

# Legal Services Necessary for Society to Survive a Pandemic

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Eddie Brown seemed to fit the profile of a federal inmate most eligible for emergency release during the ongoing coronavirus pandemic. As a survivor of hepatitis C who had served six of his 15-year sentence, Brown should have been a strong candidate for home confinement or compassionate release based on standards introduced by the Bureau of Prisons. Nevertheless, he had two strikes against him. The first was his criminal record, which includes three felony drug convictions. The second was that unlike his wealthier counterparts, Paul Manafort and Michael Cohen, Brown did not have the means to afford a lawyer who could steer him through the confusing process of securing early release.

**The pandemic brought us to a historic crossroads. We can either learn from this moment to create a more egalitarian democracy or return to the status quo.**

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Discussions on what changes the country needs to make during, and following, the coronavirus pandemic have already taken shape. While medical bills pile up, support for Medicare for All is growing louder. With millions of Americans having made the transition

to remote work, many are calling for greater opportunities to telework. Voting rights activists are arguing that the franchise should be expanded so as to allow Americans to vote by mail.

One crucial part of this conversation has often been overlooked by experts and politicians: expanding access to legal services.

Exigent circumstances established by the coronavirus pandemic have required Americans to grapple with many complicated and unfamiliar legal challenges. American workers, in particular, have been pushed into situations that are unethical if not downright illegal. An Illinois family lost their loved one to COVID-19. According to the family, his employer, Wal-Mart, knew that he and others were exhibiting the symptoms of coronavirus, but subsequently failed to implement sufficient safety measures to protect its employees. McDonald's employees in Chicago say that they were asked to expose themselves to the coronavirus to serve customers without sufficient access to potentially life-saving equipment, like masks. Recently fired Hooters employees claim that the restaurant chain fired them without notice, leaving them unemployed during a global pandemic.

As troubling as these circumstances are, the victims are more fortunate than others. They were able to secure legal representation, meaning that they have at least a shot at receiving redress for the harms they suffered. Representation cannot bring a loved one back to life. But it can result in monetary damages that support the financial needs of the family. Representation cannot protect those who are infected. But it can result in changed workplace conditions that protect others from meeting a similar fate.

For Bobby Parker, legal representation may have made the difference between life and death. Reduced income caused the New Orleans resident to fall behind on his rent. After he was pushed out of his apartment, a lawyer helped him regain access to his home and his life-saving medication. In New York City, which was the leading coronavirus hot spot in the United States at one point, the services of lawyers were in high demand to help vulnerable New Yorkers avoid eviction and food insecurity. Anticipating having to return to work, many New Yorkers sought counsel on how to draft legal documents to protect families should the worst occur.

More pain is yet to come. States, and businesses, are opening in unsafe conditions. Many employees will be forced to choose between remaining home, thereby prioritizing their safety, and returning to work in order to keep food on their tables. Tragically, some will return to work. With a global depression coming into progressively clearer focus, employers will likely be forced to shed employees. Plenty of Americans have already felt the economic slump. At press time, 13.3 percent of Americans are out of work, the manifestation of an unemployment crisis that has caused more than 40 million Americans to file for unemployment benefits. With so many Americans facing joblessness and reduced income, more are likely to experience homelessness and food insecurity.

Health experts estimate that the coronavirus may recirculate globally over the course of the next two years at least. Consequently, demand for legal services is unlikely to subside any time soon. Even in the post-coronavirus era, coronavirus-related lawsuits are likely to be an enduring feature of American society.

This historical moment calls for a shift in the way our society views legal services. Access to the legal system in America is generally seen as a privilege, not a right—and that privilege is primarily reserved for the privileged. Access to legal services likely spared many Americans from further harm wrought by the pandemic. The opposite likely made many Americans more vulnerable to the worst of the pandemic. So why aren't legal services considered fundamental rights, just as food, shelter, and medical services are? The coronavirus pandemic has made it clearer than ever that legal services are a crucial part of the social safety net and deserve to be supported as such.

Cost is a significant barrier to securing legal assistance. Lawyers' hourly rates can range anywhere between hundreds of dollars per hour to thousands of dollars per hour. Because lawsuits require hours of preparation and can take years from start to finish, litigants can find themselves reaching even deeper into their pockets to maintain representation. Between lawyers' hourly rates and other fees, like consultation fees and retainer fees, obtaining a lawyer can be prohibitively expensive.

Likely due to the costs of obtaining legal assistance, many forgo legal representation, especially with respect to civil disputes, in which there is no constitutional right to counsel.

Coronavirus-related disputes will proliferate as long as the virus endures, but more conventional legal issues will also need to be resolved in the meantime. As the unemployment rate climbs, legal assistance will be even more out of reach than it was before. How many parents will lose custody of their children because they cannot afford to contest custody arrangements in court? How many Americans will have to forgo public benefits to which they are legally entitled because they cannot afford representation to mount legal challenges to their denials? The coronavirus pandemic has precipitated a rise in incidents of domestic violence. How many survivors will have to forgo using the legal system to protect themselves from their abusers because they do not have the means to obtain legal representation?

Legal aid organizations have attempted to bridge the divide. Their services are often offered at a reduced cost or for free depending on the socioeconomic profile of the prospective litigant. Nevertheless, legal aid organizations only have so much time, only so many lawyers, and only so many financial resources. Even under usual circumstances, demand for their services can exceed their capacity to provide legal assistance.

Recognizing that accessing the legal system can be prohibitively expensive, Congress established the Legal Services Corporation (LSC). LSC distributes funding to legal aid organizations across the country, empowering them to support low-income clients with legal assistance in civil matters. The nonprofit has been underfunded during the Trump era. LSC received \$440 million for fiscal year 2020, far less than the \$593 million it requested, which it estimated would have allowed it to expand the operations of its grantees by 55 percent. Just a month before the pandemic intensified in the United States, LSC requested \$652.6 million for fiscal year 2021. Meanwhile, the Trump administration proposed defunding the organization as part of its strategy to attack the programs that are crucial to keeping low-income Americans on their feet.

Americans will suffer if Congress does not boost funding to LSC commensurate with the growing need for legal representation during and beyond the coronavirus pandemic. The way to do this effectively is to provide increased funding through the standard fiscal year budget and through coronavirus-related legislation. And it will take multiple times what LSC has requested for fiscal year 2021. So far, Congress has appropriated an initial \$50 million to support legal aid organizations through the coronavirus pandemic. It's going to take much more than that for the next coronavirus relief deal to make sure Americans have access to desperately needed legal services.

States and municipalities have a role to play too. There is no right way to lead Americans through this crisis, but there are many wrong ways. Allowing Americans to face eviction, unsupported by the expertise of legal representation, is one of those ways. States and municipalities should follow the precedent the New York City Council established when it passed a 2017 law to check evictions with the right to counsel.

Low-income tenants are now entitled to free legal representation in eviction cases, correcting a gross disparity between landlords and tenants in terms of their ability to obtain legal services. Expanded access to representation had already reaped dividends for low-income New Yorkers, reducing the number of evictions by 30 percent between 2013 and 2018. From Cleveland to San Francisco, other cities have embraced similar so-called "right to counsel" laws since 2017 to protect low-income tenants. The adoption of "right to counsel" laws across the country could protect Americans from the dual crises of losing their homes, which portends a host of other tragedies, and facing increased vulnerability to the coronavirus.

Widespread "right to counsel" laws should be the stepping stone to a constitutional amendment that guarantees representation in civil litigation. Seventy percent of low-income Americans reported experiencing at least one civil legal challenge in 2017, while 47 percent of all American households reported facing such a challenge within the past year in 2018. Statistics like these indicate that the need for expanded access to legal services is pressing and transcends socioeconomic status.

Civil legal challenges rival the seriousness of criminal matters. Losing custody of a child or being forced to vacate your home is not necessarily less emotionally damaging or financially costly than facing incarceration. Constitutional rights are no safer from abuse in civil litigation than in criminal litigation. So why does the Constitution regard the need for legal representation as less urgent in civil litigation than in criminal litigation?

Opportunity often presents itself in times of tragedy. The coronavirus pandemic has revealed the shortcomings of our society: the fragility of our economy, the cruelty of capitalism, and the cracks in our social safety net. In doing so, however, the pandemic has brought us to a historic crossroads. Our country can either use the lessons learned from this moment to create a more egalitarian democracy, and survive the pandemic in the process, or return to the status quo, the conditions of which compounded the devastation of an intrinsically chaotic occurrence.

Medical services, food services, and legal services are the essential services that have kept our country somewhat intact. Barriers preventing Americans from accessing those services need to be struck down lest the next catastrophe that shakes the foundation of our country destroys it.

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