 10.2% of Cranston's population lives below the federal poverty level, but poverty data from individual census tracts within the district reveals that in some areas the percentage is as high as 21%. See *2009-2013 American Community Survey 5-Year Estimates*, AMERICAN FACT FINDER, <http://factfinder.census.gov/> (last visited April 12, 2015) (access Table S1701, "Poverty Status in the Past 12 Months," searching by place for Cranston, RI and by census tracts 135, 136, 137.01, 138, and 141).

ously unmet need for *pro bono* or *low bono* legal services, and second, that there had to be a better way to organize myself to meet that need. In 2007 I had my epiphany and announced to my wife that I was, at age 59, going to form my own non-profit legal services agency. She then looked at me and said with a very straight face, “you’ve been a non-profit for ten years!” It is true that as Mark and Luke wrote in the Gospels, a prophet is never honored in his own land.¹²

The reality of Rhode Island’s need for additional *pro bono* legal services is more than anecdotal; it is supported by solid census data. The number of Rhode Islanders living in poverty has risen even since 2007. The 2007–2009 American Community Survey (ACS)¹³ shows the percentage of Rhode Islanders below the poverty line¹⁴ remained relatively constant at an average of 11.9% of Rhode Island’s population of just over one million residents.¹⁵ The 2010-2012 ACS, which was published in 2013, estimated that the percentage of Rhode Island’s poor had climbed to 14.2% of all Rhode Island residents.¹⁶

The official poverty rate does not even capture the extent of the problem in Rhode Island. A family of two adults with a total income at 200% FPL in 2014 had an annual household income of \$31,460.¹⁷ According to the Economic Progress Institute in Providence, Rhode Island, the annual cost of living for this family is \$35,509,¹⁸ resulting in an annual income deficit of \$4,049. Moreo-

¹² *Mark* 6:4 (King James) (“But Jesus said unto them, A prophet is not without honour, but in his own country, and among his own kin, and in his own house”); *Luke* 4:24 (King James) (“And he said, Verily I say unto you, No prophet is accepted in his own country”).

¹³ The American Community Survey (“ACS”) is a statistical survey run by the United States Census Bureau that samples small percentages of the population every year. See generally, *About the American Community Survey*, AMERICAN COMMUNITY SURVEY, http://www.census.gov/acs/www/about_the_survey/american_community_survey/ (last visited April 12, 2015), archived at <http://perma.cc/TQZ5-TBVU>.

¹⁴ Based on the Census Bureau’s poverty thresholds. See *How the Census Bureau Measures Poverty*, CENSUS.GOV, <http://www.census.gov/hhes/www/poverty/about/overview/measure.html> (last visited April 11, 2015), archived at <http://perma.cc/J4BV-XHXQ>.

¹⁵ *2007-2009 American Community Survey 3-Year Estimates*, AMERICAN FACT FINDER, <http://factfinder.census.gov/> (last visited April 12, 2015) (access Table DP03, “Selected Economic Characteristics,” searching by state for Rhode Island).

¹⁶ *2010-2012 American Community Survey 3-Year Estimates*, AMERICAN FACT FINDER, <http://factfinder.census.gov/> (last visited April 12, 2015) (access Table DP03, “Selected Economic Characteristics,” searching by state for Rhode Island).

¹⁷ *2014 Poverty Guidelines*, U.S. DEP’T OF HEALTH & HUMAN SERV., <http://aspe.hhs.gov/poverty/14poverty.cfm#thresholds> (last visited April 13, 2015), archived at <http://perma.cc/W6MD-UT5H>.

¹⁸ *Cost of Living Calculator*, ECONOMIC PROGRESS INSTITUTE, <http://www.economic->

ver, based on the 2012 ACS, there were just over 33% of Rhode Island households with incomes at or below \$34,999,¹⁹ which means that about a third of Rhode Islanders make less money than the cost of living in the state. This level of deficit forces a family to decide whether spend money to pay the rent, or for heat or food. Not many could afford to pay for all three. Somehow or other, this family is going to need to find a way to shave \$337 off its expenditures *each month*. Can anyone say that such a family with a household income at 200% FPL is *not* poor?

Not included in the above is Rhode Island's seemingly intractable unemployment rate. According to the U.S. Bureau of Labor Statistics (BLS) and Rhode Island's Department of Labor and Training (DLT), in June 2008, three months after I filed our incorporation papers, the unemployment rate was 7.6%; by June 2009 it had increased to 10.9%; by December 2009 it jumped to 11.9%; it declined slightly to 11.5% in December 2010; until the "recovery" kicked in to the point that unemployment was reported to be 7.6% in September 2014.²⁰ Only five years and three months to get back to being just horrible.

These numbers do not include the labor underutilization measure (U6) which is calculated by the BLS. The U6 incorporates persons who are totally unemployed (a number that only includes those who are activity looking for work) plus those who have stopped looking for work or are employed part time for economic reasons.²¹ For 2014 this calculated to 13.5% of the workforce.²²

And this is the tip of a very big and deep iceberg. Suffice it to say that many of the economic issues in Rhode Island are structural and endemic, and not likely to significantly improve in the near future.

In 2008, there were only a couple of legal service providers available to low income folks in our state. The crown jewel was the

progressri.org/CostofLivingCalculator/tabid/180/Default.aspx (last visited April 13, 2015), archived at <http://perma.cc/G73G-LSR2> (using the tool to calculate the cost of living for two adults and zero children).

¹⁹ *2010-2012 American Community Survey 3-Year Estimates*, AMERICAN FACT FINDER, <http://factfinder.census.gov/> (last visited April 12, 2015) (access Table DP03, "Selected Economic Characteristics," searching by state for Rhode Island).

²⁰ *Rhode Island Labor Force Statistics Seasonally Adjusted*, RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING, <http://www.dlt.ri.gov/lmi/laus/state/seas.htm> (last visited Feb. 5, 2015), archived at <http://perma.cc/F9HC-3J2X>.

²¹ *Alternative Measures of Labor Underutilization for States, 2014 Annual Averages*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/lau/stalt.htm> (last updated Jan. 30, 2015), archived at <http://perma.cc/59XW-V84P>.

²² *Id.*

Rhode Island Legal Services, Inc. (RILS), which was created as a result of President Lyndon B. Johnson's War on Poverty.²³ By the time RICLAPP was organized, RILS was celebrating its fortieth anniversary.²⁴ According to some of their representations, RILS clears about 5,000-6,000 cases per year, not an insignificant number.²⁵ The Disability Law Center has a very discrete mission to serve those with disabilities in a variety of civil legal areas, for example in housing and employment issues.²⁶ The Rhode Island Mental Health Advocate's office, a state agency, is charged with representing clients involved in the public mental health system.²⁷ Finally, the Rhode Island Bar Association (RIBA) had a volunteer legal program (VLP)²⁸ where members of the Bar would sign up to help those with few resources.

Let's assume that RILS completed 6,000 cases in 2008, and that the Disability Law Center and the Mental Health Advocate completed another 1,000, and that the RIBA's VLP completed another 2,000 cases. This would still fall short of the very real level of need in pre-recession, pre-program cut, Rhode Island. This would total 9,000 cases out of a number of 119,000 Rhode Islanders living at or below the poverty line.²⁹

²³ *History, The Founding of LSC*, LEGAL SERVICES CORPORATION, <http://www.lsc.gov/about/what-is-lsc/history> (last visited Feb. 5, 2015), *archived at* <http://perma.cc/YSL9-8Z2G> (stating that the idea of government-provided legal assistance began to take shape during President Lyndon B. Johnson's War on Poverty in the 1960s). *See also* ALTHEA J. HAYWARD ET AL., LEGAL SERVICES CORPORATION, PROGRAM QUALITY VISIT REPORT 3 (2014) (stating that Rhode Island Legal Services began operating as a non-profit legal services organization in 1969).

²⁴ *About Us*, R.I. CENTER FOR LAW AND PUBLIC POLICY, <http://www.riclapp.org/about.html> (last visited Feb. 5, 2015), *archived at* <http://perma.cc/G7FM-H2YM> (stating that the organization was incorporated in 2008); ALTHEA J. HAYWARD ET AL., *supra* note 23.

²⁵ R.I. LEGAL SERVICES, INC., ANNUAL REPORT 2012 3 (2012), *available at* <http://www.rils.org/index.cfm>, *archived at* <http://perma.cc/8FM7-DHPJ> (stating that RILS closed 6,071 cases in 2012).

²⁶ *See Overview*, RHODE ISLAND DISABILITY LAW CENTER, <http://www.ridlc.org/about.htm> (last visited Feb. 5, 2015) ("Rhode Island Disability Law Center (RIDLC) provides free legal assistance to persons with disabilities. Services include individual representation to protect rights or to secure benefits and services; self-help information; educational programs; and administrative and legislative advocacy.").

²⁷ *Rhode Island Office of the Mental Health Advocate*, R.I. SEC'Y OF STATE, <http://sos.ri.gov/govdirectory/?page=DetailDeptAgency&eid=3868> (last visited April 16, 2015), *archived at* <http://perma.cc/93EV-5927>.

²⁸ *How to Choose and Use a Lawyer*, RHODE ISLAND BAR ASSOCIATION, <https://www.ribar.com/for%20the%20public/findingandchoosingalawyer.aspx> (last visited Feb. 5, 2015), *archived at* <https://perma.cc/TN4L-6F5S>.

²⁹ Based on rounding the population of Rhode Island to 1 million and multiplying by the 11.9% poverty rate. *See 2007-2009 American Community Survey 3-Year Estimates*, AMERICAN FACT FINDER, <http://factfinder.census.gov/> (last visited April 13, 2015) (ac-

Let's make one other assumption. For the sake of this analysis, let's take the data published by the Rhode Island Department of Planning and Development and assume that in 2007-2009 there were 31,809 households with annual incomes below \$10,000.³⁰ We know from studies and our own experience that each household can expect to have approximately 2.5 legal issues per year.³¹ If correct, that means that there were 79,523 legal issues each year from this economic cohort alone. If that's the case, and the providers extant in 2008 were clearing 9,000 cases, there was a shortfall of *at least* 70,000 unaddressed legal issues that threatened Rhode Island's lowest-income households. And as you might guess, it hasn't gotten much better over the past six years.

That's the need I saw and why I organized RICLAPP—not to pick up the 70,000 or so shortfall, but to assist those doing this work and to try to meet the overwhelming needs of Rhode Island's most vulnerable residents.

II. RICLAPP: ORGANIZATIONAL STRUCTURE

Any organization should reflect its milieu and its resources. RICLAPP started with nothing, building from the ground up, serving those with nothing and with no hope of moving up. As a result, we needed to keep our grassroots identity foremost in mind as we went about our duties.

A grassroots organization should never scream "hierarchy." Ours consisted of me being in charge, meaning that I had overall responsibility for all RICLAPP activities and programs, with task-related functions delegated to staff. We tried to foster camaraderie, a true brothers-in-arms mentality. It was my job to create a comfortable, welcoming work environment where people were and are treated as professionals. Nobody was asked to do something that I wouldn't do or hadn't done. I created a culture of inclusion, where all voices were heard and respected. I made myself available and accessible to everyone. And I never forgot the commitment that

cess Table B01003, "Total Population," searching by state for Rhode Island and Table DP03, "Selected Economic Characteristics," searching by state for Rhode Island).

³⁰ STATE OF RHODE ISLAND, DEPARTMENT OF ADMINISTRATION, DIVISION OF PLANNING, RHODE ISLAND: SELECTED ECONOMIC CHARACTERISTICS: COMPARISON OF THREE-YEAR DATASETS THE PERIOD 2007-2009 VERSUS 2010-2012, *archived at* <http://perma.cc/W85H-Q475>.

³¹ See LEGAL SERVICES CORPORATION, *supra* note 3 at 13, 15 (comparing seven large-scale, survey-based studies conducted by independent research entities in various states and determining that "the average low-income households experienced from 1.3 to 3.0 legal needs per year").

our people were making to RICLAPP and its clients. As a small organization we needed to be flexible and nimble and that can't happen if there's an inflexible structured bureaucratic hierarchy in the way.

As a result, we were able to develop a variety of legal and non-legal skills and expertise in attorneys, paralegals, and administrative staff because, in a small organization, each of us may have to do something outside the traditional scope of our individual duties. Any one of us might have to cover for another colleague. And when it came to fundraising efforts, it was everyone's responsibility to engage as needed in that effort.

Thus we became a flat organization, like a rug with only a little bump in the middle. I was that bump, elevated enough to make judgments about delivery of programs, to counsel and mentor staff on a variety of issues, and to protect them if they got into the proverbial deep end of the pool.

A. *Resources*

The organization, as noted above, must reflect its resources. Since we had few financial resources, from its beginning to this day, people didn't get paid a lot. And that's a sin as my people, to a person, were worth ten times the top dollar value I was able to pay.

To illustrate this point, at our financial peak, my highest paid attorney earned an annual salary of \$45,000; my next highest paid attorney received a salary of \$38,800; my paralegal/office manager earned \$30,000 per year; while a second paralegal earned only \$16,000; while an administrative clerk earned \$7,500 a year. These were not the salaries they received when they began their RICLAPP careers, but they increased over time.

By way of comparison, the tenth percentile of all lawyers earn \$55,400 annually;³² the National Association for Law Professionals reports that in 2014 the median entry level salary for a civil legal services attorney was \$44,600 annually;³³ and the median wage for a paralegal or legal assistant was \$48,350 annually.³⁴

³² *Occupational Employment and Wages, May 2014, 23-1011 Lawyers*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/oes/current/oes231011.htm> (last modified March 25, 2015).

³³ Press Release, National Association for Law Professionals ("NALP"), Top Salaries for First-Year Associates Remain Flat at \$160,000, But Prevalence Shrinks as Large Law Firm Market Becomes Less Homogenous (Oct. 9, 2014), *available at* <http://www.nalp.org/uploads/PressReleases/2014ASSRPressRelease.pdf>, *archived at* <http://perma.cc/C8LG-DRUG>.

³⁴ *Occupational Employment and Wages, May 2014, 23-2011 Paralegals and Legal Assist-*

These mission-driven, generous souls, whose only motivation was to help underserved Rhode Islanders, were woefully underpaid. As a result of their very real sacrifices, we were able to directly and indirectly help nearly 12,000 Rhode Islanders, many of whom presented with complex issues. Not once did anyone ever complain about conditions or demand more money. Maybe it helped that I didn't take a salary, however most were unaware of my situation until 2012-2013. And to this day, nobody knows how much of my own money I contributed to make sure our financial commitments were met. Because I was able to take myself out of the financial equation, I was able to distribute funds to them.

The reality is that employees, along with interns and volunteers, equals expansion of mission, and that equals more people helped who otherwise would have gone without legal services. We were fortunate in being able to supplement our paid staff with law school interns and volunteer attorneys. Early in our history, RICLAPP established a good relationship with the state's only law school, Roger Williams University School of Law. The law school was a source of smart, dedicated, and hardworking law students who provided great service to RICLAPP and its clients. To this day, we are in touch with many of them as they have since embarked on exciting legal careers, many in public interest law.

We also benefited from a down economy. If that sounds a bit mercantile, I apologize, but truth is truth. In a more robust employment market, we'd never have met and benefited from the service of so many new attorneys. Their contribution to RICLAPP's mission cannot be overstated and if I had room, I'd give each an individual shout-out. Along with the law students and volunteer lawyers, we also were able to attract a variety of administrative volunteers—people who had lost their jobs during the recession and were looking for ways to give back while burnishing their skills and resumes.

Finally, I benefited from the good will and generous spirit of my fellow members of the Bar. No organization can be all things to all people, and we were no different. RICLAPP provided a wide range of civil legal services, but didn't cover some domestic relations issues, bankruptcy, or anything that smacked of complex prolonged litigation. I was allowed to prevail on my friends in the Rhode Island Bar to take some cases on the same basis that we would if we could—that is on either *pro bono* or *low bono* basis.

ants, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/oes/current/oes232011.htm> (last modified March 25, 2015).

These attorneys, while not wanting to provide *pro bono* services full time, were very generous with our referred clients. I want to sing praises to those who stand ready and willing to help us further our mission to help those with the least among us.

Although underpaid lawyers and staff, and volunteers help to reduce expenses, there were still fixed costs that had to be met. There is nothing like cheap rent in a decent building, rent that includes utilities. I have to say that my landlord, the Central Rhode Island Chamber of Commerce was more partner than landlord. It was a comfortable and lucky fit for us.

I was fortunate to find this office for a manageable rent. It was right across from the Warwick City Hall, giving us easy access to a variety of resources. We had a bus stop right outside our doors, making us accessible to those who rely solely on public transportation. This office suite consisted of four separate offices providing enough workspace for staff, volunteers and interns, and ensured that client conferences were confidential. We also had a conference room, which doubled as an additional client meeting space or a venue for staff meetings. Utilities are included, which is huge! And all this for \$1,500 per month.

Among the other fixed costs were Lexis, library, case management software and licenses, Internet access, website design and updates, and professional and premises liability insurance. Even keeping these costs as low as possible, it still was expensive to operate on even a bare-bones basis. At our zenith, we had a monthly payroll and fixed costs of over \$14,000, not including variable court fees and related costs on behalf of our clients and other expenses for which, because of our indigent clientele, we'd never receive reimbursement. Factor those variable costs into the equation and the monthly budget would sometimes balloon to \$20,000. Overall, everything included, we operated on a \$250,000 per year budget. By way of comparison, Rhode Island Legal Services operates on an annual budget of \$3 to \$4 million.³⁵

As our budget suggests, we had an acute challenge, as I'll discuss below.

B. Leadership

I loathe discussing leadership as I have no idea whether I'm good, bad, or somewhere in between. In the saga that was to come, as I now look at events, I am certain that I could have done things

³⁵ ALTHEA J. HAYWARD ET AL., *supra* note 23 at 4.

much better to achieve better organizational sustainability. That said, operating in the milieu of Rhode Island in the period post-2008, I look back and think that I didn't do too badly. I'll let the reader and my peers decide.

There are a couple of things I think are important for an organization's performance. The first is a clearly articulated and consistent vision and mission. Nobody was under any delusion as to what we were trying to do or how we were going about it. Second, I am always on mission. I don't care where I go or whom I speak with, I am on mission. And I urged the staff and my board to do likewise, which for the most part they did. To be clear, this is different from marketing, which I am lousy at. But it's important that people engaged in the practice of the organization extol its virtues to the public, including family, friends, and colleagues. Doing this work is not merely a "job;" it's in every sense a calling. The inertia arrayed against us and our clients, the frustrations derived from a political and economic system where our clients have had their humanity stripped from them, and the lack of resources to bring impact litigation in an attempt to ameliorate the problems that impact our clients all conspire to overwhelm the public interest practitioner. In other words, if it ain't a calling, the attorney won't last long in this business. Public interest law is not the stuff of dreams. Too often it's the stuff of nightmares—literally.

Third, I attempt to treat all staff, paid and volunteer, as the professionals that they are. I believe that's an important part of leadership—setting the standard that you expect others to strive for. And because many of these folks are or were new attorneys or legal professionals, it is important that I be available for advice and counsel. It was not often that I felt I had to compel an attorney to do one thing or another. More often, I was able to guide a case review or discussion in a direction that I wanted to go. The attorney assigned to a case was able to bring her perspective to an issue or strategy which allowed for a free exchange of views. Everyone felt better doing this—the attorneys because I wasn't micromanaging a case, and me because I didn't have to micromanage anyone.

As the organization evolved, others took a more active role in the supervision of RICLAPP. One attorney became Project Director at our Medical Legal Partnership program. A paralegal, with extensive corporate supervisory experience, was able to lead the professional and non-professional staff. And I was always available to everyone to answer questions, give advice, and engage in a mentoring moment.

III. RHODE ISLAND: LOCATION, LOCATION, LOCATION

The mantra of every realtor is “location, location, location.” Location is an important, if not vital, consideration for start-up organizations. What does the local landscape look like? Who are the power players and their agendas? And perhaps more important, is there enough money available to support your mission?

It’s this last part that’s the rub. In a large city with its comparatively infinite resources, in a more economically robust state with a diverse donor base, with local institutions supportive of innovation and a heightened sense of community engagement, a new agency like mine, while having different problems, would at least have had access to financial and institutional resources to some degree. However, in a state with few resources, community leaders and institutions of limited vision, and a real dearth of any community spirit, the chances of success were minimal, if not *de minimis*.

I don’t care whether it was Oliver Wendell Holmes or Alexander Bickel who coined the phrase “nine scorpions in a bottle” to describe the inner workings of the United States Supreme Court.³⁶ If either or both of them had spent much time working in Rhode Island they’d have described the Court as nine butterflies in a garden on a sunny day. And nothing gets the Rhode Island scorpions revved up more than money, the scarcest commodity in the state.

Because of the scarcity of money, any reallocation of dollars to a start-up agency comes at the expense of an existing entity. This is a classic zero sum game—in order for RICLAPP to win, someone else must lose, and vice versa.³⁷ There isn’t much incentive for service providers to collaborate.

And if that’s not enough, Rhode Island is a small town, one

³⁶ Medha Gargeya, *Feldman’s “Scorpions”*, HARVARD POLITICAL REVIEW, Nov. 20, 2010, <http://harvardpolitics.com/online/hprgument-blog/feldmans-scorpions/> (“In *Scorpions: The Battles and Triumphs of FDR’s Great Supreme Court Justices*, Noah Feldman, the Bemis Professor of International Law at HLS, paints the lives of Justices Hugo Black, William O. Douglas, Felix Frankfurter and Robert H. Jackson The title, ‘Scorpions,’ comes from the description of the Court as ‘Nine scorpions in a bottle’ attributed to either Justice Oliver Wendell Holmes or Alexander Bickel (one-time clerk for Justice Frankfurter).”).

³⁷ See generally Kathryn E. Kovacs, *Hobby Lobby and the Zero-Sum Game*, 92 WASH. U. L. REV. 255 (2014) (discussing *Burwell v. Hobby Lobby Stores, Inc.* as a zero-sum game in which the net result is zero meaning that for every gain by one side, there is a counterbalancing loss by the other); Martin E.P. Seligman, Paul R. Verkuil & Terry H. Kang, *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33 (2001) (discussing the legal system as one that is adversarial in nature and is essentially a zero sum game); David Crump, *Game Theory, Legislation, and the Multiple Meanings of Equality*, 38 HARV. J. ON LEGIS. 331 (2001) (discussing the implications of a zero-sum game for legislation affecting equality).

where everyone seemingly knows one another. The elites often come from the same backgrounds, having attended the same schools, played on the same teams, and worshiped at the same churches and temples. Along with these intellectual and social mindsets comes a cultural mindset, leading to a groupthink that retards social growth and change. In this environment, an oligarchy develops at the intersection of law, politics, and private enterprise. Any innovation and change brought from outside by a non-elite is seen as a threat to the stability of the social order. It's the Iron Law of Oligarchy writ large.³⁸

In the traditions of the robber barons and the oligarchs of the 1920s, social programs are only implemented if they serve to support, or at least not threaten, the established order.³⁹ Whether intentionally or inadvertently, this perpetuates a permanent underclass that is then exploited by those in power for professional⁴⁰ or political gain, or at minimum to avoid political liability.⁴¹ The *status quo* is perpetuated because, "The problem of the poor is not only that they lack money, but that they lack power."⁴²

In other words, funds will be expended on behalf of social service programs to ensure the extolling of some faux communitarian spirit, but never enough to actually change the status quo or improve the lot of the underserved.

Thus, in Rhode Island, fundraising is political, and in the immortal truth articulated by Finley Peter Dunne's favorite bartender, Mr. Dooley, "Politics ain't beanbag."⁴³

Rhode Island is not unique merely because both fundraising and social change are political. What makes Rhode Island unique is the proximity of the players.

³⁸ ROBERT MICHELS, *POLITICAL PARTIES: A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMONCRACY* 233-235 (Batoche Books) (2001) *available at* <http://socserv.mcmaster.ca/econ/ugcm/3ll3/michels/polipart.pdf>, *archived at* <http://perma.cc/3WME-E9U5> (explaining that an oligarchy is a predetermined norm of society).

³⁹ *See generally* DANIEL P. MOYNIHAN, *MAXIMUM FEASIBLE MISUNDERSTANDING: COMMUNITY ACTION IN THE WAR ON POVERTY* (Free Press) (1970).

⁴⁰ *See id.* at 21-37 (describing the "professionalization of reform" as a shit in American politics wherein reform is conceived of and implemented by government insiders rather than members of oppressed groups themselves).

⁴¹ *Id.* at 140-46,158.

⁴² *Id.* at 186.

⁴³ *Politics Ain't Beanbag*, TAEGAN GODDARD'S POLITICAL DICTIONARY, <http://politicaldictionary.com/words/politics-aint-beanbag/> (last visited Feb. 5, 2015), *archived at* <http://perma.cc/2DGA-U72L>.

IV. FUNDING

A. “No Money, No Mission”

RICLAPP’s Board Chair has a mantra: “No money, no mission.” So that begs the question, where to get money in order to operate? This is particularly problematic if the public interest legal services organization receives no Legal Service Corporation (LSC) money.

In 1974 the LSC was established as a 501(c)(3) grant making organization to provide financial support to civil legal services organizations throughout the United States serving low-income individuals at or below 125% of the federal poverty guidelines.⁴⁴ Today, LSC remains “the single largest source of funding for civil legal assistance to the nation’s poor.”⁴⁵ It awards or renews grants in a designated “service area” every three years.⁴⁶ However, LSC restricts grantees from participating in class action lawsuits,⁴⁷ providing representation in criminal proceedings,⁴⁸ engaging in litigation to preserve abortion services,⁴⁹ using funds in support of political activities,⁵⁰ representing non-citizens,⁵¹ and using funds to support any labor or anti-labor activities.⁵² LSC grantees must agree to comply with all LSC regulations and must report on organization activities that use LSC funds.⁵³

Each state has at least one local legal services corporation that is supported by the national LSC.⁵⁴ In addition, the LSC makes financial contributions to non-LSC agencies.⁵⁵ For example, in Massachusetts, there are two LSC organizations that receive federal

⁴⁴ *About LSC*, LEGAL SERVICES CORP, <http://www.lsc.gov/about/what-is-lsc> (last visited Feb. 25, 2015), *archived at* <http://perma.cc/62JA-YXUE>.

⁴⁵ *History*, LEGAL SERVICES CORP, <http://www.lsc.gov/about/what-is-lsc/history> (last visited Feb. 25, 2015), *archived at* <http://perma.cc/FP25-3R6N>.

⁴⁶ *Legal Aid Grants*, LEGAL SERVICES CORP, <http://grants.lsc.gov/about/legal-aid-grants#award> (last visited Feb. 25, 2015), *archived at* <http://perma.cc/E4AQ-DA54>.

⁴⁷ 45 C.F.R. § 1617.3 (2014).

⁴⁸ Legal Services Corporation Act § 1007(b)(2), 42 U.S.C.A. § 2996f(b)(2) (West); 45 C.F.R. § 1613.3 (2014).

⁴⁹ Legal Services Corporation Act § 1007(b)(8), 42 U.S.C.A. § 2996f(b)(8) (West).

⁵⁰ Legal Services Corporation Act § 1007(b)(4), 42 U.S.C.A. § 2996f(b)(4) (West).

⁵¹ 45 C.F.R. § 1626.3 (2014).

⁵² Legal Services Corporation Act § 1007(b)(6), 42 U.S.C.A. § 2996f(b)(6) (West).

⁵³ *See Legal Aid Grants*, *supra* note 46.

⁵⁴ *Grantee Profiles*, LEGAL SERVICES CORPORATION, <http://www.lsc.gov/local-programs/program-profiles> (last visited Mar. 12, 2015), *archived at* <http://perma.cc/QQ2Z-PG29>.

⁵⁵ CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., RL34016, LEGAL SERVICES CORPORATION: BACKGROUND AND FUNDING 2 (2013).

funding and two non-LSC organizations that receive funding.⁵⁶ In Rhode Island, we have just one LSC, with no non-LSC organizations that receive funding.⁵⁷

Over the past forty years, LSC funding has been subject to political whim. Some years, the LSC has received generous financial support from the Congress.⁵⁸ However, more often than not, the LSC's budget has been reduced to levels below its original funding level in 1976, adjusted for 2013 dollars.⁵⁹

In conjunction with LSC funding, civil legal service organizations may receive funds from Interest on Lawyer's Trust Accounts (IOLTA),⁶⁰ provided they are not used for any restricted purpose.⁶¹ In Rhode Island, the Rhode Island Bar Association manages the state's IOLTA account and awards grants to provide and improve the delivery of legal services to the poor.⁶² As noted above, in Rhode Island, there is only one LSC-funded agency, the aforementioned Rhode Island Legal Services Corporation (RILS).⁶³ When we started out in 2008, a significant source of RILS' funding came largely from two sources: the LSC and IOLTA funds distributed by the Rhode Island Bar Foundation.⁶⁴ By way of example, in 2011, RILS received over \$3 million in government grants and an additional \$225 thousand (rounded) from the Rhode Island Bar

⁵⁶ See *LSC-Funded Programs in Massachusetts*, LEGAL SERVICES CORP., <http://www.lsc.gov/local-programs/state-profile?st=MA> (last visited Mar. 12, 2015), archived at <http://perma.cc/72Q6-9ZFH>.

⁵⁷ *Rhode Island Legal Services, Inc.*, LEGAL SERVICES CORPORATION, <http://www.lsc.gov/local-programs/program-profile?RNO=140000> (last visited Mar. 12, 2015), archived at <http://perma.cc/BH4Z-7GN2>.

⁵⁸ Legal Services Corporation, *Annual LSC Appropriations 1976-2013 in Constant 2013 Dollars*, <http://www.lsc.gov/congress/funding/funding-history> (last visited Mar. 12, 2015), archived at <http://perma.cc/GE89-PLDR>.

⁵⁹ *Id.*

⁶⁰ When the amount of money a lawyer holds for a client is large, the client is entitled to the interest earned on the account. However, when the amount of money held is nominal, the lawyer is required to deposit the funds into a pooled interest bearing account. The bank then transfers the interest earned to the IOLTA program. The amount of interest earned from the pooled trust is used to support non-profit civil legal services providers. See *What Is IOLTA?*, IOLTA, <http://www.iolta.org> (last visited Feb. 25, 2015), archived at <http://perma.cc/KX5F-RFGK>.

⁶¹ 45 C.F.R. § 1610.4(b) (2014).

⁶² *What Is IOLTA?*, R.I. BAR ASS'N, <https://www.ribar.com/Members%20Only%20Area/IOLTA.aspx> (last visited Feb. 25, 2015), archived at <https://perma.cc/5568-5JY5>.

⁶³ LEGAL SERVICES CORP., 2013 ANNUAL REPORT 1 (2013), available at <http://lsc.gov/sites/lsc.gov/files/LSC/Publications/AnnualReport2013/LSC2013AnnualReportW.pdf>.

⁶⁴ Rhode Island Legal Services IRS Form 990; Rhode Island Bar Foundation IRS 990, both accessed via Guidestar on April 20, 2015.

Foundation.⁶⁵ For RILS, those were big bucks. For an agency like RICLAPP, they were unattainable.

In 2008, there was a non-LSC/IOLTA source of funding that we had hoped to tap—the Rhode Island Foundation, one of the nation’s oldest, and Rhode Island’s only community foundation.⁶⁶ In pre-recession 2008, the Foundation divided its focus, and thus its dollars, into six broad categories, with each category having several sub-categories.⁶⁷ We had hoped that RICLAPP would be eligible for funding from two of those funding categories, “Community Development” and “Health.” Both were broad categories and we thought we would be a good fit for some of those dollars, particularly as we began our community-based programs and joined the Medical Legal Partnership.

Unfortunately, over the years, in part due to the recession and in part due to a change in leadership focus, although the broad categories remained, the sub-categories became much more restricted.⁶⁸ For example, the “Health” category became focused on increasing primary medical services only.⁶⁹ The “Economic Security” category (successor to “Community Development”) became limited to improving Rhode Island’s “environment” for economic growth.⁷⁰ There was a “Basic Human Needs” category but it focused on community agencies that provide so-called “basic needs”: food, clothing, housing, and prescription services to low-income people.⁷¹ Legal services, which can secure many of the above “needs,” are not considered a “basic need” under this regime.

Over time, the nature of the way in which the Foundation awarded grants also changed.⁷² When we started, there were large

⁶⁵ *Id.*

⁶⁶ *Overview*, THE RHODE ISLAND FOUNDATION, <http://www.rifoundation.org/InsidetheFoundation/Overview.aspx> (last visited Feb. 12, 2015) (“Founded in 1916, the Rhode Island Foundation is one of the nation’s oldest and largest community foundations. We are Rhode Island’s only community foundation and the largest funder of Rhode Island’s nonprofit sector.”).

⁶⁷ *Grant Opportunities*, THE RHODE ISLAND FOUNDATION, http://web.archive.org/web/20081201182647/http://www.rifoundation.org/matriarch/Switch.asp_Q_PageID_E_870 (accessed by searching for The Rhode Island Foundation in the Internet Archive Index).

⁶⁸ See RHODE ISLAND FOUNDATION, 2013 ANNUAL REPORT 18 (2013), *available at* http://www.rifoundation.org/2013report/downloads/RIF_2013_Annual_Report.pdf.

⁶⁹ *Id.* at 2.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² R.I. FOUNDATION, 2012 ANNUAL REPORT 4 (2012), *available at* http://www.rifoundation.org/Portals/0/Uploads/Documents/Inside-The-Foundation/RIFAnnualReport_2012.pdf (hereinafter “R.I. FOUNDATION 2012 REPORT”) (stating that in 2012 the Rhode Island Foundation awarded grants to over 1,300 organizations).

numbers of small grants given every six months, but that changed to larger grants to fewer organizations awarded every month.⁷³ We were told that the Rhode Island Foundation's thought was that these larger grants awarded to fewer agencies would have a greater impact on the areas funded. However, by 2012, the Foundation drastically limited the scope of programs it would fund, and the two categories we thought we were eligible for closed up.⁷⁴ In 2014, they answered an email of inquiry stating that the Foundation no longer considers funding programs like RICLAPP. As it turned out, for a couple of years we were able to obtain development dollars from the Foundation. But we were never able to get any substantial funding for direct services programs.

There were other local granting agencies,⁷⁵ but while they liked what we were trying to do, we ultimately weren't a good fit. They funded programs addressing "basic needs" such as food, housing, even health care. Again, legal services weren't thought of as being a basic need.

Like any other non-profit agency, we wrote grants, mailed annual appeal letters to potential donors,⁷⁶ and even did an annual event to raise money. All of these efforts met with a modicum of success. But fundraising is tough work, and required the participation of everyone associated with the agency. Employees, volunteers, management, and Board members all have a role in raising money. If there is one thing that needs 100% buy-in by everyone, it's raising money. Again, no money, no mission.

As experience taught me, there aren't a lot of funders willing to fund direct legal service programs, and those that do usually do so in a specific geographic area. There are more funders that will fund legal education and consultation programs, but while rights education and consultation were part of the mission, the main part—the expensive part—was direct services.

⁷³ *Id.*

⁷⁴ See generally RHODE ISLAND FOUNDATION, 2012 ANNUAL REPORT 2 (2012), available at http://www.rifoundation.org/Portals/0/Uploads/Documents/Inside-The-Foundation/RIFAnnualReport_2012.pdf.

⁷⁵ See e.g., OCEAN STATE CHARITIES TRUST, <http://www.osct.org/> (last visited April 2, 2015); *About Episcopal Charities*, EPISCOPAL DIOCESE OF RHODE ISLAND, <http://www.episcopalri.org/ProgramsMinistries/EpiscopalCharities.aspx> (last visited April 2, 2015).

⁷⁶ An organization's annual appeal letter is a yearly letter that gets sent out, usually around the same time each year, to current and prospective donors asking for general operating funds for the non-profit. Joe Garecht, *The 5 Rules of Successful Annual Appeal Fundraising Letters*, THE FUNDRAISING AUTHORITY, <http://www.thefundraisingauthority.com/fundraising-by-mail/annual-appeal-letters/> (last visited Feb. 12, 2015).

While the Great Recession brought about changes in foundation funding, it wreaked havoc on corporate and individual donations.⁷⁷ As time went on, especially in Rhode Island, corporate and individual donors became less inclined to fund organizations like ours.⁷⁸ Even those organizations serving basic needs that had previously enjoyed foundation, corporate, and individual support suffered.⁷⁹ Last year *The Providence Journal* reported that Rhode Islanders were forty-first in the nation for making charitable donations.⁸⁰

We did receive some money from the usual fundraising methods, and we scored big with a share of the lead paint litigation settlement money. Rhode Island sued several paint manufacturers regarding the lead content in their paint, under Rhode Island's public nuisance statute.⁸¹ In 2005, one of the defendants, DuPont Co., settled with the State and agreed to make a \$12.5 million payment for education, lead abatement, and building code enforcement.⁸² The money was to be distributed to the Children's Health Forum, from which money would be distributed to advance the various purposes of the settlement agreement.⁸³ Finally, by late 2007, some of the money began to flow.

Part of this money was to be devoted to legal services that would enforce building codes and hold landlords accountable for cleaning up their rental properties. According to the National Association of Home Builders, 65% of all residential buildings were constructed prior to 1970.⁸⁴ Additionally, 83% of Rhode Island's low income children lived in older housing,⁸⁵ which if not properly maintained put children at risk for lead poisoning.

⁷⁷ Paul Davis, *Recession Has Taken a Toll on Charitable Giving in R.I.*, THE PROVIDENCE JOURNAL (December 6, 2014, 11:15 PM), <http://www.providencejournal.com/news/content/20141206-middle-class-squeeze-recession-has-taken-a-toll-on-charitable-giving-in-r.i.-video-interactive.ece>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See *State v. Lead Indus. Ass'n*, 951 A.2d 428, 434 (Jul. 1, 2008); R.I. Gen. Laws § 10-1-1 (2014).

⁸² Katie Zezima, *Rhode Island Drops DuPont From Suit Over Paint in Deal*, N.Y. TIMES (July 1, 2005), <http://www.nytimes.com/2005/07/01/national/01paint.html>.

⁸³ See *id.*

⁸⁴ ROBERT DIETZ, *The Geography of the Age of the Housing Stock*, NATIONAL ASSOCIATION OF HOME BUILDERS (Aug. 8, 2012), <http://eyeonhousing.org/2012/08/the-geography-of-the-age-of-the-housing-stock/>, archived at <http://perma.cc/37B4-TPSZ>.

⁸⁵ RHODE ISLAND DEPARTMENT OF HEALTH, *HEALTHY HOUSING DATA BOOK 4* (2012), available at <http://www.health.ri.gov/publications/databooks/2012HealthyHousing.pdf>, archived at <http://perma.cc/37B4-TPSZ>.

In late 2010, RICLAPP was awarded \$150,000 to conduct community education to raise awareness of the danger of lead poisoning and, when appropriate, take legal action against non-compliant landlords.⁸⁶ This grant was by far the largest grant we had received. We showed that not only could we manage, report, and meet and exceed our targets, but we could do so efficiently and effectively. These dollars enabled us to hire staff and serve more low-income families, while using code-enforcement and litigation to improve the housing stock in Rhode Island's core cities. This money was meant to last two years, but when combined with other funds we made it last over three and a half years.

Sadly, there aren't many grants like that available, and those who received less than they thought was their due (see discussion of Zero Sum Game⁸⁷) weren't about to let this happen again. And it didn't.

Another means of earning money was by charging a sliding fee scale for those who could afford to pay something toward keeping the doors open. We provided *pro bono* services for those at or below 125% FPL. For those with incomes at 126% to 300% FPL, we assessed a modest fee on a sliding scale, with the top fees at the higher end of the scale. This sliding fee scale was a twin edged sword. On the one hand, it provided at least a trickle of revenue desperately needed by RICLAPP. On the other hand, it increased administrative costs of tracking and collecting the money. But worst of all, it gave our enemies ammunition with which to attack us. For example, the head of one competing organization and a member of his staff went to several of our collaborative partners, claiming that we were really a for-profit organization disguised as a non-profit agency. That assertion was laughable, if not ludicrous, but it forced me to have to defend RICLAPP and its people, diverting time and attention away from our essential mission of serving those who our attackers claimed to also serve.

B. Collaborations

Most studies that I've read regarding the justice gap in America point to four reasons why the gap exists.⁸⁸ Two of the rea-

⁸⁶ Press Release, Dep't of the Attorney Gen., Attorney Gen. Peter F. Kilmartin and the Children's Health Forum Award \$850,000 in Competitive Grants for R.I. Lead Safety Compliance Programs (March 14, 2011), *available at* <http://www.ri.gov/press/view/13391>, *archived at* <http://perma.cc/3EWB-FQHD>.

⁸⁷ See Kovacs, *supra* note 37.

⁸⁸ See Robert Echols, *State Legal Needs Studies Point to "Justice Gap"*, DIALOGUE (National Legal Aid Defender Association), Summer 2005, *available at* <http://www.nlada>

sons relate to access to services: knowledge of the availability of services and the ability of the prospective client to actually get to the provider of these services. Interestingly, a low-income person's lack of money is not considered to be as significant an issue as one might have thought. But the inability to afford counsel often leads to a person acting *pro se*, which in turn creates more problems for the clients, attorneys, and courts. The fourth reason for the justice gap is that low-income people are often unaware of any legal component to the daily problems they confront.⁸⁹

To overcome the problems related to lack of access, we began regular collaborations, with senior and community centers. Our collaborations were different than the usual presence that members of the private bar have at these centers, where they give a little educational seminar or presentation and take a couple of cases with them, never to return. We provided regular office hours for the clients of our host center.⁹⁰ During these office hours we met with "clients" and provided either counsel, or if necessary, direct services. The key was that we weren't there only for a day, a week, or a month; we were there every month, sometimes more often if there was sufficient demand and interest. While we were a new organization working on establishing our own credibility, we were able to benefit from the imprimatur bestowed by our host.

By providing services in this manner, we not only overcame the access hurdle that our clients faced, but we saved money by expanding capacity without increasing overhead. We also enjoyed some logistic support provided by the host, and we were able to collaborate to provide wrap-around services for our joint clients. Thus, from our end, was the birth of our "preventative law" approach to public interest law. We thought that if we could make ourselves available *before* a minor issue grew to be a legal war, it would better serve our clients and allow us to do more with fewer resources. Therefore, this became a quintessential win/win.

It's important to realize that conserving scarce financial and material resources is *not* the same as receiving money. To help off-

.org/DMS/Documents/1125689452.32/Dialogue.pdf, archived at <http://perma.cc/8ZLQ-CGRM>; LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA 6 (2d ed. 2007), available at <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf>, archived at <http://perma.cc/7XVY-5NFN>.

⁸⁹ *Id.* See also generally Mark Andrews, *Duties Of The Judicial System To The Pro Se Litigant*, 30 ALASKA L. REV. 189 (2013); Kaitlyn Aitken, *Unbundled Legal Services: Disclosure Is Not the Answer*, 25 GEO. J. LEGAL ETHICS 365 (2012).

⁹⁰ See generally *Community Partners*, R.I. CENTER FOR LAW AND PUBLIC POLICY, <http://riclapp.org/partners.html> (last visited Feb. 19, 2015), archived at <http://perma.cc/BBP7-7TA2>.

set the money drain, we were able to obtain small Community Development Block Grant (CDBG)⁹¹ dollars from some of the communities in which we provided services. To shore up the shortfall, we needed to allocate discretionary dollars to these center programs.

This obviously begs the question as to why we didn't just charge the centers for our services. The answer is simple—many of these centers were no more financially well-off than was RICLAPP. And while many centers were city agencies,⁹² many of Rhode Island's cities and towns adopted austerity measures due to the recession.⁹³ Even if times were flush, in hindsight, I doubt that we'd have done much better. As time went by, it became clear to me that not only were legal services not thought to be a "basic" need, but that attorneys as a group were morally suspect, even we cute cuddly public interest lawyers.

It was always fascinating to me how the traditional Bar reacted to our programs at these centers. Some members of the private bar would show up when we were there, snoop around, ask us questions, and leave. Others tried to collaborate with us—as though we were onto a profitable thing and should share with others. But the unkindest cut of all came from those who sought to shut us down at the expense of our clients. One example occurred in a small town where we conducted monthly office hours at one of the town's own community centers. To advertise RICLAPP's free service at the center, the town placed an ad in its own weekly newspaper. A local attorney, who paid for her ads, complained to the publisher and threatened to remove her ads if the publisher didn't stop this "free advertising of RICLAPP services."

Some in the Bar don't like RICLAPP because they think that somehow we are unfairly taking food out of their families' mouths. Frankly, if some of these folks weren't so focused on fee generation, they'd realize that the clients we serve are those that would never be served by the members of the traditional Bar because

⁹¹ See, e.g., *Mayor Announces \$540,300 in Block Grant Funding*, WARWICK ONLINE (June 9, 2011), <http://warwickonline.com/stories/Mayor-announces-540300-in-block-grant-funding,54904>, archived at <http://perma.cc/UBN4-SLL6>.

⁹² See, e.g., *The Pilgrim Senior Center*, WARWICK, http://www.warwickri.gov/index.php?option=com_content&view=category&id=64&Itemid=251 (last visited Mar. 12, 2015), archived at <http://perma.cc/QEP9-H5YB>; *Senior Services*, CRANSTON, <http://www.cranstonri.com/generalpage.php?page=35> (last visited Mar. 12, 2014), archived at <http://perma.cc/7WNK-QKML>.

⁹³ Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1130 (2014) (stating that state revenues plunged during the recession and that cuts in Rhode Island were especially severe for non-education local government entities).

there was no money in it. As I noted before, there are exceptions to this, but over the years it seems that we ran into more of the traditional attorneys and fewer exceptions.

We also were able to collaborate with the Small Business Development Center (SBDC), until recently at Johnson & Wales University, to assist their small business clients with the legal issues associated with starting and running a business.⁹⁴ For that service, the SBDC would pay us a modest hourly rate. We also collaborated with an organization out of Massachusetts that was expanding into Rhode Island called Bridges to Business (BTB), which focused primarily on indigent entrepreneurs.⁹⁵ BTB also paid us a modest, but welcome, fee for our services.

By far, our most lucrative collaboration was with the Medical Legal Partnership (MLP) at Hasbro Children's Hospital in Providence.⁹⁶ Briefly stated, the MLP combines the talents of attorneys and physicians to achieve good health outcomes for traditionally underserved patients.⁹⁷ Essentially, we would see a patient's family referred to us by a doctor who determined the possible presence of some social determinant adversely impacting a patient's health. For example, if there was an unhealthy housing issue preventing a good health outcome, we'd seek to remediate that housing issue so that the medical interventions could have better effect.

Hasbro paid a stipend for this service, which increased a bit over time but was still not enough to pay for the program. Because of the MLP collaboration, we were able to receive some of the lead paint settlement money referenced above. Relatedly, under the Affordable Care Act not-for-profit hospitals are required to work with community based organizations to support the health needs of the community.⁹⁸ Unfortunately, while not excluded, legal service providers are not specifically contemplated as a community-based

⁹⁴ See *About, AMERICA'S SMALL BUSINESS DEVELOPMENT CENTER RHODE ISLAND*, <https://www.risbdc.org/DocumentMaster.aspx?doc=1665> (last updated Nov. 19, 2014 7:50 PM), *archived at* <https://perma.cc/2NBE-3TPF>.

⁹⁵ See *Entrepreneurs Wanted!*, INTERNATIONAL INSTITUTE OF NEW ENGLAND (May 11, 2011), <http://iine.us/2011/05/entrepreneurs-wanted/>, *archived at* <http://perma.cc/SV45-Q7BU> (explaining that Bridges to Business provides business classes, coaching, and support services to entrepreneurs).

⁹⁶ See *HASBRO CHILDREN'S HOSPITAL*, <http://www.hasbrochildrenshospital.org/> (last visited March 20, 2015), *archived at* <http://perma.cc/P2B8-JEMY>.

⁹⁷ *The MLP Response*, NATIONAL CENTER FOR MEDICAL LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/mlp-response/> (last visited Feb. 19, 2015), *archived at* <http://perma.cc/7MPP-S8PA>.

⁹⁸ 26 C.F.R. § 1.501(r)-3; Sara Rosenbaum, et al., *Encouraging Nonprofit Hospitals To Invest In Community Building: The Role Of IRS 'Safe Harbors'*, HEALTH AFFAIRS BLOG (Feb. 11, 2014), <http://healthaffairs.org/blog/2014/02/11/encouraging-nonprofit-hospi>

partner with which recipients of ACA dollars need collaborate.⁹⁹ So the struggle continues.

C. *Follow The Money . . .*

While the mythical words attributed to W. Mark Felt, Deep Throat of Watergate fame,¹⁰⁰ are an appropriate admonition for investigating a story, I'm not certain that "follow the money" is particularly good advice for a non-profit agency. On the one hand, there's little to no non-LSC money available for what we do, but there seems to be more dollars available for what we don't do. RICLAPP is a direct services agency, with a component of dissemination and distribution of legal information and education. Yet there seems to be a bit of money available for legal education and counsel.¹⁰¹

We could apply for and probably receive our share of legal education dollars, but these dollars would be dedicated to a specific purpose and not be available to our prime direct services mission.¹⁰² On the other hand, we could chuck the whole direct services mission and morph into legal information and education.

But why would we do that? The only reason would be to chase

tals-to-invest-in-community-building-the-role-of-irs-safe-harbors/, archived at <http://perma.cc/S9AV-UC29>.

⁹⁹ See 26 C.F.R. § 1.501(r)-3; see also SARA ROSENBAUM, PRINCIPLES TO CONSIDER FOR THE IMPLEMENTATION OF A COMMUNITY HEALTH NEEDS ASSESSMENT PROCESS (2013) available at http://nnphi.org/CMSuploads/PrinciplesToConsiderForTheImplementationOfACHNAPProcess_GWU_20130604.pdf, archived at <http://perma.cc/VQM3-SPFZ>.

¹⁰⁰ Kee Malesky, *Follow The Money: On The Trail Of Watergate Lore*, NPR (June 16, 2012, 12:15 PM), <http://www.npr.org/2012/06/16/154997482/follow-the-money-on-the-trail-of-watergate-lore>.

¹⁰¹ See, e.g., *Child Custody & Adoption Pro Bono Project*, ABA, http://www.americanbar.org/groups/probono_public_service/projects_awards/child_custody_adoption_pro_bono_project.html (last visited April 24, 2015), archived at <http://perma.cc/67FM-8FNW> (funding to attended educational conference); THE CHARLES EVANS HUGHES MEMORIAL FOUNDATION, http://www.cehughesfoundation.org/Program_Focus.html, archived at <http://perma.cc/8BNL-CWTL> (general legal rights education); *Housing*, MACARTHUR FOUNDATION, <http://www.macfound.org/programs/housing/> (last updated May 2014) (housing policy); *Office of Grant Support, Law Funding Sources*, ALBERT EINSTEIN COLLEGE OF MEDICINE, <https://www.einstein.yu.edu/administration/grant-support/law-funding.aspx> (last visited April 24, 2015), archived at <https://perma.cc/8FYV-CJK9> (list of law student scholarships and fellowships).

¹⁰² See NIKI JAGPAL & KEVIN LASKOWSKI, NATIONAL COMMITTEE FOR RESPONSIVE PHILANTHROPY, THE STATE OF GENERAL OPERATING SUPPORT 2011, at 1 (May 2013), available at <http://ncrp.org/files/publications/PhilanthropicLandscape-StateofGeneralOperatingSupport2011.pdf>, archived at <http://perma.cc/C2SK-WWB5> (reporting that in 2011, 1,121 American grantmakers reported that 24% of their overall funding went toward general operating support rather than to restricted purposes).

dollars. However, once an agency goes down the slippery slope of changing mission to chase dollars, too soon it loses focus and identity, and over time becomes less competitive for money for any purpose from any source.

Deciding between these two approaches represents a true Hobson's choice.¹⁰³ On the one hand, in order to take the money we'd cease to exist. On the other hand, changing mission might secure the agency's survival, but have a lesser effect that doesn't get to the root cause of underserved people. I never believed we should allow ourselves to get into this kind of take-it-or-leave-it position.

D. Fund Development: Be Creative

When you're the smallest dog in the fight, you have to get a little creative, especially in fundraising. One way that we thought to do it was to ask the Rhode Island General Assembly to increase certain court filing fees by five dollars in the district court and ten dollars in both the family and superior courts—with the increase being devoted to support RICLAPP.¹⁰⁴

I'd like to take credit for this approach, but to be honest, I stole the idea from RILS. In 2009, RILS petitioned the legislature to increase fees by the same amount to be assessed on very specific filings.¹⁰⁵ In 2010, they got the fee increase; in 2014 we didn't.¹⁰⁶

Making this kind of effort consumes tremendous resources. We worked for nearly a year introducing and supporting these bills. We met individually with senators and representatives, and collectively with them when we testified before the Senate and House Judiciary Committees.¹⁰⁷

A member of my Board was the Senate President's Chief of Staff. As such, we had a certain imprimatur going in. For example, through him I was able to get the senator who sponsored the RILS legislation in 2009 to sponsor our legislation in the Senate in 2014. I was able to have my local representative and friend sponsor our

¹⁰³ *Hobson's choice*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/hobson's%20choice> (last visited Mar. 3 2015), *archived at* <http://perma.cc/3ZJ2-AE25> ("the necessity of accepting one of two or more equally objectionable alternatives").

¹⁰⁴ S. 2368, 2369, 2014 Gen. Assemb., Jan. Sess. (R.I. 2014); H. 7841, 7842, 2014 Gen. Assemb., Jan. Sess. (R.I. 2014).

¹⁰⁵ Legislative Status Report, 2009 Session, Senate Bill No. 311-Sub A, Chapter 372, <http://status.rilin.state.ri.us/> (search Session Year "2009" and Bills "311").

¹⁰⁶ R.I. Gen. Laws §§ 9-29-14, 9-29-19, 9-29-1, 9-29-18.

¹⁰⁷ *Organizing for RICLAPP*, RICLAPP, <http://riclapp.org/organizing.html> (last visited April 13, 2015), *archived at* <http://perma.cc/U3HX-DJK5>.

bills in the House. We provided fact-based, data-driven materials that demonstrated both the level of legal need in the state and our effectiveness in meeting that need.

We sponsored online and written petitions to support our legislation and delivered over 1,000 signatures to both the Senate President and Speaker of the House. We rallied in the rotunda of the State House. Realizing that we needed more traction, we were ready to commit a significant amount of our limited resources to engage a local well-regarded lobbying firm. After a hopeful start, the firm declined to take our project or our money.

The Rhode Island General Assembly is a part-time legislature, meeting annually for six months, usually from January through end of June. As time for enactment of our legislation was waning, my board chair, who had friendly relations with members of the judiciary, reached out to see if we could elicit some support for our bills. Our thinking was that the judges, who saw low-income people appearing before them without representation on a daily basis, would be interested in any effort to contribute to the more efficient operation of the courts and along with more consistent judicial outcomes. We provided them with materials, which were well received. But, they too, declined to support our legislation.

By mid-June, what had become increasingly obvious became official—our legislation was never going to leave committee for floor votes in either chamber. Physically and mentally exhausted, and I have to admit being bitterly disappointed, finally the fight was over.

I could recount in exhaustive detail the “what” and “how” of this legislative dance, but in these instances the salient question is not *what* happened but *why*? I think I know why this outcome occurred, but to detail that is well beyond the scope of this piece. We had some well placed and, to some degree, powerful friends; we had a well-documented and righteous cause; we worked hard and successfully engaged the community. However, dissecting the past in some self-indulgent retrospective would keep us from moving forward. As will be noted below, we were working on other initiatives to keep our programs alive. That said, it cannot be stated emphatically enough how important this legislation was. Aside from the obvious, these dollars would serve notice to other donors, both institutional and individual, that we were a credible investment. And given the limited availability of such investors, it is impossible to overstate the importance of our legislation. With it, we could continue and expand our programs and services; without it

The postscript to this is that my board and I resolved to make one more try to introduce legislation in the 2015 session of the General Assembly. This time, however, we decided to engage the judiciary earlier in the process, again for the same reasons as noted below. My board chair arranged to have lunch with the Chief Justice of the Rhode Island Supreme Court to discuss whether he could support our bills. I had previously met the Chief Justice and found him to be fair and open to discussion of RICLAPP and the need for legal services to be provided to underserved Rhode Islanders. This meeting was no different. Yet, after a broad ranging hour-long discussion, the Chief Justice told us that not only could he not support our bills, but that he was opposed to the legislation in general because the court fees are already too high.

This fees argument surfaced from time to time throughout our 2014 efforts. I even had one person connected to the General Assembly tell me that any increase in fees would prevent *our* clients from accessing the courts, the fact that our clients would enter most actions *in forma pauperis* notwithstanding.¹⁰⁸ Added to that, in 2014, the court itself sought and won passage of legislation to pay for an e-filing system throughout the court system that carried with it a \$25 user's fee.¹⁰⁹

The argument clearly ignores the fact that even with the \$25 up-charge for e-filing, Rhode Island's fees on those filings we targeted were *less* than those of our neighbors to the north and west. For example, in Rhode Island, even with the additional \$25 e-filing fee, it costs \$80 (without any RICLAPP surcharge) to file a complaint in the District Court;¹¹⁰ in Massachusetts the same filing costs \$180.¹¹¹ In the Rhode Island Superior Court, it now costs \$185 to file a complaint;¹¹² in Massachusetts, the same complaint will cost \$275 (including two surcharges).¹¹³ In the Connecticut Su-

¹⁰⁸ *In forma pauperis* literally translates to "in the manner of a pauper." In practice, this means an indigent person is permitted to disregard filing fees and court costs. BLACK'S LAW DICTIONARY 357 (3rd pocket ed. 2006).

¹⁰⁹ Katie Mulvaney, *R.I. Judiciary in Midst of \$5.9-million Transition to Online Case-File System*, PROVIDENCE JOURNAL (May 19, 2014), <http://www.providencejournal.com/article/20140519/News/305199989>, archived at <http://perma.cc/JW97-8WC8>.

¹¹⁰ R.I. Gen. Laws § 9-29-1 (West 2015).

¹¹¹ MASS. GEN. LAWS ch. 262, § 2 (West 2014).

¹¹² R.I. Gen. Laws Ann. § 8-15-11(a) (West 2014) (requiring an additional \$25 for e-filing); R.I. Gen. Laws Ann. § 9-29-18(a) (requiring \$160 filing fee for every civil action).

¹¹³ MASS. GEN. LAWS ch. 262, § 4A (West 2015) (requiring \$240 as a filing fee, plus a \$20 security fee); MASS. GEN. LAWS ch. 262, § 4C (requiring an additional \$15 surcharge on filing fees).

perior Court, filing a complaint will cost \$325.¹¹⁴ To be blunt, even with the requested RICLAPP surcharge, Rhode Island filing costs are still significantly lower than fees in Massachusetts and Connecticut.

The eminent political science professor Harold Lasswell's classic work, *Politics: Who Gets What, When, How* described how political outcomes were determined by elites.¹¹⁵ Of course he later refined his view by including personalities and culture as components that influence outcomes.¹¹⁶ A non-elite trying to achieve a desired political outcome that is opposed by elites is like bringing a knife to a gunfight.¹¹⁷ Nobody ever bets on the guy with the knife and RICLAPP was holding the knife.

Once when discussing the banks, President Harry S. Truman is reputed in the 1975 play, *Give 'Em Hell, Harry*, to have said, "You want a friend in life, get a dog!"¹¹⁸ Whether about banks or politicians, with both an upper and lower case "P," this is good advice. Too often in my view political decisions are not made on the basis of merit or acquaintance; rather, they are made on the basis of an alignment and advancement of the agendas of the elites that Lasswell wrote about.

The inescapable fact is that RICLAPP's agenda did not mesh with the agendas of those who had the power to support and enact our legislation. Given the import and merit of our bills, it's not unfair to ask, *why not?*

E. Other Initiatives

There were other initiatives that we explored. For example, we reached out to the Department of Elderly Affairs to see if we could obtain some of the Administration on Aging Title III money for legal services that the Department administers.¹¹⁹ This money goes

¹¹⁴ CONN. GEN. STAT. § 52-259(c) (West 2015).

¹¹⁵ HAROLD LASSWELL, *POLITICS: WHO GETS WHAT, WHEN, HOW* (1936).

¹¹⁶ HAROLD D. LASSWELL & ABRAHAM KAPLAN, *POWER AND SOCIETY: A FRAMEWORK FOR POLITICAL INQUIRY* (Yale University Press 1950).

¹¹⁷ *THE UNTOUCHABLES* (Paramount Pictures 1987).

¹¹⁸ The Harry S. Truman Library has no evidence of Harry S. Truman actually saying this; rather, this line is attributable to the character of Harry S. Truman in Samuel Gallu's play, *Give 'Em Hell, Harry*. David Rothman, *Google Book Search, Harry S. Truman and The Get-a-Dog Quote: Presidential Library Unable to Confirm It*, TELEREAD (June 28, 2008), <http://www.teleread.com/books/google-book-search-harry-s-truman-and-the-get-a-dog-quote-presidential-library-unable-to-confirm-it/>, archived at <http://perma.cc/BQN6-QKML>.

¹¹⁹ Programs for Older Americans, 42 U.S.C. §§ 3001-3057 (West 2015) (explaining the grants for state and community programs on aging, which include legal services programs for the elderly).

to serving the legal needs of Rhode Island's elder population. I thought our programs in the various senior centers throughout Rhode Island showed our commitment to that goal. Unfortunately, no portion of these Title III dollars was diverted to us.

We've sought corporate and grant support to expand the MLP, to no avail. The Rhode Island Foundation is indifferent to our program, and other corporations and donors who would support direct legal services to low-income people, even in a hospital setting, are hard to come by. Although the two major health corporations in Rhode Island have internal budget issues, they are reluctant to support a partnership that not only would serve their patients, but also save them money over the long run (an outcome that would be rewarded by the Affordable Care Act¹²⁰). Medical Legal Partnerships have been shown to provide a positive economic outcome to its medical host.¹²¹

We are in the process of trying to link with the local Veterans Administration Hospital to open an MLP for its patients. There is a lot of interest and this shows great promise, but as of this writing, our proposal hasn't gone to the upper echelons of the Veterans Administration. My guess is that if this initiative bears fruit, it won't be until late 2015 or early 2016.

V. POVERTY: A COMMUNITY PROBLEM

I am writing this in early 2015. According to data reported by the Pew Research Center on December 5, 2014, income inequality in America is at the highest level since 1928, one year prior to the Stock Market Crash of 1929.¹²² Citing work by Professor Emmanuel Saez of UC-Berkeley, in 1928, Pew reported that 1% of families received 23.9% of all pre-tax income; the bottom 90% received

¹²⁰ CENTER FOR MEDICARE & MEDICAID SERV., *THE AFFORDABLE CARE ACT: LOWERING MEDICARE COSTS BY IMPROVING CARE EFFORTS WILL SAVE OVER \$200 BILLION FOR TAXPAYERS THROUGH 2016, NEARLY \$60 BILLION FOR BENEFICIARIES IN TRADITIONAL MEDICARE 3* (2012), available at <http://www.cms.gov/apps/files/aca-savings-report-2012.pdf>, archived at <https://perma.cc/ZJX2-Q54W?type=pdf> (explaining that under the ACA the Center for Medicare & Medicaid Services was "putting into place payment methods that reward quality of care delivered, not just the quantity of services provided").

¹²¹ JAMES A. TEUFEL ET AL., *RURAL MEDICAL-LEGAL PARTNERSHIP AND ADVOCACY: A THREE-YEAR FOLLOW-UP STUDY 710-711* (2012), available at <http://medical-legalpartnership.org/wp-content/uploads/2014/03/Rural-Medical-Legal-Partnership-and-Advocacy-A-Three-Year-Follow-up-Study.pdf>, archived at <http://perma.cc/2AFP-4DKV>.

¹²² Drew Desilver, *U.S. Income Inequality, on Rise for Decades, is Now Highest Since 1928*, PEW RESEARCH CENTER, (Dec. 5, 2013), <http://www.pewresearch.org/fact-tank/2013/12/05/u-s-income-inequality-on-rise-for-decades-is-now-highest-since-1928/>, archived at <http://perma.cc/4LSK-XFM5>.

50.7% of all pre-tax income.¹²³ Compare that data to 2012 when 1% of families received 22.5% of all pre-tax income while pre-tax income of the lower 90% of families dropped below 50% for the first time ever.¹²⁴

In President Lyndon B. Johnson's 1964 State of the Union address, he stated that "many Americans live at the outskirts of hope."¹²⁵ And thus began the War on Poverty. There's a bit of an academic debate as to the effect of this war, but one thing seems certain: the programs instituted during the War on Poverty had a positive, even a dramatic effect on reducing the poverty rate, until they were cut back in the mid-1970s and further eviscerated during the 1980s to the present.¹²⁶

Even the poverty rate today is disputed.¹²⁷ According to pretty much everybody who's looked at the measure of the rate of poverty in America, the current measure isn't accurate.¹²⁸ Scholars writing for the Institute for Research on Poverty at the University of Wisconsin–Madison in 2013 noted that while the poverty rate had improved since 1964, it was worse than the rate reported by the Census Bureau.¹²⁹ The best guess is that there's 15% to 16.2% of the population living in poverty.¹³⁰ Or maybe not.

I don't care as to which methodology is used. I know that there are at least 300,000 Rhode Islanders, perhaps more, who

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Lyndon B. Johnson, *supra* note 4.

¹²⁶ See Stanley Meisler, 25 Years After the Dream, L.A. TIMES, July 14, 1989, available at 1989 WLNR 2553852; Terrance Heath, *After 50 Years, How to Move Forward in the War on Poverty*, CAMPAIGN FOR AMERICAN'S FUTURE, (Jan. 8, 2014), (explaining that President Johnson's safety-net programs helped reduce poverty rate in 1960s, then the programs lost steam in the 1970s, and finally were not supported by President Reagan in the 1980s).

¹²⁷ Drew Desilver, *Who's Poor in America? Fifty Years in to the 'War on Poverty,' a Data Portrait*, PEW RESEARCH CENTER (Jan. 13, 2014), <http://www.pewresearch.org/fact-tank/2014/01/13/whos-poor-in-america-50-years-into-the-war-on-poverty-a-data-portfolio/>, archived at <http://perma.cc/2YV3-YBQM>.

¹²⁸ See, e.g., Statement of Nancy K. Cauthen, Ph.D., Hearing on Measuring Poverty in America, Subcommittee on Income Security and Family Support House Committee on Ways and Means (Aug. 1, 2007), available at http://www.nccp.org/publications/pdf/text_752.pdf, archived at <http://perma.cc/5K5G-P3R7> (critiquing current measurements of poverty as being based on outdated assumptions about family expenditures and inadequately estimating family resources and detailing recommendations by the National Academy of Sciences to change the way poverty is measured).

¹²⁹ CHRISTOPHER WIMER et al., TRENDS IN POVERTY WITH AN ANCHORED SUPPLEMENTAL POVERTY MEASURE, 17 (Institute for Research on Poverty) (Dec. 11, 2013), available at <http://www.irp.wisc.edu/publications/dps/pdfs/dp141613.pdf>, archived at <http://perma.cc/YE3L-DNNJ>.

¹³⁰ *Id.* at 7-8.

have trouble making ends meet.¹³¹ What I know is that many of these people have legal problems that require the assistance of a lawyer.¹³² And what I know is that there are very few lawyers available to these folks.¹³³

According to data published by the National Center for Access to Justice, there are 40.20 attorneys for every 10,000 Rhode Islanders.¹³⁴ However, there are only 1.33 attorneys for every 10,000 Rhode Islanders living in poverty.¹³⁵ The disparity in these numbers is staggering.

In 1970, a former Attorney General wrote that if one was looking to discover the location of a municipality's highest crime rates, he would only need to visit the poorest sections of the community.¹³⁶ From our experience we know that poverty is a prime contributor to the alienation, marginalization, and stress that impoverished people, in this culture, at this time, live with each day. Poor kids too often attend poor schools, poor people live in poor housing, and poor families often exist on public benefits that are reduced or eliminated, seemingly at whim.¹³⁷ We have placed over 45 million people in a Dickensian, if not Malthusian, nightmare and wonder why they can't make their way in life like those with fewer or no barriers to overcome.¹³⁸

¹³¹ The American Community Survey shows that 303,430 individuals were living at 200% of the federal poverty level during the years 2009-2013. This equates to an annual income of \$23,340. See 2009-2013 American Community Survey 5-Year Estimates, American Fact Finder, <http://factfinder.census.gov/> (last visited April 13, 2015), archived at <http://perma.cc/5FTQ-CN8B> (access Table S1701, "Poverty Status in the Last 12 Months," searching by state for Rhode Island); *2014 Federal Poverty Level (FPL) Guidelines By Family Size*, RI DEP'T OF HUMAN SERV. (2014), <http://www.dhs.ri.gov/Portals/0/Uploads/Documents/Public/General%20DHS/FPL.pdf>, archived at <http://perma.cc/BZ8F-H7QE>.

¹³² LEGAL SERVICES CORPORATION, *supra* note 3 at 17.

¹³³ According to the American Bar Association, there were 4,179 active attorneys in Rhode Island in 2014. AMERICAN BAR ASSOCIATION, NATIONAL LAWYER POPULATION BY STATE (2014), available at http://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-current.authcheckdam.pdf, archived at <http://perma.cc/QW2Z-LKQP>.

¹³⁴ *The Justice Index, Attorney Access: Number of Attorneys for People in Poverty, Comparison of Number of Civil Legal Aid Attorneys to All Attorneys*, NATIONAL CENTER FOR ACCESS TO JUSTICE (Nov. 13, 2014), <http://www.justiceindex.org/findings/attorney-access/>, archived at <http://perma.cc/F9R2-79EP>.

¹³⁵ *Id.*

¹³⁶ Ramsey Clark, *Crime In America: Observations on its Nature, Causes, Prevention and Control*. Simon & Schuster, 1970.

¹³⁷ See Nicholas Johnson, Phil Oliff & Erica Williams, *An Update on State Budget Cuts, At Least 46 States Have Imposed Cuts That Hurt Vulnerable Residents and Cause Job Loss*, CENTER ON BUDGET AND POLICY PRIORITIES 66 (2011), <http://www.cbpp.org/research/an-update-on-state-budget-cuts>.

¹³⁸ *Poverty – 2013 Highlights*, U.S. CENSUS BUREAU, SOCIAL, ECONOMIC, AND HOUSING

These are social issues to be sure, but they are legal issues as well. And unless we're willing to perpetuate a permanent underclass, with all the social upheaval that entails, then poverty is a community problem that calls for a community solution. Not only is a broad-based solution the right thing to do, but it's also the smart and cost effective thing to do. Nowhere is this more evident than ensuring that every low-income person who needs a lawyer, and wants a lawyer, gets a lawyer.

VI. ACCESS TO JUSTICE

On April 5, 1968, the day after Martin Luther King, Jr. was assassinated, Robert F. Kennedy spoke to the Cleveland City Club on the topic of violence in America. Included in his remarks was the following:

For there is another kind of violence, slower but just as deadly, destructive as the shot or the bomb in the night. This is the violence of institutions; indifference and inaction and slow decay. This is the violence that afflicts the poor, that poisons relations between men because their skin has different colors. This is a slow destruction of a child by hunger, and schools without books and homes without heat in the winter . . . Yet we know what we must do. It is to achieve true justice among our fellow citizens. The question is no[t] what programs we should seek to enact. The question is whether we can find in our own midst and in our own hearts that leadership of human purpose that will recognize the terrible truths of our existence.¹³⁹

Without so intending, our courts are too often seen as instruments of institutional violence against persons without the sophistication or resources to defend themselves. I have seen the results of lives turned upside-down due to illegal evictions, improper benefit denials, unlawful employment termination, and myriad other occurrences that were ratified by the courts and allowed to stand because people lacked access to representation.

Kennedy's words are as true today as they were in 1968: we need to find "that leadership of human purpose that will recognize these terrible truths,"¹⁴⁰ and act decisively.

STATISTICS DIVISION, <https://www.census.gov/hhes/www/poverty/about/overview/> (last revised Sept. 16, 2014).

¹³⁹ Robert F. Kennedy, Remarks to the Cleveland City Club (April 5, 1968), *available at* <http://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/RFK-Speeches/Remarks-of-Senator-Robert-F-Kennedy-to-the-Cleveland-City-Club-Cleveland-Ohio-April-5-1968.aspx>, *archived at* <http://perma.cc/5D6M-BCFZ>.

¹⁴⁰ *Id.*

To that end, there are jurisdictions and states that are acting to provide legal assistance to indigent parties. California passed the Sargent Shriver Civil Counsel Act, AB 590 in 2011 and appropriated \$9.5 million each year to provide civil legal services to low-income Californians, up to 200% FPL, in seven pilot projects throughout the state through 2015.¹⁴¹ Clearly this will not serve every low-income person who needs a lawyer, but it's a start.

Massachusetts has also been a leader in recognizing the importance of legal representation for low-income residents of its state. In 2008 The Boston Bar Association stated that “[a] rigid delineation that presumes that counsel is important in criminal cases but not civil cases is untenable in the United States in the twenty-first century.”¹⁴² In October 2014, the Boston Bar Association released a report that determined that the Commonwealth would reap a return in savings of from \$2 to \$5 for every dollar spent on providing an attorney for indigent parties in eviction and domestic violence cases.¹⁴³ On December 4, 2014, the Massachusetts Access to Justice Commission unanimously adopted a resolution to support the recommendations of the Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts, urging the Legislature to enact, and the Governor to sign, appropriations increasing Massachusetts Legal Assistance Corporation funding by a total of \$30 million over the next three fiscal years.¹⁴⁴

In New York, Chief Judge Jonathan Lippman appointed the Task Force to Expand Access to Civil Legal Services, which found in its 2010 report that because of an enormous percentage of *pro se* litigants in the New York Court system, the state economy lost approximately \$400 million per year.¹⁴⁵ The Task Force proposed a four-year plan to allocate dollars from the Judiciary's Budget to

¹⁴¹ Cal. Gov. Code § 68650 (West 2010).

¹⁴² BOSTON BAR ASS'N TASK FORCE ON EXPANDING THE CIVIL RIGHT TO COUNSEL, GIDEON'S NEW TRUMPET: EXPANDING THE CIVIL RIGHT TO COUNSEL IN MASSACHUSETTS I (2008).

¹⁴³ BOSTON BAR ASSOCIATION STATEWIDE TASK FORCE TO EXPAND CIVIL LEGAL AID IN MASSACHUSETTS, INVESTING IN JUSTICE: A ROADMAP TO COST-EFFECTIVE FUNDING OF CIVIL LEGAL NEED IN MASSACHUSETTS 2 (2014).

¹⁴⁴ BOSTON BAR ASSOCIATION, INVESTING IN JUSTICE: A ROADMAP TO COST-EFFECTIVE FUNDING OF CIVIL LEGAL AID IN MASSACHUSETTS 5 (2014), available at <http://www.bostonbar.org/docs/default-document-library/statewide-task-force-to-expand-civil-legal-aid-in-ma—investing-in-justice.pdf>, archived at <http://perma.cc/8KCG-FTKS>.

¹⁴⁵ THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2010), available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>, archived at <http://perma.cc/Z2GU-HTKZ>.

fund grants to civil legal service providers.¹⁴⁶ By the time the Task Force's 2011 Report was published, fifty-six grants had been awarded and 51,297 low-income families and individuals had received legal assistance to help address the "essentials of life."¹⁴⁷

These are just a sample of the state-level efforts being made to bring legal services to indigent individuals and families. Nobody asserts that any of these individual efforts addresses the totality of need extant in America, but it's a good start.

VII. CONCLUSION

There are three conclusions to this Article that I would like to share. First, as of this writing, Rhode Island has not established an "Access to Justice Commission" nor is it likely to do so in the near future. According to the American Bar Association, in 2014 there were thirty-eight such Commissions throughout the country.¹⁴⁸ Rhode Island is one of the remaining twelve.¹⁴⁹ Evidently, in 2013 the American Bar Association awarded the State of Rhode Island a grant to form its own Access to Justice Commission.¹⁵⁰ As of this writing, such a commission has not been formed.¹⁵¹ Its absence continues to be a shame and a stain on the Aristotelian notion of the moral virtue of justice.¹⁵²

Second, if we're really serious about serving those in need, both through legal and social service programs, we need to drop

¹⁴⁶ *Id.* at 39.

¹⁴⁷ THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2011), available at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf.

¹⁴⁸ Resource Center for Access to Justice Initiatives, *ATJ Commission Movement*, A.B.A. J. (last visited Mar. 5, 2015), http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html, archived at <http://perma.cc/GKY8-M9H8>.

¹⁴⁹ *Id.*

¹⁵⁰ *ABA Access to Justice Commission Expansion Project 2013 Grants to Promote the Creation of New Access to Justice Commissions*, AMERICAN BAR ASS'N (March 15, 2013), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_grant_awards.authcheckdam.pdf, archived at <http://perma.cc/5896-7QS9>.

¹⁵¹ The ABA's Access to Justice website states that Rhode Island's commission remains in the "process of formation." Resource Center for Access to Justice Initiatives, AMERICAN BAR ASS'N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html (last visited April 16, 2015), archived at <http://perma.cc/X8JS-K22W>.

¹⁵² See generally ARISTOTLE, *NICOMACHEAN ETHICS* BK. V (2nd ed., Terrence Irwin trans., Hackett Publishing Co., Inc. 1999); see also ARISTOTLE, *POLITICS* (Benjamin Jowett trans., Dover Publications, Inc.).

the pernicious word “benefit” from describing these programs. As the above examples demonstrate, money spent on these kinds of programs are investments to save money, not dollars sent down the drain as too many pundits in our toxic political and social climates would opine.¹⁵³ I, for one, would rather spend a dollar on a program that will save me from two to five dollars than spend five dollars on a program that isn’t working.

Third, as you can guess, the Rhode Island Center For Law And Public Policy is in trouble. In December 2014, save for its Medical Legal Partnership program, RICLAPP had to suspend operations. During what I hope is a brief hiatus, the board and I will continue to search for resources and collaborations that will stabilize and sustain us. That there is an endemic need for our services is not in dispute. That we were effective in meeting this need is not in dispute. And that the way we met that need was both cost efficient and effective is not in dispute.

I am something of a student of history and I am particularly fond of Theodore Roosevelt. What I like about him was that for the most part he was not afraid to stand for something, whether it was an idea or a policy.¹⁵⁴ He took his hits, but he kept trying to affect social change.¹⁵⁵ I am especially enamored of his 1912 speech “Confession of Faith,” which concluded with this statement: “We stand at Armageddon, and we battle for the Lord.”¹⁵⁶ Over the past seven years, and in particular during this past year, I have come to better appreciate what he meant.

As I mentioned at the beginning of this paper, I started RICLAPP in an attempt to answer many questions that I had about

¹⁵³ See Kenneth F. Boem & Peter T. Flaherty, *Why the Legal Services Corporation Must be Abolished*, THE HERITAGE FOUNDATION (Oct. 19, 1995), <http://www.heritage.org/research/reports/1995/10/bg1057nbsp-why-the-legal-services-corporation>, archived at <http://perma.cc/SSC3-S6B3> (arguing that taxpayer-funded legal groups do not adequately provide meaningful legal services for the poor).

¹⁵⁴ For example, “[Roosevelt] turned to the Sherman Anti-Trust Act to challenge business monopolies, bringing suit against the Northern Securities Company (a railroad trust) in 1902. The Justice Department initiated forty-two additional anti-trust cases during his presidency.” Kirsten Swinth, *The Square Deal: Theodore Roosevelt and the Themes of Progressive Reform*, THE GILDER LEHRMAN INSTITUTE OF AMERICAN HISTORY, <http://www.gilderlehrman.org/history-by-era/politics-reform/essays/square-deal-theodore-roosevelt-and-themes-progressive-reform> (last visited Mar. 5, 2015), archived at <http://perma.cc/66EH-HCSV>.

¹⁵⁵ *Id.*

¹⁵⁶ Theodore Roosevelt, 26th President of the United States, Address at the Progressive Party Convention: A Confession of Faith (Aug. 6, 1912), available at <http://www.theodore-roosevelt.com/images/research/speeches/trarmageddon.pdf>, archived at <http://perma.cc/KP7X-67CJ>.

the law, society, and justice. Although I made some headway in my quest over the past years, I still have more questions than answers. However, one thing I did learn is that organizations like RICLAPP cannot exist without community support. It is the community that determines what to invest in and what causes to champion.

I believe that people are essentially good and want to do the right thing—whatever that may be. There has been a dearth in Rhode Island of real information detailing the level of need that exists in our community. The state government, along with its local counterparts, has narrowly defined “investments” to encompass only a *quid pro quo* relationship with commercial interests. Because of these relationships there is no urgency to reform what we do and how we do it.

My job going forward is the try to engage in these conversations as I attempt to rebuild RICLAPP. In this venue and this political climate, I may resemble Sisyphus and the rock but I need to try. I have worked all my life championing causes that I thought would make the world, or at least my little corner of it, a better place in which to live. RICLAPP was the expression of that belief and as I continue to work on making my agency sustainable and my goal more of a reality, I recall the words of Senator Edward Kennedy in 1980.¹⁵⁷ Conceding that he lost the presidential nomination, Kennedy addressed the Democratic convention and by all accounts gave the speech of his life.¹⁵⁸ At the conclusion of his speech he said, “For all those whose cares have been our concern, the work goes on, the cause endures, the hope still lives, and the dream shall never die.”¹⁵⁹

The dream shall never die.

¹⁵⁷ Senator Edward M. Kennedy, Address to the Democratic National Convention (Aug. 12, 1980) (transcript available in the John F. Kennedy Library and Museum).

¹⁵⁸ See *Kennedy’s Dream Will Outlive Us All*, BOSTON HERALD (Aug. 26, 2008); *To the Mountaintop*, THE ECONOMIST (AUG. 26, 2009), http://www.economist.com/blogs/democracyinamerica/2009/08/to_the_mountaintop, archived at <http://perma.cc/6743-FKGJ>; John Nichols, *Still Dreaming Ted Kennedy’s Dream*, THE NATION (Sept. 4, 2012), available at <http://www.thenation.com/blog/169738/still-dreaming-ted-kennedy-dream#>, archived at <http://perma.cc/5C8E-YL36>.

¹⁵⁹ Senator Edward M. Kennedy, *supra* note 157.

