

White Paper

The Case for Universal Access to Legal Help

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Abstract

The United States ranks as the absolute worst high-income country in access to civil justice. As a result, it is incredibly difficult for low-income people to enforce their family, contract, property, and other civil rights. This leads to many billions of dollars in value and earnings potentially illegally expropriated from our most vulnerable neighbors every year. The most cost-effective way to deter these bad actors is through the creation of a system of universal access to civil legal representation. In fact, universal access is the most cost-effective way overall to address poverty and can save the city up to four dollars on emergency services for every one dollar spent on its implementation. We imagine that Open Door Legal would operate as an entity akin to a ‘general hospital’ in such a system, focusing on building a layer of triage and general practice. The entire system could be created with an additional investment of only four million dollars.

We believe that injustice is the heart of poverty and we invite the reader to imagine that a more just society is possible. What would our city be like if we substantially ended domestic violence, wage theft, wrongful foreclosures, and all forms of illegal expropriation?

The Need for Legal Help

According to the 2019 Justice Gap report from the State Bar of California, only 32% of Californians who experienced a legal problem actually sought out legal help to solve that problem. And of the ones who sought out help at legal aid organizations, only 30% were “fully served.” That means **only 15%** of Californians who experienced a legal issue obtained adequate legal assistance.¹ Existing solutions mostly center around limited-scope services, but those are wholly ineffective to address complex issues.

For example: one study of eviction cases in San Mateo county found that tenants who had received limited-scope services kept possession of their unit only 18% of the time, while full-scope tenants kept possession of their unit 55% of the time. Limited-scope tenants ended up paying the landlord more than their maximum legal liability 51% of the time, whereas full-scope tenants never paid more than their maximum legal liability. The study further found that limited-scope tenants and a “control” group of tenants who had never

¹ The State Bar of California. (n.d.). (rep.). 2019 California Justice Gap Study. Retrieved from <https://www.calbar.ca.gov/Portals/0/documents/accessJustice/California-Justice-Gap-Report.pdf>.

interacted with a lawyer ended up with statistically indistinguishable outcomes.²

This is not an isolated finding. A meta-analysis has found that, depending on the procedural complexity of the issue, a represented individual is between 20% and 1,379% more likely to win their case than one without representation. The median is about 500% more likely. And of course, the actual difference in outcomes is likely to be up to 3x higher, since to be included in this meta-analysis a self-represented litigant must have been procedurally competent enough to file their own case in the first place.³

California is woefully behind other districts and states in its ability to provide access to justice for low-income people. According to the National Center for Access to Justice 2020 data, California, which has over 10 million residents living below 200% of the federal poverty level, only has 776.1 legal aid attorneys in the *entire state*. This comes out to a rate of 0.72 legal aid attorneys per 10,000 people in poverty, significantly below the national average of 0.97 per 10,000. New York, by contrast, has 4.39 legal aid attorneys per 10,000 and Washington DC has 12.22 per 10,000.⁴

While California falls below the national average in providing legal representation, the United States is a true outlier among developed countries. The World Justice Project reviews justice systems for countries around the world and ranks them according to various criteria. Under the criteria “people can access and afford civil justice” the United States ranks 126th out of 139 surveyed countries. It is the absolute worst country for access to civil justice among high-income countries, with a rank of 46 out of 46th.⁵

How does this look in practice? In the United Kingdom, which is rated 88th in the world in access to civil justice, anyone can go to any private attorney, and if they are income-qualified, that attorney can directly bill the government for the time. This can be used for almost any civil case, except libel, personal injury, and employment (these cases are supposed to be handled on a

² Steinberg, J. (2011). In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services. *Georgetown Journal on Poverty Law and Policy*, 18, 453.

³ Sandefur, R. (2010). The Impact of Counsel: An Analysis of Empirical Evidence. *Seattle Journal for Social Justice*, 9, 51.

⁴ National Center for Access to Justice. (2020). (rep.). *Attorney Access*. Retrieved from <https://ncaj.org/state-rankings/2020/attorney-access>.

⁵ World Justice Project. (2020). (rep.). *WJP Rule of Law Index*. Retrieved from <https://worldjusticeproject.org/rule-of-law-index/country/2021/United%20States/Civil%20Justice>.

fee-sharing or contingency basis). This means that everyone in the UK with a family law case, eviction, consumer fraud, and others - have had guaranteed legal representation since 1950. And, it is important to note, despite being leagues more inclusive than the United States, that the United Kingdom is considered the *least* accessible western country after the US.⁶

In observing this problem, many commentators in the US have commented that the solution is to make it easier for para-professionals to practice, to lean more into administrative solutions, or to deploy technologies that assist self-represented litigants. All of these solutions can be very effective on the margins, but they miss the forest for the trees. In fact, the United States has *more* licensed attorneys per capita than any other country in the world, except Israel. The US manages to be one of the least accessible country's for civil justice despite having 39.6 attorneys per 10,000 people.⁷

While the United States has many problems, we argue that there are only two issues on which we are a true outlier. First, we incarcerate more of our citizens than any other country. Second, we have refused to provide access to civil justice. And obviously, both of these issues harm communities of color disproportionately. Data from the state's justice gap report does not specifically break out legal needs by racial/ethnic groups, but our own data is suggestive. Almost 50% of ODL's clients are Black, despite Black people only composing 5.2% of San Francisco's population.

The impact of free access to excellent full-scope legal care is, quite literally, life-changing for many of our clients. It changed Claudia's life. Claudia legally immigrated from Guatemala when she was a teenager and settled in the Bayview district. She attended high school in San Francisco and ended up marrying her high school sweetheart.

Unfortunately, the relationship quickly turned abusive. Claudia estimates that for 8 years she was assaulted on average twice a week. One time the

⁶ Virtually every other European country, as well as Japan, South Korea, Australia, New Zealand, and many developing countries, are considered to have more accessible systems than the UK, which itself is far more accessible than the US. Id. For a description of the UK's system and a comparison with Nordic countries, see Barlow, A. (2019). (rep.). *The machinery of legal aid : a critical comparison, from a public law perspective, of the United Kingdom, the Republic of Ireland and the Nordic countries*. Retrieved from <https://core.ac.uk/download/pdf/188524766.pdf>.

⁷ The American Lawyer. (2014). (rep.). *The Global 100*. Retrieved February 11, 2022, from <https://www.law.com/americanlawyer/almID/1202671388512/>.

violence was so bad that she called law enforcement, but after her husband's family threatened to burn her father's car and report him to ICE, she withdrew charges. Another time she was admitted to the hospital because of abuse while pregnant. And in the course of eight years of abuse, she gave birth to their two children.

One day, during a fight, her husband called the cops and reported that *she* had hit *him*, which wasn't even true in this specific case. Nevertheless, the cops arrested Claudia and she spent five nights in jail. She was released without criminal charges, but she was given a restraining order that prevented her from going home, seeing her children, or even getting a change of clothes. Her husband locked her out of the bank accounts and as a result, Claudia ended up homeless in San Francisco.

Claudia had a trial coming up that would determine whether she'd be allowed back in her home. To prepare, she visited four different nonprofit agencies across the city, asking for help. They each turned her away: some claimed a lack of capacity, others that it wasn't the precise kind of case they handle. She came to Open Door Legal just days before her first hearing, completely desperate. We took her case, won a three-day trial, helped get her back in the home, removed her husband out of the home, helped her obtain sole custody of her children, and helped her obtain a divorce, even as her husband tried to hide community assets. As a result, she was able to remain stably housed, re-join the workforce, and start a new, more stable, relationship. She was never hit again after we became involved.

It's almost inconceivable that Claudia would have been able to achieve the same outcome if she were self-represented. And it only cost the organization roughly \$3,000 to achieve this outcome. That is a small fraction of what homeless services, police services, health services, and mental services would have cost if Claudia had remained homeless.



Claudia, a family law client of ODL

As mentioned above, in the median case people are 5x more likely to prevail if they are represented. We know of no other human service that presents such a huge delta in outcomes from such a simple intervention. Imagine, for example, that a job training program is 5x more likely that participants would find gainful employment, or that a college-prep course is 5x more likely students would get into college - funding and scaling such programs would be an obvious imperative.

Stated in the reverse, since legal representation is not provided to the community, billions of dollars in assets and earning potential are stolen every year in California from low-income communities of color. We realized that this is a huge, and underappreciated, cause of poverty. In fact, because of the huge delta in outcomes that legal representation generates, and a completely inadequate number of service providers, providing universal access to legal help may be the most cost-effective way to address poverty.

How Universal Access Deters Future Bad Action

The classic model of deterrence states that bad actors will commit crimes where the benefits outweigh the costs. However, as researchers have dug in to create a deeper understanding of deterrence, they have found that this simplistic model did not fit the data. A modern model of deterrence that much closer conforms to the data is:

$$\text{Benefits} > \delta_t p (\text{Legal Costs} + \text{Extralegal Costs})$$

This model predicts that crime will occur when the benefits of crime outweigh the costs, expressed as:

- δ_t = a discount factor that assigns a weight to future costs. Essentially, this is a present value calculation that models how deterrence becomes less effective the more time passes between the action and punishment. $\delta_t = 1/(1+r)$, where r is an individual's future discount rate.
- p = is the probability of punishment
- The legal costs include the legal sanctions/punishment of the action
- The extralegal costs are the social and personal costs of the action⁸

⁸ For an meta-analysis of deterrence theory, see Paternoster, R (2010). How Much Do We Really Know about Criminal Deterrence. *Journal of Criminal Law and Criminology*, 100, 765. For specifics on the model mentioned, see Nagin & Pogarsky (2001). Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence. *Criminology*, 39, 865.

As this model makes clear, the most important variable in deterrence is the probability of punishment. Bad actors are far more responsive to the *likelihood* of punishment, as opposed to the *severity* of punishment. In other words, a high chance of being caught with a light punishment will change behavior much faster than a low chance of being caught with a strong punishment.

Our insight was that this same model could be used to explain the behaviors of bad actors in the civil law context. The consistent willingness of unethical landlords, banks, and employers to violate the rights of low-income people is directly connected to the very low probability of facing punishment. Recall the data presented above regarding the shockingly low numbers of legal aid attorneys in California and the extreme difficulty people have in accessing civil justice. The data means that certain bad actors, such as employers who refuse to pay wages, have a practically zero risk of punishment as long as the harmed parties are poor.

In other words, the lack of public investment in legal aid keeps the rate of punishment for bad actors low and encourages them to continually and boldly violate the rights of low-income people.⁹

To illustrate, let's return to the issue of domestic violence. Consider Claudia's case, which was discussed above. After eight years, the abuse abruptly stopped once we became involved. While a variety of interventions exist for domestic violence survivors, a 2003 study found that civil legal services were the *only* intervention associated with a reduction in domestic violence.

With the exception of legal services, none of the services specifically designed to help victims of domestic violence impact the likelihood of abuse. Women living in counties with shelters, hotlines, safe homes, emergency transportation, programs for batterers, children's programs, and counseling are not significantly less likely to be victims of intimate partner abuse than women who live in counties without these services. However, women who live

⁹ Private attorneys who operate on contingency fees cannot fill this gap because they will typically require provable damages of at least \$50,000 - \$75,000 (as well as proof of insurance from the adverse party) to litigate economically. Since damages are typically derived from lost income and back-rent, it is much harder for low-income people to have the requisite provable damages than it is for high-income persons.

in counties with legal assistance programs to help battered women are significantly less likely to report abuse.¹⁰

The most likely explanation for the efficacy of legal services is deterrence. Legal aid caused Claudia's husband to endure a series of punishments: being forced out of the house, losing custody of the children, losing a portion of the community property, and being forced to pay child support. In other words, we deterred Claudia's husband from engaging in future harm.

And we must remember that domestic violence has real impacts on the earned income and assets of survivors. The Center for Disease Control and Prevention has calculated that domestic violence results in the loss of “nearly 8.0 million days of paid work—the equivalent of more than 32,000 full-time jobs—and nearly 5.6 million days of household productivity” every year in the United States.¹¹

The Cost-Effectiveness of Universal Access

We can see, then, that legal services have a ‘double’ effect. It can generate income and assets for clients as well as effectively deter future illegal conduct. What's important to note is that the dynamics presented above are not unique to family law, but exist in all areas of law.

For example, let's look at wage theft. According to the Economic Policy Institute, paying workers below minimum wage affects 17% of all low-wage workers and costs these workers an estimated \$15-16 billion a year. This alone is a higher sum than the value of all major property crimes in the US combined. Additionally, more than two-thirds of low-wage workers have experienced at least one pay-related violation in the previous work week. If all forms of wage theft were counted, low-wage workers in the US lose an estimated \$50 billion a year.¹²

¹⁰ Farmer, A. (2003). Explaining the Recent Decline in Domestic Violence. *Contemporary Economic Policy*.

¹¹ Centers for Disease Control & Prevention, Costs of Intimate Partner Violence Against Women in the United States (2003), available at: <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>

¹² Cooper, D., & Kroeger, T. (2017). (rep.). *Employers steal billions from workers' paychecks each year*. Economic Policy Institute. Retrieved from <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>. Also see Bernhardt, A., et. al. (2009). (rep.) *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws In America's Cities* 20, 21, 50. Retrieved from <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.

Because there aren't enough legal aid attorneys to handle these cases, workers are shuffled to the Division of Labor Standards Enforcement (DLSE) to fill out claims. Workers often wait two years to get a judgment and said judgments aren't always enforceable. And getting any payout at all is the exception rather than the rule – fully 83% of workers who *won* their case before the DSLE *never* collect any payment at all. This is why workers who can afford attorneys never file with the DLSE at all and instead go straight to superior court. For example, in CA business owners are personally liable for unpaid wages, but DLSE judgments almost never attach the owners personally and the DLSE itself does not help with collection actions.¹³

But all of this is preventable. According to deterrence theory, If every low-wage worker was able to access legal help, the rate of punishment would rapidly climb and then the number of workers experiencing wage theft would dramatically decrease. Workers would enjoy tens of billions of dollars in additional assets and not a single law would need to change.

The situation is even more striking regarding wrongful foreclosures. Teresita Pobre immigrated to San Francisco from the Philippines as a young adult. After saving up money for decades, she and her husband bought a home in the Bayview. Unfortunately, her husband unexpectedly passed just six months after the home purchase, widowing her and leaving her as a single parent to their young daughter.

For 25 years Ms. Pobre carried the mortgage on her own. She spent over half of her entire income on the mortgage, eventually getting the balance on the mortgage to just \$50,000. That's when work became harder to come by; she fell behind on her



Teresita, a civil litigation client of ODL

¹³ Hyunhye Cho, E., Koonse, T., & Mischel, A. (n.d.). (rep.). *Hollow Victories: The Crisis in Collecting Unpaid Wages for California's Workers*. National Employment Law Project. Retrieved February 17, 2022, from <https://www.nelp.org/wp-content/uploads/2015/03/Hollow-Victories-Unpaid-Wages-Report.pdf>.

mortgage and had trouble getting current. Because the house held more than \$800,000 in equity, she thought it would be ok.

Her bank, however, immediately started the foreclosure process. They called the listed number, but it was disconnected. They visited the home 10 times to inspect and appraise it but never attempted to make personal contact with her about the foreclosure. And in the end, they sold the home for \$50,000 to an investment group. They literally mailed a check for \$0.01 to Ms. Pobre to represent the 25 years of investment she had made in the property. Ms. Pobre came to us after the new owners had started eviction proceedings against her family.

We did preliminary discovery and found that the bank lacked the legal authority to foreclose in the first place. We were able to reverse the foreclosure, restore title to Ms. Pobre's name, cancel the property tax increase, and obtain several tens of thousands of dollars in damages. We even wrote an estate plan so she could pass the home to her daughter. Ms. Pobre went from almost being homeless to being debt-free and being able to pass down an \$800,000+ asset to her daughter. This is the kind of life-changing work that full-scope legal services provides, and perhaps the most frustrating part of this story is how common legal violations like this are. One study found that 84% of foreclosures were processed with a "major" legal violation.¹⁴ Like with wage theft and domestic violence, the low probability of punishment in wrongful foreclosures appears to relate to subsequently the low rates of compliance.

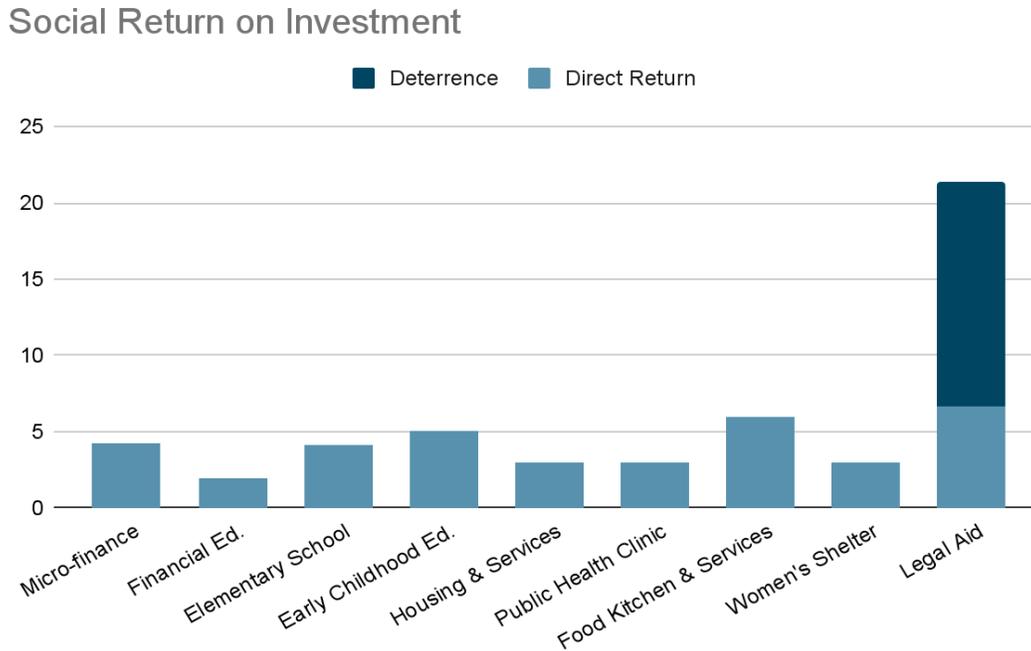
Let's look at Ms. Pobre's situation through the lens of increased assets. The assets generated for Ms. Pobre and her family include:

- The value of her home
- The value of damages against the bank
- The value of not having to probate the home so it can be passed to her daughter.
- The likelihood that the same bank will not attempt another wrongful foreclosure on another homeowner (through deterrence)

Bringing it all together, then, we estimate that for every \$1 we spend, we generate \$6.63 in assets for low-income clients, across all areas of law, and deter up to \$14.75 in illegal activity. In 2020 alone, we created \$2,880,765 in assets, obtained or preserved housing for 120 families, and resolved 79 family

¹⁴ Office of the Assessor-Recorder. (2012). (rep.). *Foreclosure in California: A Crisis of Compliance*. San Francisco.

conflicts (among many other direct outcomes).¹⁵ The following graph compares our estimated social return on investment with the known SROI for other kinds of human services:



Our research clearly shows that universal access to legal services is the most cost-effective way to address poverty.¹⁶ No other human service comes close to the speed at which assets are built for marginalized community members. And because this intervention gets close to the root cause of poverty, it was the potential to save the city a lot of money in emergency services.

How Universal Access Saves the Government Money

Universal access not only ensures that assets belong to their rightful owners, but it functions at a far more efficient rate than alternative solutions, which

¹⁵ Open Door Legal. (n.d.). (rep.). *The Anti-Poverty Effect of Legal Aid*. Retrieved February 25, 2022, from <https://38h75q3vqwbp156iqszoh1ix-wpengine.netdna-ssl.com/wp-content/uploads/delightful-l-downloads/2018/08/SROI-Report-v1.2.pdf>. For a discussion of of social return on investment methodology, see Robin Hood Foundation. (2014). (rep.). *Metric Equations*.

¹⁶ See Weinstein, M. M., & Lamy, C. E. (2009). (rep.). *Measuring Success: How Robin Hood Estimates the Impact of 12 Grants*. Robin Hood Foundation.

means it saves the city money, particularly in the areas of housing, health care, and law enforcement.

The New York City Social Services Department estimated that **the city saved \$4 in shelter and other social services for every \$1 spent on legal representation.**¹⁷ Another report estimated that New York City saved \$320 million in reduced costs from homeless shelters, medical services, law enforcement, construction of affordable housing, and other expenses, after factoring in the cost of counsel when expanding eviction defense funding.¹⁸ The Massachusetts Legal Assistance Corporation likewise concluded that legal services saved the commonwealth \$11.25 million in state shelter costs.¹⁹ These findings are supported by research that has found that even when controlling for poverty, legal aid attorney count is significantly correlated with a wide range of beneficial health outcomes, including higher life expectancy, reduced obesity, reduced diabetes, lower preterm births, expanded Medicaid, lower uninsured rates, and lower food insecurity rates.²⁰ Other research has found legal aid to be significantly correlated with a reduction in property crime, with each legal aid attorney being 8x more impactful in reducing poverty crime than each police officer.²¹

San Francisco is now spending \$1.1 billion dollars on homelessness, more than a 400% increase from just 4 years prior, and that does not include items like police services or public health.²² Given the scale of those costs, wouldn't it make the most sense to ensure that everyone who has a solvable legal

¹⁷ New York State. Department of Social Services. Office of Program Planning, Analysis and Development. (1990). (rep.). *The Homelessness Prevention Program : outcomes and effectiveness*. Albany, New York.

¹⁸ Stout Risius Ross, Inc. (2016). (rep.). *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*. Retrieved from https://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf.

¹⁹ Massachusetts Legal Assistance Corporation. (2011). (rep.). *Civil Legal Aid Yields Economic Benefits to Clients and to the Commonwealth: Some Benefits from FY11 Advocacy*. Retrieved from mlac.org/pdf/Economic-Benefits_FY11.pdf.

²⁰ Teufel, J. & Mace, S. (2015). Legal Aid Inequities Predict Health Disparities. *Hamline Law Review*, 38, 329.

²¹ Hal 24k. (n.d.). (rep.). *Fighting Property Crime with Legal Aid*. Retrieved February 25, 2022, from <https://opendoorlegal.org/wp-content/uploads/delightful-downloads/2018/10/ODL-flyer-01-lattersize-v2-1.pdf>.

²² Thadani, T. (2021, July 16). S.F. has an unprecedented \$1.1 billion to spend on homelessness. The pressure is on to make a difference. *SF Chronicle*. Retrieved from <https://www.sfchronicle.com/bayarea/article/S-F-has-an-unprecedented-1-1-billion-to-spend-16318448.php>.

issue obtains assistance? Isn't it more efficient to provide people with the most cost-effective solution?

In Claudia's case, spending \$3,000 on legal representation enabled her to re-enter the workforce, save on medical costs, obtain her community assets, and raise her children in a loving environment. If she had been forced to reside in a shelter, it likely would have cost the city over \$35,000 per year just to shelter her, not to mention pay for the medical costs, and she would not have been able to recover her assets or re-enter the workforce. And the same applies, even more so to Teresita, who would have probably required high-touch supportive services given her advanced age, and who would have lost \$800,000+ in assets.

Imagine then, what our city would be like if we could substantially eliminate domestic violence, wage theft, wrongful foreclosures, and all other forms of illegal expropriation? Universal access to legal help presents the most effective way to do just that.

Our Vision for Universal Access

Universal access to the law is the idea that everyone who desires legal assistance and who has a problem that the legal system can resolve, will be able to obtain timely and competent assistance. Importantly, this means that for people who cannot afford an attorney, one will be provided free of charge. Recall above that only 30% of people who reached out to legal aid organizations were "fully served;" the goal of universal access is to ensure everyone who reaches out and needs assistance is "fully served."

Our vision for universal access is that any qualifying person can walk into one of our offices and obtain an appointment to see an attorney within 15 minutes. They can also request an appointment online. Guests won't need to have an understanding of the law, just a feeling that they have been treated unfairly, and the entire process of finding timely, competent counsel to review their issue is done in the background by the organization. Every guest is treated with a culturally competent, trauma-informed lens and provided sufficient wrap-around services to ensure they are able to effectively engage in their own case. If referrals are processed to attorneys outside of the organization, it's perceived as part of a unified system and not like a 'referral roulette.'

To better understand what we mean by universal access, let's discuss a few qualifiers and edge cases. We will analogize to the medical system to help clarify our meaning.

Universal access does not mean that everyone who desires legal assistance will get legal assistance. When people feel sick they go to their doctor. They may have an idea on a course of treatment they would like to take, but ultimately the doctor must decide if such a treatment is appropriate and likely to work. The doctor may ultimately tell the person to go home and come back if things get worse.

Similarly, we want everyone who feels they have been unfairly treated to come in and see us. We do not expect people to have an understanding of the law, and even if they had an idea of the specific course of action they wanted, it's our attorney's job to render a professional judgment as to whether their issue is solvable and what course of action to take. Sometimes our attorneys say to try various self-help techniques and if things don't improve, to come back.

Practically, this means that in almost all claims where the individual is defending a lawsuit (such as in unlawful detainers), the individual could benefit from legal assistance. The idea is that legal assistance is necessary in defensive cases to ensure the judicial process itself produces fair outcomes. The main exceptions to this are restraining order cases (such as domestic violence restraining orders or elder abuse restraining order) where the individual does not have any defenses. For affirmative claims, there must be a relevant legal violation that can be found as well as the existence of evidence to support that claim that can be reasonably discoverable in order to proceed. These have to be professional judgments by individual attorneys, but what's important is that the decision whether or not to help someone is not conditional on funding or even on an area of law, only on the likelihood of success.

Universal access does not mean that everyone with a legal issue will be given full-scope legal representation. In the medical system, doctors have to use their discretion to identify the most appropriate course of treatment for the problem at hand. Not every treatment will result in a hospital stay. Generally, less intensive treatments are preferred if they are equally or more effective.

Similarly, we believe that each individual should obtain enough legal service in order to solve their problem. In the vast majority of cases, this is handled

via full-scope representation, but for certain kinds of claims, it is more effective to solve the problem through a type of limited-scope or unbundled service. For example, wage theft cases can be expeditiously handled via small claims court; civil harassment restraining orders are typically better handled without an attorney present (as they create attorney fee awards), and uncontested petitions can often be handled limited scope.

Universal access does not mean that we will handle cases on behalf of clients who can afford to pay. In the medical system, due to the existence of insurance schemes that the government subsidizes, low-, moderate-, and high-income individuals largely can go to the same set of doctors. Nonprofit hospitals can serve both low and high-income patients and are generally expected to earn a profit. Private doctors can see low-income patients through government-provided insurance schemes that reimburse them, such as Medicare and Medicaid.

In the legal system, funding for nonprofits generally restricts them from representing people who can pay. The California IOLTA fund, for example, disqualifies any nonprofits from funding if more than 25% of their clients earn more than 200% of the federal poverty level.²³ The IRS itself has made clear in revenue rulings that nonprofit legal providers (unlike nonprofit health care providers) should not earn a profit or otherwise take away paying clients from for-profit law firms.²⁴ And on top of all that, unlike in Canada and the UK, there is no publicly-funded tranche that will pay private attorneys to represent low-income clients, except in certain niche areas such as dependency law and criminal law.

We have worked for years on the best possible design for creating truly universal access to the law. If there is a viable affirmative case where private firms are readily interested in the matter (typically this requires at least \$50,000 in provable damages and the adverse party to be insured), the case will be referred to a suitable firm. This will ensure that we are following best

²³ See CA Bus & Prof Code § 6213, State Bar Rule 3.671 - A Qualified Legal Service Project (QLSP) is presumed to meet the primary purpose and function requirement when 75 percent or more of its expenditures are directed to free legal services to indigent people.

²⁴ See Rev. Rul. 69-161, 1969-1 C.B. 149 [providing legal services to indigent persons financial incapable of receiving such services constitutes relief of the poor and distressed], Rev. Rul. 78-428, 1978-2 C.B. 177 [legal services to the indigent that charges a nominal fee still qualifies as a relief of the poor and distressed, since costs are based on ability to pay], and Rev. Rul. 76-442, 1976-2 C.B. 148 [Free legal services to people who can otherwise pay is not a charitable purpose].

practices to not take business from for-profit firms when that business is available for them.

If private firms would not be interested and the client earns less than 50% area median household income (AMI), services will be provided by a nonprofit or pro bono law firm. If the client earns 50%-100% AMI, the case will be referred to a sliding scale attorney or law firm, and panels of such attorneys should be created for each issue area. If the client earns above 100% AMI, they will be referred to the private bar. Outside of specific matters, cases representing entities, as opposed to individuals, will always be referred to private counsel (sliding scale where appropriate) under the idea that such costs should be internalized as part of the entity's cost of doing business, and because the corporate form shields owners from almost all forms of personal liability.

There can be a robust role for pro bono to play within the larger end game of universal access. However, legal staff can build institutional knowledge based on repeat experience with certain issues and courts and are therefore able to handle cases much more efficiently than pro bono attorneys could. Additionally, most pro bono attorneys are not sufficiently trained in client management techniques to be able to effectively assist highly traumatized clients. Stated simply, it is not possible to build a universal system solely on the basis of volunteer labor, which is probably why there are almost no volunteer services in our medical system. That said, pro bono attorneys can provide a critical role in helping to staff up and resource particularly knotty cases, as well as providing supplemental capacity in more typical matters.

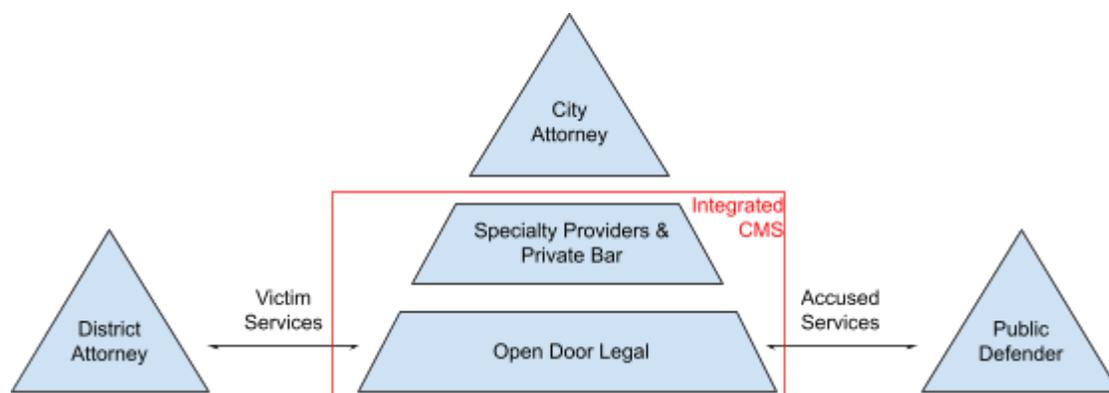
Universal access does, however, mean a refusal to turn away clients just because an arbitrary "cap" on capacity has been reached. Many legal aid nonprofits typically turn away clients once they have represented a contracted number of people. For example, if a nonprofit has a contract to represent 50 tenants per year, they will typically turn away the 51st tenant who comes in for help. It's obvious to us that this type of behavior is not compatible with a system of universal access. Just like a public school cannot turn away a student who shows up for class, or a public hospital cannot turn away a patient who comes to the emergency room, we want to be the entity that does not turn away someone seeking justice. Short-term capacity issues are handled in creative ways, including the use of pro bono counsel, technology, and by triaging the issues that come to us. This can render the work we do substantially more difficult than in peer organizations.

We do not see universal access simply as the work of one agency. Universal access has to mean the creation of a coordinated system that combines the efforts of nonprofits, the private bar, and the government to ensure that every person with a viable legal need is able to afford and obtain appropriate counsel. We envision Open Door Legal as fulfilling a role akin to a 'general hospital' in this system. Just as General Hospitals tend to be location- and community-centered and focus on acute or emergency care, Open Door Legal is rooted in and responsive to the needs within our community and focused on triaging legal problems. While specialty hospitals might focus on special populations like children with chronic diseases, a general hospital is essentially in charge of ensuring everyone in a specific area receives care.

Unlike our peer legal aid organizations almost all focus on specific populations or specific issue areas, Open Door Legal is set up to handle almost any type of case and intakes up to 20% of matters on an "emergency" basis. We are intentionally located in San Francisco's low-income communities of color so that we are easily available to our clients. The idea is that clients can be assessed and transferred to more specialized nonprofits where appropriate, in the same way SF general might transfer a patient to UCSF children's hospital.

This entire system runs on our custom-built case management system (CMS), which we are currently beta testing and working to license in a public launch this year. The CMS will upgrade the operational efficiency of each participating nonprofit, allowing them to serve more people with less overhead and maintain their own confidential client list. The CMS will also allow nonprofits to coordinate services by seamlessly integrating referrals. Clients will have to do an intake only once, meaning the system as a whole will guarantee help to anyone no matter what their access point is. The CMS can even automate reporting into government systems and aggregate data about adverse parties. This could inform what parties the City Attorney brings legal action against and ultimately allow the City Attorney to fulfill a role akin to the Department of Public Health in preventing major outbreaks of injustice.

Conceptually, the final system would look like the following:



The closest analogy to this system is actually the system of universal access to health care created in San Francisco via the “Healthy San Francisco” program. It was not an insurance program, but rather a system that funded and coordinated the efforts of SF General Hospital and various nonprofit providers in such a way as to ensure access to health care for every SF resident. The program was praised for its high satisfaction rating and for being cost-effective.²⁵ We now have the opportunity to do for justice what Healthy SF did for health care.

How it Would Scale

The systems of public reimbursement to private attorneys that exist in the UK and in Canada are actually quite expensive to implement. We believe that the most cost-effective model utilizes staff attorneys to deliver the bulk of services and is organized in the manner described in the previous section. In order to ensure the system works, we have to assume that the number of qualifying people coming in to request help can be predicted. This is similar to how public health specialists model how hospital utilization rates change over time. We use the following equation to model the demand for how active cases we would expect at a given time:

$$A_c = V_p * V_i * O$$

- A_c = The number of expected active cases

²⁵ See The Henry J. Kaiser Family Foundation. (2009). (rep.). *Survey of Healthy San Francisco Participants*. Retrieved from <https://www.kff.org/uninsured/poll-finding/survey-of-healthy-san-francisco-participants/>. Also see, Katz, M. H., & Brigham, T. M. (2011). Transforming a traditional safety net into a coordinated care system: Lessons from Healthy San Francisco. *Health Affairs*, 30(2), 237–245. <https://doi.org/10.1377/hlthaff.2010.0003>

- V_p = A variable representing the number of people in poverty in a given geography. This is scaled to an estimated number of intakes based on historical data
- V_i = A variable representing the case open rate. If laws are stronger or provide more remedies, we expect the case open rate to increase.
- O = A variable representing outreach or awareness. More outreach will lead to more cases.

We began testing services and refining our model in Bayview. Starting in 2018, as our funding grew, we began expanding our service area to cover more and more of the city. We were able to model how many cases we would have open as we grew our service area, and this allowed us to ensure we raised sufficient funding to hire the requisite number of staff to handle the projected caseload. Despite short-term capacity challenges caused by staff turnover, we've been able to stay ahead of demand and gradually lower the average caseload and improve staff compensation. We have the highest levels of community awareness in Bayview and consequently, the highest rate of active cases. In zip code 94124 we have approximately 17.3 active cases per 1,000 people in poverty. If we include cases handled by other legal aid organizations, we can estimate a steady state of 30 active cases per 1,000.²⁶

If that estimate is true, a city-wide system of universal access would need to be able to handle approximately 3,300 concurrent cases. We believe that approximately $\frac{1}{3}$ of these cases will be handled by Open Door Legal and the remainder handled by all other providers.

The city has already made several major investments in this direction. It has substantially funded eviction defense and deportation defense, and even if these case types are not yet universally available, they are close. The city has also made substantial investments into universal access to legal services. We hold what could be the first public contract in the country to provide universal access to legal services - currently a \$1.5 million contract for services in D10, D11, D5, and D2 administered by the Mayor's Office of Housing & Community Development. We've also received significant funding from the Department of Aging & Adult Services and for the Tenant's Right to Counsel initiative, bringing our total 2022 budget to at least \$5 million.

²⁶ It is impossible for us to systematically track how many cases other legal aid organizations are handling and for which geographies. This figure is intended as a rough estimate pending more data.

If all the above assumptions hold true, **we believe that we can make San Francisco the country's first city with universal access to civil legal representation with an annual budget of \$9 million.** This will enable us to operate as the general practice layer for the entire system, handle approximately $\frac{1}{3}$ of all the cases in the system, and deploy the shared CMS to all our peer organizations. Since we already have the key talent and infrastructure in place, funding is truly the only thing holding us back.

Notes:

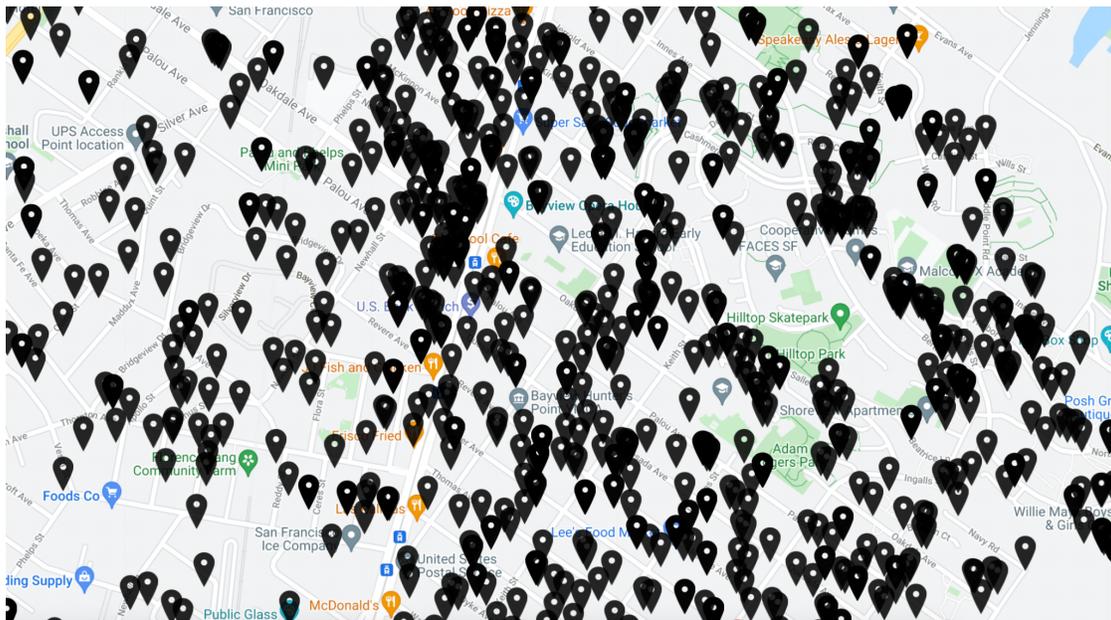
- This budget assumes an increase in starting compensation for our attorneys to approximately \$84,000 per year. In order to ensure that we can employ and retain top talent, we believe that eventually, pay should achieve parity with salaries paid in the public defender and district attorney's offices.
- This budget assumes that people who earn over 50% AMI will be represented by private attorneys. If the qualification threshold is raised, a higher budget will be required.
- Because our modeling assumes a certain framework of rights, the creation of new substantive rights by the legislature would be expected to increase our case open rate, and therefore the number of matters we are handling. The estimated cost would increase as well.

We are excited by the right to civil counsel for domestic violence survivors embedded in Supervisor Stefani's June 2022 ballot measure. If this passes, we plan to position ourselves as the lead implementing agency for the initiative and use the CMS to create an integrated system with our peer organizations that guarantee representation for all domestic violence survivors in any area of law - housing, immigration, family, consumer, and restraining orders. We believe we can complete the creation of this system by the end of 2022.

Since the right to civil counsel for DV survivors guarantees help regardless of the type of legal issue and will operate via a collaborative of several organizations, it's the perfect dry-run for the creation of a city-wide system of universal access to legal services. If the remaining funding were found in the 2023 budget cycle that would allow us to reach a \$9 million budget, we believe we could complete the system by mid-2024 and truly make San Francisco a model in access to justice for the rest of the country.

Conclusion

Thousands of our low-income neighbors experience major civil legal issues every year. Workers face wage theft, women face domestic violence, homeowners face wrongful foreclosure, consumers face scams, tenants face evictions, immigrants face deportation, and it goes unaddressed. Every year, billions in value are stolen from communities of color, illegally, because we have failed to guarantee access to legal representation. As a quick demonstration of the depth of this need, see the below map, which shows the location of every family we've represented in the area around our first office in Bayview:



International studies show that what we normalize as an acceptable level of access to civil justice is, in fact, truly an outlier. No other developed country would dare so grossly prevent its citizenry from enforcing its rights and deny it access to the courts. The fact that we have tolerated this for decades has greatly contributed to the extreme levels of poverty we observe and the high cost of government services that we see. It's made homelessness that much more intractable an issue.

As shown in this paper, we have pioneered a scalable solution that can ensure universal access to justice for thousands of San Franciscans every year, and we invite the reader to imagine the effect of this tangibly:

Imagine if domestic violence was practically eliminated from our city, how this would help the psychological health of thousands of women every year, how this would improve their earning potential and savings, how this would help children, and how this would save the city money on police calls, health care costs resulting from abuse, shelter costs, and other survivor services.

Imagine if wage theft was dramatically reduced, how many tens of millions of dollars would flow straight into the pockets of our low-wage neighbors. How much easier it would be for them to raise their family, pay for childcare, and get out of poverty. How many fewer of them would fall back on public benefits and publicly-provided health care.

Imagine if wrongful foreclosures were eliminated and every senior was able to get a trust. How many billions of dollars in value could be saved. How many hundreds of homes would be passed on to the next generation. How many fewer seniors would need to be provided publicly funded senior living.

Now imagine the same order of effect, but also for eliminating wrongful evictions, ensuring every qualifying immigrant is granted status, ending elder abuse, ensuring every child had stable and loving parenting, ending all slum-like housing conditions, ending consumer fraud and so much more. Imagine the effect on poverty this would have.

The law is an incredibly powerful tool. It is time we gave everyone access to it. Injustice is the heart of poverty; together we can show that a more just society is possible.