

# Democracy, The Justice Gap, and Preserving the Rule of Law



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What if we told you that for just \$200 a month, you could ensure that all Americans below the poverty line receive legal representation and thereby restore ordinary Americans' trust in the legal system and the rule of law — and fundamentally, their belief in democracy? What if we further told you that the legal ethics rules, in fact, say that lawyers should already be giving away \$200 a month, and likely much more than that?

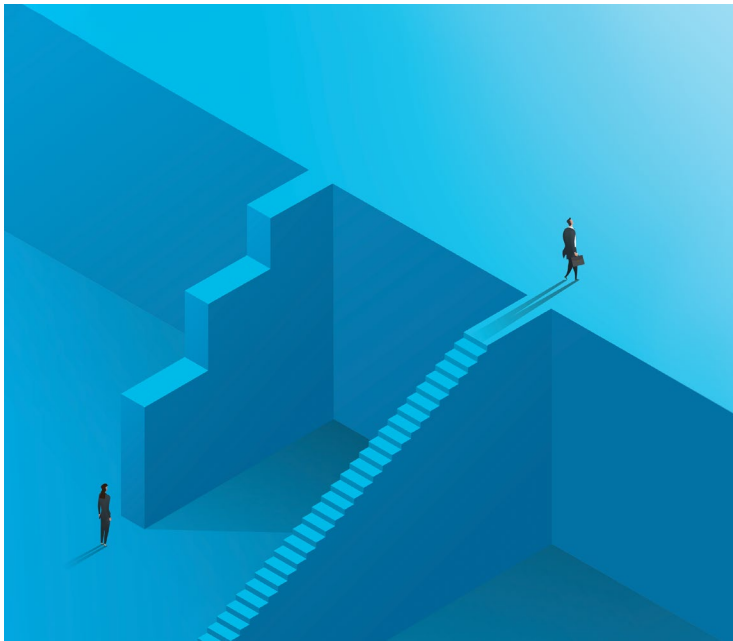
We all know the Miranda rights police must read to suspects when they are arrested, because all Americans are entitled to an attorney if you are facing incarceration thanks to the Supreme Court's opinion in the *Gideon v. Wainwright* case. But there has never been a "civil Gideon," and individuals have no legal right to an attorney in civil cases.

If you are a tenant facing eviction, a young adult fighting the IRS, or a domestic violence victim seeking custody of children, you are not entitled to representation. When people who need representation cannot afford it, they fall into the "The Justice Gap," a gap whose existence has a lasting effect on our country's faith in democracy.

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The Legal Services Corporation (LSC) is Congress' answer to this problem. It is the independent nonprofit entity to which Congress allocates funding to ensure that civil legal services are made available in every county of the United States. These grants are

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awarded to local nonprofit legal services organizations. LSC also monitors and reports on the legal needs of impoverished communities in the US, and in its recent Justice Gap Report, LSC reported that low-income Americans did not receive any legal help or enough legal help for 92% of the problems that substantially impact them in the past year.<sup>1</sup>

The problem is a simple one: lack of funding. LSC's budget has not increased with inflation. Congress would need to apportion roughly four times the current amount of funding simply to be even with the amount of money initially appropriated at LSC's creation. The result, in Tennessee, is that there are 1.6 legal aid attorneys for every 10,000 residents in poverty, the tenth lowest ratio in the country.<sup>2</sup> This shortfall is a deficit both in funding and in the number of pro bono attorneys willing to assist these people. With such limited resources, local legal services organizations turn away 50% of the people who reach out to them for help.<sup>3</sup> That lack of access to justice creates a feeling of disenfranchisement, which inevitably erodes confidence in the judicial system and democracy as a whole – the Justice Gap.

Many of us have witnessed the train wreck in court where an individual, unable to afford an attorney, or turned away by legal services programs, stands before

a judge helplessly advocating to protect his legal rights, only to lose because he does not understand legal technicalities. When this happens, the unrepresented person often feels mistreated by the legal system, or worse. Imagine, for example, a person who loses a case, owes a judgment, then loses their driver's license for failure to pay the judgment, only to then lose the ability to get to work, and lose their income, and then lose the ability to take care of their child. One of us dealt with that exact issue, and it is simply an example of what legal aid lawyers see every day. This lack of representation results in the criminalization of poverty. By not having counsel, the unrepresented person loses much more than a legal case, and society as a whole loses even more.

There is a solution. Every hour of free legal aid is calculated to return eleven times (11x) that value back to society. Seeking to provide legal aid to those in need, the TN Model Rule Professional Conduct 6.1 states, "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year." But, because it is not always feasible for every lawyer to engage in pro bono services, comment 9 to the rule states that at such times "a lawyer may discharge the pro bono responsibility by providing financial support to the organizations providing free legal services to persons of limited means. Such financial support should be *reasonably equivalent to the value of the hours or service that would have otherwise been provided...*"

What would happen if every lawyer in Tennessee simply followed the model rule? According to the American Bar Association (ABA), there were 19,583 lawyers in Tennessee in 2023,<sup>4</sup> and the Bureau of Labor Statistics reports the mean hourly wage for a lawyer in Tennessee is \$74.57 per hour.<sup>5</sup> If every lawyer in the state of Tennessee contributed 50 hours of their hourly rate each year, it would generate over \$73 million in financial support for civil legal services in the state of Tennessee alone. By comparison, the total budget for the largest legal services program in the state is only \$14 million.<sup>6</sup>

Consider now our opening question: what if every lawyer in middle Tennessee gave just \$50 an hour, which is \$2500 a year, or just over \$200 a month? That would be \$15 million, which would more than double Legal Aid of Middle Tennessee's entire \$14 million budget. Since legal aid turns away about 50% of applicants, that doubling of the budget would theoretically solve the Justice Gap in our community.

The problem is acute, but solvable. Our own ethics rules offer a solution, and if we all just followed those rules, Middle Tennessee could be an example for the country of how the Justice Gap can be closed and the needs of our community addressed. ■

### Footnotes

<sup>1</sup> Legal Services Corporation, THE JUSTICE GAP, <https://justicegap.lsc.gov/resource/section-4-seeking-and-receiving-legal-help/>

<sup>2</sup> Lawyer Demographics – ABA Profile of the Legal Profession 2023, <https://www.abalegalprofile.com/demographics.html>

<sup>3</sup> Legal Services Corporation, THE JUSTICE GAP, <https://justicegap.lsc.gov/resource/section-4-seeking-and-receiving-legal-help/>

<sup>4</sup> Lawyer Demographics – ABA Profile of the Legal Profession 2023, <https://www.abalegalprofile.com/demographics.html>

<sup>5</sup> U.S. Bureau of Labor Statistics, OCCUPATIONAL EMPLOYMENT AND WAGE STATISTICS, May 2023 State Occupational Employment and Wage Estimates, Tennessee, [https://www.bls.gov/oes/current/oes\\_tn.htm#23-0000](https://www.bls.gov/oes/current/oes_tn.htm#23-0000)

<sup>6</sup> Tennessee's largest nonprofit law firm is Legal Aid Society of Middle TN and the Cumberland, based in Nashville, TN. *Largest Law Firms in Nashville*, THE BUSINESS JOURNAL, <https://www.bizjournals.com/nashville/subscriber-only/2024/02/09/largest-law-firms-in-nashville.html>



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