INTRODUCTION

In his book, *So Rich, So Poor*, Peter Edelman calls for the nation to address concentrated poverty as part of a larger strategy to end poverty in America.¹ Most efforts to address concentrated poverty have included well-intentioned strategic thinking by policy specialists. These include the creation of Community Development Corporations beginning in the 1960s with Robert Kennedy’s Bedford/Stuyvesant project, the enterprise zones of the 1980s, and empowerment zones in the 1990s.² These have been somewhat successful, but limited in their reach. And, too often, such efforts faded as funding was diverted else-

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¹ PETER EDELMAN, *SO RICH, SO POOR: WHY IT’S SO HARD TO END POVERTY IN AMERICA* 136 (2012).
² Id. at 110-15.
where to pursue other ideas or when the needs of the urban poor appeared less urgent. 3

Poor people cannot wait for powerful elites to decide it is time to address their problems and support their neighborhoods. A civil right to counsel may be one tool that poor people themselves can use to crack open generations of imprisonment in low-income, underserved, and under-achieving neighborhoods. By establishing a right to counsel in case types affecting basic human needs—shelter, sustenance, safety, health, and child custody—the poor may be able to demand their due, stabilize their families, improve their well-being, strengthen their neighborhoods, and promote economic diversity and socio-economic mobility in our cities.

The creation of a civil right to counsel will also affect changes in the justice system itself as legal service providers will be called upon to expand services to meet a greater percentage of the legal needs of the poor. Increased funding and demand will require that providers establish offices within urban neighborhoods and will increase the interaction between public interest lawyers and those they serve. If they are wise and adopt a client-driven approach, providers will have an opportunity to learn from their clients. This will also permit legal service providers to identify potential clients in case types that are outside the scope of a civil right to counsel, perhaps in those areas where they can have an even greater significance on law reform efforts to address poverty. This Article will address the challenge of concentrated poverty and suggest that the creation of a civil right to counsel can be a powerful opportunity to enhance low-income inner-city neighborhoods, to empower those who live there, and to create new opportunities, new choices, and socio-economic mobility in our cities. The first Part will describe the phenomenon of concentrated poverty, proposed theories and solutions, and legal issues inherent in its causes. The second Part will describe what it means to provide a “civil right to counsel,” and review the case types likely to be included in an expanded right. It will explore several strategies that have been proposed for improving neighborhood conditions and promoting mobility, and discuss the potential legal strategies that might be employed by poor residents in advancing those strategies. The final Part will review how having a lawyer makes a difference, i.e., why these strategies will be less effective if residents do not have access to counsel, the role lawyers may be able to play in inner-city neighborhoods, and, finally, the impact on the law itself that may result from engaging lawyers in poor neighborhoods.

3. See id. at 113 (referring to the challenges faced by antipoverty programs after Robert F. Kennedy’s death in 1968: “The general waning of interest in problems of the inner city once the civil unrest of the 1960s had been contained added to the difficulty of getting things done.”).
I. THE CHALLENGE OF CONCENTRATED POVERTY

Life is difficult for the poor; it is even more difficult for those poor whose support network is also impoverished.4 City residents in neighborhoods with high concentrations of persons living in poverty are less likely to alter their circumstances.5 While it is not exclusively an urban problem, most of the nation’s concentrated poverty and “socially distressed” tracts are found in the 100 largest central cities.6 This Article will suggest that providing a right to a lawyer in key case types that affect the poor is an important part of any comprehensive strategy for addressing poverty. Access to justice has a role to play in addressing the limitations of place and the legacy of race. Providing a legal enforcement mechanism—a right to a lawyer—can make any single antipoverty strategy more robust.

The changes in the U.S. economy over the last several decades have seen concomitant decreases and increases in concentrated poverty, mirroring the health of the overall economy. The decennial Census, and the American Community Survey (ACS) provide data on the percentage of individuals living within a specific census tract who report incomes below the federal poverty level.7 Most recent research relies on Census data through 2000, and then on the ACS for a five-year estimate of the period between 2005 and 2010.8 The

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4. See Silvia Domínguez & Celeste Watkins, Creating Networks for Survival and Mobility: Social Capital Among African-American and Latin-American Low-Income Mothers, 50 SOC. PROBS. 111, 111-13 (2003) (“Low-income mothers residing in the inner city often have social networks that are localized, insular, and sometimes draining.”). Small, homogeneous social networks provide support, but sometimes limit opportunities for social mobility; networks with heterogeneous ties offer social leverage that help individuals get ahead. Id.

5. See David Leonhardt, Geography Seen As Barrier to Climbing Class Ladder, N.Y. TIMES, July 22, 2013, at A1 (describing the results of a study finding that “[a]ll else being equal, upward mobility tended to be higher in metropolitan areas where poor families were more dispersed among mixed-income neighborhoods.”).


U.S. Census Bureau categorizes tracts based on the rate of families living in poverty within that tract. In Category I tracts, fewer than 12.4% of families have incomes below the federal rate. Category II includes tracts with a poverty rate of 12.4% to 19.99%. Category III includes tracts with a poverty rate of 20% to 39.9%, and Category IV includes tracts with poverty rates of 40% or more. Studies vary on whether they use 20%, 30%, or 40% as the hallmark of “concentrated poverty.” Regardless of the definition used, however, the trends are the same.

The percentage of individuals living in neighborhoods of concentrated poverty increased during the 1970s and 1980s, but decreased significantly during the robust economy of the 1990s. During the 2000s, U.S. metropolitan areas saw a resurgence in concentrated poverty, eviscerating the gains that had been made during the 1990s. The percentage of those living in extreme poverty (Category IV) in metropolitan areas increased from 13% to 17% during the 1980s, but by 2000 had decreased again to 12%. By 2010, however, the percentage of individuals living in concentrated poverty had again increased. From 2005 to 2009, while the percent of metropolitan neighborhoods with poverty rates of 40% or more increased by only half a percentage point (0.5%), researchers estimate that the concentrated poverty rate rose another 3.5% in 2010 alone, to reach 15.1% percent. Studies that use the five-year estimate from the ACS may actually understate the effect of the Great Recession on the rate of concentrated poverty, since that study relies on averages from years that precede 2008.

During the period between 2000 and 2010, when concentrated poverty increased, the overall poverty rate was also increasing—from 11.3% to 15.3%. Metropolitan areas that experienced a sharper rise in overall poverty likewise experienced an increase in poverty concentration. The face of poverty changed during this period as well. There was a general shift in concentrated poverty to the Midwest and the South during the 2000s, altering the average demographic profile of extreme poverty neighborhoods. Residents of extreme poverty neighborhoods have a higher proportion of children, lower levels of education, and higher rates of unemployment.

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9. Researchers tend to use the terms “tracts” and “neighborhoods” interchangeably. See, e.g., ALIPRANIS ET AL., supra note 8, at 2 (“The metropolitan area then is made up of a collection of neighborhoods (census tracts) that are within the same broad labor market.”). Although the two terms are not truly identical, this Article will follow suit.

10. KINGSLEY & PETTIT, supra note 8, at 1.

11. KNEEBONE ET AL., supra note 7, at 1. 2010 ACS poverty rates were much higher than those in the 2005-2009 five-year estimates, and it is likely that concentrated poverty was higher too, but they needed the multi-year survey data to get a large enough sample.

12. See ALIPRANIS, ET AL., supra note 8, at 6 (“[I]t should be noted that while these are the most recent tract-level data available, they do not reflect the full effect of the recession since the averages contain data from years that preceded the recession (2006 and 2007).”)

13. Id.

14. See id. (“Unsurprisingly, the median neighborhood poverty rate also increased between 2000 and 2006-2010, from 8.4 percent to 10.9 percent.”)
poverty neighborhoods were more likely to be white, native-born, high school or college graduates, homeowners, and not receiving public assistance than they had been a decade earlier. Nevertheless, African-Americans still represented the largest percentage of those living in neighborhoods of concentrated poverty, where they made up 44.6% of the population.

A. Why Place Matters

The “spatial concentration of poor people acts to magnify poverty and exacerbate its effects.” Individuals living in Category III and IV tracts (with poverty rates above 20%), score extremely high on indicators of social and economic distress. It should not be surprising that living in concentrated poverty limits one’s educational opportunities, exposes one to increased crime, and is likely to affect one’s health. It also makes it more difficult to accumulate wealth. As real estate markets decline, the few assets that poor individuals own decrease in value. Such neighborhoods are less attractive to investors. This means there are fewer retail establishments and services. The lack of competition drives up prices in these inner-city neighborhoods, further burdening the poor who have limited transportation options at their disposal. Increased social services caseloads, high rates of emergency room admissions, and law enforcement costs further burden local governments, driving up taxes. The poor do not just pay twice; they pay more, and they pay more often.

Before the poor can “move or improve,” they need meaningful choices about where to live, where to work, what schools their children attend, and to whom they go for health care. Enforcement of the law is a critical component of any public policy that creates new choices to ensure that panoply of choices remains available to the poor. A city that invests in job training and job creation, for example, may open up opportunities for the unemployed or underemployed, but that investment will fall flat unless that city also invests in enforcement by providing access to the legal system that enforces employment rights. Take, for example, low-wage workers who are at times misclassified as independent contractors. By failing to treat their workers as employees under the law, employers can avoid minimum wage laws, overtime pay, unemployment, and worker’s compensation payments. A worker will not realize that he has been deprived of benefits to which he is entitled under the law until he is disabled or loses his job, and is denied disability or unemployment compensa-

16. Id. at 16.
17. Kingsley & Pettit, supra note 8, at 2 (quoting Paul A. Jargowsky, Poverty and Place: Ghettoes, Barrios, and the American City 1 (1996)).
18. Id.
20. Id.
Enforcement actions are key components of any anti-poverty solution. And that enforcement, although undertaken in many cases by individual litigants, has a public purpose, and as such should be publicly funded. An efficient economy “promotes equality of opportunity without exacerbating inequality.”

In his study, *Poverty in America*, John Iceland cites the work of Samuel Bowles and Herbert Gintis on the role of accountability in efficient markets:

> Accepting the market framework as one that raises average standards of living, or the overall “size of the pie,” they state that “government policies should seek not to supplant markets and communities but to ensure their accountability and enhance their capacity to support equitable and efficient outcomes. Conversely, markets and communities should be organized to promote the accountability of government to the people.”

When parents have limited choices, their children are likewise affected. To some extent, concentrated poverty breeds generational poverty. Place matters in the lives of children and has a significant impact on their well-being. Eight million children lived in neighborhoods with a poverty rate of 30% or more between 2006 and 2010. The number of children living in high poverty neighborhoods increased by 1.6 million, or 25% between 2000 and 2010. Nearly one in three children (29%) in poor families live in high-poverty neighborhoods. Families living in these neighborhoods are more likely to be “food insecure,” to struggle paying for their housing, and to lack health insurance. Children are more likely to experience stress and severe behavioral and emotional problems, which in turn affects their ability to succeed in school. Children of families living in high poverty neighborhoods have lower test scores, are more likely to drop out of high school, and less likely to improve their standard of living as an adult. Children of color are more likely to experience the negative effects of concentrated poverty, as they are between six and nine times more likely than their white counterparts to live in such neighborhoods.

Recent research by the Economic Opportunity Project, a research project of Harvard University and the University of California at Berkeley, supports the conclusion that “[w]here you grow up matters.”

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23. Id. at 139 (quoting 3 Samuel Bowles & Herbert Gintis, *The Real Utopias Project, Recasting Egalitarianism: New Rules for Communities, States and Markets* 363 (1998)).
25. Id.
26. Id.
27. Leonhardt, supra note 5, at 1; see also Raj Chetty et al., *Summary of Project Findings: The Equality of Opportunity Project* 1 (July 2013), available at http://obs.rc.fas.harvard.edu/chetty/website/IGE/Executive%20Summary.pdf (discussing ev-
portraits to date of economic mobility in the United States, four broad factors appear to affect whether children will later be able to rise out of poverty. Children were more likely to thrive later in life if they grew up in: 1) mixed income neighborhoods; 2) areas with more two parent households; 3) areas with better elementary and high schools; and 4) areas with more civic engagement, including higher participation rates in religious and community groups. While rates of upward mobility are significantly lower in areas with large African-American populations, the study also found that whites in those areas likewise had lower mobility rates. Thus, the geographic differentiation study authors found in upward mobility is not tied directly to race.

Race may not be a direct factor in determining upward mobility, but racial segregation and the legacy of discrimination have long been seen as a cause of concentrated poverty. Racial segregation is the “principal feature of American society that is responsible for the creation of the urban underclass.” Institutional discrimination has often determined where families of color live, but it is where those individuals live, rather than their racial identity, that determines whether they will have opportunities to improve their lot. Racial differences can be used to put you down, but racial identity cannot keep you down. This suggests that we can alleviate concentrated poverty simply by focusing on the phenomenon of place, but that may be too simplistic. If we can create opportunities that permit low-income families to relocate to mixed income neighborhoods, those families will benefit. We still, however, need tools, including access to legal representation, to enforce antidiscrimination laws and prevent other families from falling into poverty and geographic isolation.

B. Theories and Solutions

In their 2008 report, The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S., the Federal Reserve System and the Brookings Institution summarize contemporary theories about the causes of concentrated poverty. Through the 1980s, journalists like Ken Auletta, Nicholas Lemann, and Leon Dash chronicled the rise in poverty, while researchers like Erole Ricketts, Isabel Sawhill, Ronald Mincy, and Susan

28 Chetty et al., supra note 27, at 2; Leonhardt, supra note 5, at 2.
29 Chetty et al., supra note 27, at 2.
Weiner identified the new underclass emerging in high poverty pockets within the nation’s cities by looking for a confluence of negative effects.32 Theorists tended to focus on the behavioral causes of poverty, emphasizing individual responsibility and poor choices.33 Another school of thought emphasized the structural causes of concentrated poverty. In this analysis, concentrated poverty is the result of the nation’s transition from an industrial to a service-based economy, the suburbanization of employment, and ongoing racial segregation.34

Over time, a synthesis approach has emerged. Researcher William Julius Wilson has argued that structural factors, including changes in the economy, resulted in widespread unemployment, which in turn impacted cultural norms and behaviors in poor neighborhoods. His research of Chicago’s South Side emphasized the conditions present in high poverty neighborhoods, and highlighted the role those neighborhoods have in shaping the lives of the poor.35 As Edelman has said, “[W]e are talking about too many poor people all living in the same place and for a long time—long enough for behaviors to be passed on from one generation to the next and reinforced among peers in each generation as it comes along.”36 The Federal Reserve report goes on to identify a number of reasons for the increase in concentrated poverty since the 1970s. In addition to the shift in the economy from a manufacturing and industrial economy, they point to the growing mismatch between the education of former blue collar workers, especially black males, and the skills demanded by the new service-based industries; the out-migration of families of color as a result of desegregation, an option available only to middle income African-Americans, which resulted in the concentration of poorer families of color in inner cities; continuing racial or ethnic segregation in metropolitan housing markets; housing policies that reinforced the segregation of the poor; an influx of immigrants, likely to be less educated; trends in family formation that have resulted in more single parent and never-married households; and a decline in multigenerational economic mobility.37

The strategies that have been proposed and implemented to address concentrated poverty in the United States tend to fall into one of two categories. Some strategies focus on making improvements in poor neighborhoods themselves, to lift them out of extreme poverty and create mixed income neighbor-

32. Id. at 4; see also Kasarda, supra note 6, at 255-56 (using indicators to describe “distressed” and “severely distressed neighborhoods”).
34. Id. (citing John Kasarda, Urban Industrial Transition and the Underclass, 501 ANNALS AM. ACAD. POL. & SOC. SCI. 26 (1989)).
35. Id.
36. EDELMAN, supra note 1, at 103.
hoods.\textsuperscript{38} Others focus on promoting family mobility, empowering poorer families to move out of high poverty neighborhoods to neighborhoods where they are closer to work, their children can attend better schools, their neighbors model good economic and behavioral choices, and where the institutional and structural effects of place are more likely to help them thrive rather than dive.\textsuperscript{39}

Most researchers today suggest that in order to dismantle concentrated poverty, cities will have to adopt a range of approaches, giving low-income families both better neighborhoods and real opportunities for mobility, should they choose to leave those neighborhoods.\textsuperscript{40} Scott Bollens suggests the distinction between solutions that address poverty “in place” by focusing on community development, and those that focus on mobility and “de-concentration,” creates a false dichotomy. To be effective, poverty strategies will have to both improve neighborhoods and enhance mobility.\textsuperscript{41} Cities will have to target structural changes as well as behaviors,\textsuperscript{42} promoting a “mixed strategy” that

\textsuperscript{38} Bollens, supra note 30, at 11-12.  
\textsuperscript{39} Id.  
\textsuperscript{40} In their 2005 study, Turner and Rawlings document the results of a randomized controlled study of three Housing and Urban Development strategies for helping low-income families escape the isolation and stress of living in high-poverty metropolitan communities. The study examined three programs, one of which focused on residential relocation, one on in-place services and incentives designed to improve the neighborhood, and a third that created linkages for inner-city residents with suburban jobs. The Moving to Opportunity program used tenant-based rental subsidies, housing search services, and counseling services to aid residents in moving to better neighborhoods. The program dramatically improved the neighborhood conditions for families, which generated better mental and physical health for adults, and led girls to participate in less risky behavior. The experience of boys in these families, however, was the same or worse. The project did not impact employment, earnings, or the rate at which families received public assistance. The Jobs-Plus program provided employment services, rent-based financial work incentives, and enhanced community support for work. The program was complex, took too long to implement, and was never fully implemented in all sites. The third program, Bridges to Work (BTW) was also never fully implemented but originally sought to connect work-ready applicants in inner cities with jobs in the suburbs, to address a perceived mismatch between the low-skilled workers in the cities and the presence of low-skill jobs in the suburbs. Implemented during a flourishing economy, some participants found it easier to get work rather than rely on the program. In BTW, the commutes ended up being too long. Researchers concluded that to effect meaningful change, programs must be adequately funded, multidimensional, and sustained over several years. They cautioned that programs must pay special attention to the needs of men and boys, and cannot ignore the barriers of racial prejudice, discrimination and segregation. See generally MARGERY AUSTIN TURNER & LYNETTE A. RAWLINGS, OVERCOMING CONCENTRATED POVERTY AND ISOLATION: LESSONS FROM THREE HUD DEMONSTRATION INITIATIVES (2005).  
\textsuperscript{41} Bollens, supra note 30, at 18-19; see also ANNIE E. CASEY FOUND., supra note 24, at 2-4 (suggesting possible strategies for addressing the increase of children living in concentrated poverty, including promoting promising practices in work support, asset building and employment, increasing access to affordable housing in safe, opportunity-rich communities, prohibiting discriminatory practices, marketing to diverse applicants, and creating housing mobility programs).  
\textsuperscript{42} EDELMAN, supra note 1, at 103.
gives people meaningful choices about where they will live. Elements of this broader strategy include providing a living income, keeping jobs in the regional economy, creating livable neighborhoods, improving neighborhood schools, attracting higher income families into the neighborhood without driving out the poor, and addressing the norms and behaviors that perpetuate poverty.

Two factors emerge from the research. First, once a neighborhood deteriorates, it is not a forever-doomed pocket of concentrated poverty. To the contrary, neighborhoods can improve. When Thomas G. Kingsley and Kathryn L.S. Pettit released their 2003 study, Concentrated Poverty: A Change in Course, summarizing trends through 1990, they noticed that, “[a] surprising number of tracts move in and out of high-poverty status each decade.” The changes they documented in national poverty concentration were not primarily due to population growth or decline in particular neighborhoods, but to the changing status of individual neighborhoods. “[T]he outcome is determined more by the number of tracts moving in and out of those categories. And it is important to know that when tracts reach high-poverty status, further deterioration is not at all inevitable.”

The second point that emerges is that when concentrated poverty has declined in the past, it has been largely because of the health of the overall economy. Kingsley and Pettit cite Paul Jargowsky whose model had suggested that if the economy improved the poor would benefit, and, they note, he was right. During the 1990s, the conditions in high poverty neighborhoods improved, as did conditions in non-poor neighborhoods. The gaps between rich and poor did not shrink, but in many instances widened. “In every respect, a strong economy is our strongest antipoverty weapon, even when it helps the rich more than the poor. When there’s a hot economy, there are more jobs and all of the jobs pay a little better.”

Should relative deprivation matter? Should we find a way to address gaps between the wealthiest neighborhoods and the poorest neighborhoods in our cities? We should, if we concur with the research that mixed-income neighborhoods are the strongest defense against concentrated poverty. Mixed income neighborhoods promote social mobility. Edelman suggests our society functions best “when no one is consigned by law or a multiplicity of facts and for-
es to live in a certain part of a city." Concentrated wealth drives up real estate prices and precludes moderate- and lower-income city residents from moving into the neighborhood. Concentrated poverty drives down property values, increases demand on city services, and drives up taxes. This in turn drives businesses and employment to other parts of the city or the suburbs, perpetuating a cycle of un- and underemployment, and trapping low-income residents in declining neighborhoods. You cannot promote mixed-income neighborhoods without moving away from patterns that ghettoize both wealth and poverty.

C. Addressing Concentrated Poverty as a Legal Problem

When researchers expound on the range of services needed to help lift low-income families out of poverty, legal services are rarely on the list. Like the low-income individuals they study, social science researchers often overlook the legal strategies that might be employed to address some problems associated with or contributing to concentrated poverty.

To the extent concentrated poverty has its roots in racial discrimination, it is a legal problem. To the extent concentrated poverty has its roots in unfair employment or housing practices, it is a legal problem. To the extent a lack of social mobility or neighborhood conditions can be attributed to a lack of access to core social services, transportation or education, it is a legal problem. At the risk of using too narrow a lens to diagnose the problem (to a hammer every problem looks like a nail), it may be that, indeed, providing access to civil legal services in a key set of case types that affect the poor may give them one more tool that they can use to enhance their current neighborhood conditions and/or move to a healthier neighborhood. In the following Parts, this Article explores the potential a civil right to counsel may have to address the causes of concentrated poverty in our nation’s cities, and the role lawyers in key case types can play to enforce rights and remedies already available to the poor, but inaccessible to them because of a lack of access to legal representation.

II. CIVIL RIGHT TO COUNSEL

As we celebrate the fiftieth anniversary of *Gideon v. Wainwright*, the decision that established the right to counsel in criminal matters, it would be surprising to many Americans to learn that there is no corresponding right to counsel in civil matters. Many ordinary citizens are unaware that if they were at risk of losing the ability to care for a child, were seeking protection from domestic violence, or at risk of losing their home because of a dispute with a landlord or mortgage lender, and were unable to afford counsel, one would not be appointed to represent them. They would have to go it alone.

Since shortly after the Gideon decision, advocates have been advancing the idea that low-income individuals should have a “civil right to counsel.” In recent years that aspiration has been expressed as a right to a publicly funded lawyer in those categories of proceedings where basic human needs are at stake. In 2006, the American Bar Association (ABA) adopted a resolution supporting such a right in adversarial proceedings involving basic human needs such as shelter, sustenance, safety, health or child custody. The resolution has since been adopted by seventeen state and local bar associations. An active debate is emerging about whether and how far a right might be extended in civil matters. The National Coalition on a Civil Right to Counsel tracks and supports national and regional efforts to advance litigation, legislation and policy changes that promote a civil right to counsel.

The U.S. Supreme Court has been reluctant to extend the right to counsel beyond criminal matters. After Gideon, in which the Court extended the right to counsel in criminal misdemeanors where the defendant faces possible incarceration, the Court has been more circumspect of efforts to posit the same right where respondents face the loss of other rights and privileges. Until 2011, the Supreme Court’s most definitive pronouncement on this topic came from Lassiter v. Dep’t of Social Services. In Lassiter, the Court declined to find inherent in the Due Process Clause of the Fourteenth Amendment a categorical right to counsel in cases involving the termination of parental rights. For years, Lassiter stood for the proposition that unless the individual faced a possible loss of liberty, there was a presumption against a right to counsel in civil matters. To overcome the presumption, a claimant would have to be able to demonstrate that their situation warranted counsel in light of the three-prong test established in Matthews v. Eldridge, which balances the private interests at stake, the state’s interest, and the risk that the procedures used will lead to erroneous decisions. In termination of parental rights cases, courts would henceforth need to evaluate a request for counsel on a case-by-case basis.

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53. Justice Earl Johnson Jr., 50 Years of Gideon, 47 Years Working Toward a ‘Civil Gideon,’ 47 CLEARINGHOUSE REV. 47, 48 (2013).
58. Id. at 27 (citing Mathews v. Eldridge, 424 U.S. 319, 335 (1976)).
59. Id. at 32-33.
For many, Lassiter suggested that civil matters where a respondent’s liberty was at stake might merit a categorical right to counsel. The Supreme Court dispelled this presumption in 2011. In Turner v. Rogers, the Court declined to find a categorical right to counsel in a case involving civil contempt for the failure to pay child support where the respondent was facing possible jail time. The Court suggested that child support cases were usually simple matters, and found it significant that the opponent in this particular case was not the State, but rather the other parent, who was likewise unrepresented. The Court expressly declined to rule on whether counsel would be required if the matter was “unusually complex” or if the opponent was either the State or represented by counsel.

While the states are bound by the U.S. Supreme Court’s interpretation of the Fourteenth Amendment, states have relied on their own constitutions in some instances to extend the right to counsel to some civil matters. States have also provided a statutory right to counsel in a number of civil areas including adoptions, civil contempt, child welfare, involuntary commitments, terminations of parental rights, paternity, and guardianship matters. Several model civil right to counsel bills have been developed by advocates, and by the ABA. In 2009, the State of California passed the Sargent Shriver Civil Right to Counsel Act which provides nine to ten million dollars per year to fund civil right to counsel pilot programs in the state for the next six years. California is using these resources to pilot programs in areas such as housing, custody, and probate guardianship cases. The Boston Bar Association implemented and evaluated two pilot projects to study the impact of a right to counsel in housing matters. The State of Illinois recently passed legislation that will provide mil-

62. Id.
63. Clare Pastore, Life After Lassiter: An Overview of State-Court Right-to-Counsel Decisions, 40 Clearinghouse Rev. 186, 187 (2006); Pollock, supra note 60, at 766.
64. See generally Laura K. Abel & Max Rettig, State Statutes Providing for a Right to Counsel in Civil Cases, 40 Clearinghouse Rev. 245 (2006).
65. See, e.g., AM. BAR ASS’N, ABA BASIC PRINCIPLES FOR A RIGHT TO COUNSEL IN CIVIL LEGAL PROCEEDINGS (Aug. 2010); CAL. COMM’N ON ACCESS TO JUSTICE, STATE BASIC ACCESS ACT (Feb. 8, 2008); CAL. COMM’N ON ACCESS TO JUSTICE, STATE EQUAL JUSTICE ACT (Nov. 4, 2006); see also Clare Pastore, The California Model Statute Task Force, 40 Clearinghouse Rev. 176, 176 (2006) (describing the California Commission on Access to Justice’s process in drafting a model statute for implementing a civil right to counsel).
lions of dollars for right to counsel pilot projects over the next five years. Judicial leaders, including New York’s Chief Justice Jonathan Lippman, have begun calling for a broader right to counsel in civil matters.

It is beyond the scope of this Article to explore how a civil right to counsel might be implemented or funded, but some preliminary work has been done. In 2011, the Maryland Access to Justice Commission released a report that explored how the state might administer a civil right to counsel in basic human needs cases. In creating its report, Implementing a Civil Right to Counsel in Maryland, the Commission dissected seventeen variables that would need to be decided along the way. These included the scope of a possible right, merits testing, service delivery models, program administration, right on appeal, funding, and quality assurance. On the issue of funding, the Commission recommended that a civil right to counsel program be funded at public expense from state general funds. In a comment, the report notes:

The source of funds identified for programs implementing a civil right to counsel should reflect the significance and centrality of the right in a just and civil society. Funding should be provided from State general funds, the most stable and reliable source available, to ensure the right is not compromised in the future by changes in interest rates, special fund revenues, or State or federal grant funding priorities.

The Maryland report also includes a fiscal narrative that provides an estimate of what it might cost to implement in Maryland. Based on the model sketched out in the report, and using the limited information available about self-represented litigants and estimates on the unmet justice gap, the Commission estimated such a system would cost approximately $106 million to implement. The Maryland Access to Justice Commission has also studied the other side of the cost equation—the economic benefit to the state of providing legal help to low-income residents. In a 2013 report, the Commission estimated that civil legal aid lawyers generated approximately $190 million in economic benefit for the State during a single calendar year.


70. See Pollock, supra note 55, at 4 n.35 (citing Jonathan Lippman, Remarks at the Central Synagogue on Lexington Ave. in New York City: ‘Justice, Justice, Shall You Pursue,’ The Chief Judge’s Perspective on Justice and Jewish Values at 13-14 (Feb. 5, 2010)).


72. Id. at 5.

73. Id. at 6.

74. Id. at 10.

75. Id. at 10.

III. HOW A CIVIL RIGHT TO COUNSEL ADDRESSES CONCENTRATED POVERTY

By providing residents in high-poverty metropolitan neighborhoods with a right to counsel in key case types, we empower those individuals to effectuate the reforms researchers have suggested hold the key for social mobility and neighborhood improvement. Inner-city residents with genuine access to counsel will be able to access the rights and protections already available to them under the law. In their study of HUD programs designed to address concentrated poverty, Turner and Rawlings call upon policymakers to, among other things, “[d]esign programs to tackle the major barriers and challenges participating families face—housing, safety, health, employment, and education,”76 a list that mirrors fairly closely the basic human needs to be addressed by a civil right to counsel. A civil right to counsel may be another way to break up the institutional and structural constraints that have limited earlier efforts to address concentrated poverty. We can begin to envision how this might work by examining the legal issues inherent in some of the strategies proposed for addressing concentrated poverty.

A. Housing

The strategies proposed for addressing concentrated poverty in the nation’s cities include the following: “channel federally-assisted housing expenditures to lessen racial concentration,”77 “require fair-share affordable housing obligations,”78 “encourage balanced distribution of . . . housing;”79 promote racially mixed neighborhoods;80 “help families that are receiving place-based services and supports remain in place, if they want to stay;”81 help families recognize and address housing discrimination;82 and promote housing choice and relocation for those who want it.83 The poor themselves might undertake many of these strategies if they were provided meaningful access to legal representation.

The challenge of ensuring access to adequate, affordable housing is closely tied to the nation’s history of racial discrimination and segregation. For example:

Considerable research suggests links between housing market discrimination and racial segregation, and ample evidence supports the hypothesis that a lack of coordinated land-use planning and localized fiscal structures have, over

76. TURNER & RAWLINGS, supra note 40, at 33.
77. Bollens, supra note 30, at 15.
78. Id. at 16.
79. Id. at 17.
80. Id. at 18.
81. TURNER & RAWLINGS, supra note 40, at 30.
82. Id. at 34.
83. EDELMAN, supra note 1, at 132.
time, produced relatively fewer affordable housing opportunities in suburban jurisdictions, disproportionately affecting poorer households.\textsuperscript{84} The housing market has also been the forum for fraud and abuse, further victimizing already vulnerable families. Those who live in poverty are vulnerable to predatory and fraudulent practices, as demonstrated by the mortgage-foreclosure crisis.\textsuperscript{85} People of color were more likely to be extended loans beyond their ability to pay, more likely to be steered into costly subprime loans unnecessarily, and more likely to fall into foreclosure.\textsuperscript{86} It is estimated that the net worth of African-American families declined 53\% between 2005 and 2009.\textsuperscript{87}

What if low-income, inner-city residents had meaningful access to a lawyer to address housing and foreclosure issues? Low-income residents can be the catalyst for changes in the law when they have the opportunity to be represented. In the past, impact litigation brought on behalf of low-income individuals has had a significant impact on housing patterns. The \textit{Mount Laurel} doctrine emerged from a line of New Jersey cases and established key principles of inclusionary zoning. As stated in \textit{South Burlington County NAACP v. Township of Mount Laurel (Mount Laurel II)}, “those regulations that do not provide the requisite opportunity for a fair share of the region’s need for low and moderate income housing conflict with the general welfare and violate the state constit-


\textit{subprime-mortgages.}


\textit{discrimination-charges.html?r=0&pagewanted=print.}

\textsuperscript{87} \textit{Ctr. for Responsible Lending, Foreclosures by Race and Ethnicity: The Demographics of a Crisis} 3 (2010), \textit{available at} http://www.responsiblelending.org/ mortgage-lending/research-analysis/foreclosures-by-race-executive-summary.pdf (“Non-Hispanic whites represent the majority of at-risk borrowers, but African-American and Latino borrowers are more likely to be at imminent risk of foreclosure (21.6\% and 21.4\%, respectively) than non-Hispanic white borrowers (14.8\%). . . . [W]e estimate that 17\% of Latino homeowners, 11\% of African-American homeowners, and 7\% of non-Hispanic white homeowners have lost or are at imminent risk of losing their home.”); \textit{Rakesh Kochhar, Richard Fry & Paul Taylor, Pew Research Ctr.}, \textit{Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics: Twenty-to-One, Executive Summary} 5 (2011), \textit{available at} http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics (“The net worth of black households fell from $12,124 in 2005 to $5,677 in 2009, a decline of 53\%. Like Hispanics, black households drew a large share (59\%) of their net worth from home equity in 2005. Thus, the housing downturn had a strong impact on their net worth. Blacks also took on more unsecured debt during the economic downturn, with the median level rising by 27\%.”); see also \textit{Tami Luhby, Housing Crisis Hits Blacks Hardest, CNN} (Oct. 19, 2010, 8:15 AM), http://www.cnn.com/2010/ LIVING/10/19/mam.housing.foreclosure.money (noting that blacks’ homeownership rate plummeted nearly 6\% between 2004 and 2010, to 46.2\%, more than twice that of any other racial or ethnic group. Rates for the nation as a whole fell only 2.3\% according to U.S. Census data.).
tional requirements of substantive due process and equal protection.” After the Mount Laurel II decision, the New Jersey Supreme Court established a three-judge panel to ensure that each city provides its “fair share” of affordable housing.

Litigation also played a critical role in early efforts to address racial segregation and, according to some, helped make possible the Great Migration. In Buchanan v. Warley, the U.S. Supreme Court unanimously invalidated a Louisville, Kentucky ordinance prohibiting any colored person from moving into a home on any block where a greater number of homes were occupied by whites than by colored persons. W.E.B. DuBois credited Buchanan with “breaking the backbone of segregation.” The Gautreaux Program was instituted in the 1970s in response to a court order in Gautreaux v. Housing Authority, and was designed to remedy segregation in the Chicago Housing Authority. Those who were relocated through the program were more likely to be employed, less likely to receive public assistance, and their children were more likely to enroll in post-secondary education.

Despite some early successes, institutional and structural discrimination remain embedded in housing patterns in America’s cities. And the impact of poverty and bias are mutually reinforcing. Wade Henderson and Jonathan Smith have noted that low-income clients cannot always classify their problem as solely a civil legal or civil rights problem. “From the perspective of clients who cannot afford counsel and are seeking help, the effects of poverty and bias are bound together.” It may be that, in addressing the civil legal needs of the poor in America’s cities, we may be able to leaven their civil rights as well. Justice Earl Johnson, an early promoter of a civil right to counsel, has suggested that, during the early days when federal funding for legal services was more generous, equal opportunity among racial, economic, and geographic groups

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89. Bollens, supra note 30, at 16.


91. 245 U.S. 60 (1917).


94. FED. RESERVE SYS. & BROOKINGS INST., supra note 31.

was a by-product of improved access to counsel as much as a deliberate strategy to address discrimination.96

Judicial decisions, like Mount Laurel II and Buchanan, effect change not simply by mandating changes in behavior. Rather, they make it more costly to ignore the law, creating market incentives for non-discriminatory behavior.97 When laws requiring landlords to maintain habitable rental properties are regularly enforced, for example, it becomes less costly to comply with the law than to violate it. This permits landlords who already comply with the law to compete fairly in the housing market. The quality of housing stock improves generally, and neighborhoods become more attractive to a broader range of city residents.

Impact does not always come from impact litigation, of course. It is the efforts of thousands of individuals to assert their rights that make the law truly powerful; and cultures shift when institutional defendants honor the laws already on the books, knowing they will be held accountable to those laws if they do not. Legal aid lawyers provide a broad range of benefits for their clients in housing matters. Lawyers help in preventing evictions, delaying evictions providing their clients more time to move, securing access to housing, avoiding or delaying foreclosure, overcoming a denial of a tenant’s rights under a lease, enforcing rights to decent, habitable housing, preserving or restoring access to personal property after eviction, addressing discrimination, obtaining reasonable accommodations, obtaining repairs, facilitating the return of a security deposit, and assisting in the development or renovation of affordable housing.98 With the help of legal aid lawyers, low-income city residents are able to secure improved living conditions, raise the quality of life in their neighborhoods, and create meaningful choices about where to live.

The mortgage-foreclosure crisis has devastated inner-city neighborhoods. Lawyers can play an important role in helping homeowners retain their housing or avoid homelessness as a result of foreclosure. Foreclosure can lead to a cascade of other negative consequences for vulnerable families, consequences that ripple out to affect that family’s neighborhood and larger community. “[F]oreclosure has potentially enormous collateral consequences, such as loss of home equity, homelessness, disruption to education, damaged credit, removal from the community (if the homeowner is forced to move far away), emotional distress and health problems, both mental and physical.”99 The foreclosure process is complex and nearly impossible for homeowners to navigate on their own. As the crisis has unfolded, there have been many reports of error, robo-signing, incorrect or faulty documentation, illegal fees, fraud, and

96. Id. at 215 (quoting Earl Johnson Jr., Justice and Reform: The Formative Years of the American Legal Services Program 195 (1974)).
97. Bernstein & Somin, supra note 90, at 643.
Homeowners may have a range of affirmative defenses available to them that they are unlikely to raise unless they have the benefit of counsel. In Fiscal Year 2012, Maryland legal services providers successfully helped 405 homeowners avoid or delay the foreclosure of their home, affecting a total of 1,196 household members. Those household members included children whose schooling was not disrupted by an unexpected move, parents who were able to continue caring for their children, adults who were able to focus on their work and retain employment. These were the homes that did not get boarded up on streets that remained viable for just a little longer.

Researchers in New York testified, during a series of hearings on civil legal services, that an average of 40.2% of evictees and individuals in foreclosure end up taking advantage of homeless shelters. The Maryland Access to Justice Commission estimates Maryland avoided $3,696,000 in shelter costs alone as the result of the advocacy of civil legal aid lawyers during Fiscal Year 2012. State and local governments save money and maintain their tax base when inner-city residents are able to retain their housing, resources that can be used to benefit inner-city neighborhoods in other ways—it’s a double win.

B. Employment

Cities face a myriad of challenges in trying to ensure residents have adequate employment. Strategies to address un- and underemployment have included rent-based financial incentives to work, job placement and community supports for working families, connecting inner-city residents with suburban jobs, providing transportation help, as well as programs that support and encourage inner-city residents to move to neighborhoods with better jobs. Others have encouraged cities to work for a balanced distribution of jobs and transportation, prevent suburban sprawl, and raise wages. ABA Resolution 112A includes “sustenance” as one of the case types where basic human

100. Id. at 453.
101. Id.
102. MD. ACCESS TO JUSTICE COMM’N, supra note 75, at 12.
104. MD. ACCESS TO JUSTICE COMM’N, supra note 75, at 12. A number of states have done studies to assess the economic impact of providing civil legal services, and have reported similar results. See Economic Benefit of Meeting Civil Legal Needs, NAT’L LEGAL AID & DEFENDER ASS’N, http://www.nlada.org/DMS/Index/000000/000050/document_browse#topics (last visited Apr. 11, 2014).
105. TURNER & RAWLINGS, supra note 40.
106. Bollens, supra note 30, at 17.
107. Id. at 16.
108. EDELMAN, supra note 1, at 133.
needs are stake. In the accompanying report, the ABA has defined “sustainability” to include:

[A] person or family’s sources of income whether derived from employment, government monetary payments or ‘in kind’ benefits (e.g., food stamps). Typical legal proceedings involving this basic human need include denials of or termination of government payments or benefits, or low-wage workers’ wage or employment disputes where counsel is not realistically available through market forces.

When legal aid lawyers are available to help with these issues, they make a significant difference in the lives of their clients, those clients’ households, and in the surrounding neighborhood in which those families live. In Fiscal Year 2012, Maryland legal services providers helped 996 individuals obtain wages or back pay. In a study of the economic impact of civil legal aid in the State, providers reported securing $173,603 in wages and back pay, and helped 230 clients obtain $2.6 million in unemployment benefits. Legal aid lawyers also help clients redress workplace discrimination, wrongful discharge, safety and other workplace grievances, help individuals obtain expungements (a criminal record can be a bar to employment), and take on impact litigation designed to improve the timely payment of public benefits and establish a living wage.

When one worker has been unfairly deprived of wages, or has been underpaid, there are usually others. Wage and hour disputes can create opportunities for collective action that benefit a broad range of low-wage workers. Because of the low amounts of money at stake, wage and hour disputes involving low-wage workers are often unattractive to private counsel. Public interest lawyers can play an important part by litigating these cases and bringing class actions where appropriate. In 2013, the Public Justice Center and their litigation partners successfully litigated two related cases on behalf of eighty low-wage construction workers. In the suits, workers alleged their employers, five different construction contractors and subcontractors, had misclassified them as independent contractors by moving them from payroll to payroll, and had deprived them of full, on-time payments. “[W]orkers who are misclassified as independent contractors lose coverage under unemployment insurance and workers’ compensation, as well as their right to earn minimum wage and overtime pay.”

110. Id. at 13.
111. MD. LEGAL SERVS. CORP., supra note 98.
112. MD. ACCESS TO JUSTICE COMM’N, supra note 75, at 4, 6.
113. See id. at 8-10. The Public Justice Center brought a case in Maryland that resulted in an injunction requiring the State to make timely eligibility decisions on safety net programs. The injunction was lifted in 2012 after the State was able to show it had reached a 98% compliance rate with timeliness requirements.
115. Vaughn, supra note 21, at 144.
The Public Justice Center also negotiated a settlement in 2013 as the result of litigation on behalf of asbestos-abatement workers under Maryland’s Wage and Hour Law, the Maryland Wage Payment and Collection Law and the Fair Labor Standards Act. The suit alleged workers were not paid for time spent attending state-mandated abatement training courses. The workers also demanded reimbursement for the costs of the courses and personal protective gear that they had to buy to do their work. The settlement benefited at least 500 workers who will receive $200,000 in direct payments, compensation for time spent in trainings, free protective equipment, and a grievance procedure for future violations. The settlement will have a long-term impact in a variety of ways: 1) by increasing the fiscal resources available to these and future employees; 2) by ensuring they have adequate gear to protect their long-term health at no cost to them; 3) by creating enforcement procedures to ensure the settlement is followed by the employer; and finally 4) by putting other employers on notice that the provisions of these critical employee protection laws are enforceable and enforced. By providing a right to counsel for low-wage workers with employment disputes, a civil right to counsel has the potential to have a significant impact on the lives of the working poor.

In addressing employment issues, public interest lawyers help clients avoid the cascading effects of poverty. In 2011, a client of South Coastal Counties Legal Services in Massachusetts missed work to receive treatments for breast cancer, which ultimately cost her her job. As a result of losing her income, and the high cost of insurance needed to cover her continuing chemotherapy, the client was at risk of eviction. Her lawyer contacted the employer, asserting her right to accommodations under the Americans with Disabilities Act, and requested she be reinstated. As a result of the attorney’s advocacy, the employer rehired her and provided her time off to complete chemotherapy. Her lawyer was also able to negotiate a settlement with the landlord who dropped the eviction proceeding. She and her daughter were able to remain in the home, she finished her treatments, and she returned to work, cancer-free.

Efforts that promote social mobility have a leveraging effect by creating cross-cultural ties. While the poor benefit from the social support they receive from homogeneous networks that include their low-income peers, research has shown that it is often “weak ties,” those outside one’s regular family and friends, that really help impoverished people “get ahead.” In their examination of social capital among African-American and Latin-American low-income mothers, Silvia Dominquez and Celeste Watkins distinguish two types of social networks: 1) homogeneous groups that provide social support to one


118. Dominguez & Watkins, supra note 4, at 113.
another; and 2) heterogeneous ones that provide social leverage.\textsuperscript{119} Low-income individuals need both—the former to survive and the latter to advance. A new job or a home in a new neighborhood can expose an individual to new acquaintances—those outside her ethnicity, race, or social class. It is these relationships that expose her to new opportunities and literally expand her horizons. These new, albeit weak, ties create further opportunities for better employment and social mobility.

A civil right to counsel is less likely to play a direct role in the public planning process which creates the structural parameters that determine access to housing, jobs, and transportation. Many of the strategies for addressing concentrated poverty will require regional planning and participation in the development of comprehensive plans, zoning ordinances, and local budgets. To the extent access to counsel helps inner-city residents remain in their neighborhoods, or move to new, healthy ones, however, having a civil right to counsel is likely to yield inner-city residents who are healthier, better able to support their families and who are more empowered to take action on their own behalf. With greater attachment to their community, inner-city residents might play a larger role in community organizations, tenant associations, and neighborhood nonprofits that often do play a role in the local planning process. By identifying some of the legal issues inherent in their day-to-day problems, and addressing those with the help of a lawyer, inner-city residents will put pressure on those institutional structures and the policymakers who design them. If we provide true access to justice, we have a better chance of promoting job, housing, and transportation equity in our nation’s cities.

C. How Important Is It to Have Counsel?

Poor people regularly represent themselves in court. In most parts of the country, few litigants are represented in landlord-tenant court, small claims courts, or in matters involving domestic violence.\textsuperscript{120} In Fiscal Year 2010, 73\% of domestic cases in Maryland involved at least one self-represented litigant at the time the answer was filed, and in nearly half (47\%) of cases, neither party was represented.\textsuperscript{121} Approximately 80\% of the legal needs of the poor go unaddressed or are handled without the help of a lawyer.\textsuperscript{122} Do these individuals really need a lawyer to address their legal problems? With the proliferation of

\textsuperscript{119} Id. at 112.

\textsuperscript{120} See Paula Hannaford-Agor & Nicole Mott, Research on Self-Represented Litigation: Preliminary Results and Methodological Considerations, 24 JUST. SYS. J. 163 (2003).

\textsuperscript{121} MD. ACCESS TO JUSTICE COMM’N, SELF-REPRESENTED LITIGANTS IN MARYLAND (2011).

court forms, self-help services and brief advice programs, can’t low-income individuals navigate the justice system without the help of an attorney?\textsuperscript{123}

In some case types that affect the poor, there is an imbalance of power between the parties; in such cases there may be no good substitute for representation. Housing cases often involve unrepresented tenants defending against actions brought by corporate plaintiffs represented by counsel. An early study of Baltimore City rent court found corporations and proprietorships comprised 72.6\% of plaintiffs, but only 0.36\% of defendants.\textsuperscript{124} In domestic violence cases, the person seeking protection must deal with the alleged perpetrator, someone who may have manipulated and controlled them for years. If that person is represented, it can be difficult indeed for an unrepresented victim to obtain the full protection to which she is entitled, and upon which her safety depends. In her 2003 study of the use of legal remedies in domestic violence, Jane Murphy found that few women seeking civil protective orders had representation, but that when they did they were much more likely to get the protective order. Of the 142 women in the study, only 36 (approximately 25\%) had legal representation for the protective order hearing.\textsuperscript{125} This study was conducted in a court that had a VAWA-funded legal clinic in the building. Women either chose not to be served or were unable to be served by the program.\textsuperscript{126} Data available from the Maryland Judiciary for 2012 reflects that even fewer individuals statewide are represented in these matters. In 2012 only 23.8\% of petitioners and 17.7\% of respondents were represented statewide in final protective order hearings. In only 10.9\% of cases were both parties represented.\textsuperscript{127} In Professor Murphy’s study, those who were represented fared significantly better. Those with counsel obtained the protective order 83\% of the time, compared to only 32\% for those who were unrepresented.\textsuperscript{128}

The complexity of these cases, the speed at which they are handled, and the power imbalances present create an environment that significantly disadvantages the unrepresented. Rent courts are high-volume fora where few cases go to trial. Most cases are resolved by default or settlement and tenants are rarely represented. Landlords are often more likely to be represented and some courts report significant disparities in representation rates.\textsuperscript{129} Tenants who are

\textsuperscript{123} See generally INNOVATIONS FOR SELF-REPRESENTED LITIGANTS (Bonnie Rose Hough & Pamela Cardullo Ortiz eds., 2011).


\textsuperscript{125} Jane C. Murphy, Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women, 11 Am. U. J. Gender Soc. Pol’y & L. 499, 511 (2003).

\textsuperscript{126} Id.


\textsuperscript{128} Murphy, supra note 125, at 511-12.

represented are more likely to prevail in rent court. Those who go without counsel may not appear at all. When they do appear on their own, they often participate in “unmonitored, hallway negotiations” with the landlord or landlord’s lawyer. This puts them at a distinct disadvantage. Unrepresented persons may be dependent on the lawyer for the opposing side to guide them through the process, explain their options and help present any settlement to the court. Litigants sometimes do not know when their case is called. In a housing matter, for example, if a corporation owns the building, the litigant may be listening for the name of the person to whom they pay their rent rather than the name of the corporate entity. By the end of the court session, the case may have been called and dismissed or a judgment entered. Now the litigant must file a motion to reopen the case, adding layers of complexity to an already confusing experience.

In a study conducted by the National Center for State Courts, the Chicago-Kent College of Law, and Illinois Institute of Technology’s Institute of Design, researchers examined case outcome data to determine whether having an attorney made a difference. The study noted two trends. First, when both parties were unrepresented, the case was more likely to be dismissed. Second, if at least one of the parties had a lawyer, the case was more likely to settle. In other words, the lack of a lawyer was associated with higher dismissal rates and lower settlement rates. Two pilot projects in Massachusetts explored the impact of having counsel in housing matters. Both projects were designed as randomized control studies. One, in Northeast Housing Court in Lawrence and Lynn, Massachusetts, compared varying levels of legal representation. Those courts, which were special housing courts, already provided support to tenants, including limited representation through a Lawyer of the Day Program. The study showed no measurable difference in outcomes between the group that re-

130. Engler, supra note 129, at 48-49 (“Some reports discuss winning generally, showing tenants three, six, ten or even nineteen times as likely to win if they are represented.”).

131. Id. at 46-47.

132. Hannaford-Agor & Mott, supra note 120, at 171.

received limited representation and the program with enhanced representation, although the final report by the project administrator noted that the limited representation group received such extensive assistance that the Northeast pilot essentially ended up comparing varying forms of representation by counsel, rather than the impact of full representation by counsel to lesser forms of assistance. A sister study of Quincy District Court, however, where there were fewer resources in place, compared the impact of full representation to screening and brief service offered to the control group. Tenants in the Quincy Court study were twice as likely to retain possession, and received almost five times as much as the control group (nine and a half months rent compared to two months rent) in waived rent and damage payments.

Case outcomes can be difficult to measure in family cases where there may be no “right answer,” but research suggests representation does affect the outcome. In a study of Maryland custody cases, the Women’s Law Center of Maryland found when parents are represented by a lawyer, it is more likely that spousal support or alimony will be awarded. In the follow-up study, researchers affirmed that “when neither party is represented, both parties ‘do the worst’ in terms of financial outcomes.” The follow-up study also looked specifically at the impact of representation on custody outcomes. When mother alone was represented and when neither parent was represented, sole custody to mother was the most prevalent outcome (54.8% and 41%, respectively); when father alone or when both parents were represented, joint legal with physical custody to mother (29.6% and 44.7%) was the most prevalent outcome. “When one party in a contested custody case is represented by an attorney and the other is not, chances are good that the outcome will be sole custody to the party with an attorney.” Since family structure affects concentrated poverty, how families fare in divorce and custody cases can have an impact on how they weather the transition the litigation represents. Providing representation to parties in these cases may mean they are more likely to obtain a financial award (child support, alimony, marital property) to which they are entitled under the

134. Greiner et. al., How Effective?, supra note 133.
136. Id. at 15; Greiner et. al., The Limits of Unbundled Legal Assistance Programs, supra note 133.
138. Women’s Law Center of Maryland, Inc., Families in Transition: A Follow-Up Study Exploring Family Law Issues in Maryland 47 (2006). Russell Engler has commented on this study that individuals who have more resources are more likely to be able to pay a financial award, and more likely to be able to retain counsel. It is no surprise then, that there is an association between having counsel and paying an award. “[P]oorer litigants can be expected both to appear without counsel at a higher rate and to be less able to pay a financial award.” Engler, supra note 129, at 53.
139. Women’s Law Center of Maryland, Inc., supra note 138, at 47-49.
140. Id. at 55.
law. It may mean the children are placed in an arrangement that keeps both parents engaged. And it may mean that the case is more likely to settle rather than result in a judge-made decision. In the Maryland follow-up study, cases that ended with a judge-made decision were twice as likely to involve post-judgment litigation—meaning the parties were more likely to return to court to modify the decision. More litigation means the stress and expense of court involvement continues, further draining the family.

Providing access to a lawyer may have a larger impact beyond the outcome of the case. Legal action has a leveraging effect on the aspirations of individuals and on the expectations of the community. “Since rights carry with them connotations of entitlement, a declaration of rights tends to politicize needs by changing the way people think about their discontents.” When they participate in legal action on their own behalf, low-income residents aid themselves and empower others; they educate their neighbors and inspire others to pursue their rights as well. Public interest lawyers “give voice to individuals who would otherwise not be heard.” In addition, public interest lawyers may play a role in developing community identity. Poverty isolates the poor. Low-income residents may be isolated by their experiences interacting with the social service or justice systems. They may see their inability to find a job or maintain adequate housing as a personal failure. Lawyers sometimes act as “hubs” for isolated clients. Through their work with a public interest lawyer, clients can learn they are part of a community of others similarly affected. They may begin to see and frame their problems differently. Once they see they are part of a community of individuals with similar problems, they may begin to identify the structural and institutional roots of poverty that have contributed to their personal situations.

D. The Impact on the Law Itself from Engaging Lawyers in Poor Neighborhoods

Providing a civil right to counsel in basic human needs cases will benefit not only the poor, but the wealthy, not only our cities, but lawyers and the law itself. If the creation of a right comes with an infusion of resources, legal aid organizations will have an opportunity to reopen offices closed when federal funding was cut back in the 1980s and 1990s, or as a result of the recent decline in interest rates which decimated the Interest on Lawyers Trust Account.

141. Hannaford-Agor & Mott, supra note 120, at 171.
142. WOMEN’S LAW CENTER OF MARYLAND, INC., supra note 138, at 40.
145. Id. at 232.
(IOLTA) programs that had become an important funding source for legal aid programs in the last two decades. In order to deliver services to urban poor, it is likely these organizations will open more offices in inner-city neighborhoods. Increased access to representation will provide more opportunities for direct lawyer-client interaction. This interaction can be transformative for both clients and lawyers.146 When they are truly client-focused, and do not play the role of elites themselves, public interest lawyers can serve as “mediators” between elites and the poor, between those who make the policies and those affected by them. It may be that, as they take advantage of the opportunities to learn from their clients, legal services lawyers will be able to identify issues and client needs that permit them to raise broader, systemic issues with implications for concentrated poverty. Increased “lawyer-client openness” is “more likely to produce change in the clients’ and lawyers’ understanding of their claims and grievances and in our understanding of the way poor people are impacted by policies and practices.”147

This Article has noted the impact having a lawyer can make on the enforceability of the law, and on the behavior of institutional defendants. But what if those same landlords, lenders, healthcare providers, agencies, and others knew that low-income residents would only be able to obtain the help of a lawyer 20% of the time? In its 2007 legal needs study, *Documenting the Justice Gap in America*, the federal Legal Services Corporation found fewer than one in five legal problems experienced by low-income individuals are addressed with the help of a lawyer.148 In their business model, it might continue to make sense for lenders, landlords, creditors, and employers to “push the envelope.” Compliance with the law might still cost more than ignoring the law if the low-income individuals whose rights are not fully enforced are likely to get legal help only 20% of the time. By providing a civil right to counsel in key case types, low-income residents would be able to determine the extent of their legal problems with the help of a lawyer and assert rights, benefits, or defenses available to them under the law—every time.

**CONCLUSION**

Is a civil right to counsel a panacea for the ills of the urban poor? Absolutely not. To the contrary, a civil right to counsel can play a role in addressing the everyday legal needs of the poor, but it must not create an excuse for policymakers to abdicate responsibility for addressing inner-city poverty. It is one tool among many. If fully funded and implemented, the creation of a civil right to counsel will necessitate a significant increase in resources devoted to legal

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147. Id.
148. LEGAL SERVS. CORP., supra note 122, at 2.
aid, and will raise awareness among the poor that they can begin to address the legal issues inherent in their everyday problems. An influx of resources without the creation of a right would have a significant impact on its own, but it is unlikely to happen in the absence of a right.

Some within the access-to-justice community have proposed an alternative model that would create “an entitlement not to a lawyer but to legal assistance appropriate to a claimant’s circumstances and need.”¹⁴⁹ As articulated by Jeanne Charn, this approach would include self-help and brief advice services (what she calls “lawyer-lite”), would encourage innovation in the delivery of legal services, and would be built on empirical research that affectively assesses what type of legal help works best in specific circumstances.¹⁵⁰ Charn’s model looks more like the triage-based model already in place that attempts to deliver the most cost-effective service necessary to achieve the client’s goals. In Maryland, for example, the bulk of civil legal services provided are, indeed, brief advice services.¹⁵¹ The Maryland delivery system includes a statewide legal content website, court forms and instructions, court-based self-help centers including walk-in, phone, and live chat assistance, brief advice clinics, telephone hotlines, public law libraries, as well as traditional legal services clinics, pro bono, and staff attorney programs that provide full representation. The current model is already triage-based. It is the type of model designed when insufficient resources exist to meet current needs. What is missing from the spectrum of resources is access to full representation, when warranted. Adding a right to counsel would enable lawyers to assess the individual’s legal needs, and would ensure that person full representation in those instances where there was no adequate substitute.

A right to counsel may permit individual metropolitan residents to pursue their rights under the law, but we cannot abandon the poor to address their problems on their own. We need to provide adequate transportation between high poverty neighborhoods and employment centers; we need inclusionary zoning and individual planning decisions that promote mixed-income development; we need public benefits that provide a “first rung” on the ladder to help families weather illness, job loss, or other stressors;¹⁵² we need law and court reforms that provide institutional protections for the vulnerable, that help individuals and families avoid litigation when possible, or that obviate the need for


¹⁵⁰. Id.


¹⁵². Edelman, supra note 1, at 83-84. (“One piece of relatively good news is that people tend not to be mired permanently in deep poverty . . . . Of people with incomes below half the poverty line, only one in four is deeply poor three years in a row . . . . If the need for safety-net support for those at the very bottom—at least to keep them from the most severe privation—is quite temporary for most, why not respond to it?”).
litigation altogether; and we need access to legal services to ensure the laws passed by our legislatures to protect the vulnerable actually have meaning.

Like any innovation, a civil right to counsel can cut both ways. There are some who believe the right to counsel in criminal matters has not improved the situation of the poor, and has, perhaps, made things worse. As stated by critical rights theorist, Paul Butler, *Gideon* “provides a legitimation of the status quo.”\(^{153}\) Indeed, the failure to adequately fund the indigent defense system has made a mockery of *Gideon*. “As a practical matter . . . the right to counsel [in criminal matters] means whatever five or more members of the Supreme Court say it does (or what the social understanding of the right is).”\(^{154}\) Even if a right to counsel were extended to civil matters, it would be up to us to make it mean something.

If we choose to provide a right to counsel for low-income individuals whose basic human needs are stake, we will be signaling more about ourselves than about the poor—that we stand for the principle of “Equal Justice Under Law.” We will be saying to the families of the Lower Ninth Ward, the children on Chicago’s South Side, and the homeless in lower Manhattan: “We will not abandon you.”

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\(^{154}\) *Id.* at 2192.