



## Acknowledgements

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## **Executive Summary**

In 2006, the American Bar Association passed a resolution supporting the right to counsel in civil “adversarial proceedings where basic human needs are at stake.”<sup>1</sup> Polls show that a majority of Americans believe there is a right to counsel in such matters, but there is not.<sup>2</sup> Since September 2007, a broad-based Task Force on the Civil Right to Counsel (“Task Force”) convened by the Boston Bar Association (“BBA”) has examined the question of how to establish a right to counsel for situations in which a family or an individual faces the risk of a loss of shelter, sustenance, or other basic human needs. Focusing on the core areas of housing, family, juvenile, and immigration law, the Task Force recommended pilot projects to learn more about the mechanisms for providing counsel, the effect of creating a right to counsel, the costs involved, and the potential cost savings to the Commonwealth.

Funding was obtained for two pilot projects involving eviction cases. This report describes the goals and structure of the housing pilot projects, and presents the conclusions that flow from them. Consistent with the goal of understanding the situations in which assistance short of full representation would be unable to preserve a basic need or right, the “targeted representation model” implemented in the pilot projects identified categories of eviction cases in which, in the judgment of experienced housing judges and lawyers, counsel was most needed and nothing short of full representation would be effective. In Massachusetts, the District Courts in each county hear approximately one-third of eviction cases, while five specialized Housing Courts hear two-thirds of such cases. In conjunction with the courts, the Task Force operated the projects in the Quincy District Court (“Quincy”) and the Northeast Housing Court (“Northeast”) in Lawrence and Lynn, MA, with intake occurring for more than a year beginning in the spring of 2009.

Both pilot projects provided free legal representation to specific categories of low-income tenants in cases in which representation was expected to make the most difference in terms of case outcomes. Both projects were also designed as randomized studies with control groups in order to produce statistically valid data. The Task Force supplemented the statistical analysis with other evaluation tools, including follow-up interviews with clients, project attorneys, court clerks, judges, and homeless shelter providers, to better understand the impact of representation on outcomes and on the tenants' lives.

Both pilot projects prevented evictions, protected the rights of tenants, and maintained shelter in a high rate of cases. In Quincy, two-thirds of the tenants who received full representation were able to stay in their homes, compared with one-third of those who lacked representation. Even for those represented tenants who moved, they were better able to manage their exit on their own timetable and their own terms. Full representation therefore allowed more than two-thirds of the tenants in this pilot to avoid the destabilizing consequences of eviction, including potential homelessness. Represented tenants also received almost five times the financial benefit (*e.g.*, damages, cancellation of past due rent) as those without full representation.

In Northeast, because a robust program already made limited representation available to all parties, the study essentially compared varying levels of legal representation, rather than full representation and a lack of representation. The data there showed no measurable difference in outcomes between the treated and control groups. One-third of the tenants in each group kept possession, and the financial benefits between the two groups were also similar. These possession rates for both the treated and control groups of tenants are well above the state



average for possession rates for tenants generally, confirming the importance of representation in Northeast as well as Quincy.

The findings of both pilot studies confirm that extensive assistance from lawyers is essential to helping tenants preserve their housing and avoid the potential for homelessness, including all of the far-reaching tangible and intangible costs to tenants and society generally that are associated with homelessness. The effects and costs of homelessness are discussed in more detail in Appendix A to this report. Previous studies, both nationally and in Massachusetts, similarly showed that tenants represented by lawyers obtain significantly better outcomes in court than those who represent themselves because, without counsel, they are unable to present their valid defenses. In interviews and surveys conducted by the Task Force prior to the pilot studies, judges and experienced practitioners expressed the same view of the beneficial impact of counsel and the need for more representation in eviction cases.

Although civil legal aid reaches some indigent clients in eviction cases, the shortage of available counsel for the poor, and the dramatic extent of unmet legal needs, have been widely documented. Massachusetts studies show that landlords are represented by lawyers in more than two-thirds of summary process eviction cases, but only 6 to 10% of tenants are represented. The intervening recession has made the problem worse, increasing the number of potential clients eligible for legal services, at the same time it has led to dramatic budget cuts for legal services programs, ultimately causing a sharp reduction in the programs' capacity to help at a time of urgent need.

Based on all of the available data, the Task Force concludes that expanding the right to counsel, including full representation as of right, makes an enormous difference in the types of eviction cases identified by the targeted representation model in both the District Courts and the

Housing Courts. Retired Chief Justice Margaret Marshall most recently described the dire need for counsel in civil cases involving evictions in these words:

Access to justice is best secured by – and perhaps requires – a lawyer. In Massachusetts, we provide lawyers free of charge to those accused of a crime if they cannot afford one, through the state-funded public defender system. As a retired Chief Justice of the Massachusetts Supreme Judicial Court, I know that this system – while not perfect – protects the basic rights of those accused of a crime by ensuring that they have access to a competent lawyer. But there is no similar guarantee of representation for thousands of our most vulnerable residents confronted with non-criminal civil actions in which their most basic rights are also at stake. We do not provide lawyers, for example, to families threatened with wrongful eviction, or to battered women seeking restraining orders, or to senior citizens who challenge the improper denial of Medicare benefits. They are often on their own, left to fend for themselves without legal assistance in a complex adversarial system in which the party with a lawyer has the clear advantage. These impoverished litigants need the help of lawyers just as much as those accused of committing a crime.<sup>3</sup>

All concerned stakeholders should be involved in the development of an implementation plan that will supplement existing legal aid and *pro bono* efforts. Such a plan should ultimately enable the statewide expansion of the right to counsel in eviction cases selected by the piloted targeted representation model.

## **I. Background of the Pilot Projects**

In 2009, the BBA Task Force, with the crucial support of the Boston Bar Foundation (“BBF”), The Boston Foundation (“TBF”) and the Massachusetts Bar Foundation (“MBF”), established the Housing Assistance and Representation Pilot Project, which consisted of two separate pilot studies designed to measure the effect of providing full representation to a targeted low-income group of tenants facing eviction proceedings in court. With the volunteer assistance of a Harvard law professor and a Ph.D. candidate in statistics, the experiments used a tightly controlled, randomized process to select individuals to be represented and sought to develop reliable data to test the effectiveness of representation. In the process, the two pilot projects set a new standard for statistical integrity in legal services studies. This report sets out the conclusions

of the Task Force based on the pilot studies and other research and suggests next steps to assure equal access to justice in eviction cases in Massachusetts.

**A. BBA Task Force and *Gideon's New Trumpet* Report**

The Task Force was created in response to the 2006 resolution of the American Bar Association (“ABA”) calling for the provision of legal counsel “as a matter of right at public expense to low income persons” in categories of adversarial proceedings “where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody....” As then-BBA President Anthony Doniger observed when he convened the Task Force: “[W]e are now beyond the point of debating whether the civil right to counsel concept is a good idea.”

The Task Force began its work in September 2007. Convened by the BBA, the Task Force was expanded to include statewide representation, reflecting the support of the Massachusetts Bar Association and Massachusetts Access to Justice Commission, among other groups. The Task Force was created against the backdrop of the “justice gap” in Massachusetts, mindful that, “[a]lthough more than 965,000 of Massachusetts’ residents [were] eligible for free legal services, most of them [were] turned away because legal programs do not have the resources to assist everyone needing counsel.”<sup>4</sup> The intervening 2008 economic crisis has exacerbated this already bleak picture, rendering far more residents poor enough to qualify for legal services while reducing funding for legal services programs, leading to even fewer advocates available to respond to the increased need for assistance.

The Task Force released its first report in 2008. In *Gideon's New Trumpet: Expanding the Civil Right to Counsel in Massachusetts* (“*Gideon's New Trumpet*”), the Task Force urged the Massachusetts legal community to move from debate to action to give meaning to the words “equal justice for all.”<sup>5</sup> The report recommended the implementation of nine pilot projects in the areas of housing, family, juvenile, and immigration law to “provide tangible starting points for

achieving justice for all in our courts.”<sup>6</sup> The design of the pilot projects, intended as starting points for expanding the civil right to counsel, flowed from the Task Force’s belief that

Civil Gideon, as understood by members of this Task Force, stands for the basic proposition that when a civil proceeding involves a basic need or right, and nothing short of representation by counsel will preserve that right, counsel must be provided. No one is calling for a lawyer for all litigants in all civil matters. No one is calling for representation by counsel when more limited forms of assistance will provide meaningful access to justice. No one is calling for representation when the rights at issue do not involve basic human needs.<sup>7</sup>

*Gideon’s New Trumpet* describes the deliberations and decisions of the Task Force’s initial year. The Task Force considered an array of priority areas as starting points for an expanded civil right to counsel before settling on the core areas of housing, family, juvenile, and immigration law, in keeping with the ABA resolution. Although the Task Force was aware that advocates in other states had approached the topic by seeking a broad-based declaration of rights either from a state’s highest court or from state legislatures, the Task Force decided that more information about how to implement a right to counsel in most substantive law areas was first required. Consequently, the Task Force recommended nine pilot projects to develop the necessary information.<sup>8</sup> *Gideon’s New Trumpet* noted the common themes that emerged during the development and discussion of the pilot project proposals, even though they were proposed by committees focused on different subject areas. Proposals fell broadly into two types of categories: (1) those in which the need for counsel in a civil case arose because of a related criminal matter in which a deprivation of liberty potentially was at stake; and (2) those in which the potential loss of basic human needs was at stake due to a dramatic power imbalance.<sup>9</sup> The proposed pilots were starting points and were not meant to be a complete list of the types of cases in which a civil right to counsel was needed.<sup>10</sup>

## **B. The Rationale for Housing Pilots Projects**

In describing the need for counsel in the housing area, *Gideon's New Trumpet* relied on data and reports from Massachusetts and around the country demonstrating the need for assistance in eviction cases.<sup>11</sup> In Massachusetts, as elsewhere, most tenants appear without counsel, while many landlords obtain representation. Nationally, data consistently show that tenants are rarely represented by counsel. At the same time, the representation rate for landlords varies from low in some courts to as high as 85 and 90% in others. Where landlord representation is high, the typical eviction case pits a represented landlord against an unrepresented tenant.<sup>12</sup> Massachusetts data is consistent with the national trends. Data collected in 2005 by the Massachusetts Law Reform Institute (“MLRI”) found that 66% of landlords were represented by counsel statewide, compared with only 6% of tenants.<sup>13</sup> A 2008 study of 365 cases in Cambridge District Court found that in 97.3% of landlords were represented by counsel, compared with 10.7% of tenants.<sup>14</sup> Most recently, the Housing Court provided statewide statistics on the percentage of unrepresented litigants in summary process cases in 2011, showing that 59.4% of plaintiffs were represented compared with 5.6% of tenants.<sup>15</sup>

Courts hearing eviction cases are high volume courts, with few cases going to trial and the vast majority resolved by default or settlement.<sup>16</sup> The settlements often are the result of hallway negotiations. In the Massachusetts Housing Courts, many settlements occur under the auspices of housing specialists, who are court mediators. The demographics of the tenants “reveal a vulnerable group of litigants, typically poor, often women, and disproportionately racial and ethnic minorities.”<sup>17</sup> Reports from across the country document that tenants often face swift eviction with minimal judicial oversight.<sup>18</sup> Tenants rarely win possession in these cases. The 2005 MLRI survey found that landlords were awarded possession in 78% of cases compared with 2% for tenants. The remaining 20% of cases were dismissed. While the files do not indicate

in which, if any, of these dismissed cases, the tenants maintained possession, a common resolution of eviction cases involves dismissal of the case accompanied by the tenant moving out. The statewide possession rate therefore is likely to be in the single digits.

The existing reports paint a consistent picture of the importance of counsel for tenants and the devastating consequences of being unrepresented for the vast majority of tenants. However, some critics of the reports note that the outcomes could, in theory, be explained at least in part by rational market choices of lawyers and clients.<sup>19</sup> In theory, lawyers might select their cases based on the likelihood of success, while clients might be less likely to seek lawyers when their cases are weaker.<sup>20</sup> Veterans of legal services and the courts have suggested other reasons why tenants facing eviction might not try to find a lawyer<sup>21</sup> and have expressed little doubt that representation itself is the key variable. A randomized study, in which cases are assigned by a computer to a treated group for full representation or a control group, could confirm that representation is in fact the key variable.<sup>22</sup>

Another objective of the Task Force was to explore and describe the connection between eviction and the societal costs of homelessness. Eviction will, sooner or later, force at least some individuals and families into shelters, particularly if it causes a significant loss of benefits when the right to public housing is at stake, as it was in many of the cases handled in the two pilot studies.

### **C. Development of Housing Pilot Targeted Representation Model**

The Task Force proposed to target the subset of eviction cases in which representation might prove most important.<sup>23</sup> To strike a balance between the desire to assist all tenants and the need to target the cases in which representation might make the most difference, the Task Force recommended that the representation proposal “be supplemented with the expansion of assistance programs, such as lawyer for the day programs, for both tenants and landlords in all

Housing and District Courts, to reach all eligible litigants seeking assistance.”<sup>24</sup> The Task Force’s Housing Law Committee surveyed experienced housing judges, *pro bono* lawyers for the day, legal services attorneys, and landlord attorneys in attempting to identify a description of the types of litigants and cases in which representation was most needed.

Most respondents articulated the view, shared by the Task Force, that representation would benefit all litigants. At least two Housing Court judges explicitly stated that “lawyers should be provided for all S[ummary] P[rocess] cases.” Another expressed his “belief that litigants (landlord and tenant) are better protected and get better results when represented by knowledgeable counsel.” Where judges focused on subsets of eviction cases, one judge felt that the most compelling cases for legal representation involved “[p]ersons who have cognizable defenses or counterclaims ... because they often do not know or have the capacity to assert their claims, prove their case, save their tenancy.” A different judge urged appointed counsel after a balancing of three factors: (1) the seriousness of the consequences; (2) the complexity of the issues; and (3) the abilities of the parties to articulate and prove their claims and defenses.

The process ultimately singled out three subsets, or categories, of eviction cases: (1) cases where the eviction was related to a mental disability; (2) cases involving allegations of criminal conduct; and (3) cases where the weighing of specific factors revealed a power imbalance between the landlord and tenant that was likely to deprive the tenant of an affordable apartment despite a viable defense.<sup>25</sup> Every tenant who fell into the first two categories was perceived to be vulnerable enough to include. Tenants with mental disabilities are extremely vulnerable to losing rights because of their disability. Likewise, tenants being evicted because of their own or a household member’s alleged criminal conduct are vulnerable because the right to counsel in criminal cases may be rendered meaningless if counsel is not available in an eviction

case based on the same facts. The third category was included because there are many additional cases in which the absence of representation for the tenant would lead to a “substantial denial of justice.” The Housing Law Committee of the Task Force selected six factors to which to identify these cases: (1) the vulnerability of the tenant; (2) the power of the landlord; (3) the affordability of the unit; (4) whether there appeared to be cognizable defenses; (5) whether the loss of shelter might jeopardize other basic human needs of the tenant, such as safety, subsistence, health or child custody; and (6) other indicia of power imbalances between the parties.<sup>26</sup> The Task Force also recognized that a landlord might be vulnerable and included a proposal for representation for landlords for whom shelter was at stake and where the tenant was represented.<sup>27</sup>

## **II. Implementation of the Housing Pilots**

### **A. Pilot Setup**

Summary process (eviction) cases are heard both in the Housing Courts and the District Courts in Massachusetts. In fiscal year 2010, there were 35,950 summary process cases filed in Massachusetts courts, 12,009 in District Court and 23,941 in Housing Court.<sup>28</sup> Thus, roughly two-thirds of the cases are heard in the five Housing Courts across the state (Boston, Northeast, Southeast, Western and Worcester Divisions), and one-third are heard in the 62 local District Courts. Housing Court jurisdiction does not cover the whole state, but when there is overlapping jurisdiction, tenants can transfer their cases from District Court to Housing Court.

Because the courts have different structures and resources, the Task Force’s intent was to set up one pilot project in a Housing Court and another in a District Court. The Housing Courts typically have housing specialists on staff who mediate many of the cases, leading to settlement. In addition, the Tenancy Preservation Program (“TPP”)<sup>29</sup> operates only in the Housing Courts and is designed to help fashion remedies to prevent the eviction of many vulnerable tenants and their families in households including someone with a mental or physical disability. Finally,



legal services offices typically have a greater presence in the Housing Courts, including assisting at Lawyer for the Day programs.<sup>30</sup> Housing Courts often offer limited representation for both tenants and landlords through the Lawyer for the Day program, particularly through mediation conferences and settlement. The District Courts, in contrast, lack housing specialists, the TPP, and Lawyer for the Day programs and have no regular legal services presence.

With the help of the courts, the Task Force selected Northeast and Quincy as the two sites for the pilot projects. The Task Force chose a staff-based model for representation, with Neighborhood Legal Services (“NLS”) selected for the pilot in Northeast and Greater Boston Legal Services (“GBLS”) in Quincy. NLS already played a prominent role in the Lawyer for the Day program in Northeast, so funding was for one staff attorney (a position filled by two half-time attorneys) to undertake full representation of eligible cases under the pilot criteria. In Quincy, by contrast, there had been no regular legal services presence for a number of years, so GBLS was funded to provide full representation as well as resources for screening and brief service to eligible tenants not selected for full representation. The Volunteer Lawyers Project of the Boston Bar Association (“VLP”) agreed to assist eligible landlords in finding counsel in Quincy.

Responding enthusiastically and generously to the ideas reflected in *Gideon’s New Trumpet*, the BBF, TBF, and MBF provided funding for the housing pilot projects beginning in 2009. Despite the devastating economic crisis that severely limited available resources, additional funding was provided in 2010 to allow for completion of the pilots. The support of the three foundations, combined with support from the Housing Court and District Court, allowed for the successful implementation and completion of the two studies. With the initial grant awards and subsequent renewals, the projects received funding for roughly a year’s worth of

intake. The Quincy project began taking cases in May 2009, and the Northeast project began taking cases in June 2009. Both projects wound down by the end of 2010, but maintained a continuing presence in the courts after the project funding ended, depending upon the needs of uncompleted cases.

## **B. Study Design**

The most important goals of the pilots were to test the impact of representation and the efficacy of the targeted representation model. To help isolate the impact of the variable of representation, the Task Force worked with Harvard Law School Assistant Professor James Greiner and Harvard University College Fellow Cassandra Wolos Pattanayak,<sup>31</sup> who designed the pilot projects as two randomized studies with control groups. In each location the design was intended to isolate the impact of an “offer of representation”<sup>32</sup> on the outcomes of the eviction cases. GBLS and NLS staff screened applicants to identify the eligible cases. A computer program chose at random which of these eligible cases were to be accepted for full representation and which would be assigned to the other systems of helping self-represented litigants in the respective courts.<sup>33</sup>

While the case data generated in the randomized study provided the core data for the evaluation of outcomes, the data was supplemented in a variety of ways. Interviews with key participants, including the lawyers, judges and clerks, provided one additional form of assessment. Follow-up interviews with tenants provided another way to complete the picture of what had occurred and of the impact of the assistance received. Case studies provided a further basis for assessing the differences between the two groups. Throughout the course of the study, various researchers reviewed files and docket sheets in search of supplemental information. Finally, researchers conducted interviews of staff at homeless shelters to understand better the connection between eviction and homelessness.

The pilot project design went to great lengths to assure that outcome data about treated participants could be compared with outcome data about untreated participants in order to explain differences in outcomes in each court in a statistically significant way. One of the important features of this design was that, within each separate pilot project, all of the participants experienced the same court procedures and the same system of assistance to self-representing litigants as did all other participants in the same pilot. Similarly, participants were trying to find shelter in the same housing market and shared with all other participants the same range of demographic characteristics.

It is very important to note that, because the pilots were designed and run as two different studies, there is no way to draw valid conclusions from a comparison of outcomes between the two studies.<sup>34</sup> However, within each pilot, the randomization structure eliminated variables that might explain the outcome differences beyond the impacts of representation. Specific details about each pilot study are set forth in the section discussing that study.

### **III. Quincy District Court Pilot Study**

#### **A. Setting and Structure**

The Quincy pilot project included a review of eviction cases filed in Quincy and an outreach process to identify prospective project participants. The project team developed an intake process and supporting materials along with a reporting protocol that would support the Harvard research team.<sup>35</sup> GBLS staff went to Quincy each week to review all new eviction case filings and then sent letters inviting tenants to come to an eviction clinic that usually was held on Friday mornings in Quincy. GBLS staff also sent letters to all the small landlords (*i.e.*, in owner-occupied buildings) informing them that they might be able to receive assistance through the VLP.

At the eviction clinic, generally 2 to 3 hours in length, GBLS project attorneys reviewed each tenant's eviction papers; helped tenants prepare *pro se* answers, discovery and where appropriate, motions; and explained the tenant's rights and discussed the court process and settlement options. GBLS project attorneys then evaluated each case for full representation through the project, submitted information sheets to the Harvard team on cases eligible for full representation, and offered full representation to the tenants who were randomly selected. In addition to the eviction clinic process, some tenants also connected with GBLS through their court appearances during which the court announced the presence of the project, inviting tenants with questions to consult the project lawyers. Where these cases fit the project criteria, they were similarly referred to the Harvard team for randomization and included in the study.

The Quincy project reported having served 470 tenants, 129 (27%) of whom were deemed to have met the criteria and entered into the study. The GBLS staff acknowledged that they might have used a slightly tighter or looser screen from week to week, depending on their capacity to accept cases and the nature of the cases for the week. With a tighter screen, more borderline cases would be eliminated from the pool of eligible cases because the screener might wait for more certain information of eligibility or require that more factors be present to meet the project criteria. On the other hand, a looser screen might admit more cases, either because the decision was made earlier in the process before a more detailed investigation was complete or because the screener relied on fewer indicia of a power imbalance before determining the case was eligible. Overall, however, GBLS relied on a tight screen to ensure that cases met the project criteria, sometimes assisting the tenant in compelling discovery requests and reviewing the landlord responses before making a final determination.

## **B. Findings**

### **1. Results for Clients: Impact of Counsel**

The strongest finding of the study is the clear and powerful impact of full representation for tenants in the Quincy project. Compared with the control group, tenants in the Quincy treated group fared, on average, twice as well in terms of retaining possession, and almost five times as well in terms of rent waived and monetary awards. Another critical finding of the study was that tenants who had full representation in Quincy created a lesser drain on the court system than those who were not offered full representation. As Greiner and Pattanayak concluded:

[A]s far as one can tell from court records, the data demonstrate that an offer of representation from a GBLS staff attorney caused the more favorable possession and financial results ... without increasing the burden on the court, beyond the increase in the time needed to reach judgment, which on its own has limited substantive significance.<sup>36</sup>

#### **a. Possession**

The case outcomes from the Quincy pilot project dramatically illustrate the impact of full representation by counsel. In the key data point of possession, fully two-thirds of the treated group retained possession, while only one-third of the control group retained possession. Despite the fact that members of the control group received assistance not only in the form of brief service, but also assistance with answers, discovery, and motions from the GBLS team, tenants in the treated group fared dramatically better.

#### **b. Financial Benefits**

Regarding financial benefits, including rent waived and damage payments from landlords to tenants, members of the treated group in Quincy again fared far better than those in the control group. While tenants in the Quincy control group received financial benefits equivalent to an average of two months' rent,<sup>37</sup> those in the treated group received almost five times as much – the equivalent of nine-and-a-half months of rent. Moreover, the Harvard team reported that the

nine-and-a-half months figure for the treated group was an understatement, and probably quite a substantial one, of the financial benefit representation provided.<sup>38</sup> With regard to tenants receiving damage awards, tenants in the treated group received a total of \$306,415 as opposed to \$72,723 in the control group to date.<sup>39</sup>

**c. Other Client Benefits**

The study design looked for variations in outcomes, such as possession and financial benefits that were caused by representation of the study population. But outcomes that were not measured might be attributable to representation as well. For this reason, the Task Force supplemented the Harvard team's data with interviews with the lawyers, judges, court personnel, and available members of both the control and treated groups in both pilots.

The GBLS lawyers agreed that, with full representation, they were far better able to assess the clients' goals and to structure their assistance accordingly. They further noted that clients receiving full representation generally were more in control of their fate and the litigation process rather than being forced to react to the pressures of the summary proceedings and having little ability to influence the outcomes without substantial assistance. The GBLS lawyers added that, for the one-third of the members of the treated group who were considered to have "lost possession," some did so of their own volition and most did so on their own terms, often finding more suitable housing. The leverage achieved through full representation bought the tenants time, money, or both. As one lawyer explained, when the full representation process allowed the tenants to remain in possession, they moved when they were ready to do so. Treated group tenants also appeared more likely to obtain needed repairs. However, because that result was not always reflected in the court file, this important benefit of representation was excluded from the study because it could not be reliably compared with the control group. Moreover, the lawyers often played a crucial role in helping the tenants obtain bridge funding (one-time funding to help

pay a temporary arrearage) or other forms of assistance from third parties, including government and social services agencies. Again, because this benefit was not consistently reflected in the court files, it was not the type of benefit that the Harvard team could capture.

Date collected from the interviews with judges and clerks was consistent with the Harvard team's data. Judge Mark Coven, the Presiding Justice, and John Dalton, the Civil Clerk at Quincy District Court described a dramatic difference in their court because of the operation of the pilot project. Judge Coven made clear that if the goal of the project involved preventing evictions, protecting rights, and maintaining shelter, then the answer to the question whether the pilot project was a success is "undeniably yes."<sup>40</sup> He reported that the Quincy lawyers provided excellent representation, and aggressively did what they were supposed to do – the project was "quite a success." He observed that represented tenants obtained money, prevailed on their claims, and maintained possession.

## **2. Effects on the Court**

Since representation made such a big difference in outcomes at Quincy, policy makers might be concerned that full representation could have had a negative impact on the court's operation. The Harvard team's data from Quincy suggests exactly the opposite: full representation reduced the drain on the court's resources. Treated cases took 45 days longer to reach judgment, yet they involved fewer court appearances and contested rulings (although the latter two results fell just short of statistical significance). Over 90% of the landlords were represented in the Quincy data set. Thus, in the treated group, the lawyers were typically able to work through case issues with less court assistance than was required for the control group.

The Harvard team was measuring only the impact of full representation, rather than the impact of the overall project, in assessing court burden. The overall project undoubtedly impacted the court in a number of ways. Judge Coven and Mr. Dalton reported that there were

bumps in the road at the outset, as the landlords and their lawyers adjusted to the presence of the project and its attorneys in court. Presumably due, at least in part, to the assistance provided to tenants in the control group, Judge Coven reported that the summary process session took longer once the project started and Mr. Dalton commented that the staff workload and paperwork increased in the clerk's office due to the project.

At the same time, the interviews indicate that the projects had a substantial positive impact on the court. Judge Coven went so far as to state that the project changed the culture of the court. It changed the litigants' expectations as to what would happen, "raised the bar" as to what the various players should expect, and served "to keep everyone honest," in the sense that it was clear that below par legal work could not pass muster. Mr. Dalton added that the project had benefits for the staff as well, exposing them to a different perspective, which contributed to the change in culture. Mr. Dalton thanked the Task Force for choosing Quincy as the site for the project. Judge Coven closed the interview by responding to the question of whether the project should be replicated elsewhere with an "unequivocally positive" response, saying there was no question that he would recommend the project to other District Courts.

#### **IV. Northeast Housing Court**

##### **A. Setting and Structure**

The operation in Northeast evolved differently because NLS already ran a highly successful and expansive Lawyer for the Day program in that setting. The Lawyer for the Day program, which was designed in the wake of legal services findings that providing advice and education alone to *pro se* tenants produced no appreciable differences in case outcomes,<sup>41</sup> involves extensive attorney assistance. Attorneys interview and advise clients; assist them in completing *pro se* answers, discovery and transfers from District to Housing Court; represent them in settlement negotiations, including in mediation before the housing specialists; and may



assist the tenant in presenting the eventual agreement in court.<sup>42</sup> In fact, the program was originally named a “Mediation Project.” While this report uses the term “Lawyer for the Day” to refer to the program, as participants do, it is crucial to understand that the program really involves limited representation at every critical stage of the case short of trial, particularly in light of the fact that most cases settle at the mediation stage.<sup>43</sup> In addition to the Lawyer for the Day program, the Northeast pilot differed from the Quincy pilot in that 54.3% of the cases accepted in Northeast (100 of 184 cases) involved cases taken at the notice to quit stage in an effort to obtain data as to whether providing pre-litigation representation could help keep cases out of court, thereby helping tenants and saving judicial resources.

As with the Quincy project, the Northeast project required careful development of protocols that involved outreach and screening and developing the necessary forms. To maintain the separateness of the operation, the Northeast team developed an intake stream that sent cases to the project from a variety of different sources. Primarily, intake began when a potential client called NLS and, after a brief informational conversation, was referred to an appointment with an NLS housing attorney at one of NLS’ two offices. To be eligible for the study, the potential client had to keep this appointment. At these meetings, NLS attorneys helped potential clients fill out answers, discovery, counterclaims, and transfer forms, if appropriate. NLS attorneys also reviewed with the clients the basics of the summary eviction process as well as what to expect in mediation before housing specialists, obtained consent to participate in the study, and encouraged tenants to use the Lawyer for the Day program if they were not selected for an offer of full representation. At that point, the cases were referred to the Harvard team for randomization. Potential clients randomized to the treated group received an offer of full

representation, and those randomized to the control group were again reminded about the Lawyer for the Day program.<sup>44</sup>

The lawyers running the Lawyer for the Day program refrained from appearing before the judge on behalf of tenants in the control group, but nonetheless assisted them in other aspects of the court process, including during negotiations in the hallway and before the specialists. Because mediated settlements are rarely rejected, any differences in outcomes between treated and control groups would come at the trial stage, but there were hardly any trials. Adding to the closeness of the project and the Lawyer for the Day program, the project staff attorneys, each of whom worked half-time on the project, also worked part-time in the housing units of NLS where their duties included helping to staff the Lawyer for the Day program.

## **B. Findings**

### **1. Results for Clients: Impact of Counsel**

#### **a. Possession**

The comparison of possession outcomes between treated and control groups showed little difference. Tenants in the treated and control groups were each awarded possession roughly one-third of the time.

Focusing only on the almost 55% of cases accepted at the notice to quit stage in Northeast, the pilot examined whether earlier intervention might increase the likelihood that the case would be kept out of court entirely, with the tenant keeping possession. This data comes with the caveat that it proved harder than anticipated to track all cases, as cases could be filed not only in Northeast, but also in a variety of District Courts. Roughly half the control group ended up in court following the notice to quit, compared with 40% of the treated group. Whether the difference flows from the impact of representation, the difficulties of tracking all the cases, or

some randomness within the study groupings is unknown, leading to an uncertain conclusion from the data.

While not rising to the level of a randomized study, information supplied to the Task Force by the NLS Executive Director sheds light on the inquiry.<sup>45</sup> Comparing the results of the first 69 cases randomized for full representation with the NLS data from its Lawyer for the Day program for 2008-2009 and 2009-2010, the data shows a substantially higher dismissal rate for those receiving full representation: 18 of the first 69 cases in the treated group resulted in dismissal or a resolution of the case before a summons and complaint was filed (26%), while 15 of the 469 cases handled at the Lawyer for the Day program in 2008-2009 (3%) resulted in dismissal. Of the 9 full representation cases in the treated group that resulted in an agreement for judgment to move, the tenants received average stays of 11.4 weeks, while the average stays for the 416 cases handled by the Lawyer for the Day program in 2009-2010 was 4.6 weeks.

**b. Financial Benefits**

Both the treated and control groups in Northeast received the equivalent of roughly two months of rent.<sup>46</sup> With regard to tenants receiving damage awards, tenants in the treated group received a total of \$122,235, and tenants in the control group received \$109,778.

**c. Other Client Benefits**

The lawyers reported several benefits of full representation that would not necessarily be reflected in the collected outcome data. The NLS lawyers indicated that, because they were able to conduct far more extensive interviews with clients, they were better able to ascertain the clients' goals than they were during the brief interviews incident to the Lawyer for the Day process (typically 15 to 20 minutes). Full representation allowed the lawyers to understand the clients' goals and manage the case accordingly. However, subjective outcomes such as client satisfaction were not measured.

Both NLS lawyers believed that the tenants who received full representation obtained much better outcomes. The NLS Executive Director and Director of Litigation agreed and wished to compare the outcomes of the treated group with those of the control group who were not helped by the Lawyer for the Day program. Unfortunately, the data on the control group did not correlate Lawyer for the Day participation and outcomes with those who were not helped by the Lawyer for the Day program.

## **2. Effect on the Court**

In Northeast, the Harvard team's data did not detect a difference in the area of court burden. Nor was there a perceptible difference to the Court itself. With a fully-functioning Lawyer for the Day program sometimes staffed by the same lawyers who provided representation in the same types of cases to the treated group, Judge David Kerman, the First Justice of the Northeast Housing Court, was unable to discern differences between assistance through the pilot project and other forms of assistance. This was particularly so because the study was a "double blind" study from his perspective: the randomization process did not occur under Judge Kerman's purview, and he was not informed which appearances were due to the project as opposed to those occurring through the normal Lawyer for the Day process.

## **V. Additional Data**

The Harvard team's study results contain a rich array of additional information that is beyond the scope of this report to explore. The data provides insight into demographics, procedural aspects of the proceedings, such as motions filed and days elapsed between the filing and resolution of the case, and an array of other data points relating to outcomes. In each case, the data appears with raw numbers, percentages, and statistical measurements including the standard deviation. Professor Greiner and his co-authors have presented and analyzed the data in detail in their articles *The Limits of Unbundled Legal Assistance: A Randomized Study in a*

*Massachusetts District Court and Prospects for the Future and How Effective Are Limited Legal Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court*, first issued in October 2011.<sup>47</sup>

#### **A. Case Studies**

While the interviews with the project participants underscore many of the ways in which full representation impacted the litigants and the court, a comparison of individual cases illustrates the crucial role of representation as well. For example, two companion cases arrived at the Quincy project involving alleged criminal activity. However, no notice to quit had been served. Both cases involved the same incident: a dispute between the boyfriends of the two tenants, with one boyfriend allegedly shooting at the other, and eviction proceedings against both resulting. GBLS first submitted the easier case – the one in which the tenant’s boyfriend was not the alleged shooter – for randomization, but the computer randomized the case into the control group. With no danger that the computer would direct GBLS to take both cases, the attorneys placed the second case, in which the tenant’s boyfriend was the alleged shooter, into the pool. This time, the computer randomized the case to the treated group and, therefore, the tenant received full representation.

Although there was no notice to quit in either case, the tenant whose case was randomized to the control group was evicted and lost her rent subsidy almost immediately. With the second case randomized to the treated group, even though the tenant’s boyfriend was in jail for the shooting, GBLS was able to file a motion to dismiss based on the absence of the notice to quit and use the defect for leverage in settlement discussions. Settlement negotiations eventually led to an agreement that the tenant would move seven months later, with her subsidy intact and applied to her new apartment and with her case dismissed.

A comparison of two simpler cases yields a similarly striking difference in outcome due to representation. Early in the project, GBLs screened a pair of nonpayment cases brought by the Weymouth Housing Authority, one alleging a total arrearage of \$1,094 and the other \$1,155. The case randomized to the control group resulted in an agreement of possession for the landlord as well as a money judgment for the landlord. The file later reflects that the landlord returned to court to seek an execution to evict the tenant. The case randomized to full representation resulted in a judgment of dismissal.

There were also concrete benefits for a family's overall housing stability, as the following cases illustrate:

- MR was a subsidized tenant (single working mom with disabled child). Her landlord converted her rent to a market rent after terminating her project-based subsidy. Representation saved the subsidy and tenancy, and the court determined that the landlord owed MR thousands of dollars in miscalculated rental amounts. The returned rent enabled the family to purchase its own condo.
- TC's family had lived in private housing for a number of years when it faced eviction by the landlord trust. Through representation, the family recovered over \$10,000 of wrongfully paid utilities, which were actually the trust's obligation to pay under the lease. The reimbursement enabled the family to purchase its own home.
- SL was a disabled woman whose husband abandoned her, owing almost \$10,000 in back rent. Representation was able to wipe out the arrearage due to health and safety violations in the apartment and helped her move into a repaired, larger two-bedroom apartment at a reduced rent.<sup>48</sup> With a larger apartment, SL's son could move in and assist with the rent going forward.
- AG and her husband and three children came from Togo. She cleaned hotel rooms, and her husband did HVAC repairs. They fell behind on rent when AG's husband was suffering from such severe gout that his feet were too swollen with sores for him to wear his work boots and his employer wouldn't let him work in sandals. For purposes of the study, the family was considered a "move-out" but they actually moved out voluntarily months before the jury trial because the apartment was causing additional health problems. Counsel secured cancellation of thousands of dollars in arrearage and won an additional \$9,000 in damages, which the landlord is making in monthly installment payments.

- MP and his family, with three disabled children, lost their home when the bank foreclosed. The home was then sold to an investor at auction. Counsel obtained dismissal of the initial eviction and then filed predatory lending claims in Superior Court, which are pending, with an injunction in place against further eviction.

## **B. The Relationship between Eviction, Homelessness, and Cost Savings**

*Gideon's New Trumpet* asserts that the right to be heard is the primary justification for an expanded right to civil counsel.<sup>49</sup> The pilot studies have confirmed that, without full representation by counsel or an effective alternative, many vulnerable tenants forfeit important rights, lose possession they could have retained, and forego substantial financial benefits. With counsel, eviction proceedings have outcomes that are more just.

While achieving greater justice is a sufficient goal on which to base an expansion of counsel for tenants in eviction cases, there may be another reason to afford full representation to tenants facing eviction. If eviction leads to homelessness and high state expenditures for shelter assistance, representation of tenants in eviction cases that stops evictions may be a way to save the state money. The data from the pilot projects, combined with previous information regarding evictions in Massachusetts, demonstrates the importance of representation in keeping tenants in their homes or allowing them to secure alternative housing of their choosing. Preliminary research by the Task Force documents that implementing the targeted full representation model will prevent homelessness for a number of tenants and should save the state enough money both to pay for counsel and to reduce the economic and social costs of homelessness. This work is set forth in more detail in Appendix A.

## **VI. Analysis of the Targeted Representation Model**

The Task Force hoped to learn a number of things in running the projects. First, it hoped to gauge the effectiveness of the targeted representation model on case outcomes. This data has been reported above and is discussed below in the overall conclusions drawn from the Task

Force's work. Second, it sought to determine the most effective mechanisms for identifying the cases that were most in need of representation. Third, the Task Force aimed to determine the numbers of clients eligible for representation under the targeted representation model. Finally, the Task Force hoped to obtain information about the hours and costs involved in representation in these cases, thereby providing useful data for calculating the cost of the model for continuation or expansion.

#### **A. Case Selection**

Beyond learning about the impact in terms of case outcomes, the pilots were designed to provide insight into the effectiveness of the criteria as a means of sorting cases on the docket to identify those in which tenants were most in need of full representation by counsel. As described in Section I.C. above, the project criteria were developed after surveying judges and lawyers who were experts in the area of housing law. Although there was consensus that all parties would benefit from full representation, the inquiry as to which cases were most in need of representation yielded the three categories included in *Gideon's New Trumpet* and applied in both project settings.

Lawyers in Quincy and Northeast agreed that the three categories were workable and allowed for identification of the cases most in need of representation. Due to the randomized study, many of those cases were sorted into the control group, but that does not undercut the effectiveness of the project criteria to identify the cases most in need of representation. Both sets of lawyers reported that very few cases fell into the category involving criminal conduct, and, although more cases may have fallen into the category involving mental disability, the third category involving the balancing of factors allowed for the easiest route to eligibility. Thus, cases involving mental disabilities that might have fallen under the first category could more quickly



and easily be sorted into the third category, obviating the need to find a causal connection between the mental disability and the grounds for eviction.

These factors together meant that most cases fell under the third category, a fact supported by the Harvard team's data: in both studies, over 95% of the cases were classified as study-eligible under the third category. That same reality, however, underscores the potential for differences in the application of the criteria from court to court, office to office and attorney to attorney. As noted above, the NLS lawyers utilized a looser screen, sorting cases more quickly to ensure sufficient numbers, often accepting cases under the third category where fewer criteria were met or without the benefit of a fuller investigation of facts prior to randomization. In contrast, in Quincy, the GBLS lawyers sometimes waited for discovery responses from the landlord, delaying the decision but increasing the chances that the accepted cases truly met the criteria.

The Task Force does not find the fact that the criteria might be applied differently to be a flaw in the model. To the contrary, the Task Force believes that such a reality is the least of the potential evils in a system that falls short of a categorical right to counsel. In other words, if every tenant were entitled to full representation by counsel, there would be no equivalent screening issue. If only the first two categories for criminal conduct and mental disability existed, cases in which virtually everyone involved would agree that representation was needed could not be accepted because of the inability to shoehorn a case into a narrow sub-category. The targeted representation model tested in the pilot projects provides a workable compromise.

## **B. Numbers of Cases**

The Task Force's best estimate was that 10 to 20% of the cases on the eviction docket would meet the project criteria. Given the discussion above about the differences in how strictly or loosely the two projects applied the criteria, any conclusion drawn from the data might be a bit

high or a bit low were the project replicated in other courts or statewide. Nonetheless, various pieces of additional information confirm that the estimates were reasonably accurate.

In post-project interviews, the NLS attorney who described utilizing the looser screen – finding eligible cases that met the project criteria if one of the six components of category three was met – estimated that eligible cases made up 20 to 25% of the docket, a figure that would be lowered with a tighter screen. In Quincy, the project assisted 470 cases total, 129 of which were found to meet the project criteria and sent to the Harvard team for randomization. This figure amounts to 27% of the cases, while leaving open the question as to whether the tenants who did not respond to the invitation to seek assistance would have been more likely to fit the criteria. At least some would be defaulting tenants, unlikely to utilize counsel even if such a right existed, possibly rendering the 27% figure misleadingly high. In Northeast, the project served 1,258 litigants, 174 (13.8%) of whom met the project criteria.

Other attempts to gain insight into the percentage of the docket that might meet the project criteria include considering the overall number of summary process cases filed. The easiest data to locate does not align perfectly because the court reports data for each fiscal year, but the Quincy project conducted intake between May 2009 and the fall of 2010. Nevertheless, the figures are illuminating. The courts report that 1,286 summary process cases were filed in Quincy in fiscal year 2010. A comparison of that data to the 129 cases taken in the Quincy project produces a far lower estimate of the percentage of the docket – 10% (129 of 1,286) – though that figure excludes the eligible cases where the tenants never connected with the project. The 2% figure for Northeast (the 84 summons and complaint cases taken by the Northeast project as a percentage of the 4,095 total of summary process cases filed in Northeast) is certainly low since the project did not even operate in two of the four sessions of the court. Still,

the figure indicates that the 20 to 25% estimate is likely on the high side. For all these reasons, the original estimate was close, and the 10 to 20% range, at the higher or lower end subject to how strictly the criteria are applied, is a sound estimate. Statewide there are 35,950 eviction actions filed in a year, so it is estimated that between 3,595 and 7,190 tenants would be eligible for services from a targeted representation model.

### **C. Hours and Cost Estimates Per Case**

The pilot projects also yielded important information on the average number of hours expended on representation per case. The lawyers at both sites tracked their hours. The attorneys emphasized that the hours involved varied widely, depending on the case. The most obvious example is that notice to quit cases in Northeast took far less time than did summons and complaint cases. However, even within summons and complaint cases, the hours involved varied widely.

In Quincy, the mean (average) case took 17 hours. The range was .5 to 92.8 hours, but the median case took just 5.25 hours. An examination of the underlying data reveals that this difference between mean and median is primarily attributable to just seven outlying cases that consumed between 60 and 98 hours. Thus, the typical case in Quincy took 8 hours of attorney time to resolve, but 5% of the cases took much more time, increasing the average time per case to 17 hours.

In Northeast, the mean (average) case took 12.4 hours. The range was 1.0 to 75.5 hours, but the median case took just 10 hours. Again, the difference between mean and median is primarily attributable to six outliers, cases in which NLS reported more than 30 hours, including one case taking 75.5 hours. Thus, the typical case in Northeast took 10 hours of attorney time to resolve, but 7% of the cases took more time, increasing the average time per case to 12.4 hours.

In addition to the data on hours, an hourly rate must be used to derive cost estimates. The actual hourly rates of the attorneys who worked in the pilots may or may not be predictive of the hourly rates of lawyers who will work in a project implementing a civil right to counsel, but an estimate of hourly rates is needed to estimate the cost of implementation. The Task Force found several such estimates. GBLS, which has the highest salaries among the state's field service legal aid programs, informed the Task Force that hourly rate it utilizes for grant applications is approximately \$70 per hour. NLS does not use a similar number, but based on the salaries of the two NLS attorneys involved in the pilot project, which included benefits, their hourly rate was approximately \$50, which is consistent with the average hourly wage, including benefits, of the four NLS staff who do most of their housing work. Based on other indications of what price per hour might be offered by providers of civil legal services to low-income clients who wished to staff a targeted representation model, a range of \$50 to \$70 per hour seems appropriate.<sup>50</sup>

Using an average cost of \$60 per hour and the weighted average hours for the typical case in Quincy and Northeast (9.2 hours per case), the average cost per typical case is estimated at \$552. Using the midpoint of the estimate of the number of cases (5,393), the estimated costs of implementing the targeted representation model statewide would be \$2,815,146. Recognizing the wide range of numbers that went into this estimate, Appendix B lays out variations on that number using the low and high ends of the different estimates or data about the numbers of case, hours per case and hourly rates. The costs of full implementation of the targeted representation model is one of the areas that warrant further study before a right to counsel in such cases is implemented.

The Task Force recognizes that when the approach to handling the outlier cases (cases that were excluded from calculating the hours spent on the typical case) is taken into account,

that might lead to higher costs for full scale implementation (but also potentially higher fee recoveries). Further analysis of the impact of such cases, and how best to handle them, is essential. For example, consideration could be given to a pro bono panel to take on the outliers or to creation of a referral panel that would agree to handle outliers in light of their potential to generate significant attorney's fees under Massachusetts' fee shifting statute for eviction cases. Approaches such as these, however, require further study and analysis and may not be feasible across the board.

In addition, there must be an offset against costs for fees recovered in litigation. In the course of representing tenants in the pilot projects, the Quincy attorneys recovered attorneys' fees, primarily through settlement, in a number of cases. GBLS reported its recovery at \$50,857 to date. As of the writing of this report, some of the GBLS cases likely to result in fees remain incomplete, but additional recoveries aggregating to at least \$37,000 are anticipated.

Finally, any analysis of cost should include an analysis of potential cost savings. Appendix A explores more fully savings in homelessness shelter costs. Potential overall costs would therefore be offset not only by the amount of fees recovered, but also by savings incurred from representation, including from homelessness prevention.

#### **D. Landlords**

The project design created a mechanism for eligible landlords to obtain counsel as well. Under the project criteria, designed to parallel the protections for vulnerable tenants facing the loss of their housing, the project would provide legal counsel for landlords where: (1) the landlord resided in the building that is the subject of the eviction proceeding; (2) the landlord owned no other interest in real property; (3) the tenant was represented by counsel; and (4) the landlord's shelter was also at stake in the proceeding. The VLP stood ready to match eligible

landlords with volunteer counsel. The Task Force is not aware of a single case in which the landlord was eligible for representation. No requests for counsel were submitted to VLP.<sup>51</sup>

## **VII. Conclusions**

The results of the randomized study in Quincy provide perhaps the strongest evidence ever developed of the positive impact of full representation for tenants facing eviction. Tightly controlled randomization and data collection and analysis revealed that those in the treated group retained possession at twice the rate of those in the control group and received almost five times the level of financial benefit. The Task Force concludes that, in a setting like District Court that lacks extensive, pre-existing assistance programs for tenants, full representation by counsel is essential for tenants to protect their rights. Without full representation, many tenants forfeit their right to shelter, a basic human need. A targeted representation model can identify those most in need of full representation and provide the level of assistance necessary to avoid eviction.

The data from Northeast is consistent with this conclusion. While the Housing Court data showed no significant impact between the treated and control group, both groups benefited from representation by legal services lawyers. The treated group received full representation, while over half the study group received limited representation by Lawyer for the Day lawyers through the key stage of mediation, where most cases settle. Although the 33% (approx.) possession rate in Northeast for both the treated and control group tenants is the same as for the control group in Quincy, it is well above the previously reported state average in both Housing and District Courts (2% possession for tenants in cases not dismissed).<sup>52</sup>

Based on these findings, expanding the right to counsel in eviction court cases will provide representation for vulnerable litigants who cannot otherwise achieve meaningful justice in the legal system. This echoes the qualitative data collected from judges and practitioners, who informed the Task Force that, based on their extensive experience with eviction proceedings, it is

their opinion that counsel is needed to protect the basic rights of many of the litigants with whom they deal on a daily basis.

The similarity in results between the treated and control groups at Northeast inevitably gives rise to the question of what caused such similarity, especially when full representation in Quincy produced better results. While mindful of Professor Greiner's admonition that the two pilot studies were not intended to be comparable,<sup>53</sup> the Task Force nonetheless considered possible explanations. Obvious differences came to mind easily. For one, over half the Northeast cases were notice to quit cases, something not explored in the Quincy pilot. Perhaps more significantly, tenants in the Northeast control 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.<sup>54</sup> NLS staff are proud of the Lawyer for the Day program they developed and believe it contributes substantially to protecting the rights of the tenants it serves. But any number of other variables might explain why the outcomes differ between the study sites: differences between the courts;<sup>55</sup> differences in the operation of the pilots;<sup>56</sup> differences in the clients' goals and/ or characteristics;<sup>57</sup> differences in the housing stock in the geographic area;<sup>58</sup> and differences in the manner in which the lawyers approached the cases, both in case selection and in litigation strategy.<sup>59</sup> While future studies might be constructed across multiple sites to test the degree to which outcomes of treated and untreated participants are attributable to variables other than representation, or even to combinations of variables, until these studies are done, the effect of variables like these must properly be viewed as unknown.<sup>60</sup>

It must be emphasized that the conclusion that representation matters greatly to tenants facing eviction leads to an unpalatable corollary. Massachusetts statistics show that tenants are

represented in at most 10% of the roughly 36,000 eviction cases filed annually. For the 90% or more of tenants who do not receive any representation, or who would fare better with full representation as shown in the Quincy study, every eviction case puts them at risk of losing their home, with all of the consequences that creates, when they might very well have legal grounds to resist or delay eviction and indeed, might well not owe the rent claimed, or might even be entitled to damages. The Task Force can only conclude that this is a risk no legal system or society which values access to justice should tolerate.

The question remains how best to act on the conclusions above concerning the importance of representation, including full representation as of right, in eviction cases in both the District Courts, which handle one-third of eviction cases, and the Housing Courts, which handle two-thirds of eviction cases in Massachusetts. Further study is warranted to explore the various forms of assistance programs available in the Housing Courts and determine which work best, as is further research on the potential cost savings to the community that would flow from fewer evictions. Many factors must be considered in any such future work. A few are listed below.

- The Task Force is aware of the budgetary crisis facing the Commonwealth, and the recent cuts to legal services. The Task Force fully supports efforts to restore and expand funding and staff to the legal services delivery system. Expansion of a civil right to counsel by implementing the targeted representation model in eviction cases should not come at the expense of existing funds for civil legal services or the Committee on Public Counsel Services. Among other things, the Task Force hopes further research, by the bar or other interested parties, will confirm the Task Force's preliminary conclusions that there are cost savings in the social services sector that would make providing counsel in targeted eviction cases sound fiscal policy as well as sound justice.
- If statewide implementation of the model is not feasible at the outset due to the economic crisis, consideration should be given to phased implementation of the targeted representation model, by court or on the basis of the three categories used in determining project representation.<sup>61</sup>



- *Gideon's New Trumpet* emphasized the manner in which the operation of courts and agencies is related to the need for counsel. In the housing context, public housing authorities commence a large number of summary process cases. Changes in their administrative processes or eviction practices that reduce the flow of cases to court will reduce the number of cases in which counsel is needed. Similarly, the Housing Courts have worked over the years to make the courts more and more accessible to those without counsel. The Task Force continues to support innovations in the courts and in the eviction process generally to increase the provision of meaningful access to justice, paired with data collection regarding case outcomes to identify which reforms in fact reduce the need for counsel and which, despite other potential benefits, do not.

But action is needed far more than study. The data and information gleaned from the studies amply demonstrates the crucial role of a targeted right to counsel and the feasibility of structuring such a right in the context of eviction proceedings. In the words of Professor Greiner and his co-authors, “the adjudicatory system did not provide full access to justice despite the best efforts of the personnel within it.”<sup>62</sup> For all of these reasons, the Task Force will seek authorization from the BBA to prepare a more concrete plan to translate these conclusions into a clear pathway to civil representation as of right. The Task Force will seek to work in conjunction with the many interested stakeholders, including the Massachusetts Access to Justice Commission, courts, legal services providers, CPCS, the Massachusetts Bar Association, and others, to develop a more specific action plan to make the promise of improving access to justice for unrepresented parties in eviction cases a reality as time and fiscal circumstances permit increased funding for this new right.

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<sup>1</sup> AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES, RESOLUTION 112A, at 1 (2006), *available at* <http://www.abanet.org/legalservices/sclaid/downloads/06A112A.pdf> (hereinafter "ABA Resolution 112A"). ABA Resolution 112A reads, in its entirety:

**RESOLVED**, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

ABA Resolution 112A was approved unanimously on August 7, 2006. The BBA co-sponsored ABA Resolution 112A, the substance of which later was endorsed by both the Massachusetts Bar Association and Massachusetts Access to Justice Commission.

<sup>2</sup> Mary Deutsch Schneider, *Trumpeting Civil Gideon, An Idea Whose Time Has Come?*, *Bench & Bar of Minnesota*, Vol. 63, No. 4, April 2006, <http://www2.mnbar.org/benchandbar/2006/apr06/gideon.htm>

<sup>3</sup> Margaret Marshall, *Provide Legal Support to Those Most Vulnerable*, *BOSTON GLOBE*, Oct. 29, 2011.

<sup>4</sup> BOSTON BAR ASS'N, *GIDEON'S NEW TRUMPET: EXPANDING THE CIVIL RIGHT TO COUNSEL IN MASSACHUSETTS*, at 3 (2008), *available at* [http://www.bostonbar.org/prs/nr\\_0809/GideonsNewTrumpet.pdf](http://www.bostonbar.org/prs/nr_0809/GideonsNewTrumpet.pdf) (hereinafter "GIDEON'S NEW TRUMPET"). For convenience, we retain the label "Task Force" throughout this report because it is the name under which the group issued the report and applied for and secured funding to operate the housing pilots.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 8-25.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> GIDEON'S NEW TRUMPET, *supra* note 4, at 25-28.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 *FORDHAM URB. L. J.* 37, 47 (2010).

<sup>13</sup> MASS. LAW REFORM INST., *SUMMARY PROCESS SURVEY 3* (2005). This was the fourth survey of residential summary process cases in Massachusetts, with prior studies in 1990, 1995 and 1999. MLRI reported that the trends in 2005 were the same as those reported in the earlier studies.

<sup>14</sup> Jennifer Greenwood et al., *Tenancy at Risk: Leveling the Playing Field* 16 (May 2008) (unpublished report).

<sup>15</sup> See <http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/2011-additional-departmental-stats.pdf>.

Also of note is a recent unpublished study of the Boston Housing Court, which found that tenants were represented 8.3% of the time and landlords 86.2%. See Marc Rotter, *Allocating Scarce Resources: An Empirical Study of the Effect of Representation on Boston Housing Court and its Implications for the Provision of Legal Services* 3 (May 2008) (unpublished manuscript).

<sup>16</sup> Engler, *supra* note 12, at 47.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 85-86. See also D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation of Legal Assistance Programs: What Difference Does Representation (Offer and Actual Use) Make?* 121 *YALE L.J.*, (forthcoming 2012), *earlier draft available at* <http://ssrn.com/abstract=1708664>.

<sup>20</sup> *Id.*

<sup>21</sup> For example, whether a low income person seeks legal help might depend on his or her knowledge of rights afforded tenants, as well as economic and accessibility factors.

<sup>22</sup> See Greiner & Pattanayak, *supra* note 18. Only a single housing study prior to this one involved randomization, and that study did show the significant impact of counsel. See, Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 *LAW & SOC'Y REV.* 419, 423-26 (2001); Engler, *supra* note 11, at 86.

<sup>23</sup> For a more detailed description of the Housing Law Committee's assessment of the need for counsel, the process that led to the proposal and the description of the proposals, see GIDEON'S NEW TRUMPET, *supra* note 4, at 8-11.

<sup>24</sup> GIDEON'S NEW TRUMPET, *supra* note 4, at Appendix 5C. reproduced as Appendix C to this report.

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<sup>25</sup> *Id.* at 9, 28. The Housing Committee Proposal originally appeared as Appendix 5C to *Gideon's New Trumpet*, and is attached to this report as Appendix C.

<sup>26</sup> See GIDEON'S NEW TRUMPET, *supra* note 4, at 10-11.

<sup>27</sup> *Id.* at 11. The proposal for landlords provided for counsel where: (1) the landlord resides in the building that is the subject of the proceeding; (2) the landlord owns no other interest in real property; (3) the tenant is represented by counsel; and (4) the landlord's shelter is at stake in the proceeding.

<sup>28</sup> See <http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/civilstats2010.pdf> and <http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/2010-filings-dispositions.pdf>. Statistics now available for 2011 show an increase in total summary process cases in the Housing and District Courts to 38,042, with a similar breakdown between the two types of courts handling those cases. In addition to cases in the Housing Court and the District Courts, the Boston Municipal Court Department handled approximately 1,000 summary process cases in 2010 and 2011. See

<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/2010caseloadstats.pdf> and

<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/2011caseloadstats.pdf>.

<sup>29</sup> The TPP works to prevent homelessness among people with disabilities. The TPP acts as a neutral party between landlord and tenant and provides clinical consultation services to the Housing Court. The program targets individuals and families where a disability is both present and directly related to the reason for eviction. TPP clinicians assess the reasons for the eviction, identify needed services, develop a treatment plan to maintain the tenancy, and monitor the case. If the tenancy cannot be preserved, the TPP coordinates the tenant's transition to a more appropriate placement, preventing homelessness whenever possible.

<sup>30</sup> The term is often applied to court programs which offer different services from court to court.

<sup>31</sup> Cassandra Wolos Pattanayak is a College Fellow and Ph.D. candidate in the Department of Statistics at Harvard University. Throughout the text, we often refer only to Professor Greiner for the sake of simplicity. However, Professor Greiner and Ms. Pattanayak worked as a team throughout this project, and the Task Force is very grateful for Ms. Pattanayak's immense contributions to the project, as well as to Professor Greiner. Along with a third author, Greiner and Pattanayak have produced two articles describing their findings and interpretations with respect to the pilot projects. See D. James Greiner, Cassandra Wolos Pattanayak, & Jonathan Phillip Hennessey, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future* (Oct. 23, 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1948286](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1948286) (hereinafter "*The Limits of Unbundled Legal Assistance*"); D. James Greiner, Cassandra Wolos Pattanayak, & Jonathan Phillip Hennessey, *How Effective Are Limited Legal Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court* (Oct. 23, 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1880078](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1880078) (hereinafter "*How Effective Are Limited Legal Assistance Programs*"). We note that while Professor Greiner anticipates further revisions to the articles, the substantive findings will not change.

<sup>32</sup> Based on Professor Greiner's report of statistical principles established for decades, the validity of the research depended on studying what could be randomized. The offer of representation, rather than representation itself, could be randomized. In other words, the study results could focus with reliability only on the impact of the *offer* of representation. Professor Greiner and Ms. Pattanayak have explained the difference at length elsewhere. As they explain, the difference between the offer and actual use would disappear if all members of the treated group accepted the offer of representation and none of the members of the control group obtained representation. Members of the Task Force, and many readers, might have preferred data that excluded the results from the unrepresented members of the study group or represented members of the control group, to maintain the focus on the impact of representation. Based on his experience with the statistical community's established principles, Greiner advised that removing people from either group was methodologically unsound. Because the Task Force's purpose was to produce a study that was statistically sound, the Task Force adopted Greiner's recommendation. Most tenants accepted the offer of representation. 90% of the Northeast treated group and 93% of the Quincy treated group had full representation.

<sup>33</sup> Many on the Task Force recognized the potential ethical dilemma in using a random process rather than analysis of the relative merits of the case to turn away individuals who could have been helped. But, no matter what process it used, so long as the number of eligible cases exceeded the capacity of the project to provide assistance, some eligible tenants would have to be turned away. Indeed, recognition that need far exceeds available resources is at the heart of the Task Force's work. Utilizing computer randomization, as opposed to some other form of triage, to make

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the decisions regarding case acceptance posed no special ethical problems. Moreover, at each site, potential clients not accepted for full representation were offered forms of limited assistance equal to or greater than what they would have received in the absence of the project.

<sup>34</sup> *How Effective Are Limited Legal Assistance Programs*, *supra* note 31, at 49-59.

<sup>35</sup> Both the Quincy and Northeast projects operated under the label “HARP,” short for Housing Assistance and Representation Pilot Project. To avoid confusion that might flow from the use of an acronym, the report refers to pilot projects, rather than HARP.

<sup>36</sup> *The Limits of Unbundled Legal Assistance*, *supra* note 31, at 42.

<sup>37</sup> According to Professor Greiner, measuring benefits in months of rent was the most appropriate way to measure impact, because it accounted for the variation in rental amounts per tenant.

<sup>38</sup> In two cases, the awards GBLs attorneys obtained for tenants were so enormous (\$12,000 and \$5,000 for Section 8 tenants who paid essentially \$1 per month in rent) that these two extremely favorable results had to be removed from the treated-to-control group comparison in order to allow statistical analysis to proceed.

<sup>39</sup> There are still two open cases in Quincy. In one, the tenant has an attachment for \$60,000, and has retained \$33,000 in rent so far. In the other, rent was reduced from \$1,860 to \$0, with the landlord paying the tenant \$193 each month; the tenant has already received \$4,000 in cash; rent claims in the amount of \$10,500 were dropped and there are ongoing settlement discussions in the mid-5-figure range.

<sup>40</sup> Interview with Judge Mark Coven, Presiding Justice, Quincy District Court, and John Dalton, Civil Clerk, Quincy District Court (Jul. 13, 2010).

<sup>41</sup> Ross Dolloff & Patricio Rossi, *Mediation Project Gets Results for North Shore Tenants*, 16 LEGAL SERVS. REP. 1, 12 (May 2006) (finding no appreciable difference for clients who received advice and education from *pro se* clinics alone).

<sup>42</sup> *Id.*

<sup>43</sup> Attorneys participating in the Housing Court Lawyer for the Day programs operate under Housing Court Standing Order 1-01 that allows them, if mediation is unsuccessful, to enter their appearance and request a two week continuance to prepare for trial. This option was prohibited for NLS attorneys for those cases screened into the control group, although some private attorney volunteers did utilize it.

<sup>44</sup> In contrast, no tenant in the Quincy control group received assistance from the court-annexed mediation program in Quincy, described below in note 54.

<sup>45</sup> See e-mail from Sheila Casey, Exec. Dir., NLS, to Jayne Tyrrell, Exec. Dir., MA IOLTA Com. (Sep. 20, 2010) (on file with the authors).

<sup>46</sup> The Harvard team was only able to measure the financial benefits for the portion of Northeast cases involving a summons and complaint.

<sup>47</sup> See *supra* note 31. Professor Greiner plans to make the raw data from the study available for others to analyze when all of the cases are complete and programming is final. Interested parties should contact Professor Greiner.

<sup>48</sup> This rent reduction was not counted as a financial benefit of representation in the randomized study, however, as it was deemed too difficult to reliably compare with the control group.

<sup>49</sup> See GIDEON’S NEW TRUMPET, *supra* note 4, at 1.

<sup>50</sup> See, e.g., MASS. LEGAL ASSISTANCE CORP., FACTBOOK 2010 (2011), [http://www.mlac.org/pdf/FY10\\_MLAC-Fact-Book.pdf](http://www.mlac.org/pdf/FY10_MLAC-Fact-Book.pdf); Legal Services Corporation, Fact Book 2010 (2011), [http://www.lsc.gov/sites/default/files/LSC/pdfs/LSC\\_2010\\_Fact\\_Book.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/LSC_2010_Fact_Book.pdf); Comm. for Public Counsel Servs., *V. Policies and Procedures Governing Billing and Compensation*, §33 (Apr. 10, 2006), available at [http://www.publiccounsel.net/billing\\_information/attorney\\_billing/pdf/payment\\_structure\\_for\\_compensation\\_of\\_attorneys.pdf](http://www.publiccounsel.net/billing_information/attorney_billing/pdf/payment_structure_for_compensation_of_attorneys.pdf).

<sup>51</sup> NLS’s Lawyer for the Day program also provides the services of volunteer private attorneys to low income landlords; however, no separate data is available regarding landlord assistance arising from the pilot project. Regardless, the NLS Executive Director opined that any such data would be statistically insignificant.

<sup>52</sup> See, *supra*, at 7; without data about possession rates in the 20% of cases which were dismissed in the MLRI study, we think the possession rate likely was higher than 2% but still in the single digits. The highest possible rate that could be derived from this study is 22%, more than 10% less than the lowest group in either of the Quincy or Northeast studies.

<sup>53</sup> See *How Effective Are Limited Legal Assistance Programs*, *supra* note 31, at 54 (“We have not attempted an across-study statistical analysis, fearing that doing so might lend greater credence to this cross-study comparison

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than it deserves.”). Professor Greiner and his co-authors, however, then proceeded to do just that. *See, infra*, note 31, *How Effective Are Limited Legal Assistance Programs* at 49-59.

<sup>54</sup> In Quincy, the major organization providing assistance to tenants and landlords is the Quincy Community Action Program (“QCAP”). QCAP provides a number of housing counseling services including:

- tenant workshops and individual counseling;
- information about lead paint laws and sanitation codes;
- mediation services to help resolve disputes;
- budget and credit counseling;
- referrals to legal assistance; and
- limited emergency rental assistance.

However, QCAP does not provide limited representation or even legal advice. Aside from QCAP, virtually no other forms of tenant assistance existed beyond the brief service provided by GBLS to tenants sorted into the control group described above at p. 14.

In stark contrast, members of the control group in Northeast were eligible for assistance from the Lawyer for the Day program, and the actual amount of assistance received by control group members in Northeast was also extensive. Based on court files, roughly 55% of the control group cases that went to litigation in Northeast received assistance from the Lawyer for the Day program, including representation through the end of the mediation process. The Court often conducted a colloquy with the parties, rather than a full trial, in an effort to spur additional settlement discussions. Because most cases settle and few agreements are rejected, these control group tenants ultimately received representation at vital stages of the litigation. While Lawyer for the Day attorneys did not participate in hearings or trials after mediation failed, sometimes members of the private bar would assist litigants at this stage. Follow-up phone calls to many of the members of the control group confirmed that almost all of them reported receiving assistance of some kind, often from a legal services lawyer through Lawyer for the Day (staffed in part by the same lawyers who provided the representation through the pilot project), but also from other groups such as social services organizations providing elder assistance, community action agencies, anti-foreclosure community groups, mental health clinicians and social workers, case managers, and the TPP staff.

<sup>55</sup> These would include any procedural differences in the operation of the Housing Courts versus the District Courts, the presence of housing specialists in Housing Courts, the use of the TPP in Housing Courts; the culture of the courts, and the structure and operation of the various forms of assistance for litigants.

<sup>56</sup> With respect to the design of the pilots, in addition to the Lawyer for the Day program, two other features of the Northeast pilot differed from the Quincy pilot. First, 54.3% of the cases accepted in Northeast (100 of 184 cases) involved cases taken at the notice to quit stage to obtain data to see if providing pre-litigation representation could help keep cases out of court, not only helping tenants but saving judicial resources. Second, while GBLS often awaited discovery results before making its screening determination, NLS did not, and instead made a quick assessment of whether the cases met the civil Gideon criteria and appeared to have merit. As one NLS staff attorney explained in an interview at the end of the project, if any of the six criteria listed in category three applied, the case was deemed to be within the project criteria and eligible for inclusion in the study. These differences may have led to the provision of full representation to clients with cases weaker on the merits than might have been included in the Quincy pilot.

<sup>57</sup> With respect to the goals of the clients, at the intake stage, 20% of the tenants in the Quincy pool expressed a desire to move from their apartment, compared with 28% for the pool in Northeast. To the extent a higher percentage of the Northeast cases involved families with a stated goal of moving, that reality provides a further variable that might impact case outcomes.

With respect to the characteristics of the clients, demographics present additional variables between the projects. In Quincy, 48% of the tenants were identified as White, 38% were Black, 5% were Hispanic and 7% were Asian. The comparable figures in Northeast were 64% White, 18% Black, 28% Hispanic, and 0.2% Asian. The numbers in both cases do not necessarily add up to 100% because participants were permitted to self-identify in more than one category, such as “White” and “Hispanic.” With regard to the presence of household members with disabilities, in Quincy 31% of the families had at least one family member suffering from a mental disability, and 31% of the families had at least one family member with a physical disability. In Northeast, 39% of the households had at least one family member suffering from a mental disability, and 41% had a family member with a physical disability.

<sup>58</sup> Tenants living in public housing or receiving Section 8 subsidies likely live in more affordable housing than tenants living in private housing, and might possess stronger defenses on the merits as a result. Roughly 5% of the

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tenants in the Northeast pilot (control plus treated group) lived in public housing, compared with 10% in the Quincy pilot. 20% of Northeast tenants received Section 8 benefits, compared with 40% of Quincy tenants. Combining the numbers, roughly a quarter of Northeast tenants and half the Quincy tenants either lived in public housing or received Section 8 benefits.

<sup>59</sup> As discussed, NLS attorneys screened cases earlier in the process and used a “looser” screen. In terms of litigation strategies, the GBLS lawyers were more likely to demand jury trials and file prejudgment motions, factors that might be expected to influence case outcomes. For example, the average number of jury demands was .80 per case in Quincy and .11 in Northeast. The average number of prejudgment motions filed by defendants was 1.12 in Quincy and 0.17 in Northeast.

<sup>60</sup> Greiner, Pattanayak and Hennessey thoughtfully discuss the variables that might explain the differences between the study cites and focused on three particular factors: (1) the intake and screening mechanisms; (2) the “forceful brand of ‘mediation’ practiced by Housing Specialists”; and (3) the difference between the full attorney-client relationship as practiced in Northeast and the lawyer for the day representation practiced there. *See How Effective Are Limited Legal Assistance Programs*, *supra* note 31, at 46-59.

<sup>61</sup> For example, the second category provides for representation for indigent tenants in eviction cases involving criminal conduct. As *Gideon’s New Trumpet* explains, this category avoids “the anomalous and inefficient situation in which representation is available by right in the criminal context but not in the related eviction.” *See supra* note 4, at 10. The study revealed that such cases are quite rare: only six of the 129 cases in Quincy, and two of the 184 cases in Northeast fell into this second category. Providing a right to counsel in these rare cases would have an important impact on the families involved at a nominal price, and the Committee for Public Counsel Services may already have authority to provide such counsel.

A similar expansion could occur with the first category, which provides counsel for tenants in cases “involving household members with mental disabilities where the disability is directly related to the reason for eviction.” This language was crafted to match the statutory language for the TPP, recognizing that the legislature had already identified this truly vulnerable subset of tenant households in need of assistance. The concept of a civil right to counsel for litigants with disabilities is not without precedent. The State of Washington, for example, adopted a court rule providing for accommodations for litigants with disabilities, and one of the permissible accommodations is appointment of counsel. WASH. GEN. APPLICATION CT. R. 33(a)(1)(c). The qualified right to counsel enacted by the Commonwealth of Massachusetts as part of the reform of the guardianship laws likewise embodies the notion of providing counsel for vulnerable persons needing protection.

<sup>62</sup> *The Limits of Unbundled Legal Assistance*, *supra* note 31, at 2.

## APPENDIX A

### **Testing the Hypothesis that Full Representation Reduces Homelessness and Saves the State Money**

As described in this report, the pilot studies have confirmed that, without counsel or an effective alternative, many vulnerable tenants forfeit important rights, lose possession they could have retained and forego substantial financial benefits. With counsel, eviction proceedings have outcomes that are more just. The justice issue is particularly acute in courts handling eviction proceedings because if eviction leads to homelessness and high state expenditures for shelter assistance, representation of tenants in eviction cases that stop evictions may be a way to save the state money. The Task Force explored the proposition that implementing the targeted representation model will save the state enough money both to pay for counsel in selected eviction cases and to reduce the costs of homelessness as well.

#### **I. The Causal Connection between Eviction and the Need for Shelter**

Greiner and Pattanayak did not follow evicted members of either the treated or the control groups in the pilot studies to learn whether they became homeless. But it seems obvious that eviction will make some tenants homeless. How often these homeless tenants require emergency shelter, what that shelter costs the state, and whether full representation can reduce the frequency with which these costs are incurred are complicated questions. Our analysis of the data and literature search on these questions revealed many strong indications that preventing evictions will reduce the number of people needing emergency shelters and related economic and social costs.

As described in the Task Force report, in about 36,000 eviction cases annually,<sup>1</sup> at least 80% to 90% of tenants lose possession, or roughly 30,000 families or individuals.<sup>2</sup> In the pilot projects, 77% of those evicted were families and 23% were individuals; thus an estimated 23,100

families and 6,900 individuals evicted. Some evicted tenants enter the Commonwealth's homeless shelters. A 2011 Massachusetts Interagency Council on Housing and Homelessness ("ICHH") Report found 45% of households giving eviction as the reason they were homeless or at risk of homelessness.<sup>3</sup> A New York study of homeless people found that 38% had experienced formal eviction proceedings within the five years before they entered a shelter.<sup>4</sup> Another New York study found that nearly 30% of the homeless became homeless because of eviction.<sup>5</sup>

According to the most recent available Emergency Assistance ("EA") quarterly report from the Massachusetts Department of Housing and Community Development ("DHCD"), 23% of families applying for emergency shelter did so because of eviction. The remaining 77% were there for a variety of other causes, including overcrowding (28%) and discord and/or being asked to leave (26%).<sup>6</sup>

There is good reason to believe that for many of the families in these other groups the precipitating event that ultimately led to the request for shelter may have been eviction. DHCD policy requires shelter applicants to give the agency permission to call family members and friends to see if any are willing to take the applicants into their homes. These calls are made before applicants can be approved for shelter. It is reasonable to assume that many who apply for shelter after being evicted are required to move in with family and friends first, perhaps in overcrowded, unsafe or discordant situations that ultimately lead to another request for shelter. However, for this subcategory of evicted tenants, the reason for seeking shelter would not be recorded as eviction, but as overcrowding or some other category.

Data from the Massachusetts Coalition for the Homeless ("MCH") confirms the hypothesis that residents often indirectly enter shelter as a result of an earlier eviction. In a recent survey of 309 residents at 12 Massachusetts family shelters, MCH found that 28.1% of residents



who did not enter shelter directly from eviction had been primary tenants in the past five years and had lost their tenancy due to non-payment of rent.<sup>7</sup> Although it is possible that some of these shelter residents were not actually evicted, it is more likely that the number evicted is even higher, since non-payment of rent is only one reason for eviction.

Shelter residents were interviewed by law students in two shelters that housed individual residents in the North Shore to determine where residents were living prior to entering the shelter. The interviews were conducted at River House in Beverly and Action Shelter in Gloucester. Most of the residents interviewed (66% of the total of 18) were either evicted or moved out when they could not pay the rent due to loss of a job or ill health. Of the 66%, 22% left their apartments when they could no longer pay the rent. Twenty-seven percent received notices to quit from their landlords and were effectively evicted and 17% were asked to leave by people they doubled up with.

## **II. Homelessness Costs**

Family homelessness has increased across the country and Massachusetts is no exception. As of June 2011, over 3,200 families were living in the state's shelter system, while the number of families in motels reached a record high of 1,540 families.<sup>8</sup>

The state spends over \$161 million each year on homeless shelters and related services.<sup>9</sup> If 50% of homelessness starts with eviction, then cutting evictions by just 10% could save the state \$8 million. Based on a similar rationale, New York City ("City") started funding lawyers to represent low income tenants in eviction proceedings. The City's social services department subsequently calculated that the City saved \$4 in shelter and other social services costs for every \$1 spent on legal representation.<sup>10</sup>

Even more troubling than the financial costs of homelessness are the human costs. Homelessness challenges the health and stability of a family in every facet of their life. Homeless

families face daily stresses and conditions that can cause or exacerbate serious physical, emotional and cognitive problems for both children and parents.<sup>11</sup>

Prompted by the unprecedented increase in homelessness and its high costs, states are looking more closely at cost-effective preventive approaches that are less disruptive for families. Attacking the problems of homelessness with short-term emergency aid has not proved cost effective and is losing ground in policy circles. Governor Deval Patrick, facing a record rise in family homelessness, has announced plans to introduce a system that would fundamentally change how the state addresses the crisis. Rather than spend money on emergency shelter, funding would go to cash subsidies to prevent eviction or to provide money to help families rent a new apartment. Cash assistance could be used to pay rent, utilities, or other expenses.<sup>12</sup>

Among the additional costs of homelessness are medical care, children missing school, moving costs, families being separated, children being sent to foster care or becoming involved in the juvenile justice, and loss of work. Although these costs of these social problems are difficult to measure, a number of institutions have begun to do so. An evaluation by the Massachusetts Housing and Shelter Alliance in 2011 reports significantly higher health care costs for homeless (\$28,436) versus housed individuals (\$6,056).<sup>13</sup> The Child Health Impact Working Group<sup>14</sup> reports higher rates of educational problems for homeless children, specifically the increased need for special education (\$6,700/child) and grade repetition (\$6,800/child).

### **III. Representation is an Effective Form of Homelessness Prevention**

While the recent literature does not focus on homelessness prevention through representation at eviction hearings, the data from the two pilot projects illustrates the way in which a targeted representation model can be expected to yield cost savings. The data from the Quincy District Court (“Quincy”) data showed that represented tenants were twice as likely to retain possession as tenants in the control group. In the Northeast Housing Court (“Northeast”),

the gap closed between the treated and control groups, but both groups received substantial assistance from the NLS lawyers. The interviews with the NLS and GBLS lawyers emphasized that even where represented tenants gave up possession of their apartments, they did so on their own terms, controlling the timing of their moves, gaining additional time to move when they were represented, and often moving with additional resources in terms of waived rent, payments from the landlord or support from public agencies or charitable agencies. All of these outcomes lead to a greater likelihood that evicted tenants will be appropriately housed, thus reducing the likelihood that these evictions will lead to homelessness.

The design of the two pilot projects aligns with the research described above about cost savings and supportive services. Cost savings are tied to health care savings, preventing a shift to the use of emergency services that often result from homelessness. In the eviction defense pilot project, one of the categories for representation focused on the connection between mental health issues and eviction, and was intended to track the definitions used by the TPP. The third category, balancing the tenant's vulnerabilities against the landlord's power in scenarios in which cognizable defenses existed, also increased the focus on tenants with mental and physical disabilities. The study pool, in fact, included a substantial portion of families with household members with mental or physical disabilities, or both. In Quincy, 31% of the families had at least one family member suffering from a mental disability, and 31% of the families had at least one family member with a physical disability. In the Northeast, 39% of the households had at least one family member suffering from a mental disability and 41% with a physical disability.

Given the complexity of the phenomenon of homelessness, and the need to spend most of the pilot funding on representation and legal assistance, it was beyond the scope of the project to provide systematic tracking of the precise link between the tenants in this study and

homelessness. The Harvard research team initially tried to track tenants in the control and treated groups in order to study the connection between eviction and homelessness, but concluded that it was too costly and difficult to maintain contact with a sufficient percentage of each group to draw reliable conclusions.<sup>15</sup>

Notwithstanding the methodological difficulties identified by Greiner and Pattanayak, researchers recruited by the Task Force attempted to track members of the control group in Quincy to obtain at least some information about their current housing situation. Although the Quincy treated group retained possession at a high rate, of the first thirty members of the Quincy control group reached by the investigator, twenty were evicted, a one-third possession rate that matches the Harvard team's data. Of the twenty evicted families, two were living in homeless shelters, three were doubled up other family members, five were living with friends, nine were living in new residences and one was living in a truck. Whatever the methodological limitations, the information from interviews illustrates powerfully the perils facing families that cannot retain possession, and the likely fiscal cost to the state and human cost to the families, all dangers and risks which were often averted for the treated group through legal representation.

#### **IV. Estimating State Cost Savings Resulting from Implementing the Targeted Representation Model—An Illustration**

The data developed by the two pilots, combined with the information contained in the literature about homelessness, demonstrate that preventing eviction will keep some families out of shelters, saving the state substantial shelter costs. A detailed analysis and set of calculations is beyond the scope of this report, and deserves significant attention and resources. Yet, even using one set of calculations for illustrative purposes suggests the potential for cost savings by implementation of a targeted representation model. For example:

1. 35,950 eviction cases were filed in 2010;

2. Approximately 5,393 would be eligible for the targeted representation model (The pilots yielded an estimate of eligible defendants in eviction cases at between 10% and 20%, so using the midpoint of 15% yields 5,393);
3. 1,780, or approximately an additional one-third of those families or individuals would retain possession with the targeted representation model;<sup>16</sup>
4. Approximately 280 of those tenants would become homeless and end up in shelters;<sup>17</sup>
5. The cost of sheltering those tenants is approximately \$6.5 million, based on EA shelter data;<sup>18</sup>
6. The cost for the targeted representation model may be estimated at an average of \$552 per case, based on data regarding the average hours per case and the average cost per hour for a lawyer;<sup>19</sup>
7. The total cost for a statewide targeted representation model would be \$2.8 million (\$552 per case x 5,393); and
8. The net savings in EA to the Commonwealth after the cost of the targeted representation model is estimated at over \$3 million.

The Task Force acknowledges, as explained more fully in its full report at Section V.C, that utilizing available data and different estimates as to the number of cases and the hours and costs per case yields many permutations on this bottom line number (*see* Appendix B), but uses this set of assumptions for illustrative purposes. By way of comparison, the Massachusetts Legal Assistance Corporation has just released fact sheets which estimate cost savings to the Commonwealth from all civil legal services directed at protecting housing for poor people at \$11,251,027 in shelter costs alone.<sup>20</sup>

Any illustration such as the one presented above likely understates the financial benefits of the targeted representation model. The costs would decrease when off-set by attorneys' fees recoveries. Moreover, the cost savings would increase by recognizing the fiscal savings, in terms of the cost of social, medical and other services, from averting homelessness. The calculation also uses the conservative figure of an additional one-third of families avoiding homelessness, drawing from the difference between the Quincy treated and control groups winning possession for the purposes of the illustration. However, both the Quincy and Northeast control groups received substantial assistance from lawyers and won possession one-third of the time, well above the two percent rate reported in a recent case study of eviction cases in Massachusetts. Further, many of the Quincy tenants who "lost" possession did so by resolving their cases in a way that allowed them to move on their own timetable and their own terms and thus remain adequately housed. Both these factors suggest the one-third figure is low.

On using this data for illustrative purposes, providing representation to all eligible clients in Massachusetts District and Housing Courts could save the state over \$3 million in emergency shelter (EA) costs alone per year.<sup>21</sup> The factors combined suggest that for every \$1.00 spent on legal aid, the state would save at least \$2 in shelter costs, and likely closer to \$3 or \$4, when all factors are included in the calculation. While each step in the calculation merits further study and analysis, the connection between representation, homelessness prevention and cost savings should no longer be ignored. Investing in homeless prevention by providing low income tenants with attorneys should decrease substantially the number of people who become homeless, leading to significant fiscal, let alone human, savings.

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<sup>1</sup> See Task Force report, *supra* p. 10, n.28.

<sup>2</sup> See *id.* at p. 7-8.

<sup>3</sup> MASS. INTERAGENCY COUNCIL ON HOUSING AND HOMELESSNESS, REG'L NETWORKS TO END HOMELESSNESS PILOT: FINAL EVALUATION REPORT app. 4 at 76 (2011).

<sup>4</sup> NANCY SMITH & ZAIRE DINZEY FLORES, VERA INST. OF JUSTICE, *Section III: Struggling to Make Ends Meet: Pre-Shelter Experiences of Homeless Families in New York City*, in UNDERSTANDING FAMILY HOMELESSNESS IN NEW YORK CITY: AN IN-DEPTH STUDY OF FAMILIES' EXPERIENCES BEFORE AND AFTER SHELTER, at 1, 14 (2005).

<sup>5</sup> N.Y.C. DEP'T OF SOCIAL SERVS., THE HOMELESSNESS PREVENTION PROGRAM: OUTCOME AND EFFECTIVENESS (1990), *cited in* LEGAL SERVS. PROJECT, FUNDING LEGAL SERVICES FOR THE POOR: REPORT TO THE CHIEF JUDGE (1998).

<sup>6</sup> COMMONWEALTH OF MA., DEP'T OF HOUSING AND CMTY. DEV., EMERGENCY ASSISTANCE LEGISLATIVE REPORT (Dec. 2010), <http://www.mass.gov/hed/docs/dhcd/hs/2010dec.pdf>. It is important to note the Emergency Assistance is a Massachusetts program that gives shelter and other emergency housing services to low-income families with children, and to pregnant women, who are homeless. Emergency Assistance helps eligible families who have nowhere else to live. See <http://www.massresources.org/emergency-assistance.html>.

<sup>7</sup> See E-mail from Kelly Turley, Mass. Homeless Coal., to Jayne Tyrrell, Exec. Dir., Mass. IOLTA Comm'n (Jul. 28, 2011), on file with the Task Force.

<sup>8</sup> This figure is the average number of families in motel at the end of each month. According to the Massachusetts Coalition for the Homeless, it now costs about \$30,000 to shelter the average homeless family through its time in the system. David Abel, *State drafts an approach to keep families in homes*, BOSTON GLOBE, June 20, 2011, [http://articles.boston.com/2011-06-20/news/29680351\\_1\\_homeless-families-rental-subsidies-shelter](http://articles.boston.com/2011-06-20/news/29680351_1_homeless-families-rental-subsidies-shelter).

<sup>9</sup> Massachusetts spent \$161 million on Emergency Assistance to house homeless families, according to Patrick Administration officials quoted in the Boston Globe. *Id.*

<sup>10</sup> See N.Y.C. DEP'T OF SOCIAL SERVS., *supra* note 5 at 2.

<sup>11</sup> SMITH & FLORES, *supra* note 4 at 2.

<sup>12</sup> See Abel, *supra* note 8.

<sup>13</sup> MASS. HOUSING & SHELTER ALLIANCE, HOME & HEALTHY FOR GOOD: PROGRESS REPORT 2 (2011), <http://www.mhsa.net/matriarch/documents/HHG%20March%202011%20report-Final.pdf>.

<sup>14</sup> The Child Health Impact Working Group is a Working Group of members of the Pediatrics Department of Boston Medical Center. Child Health Impact Working Grp., *Affordable Housing and Child Health: A Child Health Impact Assessment of the Massachusetts Rental Voucher Program* (June 2005), <http://www.healthimpactproject.org/resources/document/massachusetts-rental-voucher-program.pdf>.

<sup>15</sup> The whole design of the randomized scheme is to eliminate variables unrelated to representation. If the Harvard team were able to locate only some of the members of each group, it would be unclear whether those located were a suitable cross-section of the treated and control group, or whether certain factors made it more or less likely that tenants could be located.

<sup>16</sup> The use of 33% is primarily based on the Quincy data but is supported by control group possession rates as well. In Quincy, 67% of treated cases resulted in possession to the tenant, either through a court's award or through settlement agreement, while in the control group tenants kept possession only 34% of the time. Thus, full representation prevented loss of the home in an additional 33% of the cases. The figure likely is on the low side, since many represented tenants gave up possession on their own terms, enabling them to secure alternative housing. Even in the Northeast, where there was little difference between the treated and control groups, both groups of tenants received extensive assistance and kept possession about 34% of the time. That figure is well above the 2% rate of possession found by the Massachusetts Law Reform Institute ("MLRI") in its 2005 study of the full caseload. Mass. Law Reform Inst., Summary Process Survey 8 (2005). Even in the targeted case model pilots, in which eligibility for study participation was limited to tenants with the financial capacity to meet future rent obligations, two-thirds of each control group lost possession.

<sup>17</sup> Based on the literature, we conclude that 15.26% is the most reasonable figure as the percentage of evicted families likely to end up in the shelter system in Massachusetts, for the purposes of the example. DHCD data for December 2010 reports that 1,086 families applied for shelter in that month. COMMONWEALTH OF MA., DEP'T OF HOUSING AND CMTY. DEV., *supra* note 4. Projecting that rate gives an estimate of 12,816 applications for a year. Approximately 55% of applications are approved, suggesting that 7,049 families enter Massachusetts shelters over the course of a year. See *id.*

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The literature further suggests that almost half of those families (3,525) are homeless because of eviction. According to the DHCD, 23% of families applying for emergency shelter were doing so because of eviction (*supra*, at 4). DHCD's data also show that 22% of families indirectly entered shelter from an earlier eviction. *See* COMMONWEALTH OF MA., DEP'T OF HOUSING AND CMTY. DEV, *supra* note 4. According to an unpublished survey from the Massachusetts Coalition for the Homeless ("MCH") (referenced in an e-mail from Kelly Turley, *supra*, note 5.), 28.1% of residents entered shelters indirectly from eviction, having been primary tenants in the past five years and losing their tenancy due to nonpayment of rent. The total equals either 45% (23 + 22%) or 51.1% (23 + 28.1%), so roughly half the families are homeless because of eviction.

Finally, the number of eviction cases filed and possession rates derived from the statewide data indicate the numbers of families evicted. In fiscal year 2010, there were 35,950 summary process cases filed in Massachusetts courts (Appendix A, *supra*, at 7). As described above, *supra* at 1, using the MLRI data from the 2005 survey, tenants lost their homes in at least 80-90% of all cases. Therefore, of about 36,000 eviction cases annually, roughly 30,000 tenants lose possession. Using the data derived from the pilot projects, 77% of those evicted were families and 23% were individuals; thus we estimate 23,100 families and 6,900 individuals evicted. Combining the number of families likely to be homeless from eviction who end up in shelters (3,525) with the earlier estimate of families evicted (23,100), provides the 15.26% figure.

The Task Force fully recognizes that each figure in the calculation merits closer examination. Thus, the text of Appendix A concludes: "While each step in the calculation merits further study and analysis, the connection between representation, homelessness prevention and cost savings should no longer be ignored. Investing in homeless prevention by providing low income tenants with attorneys should decrease substantially the number of people who become homeless, leading to significant fiscal, let alone human, savings." Appendix A, *supra*, at 9.

<sup>18</sup> The average cost of shelter for a family is \$29,601. Shelter for an individual costs only \$1,500. Since results from the pilot projects are that 77% of the tenants evicted are families, a reasonable figure for the blended average shelter cost saving per eviction averted is \$23,138 (.77x \$29,601 + .23x \$1,500).

<sup>19</sup> The pilot study data reported eight hours for a typical case in Quincy and ten hours per typical case in Northeast. A weighted average of the two sites yields 9.2 hours per case. The reported cost per hour of lawyer time in the Quincy pilot was \$70, including overhead, but that pilot was conducted by Greater Boston Legal Services, which has the highest salaries among the state's field service legal aid programs. The NLS cost per hour was approximately \$50 per hour. The Task Force believes that typical costs could be anticipated to be in the range of \$50 to \$70 per hour. Multiplying 9.2 hours per case times an average \$60 per hour equals \$552 per case. *See, e.g.*, MASS. LEGAL ASSISTANCE CORP., FACTBOOK 2010 (2011), [http://www.mlac.org/pdf/FY10\\_MLAC-Fact-Book.pdf](http://www.mlac.org/pdf/FY10_MLAC-Fact-Book.pdf); Legal Services Corporation, Fact Book 2010 (2011), [http://www.lsc.gov/sites/default/files/LSC/pdfs/LSC\\_2010\\_Fact\\_Book.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/LSC_2010_Fact_Book.pdf); Comm. for Public Counsel Servs., *V. Policies and Procedures Governing Billing and Compensation*, §33 (Apr. 10, 2006), available at [http://www.publiccounsel.net/billing\\_information/attorney\\_billing/pdf/payment\\_structure\\_for\\_compensation\\_of\\_attorneys.pdf](http://www.publiccounsel.net/billing_information/attorney_billing/pdf/payment_structure_for_compensation_of_attorneys.pdf).

<sup>20</sup>In addition to eviction assistance, this included civil legal aid efforts aimed at foreclosure prevention and preservation of affordable housing. *See* MASS. LEGAL ASSISTANCE CORP., ECONOMIC BENEFITS OF CIVIL LEGAL AID: HOW LEGAL AID BOOSTED THE ECONOMY IN FY11 (2012), [http://www.mlac.org/pdf/Economic-Benefits\\_Fact-sheet\\_FY11.pdf](http://www.mlac.org/pdf/Economic-Benefits_Fact-sheet_FY11.pdf); *see also* Press Release, Mass. Legal Assistance Corp., *Gov. Patrick Recommends Level Funding for Civil Legal Aid Line Item* (Jan. 26, 2011), [http://www.mlac.org/pdf/statement\\_Gov-budget.pdf](http://www.mlac.org/pdf/statement_Gov-budget.pdf) (announcing that Gov. Deval Patrick recommended \$9.5 million for civil legal aid in the FY12 budget, including representation for evictions).

<sup>21</sup> Using the targeted representation model, 15% of tenants in eviction cases are eligible. With representation, 280 of those who would have entered shelter are kept in their homes, saving the state \$6,478,640.



## APPENDIX B

Range of Estimated Implementation Costs of Targeted Representation Model in Eviction Cases\*

Clients Represented	Attorney Hours Per Case	Hourly Rate for an Attorney	Cost of Targeted Representation Model
3,595	8	\$50	\$1,438,000
3,595	8	\$70	\$2,013,200
3,595	17	\$50	\$3,055,750
3,595	17	\$70	\$4,278,050
7,190	8	\$50	\$2,876,000
7,190	8	\$70	\$4,026,400
7,190	17	\$50	\$6,111,500
7,190	17	\$70	\$8,556,100

\*Note: This table does not reflect offsets due to fee recoveries and cost savings, as discussed in Section VI.C and Appendix B of the report.

## **APPENDIX C**

**Draft Proposal: Pilot Project for A Right to Counsel in Certain Eviction Cases**

**I. Representation Proposal**

A. Legal counsel shall be provided for indigent tenants in the following eviction cases:

- 1) *Cases involving household members with mental disabilities where the disability is directly related to the reason for eviction; or*
- 2) *Cases involving criminal conduct (including cases brought pursuant to M.G.L. c. 139, sec. 19 and those brought as summary process cases); or*
- 3) *Cases in which the absence of representation for the tenant will lead to a substantial denial of justice. In the exercise of judicial discretion, judges shall consider the following factors:*
  - a. Factors relating to a tenant's vulnerability, such as disability, domestic violence, education, language, culture or age;*
  - b. Factors relating to the landlord, such as whether the landlord controls a large or small number of units, whether the landlord is legally sophisticated, whether the landlord is represented by counsel, and whether the landlord lives in the building;*
  - c. The affordability of the unit for the tenant, including whether the unit is in public or subsidized housing;*
  - d. Whether there appear to be cognizable defenses or counterclaims in the proceeding;*
  - e. Whether the loss of shelter might jeopardize other basic needs of the tenant, such as safety, sustenance, health or child custody;*
  - f. Other indicia of power imbalances between the parties.*

B. Legal counsel shall be provided for indigent landlords where:

- 1) *The landlord resides in the building that is the subject of the eviction proceeding;*
- 2) *The landlord owns no other interest in real property;*
- 3) *The tenant is represented by counsel; and*
- 4) *The landlord's shelter is at stake in the proceeding.*

**II. Proposals complementing the Representation Proposal**

We will further recommend that the proposal above be supplemented with the expansion of assistance programs, such as lawyer of the day programs for both tenants and landlords in all Housing and District Courts, to reach all eligible litigants seeking assistance.