

# **Closing the Justice Gap Chasm and Working to Achieve 100% Access: One Legal Services Program's Experience**

CATHERINE BLAKEMORE  
EXECUTIVE DIRECTOR

September 21, 2016



# About Disability Rights California

- ▶ We are a federally designated and funded system in California to protect and advocate for the rights of Californians with disabilities.
- ▶ In response to horrible abuses occurring in institution housing to people with development disabilities, Congress enacted legislation in 1975 mandating that each state establish a protection and advocacy agency (P&A). DRC was established in 1978.
- ▶ We are a statewide program serving more than 25,000 individuals annually and impacting the rights of hundreds of thousands more through our systemic advocacy and training.

# Legal Aid Programs in California

- ▶ Nearly 100 California legal services programs provide critical legal assistance to more than 8 million Californians who are at or below 125% of the federal poverty level (\$30,375 for a family of four in 2016), are over 60, or have a developmental disability.
- ▶ California's legal services programs annually serve about 270,000 individuals, a fraction of the number of low-income Californians who need legal assistance. There are nearly 10,000 low-income Californians for each of the 850 full-time legal services attorneys.
- ▶ Information about California's legal services program may be found at:  
<http://www.caforjustice.org/about/organizations>.

# The California Commission on Access to Justice

- ▶ The California Commission on Access to Justice was established in 1997 to pursue improvements in our civil justice system so that it is truly accessible for all, regardless of income, geography, language ability, or other factors. An overarching aspirational goal is achieving 100% access to justice for all.
- ▶ The 26 member Commission is comprised of lawyers and judges as well as representatives from business, labor, academic, religious, and civic organizations.

<http://cc.calbar.ca.gov/CommitteesCommissions/Special/AccessstoJustice.aspx>

# The Face of Poverty in California

DRC's work and the work of our legal services colleagues is to ensure access—access to the basic support and services Californians need to successfully live in our communities and access to justice to enforce their most basic legal and civil rights.

What do the statistics tell us about the face of poverty in California?

- ▶ Nearly 6 million Californians, including almost 2 million children, lived in poverty in 2015 based on the official poverty measure. 15.3 percent of Californians had incomes below the official poverty line in 2015, still well above the state poverty rate in 2007 (12.4 percent).
- ▶ Based on the Supplemental Poverty Measure California has the highest poverty rate in the nation with nearly 8 million Californians. 1 in 5 state residents (20.6 %) are unable to adequately support themselves and their families.
- ▶ The poverty rates of individuals with disabilities are higher, with the national data reflecting a poverty rate of 26.5% compared to the national overall poverty rate of 12.8% for individuals without a disability. There are 3,851,442 Californians with a disability not living in institutions.

# The Face of DRC's Clients—Why Access Matters

## Louis Soto

- ▶ Three days before Christmas in 1988, Luis Soto was shot in front of his home as he was getting into his car to go to work. In addition to his wife, he had a six-year-old daughter and a three-year-old son. The incident left him with a traumatic brain injury.
- ▶ His wife provided care for him through the In-Home Supportive Services (IHSS) Program. This allowed him to remain at home rather than live in a nursing home. After a review of his case in 2013, the county decided to cut the number of hours per month he received. Without those hours he could no longer live at home.
- ▶ DRC filed a state court lawsuit challenging the decision. In June 2015, the judge found Luis was eligible for the IHSS hours he had been receiving and was awarded back payments. Those payments went toward buying a home, providing Luis and his family with more stability.



# Autumn Whittlesey



- ▶ Autumn Whittlesey is a passionate 49'ers fan. She was happily living in her own rent-subsidized apartment with supported living services – active in both peer support groups and her day program. All of that changed when she allowed her mother, who was also her conservator, to move in with her. Her mother began to control every aspect of her life, limiting contact with family and friends, as well as participation in her day program.
- ▶ Eventually, Autumn reached out to her sister, Michelle, and told her how unhappy she was. Michelle contacted DRC's Office of Clients' Rights Advocacy. We helped Autumn terminate her conservatorship and move her mother out.

# Stopping Budget Cuts That Harm Seniors and Californians with Disabilities

- ▶ Meet Esther, David, and Leslie Who Were the Real Heroes in the Fight Against Budget Cuts





# Darling v Douglas



- ▶ Esther Darling is a spry and feisty senior who fought to stay out of a nursing home and was able to do so because of an Adult Day Health Care (ADHC) program in Davis. During California's economic downturn, the Governor searched for services to cut from California's shrinking budget and decided to reduce Adult Day Health Care programs. Adult Day Health Care programs serve more than 35,000 Seniors and people with disabilities, all who have complex medical conditions and disabilities. In 2009 DRC obtained a federal court injunction stopping the state from a drastic reduction of ADHC. In response, the state announced that its new budget would completely eliminate ADHC. Just weeks before the shutdown date of ADHC services, we settled the case.

# Oster v Lightbourne



- ▶ David Oster, 34, who has autism and bi-polar disorder, knew that without support from IHSS, his ability to live independently and safely in his own apartment was seriously at risk. His IHSS provider works about 16 hours a week at a little above minimum wage to help him clean his apartment to keep his living conditions safe, prepare nutritious meals, assist with food shopping, laundry and remind him to take his medications. When told his IHSS services would be stopped in 2009 due to the budget cuts, he found the fears about what might happen to him so terrifying that it led to hospitalization. Recognizing that 130,000 low income people with disabilities would be facing similar life-changing conditions, we obtained a federal court injunction in 2009 and 2011 stopping the state from cutting these critical services.

# Napper v Sacramento County



- ▶ In the spring of 2010, Sacramento County planned to close its outpatient mental health clinics. We filed suit and a request for an injunction to stop the cuts which would result in significant reductions in services and place our clients at risk of hospitalization. Leslie Napper, our named plaintiff, was in her early 30's when she was first diagnosed with a mental health disorder. After bad experiences with health care providers who offered heavy medications as the sole treatment, she found one of Sacramento county's outpatient clinics which offered more. They offered psychotherapy and groups to help manage medications and side effects and to avoid self-defeating behavior and importantly, consistency of providers which Leslie knew would help her stay on an even keel and avoid the need for inpatient services. We obtained a preliminary injunction stopping the County from implementing its plan.

# What is Equal Access?

- ▶ We base our legal system on the premise of equal access to justice.

- ▶ *U.S. Supreme Court Justice Lewis Powell, Jr. said:*

"Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status."

- ▶ *Former California Chief Justice Ronald George said:*

"Access and fairness in the courts are not abstract philosophical principles - they are basic to preserving the rule of law."

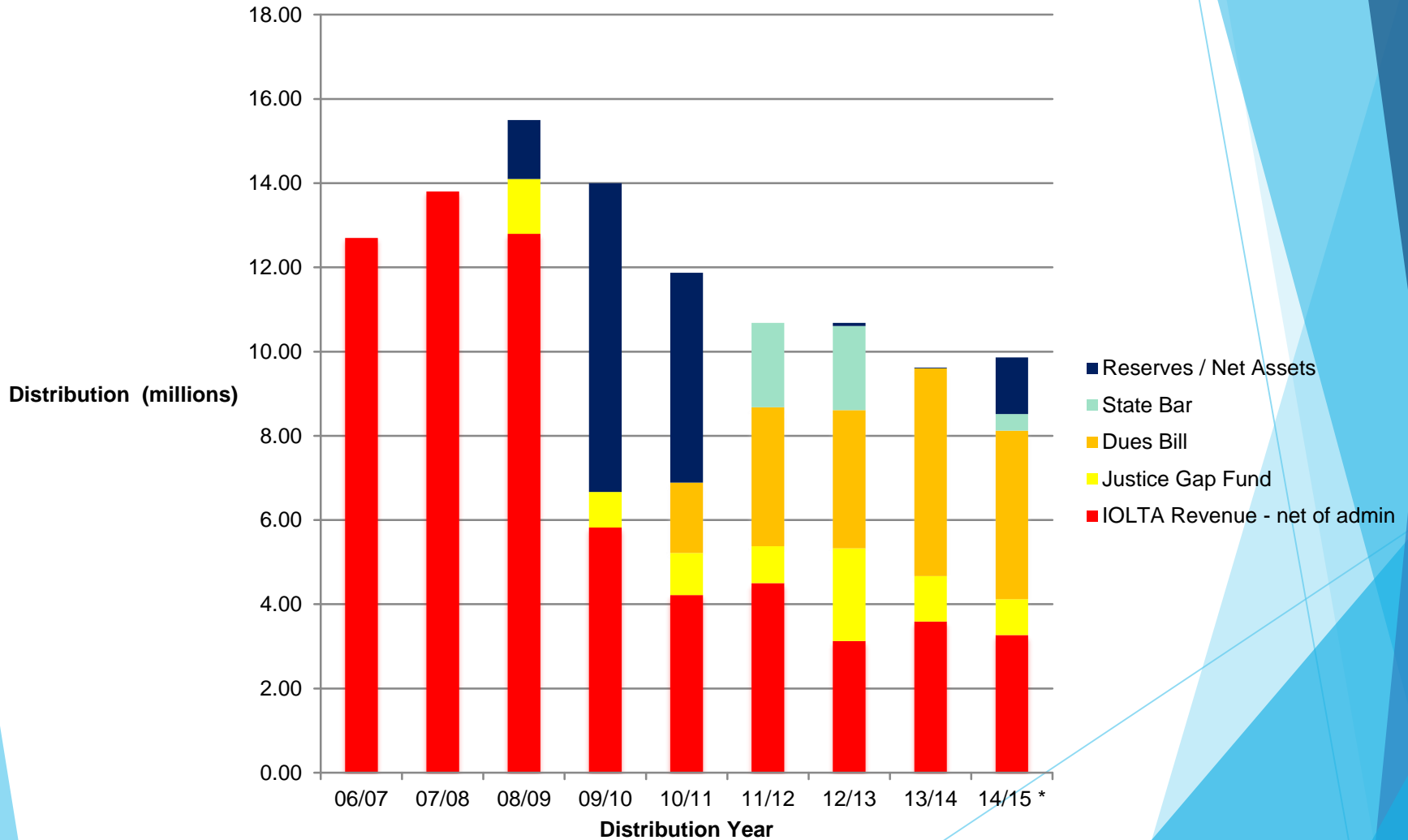
- ▶ And the California legislature in making findings in the Shriver Civil Counsel Act, concluded: "equal access to justice without regard to income is a fundamental right in a democratic society"... and "in many cases the state has as great a responsibility to ensure adequate counsel is available to both parties...as it does to supply judges, courthouses, and other forums for the hearing of the cases..."

# What is the Justice Gap or Chasm?

- ▶ Equal Access embodies the ideal that every individual should have both access to courts and access to a lawyer or other assistance. Sadly, California currently is not providing either.
- ▶ Significant budget cuts during and following the 2008-09 recession resulted in the closure of 200 courtrooms and staff reductions which made it more difficult to get court documents filed, fines and fees paid, and cases heard.
- ▶ Over 4.3 million Californians are believed to be currently unrepresented in civil court proceedings, largely because they cannot afford representation.
- ▶ Current funding allows legal services programs to assist less than one-third of California's poor and lower income residents. And over the past seven years the funding for legal services lawyers went down.

# Declining Legal Services Funding in CA

Funding Source of Distributions

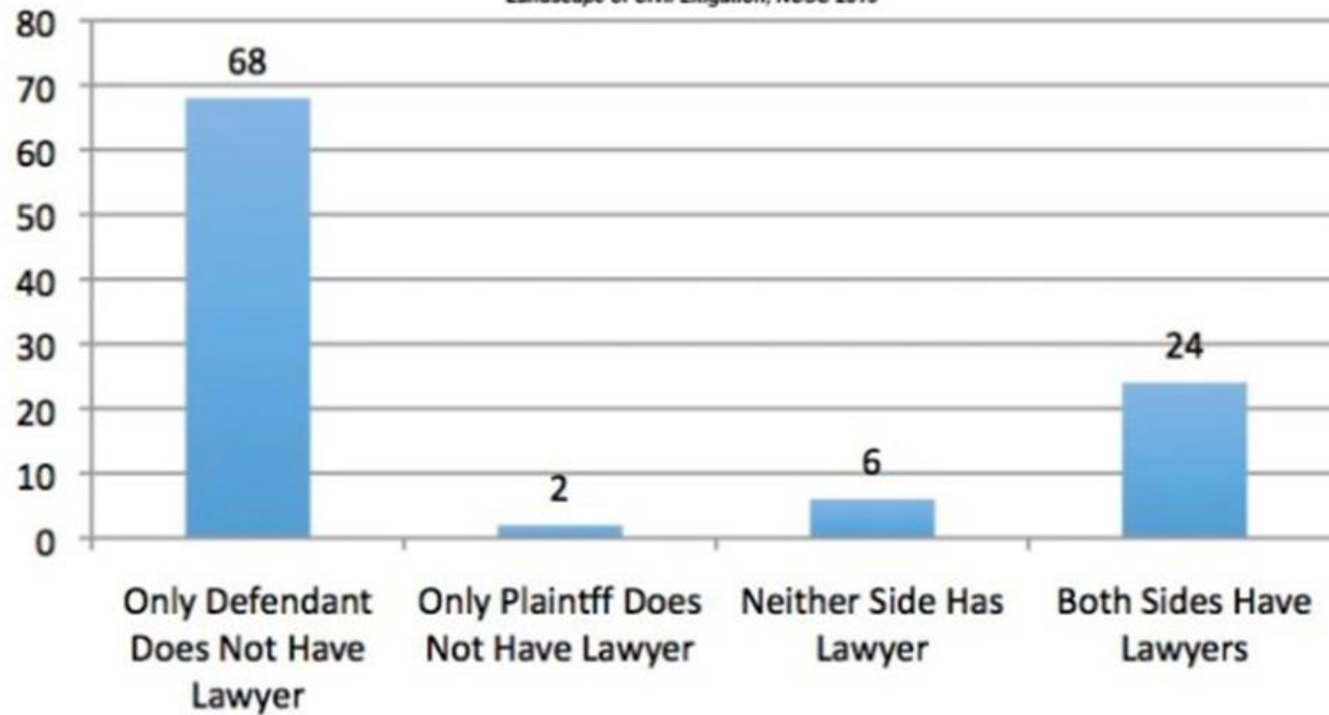


# High Numbers of Self-Represented Litigants in Civil Cases

- ▶ On an annual basis there are approximately 1.2 million self-represented litigants in California cases for a wide variety of case types. An increasing number of self-represented litigants are appearing in high-volume case types such as unlawful detainer actions, auto accident cases and debt collection cases.
- ▶ The problem isn't unique to California, Lisa Needam in the August 27 Lawyerist.com article, "Measuring the Access-to-Justice Gap: Nearly 70% of All Civil Defendants Aren't Represented" reported about data from the National Center for State Courts' Landscape of Litigation in Civil Courts as analyzed by Richard Zorza. After looking at a data set of 650,000 cases from ten urban counties, Zorza concluded that "nearly 70% of *all* civil cases only have an attorney on one side of the equation, and that side is usually the plaintiff."

# Overall Representation Status

*Landscape of Civil Litigation, NCSC 2016*





# **Solving the Justice Gap through a Commitment to 100% Access—or Meaningful Access to Justice for All**

- ▶ The Conference of Chief Justices, along with its companion Conference of State Court Administrators, recently adopted a resolution encouraging its member justices across the country to pursue efforts to reach 100% access in their states:

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs and urge their members to provide leadership in achieving that goal and to work with their Access to Justice Commission or other such entities to develop a strategic plan with realistic and measurable outcomes; and

BE IT FURTHER RESOLVED that the Conferences urge the National Center for State Courts and other national organizations to develop tools and provide assistance to states in achieving the goal of 100 percent access through a continuum of meaningful and appropriate services.<sup>22</sup>  
[CCJ Resolution 5, 2015]

# **What Strategies Are Underway or Being Considered?**

To achieve 100% Access, the only practical solution is a continuum of services and a variety of strategies to offer legal help to the greatest number of unrepresented parties. The range of services includes online resources, self-help centers in courts, alternative dispute resolution, limited scope representation, full representation, and increased funding for legal services.

# Increased Access to Attorneys and Other Assistance

## ▶ Increase for Legal Services Funding

- A one year \$5 million dollar increase in Equal Access Funds will bring the state's commitment to \$10 million. By comparison, New York for example, provides \$85 million a year in state funds for legal aid programs with only about a quarter of the population of California
- Impact of the failure of the Legislature to pass a Bar Dues Bill and efforts to protect the "opt-out" and Justice Gap "opt-in" provisions. These yield about \$7 million a year for legal services.
- Support for the Campaign for Justice which raises funds for legal services, [www.ca4justice.org](http://www.ca4justice.org)

## ▶ Pro Bono Requirements

- Inclusion of a version of ABA Model Rule 6.1 (Voluntary Pro Bono Publico Service) in the proposed amendments to the Rules of Professional Conduct of the State Bar of California. A version of this aspirational rule promoting pro bono service has been adopted by nearly every state in the nation. Rule 6.1 will help address California's access to justice crisis, and provide a clear declaration of pro bono as a professional responsibility of California lawyers consistent with the obligations current Business and Profession Code requirements: (See Bus. & Prof. Code § 6068(h) and 6072-6073)

## ▶ Modest Means Incubators

- Incubators are groups of young lawyers who receive training, mentorship and other support to provide low cost legal services for individuals of modest means who meet certain financial criteria. The goal of the Modest Means Incubator program is to train lawyers to create sustainable law practices providing affordable legal services. The number of incubators and law schools participating in incubator programs has grown significantly starting at 3 and now at more than a dozen.

# Other Means of Supporting Self-Represented Litigants

## ▶ Shriver Civil Counsel Act

AB 590 created pilot projects, and the Act this year was made permanent with the goal of providing funding for representation in critical court proceedings such as housing, family law custody and guardianship/conservatorship proceedings and the creation and expansion of innovative court procedures to ensure meaningful access to justice.

## ▶ Expansion of Self-Help Centers

Beginning in 1997 with the establishment of family law facilitator programs in every county, and expanded over the next decade to include attorney-staffed self-help centers in every Superior Court, these centers are now assisting over 1.2 million individuals each year.

## ▶ The Judicial Council Futures Commission Proposals To Help Self-Represented Litigants

The Futures Commission is looking at recommendations which include: developing an education program at each court for self-represented litigants in small claims and limited civil cases designed to be completed before the case is filed or within 30 days of filing a complaint or answer; developing virtual self-help centers with “real-time” interaction via chat or phone back-up and access to electronic resources; Increasing partnerships with law libraries, law schools, bar associations, volunteer attorneys and legal services organizations.

# Court Navigators and Limited Licensing

Court Navigators are non-lawyers who will help self-represented litigants find their way through our courthouses. A navigator will tell the self-represented litigant where the courtroom is, where to file papers, how to address the judge, etc.; in short, to help self-represented litigants understand the process without giving legal advice.

Limited licensing concept would allow technicians to perform limited services at a reduced cost to consumer. The Civil Justice Task Force proposed that the bar work with the state Supreme Court to design a pilot program covering one subject matter. How the governance, oversight and licensing would be handled is yet to be determined.

# Court Funding and Improved Access to the Courts

In 2014, the Chief Justice created the Commission on the Future of California's Court to make recommendations to improve the court operations and accessibility. Areas being discussed include court fines and fees; alternative ways of handling traffic citations.

## ▶ **Court Fines and Fees (both criminal fees and civil assessments)**

The amount of outstanding court-ordered debt is \$9.3 billion. This large amount of debt reflects defendants' inability to satisfy court-ordered debt.

Fines and fees for infractions and misdemeanors are among the highest in country. For example, the base penalty of a red signal traffic violation is \$100, but with fees added the total assessment is \$490. The failure to pay in a timely fashion or appeal adds a civil assessment of \$300. Making the total \$100 fee now \$790. For a defendant earning minimum wage, this would require two weeks of work to pay the debt.

Some relief has been provided by the Traffic Tickets/Infraction Amnesty program and is in effect from October 2015 through March 31, 2017. This allows for reduced fines based on income and reinstatement of driver's licenses.

Other options being considered by the Futures Commission are: increasing judicial discretion to waive or modify fees; establishing alternative methods to make payment accessible 24 hours a day; allow conversion to jail time or community service and adjust who can make a conversion adjustment from judicial officers to court clerks.

# Decriminalize Traffic Infractions

In fiscal year 2013-2014 just over six million criminal cases were filed in California and of these 75% were traffic infractions. This places a high burden on the court and can impair access because the criminal justice rules used to address traffic infractions are confusing to the self-represented litigant.

Solutions being looked at by the Futures Commission include: Adoption of a civil traffic adjudication model while ensuring that the law enforcement officers retain the ability stop and detain a motorist; develop models of allowing motorists accused of a violation to admit or deny an allegation without an in-court appearance; using a default judgment approach for a failure to appear without the imposition of a driver license suspension, civil assessment or other penalties and alternative dispute resolution processes.

# Next Steps

Justice for All (JFA) project, supported by the Public Welfare Foundation. In summary, the new project will:

- 1) provide templates and guidance materials to assist states in their planning to achieve 100% access, and
- 2) award grants to various states to fund development of an assessment/strategic action plan and for technical assistance to address specific state access needs.

The template for the strategic action plan, will include a basic outline for the plan, along with a list of service alternatives for states to fill the gaps in services. Awards will be granted to targeted states using an RFP process. Opportunities to think about local needs include using data maps developed by the self-represented litigation network.



# Data Maps Come to Access to Justice Planning

<https://accesstojustice.net/2016/09/15/data-maps-come-to-access-to-justice-planning/>

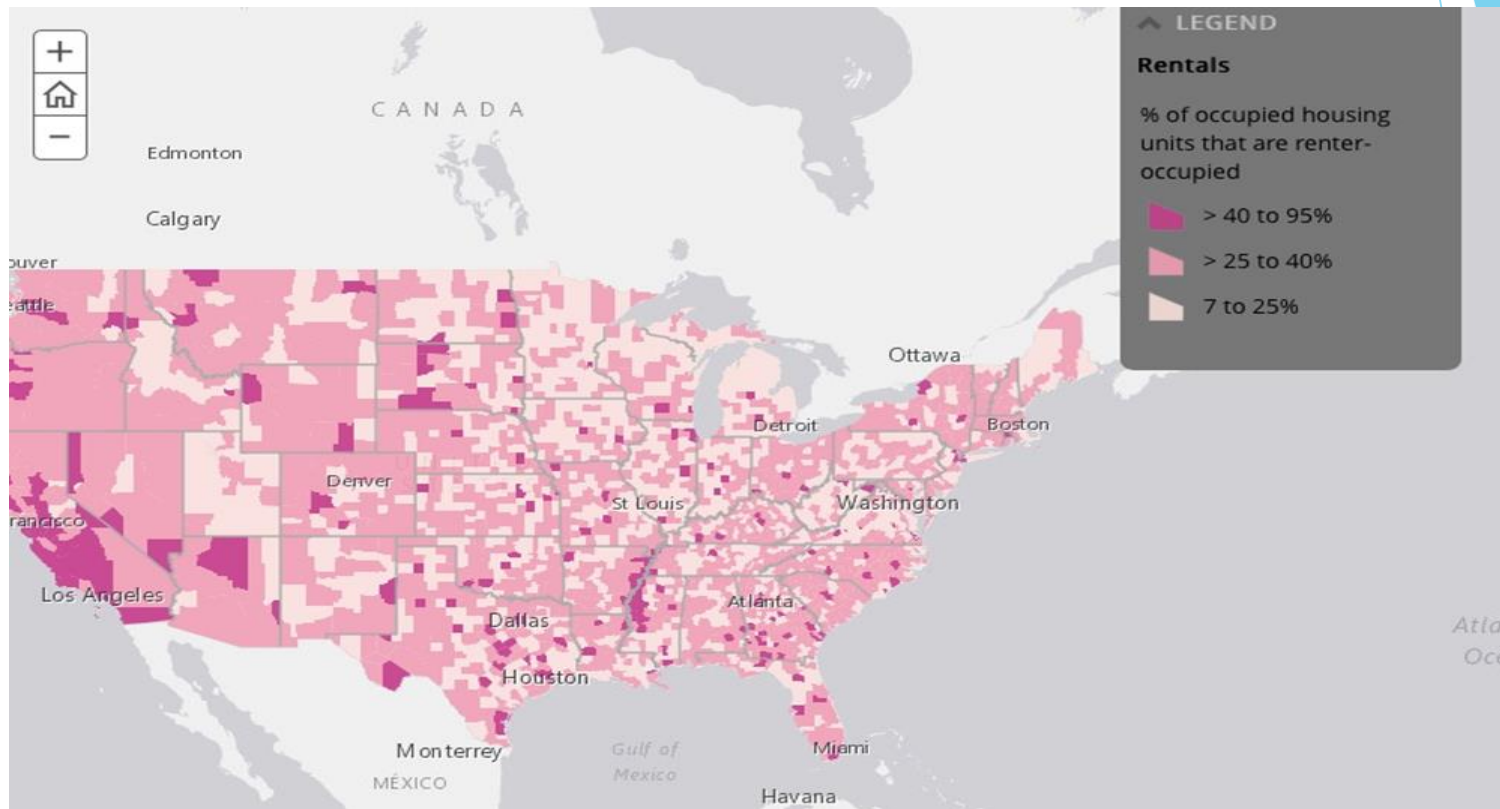
Posted on September 15, 2016 by richardzorza

This is an important step in ensuring that strategic planning is informed by underlying indicia of need. The Self-Represented Litigation Network has just launched a national, but highly granulated online tool for looking at national county by county level statistics for fourteen critical driving factors in understanding need and developing the strategies for meeting them. Those factors are:

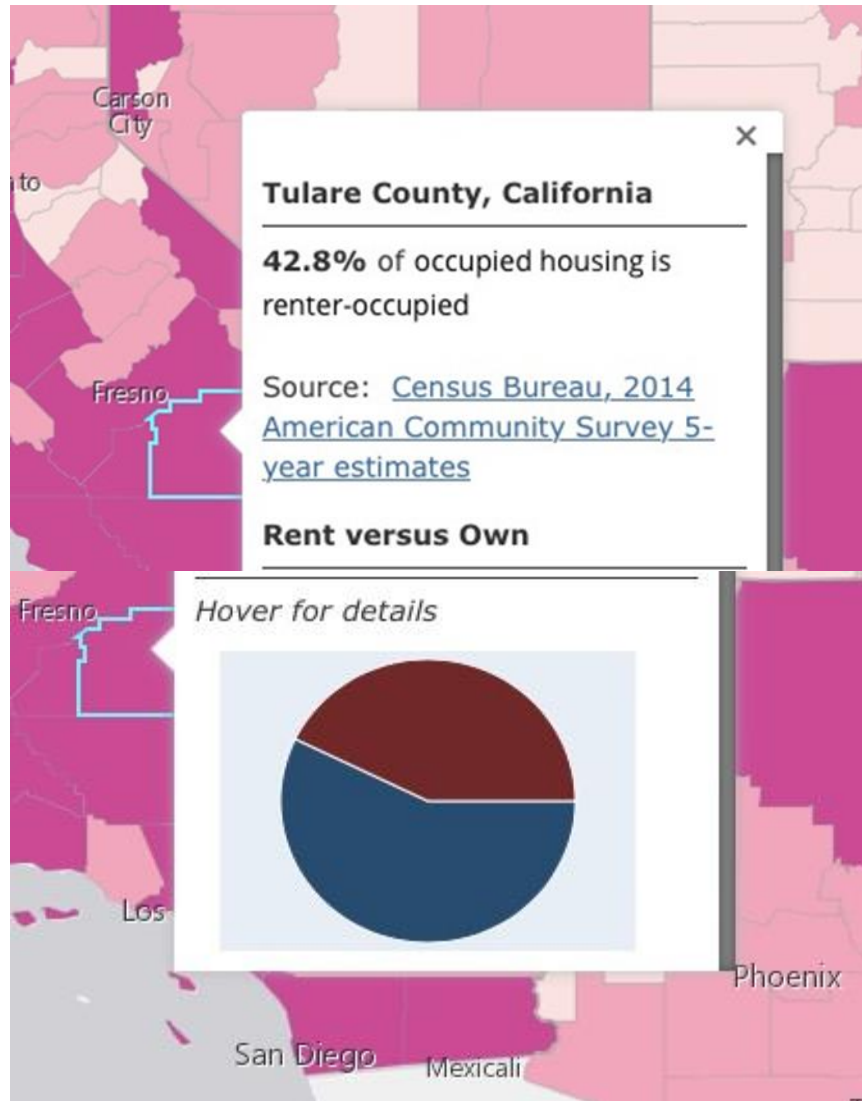
1. Population density
2. Children
3. Young Adults
4. Adults (30-44)
5. Midlife Adults (45-99)
6. Seniors (60 +)
7. High school graduates
8. Rentals
9. Vehicle access
10. Active Duty Military
11. Veterans
12. Racial Diversity
13. Foreign Born
14. Language Other Than English Spoken at Home
15. Poverty
16. Where Is Mobile Broadband Available?
17. How Fast Is Mobile Broadband?
18. Where Are Homes Connected to High-Speed Internet?

How might this be used?

Think for example, of the rental data. The extent of rentals is obviously likely to predict the number of evictions and thus of the need for access to justice services. Here is the national map:



A huge variation...



At the next level, rental units alone are not the only driver of this need. Poverty, age, etc., are obviously such predictors. If those together suggest more evictions than are actually occurring in the court systems, then that probably means that more of them are occurring as “informal evictions.”

Moreover, evictions are not the only ATJ need that will be impacted by rental levels. Rentals are usually associated with frequent moves. That means need for assistance in obtaining the right to education. More rentals surely mean more need for emergency shelter. The list and interplays go on for ever.

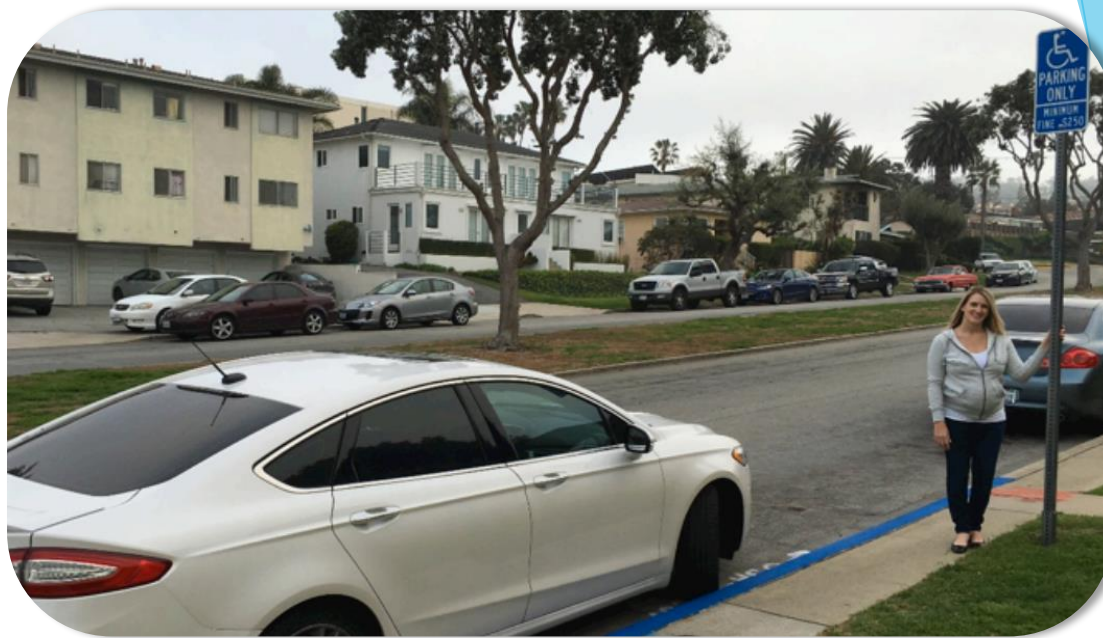
This is a fine start, and I very much hope that as states move forward on planning for strategic planning, they will make full use of this amazing resource

# Final Thoughts...

As a legal aid lawyer, the past seven years have been hard—hard for our clients who were hurt hard by the economic downturn and the resulting cuts in benefits and services many of which have not been fully restored, hard because our ability to represent people was challenged by losses in our funding, and hard because of reductions to all parts of the judicial system which made it harder to achieve access to justice.

I am, however, an optimist, and believe that the challenges have forced us to be more creative and to think about new ways we can serve clients and improve access to justice.

And daily, I am reminded about the infatigable spirit of our clients...like Katie Bassilios.



Katie is a woman with cerebral palsy who has difficult walking greater than 50 feet, up and down stairs, or on sloped or uneven surfaces. She works part-time as a behavioral therapist and uses her car to commute to work, run errands and access her community. She asked the City of Torrance to designate a parking space in front of her apartment as a handicapped parking spot by painting the curb blue. The City informed her that they do not designate handicapped parking spaces on public streets, even though the cost of the modification was modest, about \$2205. The City did however, paint the space in front of her apartment as a green 20-minute loading zone.

Because she was not successful in resolving the parking issue informally with the City, Katie contacted DRC. Our efforts to informally resolve the matter were not successful, and we ultimately filed a lawsuit on her behalf. Three years after Katie made her request, the court granted an injunction finding that the City had an obligation to modify its policies and provide an accessible parking spot. In reaching this conclusion, the court held:

The ADA ...makes crystal clear that persons with disabilities belong anywhere they want to be; indeed, the very purpose of these statutes is to ensure that disabled persons enjoy the freedoms that all others enjoy and that they are not segregated from the rest of society because of their disability.

Access of all kinds mind, so that legal aid clients can enjoy the freedoms and benefits that all of us cherish and work hard to preserve.