



# **Human Justice Grantmaking Strategy**

June 2015

With support from The Trust, a lawyer from Atlas: DIY helped Marcos P. *(left)* apply for Special Immigrant Juvenile Status.

## **BACKGROUND**

**The Trust has made grants to improve access to justice for poor New Yorkers by:**

- Providing direct legal help for low-income New Yorkers in civil court.
- Responding to increased need for legal help because of changing laws or economic conditions in areas such as housing, immigration, health care, and disability rights.
- Advocating to protect the civil rights of the City's residents.
- Pressing for better laws and policies to reduce the number of New Yorkers whose future prospects are limited by interactions with law enforcement and the criminal courts.

**Today we recommend a strategy to guide future grantmaking in this area. This report was informed by discussions with grantees, leaders in the civil and criminal justice systems, and a consultant's analysis of issues and opportunities. It will:**

- Describe the criminal and civil justice system and its effect on low-income New Yorkers.
- Discuss human justice grantmaking by The Trust and other foundations in the City.
- Highlight issues and trends in the field.
- Recommend a grantmaking strategy.

## THE COURTS

**New York City is home to several court systems.**

### **The Federal Courts:**

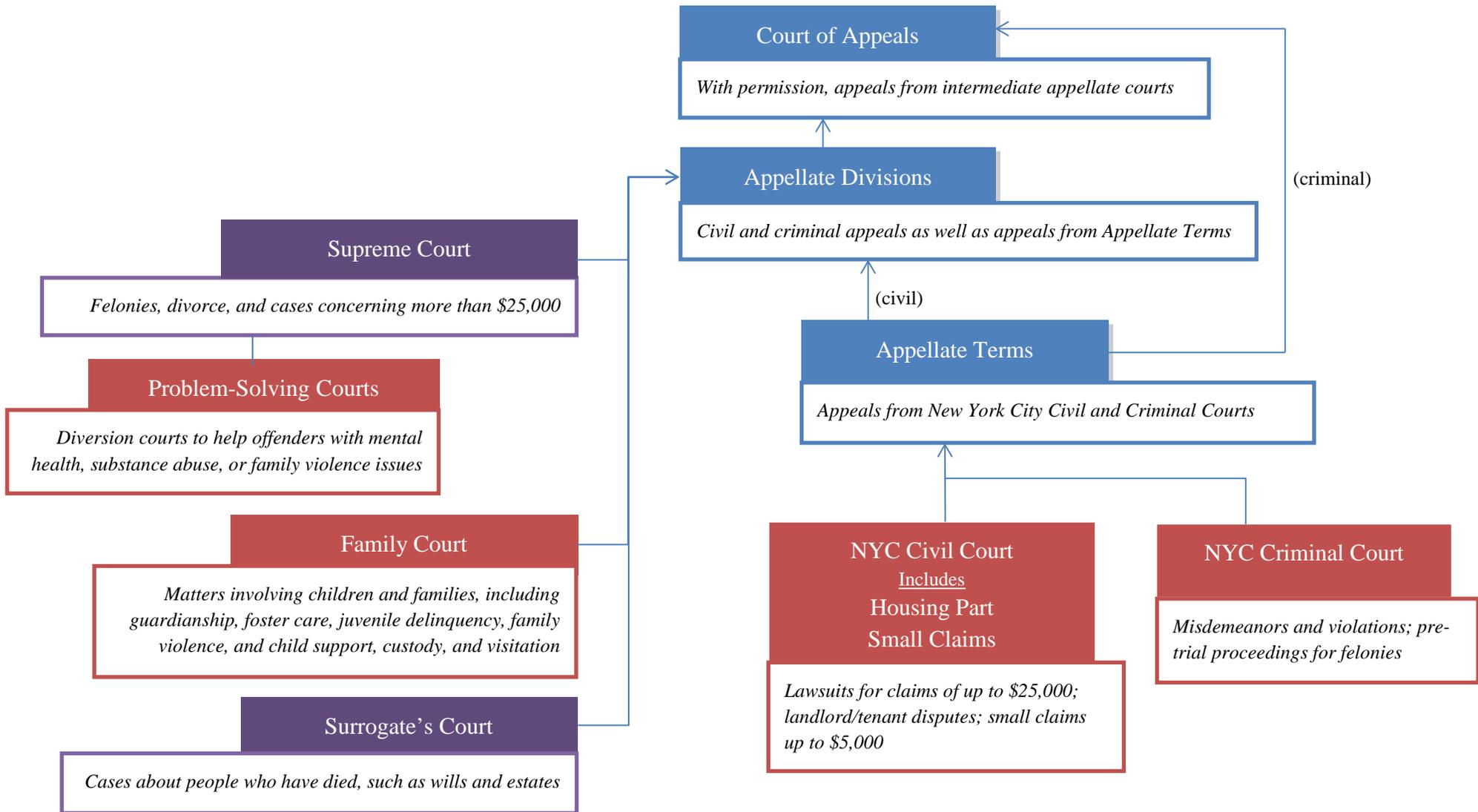
- Two federal trial courts are located in New York City – the Southern District of New York in lower Manhattan and the Eastern District of New York in Brooklyn. These courts hear cases concerning federal crimes, civil rights, and disputes among parties from different states. They also consider petitions for bankruptcy.
- The Immigration Court, with oversight from the Executive Office for Immigration Review, is also located in Manhattan. Immigration judges' decisions are appealed to the Board of Immigration Appeals.
- Appeals from the district courts and the Board of Immigration Appeals are heard by the Court of Appeals for the Second Circuit.

**Administrative Procedures:** Local, state, and federal agencies that administer public benefits such as food stamps, Medicaid, Social Security disability, special education, and workers' compensation use administrative hearings to resolve disputes about benefits. Decisions by administrative law judges are appealed within agencies before filing in state or federal court.

## STATE COURTS IN NEW YORK CITY

The New York State Unified Court System is not a simple hierarchy.

The City's poor are most likely to end up in Civil, Criminal, Family, and Problem-Solving Courts (highlighted in red below).



## **WHEN DO CIVIL LEGAL PROBLEMS ARISE?**

**Hundreds of thousands of New Yorkers wind up in New York City Civil and Family Courts, administrative hearings, and the federal Immigration Courts every year. They are:**

- Tenants facing a wrongful eviction;
- Victims of domestic violence;
- Workers whose employer failed to pay them or provide required benefits;
- Immigrant parents at risk of being deported and separated from their families;
- Disabled people who are denied access to places and benefits;
- Consumers accused of failing to pay a debt; and
- Elderly who need health care.<sup>1</sup>

**Legal problems rarely happen in isolation, and often result from events such as losing a job, getting diagnosed with a serious illness, or failing in school. Many poor people have multiple legal problems.<sup>2</sup>**

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<sup>1</sup> See generally Public Welfare Foundation and the Kresge Foundation, *Natural Allies: Philanthropy and Civil Legal Aid*, 2013.

<sup>2</sup> Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low Income Americans*, 2009, pp. 1-13 (finding that low-income households encounter two to three legal problems a year).

## NEW YORKERS IN CIVIL CASES

### Cases Filed in New York City Civil Court



Source: New York State Unified Court System Annual Reports 2004, 2009, and 2013.

The number of cases filed in New York City Civil Court climbed to nearly 1 million per year leading up to and during the recession; filings slowed as the economy improved.

In addition, approximately 250,000 cases are filed in the City's Family courts each year, many concerning child custody, visitation, or support.<sup>3</sup>

Between 2007 and 2013, more than 350,000 immigrants each year were placed into deportation proceedings across the U.S.—almost twice the rate of earlier years.<sup>4</sup> In New York City, nearly 18,000 immigration cases were filed in 2014.<sup>5</sup>

<sup>3</sup> New York State Unified Court System Annual Reports 2007-2013.

<sup>4</sup> U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2013*, <http://www.dhs.gov/yearbook-immigration-statistics-2013-enforcement-actions>.

<sup>5</sup> U.S. Department of Justice, Executive Office for Immigration Review, *FY 2014 Statistics Yearbook*, p. A3.

## **LACK OF LEGAL REPRESENTATION FOR THE POOR IN CIVIL CASES (aka the Justice Gap)**

**The courts are an adversarial system that assumes everyone will be represented by a lawyer. Nonetheless, in most civil cases, there is no right to government-funded counsel,<sup>6</sup> so the poor (and near poor) often go to court without a lawyer.**

- More than 1.8 million New Yorkers statewide in 2013 were unrepresented in state-court civil matters, down from 2.3 million the year before.
  
- In New York City:
  - only 1 in 100 tenants in eviction proceedings have a lawyer;
  - more than 95 percent of defendants in consumer credit cases are unrepresented; and
  - more than 90 percent of parents were unrepresented in child support cases.<sup>7</sup>
  
- Although an estimated 2,500 immigrants are detained in New York every year while the immigration court considers their cases (sometimes for years), more than half appeared without a lawyer.<sup>8</sup>

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<sup>6</sup> There is a right to counsel in a few narrow categories of civil cases such as child abuse and neglect cases in Family court. *See* National Coalition for a Civil Right to Counsel, [http://civilrighttocounsel.org/major\\_developments?jurisdiction=New+York](http://civilrighttocounsel.org/major_developments?jurisdiction=New+York).

<sup>7</sup> The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, November 2014, p. 20.

<sup>8</sup> Steering Committee of the New York Immigrant Representation Study, “Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings,” *Cardozo Law Review*, p. 363.

## CIVIL LEGAL SERVICES FOR THE POOR IN NEW YORK CITY

**The City is home to dozens of nonprofit legal service providers, large and small.**

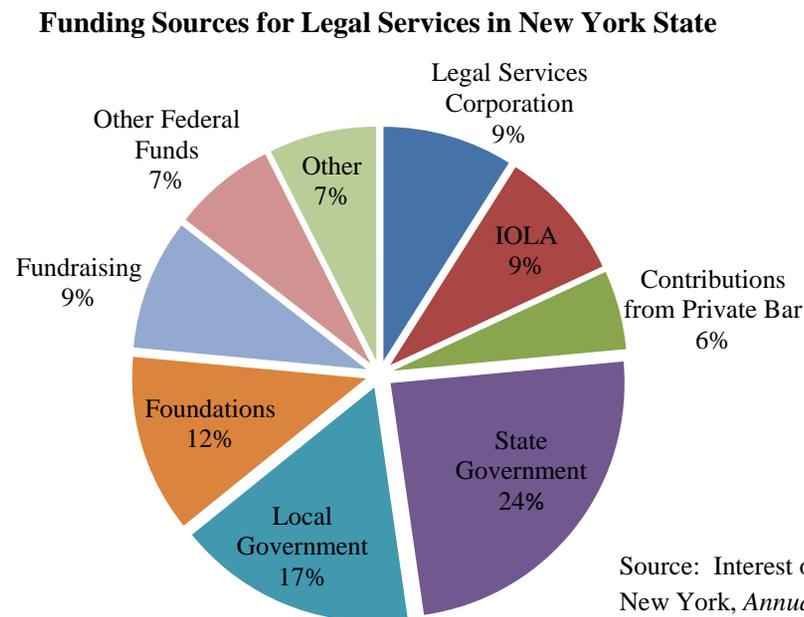
- The Interest on Lawyer Account Fund (known as IOLA)—a leading funder of civil legal services in New York—has more than 40 grantees in the City.<sup>9</sup>
- The City’s three largest nonprofit civil legal service agencies are Legal Aid Society, Legal Services NYC, and New York Legal Assistance Group (NYLAG). Combined, the three groups provide civil legal help to nearly 200,000 low-income New Yorkers annually. Nonetheless, they turn away more than half of the people seeking legal help.
- Several smaller civil legal service providers collaborate through a loosely affiliated network called the “Legal Advocacy Partnership.” Members of the partnership include New York Lawyers for the Public Interest, Urban Justice Center, Bronx Defenders, and legal departments from Make the Road NY, CAMBA, and Northern Manhattan Improvement Corporation.
- Social service providers such as Sanctuary for Families, CAMBA, and The Door have created their own legal departments to help clients handle legal problems.
- Several groups, including the Vera Institute of Justice, the Brennan Center, and the Fund for Modern Courts conduct policy research on the courts nationally and in New York.

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<sup>9</sup> Interest on Lawyer Account Fund of the State of New York, *Annual Report 2013*, p. 12-16.

## FUNDING FOR CIVIL LEGAL SERVICES

Civil legal service nonprofits are supported by a combination of federal, state, and local government funding as well as contributions from law firms and private foundations.



Funding from the federal Legal Services Corporation, which is appropriated by Congress, has diminished for New York City in recent years. Legal Services NYC is the only agency in the City that currently receives funding from the Corporation.<sup>10</sup>

Because of a decline in interest rates, the IOLA Fund's revenue available for civil legal services dropped from \$32 million in 2008 to \$7 million in 2011.<sup>11</sup>

Meanwhile, the City and State have increased funding for civil legal services.<sup>12</sup>

<sup>10</sup> Legal Services Corporation, *LSC By the Numbers 2013*, p. 3, 6.

<sup>11</sup> The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, November 2014, p. 2.

<sup>12</sup> See, e.g., The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, November 2014, p. 2.

## DOES LEGAL HELP MAKE A DIFFERENCE?

### Arguments in favor of funding for civil legal aid often emphasize economic benefits.

- Chief Judge Jonathan Lippman’s Task Force to Expand Access to Civil Legal Services calculated the economic benefits of civil legal services programs, including:
  - Annual savings of \$85 million in services for domestic violence survivors;
  - Approximately \$116 million in averted shelter costs; and
  - More than \$500 million in additional federal benefits.<sup>13</sup>
- The Interest on Lawyer Account Fund similarly reports additional benefits received and savings resulting from grantees’ civil legal services.<sup>14</sup>
- Much of the academic research on civil legal aid also focuses on economic benefits.<sup>15</sup>

### However, little reliable research has been done to:

- Establish what types of legal service delivery models are most effective;
- Identify circumstances in which legal representation is most valuable; or
- Determine the longer-term benefits (or lack thereof) of legal representation for individuals and families.<sup>16</sup>

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<sup>13</sup> The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, November 2014, p. 3.

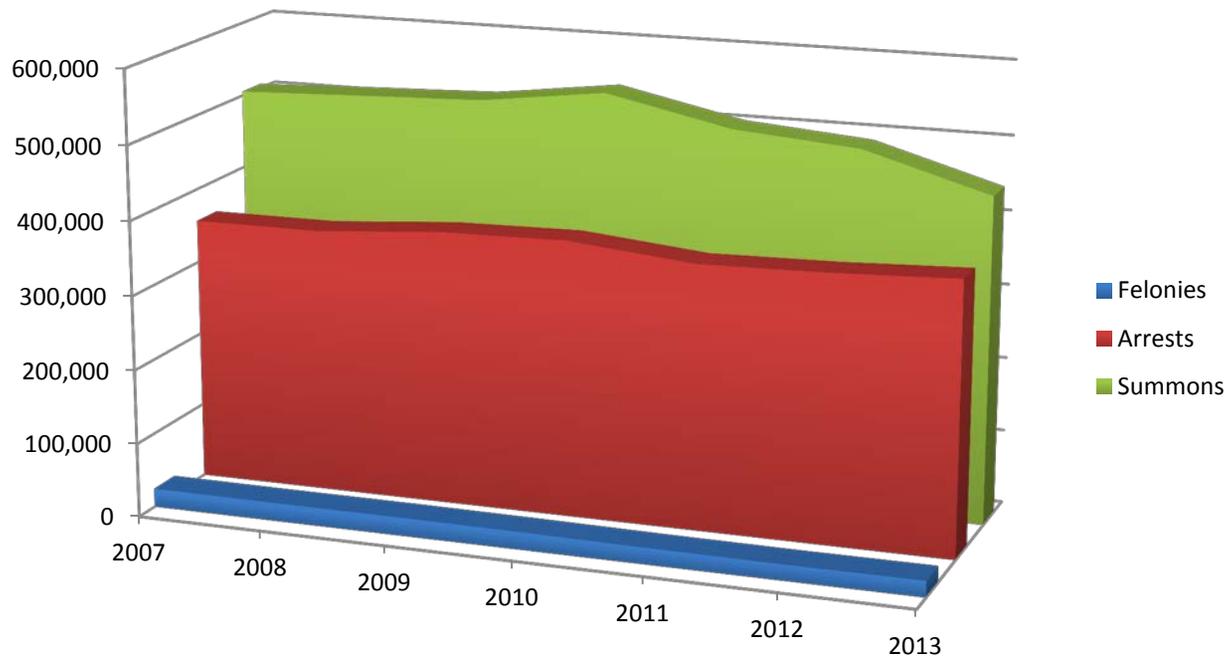
<sup>14</sup> See, e.g., Interest on Lawyer Account Fund of the State of New York, *Annual Report 2013*, p. 5

<sup>15</sup> See, e.g., Abel, Laura, *Economic Benefits of Civil Legal Aid*, National Center for Access to Justice at Cardozo Law School, September 2014, pp. 1-2.

<sup>16</sup> Rhode, Deborah L., “Access to Justice: An Agenda for Legal Education and Research,” *Journal of Legal Education*, May 2013, p. 539.

## NEW YORKERS IN CRIMINAL CASES

### New York City Criminal Case Filings



Source: New York State Unified Court System Annual Reports 2007-2013.

The number of arrests and summons for misdemeanors and violations, such as riding a bicycle on the sidewalk and drinking alcohol from an open container, has declined slightly in recent years, but remains in the hundreds of thousands compared to fewer than 25,000 felonies filed in Supreme Court annually.

## EFFECTS OF NEW YORK CITY CRIMINAL COURT

**As the result of a 1963 U.S. Supreme Court decision – *Gideon v. Wainwright* – defendants in criminal cases are entitled to a lawyer at government expense.**

- Legal Aid Society is the primary provider of government-funded criminal defense, working in all five boroughs and representing more than 200,000 New Yorkers every year.
- Several borough-based nonprofits such as Bronx and Brooklyn Defenders also provide government-funded defense.

**Nonetheless, thousands of poor Black and Latino New Yorkers end up arrested and in jail due to minor misconduct.**

### Arrests

- Last year, hundreds of thousands of New Yorkers received a summons, but many did not show up to court. As a result, the court issued a warrant for their arrest.<sup>17</sup>
- Blacks and Hispanics accounted for 80 percent of misdemeanor arrests in 2014.<sup>18</sup>
- For immigrants, an arrest can lead to deportation.
- So-called “rap sheets,” which are often reviewed by potential employers, reflect arrests even when a person is never found guilty.

### Jail

- More than 75 percent of the approximately 70,000 people jailed each year on Rikers Island have not been convicted of a crime, but rather are awaiting trial, sometimes for years.<sup>19</sup> Many cannot afford to pay court fines or make bail.
- In 2012, more than half of the City’s jail population was Black and more than 30 percent was Hispanic, while less than 10 percent was white.<sup>20</sup>
- Nearly 40 percent of inmates at Rikers have a mental illness diagnosis.<sup>21</sup>
- Recent investigations by federal agencies found that almost half of young male inmates had been subjected to the use of force by the correctional staff on Rikers Island, and discovered more than 4,000 incidents in which guards at Rikers used physical force against inmates.

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<sup>17</sup> Davis O’Brien, Rebecca, “New York City Makes Changes to Summons Court,” *The Wall Street Journal*, April 14, 2015.

<sup>18</sup> Bekimepis, Victoria, “Why Do NYC’s Minorities Still Face So Many Misdemeanor Arrests?” *Newsweek*, February 28, 2015.

<sup>19</sup> *The New York Times*, “What Is Happening at Rikers Island?” December 15, 2014.

<sup>20</sup> See, e.g., Santora, Marc, “City’s Annual Cost Per Inmate Is Nearly \$168,000, Study Says,” *New York Times*, August 23, 2013.

<sup>21</sup> Winerip, Michael and Schwartz, Michael, “Rikers: Where Mental Illness Meets Brutality in Jail,” *New York Times*, July 14, 2014.

## PRIVATE SUPPORT FOR HUMAN JUSTICE IN NEW YORK CITY

### Civil Legal Services

Locally and nationally, foundations contribute about 10 percent of the funding for civil legal services.<sup>22</sup> Several national funders, including Ford Foundation and Foundations to Promote Open Society, collectively made more than \$20 million in grants to nonprofits based in New York City but with national practices. Only four private funders invested more than \$1 million for civil legal services delivered in New York City in 2012:

	<u>Amount of 2012 Giving</u>
Robin Hood Foundation/Single Stop USA	\$8,295,000 <sup>23</sup>
The New York Community Trust	3,133,700
Oak Foundation	1,500,000
JPB Foundation	1,350,000

### Criminal Justice Reform

Several foundations, including Foundations to Promote Open Society, The John D. and Catherine T. MacArthur Foundation, Ford Foundation, Public Welfare Foundation, and Robert Wood Johnson Foundation made significant grants to New York City-based groups for their national criminal justice reform advocacy. Notably less funding was directed to nonprofits for work in the City. Following is a list of the private funders that invested more than \$300,000 in criminal justice reform for New York City in 2012:

	<u>Amount of 2012 Giving</u>
The New York Community Trust	\$480,000
The Pershing Square Foundation	300,000
The Pinkerton Foundation	300,000

<sup>22</sup> Interest on Lawyer Account Fund of the State of New York, *Annual Report 2013*, p. 5; see also American Bar Association, *Civil Legal Aid Funding 2013*, available at: [http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice/civil\\_legal\\_aid\\_funding.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/civil_legal_aid_funding.html).

<sup>23</sup> Based on a review of Robin Hood's and Single Stop's 2012 990 forms.

## **THE TRUST'S HUMAN JUSTICE PROGRAM**

**From 2005 to 2015, The Trust made \$17,974,500 in grants to increase access to justice for New Yorkers. The grants:**

- Helped thousands of people navigate the financial consequences of the recession, providing legal information and representation in public benefits, bankruptcy, unemployment, and consumer debt cases through our safety-net grants to Legal Aid Society and Legal Services NYC.
- Were the first in the City to provide application assistance to young immigrants eligible for Deferred Action for Childhood Arrivals and representation for unaccompanied immigrant children in deportation proceedings.
- Reformed the juvenile justice system (with substantial funds from our youth development program), creating a local system of services for juvenile offenders and winning the Governor's commitment to raise the age of criminal responsibility from 16 to 18 years of age.
- Created digital tools to navigate consumer debt cases and FEMA appeals in the wake of superstorm Sandy.
- Advocated to legalize gay marriage and helped gay and lesbian New Yorkers understand their new rights.

**In addition, The Trust used grants in other program areas to:**

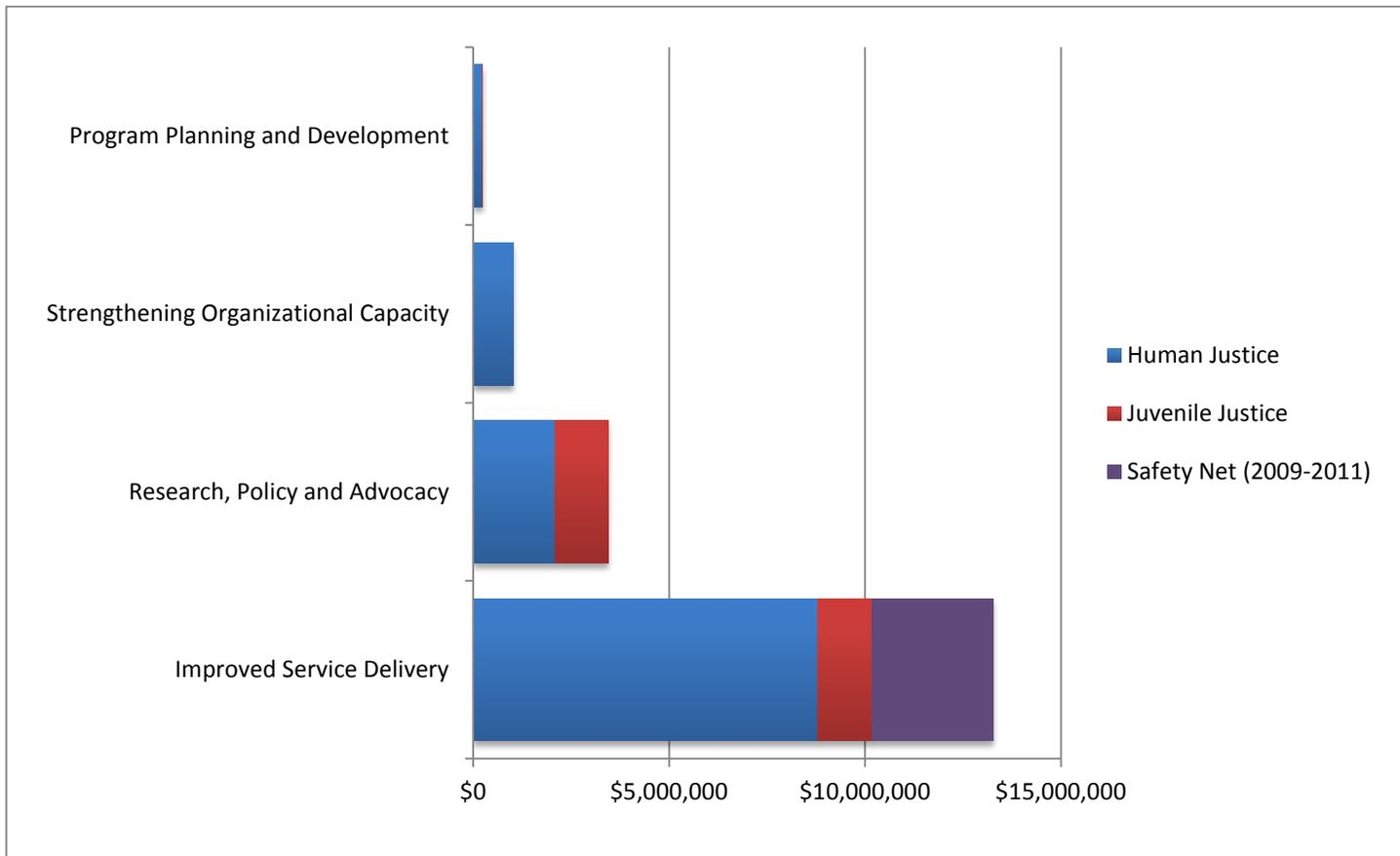
- Create problem-solving courts for vulnerable populations including those with mental illness.
- Support alternatives to incarceration for young people and women.
- Expand education and employment programs for formerly incarcerated New Yorkers.

**The Fund for New Citizens was established at The Trust in 1987, and continues to support advocacy and legal help for the City's immigrants. It has:**

- Raised more than \$12 million during the last decade for projects that benefit the City's immigrants.
- Helped start the Immigration Representation Project, a collaboration of three agencies that provides legal help to people onsite at the Immigration Court.
- Provided legal help to immigrants in their communities by supporting Legal Aid's supervision of paralegals working in community groups.
- Strengthened advocacy for immigrant rights and built the organizational capacity of more than 60 immigrant-led nonprofits.

As the immigrant population has grown to nearly half the City, immigrant-focused grants have increasingly been made through the relevant program area, e.g., Health or Civic Affairs, rather than exclusively through the Human Justice program. This trend will continue.

**During the past decade, the Trust's Human Justice grants have been made for the following purposes:**



Like most other funders in legal services, many of our grants have sought to close the justice gap by providing direct legal help to individuals.

## ISSUES AND TRENDS IN THE FIELD

**In the wake of multiple police shootings of Black men and civil unrest in Ferguson, New York, and Baltimore, there is growing consensus around the need for criminal justice reform.**

- The MacArthur and Open Society foundations recently announced more than \$100 million in grants for criminal justice reform nationally.
- President Obama and former Attorney General Eric Holder have spoken publicly about the need for reform.
- Unlikely allies are emerging in national advocacy efforts, including the president of Americans for Tax Reform, Grover Norquist; former governor of Texas, Rick Perry; and former New York police commissioner, Bernard Kerik.<sup>24</sup>
- The issue appears to be a topic in both the Republican and Democratic presidential campaigns.

**In the City, poor Black and Latino men too often end up in jail because of minor misconduct and arrests without a conviction. They face restricted housing and employment options after jail. But efforts to limit the number of people sent to jail have recently been announced.**

- Chief Judge Jonathan Lippman and Mayor de Blasio announced plans to make the language of summonses to NYC Criminal Court clearer, give residents more scheduling and payment flexibility, and speed up the process for people awaiting trial.
- In the wake of investigations by the U.S. Department of Justice, the Mayor has promised to eliminate the use of solitary confinement for juveniles on Rikers.
- A City task force on behavioral health and the criminal justice system is developing recommendations to spend \$130 million to reduce unnecessary arrests and incarceration among those with mental health problems.

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<sup>24</sup> Eisen, Lauren-Brooke, "Are More Criminal Justice Reforms on the Horizon in 2015?" *Huffington Post*, December 29, 2014.

**Although federal funds for civil legal aid in the City have fallen, state and local government funding has increased.**

- In 2014, the Chief Judge of the State of New York committed \$70 million for civil legal aid through the Judiciary budget (\$55 million through a request for proposals process and \$15 million to supplement the IOLA Fund’s reduced revenues).<sup>25</sup>
- The City Council has committed more funding for civil legal services, including:
  - Several million dollars to help undocumented youth apply for Deferred Action for Childhood Arrivals and more than \$1 million to provide representation for unaccompanied minors; and
  - Almost \$5 million to provide representation for immigrants detained during deportation proceedings.
- Early in 2015, the Mayor announced \$36 million to represent tenants in housing court.
- The City Council Speaker has proposed a Civil Justice Coordinator to increase access to lawyers for the City’s poor.

**Reliance on government and other direct service funding has encouraged civil legal service nonprofits to provide brief advice and represent individuals in straightforward matters at the expense of complex cases and systemic advocacy.**

- The Robin Hood Foundation funds direct services almost exclusively and emphasizes measurable financial gain for clients.
- Funding sources rarely distinguish between so-called “brief advice” cases that take a few hours (or minutes) and lengthy litigation. Of the cases supported by the Legal Services Corporation in 2013 nationally, more than 60 percent were “counsel and advice” with another 16 percent requiring “limited action.” Less than 20 percent involved extensive services or an agency or court decision.<sup>26</sup>
- The Legal Services Corporation also prohibits recipients from bringing class-action lawsuits or representing undocumented immigrants and prisoners.

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<sup>25</sup> The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, November 2014, p. 2.

<sup>26</sup> Legal Services Corporation, *LSC By the Numbers 2013*, p. 17.

**Even with advocacy for a right to government-funded counsel, representation for every poor person in every civil case is unlikely. Alternatives to full representation by a lawyer are gaining acceptance in civil cases, although little is known about whether or how much they help.**

- Current right to counsel campaigns for tenants in housing court and detained immigrants in deportation proceedings would result in a lawyer for some, but not all, poor people in civil cases.
- Nonprofits are providing more brief advice, short-term representation, and guidance for litigants who continue to represent themselves.
- In 2013, the Chief Judge's Task Force to Expand Access to Legal Services recommended testing the use of non-lawyer advocates to help low-income New Yorkers in straightforward civil matters.
- The courts have created online do-it-yourself court forms for unrepresented individuals, and online screening tools helped more than 10,000 young people apply for Deferred Action for Childhood Arrivals without a lawyer.

**Lawyers are working with other social service providers to address the multiple needs of struggling individuals and families.**

- Legal aid programs are extending their reach and effectiveness by working through clinics and hospitals, homeless outreach centers, veterans' service agencies, schools, and other social service agencies.
- Problem-solving courts are connecting offenders with substance abuse and mental health problems to social services.
- The United States Department of Justice created the Legal Aid Interagency Roundtable to educate other federal agencies about how legal aid can improve access to health care, housing, education, and employment as well as increase family stability and community well-being.
- The Public Welfare Foundation issued a report in 2013 encouraging foundations to support civil legal aid as part of strategies to keep families together, prevent domestic violence, reduce substance abuse, preserve housing, reduce hunger, and promote health care.

**More research and program evaluation is needed to figure out how best to use existing funding for civil legal aid and attract new funding sources.**

- Only one study has sought to figure out the impact of brief legal advice, the service on which legal service agencies spend the most time and money.<sup>27</sup>
- Very little data is available on the number of self-represented litigants and the type of help they receive.<sup>28</sup>
- The National Science Foundation and American Bar Foundation have recently begun to make grants for research by academics and social scientists to examine how civil legal aid helps (or does not help) clients.
- The Legal Services Corporation has begun requiring recipients to track the effect of civil legal help on people's lives.

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<sup>27</sup> The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, November 2014, p. 22.

<sup>28</sup> See Rhode, p. 535.

## FINDINGS AND CONCLUSIONS

- Amid growing consensus about the need for criminal justice reform, foundations are committing millions of dollars to national advocacy efforts to reduce incarceration rates. However, few foundations support research and advocacy to improve local court practices to reduce high rates of arrest and pre-trial incarceration for the City's poor, particularly Blacks and Latinos.
- In light of funders' emphasis on direct services, agencies that provide legal help have limited resources to engage in systemic policy advocacy, respond to unexpected events, collect and analyze data, or develop and test new service delivery methods and technology.
- In civil cases, direct legal services range from a phone conversation with a trained volunteer to years-long representation in protracted litigation. However, the field has little information about the benefits—or lack thereof—derived from different types of service.
- Even with increased funding for civil legal aid, thousands of New Yorkers will continue to navigate legal problems on their own. New ways to help unrepresented New Yorkers beyond assigning them a lawyer are worth developing and testing.
- Because legal issues rarely happen in isolation of other problems, courts and legal service providers may be better able to help vulnerable New Yorkers by working with other social service providers.
- With little documentation of the impact of legal help on longer-term life outcomes for clients, such as preventing homelessness or getting better jobs, civil legal aid providers often do not garner grants from government and private sources with areas of emphasis other than legal services.

## **RECOMMENDED GUIDELINES FOR HUMAN JUSTICE**

**The goal of our Human Justice program is to give all New Yorkers access to justice.**

**We will:**

**1. Promote a more effective and fair civil and criminal justice system through:**

- Research and monitoring of practices and procedures in City courts.
- Advocacy to improve local court practices and procedures.

**2. Provide advocacy, information, and representation in emerging and/or urgent areas of civil law where other funding sources are limited. (The Trust will not make grants to provide legal representation in criminal matters.)**

- We will help advocates and legal service nonprofits act quickly when laws and policies change.
- Advocacy and individual, multi-plaintiff, or class-action litigation can protect New Yorkers' civil rights and make law and public policy more responsive to the needs of the City's most vulnerable residents.

**3. Identify effective ways to help low-income New Yorkers resolve legal problems and thereby improve their quality of life.**

- We will test the effectiveness of different service delivery methods such as brief advice, technology, nonlawyers, and alternative courts.
- Through program evaluation and collaboration with other social service providers, we will connect legal help with other desired outcomes such as reducing homelessness and increasing employment and educational opportunities.
- Where needed, we will build legal-service nonprofits' capacity, individually and as a field, to track and communicate their results.