

Fall 2016

Poverty, the Great Unequalizer: Improving the Delivery System for Civil Legal Aid

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Recommended Citation

Latonia H. Keith, Poverty, the Great Unequalizer: Improving the Delivery System for Civil Legal Aid, 66 Cath. U. L. Rev. 55 (2017).

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POVERTY, THE GREAT UNEQUALIZER: IMPROVING THE DELIVERY SYSTEM FOR CIVIL LEGAL AID

Latonia Haney Keith⁺

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When individuals in the United States face civil justice issues or are involved in civil court proceedings, they do not have a constitutional right to legal counsel.¹ As a result, individuals must secure paid counsel (on a fee or contingency basis), or if unable to do so, proceed *pro se* or obtain free or pro bono civil legal assistance. As the civil legal system was designed to require an attorney in most, if not all, legal situations, civil legal aid programs have been the predominate source of legal assistance to underserved and vulnerable populations.²

1. Unlike in *Gideon v. Wainwright*, 372 U.S. 335, 343–44 (1963), in which the U.S. Supreme Court held that in criminal cases where the defendant faces imprisonment or the loss of physical liberty, the defendant has a right to state-funded counsel, the Court has not found that individuals involved in civil proceedings have a constitutional right to counsel. See *Turner v. Rogers*, 564 U.S. 431, 448 (2011) (declining to recognize a constitutional right to counsel for indigent persons facing civil contempt charges and the prospect of imprisonment); see also *Lassiter v. Dep't of Soc. Servs. of Durham Cty., N.C.*, 452 U.S. 18, 31–32 (1981) (holding that the Due Process Clause of the United States Constitution did not provide for a right to appointed counsel for indigent parents facing the termination of their parental rights).

2. ALAN W. HOUSEMAN, CTR. FOR AM. PROGRESS, THE JUSTICE GAP: CIVIL LEGAL ASSISTANCE TODAY AND TOMORROW 3 (2011), <https://www.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/justice.pdf>. (“Without the services of a lawyer, low-income people with civil legal problems may have no practical way of protecting their rights and advancing their interests. As Congress declared when creating an independent organization to fund civil legal assistance in the Legal Services Corporation Act of 1974: ‘Providing legal assistance to those who face an economic barrier to adequate legal counsel will serve the best ends of justice and assist in improving opportunities for low-income persons’ and will ‘reaffirm faith in our government of laws.’”).

Beginning in December 2007, as a result of the economic downturn, more and more people began falling into poverty.³ This, in turn, has led to a significant increase in the number of Americans who cannot afford to pay for the legal assistance that they need. Studies show that roughly eighty percent of the civil legal needs of low-income Americans go unmet.⁴ That percentage increases greatly when evaluating the unmet legal needs of modest-means individuals who do not qualify for legal aid or pro bono assistance, but nevertheless cannot afford an attorney.⁵ This reality is commonly referred to as the “justice gap.”⁶

To address the justice gap, the public interest community has launched multiple initiatives as a means of supplementing the traditional legal aid model.⁷ Though valiant, this approach has unfortunately created a complex, fragmented, and overlapping delivery system for legal aid. Civil legal aid programs focus on different substantive legal issues, serve different populations, provide differing levels of representation, and serve predominately urban populations.⁸ Given the current economic environment, with increased demand and decreased funding

3. See generally ELIZABETH KNEEBONE, BROOKINGS, THE GREAT RECESSION AND POVERTY IN METROPOLITAN AMERICA 2 (2010), https://www.brookings.edu/wp-content/uploads/2016/06/1007_suburban_poverty_acs_kneebone.pdf (“[T]he latest data from the Census Bureau’s 2009 American Community Survey (ACS) confirm that the worst U.S. economic downturn in decades exacerbated trends set in motion years before, by multiplying the ranks of America’s poor. Between 2007 and 2009, the national poverty rate rose from 13 percent to 14.3 percent, and the number of people below the poverty line jumped by 4.9 million.”).

4. See DEBORAH L. RHODE, ACCESS TO JUSTICE 3 (2004) (“[A]bout four-fifths of the civil legal needs of the poor . . . remain unmet.”); Phoebe A. Haddon, Dean & Professor of Law, Univ. of Md. Francis King Carey Sch. of Law, Too Many Lawyers? Too Few Jobs? Bridging the Justice Gap, Address at the American Law Institute, 2014 Annual Meeting, 3 (2014) (transcript available on the Univ. of Md. Francis King Carey School of Law website), <http://www.law.umaryland.edu/about/features/feature0283/JusticeGap.pdf> (“[A]pproximately 80 percent of the legal needs of poor individuals and a majority of the legal needs of middle-income Americans remain unmet.”).

5. See RHODE, *supra* note 4, at 3; Haddon, *supra* note 4, at 1 (“[A]s the justice gap has grown, it’s come to include individuals of moderate income . . . struggling to resolve conflicts on their own.”).

6. See Haddon, *supra* note 4, at 1.

7. See HOUSEMAN, THE JUSTICE GAP: CIVIL LEGAL ASSISTANCE TODAY AND TOMORROW, *supra* note 2, at 4 (“The current civil legal assistance system is a locally based system of independent staff-based service providers, supplemented by private attorney volunteer (pro bono) programs, law school clinical programs, and self-help programs.”).

8. See, e.g., *infra* notes 287–91 and accompanying text (discussing Chicago, Illinois as an example of the complexity of the civil legal aid system); see also Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 496 (2014) (“Because rural populations are disproportionately poor and because lawyers (legal aid attorneys or otherwise) are scarce in rural areas, we can surmise that rural residents—especially those who are low-income—are less likely than their urban counterparts to have their legal needs met.”).

for legal aid,⁹ now is the time to develop a more cohesive and efficient mechanism for delivering legal services to the poor.

This Article first provides an understanding of the current civil legal landscape, especially how it impacts those who are unable to afford legal counsel. This Article then examines the traditional legal aid model and the many initiatives and approaches that have been developed as a means of supplementing that model, and whether and to what extent these models have helped or harmed underserved populations. Lastly, this Article proposes three specific reforms: (1) the development of a comprehensive, cohesive and “smart” triage mechanism, (2) the infusion of business process improvement within legal aid organizations, and (3) the creation of legal information exchange organizations. If implemented, these reforms will make great strides toward streamlining the delivery system for civil legal aid.

I. THE POVERTY LANDSCAPE—WHO NEEDS LEGAL HELP & WHY?

As a result of the economic recession, the number of Americans who are unable to afford legal counsel and are therefore eligible for legal assistance funded by the Legal Services Corporation (LSC) (i.e., those living at or below 125% of the federal poverty guidelines¹⁰) or eligible for pro bono or other legal aid assistance (i.e., those living typically at no more than 300 percent of the federal poverty guidelines¹¹) remains at an all-time high. According to LSC, more than one in five Americans, or roughly 63.4 million people, were eligible in 2014 for LSC-funded legal services.¹² This amount represents a twenty-five percent increase since before the economic downturn in 2007.¹³ So, what does this mean? Who are these Americans who so desperately need legal aid services? Where are they located, what is their background, and what are the types of legal problems they face?

9. See Press Release, Legal Servs. Corp., House Spending Bill Cuts LSC Budget by 20% (June 3, 2015), <http://www.lsc.gov/media-center/press-releases/2015/house-spending-bill-cuts-lsc-budget-20> (stating that LSC’s funding was reduced by 20% in Fiscal Year 2016).

10. See Annual Update of the HHS Poverty Guidelines, 80 Fed. Reg. 3,236, 3,237 (Jan. 22, 2015) (reflecting that Americans living at or below 125% of the federal poverty guidelines in 2015 had incomes of no more than \$14,713 for an individual and \$30,313 for a family of four).

11. See *id.* (reflecting that Americans living at or below 300% of the guidelines had incomes of no more than \$35,310 for an individual and \$72,750 for a family of four).

12. *2014 Legal Services Corporation by the Numbers: The Data Underlying Legal Aid Programs*, LEGAL SERVS. CORP. 1 (2015), <http://www.lsc.gov/sites/default/files/attach/2015/08/LSC2014FactBook.pdf> [hereinafter LEGAL SERVS. CORP., *2014 by the Numbers*].

13. *2013 LSC by the Numbers: The Data Underlying Legal Aid Programs*, LEGAL SERVS. CORP. (2014), <http://www.lsc.gov/media-center/publications/2013-lsc-numbers> [hereinafter LEGAL SERVS. CORP., *2013 by the Numbers*] (“In 2007, before the economic downturn, 50.8 million Americans were eligible for LSC-funded legal services.”).

A. Demographics of Low-Income Populations

This Article attempts to provide an understanding of the demographics of constituents unable to afford legal counsel. However, due to a high degree of fragmentation in the civil legal aid system, a comprehensive national study does not exist to provide a clear picture.¹⁴ As a result, this Article will provide statistical information from various sources that can be extrapolated to populations across the country as a means of providing a general understanding of the client landscape.

1. Clients Eligible for LSC-Funded Civil Legal Aid

In 2015, LSC completed a national study of the demographics of the clients served by LSC-funded organizations.¹⁵ It is important to note that this study is limited only to clients served by LSC-grantees, which represent a subset of the clients served by legal aid, pro bono, and public interest organizations, and a subset of individuals actually requiring or seeking assistance.¹⁶ In addition to income limitations (serving only populations with income at or below 125% of the federal poverty guidelines¹⁷), LSC-grantees may only assist U.S. citizens or “members of specified categories of aliens,”¹⁸ which excludes “undocumented aliens; aliens seeking asylum, refugee status, or conditional entrant status; or other categories of aliens who are legally in the U.S., such as students and tourists.”¹⁹ Such programs are also prohibited from providing certain legal assistance to prisoners (such as “challenging conditions of incarceration”) and to “persons convicted of or charged with drug crimes” (such as representing them in eviction proceedings “based on threats to the health or safety of public housing residents. . .”).²⁰

According to LSC, in 2014, it closed almost 758,000 cases and provided assistance to almost 1.9 million people in the households in which it served.²¹ Furthermore, during 2014, “more than two-thirds of LSC clients were women . . . between the ages of 18 and 59.”²² Almost half of LSC clients identified as White (not of Hispanic origin); just over twenty-eight percent identified as Black

14. See Haddon, *supra* note 4, at 3 (“[T]here is no uniform national compilation of statistics on unrepresented litigants. None.”).

15. LEGAL SERVS. CORP., *2014 by the Numbers*, *supra* note 12, at 22–25.

16. See *id.* at 2.

17. In limited circumstances, LSC programs may serve individuals whose income exceeds 125% of the federal poverty guidelines. See ALAN W. HOUSEMAN, CTR. FOR LAW & SOC. POLICY, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2013 6 (2013) (citing 45 C.F.R. § 1611), <http://www.clasp.org/resources-and-publications/publication-1/CIVIL-LEGAL-AID-IN-THE-UNITED-STATES-3.pdf>.

18. *Id.* at 7 (citing 45 C.F.R. § 1626).

19. *Id.*

20. *Id.* (citing 45 C.F.R. §§ 1633, 1637).

21. LEGAL SERVS. CORP., *2014 by the Numbers*, *supra* note 12, at 1.

22. *Id.* at 22, 24.

(not of Hispanic origin); close to eighteen percent identified as Hispanic; and less than three percent identified as either Native American or as Asian or Pacific Islander.²³

In its 2013 edition of *LSC by the Numbers*, LSC included a map reflecting the geographic locations of constituents eligible for LSC-funded legal aid. The highest concentrations of LSC-eligible clients are located in the following states: “Mississippi (29.1%), Louisiana (25.8%), Arkansas (25.4%), Alabama (24.9%), South Carolina (24.7%), Kentucky (24.6%), Georgia (24.5%), and West Virginia (24.2%).”²⁴

2. Other Vulnerable Populations

In 2011, the American Bar Foundation issued the first-ever in-depth portrait of the civil legal aid infrastructure.²⁵ The report provides a national overview and state-by-state analysis on who is eligible for civil legal assistance, how such assistance is delivered, how eligible individuals connect with such assistance, and how such assistance is funded and coordinated.²⁶ Leveraging the Civil Justice Infrastructure Mapping Project, the American Bar Foundation compared the total U.S. population in 2009—approximately 307 million people—with the number of individuals in what it identified as the “principal population groups targeted by civil legal assistance programs.”²⁷ Out of the populations eligible for civil legal assistance, it found, for example, that approximately 55.4 million people were aged 60 years and older and 22.4 million people were military veterans.²⁸ It also found that 36.2 million people identified as having a disability, over one million people identified as being diagnosed with HIV/AIDS, and approximately 640,000 people identified as homeless.²⁹ In

23. *Id.* at 23, 25.

24. LEGAL SERVS. CORP., *2013 by the Numbers*, *supra* note 13.

25. REBECCA L. SANDEFUR & AARON C. SMYTH, AM. BAR FOUND., ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT 6 (2011), http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf.

26. *Id.* at v.

27. *Id.* at 10.

28. *Id.*

29. *Id.*; see U.S. DEP'T OF HOUS. & URBAN DEV., THE 2014 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS 1 (2014), <https://www.hudexchange.info/resources/documents/2014-AHAR-Part1.pdf> (finding that on any single night in January 2014, 578,424 people in the United States were homeless, with (i) 37 percent identifying as people in families; (ii) more than 84,000 individuals and 15,000 people in families identifying as chronically homeless; (iii) almost 50,000 identifying as veterans; and (iv) more than 45,000 identifying as unaccompanied minors); see also *Homelessness and Poverty*, THE WASH. LEGAL CLINIC FOR THE HOMELESS 2–3 (2016), <http://www.legalclinic.org/wp-content/uploads/2016/10/Fact-Sheet-updated-Oct-12-2016-with-hyperlinks.pdf> (reporting that (i) on a single night in 2016, 8,350 persons in the District of Columbia were homeless, an increase of 14% since 2015; (ii) among homeless individuals in the District, 56% are individuals in homeless families, 10.3% are veterans, 15% report chronic substance abuse, 13.3% suffer from severe mental illness, 10.3% suffer from chronic health

completing the study, it further concluded that “geography is destiny: the services available to people from eligible populations who face civil justice problems are determined not by what their problems are or the kinds of services they may need, but rather by where they happen to live.”³⁰

In 2010, the Task Force to Expand Access to Civil Legal Services in New York, convened by Chief Judge Jonathan Lippman of the New York Court of Appeals, issued a report detailing the results of a civil legal needs study that surveyed a statistically valid sample of the 6.3 million New York State residents living at or below 200% of the federal poverty guidelines.³¹ The survey asked respondents about whether they had experienced “specific legal problems, including housing, finances, employment, health insurance or medical bills, public benefits, domestic and family issues, immigration, and issues with schools affecting their households.”³² Nearly half of respondents—translating to almost three million low-income New Yorkers—were impacted by at least one of these problems, and of those three million New Yorkers over one-third were impacted by three or more legal problems.³³ According to the report, those

problems and 16.9% are physically disabled; and (iii) almost 900 homeless youth live in the District over the course of a given year, far exceeding the 165 shelter beds allocated for this demographic).

30. SANDEFUR & SMYTH, *supra* note 25, at v. Across the country, the public interest community is struggling to address the disparity of access to legal services by the poor in rural and suburban areas. *See, e.g.*, ROB PARAL & ASSOCS. & CHI. BAR FOUND., LEGAL AID IN COOK COUNTY: A REPORT ON BASIC TRENDS IN NEED, SERVICE AND FUNDING 22 (2010), <http://chicagobarfoundation.org/wpcbf/wp-content/uploads/2014/01/legal-aid-cook-county.pdf> (depicting on a map that the highest concentrations of poverty form an arc around downtown Chicago in the north, west, and south sides; however, most of those areas only have one or two legal aid providers); AMY TERPSTRA ET AL., SOC. IMPACT RESEARCH CTR., POOR BY COMPARISON: REPORT ON ILLINOIS POVERTY 4 (2015), http://www.ilpovertyreport.org/sites/default/files/uploads/PR15_Report_FINAL.pdf (finding that (i) Cook County, which contains Illinois’ largest city, Chicago, with approximately 2.7 million people, has a poverty rate between 12.2% and 17.8%; (ii) three of the six counties surrounding Cook County have poverty rates of less than 12.2% (i.e., suburbs outside Chicago); and (iii) of the 96 counties with populations less than 100,000 people, 22 have poverty rates greater than 17.8%).

31. THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 7, 11 (2010), <https://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceREPORT.pdf> [hereinafter, THE N.Y. TASK FORCE].

32. *Id.* at 11.

33. *Id.*

most in need of legal aid are families with children,³⁴ immigrants,³⁵ African Americans, Latinos, individuals with disabilities, the unemployed, and the uninsured.³⁶ Furthermore, the report found that “[s]ixty percent of low-income women under the age of 60 reported having at least one legal problem in the past year.”³⁷ Moreover, it was discovered that sixty percent of parents with minors reported at least one legal problem, with twenty-seven percent experiencing

34. See, e.g., CHILDREN’S DEFENSE FUND, THE STATE OF AMERICA’S CHILDREN 45, 52–53 (2014), <http://www.childrensdefense.org/library/state-of-america-children/2014-soac.pdf> (revealing New Mexico to have one of the highest rates of child poverty in the country ranking second to last, with (i) 29% of children living at or below the federal poverty guidelines; (ii) over 150,000 children living in an insecure food household; and (iii) over 200,000 children receiving food stamps); *Children Living with Single-Parent Families*, KIDS COUNT DATA CENTER, <http://datacenter.kidscount.org/data/tables/4629-children-living-in-single-parent-families?loc=33&loct=2#detailed/2/any/false/869,36,868,867,133/any/11432,11433> (last visited Sept. 10, 2016) (revealing almost forty percent of children from New Mexico live in a single parent home).

35. According to the Urban Institute, 11.2 million undocumented immigrants resided in the United States in 2010, representing approximately 3.7% of the total U.S. population. ERWIN DE LEON & ROBERT ROACH, URBAN INST., IMMIGRANT LEGAL-AID ORGANIZATIONS IN THE UNITED STATES 2 (2013), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412928-Immigrant-Legal-Aid-Organizations-in-the-United-States.PDF>. Six traditional immigrant-destination states represent the highest concentration of undocumented populations—California (2.55 million), Texas (1.65 million), Florida (825,000), New York (625,000), New Jersey (550,000) and Illinois (525,000)—with Georgia (425,000), Arizona (400,000), North Carolina (325,000), and Maryland (275,000) following close behind. *Id.* Relatedly, more than 25 million people (or 9% of the U.S. population) have limited English proficiency, with 66% speaking Spanish, 13% speaking Chinese, Vietnamese, Korean, or Tagalog, and 7% speaking Russian, French Creole, Arabic, Portuguese, or African languages. CHHANDASI PANDYA ET AL., MIGRATION POLICY INST., LIMITED ENGLISH PROFICIENT INDIVIDUALS IN THE UNITED STATES: NUMBER, SHARE, GROWTH, AND LINGUISTIC DIVERSITY 1, 6 (2011), <http://www.migrationpolicy.org/research/limited-english-proficient-individuals-united-states-number-share-growth-and-linguistic>. Moreover, between January 1, 2015 and December 31, 2015, callers reported 5,544 cases of human trafficking (sex or labor trafficking) to the National Human Trafficking Resource Center, 31% of which involved children and 70% involved non-U.S. citizens or legal permanent residents. NAT’L HUMAN TRAFFICKING RESOURCE CTR., NATIONAL HUMAN TRAFFICKING RESOURCE CENTER DATA BREAKDOWN: UNITED STATES REPORT 1/1/2015 – 12/31/2015 (2016), <https://traffickingresourcecenter.org/sites/default/files/NHTRC%202015%20United%20States%20Report%20-%20USA%20-%2001.01.15%20-%2012.31.15.pdf>. The United States, Mexico, Philippines, China, Vietnam, South Korea, Guatemala, India, Honduras, El Salvador, Thailand, and Russia were the primary countries of origin of trafficking victims contacting the hotline. *Id.* With the most reports occurring in California, Texas, Florida, Ohio, New York, Georgia, New Jersey, Michigan, Virginia, Nevada, and Illinois. *Hotlines Statistics*, NAT’L HUMAN TRAFFICKING RESOURCE CTR., <http://www.traffickingresourcecenter.org/states> (last visited Sept. 9, 2016).

36. THE N.Y. TASK FORCE, *supra* note 31, at 11–12; see also THE LEGAL AID SOC’Y, LOW INCOME COMMUNITIES FROM THE LEGAL SERVICES PERSPECTIVE (2014) (noting that nearly 2.2 million New York City residents are uninsured and 80% pay at least 50% of their income toward rent, leaving only \$4.40 daily per household member for all other needs); U.S. BUREAU OF LABOR STATISTICS, NEW YORK CITY ECONOMIC SUMMARY (2016), http://www.bls.gov/regions/new-york-new-jersey/summary/blssummary_newyorkcity.pdf (noting that New York City residents have an unemployment rate of 5.6%, and half of families’ income goes towards basic necessities, such as rent and food).

37. THE N.Y. TASK FORCE, *supra* note 31, at 12.

three or more problems.³⁸ The report also revealed that fifty-eight percent of households with a disabled family member reported having at least one legal problem, with twenty-nine percent experiencing three or more problems.³⁹

B. Civil Legal Needs of Low-Income Populations

As a comprehensive study does not exist to assess the public's civil legal needs or whether the legal aid or pro bono services provided in a given city, county or state match the needs of the low-income populations within those areas, this Article will provide a general understanding of the legal needs of the poor through statistical information from various sources.

1. Cases or Matters Handled by LSC-Grantees

Most LSC-funded civil legal aid organizations focus on providing assistance in the areas of family law (including divorce, child support and custody, guardianship, and domestic violence) and housing law (including evictions, foreclosures, mortgage renegotiation, and landlord-tenant disputes), which represent roughly two-thirds of all cases closed by LSC-grantees in 2014.⁴⁰ Almost a fourth of cases closed in 2014 were income maintenance cases (including food stamps, government benefits, and unemployment compensation) and consumer cases (predominately bankruptcy, debtor relief, and collection matters).⁴¹ The roughly fifteen percent of cases remaining fell within the areas of health law (predominately Medicaid matters), employment law (including employment discrimination, employee rights, and taxes), individual rights (including civil rights and naturalization), juvenile representation (including abuse and neglect cases, delinquency, and guardianship), education rights (including special education, school discipline, and school access), and miscellaneous cases (predominately wills, advance directives, and powers of attorney).⁴² As articulated above, it is important to note that this study only reflects matters or cases undertaken on behalf of clients that are served by LSC-grantees, which is a limited group based on income qualifications, immigration status, type of claim, and resources.⁴³

2. Civil Legal Needs Studies

Although a comprehensive picture of the justice gap remains elusive, attempts have been made to understand the realm of issues faced by those low-income people who are either turned away after seeking legal help due to resource constraints or who do not seek legal help at all. In 2009, LSC collected data

38. *Id.*

39. *Id.*

40. LEGAL SERVS. CORP., *2014 by the Numbers*, *supra* note 12, at 17, 20.

41. *Id.*

42. *Id.*

43. 45 C.F.R. §§ 1611.3, 1620.1, 1626.3, 1633.3, 1643.1 (2015).

from LSC-grantees on the number of people who could not be served during a two-month period because the program lacked sufficient resources.⁴⁴ LSC-eligible clients were turned away after seeking assistance most often with family law issues (forty-one percent), miscellaneous issues (wills, advance directives, and powers of attorney) (fifteen percent), housing issues (other than foreclosure) (twelve percent), and consumer law issues (ten percent).⁴⁵ In 2010, Chief Judge Lippman's Task Force likewise attempted to complete a civil legal needs survey across New York State, which reflected that the most significant legal problems faced by state residents living at or below 200% of the federal poverty guidelines concerned health insurance or medical bills, followed closely by finances, employment and housing, and then by public benefits and domestic and family law issues.⁴⁶ The American Bar Foundation also recently conducted a study of civil justice experiences in a middle-sized American city, finding that the most common reported legal problems "involved bread and butter issues with far-reaching impacts: problems with employment, money (finances, government benefits, debts), insurance, and housing."⁴⁷

3. Cases or Matters Handled by Pro Bono Attorneys

In 2013, the American Bar Association (ABA) Standing Committee on Pro Bono and Public Service issued the results of its third study focused on measuring the pro bono activity undertaken by lawyers in the United States.⁴⁸ According to the study, attorneys that engaged in pro bono service most commonly undertook family law matters (roughly a third), followed closely by matters involving contractual law (twenty-one percent), trusts and estates (eighteen percent), nonprofit law (eighteen percent), real estate (seventeen percent), consumer law (sixteen percent), and criminal law (fifteen percent).⁴⁹ Roughly twelve percent of attorneys who responded to the survey assist clients with debt collection, labor and employment, business and corporate, and housing pro bono matters. Eight percent of attorneys reported handling immigration

44. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 1–2 (2009), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/Justice_GaInAmerica2009.authcheckdam.pdf [hereinafter 2009 DOCUMENTING THE JUSTICE GAP IN AMERICA].

45. *Id.* at 11.

46. THE N.Y. TASK FORCE, *supra* note 31, at 11–12, 28.

47. REBECCA L. SANDEFUR, AM. BAR FOUND., ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 3, 7–8 (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf.

48. AM. BAR ASS'N, STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS v (2013), http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf.

49. *Id.* at 10.

matters and four percent undertook youth law matters.⁵⁰ It is important to note, though, that despite distributing the survey to almost 380,000 attorneys, only 0.8 percent of attorneys responded.⁵¹ Although such a result is consistent with this type of study, the survey results, although informative, may not reflect the true breakdown of cases or matters handled pro bono by the private bar.

II. CIVIL LEGAL AID—THE COMPLEXITY OF THE DELIVERY SYSTEM

The development of the justice gap in the United States is the culmination of several barriers to access to justice by impoverished communities. The complexity of the U.S. civil legal system is, in and of itself, a tremendous barrier for low-income populations. As a starting point, it is structured in a way that requires an attorney in most, if not all, legal situations. Vulnerable populations, however, simply cannot afford to pay for counsel as they lack the necessary income or assets. According to the U.S. Census Bureau, the average family household income is a little over \$1,000 per week (before taxes),⁵² and an attorney's fees regularly exceed \$250 per hour.⁵³ As a result, the cost to obtain advice on, not to mention litigate, even simple legal matters is a non-starter for most poor families and can quickly become cost prohibitive or a significant financial hardship for modest-means families.

For low-income individuals attempting to proceed *pro se* or without counsel, they face an immediate barrier to access to justice when attempting to preserve, defend, or establish their rights. First, there is the federal-state dichotomy, through which two distinct, yet overlapping, court systems exist. Federal courts hear cases predominately involving conflicts arising under federal law and suits between citizens (including corporations) of different states.⁵⁴ State court systems handle a broad range of cases that most often affect the day-to-day lives of low-income populations.⁵⁵ Second, federal and state administrative agencies oversee legal matters involving the regulations promulgated by that particular agency. The case flow structure of a matter before a federal or state administrative agency varies greatly based on the substantive issue (e.g., immigration, social security, veterans benefits, etc.), making navigation of such

50. *Id.*

51. *Id.* at 2.

52. CARMEN DENAVAS-WALT & BERNADETTE D. PROCTOR, U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2014 4–5 (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf>.

53. See U.S. ATTORNEY'S OFFICE FOR D.C., USAO ATTORNEY'S FEES MATRIX – 2015 – 2016, <https://www.justice.gov/usao-dc/file/796471/download>.

54. 28 U.S.C. §§ 1331–32 (2012).

55. See *Federal vs. State Courts - Key Differences*, FINDLAW, <http://litigation.findlaw.com/legal-system/federal-vs-state-courts-key-differences.html> (last visited Nov. 5, 2016); see also LEGAL SERVS. CORP., 2009 DOCUMENTING THE JUSTICE GAP IN AMERICA, *supra* note 44, at 1 (“[S]tate courts, especially those courts that deal with issues affecting low-income people, in particular lower state courts and such specialized courts as housing and family courts, are facing significantly increased numbers of unrepresented litigants.”).

proceedings difficult.⁵⁶ Finally, the substantive law governing many legal issues faced by low-income populations is varied, complex, and often founded on ancient notions.⁵⁷ Navigating this system is challenging, even for those individuals who are practicing lawyers or who have studied the system in great depth.

Moreover, many impoverished individuals faced with legal problems frequently do not understand that they need legal help, do not know where to turn to obtain that help, or are unaware of the availability of free legal assistance.⁵⁸ Some have poor literacy skills or limited English proficiency, others may also have physical and mental disabilities.⁵⁹ Additionally, some have difficulty traveling to a lawyer or legal aid program due to geographical distance and isolation, challenging work and child care situations, or a lack of access to transportation.⁶⁰

Many low-income people also do not seek help because they mistrust or fear the legal system or do not believe a legal aid program will be able to assist them.⁶¹ The cultural or ethnic backgrounds of some low-income populations may also create barriers to access to justice because culture impacts one's level of comfort with the adversarial nature of the legal system, how one interacts with authority figures, and even one's ability to share personal problems with

56. See D.C. ACCESS TO JUSTICE COMM'N, JUSTICE FOR ALL? AN EXAMINATION OF THE CIVIL LEGAL NEEDS OF THE DISTRICT OF COLUMBIA'S LOW-INCOME COMMUNITY 24 (2008), <http://www.dcaccessjustice.org/files/CivilLegalNeedsReport.pdf> ("Community organizations and legal services providers cited agency unresponsiveness, the provision of misinformation and overly bureaucratic procedures as impediments to the low-income community's access to civil justice.").

57. See *id.* at 3 (finding that there are "extensive, varied and complex civil legal needs confronting the low-income community"); see also Denise R. Johnson, *The Legal Needs of the Poor as a Starting Point for Systemic Reform*, 17 YALE L. & POL'Y REV. 479, 486 (1998) ("The opportunities for reducing the formality of the forum and the level of expertise required to operate in it would be even greater if the substantive law could likewise be simplified.").

58. See SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 47, at 11–12 (finding that 46% of individuals facing legal problems handled it themselves, 16% relied on the assistance of members within their social network, 22% relied on third party assistance outside their social network, and 16% did nothing, and further finding that about two-fifths of respondents sought the assistance of an attorney in situations involving a court or tribunal, while only 5% sought an attorney's help in situations outside of court).

59. See D.C. ACCESS TO JUSTICE COMM'N, *supra* note 56, at 3 ("[M]any of the district's poorest residents also have physical or cognitive disabilities, do not speak English fluently, . . . [and] have poor literacy skills." (alteration in original)); see also SANDEFUR & SMYTH, *supra* note 25, at 10 ("Publicly supported programs exist to provide assistance in accessing civil justice to . . . people with disabilities (more than 36 million people) . . .").

60. See D.C. ACCESS TO JUSTICE COMM'N, *supra* note 56, at 3; see also HANNAH LIEBERMAN ET AL., OVERCOMING BARRIERS THAT PREVENT LOW-INCOME PERSONS FROM RESOLVING CIVIL LEGAL PROBLEMS 68 (2011), http://www.mncourts.gov/Documents/0/Public/administration/Final_MN-CABS_Study_September_2011.pdf.

61. See D.C. ACCESS TO JUSTICE COMM'N, *supra* note 56, at 3; LIEBERMAN ET AL., *supra* note 60, at xi–xii ("[L]egal aid organizations are not seen as problem solvers for low-income people, but as organizations that provide services for a limited range of legal issues . . .").

strangers.⁶² Relatedly, a “palpable social stigma that attaches to neediness” may likewise deter low-income individuals from seeking legal help.⁶³ And, unfortunately, due to the realities of living in poverty, many “may [also] have become used to accepting adversity and unfairness.”⁶⁴

Despite approximately 500 civil legal aid programs operating across the country,⁶⁵ a lack of sufficient funding for legal aid lawyers has likewise created a barrier to legal assistance for the poor.⁶⁶ As LSC has reported, for every eligible legal aid client assisted by a civil legal aid office, a similarly eligible client is turned away due to lack of resources by legal aid programs.⁶⁷ Relatedly, there are “well over ten times more private attorneys providing personal legal services to people in the general population than there are legal aid attorneys serving the poor.”⁶⁸ With 4,231 lawyers in LSC-funded programs and approximately 3,700 in non-LSC-funded programs, there is only one legal aid lawyer per 6,415 low-income people, compared to one lawyer providing personal legal services for every 429 people in the general U.S. population.⁶⁹

As such, in the face of all these myriad barriers, the public interest community developed a multitude of initiatives to increase the number of lawyers assisting the poor, as well as increase their capacity to address the overwhelming demand for legal services by the poor.

A. Increasing Supply: Initiatives to Expand Legal Aid into the Private Bar & Law Schools

1. Pro Bono Legal Services

In the face of threats to LSC funding and already limited legal aid resources, the ABA and LSC began making significant strides in the 1980s to involve the

62. LIEBERMAN ET AL., *supra* note 60, at viii–ix.

63. *Id.* at xii (internal punctuation omitted).

64. See D.C. ACCESS TO JUSTICE COMM’N, *supra* note 56, at 3 (alteration in original) (“Believing that change can occur is the first step in advocating for it; for many residents, this first step may be the hardest.”).

65. HOUSEMAN, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2013, *supra* note 17, at 2 n.1 (noting that this estimation does not include the roughly 160 programs affiliated with the Catholic Legal Immigration Network, law school clinics operated in over 200 law schools, or the roughly 900 pro bono programs).

66. See *id.* at 2 (“[T]here is not enough funding or pro bono assistance available to provide low-income persons who need legal advice . . .”).

67. LEGAL SERVS. CORP., 2009 DOCUMENTING THE JUSTICE GAP IN AMERICA, *supra* note 44, at 9–12 (“[A]lmost one million cases (944,376) per year are currently being rejected because LSC-funded programs lack sufficient resources to handle them.”).

68. See *id.* at 19, 21 (noting, though, that this methodology does not account for members of the private bar providing pro bono assistance to the poor).

69. See *id.* at 19; see also *Attorney Access: Number of Attorneys for People in Poverty*, NAT’L CTR. FOR ACCESS TO JUSTICE, <http://justiceindex.org/2016-findings/attorney-access/> (last visited Sept. 19, 2016) (finding a ratio of roughly 1:40 with respect to attorney access for people in poverty versus attorney access for those above the poverty line in the United States per 10,000 people).

private bar in the delivery of civil legal services.⁷⁰ In 1981, LSC issued an instruction to its grantees that directed them to divert a significant amount of their funds to engage private attorneys to assist LSC-clients.⁷¹ In 1996, through the work of the ABA Standing Committee on Pro Bono and Public Service, the ABA helped found the Pro Bono Institute (PBI), which launched the Law Firm Pro Bono Challenge.⁷² The Challenge was established as a means of expanding pro bono services within large law firms across the country by requiring signatories (limited to law firms with fifty or more attorneys) to publicly acknowledge their commitment to dedicate at least three or five percent of billable time to the provision of pro bono legal services to underprivileged and disadvantaged communities.⁷³

According to *The American Lawyer*, which surveys the Am Law 200 (law firms ranging in size from 150 to 4,000 lawyers with revenues from \$85 million to \$2 billion) on their commitment to pro bono, law firms are dedicating close to five million hours annually to serving the underserved.⁷⁴ According to PBI, over 140 large law firms are signatories of the Law Firm Pro Bono Challenge, dedicating more than 4.3 million hours in 2013.⁷⁵ This increase in pro bono service by the private bar is due in large part to the professionalization of pro bono, which is arguably one of the most creative and effective improvements to the delivery of legal services to low-income communities. Legal aid organizations with sophistication, vision, and funding have created full-time pro bono directors to manage the organization's pro bono practice (i.e., vetting cases, recruiting law firms, and often overseeing matters at a high level or providing substantive expertise and guidance).⁷⁶ Similarly, law firms have hired full-time pro bono counsel to manage their firm's pro bono practice, which often involves tasks such as vetting and identifying appropriate cases, staffing and

70. See ALAN W. HOUSEMAN & LINDA E. PERLE, CTR. FOR LAW & SOC. POLICY, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES 29–30, 33–34 (2007), <http://www.clasp.org/resources-and-publications/files/0158.pdf>.

71. *Id.* at 25 (“In 1984, LSC adopted a formal regulation that raised the required [private attorney involvement] allocation to an amount equivalent to 12.5 percent of a program’s LSC grant.” (alteration in original)).

72. See ASS’N OF PRO BONO COUNSEL, IMPROVING ACCESS TO JUSTICE THROUGH LAW FIRM PRO BONO 3 (2015), <http://viewer.zmags.com/publication/00375867#/00375867/1>; see also *Law Firm Pro Bono Challenge*, PRO BONO INST., <http://www.probonoist.org/projects/law-firm-pro-bono/law-firm-pro-bono-challenge> (last visited Sept. 9, 2016).

73. *Law Firm Pro Bono Challenge*, *supra* note 72.

74. See *Pro Bono Report 2015: Treading Water*, THE AM. LAWYER (July 20, 2015), <http://www.americanlawyer.com/id=1202730400870/Pro-Bono-Report-2015-Treading-Water?slreturn=20160727151446>; see also *Law Firm Profiles: The AM Law 200*, THE AM. LAWYER, <http://www.americanlawyer.com/law-firm-profiles> (last visited Sept. 9, 2016).

75. See PRO BONO INST., YEAR IN REVIEW 2014 11–12 (2015), <http://www.probonoist.org/wpps/wp-content/uploads/PBI-Year-in-Review-2014.pdf>.

76. See *About NAPBPro*, NAT’L ASS’N OF PRO BONO PROF’LS, <http://napbpro.org/about> (last visited Sept. 9, 2016) (describing NAPBPro as offering professional development opportunities for pro bono professionals at U.S. public interest agencies).

supervising matters, and managing all ethical and risk management issues within the practice.⁷⁷

In 2006, the Association of Corporate Counsel (ACC) and PBI launched the Corporate Pro Bono Challenge Initiative, through which chief legal officers at corporations commit to encourage at least one-half of their legal department staff to provide some form of pro bono service.⁷⁸ Historically, a serious impediment to in-house pro bono existed because many in-house lawyers were not admitted in the state where they were practicing, thereby prohibiting them from engaging in pro bono work.⁷⁹ Over the last decade, the rules have begun to change. Currently, thirty-two jurisdictions now permit pro bono work by in-house lawyers who are not licensed in the state.⁸⁰ The ABA House of Delegates also adopted in August 2014 a resolution requesting that in-house lawyers be allowed to do pro bono in the remaining jurisdictions.⁸¹ Advancement in altering state rules is reflected through the Corporate Pro Bono Challenge, which has attracted 130 corporations as signatories, with fifty-four percent meeting the challenge goal in 2012.⁸²

The promotion and expansion of pro bono legal services throughout the private bar has made a significant impact on the public interest community, allowing legal aid organizations to serve more low-income clients than they would have been able to do without such additional resources. Despite the economic downturn in which hundreds of Americans fell into poverty, the legal aid community, with the assistance of pro bono attorneys, has been able to maintain its level of support, serving over twenty percent of the legal needs faced

77. See ASS'N OF PRO BONO COUNSEL, *supra* note 72, at 3 (highlighting the history of the APBCo, which has become a powerful voice for law firm pro bono and has grown in the last ten years from less than sixty members from roughly fifty U.S. law firms to more than 165 members from almost 100 of the country's largest law firms, including a handful of members from Europe and Australia).

78. See CORP. PRO BONO, CPBO CHALLENGE REPORT: THE PATH OF IN-HOUSE PRO BONO (2015), <http://www.cpbo.org/wp-content/uploads/2016/03/2015-CPBO-Challenge-Report.pdf>.

79. See CORP. PRO BONO, PRO BONO DEVELOPMENT GUIDE: HOW TO START AN IN-HOUSE PRO BONO PROGRAM 7 (2013), <http://www.cpbo.org/wp-content/uploads/2016/06/In-House-Pro-Bono-Development-Guide.pdf> ("Most states permit [in-house] lawyers to work for their employers, often through a registration or authorization process, but restrict the ability of these lawyers to provide pro bono services to underserved communities." (alteration in original)).

80. Jurisdictions permitting in-house lawyers to engage in pro bono work include: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Washington, West Virginia, and Wisconsin. See CORP. PRO BONO, MULTIJURISDICTIONAL PRACTICE IN THE U.S.: IN-HOUSE COUNSEL PRO BONO 6-10 (2015), <http://www.cpbo.org/wp-content/uploads/2016/06/MJP-Guide-2016-June.pdf>.

81. See Terry Carter, *Let More In-House Counsel Do Pro Bono Service*, *ABA House Resolution Says*, ABA JOURNAL (Aug. 11, 2014), http://www.abajournal.com/news/article/let_more_in-house_counsel_do_pro_bono_service_aba_house_resolution_says.

82. PRO BONO INST., YEAR IN REVIEW 2013 10, 12 (2014), <http://www.probonoinst.org/wpps/wp-content/uploads/PBI-Year-in-Review-2014.pdf>.

by low-income populations.⁸³ Though of course this is not nearly sufficient, this percentage would have been much lower without the pro bono support from the private bar, as the legal aid community during the same period faced devastating funding cuts from federal and state governments and stark declines in contributions from private corporations, foundations, and individuals.

Moreover, the involvement of the private bar has allowed the public interest community to take on certain cases that would have been challenging given the legal aid organizations' limited resources. For example, large law firms are able to marshal the human and financial resources necessary to take on a subset of a legal issue that the legal aid community is unable to serve,⁸⁴ or to take on impact litigation cases, which can impact a significant portion of a community rather than just one individual. Many law firm pro bono programs also cover expenses associated with specific matters, including court filing fees, immigration filing fees, and costs associated with deposition services and hiring interpreters, translators, investigators, and experts.⁸⁵ Most legal aid organizations and almost all clients (at least not without significant hardship) are unable to absorb these expenses.

In some instances, the private bar brings a level of expertise in a particular substantive legal area that allows a legal aid organization to expand its services to low-income populations facing a particular legal problem. By leveraging the knowledge of the trusts and estates lawyers at a large law firm, a Chicago legal aid organization was able to expand its services to low-income individuals and families facing complex situations in probate court.⁸⁶ Relatedly, through leveraging the knowledge and talent of tax lawyers at large law firms, a nonprofit

83. Compare LEGAL SERVS. CORP., 2009 DOCUMENTING THE JUSTICE GAP IN AMERICA, *supra* note 44, at 1–2, with LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 13 (2007), <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf>.

84. See generally Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 YALE L. & POL'Y REV. 369, 381 (1998). For example, in social security and disability insurance claims many legal aid organizations only have resources available to assist low-income individuals with obtaining benefits; however, many SSI/SSDI recipients face actions by the government to recoup an overpayment of benefits due to the complex formula to calculate such benefits. As repayment obligations and reduced benefits can have a severe impact on beneficiaries (leading to homelessness, food insecurity, etc.), Illinois law firms are committed to handling this particular legal issue. See *Volunteer Information and Training Resources: About the SSI/SSDI Overpayment Project*, ILL. LEGAL AID ONLINE, <http://overpayment.illinoisprobono.org/legal-information/volunteer-information-and-training-resources> (last visited Sept. 19, 2016).

85. ONE JUSTICE, CALIFORNIA PRO BONO BEST PRACTICES GUIDE 45 (2014), [http://www.one-justice.org/clientimages/53135/california%20pro%20bono%20best%20practices%20guide%20\(2014%20ed.\)pdf](http://www.one-justice.org/clientimages/53135/california%20pro%20bono%20best%20practices%20guide%20(2014%20ed.)pdf) (noting that law firms typically cover costs that are “normally incur[red] in the handling of cases, including costs relating to messengers for documents, court filings, and the use of experts”).

86. Claire Bushey, *Big Law Already Had a Pro Bono Problem. Then the Budget Crisis Happened*, CRAIN'S CHI. BUS. (Sept. 12, 2015), <http://www.chicagobusiness.com/article/20150912/ISSUE01/309129990/big-law-already-had-a-pro-bono-problem-then-the-budget-crisis-happened>.

focused on promoting financial stability by offering tax and financial services was able to extend its reach by providing counsel in tax controversies before the U.S. Tax Court.

Although many law firms, in-house legal departments, and even law-related divisions of the government have embraced pro bono, each of those organizations' primary focus is not on access to justice for low-income populations (after all, they are, for the most part, for-profit businesses), and each of those organizations' pro bono programs are impacted by other goals, responsibilities, and interests. For example, it is well known within the public interest community that low-income populations frequently face problems involving family law.⁸⁷ It is also well understood that it is challenging to get pro bono attorneys to take on family law cases.⁸⁸ Many reasons for this challenge exist, including concerns that the matters are too "messy," arguments against expending precious resources by having large law firms fighting over visitation dates, or desires by the law firm or lawyer to take on a "sexier" matter.

Relatedly, law firm lawyers live in the billable-hour world, through which there are intense demands on a lawyer's time by the law firm itself, but more importantly by the law firm's clients. Pro bono is often seen as a great part of law firm life, but one that needs to be fit in among a lot of other demands.⁸⁹ This leads to lawyers seeking opportunities that fit within their practice; in other words, opportunities that provide them with skill development, leverage their existing expertise, or are brief or simple enough in nature as to not overburden the lawyer's schedule.⁹⁰ As a result, pro bono programs may not necessarily match well with the actual legal needs of the relevant communities, but rather reflect the interests and availability of the lawyers.

2. Law School Clinics

Beginning in the 1960s, a few law schools began developing clinical legal education programs that focused on providing legal services to underprivileged communities.⁹¹ But the model was slow to develop as it was met with tension and criticism from traditional faculty who questioned the value of experiential learning programs.⁹² By the late 1980s, however, there was a general consensus that clinical education is an effective teaching method for helping students

87. LEGAL SERVS. CORP., *2014 by the Numbers*, *supra* note 12, at 17, 20.

88. See Judy Ritts, *Pro Bono Services: A Family Law Experience*, 51 S. TEX. L. REV. 629, 631–33 (2010) (illustrating some of the difficulties associated with pro bono service in family law cases).

89. Bushey, *supra* note 86.

90. *Id.*

91. Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 998 (2004).

92. *Id.* at 999.

understand the problems lawyers confront in practice.⁹³ As a result, the growth in law school clinics or similar experiential learning has been tremendous.⁹⁴ Moreover, the ABA now requires for accreditation purposes that law schools include in their curriculum “one or more experiential course(s) . . . [which] must be a simulation course, a law clinic, or a field placement,” and that a law school “provide substantial opportunities to students for: (1) law clinics or field placement(s); and (2) student participation in pro bono legal services”⁹⁵ However, the precise number of law school clinics or pro bono programs, and the number or demographics of the clients served through the law schools, is unknown.

Similar to pro bono, the evolution of law school clinics has expanded the reach of the legal aid community. Whether through hybrid clinics (jointly led by the law school and a legal aid organization) or through stand-alone clinics (led exclusively by a professor/clinician), law schools are able to serve a subset of low-income populations that the legal aid community would otherwise be unable to serve.⁹⁶ Moreover, law school clinics help develop a public interest spirit within students, encouraging them to either pursue careers in public interest or bring a pro bono ethic to whatever career they choose; thereby increasing the number of lawyers willing to serve the underserved.

Although many law school clinics aim to represent the disadvantaged, at its core, a law school clinic’s purpose is to train law students in the practical aspects of legal practice. This focus dictates the substantive nature of the clinic as well as the type of clients served by the clinic. Moreover, faculty-student ratios (typically, a clinical faculty member teaches eight to ten students), curriculum structure (clinics are typically a semester in duration), demands on students (the clinic is just one of many courses on a student’s schedule), and limitations of a student practice license place restraints on the number of clients or complexity of matters undertaken by law school clinics.⁹⁷

B. Increasing Supply: Initiatives to Increase the Supply of Legal Aid & Pro Bono Lawyers

1. Mandatory Pro Bono Requirement

As a means of addressing the large, unmet need for lawyers to represent the poor, Chief Judge Lippman announced in May 2012 that a minimum of fifty

93. Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 188 (2008).

94. *Id.*

95. AM. BAR ASS’N, 2014—2015 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 16–17 (2014) (alteration in original), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.authcheckdam.pdf.

96. See Wizner & Aiken, *supra* note 91, at 999.

97. See *id.* at 100–02.

hours of pro bono service will be required of all individuals seeking admission to the bar in New York.⁹⁸ In his address at the New York Court of Appeals' annual 2012 Law Day, Chief Judge Lippman stated:

If pro bono is a core value of our profession, and it is—and if we aspire for all practicing attorneys to devote a meaningful portion of their time to public service, and they should—these ideals ought to be instilled from the start, when one first aspires to be a member of the profession.⁹⁹

California is quickly following suit, and Montana and New Jersey have a similar proposal under consideration.¹⁰⁰

As with law school clinics, the requirement has the potential to provide aspiring lawyers hands-on practice experience as well as inculcate a service ethic among tomorrow's lawyers, leading to more lawyers electing to serve the underserved as their primary career or incorporate pro bono within their practice. Despite the potential increase for services to the poor, however, the mandatory pro bono requirement places a tremendous burden on the legal aid community, an already overburdened system, to provide the supervision and training necessary to permit unlicensed individuals to fulfill the pro bono requirement. Such organizations are already experiencing constraints on the resources needed to directly serve their low-income clients, and the pro bono requirement adds another layer of responsibility on the organizations without the financial support to hire dedicated staff.¹⁰¹ Relatedly, any pro bono work undertaken by the student will more than likely reflect the student's interests, rather than the needs of the relevant population, and potentially place this additional burden on some organizations more than others (e.g., due to the controversy and media attention

98. Honorable Jonathan Lippman, Chief Judge of the State of New York, Address at the New York Court of Appeals' Annual Law Day (May 1, 2012), <https://www.nycourts.gov/whatsnew/Transcript-of-LawDay-Speech-May1-2012.pdf>.

99. *Id.*

100. See AM. BAR ASS'N, STANDING COMM. ON PRO BONO & PUB. SERV., NEW YORK'S 50-HOUR PREADMISSION PRO BONO RULE: WEIGHING THE POTENTIAL PROS AND CONS (2013); see also Martha Neil, *Following New York's lead, California bar officials plan to require pro bono work for admission*, ABA JOURNAL (Mar. 13, 2015) http://www.abajournal.com/news/article/following_new_yorks_lead_california_bar_officials_plan_to_require_pro_bono; MASS. ACCESS TO JUSTICE COMM'N, FINAL REPORT OF THE SECOND MASS. ACCESS TO JUSTICE COMMISSION (2015), <http://www.mass.gov/courts/docs/sjc/docs/massachusetts-access-to-justice-commission-final-report-april-2015.pdf> (securing the Massachusetts Supreme Judicial Court's approval to add "access to justice" to the Massachusetts bar exam, making Massachusetts the first state to add this concept to the exam for new lawyers); *Montana Pro Bono: Proposed Pro Bono Publico Reporting for Montana State Bar Applicants*, MONT. JUDICIAL BRANCH, http://courts.mt.gov/cao/ct_services/probono/lawstudents (last visited Sept. 20, 2016); N.J. COURTS, REPORT OF THE WORKING GROUP ON THE PROPOSED PREADMISSION PRO BONO REQUIREMENT (2013), <http://ncforaj.files.wordpress.com/2013/05/nj-report-on-50-hr-rule.pdf>.

101. Dan Grunfeld et al., *Mandatory Pro Bono is Not the Answer for Practitioners*, LAW360 (Apr. 22, 2014), <http://www.law360.com/articles/530036/mandatory-pro-bono-is-not-the-answer-for-practitioners>.

surrounding immigration, immigration legal aid organizations may bear a greater burden than legal aid organizations predominately focused on family law).

Moreover, an intense debate exists surrounding “mandatory volunteerism.” In a *Law360* article entitled *Mandatory Pro Bono is Not the Answer for Practitioners*, authors argue that a “mandatory pro bono requirement for practicing attorneys would have unintended consequences and hamper our ability to provide legal services to the indigent.”¹⁰² As noted above, arguments center on the pressure such a system would put on a currently under-funded legal aid system, as well as the disproportionate burden such programs place on solo practitioners and struggling young lawyers who lack the physical and financial resources to meet such requirements.¹⁰³ In addition, authors point to Meyer Goldman, “widely regarded as the founder of the public defender movement,” who once said, “Too frequently, the services (of lawyers appointed by the court with minimal or no compensation) are half-hearted or openly negligible . . . [t]he client pays the penalty, perhaps not for the crime charged, but often for his poverty.”¹⁰⁴ The authors, therefore, argue that mandatory pro bono will engender the same result.¹⁰⁵

2. *Pro Bono Reporting Requirements*

To track and promote pro bono, several states have instituted a mandatory¹⁰⁶ or voluntary¹⁰⁷ requirement to report the number of pro bono hours a lawyer has personally dedicated as part of her filing requirement to maintain her legal license. Such reporting requirements have the potential to encourage (or guilt) lawyers into dedicating some form of pro bono service and provide some mechanism for states to obtain statistical information about the amount of pro bono service being performed within the state. It has yet to be shown however that such a reporting requirement influences lawyers to undertake pro bono service. Because there is no real “stick” (i.e., whether you do pro bono or not, there is no impact on your license to practice), a reporting requirement may be an ineffectual mechanism for promoting pro bono and closing the justice gap.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. States with mandatory pro bono reporting requirements include: Florida, Hawaii, Illinois, Indiana, Maryland, Mississippi, Nevada, New Mexico, and New York. *See Pro Bono Reporting*, AM. BAR ASS'N, <http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html> (last visited Aug. 30, 2016).

107. States with voluntary pro bono reporting requirements include: Arizona, Connecticut, George, Kentucky, Louisiana, Michigan, Montana, Ohio, Oregon, Tennessee, Texas, Virginia and Washington. *See id.*

3. Continuing Legal Education

As a means of promoting pro bono throughout the bar, a handful of states have implemented rules that permit attorneys who take on pro bono cases to earn credit toward mandatory Continuing Legal Education (CLE) requirements to maintain their legal license.¹⁰⁸ This approach provides a direct incentive to undertake pro bono in lieu of a traditional CLE seminar. As with the pro bono reporting requirements, though, it has yet to be shown that such a mechanism influences lawyers to undertake pro bono service. Because traditional CLE courses can now often be taken at a lawyer's desk (often while multitasking, allowing lawyers to handle personal or professional matters while listening to a CLE seminar), CLE credit may not be a significant enough incentive to encourage lawyers who would not otherwise engage in pro bono to take on such a matter in lieu a traditional CLE course.

4. Legal Fellowships

A variety of legal fellowship programs have evolved over the last three decades as a way to serve more low-income individuals and families and expand the pool of public interest lawyers. Fellowships offered by the Skadden Foundation and Equal Justice Works (EJW) are arguably the most well-known. Each year, roughly thirty Skadden fellows¹⁰⁹ and more than fifty EJW fellows¹¹⁰ embark on a two-year fellowship working at legal aid organizations on projects focused on a specific legal issue or a specific client base. EJW also offers a one-year AmeriCorps Legal Fellowship now focused on removing barriers to employment and serving veterans and elders.¹¹¹

In February 2015, the Center for Court Innovation announced the launch of Poverty Justice Solutions, a new two-year fellowship program for twenty law school graduates focused on helping low-income New Yorkers preserve affordable housing and prevent homelessness.¹¹² Similarly, in 2014, Chief Judge Lippman announced the creation of the Pro Bono Scholars Program, which allows law students in New York to take the bar exam in February of their

108. States with rules granting CLE credits for undertaking pro bono matters include: Arizona, Colorado, Delaware, Louisiana, Minnesota, New York, North Dakota, Ohio, Tennessee, Washington, and Wyoming. See *CLE Rules*, AM. BAR ASS'N, <http://apps.americanbar.org/legalservices/probono/clerules.html> (last updated Dec. 2015).

109. See *Fellows*, SKADDEN FELLOWSHIP FOUND., <https://www.skaddenfellowships.org/fellows-list> (last visited Sept. 22, 2016).

110. See *Equal Justice Works Fellows*, EQUAL JUSTICE WORKS, <http://equaljusticeworks.org/communities/participants/fellowships> (last visited Sept. 23, 2016).

111. See *Equal Justice Works AmeriCorps Legal Fellowships*, EQUAL JUSTICE WORKS, <http://www.equaljusticeworks.org/post-grad/ameri-corps-legal-fellowships> (last visited Sept. 9, 2016).

112. See *Poverty Justice Solutions*, CTR. FOR COURT INNOVATIONS, <http://www.courtinnovation.org/project/poverty-justice-solutions> (last visited Aug. 29, 2016); Greg Berman, *Change is Possible*, SMALL SANITIES (Feb. 17, 2015), http://www.gregberman.org/2015_02_01_archive.html.

third year of law school in exchange for performing pro bono work full-time during the remainder of their school term.¹¹³

Such fellowships have the potential to expand the public interest community's reach, while at the same time providing newly graduated lawyers critical hands-on practice experience. Given the long-term commitment, often to a defined project, fellowships also have the potential, to a greater extent than law school clinics and the pro bono requirements, to inculcate a service ethic among new lawyers.

Despite the advantages, the effects of the fellowship may be short-lived. As noted above, the purpose of the fellowship is often to launch new, specific projects focused on a particular legal issue or client base.¹¹⁴ The success and longevity of the project depends heavily on (i) the ability of the fellow (a recent graduate with limited, *if any*, legal experience) to get the project off the ground within only two years; and (ii) funding for the continuation of the project following the completion of the fellowship.¹¹⁵ Though there is no doubt that the fellowship helps legal aid organizations touch more individuals during the fellowship, it is not often that resources are available to sustain the project long-term. Relatedly, though the statistics are favorable in terms of fellows remaining in the public interest field,¹¹⁶ it is often challenging for the host organization to find the funding necessary to employ the fellow after the fellowship ends.

5. *Loan Repayment Assistance Programs*

As an acknowledgement of the significant barrier law school debt creates for law students considering a career in public service, the government and law schools have developed loan repayment assistance programs (LRAPs).¹¹⁷

113. See *Pro Bono Scholars Program—A Legal Education Initiative*, N.Y. STATE UNIFIED COURT SYS., <http://www.nycourts.gov/attorneys/probonoscholars/index.shtml> (last updated Dec. 31, 2015).

114. See *supra* notes 114–16 and accompanying text.

115. See *The Foundation*, SKADDEN FELLOWSHIP FOUND., <https://www.skaddenfellowships.org/about-foundation> (last visited Aug. 29, 2016).

116. Almost 90% of Skadden fellows and more than 80% of Equal Justice Works fellows have remained in public interest or public sector careers. *Id.*; see also *About the Organization*, EQUAL JUSTICE WORKS, <http://www.equaljusticeworks.org/about/history> (last visited Aug. 31, 2016).

117. See *Loan Repayment Assistance Programs*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs.html (last visited Aug. 27, 2016) (noting that with law students facing law school debt of more than \$150,000 upon graduation and with median starting public interest salaries in the mid \$40,000s, many graduates will be dissuaded from pursuing public service legal jobs); *Law School LRAPs*, EQUAL JUSTICE WORKS, <http://www.equaljusticeworks.org/ed-debt/students/loan-repayment-assistance-programs/school-LRAPs/law-school-list> (last visited Sept. 9, 2016) (listing the more than 100 law schools providing LRAPs); *State Loan Repayment Assistance Programs*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs/state_loan_repayment_assistance_programs.html (last visited Sept. 1, 2016) (noting that Arizona, the District of Columbia, Florida, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New

LRAPs provide loan assistance or forgiveness to law school graduates working in the public interest or government sectors or in other low-paying legal positions.¹¹⁸ LRAPs are clearly an important incentive for law students to pursue a career serving the underserved. However, strict requirements as to limitations on income and the duration of service in a low-wage position, limitations on the type and amount of debt that may be forgiven, and the risk that LRAPs may be eliminated due to political pressures or limited funding, may dampen the potential for LRAPs to encourage significant increases in the public interest profession.

C. Increasing Capacity: Initiatives to Address the Demand by Low-Income Populations

1. Civil Gideon

Though there is no constitutional right to counsel in civil proceedings,¹¹⁹ some state legislatures have enacted statutes and some state courts have judicially decided that state-funded counsel should be provided as a right to some parties, typically concerning civil commitment or family law issues.¹²⁰ The public interest community has also launched pilot projects to provide counsel in a category of cases. For example, in 2009, Massachusetts launched two pilot projects providing counsel to tenants facing eviction and found that “extensive

Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Vermont, and Virginia have LRAP programs, but due to lack of funding, LRAPs have been suspended in Kentucky, Missouri, Nebraska, and Washington).

118. *State Loan Repayment Assistance Programs*, *supra* note 117.

119. *See supra* note 1 and accompanying text. *But see* Airey v. Ireland, 2 Eur. Ct. H.R. 305, 305, 319 (1979) (finding that the right to a fair hearing established by the European Convention required effective access to the court); Raven Lidman, *Civil Gideon as a Human Right: Is the U.S. Going to Join Step With the Rest of the Developed World?*, 15 TEMP. POL. & CIV. RTS. L. REV. 769, 775–76 (2006) (noting that (i) the result of *Airey* has been the establishment of a much broader civil right to counsel in most of the forty-seven member nations of the Council of Europe, and (ii) certain nations, including Australia, Brazil, most of the Canadian provinces, India, Japan, and New Zealand, have constitutional provisions or statutes establishing a broader civil right to counsel for indigent persons); MAURITS BARENDRECHT ET AL., HIIL, LEGAL AID IN EUROPE: NINE DIFFERENT WAYS TO GUARANTEE ACCESS TO JUSTICE? 5 (2014), http://www.hiil.org/data/sitemanagement/media/Report_legal_aid_in_Europe.pdf (describing how the notion of right to counsel plays out within the legal aid systems of Belgium, England & Wales, Finland, France, Germany, Ireland, the Netherlands, Poland, and Scotland); TASK FORCE TO STUDY IMPLEMENTING A CIVIL RIGHT TO COUNSEL IN MD., REPORT OF THE TASK FORCE 5 (2014), <http://www.mdcourts.gov/mdatjc/taskforcecivilcounsel/pdfs/finalreport201410.pdf> [hereinafter, MD. TASK FORCE] (noting that as a right established by statute, Finland is viewed as having one of the most comprehensive rights to counsel in civil matters, resulting in both high-income and low-income Finns using the courts and other formal dispute resolution processes to resolve disputes in equal numbers).

120. HOUSEMAN, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2013, *supra* note 17, at 14–19; *see also* N.D. ILL., U.S. DIST. CT. RULES., LR 83.11(G) (“Each member of the trial bar shall be available for appointment by the court to represent or assist in the representation of those who cannot afford to hire a member of the trial bar.”).

assistance from lawyers is essential to helping tenants preserve their housing and avoid the potential for homelessness”¹²¹ The California Judicial Council is currently overseeing seven pilot projects ensuring representation in child custody, guardianship, orders of protection, and most commonly, eviction cases.¹²²

Simply put, civil *Gideon* would provide access to the legal system for indigent Americans facing a myriad of civil legal issues. In his article entitled *Civil Gideon: An Idea Whose Time Should Not Come*, however, Laurence Siskind raises several interesting arguments against civil *Gideon*. He argues that civil *Gideon* assumes every indigent American is a deserving litigant, which is not reality, and it may lead our society to resort to litigation more frequently.¹²³ He also notes that it would require governments to only assist individuals at a particular income threshold, which is seldom fair, and as our criminal justice system has proven, it may lead to free counsel but not necessarily competent representation.¹²⁴ Finally, he contends that the states simply cannot afford it.¹²⁵

2. *Lawyering through Legal Clinics*

To extend their reach, many legal services organizations leverage the clinic model, which seeks to assist numerous low-income individuals or families simultaneously. Legal clinics can be structured to provide either (i) brief advice and counsel (i.e., brief advice that helps low-income individuals understand their rights and defenses, court or administrative procedure, or start-up requirements and laws);¹²⁶ (ii) limited scope representation (i.e., representation for a limited or narrow issue or matter, all of which takes place during the clinic);¹²⁷ or (iii) full representation (i.e., the clinic session provides a forum for initial advice

121. BOSTON BAR ASS’N TASK FORCE ON THE CIVIL RIGHT TO COUNSEL, THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION 3, 4 (2012), <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>.

122. See Erik Eckholm & Ian Lovett, *A Push for Legal Aid in Civil Cases Finds Its Advocate*, N.Y. TIMES (Nov. 21, 2014), <http://www.nytimes.com/2014/11/22/us/a-push-for-legal-aid-in-civil-cases-finds-its-advocates.html>.

123. Lawrence J. Siskind, *Civil Gideon: An Idea Whose Time Should Not Come*, AM. THINKER (Aug. 6, 2011), http://www.americanthinker.com/articles/2011/08/civil_gideon_an_idea_whose_time_should_not_come.html.

124. *Id.*

125. *Id.*; see also Jeanne Charn, *Celebrating the “Null” Finding: Evidence-Based Strategies for Improving Access to Legal Services*, 122 YALE L.J. 2206, 2213 (2013) (“The allure of a civil *Gideon* is dimmed by the prospect of massive, open-ended costs and nagging doubts about the value that representation by a lawyer adds in many routine matters.”).

126. See, e.g., ASS’N OF PRO BONO COUNSEL, LIGHTS, CAMERA, ACTION 22–23 (2015), <http://viewer.zmags.com/publication/00375867#00375867/1>.

127. See, e.g., *The Wills for Heroes Program*, WILLS FOR HEROES FOUNDATION, <http://www.willsforheroes.org/program.htm> (last visited Nov. 5, 2016).

and/or fact gathering that is then followed by full representation that takes place outside of the clinic session).¹²⁸

Leveraging the clinic model allows legal services programs to marshal resources simultaneously to serve more clients. This approach also reduces the amount of time spent explaining initial substantive and procedural issues to clients or training pro bono lawyers to handle the relevant matters, which in a non-clinical format takes place on a one-on-one or one-off basis causing legal aid lawyers or pro bono counsel to repeat the same information over and over again.¹²⁹ With the development of pro bono partnerships between a law firm and an in-house corporate legal department, the clinic model also helps encourage volunteerism among private lawyers and their clients. However, the majority of legal clinics only provide limited consultation or representation.¹³⁰ As such, for low-income individuals whose legal problem requires full representation, the clinic delivery model may be inadequate.

3. Virtual Lawyering

With many low-income clients outside of urban centers, coupled with demands on lawyers' time, the concept of virtual lawyering within the legal aid community is on the rise. For example, in 2012, in partnership with Cisco, DLA Piper LLP, and Fenwick & West LLP, the Pro Bono Project of Silicon Valley launched the Virtual Pro Bono Project, which connects volunteer lawyers with low-income individuals remotely through WebEx, Cisco's video conferencing platform.¹³¹ The low-income client is able to go to a convenient local site, such as a library, community center or legal aid office, and the volunteer attorney is able to provide brief legal advice from her desk.¹³²

Leveraging technology to provide legal services remotely can potentially increase a legal services program's ability to serve more clients, including those in rural or isolated areas or those who are simply unable for many reasons to travel downtown for a meeting ("connectivity problems").¹³³ It permits lawyers,

128. See, e.g., ASS'N OF PRO BONO COUNSEL, EVERYONE DESERVES A SECOND CHANCE 26 (2015), <http://viewer.zmags.com/publication/00375867#/00375867/1>.

129. See generally Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1883 (1999) ("Pro se clinics provide general information about the law, procedure, and practice to a group of litigants or prospective litigants who share a common category of legal issues.").

130. See *id.* (noting that the underlying idea for clinics is to provide participants "sufficient information" to understand the basic rules, procedures and substantive law governing their legal issue(s) or to "provide varying degrees of unbundled, or limited, services to individual litigants").

131. See *Community Change and Innovation: Law Firms Make Virtual Help a Reality*, S.F. BUS. TIMES (July 24, 2014), <http://www.bizjournals.com/sanfrancisco/feature/corporate-philanthropy/2014/fenwick-west-dla-piper-make-virtual-help-a-reality.html>.

132. *Id.*

133. Connectivity problems often affect clients from urban neighborhoods who cannot connect to legal clinics because of lack of transportation, child care issues, or conflicts of work schedules.

who experience immense time pressures, to complete the advice from their desk, which minimizes wasted travel time and encourages busy private lawyers to participate.¹³⁴ Virtual assistance also maintains, at least to some extent, the personal touch a client receives in an in-person meeting. Moreover, financial investment in a virtual clinic is minimal. By leveraging Skype, for example, Vinson & Elkins LLP invested less than \$300 (eight headsets costing \$35 each) to launch a virtual clinic focused on estate planning, family law, and landlord/tenant disputes.¹³⁵ The low investment cost and convenience for lawyers makes virtual lawyering very appealing.

The vast majority of virtual lawyering initiatives however only provide limited consultation, making virtual lawyering insufficient for low-income clients who need direct representation.¹³⁶ Also, as a key aspect of assisting clients can often be establishing a level of trust, the technology may be a roadblock or off-putting for non-tech-savvy clients.

4. Anonymous Lawyering

As a means of addressing connectivity problems as well as the limited supply of lawyers, Tennessee launched the Online Tennessee Justice platform, a website where qualifying low-income individuals can post civil legal questions to an anonymous lawyer.¹³⁷ Questions are posted to the queue where registered attorneys can review and respond.¹³⁸ Users have the opportunity to ask three different questions per year.¹³⁹ Following Tennessee's success and recognition for this initiative, Alabama, Indiana, Minnesota, South Carolina, and West Virginia have launched their own online justice systems.¹⁴⁰ Recently, the ABA Board of Governors unanimously approved the creation of a national interactive pro bono website—referred to as ABA Free Legal Answers—with a planned site launch in 2016.¹⁴¹

ABA Free Legal Answers, TENN. ALL. FOR LEGAL SERVS., <http://www.tals.org/abafreelegalanswers> (last visited Sept. 9, 2016); *Pro Bono Project*, VIRTUAL LEGAL SERVS., <http://www.probonoproject.org/vls/> (last visited Sept. 9, 2016).

134. *Pro Bono Project*, *supra* note 133.

135. Andrew Strickler, *Vinson & Elkins Goes Virtual for Texas Pro Bono Clients*, LAW360 (July 11, 2014), <http://www.law360.com/articles/555762/vinson-elkins-goes-virtual-for-texas-pro-bono-clients>.

136. See *Frequently Asked Questions—What You Need to Know*, PRO BONO PROJECT, <http://www.probonoproject.org/vls-faq> (last visited Sept. 9, 2016).

137. See *Starting an Online Justice Program*, TENN. ALL. FOR LEGAL SERVS., <http://www.tals.org/startonlinejusticeprogram> (last visited Sept. 9, 2016).

138. *Id.*

139. *ABA Free Legal Answers*, *supra* note 133.

140. GEORGE T. LEWIS, ADDING ON-LINE PRO BONO TO YOUR ACCESS TO JUSTICE TOOLKIT 2 http://www.americanbar.org/content/dam/aba/directories/pro_bono_clearinghouse/ejc_2015_73.authcheckdam.pdf (last visit Sept. 9, 2016).

141. Mary Ryan, *The Standing Committee on Pro Bono and Public Service Year-in-Review*, ABA CTR. FOR PRO BONO EXCH. (Dec. 21, 2015), <https://centerforprobono.wordpress.com/2015/12/21/the-standing-committee-on-pro-bono-and-public-service-year-in-review/>.

Implementing this technology has great potential to serve thousands of Americans.¹⁴² It leverages effectively the expertise of the private bar and provides a high return on investment. In addition, this model greatly increases the convenience for lawyers to provide legal services to the underserved on their own time.

All advice, however, is limited in nature. Therefore, this model is ineffectual for low-income individuals who need more robust service. Moreover, all aspects of the human element are removed, as there is no personal contact, which in some instances may impact the quality of the service. Limitations on the number of questions an indigent person may ask in a year may also be problematic given that studies show that many low-income individuals and families face more than three different legal problems in any given year.¹⁴³ But most importantly, this model requires low-income populations to self-identify their legal problem and understand it well enough to ask a relevant question, and then have the wherewithal to understand and effectively act upon any advice provided in the answer.

5. *Lawyering through Hotlines*

Many legal aid organizations also now operate legal hotlines, through which low-income individuals can seek the brief advice and counsel of an attorney over the telephone and potential referrals for more in-depth legal assistance, if available and necessary. According to information in the AARP's State-by-State Legal Hotline Directory, legal aid hotlines are operated in more than ninety-two legal aid programs in forty-five states, Puerto Rico and the District of Columbia.¹⁴⁴ Even more than virtual lawyering, but somewhat less than anonymous lawyering, utilizing a telephonic approach increases the convenience for lawyers to provide legal services on their own time. Unlike anonymous lawyering, lawyering through hotlines still preserves some aspect of the human element, allowing lawyers to build a sense of connection and trust with the individual on the other end of the phone line. However, all advice is limited in nature and some aspects of the human element are removed, which may impact the quality of legal services provided to the poor.

142. See ONLINE TENN. JUST., ONLINE TENNESSEE JUSTICE SERVICE REPORT (2013), <http://www.tba.org/sites/default/files/OTJ-UsageReport-061313.pdf> (indicating that more than 12,000 clients were served by the Tennessee Online Justice service during a two-month period in 2014).

143. LEGAL SERVS. CORP., 2009 DOCUMENTING THE JUSTICE GAP IN AMERICA, *supra* note 44, at 15.

144. HOUSEMAN, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2013, *supra* note 17, at 4; see, e.g., *About CARPLS*, CARPLS, <https://www.carpls.org/about-carpls/> (last visited Sept. 8, 2016) ("Founded in 1993 . . . CARPLS has helped more than 800,000 low and moderate-income residents find solutions to their everyday legal matters.").

6. Mobile Lawyering

In 2007, OneJustice launched the Justice Bus Project, which takes groups of private lawyers and law students on a bus, typically for a day, to provide brief legal advice to residents living in rural and isolated communities in Northern California.¹⁴⁵ The Justice Bus Project is a unique way of bringing legal resources, which are concentrated in urban centers, to low-income rural populations. Unlike anonymous lawyering, and to some extent similar to virtual lawyering and hotlines, this model retains the human element of in-person meetings that can be very valuable. This model, however, is structured to provide limited advice and assistance, and, therefore, is not conducive for individuals and families who need full representation. Moreover, it is unfortunately inconvenient for volunteers, making it challenging to get members of the private bar to give up at least a full day to travel to remote locations.

7. Self-Help Mechanisms

In response to the overwhelming amount of *pro se* litigants in the court system, the courts, bar associations, and legal aid organizations have spent considerable time and resources establishing self-help centers. When referring to self-help centers, it is important to note that some centers are run independently by a legal aid organization or bar association, while others are run by the court or run jointly by the court and a legal aid provider.¹⁴⁶ As Alan Houseman explained, the type of assistance provided through self-help centers can vary greatly:

Some programs provide only access to information about the law, legal rights, and the legal process in written form, on the internet, on videotape, through seminars, or through in-person assistance. Other programs actually provide individualized legal advice and often provide also legal assistance in drafting documents and advice about how to pursue cases. Often, programs provide both printed and internet-accessible forms for use by persons without legal training, and they may provide also assistance in completing the forms.¹⁴⁷

145. *Justice Bus Project*, ONEJUSTICE, <http://www.one-justice.org/justicebus> (last visited Sept. 3, 2016). Similarly, the Paris Bar launched the *Bus de Solidarité* (Solidarity Bus), which is a mobile legal services bus that travels around Paris to provide free legal consultations to underprivileged residents in proximity to their homes. See Gillian C. Lemaire, *Pro Bono Practice in France: The Current State and Direction*, PILNET (Jan. 25, 2011), http://www.pilnet.org/index.php?option=com_content&view=article&id=52:enabling-civil-society&catid=29:books&Itemid=53.

146. See generally JOHN M. GREACEN, SELF REPRESENTED LITIGANTS AND COURT AND LEGAL SERVICES RESPONSES TO THEIR NEEDS: WHAT WE KNOW 12–13 (2002), http://iri.archive.isc.gov/sites/isc.gov/files/LRI/pdf/02/020045_selfrep_litigants_whatweknow.pdf (explaining some differences between court-based and legal service program self-help clinics).

147. HOUSEMAN, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2013, *supra* note 17, at 4.

Similarly, the location and staffing model of self-help centers vary. Some are located within courthouses, while others are located in public libraries, community centers, or legal aid offices.¹⁴⁸ Some, especially court-based centers, must be staffed by attorneys or personnel directed by attorneys, while others are staffed by volunteers.¹⁴⁹

According to a recent survey by the ABA, nearly 3.7 million people are served annually by the approximately 500 self-help centers that exist across the country.¹⁵⁰ Family law, child support, and domestic violence are the most common areas of law for which low-income clients receive services at self-help centers, “followed by guardianships, landlord/tenant matters, small claims, and general civil matters.”¹⁵¹ According to the survey, “[m]ost self-help centers provide some type of in-person services, document assistance and web-based information.”¹⁵² Less common services include interactive web-based forms; in-person, web or video workshops or tutorials; an online response system; or referrals to pro bono lawyers or lawyers offering low-cost unbundled services.¹⁵³

Leveraging technology to provide legal information and services remotely via the web or developing a lean staffing structure to provide in-person limited advice and counsel touches more people than feasible with direct representation.¹⁵⁴ Self-help centers also potentially help better prepare *pro se* litigants for court hearings and related procedures, which reduces the burden on the court system to help unprepared litigants navigate the process.¹⁵⁵ Plus, locating self-help centers onsite at courthouses brings legal assistance directly to unrepresented litigants, rather than requiring them to actively seek such assistance elsewhere.¹⁵⁶

However, the vast majority of self-help centers only provide limited consultation, document preparation, or web-based information to low-income populations.¹⁵⁷ As such, for clients who need in-depth representation by a lawyer, self-help clinics are inadequate. As noted in the ABA survey, most respondents indicated that their clients “would benefit from limited scope

148. *Id.* at 31.

149. *Id.*

150. AM. BAR ASS’N, STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., THE SELF-HELP CENTER CENSUS: A NATIONAL SURVEY 1, 16 (2014), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_self_help_center_census.authcheckdam.pdf.

151. *Id.* at 15.

152. *Id.* at Executive Summary, 11–12, 14.

153. *Id.* at Executive Summary.

154. See generally JUDICIAL COUNCIL OF CAL., ADMIN. OFFICE OF THE COURTS, MODEL SELF-HELP PILOT PROGRAM: A REPORT TO THE LEGISLATURE 6–7 (2005) (explaining how technology can expand access to legal services by enabling attorneys to reach a larger number of people than would be possible under a traditional representation model).

155. *Id.* at 3–4.

156. *Id.* at 8.

157. AM. BAR ASS’N, *supra* note 150.

representation, though only 38% of the [self-help] centers provide information about such services and only 15% indicated that their community has a limited scope lawyer referral service panel.”¹⁵⁸ Relatedly, with respect to court-run or joint-court self-help centers, such centers are required to provide any information and/or counsel in a neutral manner, which prohibits the centers from advising low-income populations on strategy, key defenses, or advocacy.¹⁵⁹

Moreover, it is unknown whether self-help actually works or what level of self-help is required as no comprehensive study has evaluated this model.¹⁶⁰ Self-help materials may actually be unhelpful, which some attribute to the fact that most are written by lawyers and in English, while others blame the complexity of the substantive law as a barrier to simple and understandable materials.¹⁶¹ Another downside to this model in its current form is the lack of assessment of a person’s ability to self-advocate (e.g., evaluation of a person’s education, circumstances, or language barriers; the presence of any power imbalance in the underlying matter; and the complexity of the matter or substantive law involved).

8. Court-Approved Forms

As an extension of self-help, legal aid organizations, often in partnership with the courts, have developed court-approved forms or document assembly applications. In 2001, the Legal Aid Society of Orange County in partnership with the Superior Court of California in Orange County developed I-CAN! (Interactive Community Assistance Network), which helps *pro se* litigants prepare legal pleadings and other court forms using an online questionnaire and step-by-step instructions.¹⁶² In 2005, Pro Bono Net launched LawHelp

158. *Id.* at 27 (alteration in original).

159. JUDICIAL COUNCIL OF CAL., ADMIN. OFFICE OF THE COURTS, GUIDELINES FOR THE OPERATION OF SELF-HELP CENTERS IN CALIFORNIA TRIAL COURTS 6–7, 21 (Feb. 29 2008), http://www.courts.ca.gov/documents/self_help_center_guidelines.pdf.

160. *See* GREACEN, SELF REPRESENTED LITIGANTS AND COURT AND LEGAL SERVICES RESPONSES TO THEIR NEEDS, *supra* note 146, at 1–2. The American Judicature Society studied 25 self-help programs and determined that none of them had a system in place to evaluate the programs. As a result, there is no available evidence to show whether *pro se* litigants who seek assistance from self-help centers are able to resolve their cases more efficiently or effectively than those who do not.

161. *See* Haddon, *supra* note 4, at 4 (“Easily available court documents and call stations . . . may not be useful to immigrants or others who have language or literacy barriers.”); *see also* Sarah Burton, *What Self-Represented Litigants (Actually) Want*, *LAWNOW* (June 30, 2015), <http://www.lawnow.org/what-self-represented-litigants-actually-want/> (“We are failing to provide [self-represented litigants] with practical, readable and consistent legal information Court forms are unnecessarily complex, use legal jargon and contain unhelpful notations Self-help materials are overwhelmingly focused on substantive law at the expense of much more practical nuts-and-bolts concerns.” (alteration in original)).

162. *See About I-CAN! Legal, I-CAN! LEGAL*, <http://www.legalican.com> (last visited Aug. 28, 2016) (“I-CAN! services are available throughout California and selected counties in Georgia, Massachusetts, Minnesota, North Carolina, Oklahoma and Virginia.”).

Interactive with legal aid organizations or court systems in thirty states to assist low-income individuals with filling out court forms and creating legal documents either on their own or in self-help centers.¹⁶³ In 2014, the Center for Computer-Assisted Legal Instruction (CALI) and the Center for Access to Justice (CAJT) at IIT Chicago-Kent College of Law launched the fifth version of A2J Author.¹⁶⁴ The A2J author is now a “cloud based software tool [focused on assisting] self-represented litigants by enabling non-technical authors from the courts, clerk’s offices, legal services organizations and law schools to build and implement user-friendly web-based interfaces for document assembly.”¹⁶⁵ A2J Author is also “used in 4 U.S. federal courts as the front end for their pro se e-filing systems and by several legal aid organizations ... for online intake.”¹⁶⁶

As with self-help centers generally, leveraging technology to provide legal information and services, such as the preparation of court documents remotely via the web, greatly increases the public interest community’s reach, helps better prepare *pro se* litigants, and harnesses the expertise of lawyers in an efficient and effective way. Moreover, financial investment, although potentially greater than simple web-based information, is still minimal, and the return potentially great, as the web-based information touches more people than feasible with direct representation.¹⁶⁷

By their very nature, however, web-based document assembly tools only provide limited assistance and knowledge to low-income populations. As such, for clients who require direct representation by a lawyer, the use of court-approved forms is insufficient. Relatedly, low-income populations often need assistance with understanding how to advocate for themselves, but unfortunately as courts are required to be neutral, court-approved forms cannot be advisory in nature.¹⁶⁸ As with self-help centers and materials, no confirmation exists that the use of court-approved forms is an effective model.¹⁶⁹

163. See *Our Programs*, PRO BONO NET, <https://www.probono.net/about/item.Mission> (last visited Sept. 10, 2016).

164. See *History of A2J Author*, A2J AUTHOR, <http://www.a2jauthor.org/content/history-a2j-author> (last visited Sept. 10, 2016).

165. See A2J AUTHOR, <http://www.a2jauthor.org> (last visited Sept. 19, 2016) (alteration in original).

166. See *A2J Author: Court Form Automation Software to Help Self-Represented Litigants*, HILL, <https://innovatingjustice.com/en/projects/a2j-author-court-form-automation-software-to-help-self-repr/plan> (last visited Sept. 3, 2016) (noting that since its original launch in 2004, almost 2.5 million *pro se* litigants have used A2J Author to prepare their court forms, creating over 1.5 million ready-to-file court documents using the software).

167. See generally JUDICIAL COUNCIL OF CAL., MODEL SELF-HELP PILOT PROGRAM: A REPORT TO THE LEGISLATURE, *supra* note 154, at 6, 11.

168. JUDICIAL COUNCIL OF CAL., GUIDELINES FOR THE OPERATION OF SELF-HELP CENTERS IN CALIFORNIA TRIAL COURTS, *supra* note 159, at 10.

169. Despite consensus by key stakeholders that due to the high volume of *pro se* victims in domestic violence court a standardized form was necessary for victims seeking orders of protection, because of the complexity of the statutes governing orders of protection, the Circuit Court of Cook County was unable to make the form any shorter than eleven pages. See generally *Order of*

9. *Quasi-Legal Professionals & Volunteers*

In 2015, the State of Washington began licensing individuals who pass a licensing examination as limited license legal technicians (LLLTs), making Washington the first state to license non-lawyers to provide legal advice and assistance to clients in certain practice areas (the first practice area being domestic relations) without the supervision of a lawyer.¹⁷⁰ Similar to the legal profession, the LLLT profession will be regulated by the state supreme court; be administered by a court-appointed licensing board; subject technicians to strict education requirements, disciplinary procedures, and ethical rules (including the laws of attorney-client privilege and a lawyer's fiduciary duty to the client); and require technicians to pass a qualifying examination and carry malpractice insurance.¹⁷¹ LLLTs will be permitted to set their own fees and open their own offices and "will be authorized to help clients prepare and review legal documents . . . explain legal procedures and proceedings . . . and gather relevant facts and explain their significance."¹⁷² However, LLLTs will be prohibited from engaging in legal research, unless such work is approved by a Washington lawyer; accompanying clients into court; and engaging in negotiations on the client's behalf.¹⁷³ "California is actively considering nonlawyer licensing," and several other states, including Connecticut, Massachusetts, Oregon, and Vermont are exploring similar options.¹⁷⁴

For now, New York has sidestepped the issue of licensing. In 2014, Chief Judge Lippman launched a pilot program in which non-lawyers, referred to as navigators, provide free assistance to unrepresented litigants in housing cases in

Protection Information, CLERK OF THE CIRCUIT COURT OF COOK CTY., ILL., http://12.218.239.52/Forms/pdf_files/DVOP001.PDF. See also JOHN M. GREACEN, RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE "STATE OF THE ART" 9 (2011), <http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf> ("The most significant conclusion of this study has been the realization that forms are necessary but not sufficient to meet the needs of self-represented litigants. The form identifies the information needed to request a particular form of legal relief, but does not provide the litigant with the ability to assess whether s/he has adequate grounds to obtain that relief, how to pursue the matter within the court once it has been filed, or how to obtain satisfaction or enforcement of a judgment if one is obtained. In effect, the provision of a form enables a litigant to open the front door to the courthouse, but does not help her or him to decide whether to open that door or, if the door is opened, how to proceed through the courthouse and to exit the court with an enforceable remedy.").

170. Robert Ambrogi, *Authorized Practice: Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, ABA JOURNAL (Jan. 1, 2015), http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the_justice_gap.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

Brooklyn and consumer debt cases in the Bronx and Brooklyn.¹⁷⁵ In the program, “navigators may also accompany unrepresented litigants into the courtroom. While they are not allowed to act as advocates in court, they are able to answer questions from the judge and provide the litigants ‘moral support.’”¹⁷⁶ Navigators are typically college and law students who commit to volunteer for a minimum of 30 hours within three months of their training, which consists of a 2 ½ hour seminar and a training manual covering basic housing and consumer-debt law and interviewing and communication skills.¹⁷⁷ Similarly, JusticeCorps, an AmeriCorps-funded program based predominately in California and Illinois, trains and supports college, law students, and graduates in providing procedural and navigational assistance for *pro se* litigants to make the court experience less intimidating.¹⁷⁸

The economics of a traditional legal practice make it challenging, if not impossible, for lawyers to offer their services to low-income and often modest-means individuals. As such, developing a skilled profession that can offer a subset of legal services at a lower cost (akin to nurse practitioners) has great potential to serve many more clients than feasible within the existing legal services delivery model.¹⁷⁹ With this model though, concerns exist that quasi-legal professionals still “lack the competency to handle complex legal matters without an attorney’s supervision” and therefore will fail to provide low-income populations with the quality of legal assistance they deserve.¹⁸⁰ Without regulation as articulated in the LLLT model or attorney supervision, issues regarding the unlicensed practice of law are prevalent and place non-lawyers at risk, potentially subjecting them to penalties and litigation. Moreover, concerns exist as to whether the LLLT model will have an impact on addressing the justice gap. Gillian K. Hadfield, professor of law and economics at the University of Southern California, argues, “[t]o make LLLT practice economical requires economies of scale . . . and that can be achieved only if private companies are allowed to provide legal services.”¹⁸¹

175. *Id.* See generally *Court Navigator Program*, N.Y. STATE UNIFIED COURT SYS., http://www.courts.state.ny.us/courts/nyc/housing/rap_prospective.shtml (last updated Mar. 19, 2014) (alteration in original).

176. Ambrogi, *supra* note 170.

177. See *Court Navigator Program*, *supra* note 175.

178. See *JusticeCorps*, CAL. COURTS, <http://www.courts.ca.gov/justicecorps.htm> (last visited Sept. 6, 2016); *Justice Corps*, CHI. BAR FOUND., <http://chicagobarfoundation.org/courts/justicecorps/> (last visited Sept. 6, 2016).

179. Ambrogi, *supra* note 170.

180. *Id.*

181. *Id.* (“Suppose LegalZoom or Rocket Lawyer could hire LLLTs and have them answering phone calls, engaging in online chats—maybe even manning retail outlets—and giving assistance actually filling out the forms and navigating the procedures, all based on protocols developed by lawyers and by the company . . . That’s the way you significantly reduce the gap. Then the LLLT can be hired at lower cost.”).

10. Leveraging Non-Lawyers or Non-Legal Professionals

Legal services organizations have begun to strategically utilize the assistance of law students, paralegals, administrative staff, and other non-lawyer volunteers.¹⁸² Most opportunities to fully engage non-lawyer volunteers in law-related projects involve undertaking legal research, drafting legal documents, providing general information about court procedure, or assisting with matters in the administrative legal system, such as helping an individual with filing for expungement of their criminal record, assisting homeless youth with enrolling in school, and helping individuals with filing initial paperwork to secure immigration status or federal benefits.¹⁸³ Non-lawyers can also play a valuable role as advocates, interviewers, interpreters, translators, researchers, coordinators, assistants, and administrators.¹⁸⁴

As with developing a skilled profession of quasi-lawyers, leveraging the talents of non-lawyers allows legal services programs to siphon off aspects of legal aid practice that do not require a licensed attorney, thereby reserving the lawyer assistance (which is limited) for those issues and matters that require legal expertise. Without the supervision of an attorney, however, concerns exist that non-lawyers, regardless of how skilled in their profession, still lack the competence necessary to handle legal-related matters and are at risk of engaging in the unlicensed practice of law.¹⁸⁵ On the flip side, requiring attorney supervision dampens to some extent the resource advantages of utilizing non-lawyer assistance.

D. Increasing Capacity: Alternative Structures & Payment Models

1. Unbundling

As noted above, the cost of legal services is prohibitive for low-income and often modest-means Americans.¹⁸⁶ In response to the increased justice gap, the legal industry followed other industries, such as the airline industry, the financial service industry and the music industry, by unbundling legal services. Unbundling (or limited-scope representation) is a delivery method of legal services in which a “lawyer breaks down the tasks associated with a client’s legal matter and provides representation only pertaining to a clearly defined portion of the client’s legal needs. The client accepts responsibility for doing the footwork for the remainder of the legal matter until reaching the desired

182. See N.Y.C. BAR ASS’N, COMM. ON PROF’L RESPONSIBILITY, NARROWING THE “JUSTICE GAP”: ROLES FOR NONLAWYER PRACTITIONERS 12 (2013), <http://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf>.

183. *Id.* at 12–21.

184. See generally Richard Zorza & David Udell, *New Roles for Non-Lawyers to Increase Access to Justice*, 41 *FORDHAM URB. L.J.* 1259 (2014) (outlining how nonlawyers are currently being utilized and why they should be given greater responsibility).

185. Ambrogi, *supra* note 170.

186. *Id.*

resolution.¹⁸⁷ Unbundled legal services include: advising on court procedures and courtroom behavior, coaching on strategy, conducting document review, drafting contracts and agreements, drafting pleadings, ghostwriting, dispute resolution, organizing discovery material, preparing exhibits, and providing legal guidance or opinions.¹⁸⁸

ABA Model Rule of Professional Conduct 1.2(c) formally permits unbundling: “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”¹⁸⁹ Rule 1.2(c) has been adopted either verbatim or with some modification (typically limiting unbundling only to noncriminal matters) in forty-six jurisdictions (including the District of Columbia); however, Georgia, Michigan, Texas, and West Virginia have not adopted this rule.¹⁹⁰

Unbundling legal services “provides the public with an alternative form of legal service delivery” that provides limited representation and increases access to justice.¹⁹¹ It potentially helps better prepare *pro se* litigants for court hearings and related procedures and may allow lawyers to make limited appearances in court to more effectively assist *pro se* litigants with navigating the complexity of court proceedings. Unbundling also provides an opportunity for alternative fee arrangements, such as fixed-fee or value arrangements and payment plan options.¹⁹²

Even unbundled services, though, may present financial hardships for the impoverished. The model also rests on the assumption that the client has the wherewithal (either financially or personally) to handle the other aspects of the matter. For underprivileged communities, this assumption may prove false if their ability to self-advocate is limited and/or other self-help or legal aid resources are insufficient or unavailable, potentially diminishing the value and helpfulness of the unbundled assistance.¹⁹³ Relatedly, the unbundling model by

187. Stephanie L. Kimbro, *Law a la Carte: The Case for Unbundling Legal Services*, GPSOLO, Sept./Oct. 2012, at 32.

188. *Id.* at 33.

189. MODEL RULES OF PROFESSIONAL CONDUCT r.1.2(c) (AM. BAR ASS’N 1983).

190. Jurisdictions that have adopted Rule 1.2(c) either verbatim or in part include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming. See *Unbundling Resource Center*, AM. BAR ASS’N, http://www.americanbar.org/groups/delivery_legal_services/resources.html (last updated Oct. 19, 2010).

191. Kimbro, *supra* note 187, at 32.

192. *Id.* at 33.

193. See KATHLEEN BIRD, UTILIZING LIMITED SCOPE REPRESENTATION IN THE BRAVE NEW WORLD OF FAMILY LAW PRACTICE 5 (2012), <http://www.mobar.org/course-materials/family/advanced/Utilizing%20LSR%20in%20Brave%20New%20World%20Bird.pdf> (arguing that in order to be a good candidate for limited scope representation, a person must be literate, organized,

its nature provides limited scope representation; in other words, assistance with only a component of the relevant legal problem. As such, for clients who need full representation, unbundling may not be appropriate. Moreover, a critical aspect to unbundling is ensuring the client understands the limited scope nature.¹⁹⁴ Through experience, this is challenging in disadvantaged communities.

2. *Sliding Scale*

Through the sliding scale model, lawyers charge different prices to different groups of people based on their willingness (or ability) to pay. As an example, Open Legal Services (OLS), a nonprofit law firm in Salt Lake City, Utah, indexes its hourly rate to each client's income and family size on a simple sliding scale that is published on their website. For a family of four earning \$30,000 per year, OLS charges its lowest fee of \$75 per hour. A family of four making in excess of \$73,000, however, is charged \$145 per hour for OLS's services.¹⁹⁵ "As OLS's average hourly fee to date . . . shows, their client base thus far has skewed toward the lower side of the matrix. (OLS will only take clients whose household income is between 1.25 and 4.25 times the poverty line. In Utah, half the state's population falls in that range.)"¹⁹⁶

As with unbundling, the sliding scale model offers the public an alternative form of legal service delivery that provides direct representation at a lower cost, thereby increasing access to justice. Such a model is particularly well suited for modest-means individuals and families who can afford to pay some amount for legal services, but require lower-cost options.¹⁹⁷

But even sliding scale fee arrangements may present financial hardships for the poor and working poor. Even a reasonable billing rate multiplied by hundreds of hours can be cost prohibitive for many members of the public. Relatedly, determining who has the ability to pay is not simple; for example, should the analysis take into account all of the relevant factual circumstances and the potential complexity of the case (which is not always identifiable at the beginning of a matter) to appropriately identify whether a potential client has the ability to pay? Also, it is unclear whether models that are sustainable at such rates are offering the quality of legal services that each member of the public deserves.

and detail-oriented; possess a business-like attitude; be able to follow instructions; and have practical expectations).

194. *Id.* at 6–7.

195. *Cost of Services*, OPEN LEGAL SERVS., <http://openlegalservices.org/cost/> (last visited Sept. 8, 2016).

196. Michael Zuckerman, *The Utah Lawyers Who Are Making Legal Services Affordable*, THE ATLANTIC (Aug. 7, 2014), <http://www.theatlantic.com/business/archive/2014/08/the-utah-lawyers-who-are-making-legal-services-affordable/375717/>.

197. *Id.*

3. Subscription Service

The subscription model, through which clients pay a monthly fee for access to legal services, is most commonly offered to business clients and is akin to a virtual general counsel.¹⁹⁸ However, subscription services can be structured in a way to potentially assist underprivileged communities with the legal issues they face.¹⁹⁹ The Rosen Law Firm, for example, offers a subscription service that provides ongoing support to *pro se* litigants either considering or engaged in divorce proceedings.²⁰⁰ For a monthly fee, clients receive access to an online attorney, a library of forms and educational materials, videos providing step-by-step instructions for filing for divorce and navigating court proceedings, and a money-back guarantee.²⁰¹

The subscription model has likewise developed as an alternative fee arrangement to make legal services more accessible to the general public, and like the sliding scale model, is particularly well suited for modest-means individuals and families.²⁰² Moreover, the ongoing relationship established between the lawyer and client in the subscription model permits lawyers to practice preventatively, addressing small problems before they erupt into significant ones.

It may be challenging, though, to convince individuals and families who struggle with food and shelter security to set aside a portion of their meager income for legal assistance (despite the fact that studies show that such individuals and families have a significant likelihood of facing legal problems).²⁰³ Also, it is unclear whether models that are sustainable at such rates are offering high quality legal services. From a lawyer's perspective, conflict issues are also challenging, as a lawyer would not be able to accept parties who could potentially be adverse to each other (e.g., spouses both seeking a subscription plan for help with the same divorce proceeding).²⁰⁴

198. See, e.g., BUNKER LAW GROUP, <http://bunkerlawgroup.com/> (last visited Sept. 9, 2016); *Virtual General Counsel*, TEX. STARTUP LAWYER, <http://txbusinessattorney.com/services/virtual-general-counsel/> (last visited Sept. 9, 2016).

199. See, e.g., LEGALSHIELD, <http://www.legalshield.com> (last visited Sept. 9, 2016); LEGALZOOM, <https://www.legalzoom.com/attorneys-lawyers/legal-plans> (last visited Sept. 9, 2016); ROCKET LAWYER, <https://www.rocketlawyer.com/legal-documents-forms.rl> (last visited Sept. 9, 2016); see also Michael Zuckerman, *Is There Such a Thing as an Affordable Lawyer?*, THE ATLANTIC (May 30, 2014), <http://www.theatlantic.com/business/archive/2014/05/is-there-such-a-thing-as-an-affordable-lawyer/371746/> (outlining the pros and cons of the subscription model).

200. ROSEN LAW FIRM, <http://www.rosen.com/online/> (last visited Sept. 9, 2016).

201. *Id.*

202. See, e.g., *About us*, LEGALZOOM, <https://www.legalzoom.com/about-us> (last visited Sept. 7, 2016).

203. See generally SANDEFUR & SMYTH, *supra* note 25 (“[L]ow income populations in specific states or communities have often found even higher rates of the incidence of civil justice problems.” (citation omitted)).

204. See generally Michael McCabe, Jr., *\$4.95 Flat Rate for Legal Advice Raises Ethical Concerns*, LINKEDIN (Oct. 4, 2015), <https://www.linkedin.com/pulse/495-flat-rate-legal-advice->

4. Flat-Fees

The flat-fee model offers individuals specified legal services (i.e., limited scope representation) at specific rates. Access Legal Care, PLLC, for example, was awarded the ABA Standing Committee on the Delivery of Legal Services' 2013 Louis M. Brown award²⁰⁵ for its innovative approach to increasing access to legal services for those of moderate income. It charges all clients a flat-rate to open a case (e.g., \$225.00 to draft a letter or a basic will or \$325.00 to prepare a complete set of documents), and if needed, charges clients an additional few hundred dollars upfront for up to two hours of attorney advice and/or services at their low hourly rate.²⁰⁶ Similarly, DiFilippo Holistic Law Center provides legal advice by phone for \$50.00, by email for \$40.00, by Skype for \$60.00, and legal and court coaching services for \$170.00.²⁰⁷ As with the subscription and sliding-scale models, flat-fee representation is particularly well suited for modest-means communities, making legal services generally more accessible.²⁰⁸ It may still be out of reach for individuals and families with significant demands on their limited resources. Moreover, it is unclear as to whether such a model leads to high quality representation, raising a plethora of ethical considerations.²⁰⁹

5. Stakeholder Collaborations

Recently, the public interest community has begun to make a small but significant shift away from the traditional model of one entity helping one client at a time, toward more resourceful, sustainable, and efficient interventions that do more with less. Following meetings with Vice President Joe Biden, for example, the Association of Pro Bono Counsel (APBCo) launched its IMPACT (Involving More Pro bono Attorneys in our Communities Together) initiative, through which it convened public interest stakeholders—law firms, legal services organizations, corporate legal departments, bar associations, law

raises-ethical-concerns-mccabe-jr-?trkSplashRedir=true&forceNoSplash=true (noting it may not be possible to ensure there are no conflicts when giving advice to clients needing immediate answers, which may present ethical issues).

205. *Louis M. Brown Award for Legal Access*, AM. BAR ASS'N, http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/louis_m_brown_award_for_legal_access.html (last visited Sept. 1, 2016).

206. *Michigan: Flat Fees, Automated Forms, and Affordable Payment Plans Combine to Create a Profitable Practice for Modest Means Clients*, ACCESS LEGAL CARE (Sept. 22, 2015), <https://www.accesslegalcare.com/blog/michigan-flat-fees-automated-forms-and-affordable-payment-plans-combine-to-create-a-profitable-practice-for-modest-means-clients/> [hereinafter *Profitable Practice for Modest Means Clients*].

207. *Texas Legal Advice*, DiFILIPPO HOLISTIC LAW CTR., <http://difilippoholisticlaw.com/practice-areas-online-legal-services/texas-legal-advice/> (last visited Sept. 2, 2016).

208. See, e.g., *Profitable Practice for Modest Means Clients*, *supra* note 206.

209. See McCabe, Jr., *supra* note 204 (“For \$4.95, it appears the program contemplates ‘off-the-cuff’ legal advice. But many questions, including those that appear simple, require a substantial amount of time for the lawyer to investigate. A bargain basement price does not negate the lawyer’s standard of care.”).

schools, social services agencies, the judiciary, and the government—to create 13 unique initiatives to address issues as ingrained as safe and affordable housing, re-entry to society after incarceration, homelessness, and financial security.²¹⁰ Similarly, 294 healthcare institutions in forty-one states have launched medical-legal partnerships (MLPs),²¹¹ an innovative delivery system that teams doctors, nurses, social workers and other health care professionals with lawyers to identify whether a patient has legal needs affecting their health care.²¹²

Federal and state government entities are likewise following suit. Recently, in a Presidential Memorandum, President Barack Obama formally established the White House Legal Aid Interagency Roundtable (LAIR), an initiative originally conceived of by the U.S. Department of Justice (DOJ) Access to Justice Initiative to promote access to justice for all.²¹³ Through this initiative, the DOJ launched the LAIR Toolkit, a dynamic online resource containing information about “how civil legal aid can help advance a wide range of federal objectives, including improved access to health and housing, education and employment, family stability and community well-being.”²¹⁴ LAIR aims to facilitate more effective collaboration between civil legal aid providers, social services agencies, and government policymakers.²¹⁵

Although the first Access to Justice (ATJ) Commission was launched in 1994 in the state of Washington, the expansion of this concept has only occurred within the last few years.²¹⁶ Now, ATJ Commissions exist in more than thirty-five jurisdictions, a growth spurred by a series of one-time grants in 2012 and 2013 to spread the ATJ Commission movement across the United States.²¹⁷ ATJ

210. ASS’N OF PRO BONO COUNSEL, *supra* note 72, at 16–27 (describing IMPACT projects in ten U.S. jurisdictions: Boston, Chicago, Detroit, Houston, Los Angeles, New York, Philadelphia, the San Francisco Bay Area, Seattle, and Washington, D.C.).

211. MEDICAL-LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/> (last visited Sept. 21, 2016).

212. See *Frequently Asked Questions*, MEDICAL-LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/faq> (last visited Sept. 6, 2016) (noting that the MLP model is transforming healthcare, by improving the health of patients and helping doctors simply be better doctors).

213. Memorandum from the President of the United States on Establishment of the White House Legal Aid Interagency Roundtable for the Heads of Executive Departments and Agencies (Sept. 24, 2015), <https://www.whitehouse.gov/the-press-office/2015/09/24/presidential-memorandum-establishment-white-house-legal-aid-interagency>.

214. U.S. DEP’T OF JUSTICE, WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE TOOLKIT 1 (2016), <https://www.justice.gov/lair/file/829321/download>.

215. Lisa Foster, *Establishing the White House Legal Aid Interagency Roundtable*, THE WHITE HOUSE: BLOG (Sept. 28, 2015, 3:43 PM), <https://www.whitehouse.gov/blog/2015/09/28/establishing-white-house-legal-aid-interagency-roundtable-0>.

216. See *Access to Justice Commissions*, AM. BAR ASS’N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj-commissions.html (last visited Aug. 27, 2016).

217. See *Directory and Structure*, AM. BAR ASS’N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj-

Commissions, which focus on improving access to justice through innovation, are typically comprised of state citizens representing the legal profession, business sector, academic community, religious community, military, and public interest and advocacy community.²¹⁸

Bringing together key stakeholders within and outside the legal profession to focus on generating ideas to close the justice gap has great potential to lead to innovation and transformation. But often the process is painfully slow, leading to more talk and less action. Moreover, the lack of funding to develop, launch, and replicate even the most innovative ideas is a significant roadblock. Although great ideas have developed within the purview of the existing legal delivery structure, those ideas requiring significant attorney resources face issues of scalability and longevity.

6. *Legal Incubators*

To address the economy's attendant job woes, coupled with the inability of law students to competently hang up their own shingle upon graduation, law schools and bar associations have launched legal incubators.²¹⁹ Legal incubators have the potential to "provide entrepreneurial and public interest-minded law graduates the opportunity to incubate law practices serving modest-means clients."²²⁰ The Chicago Bar Foundation, for example, recently launched its Justice Entrepreneurs Project (JEP), an 18-month program through which ten burgeoning sole practitioners rotate through three six-month modules.²²¹ During the first term, participants dedicate 20 hours a week to pro bono service, while also engaging in training, workshops and coaching on startup legal practices.²²² In the second term, they begin handling matters on behalf of

commissions/commission-directory.html (last visited Sept. 5, 2016) (noting the establishment of ATJ Commissions in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Vermont, Virgin Islands, Virginia, Washington, West Virginia, Wisconsin, and Wyoming).

218. See AM. BAR ASS'N, ACCESS TO JUSTICE EXPANSION PROJECT, HALLMARKS OF EFFECTIVE ACCESS TO JUSTICE COMMISSIONS 1-2 (2014), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_effective_atj_commissions_hallmarks.authcheckdam.pdf.

219. IIT Chicago-Kent College of Law, University of Missouri-Kansas City School of Law, the University of Maryland Francis King Carey School of Law, and Pace University School of Law, "recently launched sole practitioner incubators, joining the long-standing incubator program at City University of New York School of Law." Latonia Haney Keith, *Above and Beyond: Justice through Entrepreneurship*, CHI. LAWYER (Mar. 1, 2013), <http://www.chicagolawyeromagazine.com/Archives/2013/03/Above-Beyond-Latonia-Haney-Keith.aspx>.

220. *Id.*

221. *JEP Frequently Asked Questions*, CHI. BAR FOUND., <http://chicagobarfoundation.org/jep/faq/> (last visited Sept. 5, 2016).

222. *Id.*

modest-means clients, charging reasonable fees.²²³ Upon entering the third term, participants develop a fuller caseload, focus on marketing and business development, and prepare to transition their practice out of the incubator.²²⁴ JEP aims to create innovative law practices that leverage technology and utilize unbundling and flat fees.²²⁵

Legal incubators will expand services to modest-income clients, allow newer law graduates to build practices, and create a replicable new delivery model that can generate access to justice for modest-means communities across the country.²²⁶ However, it is unknown, at this point, whether the model is truly sustainable. In high cost urban centers, it may not be feasible for attorneys to make a living through this model (especially given the significant overhead costs), while providing the high quality of service that everyone deserves. Also, it will take time before there is a sufficient pool of attorneys who can make any significant impact on serving the existing, unmet legal needs of modest-means communities.

7. Community Courts

Community courts are neighborhood-focused courts that strive to engage stakeholders, such as residents, merchants, schools, and churches, to harness the power of the justice system to address local problems.²²⁷ The first community court in the United States was the Midtown Community Center, which was launched in 1993 in New York City and focuses on “quality-of-life” offenses, such as prostitution, graffiti, shoplifting, and vandalism.²²⁸ Inspired by the Midtown model, today, roughly forty community courts are in operation or are planned around the United States, Australia, and Canada, with Singapore, South Africa, and the United Kingdom having likewise launched or are interested in launching similar courts.²²⁹

Community courts break down the arbitrary jurisdictional boundaries of the modern court system and provide a swifter and more coordinated judicial

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. Carolyn Turgeon, *Community Courts Around the World*, CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org/research/community-courts-around-world?mode=4&url=research%2F4%2Farticle> (last visited Sept. 5, 2016) (noting involvement with the community takes place through local representative stakeholders on their respective Community Justice Council).

228. *Midtown Community Court*, CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org/project/midtown-community-court> (last visited Sept. 5, 2016); Lauren Kirchner, *Faster Justice, Closer to Home: The Power of Community Courts*, PACIFIC STANDARD (Oct. 16, 2014), <https://psmag.com/faster-justice-closer-to-home-the-power-of-community-courts-9ad5ceb6d66d#.f4xn6cslr>.

229. See Turgeon, *supra* note 227; see also *Community Court*, CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org/topic/community-court> (last visited Oct. 24, 2016).

response to neighborhood problems.²³⁰ Such courts act as a hub within a neighborhood, making restitution and collaboration more visible to local residents.²³¹ By providing onsite social services to address issues resulting from the underlying legal issue (e.g., drug treatment or mental health support), community courts strengthen families and help individuals avoid further involvement with the judicial system.²³² The Harlem Community Justice Center's reentry program, for example, "has reduced re-offending among participants by 19 percent."²³³ Moreover, the mediation programs and the youth courts, which provide intensive leadership training to young people, act as a prevention tool to avoid problems accelerating into court cases.²³⁴

To date, the disadvantages of community courts appear minimal. However, it is of note that in a span of twenty years since the launch of the first community court, very few U.S. courts have either restructured or developed using that model. One potential downside is that the community courts are still fairly narrow in scope (handling limited issues when their potential residents are suffering from a myriad of legal issues), and are often tied to the criminal justice system more so than to the civil justice system.²³⁵ However, as the current civil legal system is so fractured, coordination of even a portion of the system is a step in the right direction.

III. MOVING FROM A COBBLED TO A COHESIVE DELIVERY SYSTEM

In the face of a mounting justice gap, the public interest community has heroically developed a myriad of initiatives in an attempt to close that gap. With millions of Americans living in poverty and increasingly facing not just one but several legal problems in any given year, demand for civil legal aid is overwhelming—the system is currently drinking from a fire hose. Though it is often hard to do—in the face of all that rushing water—the author is asking the community to take a step back and critically evaluate the overall structure and infrastructure for delivering legal services to the poor.

While admirably attempting to fix the gap by developing innovative delivery mechanisms—hotlines, anonymous lawyering, virtual lawyering, clinics—we have created a complicated, fractured, and overlapping delivery system that is almost impenetrable to the typical poor person. In its 2010 study, the Civil Justice Infrastructure Mapping Project evaluated the percentage of states that

230. Kirchner, *supra* note 228 (noting that more serious offenses are still typically the realm of that jurisdiction's traditional trial court).

231. *Midtown Community Court*, *supra* note 228.

232. *See* Kirchner, *supra* note 228.

233. *Harlem Community Justice Center*, CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org/project/harlem-community-justice-center> (last visited Sept. 5, 2016).

234. *See, e.g., id.*

235. Henry Gass, *Community Courts Let the Punishment Fit the Crime Compassionately*, CHRISTIAN SCI. MONITOR (Jan. 10, 2015), <http://www.csmonitor.com/USA/Justice/2015/0110/Community-courts-let-the-punishment-fit-the-crime-compassionately>.

exhibited at least one example of the below-described delivery mechanisms for civil legal assistance:

[S]taffed civil legal aid offices; organized civil pro bono programs; formal judicare programs; clinical programs that serve a high volume of clients; telephone hotlines delivering legal advice; telephone hotlines delivering legal information; courthouse lawyer-for-a-day programs; computer kiosks in court houses that provide assistance to *pro se* civil litigants; staff assistance centers in court houses that provide assistance to *pro se* civil litigants; court websites that provide court forms; [and] court websites that provide information about accessing and using courts.²³⁶

Its results confirm that states differ substantially in how they deliver civil legal services.²³⁷ All fifty states and the District of Columbia have at least one legal aid office and at least one organized pro bono program serving low-income populations and/or other target populations.²³⁸ Plus, a little more than half of the states also offer at least one legal advice hotline, seventy percent offer at least one court-staffed self-help center, just under sixty percent offer at least one judicare program and/or informational kiosk for *pro se* litigants, close to forty percent offer at least one courthouse lawyer-for-a-day program, and just over twenty percent offer assistance through at least one high volume law school clinic.²³⁹

This study, however, does not reflect the extent of the diversity that exists within civil legal aid practice. As Rebecca Sandefur and Aaron Smyth aptly describe, similarly categorized legal aid programs may vary in terms of the kinds of services and the manner in which those services are provided:

For example, many staffed legal aid offices specialize in assisting with specific kinds of justice problems, such as evictions, or debt, or domestic violence restraining orders, or employment issues, or troubles with public benefits. Different staffed offices deliver services through very different means. For example, some provide one-on-one service to eligible members of the public, while others use group workshops in which one staff member provides information to many people simultaneously. Some staffed offices provide principally information or advice, seldom representing clients in court

236. SANDEFUR & SMYTH, *supra* note 25, at 11 (alteration in original); *see also Innovative Programs to Help People of Modest Means Obtain Legal Help*, AM. BAR ASS'N, http://www.americanbar.org/groups/delivery_legal_services/resources/programs_to_help_those_with_moderate_income.html (last visited Sept. 6, 2016) (listing the plethora of models, services and organizations attempting to fill the justice gap).

237. SANDEFUR & SMYTH, *supra* note 25, at 11–12.

238. *See generally id.* at 31–132 (reporting the services available for all fifty states and the District of Columbia).

239. *Id.* at 11.

proceedings or negotiations, while other offices provide representation to the majority of the clients they serve.²⁴⁰

Under our current system, it is up to the low-income American to navigate through this system, requiring her to figure out whom (or which legal aid organization) to call. The individual must often make multiple calls because the legal aid organization does not serve her particular legal need or only offers limited advice and counsel, or because the individual falls outside the legal aid organization's financial eligibility or is turned away, despite being eligible, due to the legal aid organization's lack of resources. As such, eligible legal aid client populations face significant barriers in both locating and securing the type of legal aid assistance necessary to resolve their legal issues.

So, the challenge before us is how to create a cohesive, navigable system, structured in a way to provide access to justice to as many poor Americans as possible with the highest and best use of admittedly limited resources. A daunting task? Absolutely. Yet, with great challenge comes great opportunity.

As a starting point, this Article advocates for three specific reforms—the creation of a “state-of-the-art” triage system, the infusion of business process improvement, and the development of legal information exchange organizations—that, in the author's opinion, would be transformative, scalable, and sustainable. Focusing on these few core reforms to the delivery system for legal services will ignite change that will ripple throughout the system, generating continual, focused, and long-term reform. One question that arises, though, is who should lead this change. It is the author's recommendation that national organizations, such as the ABA, APBCo, LSC, NAPBPro, NLADA, and PBI, along with state bar associations and ATJ Commissions, collaborate to develop a cohesive strategy—rather than the existing piecemeal approach—to implement reform. The author acknowledges that challenges exist to such an approach and funding and resource constraints will play a factor. But those barriers will always exist, and without collaboration, ownership, and accountability, change just simply will not occur.

Before diving in, it is worth noting that complexity within the system is driven not just by infrastructure, but also by substantive law. As a result, any structural reform may face significant barriers that cannot be overcome without substantive legal reform (which varies by substantive issue across jurisdictions).²⁴¹

240. *Id.* at 12.

241. See JEANNE CHARN & RICHARD ZORZA, BELLOW-SACKS ACCESS TO CIVIL LEGAL SERVS. PROJECT, CIVIL LEGAL ASSISTANCE FOR ALL AMERICANS 17 (2005), <http://www.courts.ca.gov/partners/documents/bellow-sacks.pdf> (“Simplifying, explaining, and demystifying legal processes may turn out to be one of the most cost- and outcome-effective strategies for increasing access to justice.”).

A. Identifying Legal Problems & Legal Resources

A significant challenge to an effective delivery model for legal aid services is the current lack of a comprehensive, cohesive, and “smart” triage mechanism. As discussed above, low-income and modest-means individuals and families face incredible complexity when seeking legal services (if they seek them at all) due to an overabundance of disparate information as well as a confusing legal system filled with multiple legal aid organizations (particularly in urban centers) that have varied screening criteria and a daunting procedural and substantive legal structure.²⁴²

It is therefore recommended that the public interest community prioritize the development of a state-of-the-art triage system, leveraging technology and proven methodologies to allow for (i) identification of the legal problem(s); (ii) assessment of the nature and circumstances of the particular problem; (iii) assessment of ability to self-help or self-advocate; and (iv) based on (i)–(iii), determination of the most appropriate options available to meet the client’s legal needs. In 2013, LSC issued a report on the national Technology Summit that brought together more than seventy-five representatives from the judiciary, government, business, and public interest sectors, as well as technology experts, academics, and private practitioners. In the report, LSC articulates the need for a similar development, describing it as a “‘legal portal,’ which, by an automated triage process, directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire legal process.”²⁴³

Such a triage tool should be designed to meet potential clients (whether indigent, low-income, or modest-means) “where they are.” In other words, it should be able to be used by clients, but perhaps more importantly by victim advocates, social services agencies, medical clinics and hospitals, shelters, legal aid organizations, and the courts. Obviously, education, marketing, and stakeholder collaboration around this issue will be critical. As discussed above, it is of great concern that many poor people do not even seek legal services for a variety of reasons.²⁴⁴ But education, access, and trust are barriers that can be overcome, at least to some degree, with other stakeholders leveraging this technology to help guide individuals facing legal issues to the relevant resources. In addition, the technology should leverage cutting edge studies on communication, presentation, and design to ensure any information conveyed or

242. *Id.* at 20, 46.

243. LEGAL SERVS. CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE 2 (2013), http://www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf.

244. REBECCA L. SANDEFUR, AM. BAR FOUND. & UNIV. OF ILL. AT URBANA-CHAMPAIGN, CIVIL LEGAL NEEDS AND PUBLIC LEGAL UNDERSTANDING HANDOUT 1–2 (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_-_civil_legal_needs_and_public_legal_understanding_handout.pdf (noting several important reasons Americans do not seek legal services).

questions asked are clear and understandable to its audience,²⁴⁵ and that the platform is appealing, engaging, and unthreatening. It is also ideal that the technology contain a sophisticated tracking mechanism, allowing for better evidence-based data on client demographics, client needs, and resource availability.

In developing the triage tool, identification of the legal problem(s) is key. Many self-help centers or methodologies often assume that underprivileged client populations are adept at self-identifying their own legal problems and needs.²⁴⁶ This is inaccurate.

An example of a well-respected “legal portal” is Illinois Legal Aid Online (ILAO).²⁴⁷ Although ILAO has made tremendous strides in improving access for Illinois residents, one key concern is the portal’s request that the individual seeking legal help self-identify his or her legal problem. From the “Get Legal Help” tab on the portal’s homepage, two information prompts are posed: “my problem is about” and “zip code.”²⁴⁸ The first prompt is a simple text box. As an example, if you type in “housing” in response to the first question, and “60606” (a zip code in downtown Chicago) in response to the second question, you receive 148 self-help articles or videos dealing with “housing” issues, referrals to thirty-four legal aid organizations that handle “housing” issues, and three other articles related to “housing.” If you know to narrow your results to “Section 8 housing” (and to put those words in quotation marks²⁴⁹), you receive seven self-help articles and videos and referrals to twenty-five legal aid organizations. When placing yourself in the shoes of a low-income individual struggling to keep shelter over her and her children’s heads, the author is concerned that the portal’s reliance on self-identification of legal problems, and the resulting information, is ultimately unhelpful.

Studies show that if you ask members of underprivileged communities “if they need a lawyer,” the answer across the board is “no”; however, if you probe correctly by asking questions such as “are you having problems with your landlord,” “are you receiving your benefits,” or “are you having trouble seeing a doctor,” the responses are overwhelmingly “yes.” In preparing a two-page summary for the DOJ Access to Justice Initiative, Rebecca L. Sandefur, summarized the issue perfectly:

Research reveals that when Americans are asked about their experiences with problems or situations that happen to be justiciable,

245. This includes ensuring that it is understandable by individuals with limited literacy skills, with no or limited English proficiency, and from various cultural and ethnic backgrounds.

246. See Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOC. JUST. 51, 75–81 (2010).

247. See ILL. LEGAL AID ONLINE, <http://www.illinoislegalaid.org> (last visited Sept. 7, 2016).

248. *Get Legal Help*, ILL. LEGAL AID ONLINE, <https://www.illinoislegalaid.org/get-legal-help> (last visited Sept. 7, 2016).

249. Without quotation marks, you receive 272 self-help articles and referrals to forty legal aid organizations.

“they often do not think of their justice problems in legal terms.” . . . When Americans do not take their justice problems to lawyers or courts, the most common reason is that the use of lawyers or the justice system is simply not considered at all. How people understand their problems plays a large role in how they respond to them. A recent study in Britain found that a significant predictor of whether people would take a problem to a legal advisor was whether or not they understood the problem as a legal problem, rather than, for example, a social problem, a moral problem, a private problem, or bad luck.²⁵⁰

Assessment of an individual’s ability to self-help or self-advocate is also crucial. The author is admittedly skeptical as to the benefits of self-help tools and centers.²⁵¹ Though the author believes that the “right person” (e.g., someone who has the requisite skill set to understand complex legal issues and procedure and to advocate for themselves) may benefit from self-help resources, it is arguable whether the average poor American is helped or hurt by such resources.²⁵² With limited empirical studies, there is a lack of evidence that self-help resources actually provide access to justice—not just “minimal help.” Although self-help tools may be “helpful” and although they may be viewed positively by the individual and the court system (subjective justice), such help may not lead to a fair and just result that all individuals should be entitled to regardless of income level (objective justice).²⁵³ It is clear, though, that self-

250. SANDEFUR, CIVIL LEGAL NEEDS AND PUBLIC LEGAL UNDERSTANDING HANDOUT, *supra* note 244; *see also* SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 47, at 16 (“When facing civil justice situations, people often do not consider law at all. They frequently do not think of these situations as legal, nor do they think of courts or of attorneys as always appropriate providers of remedy.”).

251. *See* Gary Blasi, *How Much Access? How Much Justice?*, 73 *FORDHAM L. REV.* 865, 876 n.34 (2004) (“Notwithstanding the popularity of reforms dependent on improving self-help, few lawyers or judges seriously believe that, when working with the same facts and law, a litigant with one hour of preparation can fare as well in his or her first courtroom appearance as someone with at least three years of training and, in most cases, extensive courtroom experience in similar cases.”). In his article entitled *Is There Such a Thing as an Affordable Lawyer?*, Michael Zuckerman describes an individual’s experience filing a lawsuit against his landlord in small claims court, where attorneys are generally prohibited. Zuckerman, *supra* note 196. Despite the individual’s education (a B.A. from Harvard and a doctorate in physics from the University of California at Berkeley) and despite his “access to friends and acquaintances with legal expertise who could give him advice throughout the process,” the individual recalled that: “It was confusing for me even with lawyers to give me advice and my own education . . . If I hadn’t had those things, I would not have been able to figure out what the hell they were talking about half the time.” *Id.*

252. *See* Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 *FORDHAM URB. L.J.* 37, 79 (2009) (recognizing *pro se* litigants are usually poor, vulnerable and usually face opponents who are in a position of power, and they would benefit from the representation of a skilled attorney who has the requisite knowledge of the legal system to maneuver their client’s case through the court system).

253. As an example, in 2001, Professor Gary Blasi undertook an empirical evaluation of the Van Nuys Legal Self-Help Center through which he developed a control group of unassisted

representation is and will continue to be a critical component of our civil legal system. As such, this Article calls for both investment in a comprehensive study(ies) to evaluate self-representation²⁵⁴ and the development of a triage tool that identifies whether or not an individual is capable of competently representing him or herself and that takes into account personality, disability, trauma level, nature and complexity of the case, power imbalance, and perhaps resources available.²⁵⁵

litigants and compared both outcomes of the cases as well as express satisfaction for both assisted and unassisted tenants.

One result was particularly striking: Interviewed shortly after receiving services, the self-help center clients were very pleased. Fully ninety-five percent said they were either “extremely satisfied” or “very satisfied” with the services they had received. It was easy to see why. The lawyers and paralegals in the office were remarkable in their client-centeredness and supportive attitudes, and meticulous in explaining to tenants all their rights under California law and local rent control regulations. We also did follow-up interviews with both sets of tenants after they had gone to court. Although the objective outcomes were similar for both center-assisted tenants and the unassisted control group, the center’s clients were actually *less* satisfied than the unassisted control group. Again, the explanation appeared to us fairly straightforward. The staff of the self-help center had done an extremely good job of explaining to tenants their legal rights under California law, but they had been less successful in communicating what was actually going to happen when the tenants got to court. The unassisted tenants were less well-informed, and thus perhaps more cynical but also less disappointed.

Blasi, *supra* note 251, at 869; *see also* GREACEN, SELF REPRESENTED LITIGANTS AND COURT AND LEGAL SERVICES RESPONSES TO THEIR NEEDS, *supra* note 146, at 2 (“We have little evidence on whether self-represented litigants who receive assistance are more likely to obtain a favorable court outcome.”); Haddon, *supra* note 4, at 4 (“[D]oes access to justice mean access to legal services or access to a just resolution of legal disputes?”).

254. *See* Letter from Sen. Blumenthal et al. to the Honorable Richard Cordray, Director of the Consumer Financial Protection Bureau (Dec. 9, 2014), <http://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/congressional-correspondence-2014-and-2015/> (seeking financial support for the Consumer Financial Distress Research Study, a randomized control trial in Maine examining the efficiency of the small claims court system, the value of financial education, and whether legal intervention programs (such as self-help) allow individuals in severe financial distress to adequately defend themselves when they are sued on credit card debt).

255. For example, Legal Aptitude, a proposed app with the tag line “Determine whether self-representation is the right option for you,” requires users to accomplish a mission, such as picking up an item for a friend in a distant location, and presents challenges along the way. *Legal Aptitude*, DEVPOST, <http://devpost.com/software/legal-aptitude> (last visited Aug. 30, 2016). The user’s choices indicate whether she has a particular skill or aptitude (such as one’s powers of persuasion and the ability to solve problems, approach people of authority to obtain information, and speak in public) to successfully self-represent herself in court. *Id.* At the end of the mission, the user is assigned a score—a higher score indicating that the user has some capacity to successfully represent herself, and a lower score suggesting the user would benefit from direct legal assistance. *See* NEW MEXICO ACCESS TO JUSTICE COMM’N, A.B.A. ACCESS TO JUSTICE COMMISSION EXPANSION PROJECT, DIAGNOSTIC TOOL TO ASSESS POTENTIAL FOR SELF-REPRESENTATION (2014), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_overview_nm.authcheckdam.pdf (describing the diagnostic tool developed by the New Mexico ATJ Commission to assess factors that may help or hinder a particular individual in self-representation); *RePresent: Online Game for Self-Represented Litigants*, NULAWLAB, <http://nulawlab.org/view/online-simulation-for-self-represented-parties>

After identifying the legal issue and assessing the individual's ability to self-advocate, the triage tool should recommend or refer potential clients to available resources. The technology should be easily modifiable, so that each state could tweak it depending on the resources at the clients' disposal within that particular state—self-help, anonymous lawyering programs, sliding scale lawyers, legal aid, and pro bono. The results, though, should be tailored to the individual and relevant legal issue; providing referrals to multiple resources is ultimately overwhelming and unhelpful.

B. Streamlining the Delivery of Legal Assistance

Put simply, the legal aid delivery model is inefficient. As noted above, civil legal aid programs focus on varying substantive legal issues (i.e., family law, immigration, housing, benefits, etc.); serve varying types of individuals (e.g., restricting service based on income or focusing on a certain subset of the population (veterans, domestic violence victims, immigrants, the elderly, the homeless)); provide differing levels of representation (e.g., brief service, self-help, full representation); leverage various delivery mechanisms (e.g., hotlines, clinics, online resources, etc.); serve predominately urban populations; and suffer from financial and resource constraints.²⁵⁶ Moreover, the legal aid system may not leverage its resources or the resources of pro bono and other volunteers effectively and efficiently, potentially expending attorney time to handle matters that could have been handled through other means, such as self-help centers, non-lawyer volunteers or anonymous lawyering resources.

Such a fractured, underfunded and complex system understandably leads to inefficiencies. That said, if a state's civil legal system is unable to efficiently address the identified legal needs of their low-income residents, the benefits of developing a "state-of-the-art" triage system are minimal. A well-publicized, well-running triage system will only lead to an increased backlog of cases if the efficiency of the process to deliver the legal services is not adequately addressed by the states.

As such, it is recommended that the public interest community infuse business process analysis (BPA) or business process improvement (BPI) (the systemic approach to helping an organization optimize its processes to achieve more efficient results by "mapping" how a task or function is performed) into the legal

(last visited Sept. 6, 2016) (describing an online game entitled RePresent, currently being developed by the NULawLab—an innovation lab at Northeastern University School of Law—to enable self-represented litigants to gain advocacy experience before their court proceedings). *But see* GREACEN, RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS, *supra* note 169, at 13–15 (describing a self-assessment instrument used in Kansas that assumes that underprivileged client populations are adept at self-assessing their own advocacy skills by asking questions such as: "Do you easily get angry under stress?," "Are you often frustrated by rules you think are unfair or should not apply to you?," "Can you make decisions and stick to them?," and "Can you live with your mistakes?").

256. *See supra* Section I.B.1.

aid system. Doing so will aid in making the system as efficient as practicable, allowing legal aid organizations to operate like a cohesive network, avoid duplication of efforts, and better leverage their own resources as well as the resources of the private bar, paraprofessionals, law students, and other non-lawyers. Key areas for evaluation will include: (i) intake procedures;²⁵⁷ (ii) delivery of legal services to clients;²⁵⁸ (iii) maximizing internal resources; (iv) leveraging outside resources (e.g., pro bono lawyers, volunteers, experts, translators, investigators); (v) case management and tracking; (vi) statistical collection and analysis; and (vii) information delivery and management. Experts from the national Technology Summit likewise agree that BPA/BPI is critical for improving access to justice, noting that the benefits include: (i) “identifying the optimal roles that each entity can perform in providing access to justice services” (such as how the private bar can make the best contribution); (ii) “maximizing the systemic impact of process improvements . . .”; (iii) “minimizing the duplication of efforts across the [public interest] entities”; and (iv) “expanding provider knowledge of others’ processes.”²⁵⁹ A state-of-the-art triage system combined with a more efficient legal aid delivery system across the country would transform the civil legal system in an incredibly profound way.

In engaging in BPA/BPI, the public interest community must purposefully acknowledge that all legal needs are not created equal. In *Civil Legal Assistance for All Americans*, Jeanne Charn and Richard Zorza encourage the identification of “types of problems, or clusters of problems, where legal help demonstrably protects and enhances the real-world situation of those served,”²⁶⁰ arguing:

257. When seeking legal services, low-income populations often have to proceed through various intake procedures, whether online forms, phone screenings, and/or in-person intake meetings, repeating the same information over and over again. Legal services organizations should streamline their intake procedures by obtaining and using information entered electronically into the triage system.

258. As an anecdotal example, as part of a firm-wide initiative, McDermott Will & Emery LLP launched a U-Visa and DACA pro bono project. As such a project involves federal law and is therefore not dependent on any state-specific laws or expertise, the firm aimed to engage as many of its lawyers across its U.S. platform as possible in the initiative. The biggest challenge was the disparate processes and approaches to providing the same legal services to clients referred from different legal services organizations in different states. It made internal collaboration and communication difficult, requiring the firm to streamline the process internally (taking the legal aid organizations out of the equation) in order to provide high-quality, consistent services to its clients across the country.

259. See LEGAL SERVS. CORP, REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE, *supra* note 243, at 8–10.

260. CHARN & ZORZA, *supra* note 241, at 16; see *id.* at 15–17 (advocating for reform by challenging the following five truisms about the access problem: (i) money alone will produce access, (ii) money is the only barrier to access, (iii) all legal needs are equal, (iv) lawyers will provide most of the service, and (v) the access problem can be solved solely by providing consumers with more assistance).

Almost any problem can be dealt with legally, but resorting to the law is sometimes an implausible or ineffective option. For example, a tenant could sue a noisy neighbor for interference with quiet enjoyment, but a more effective response might be to talk to the neighbor, complain to the landlord or call the police. . . . [F]ull access does not and should not mean that everyone who is financially eligible is entitled to subsidized assistance on any problem.²⁶¹

The example of the noisy neighbor above is a more obvious example of a situation in which leveraging the limited resources of an attorney may not be ideal. But let's take it one step further. When is it best to leverage self-help centers, standard court forms, or non-lawyers? When is it best to leverage the pro bono resources of the private bar? And, when is it best to leverage the resources of full-time legal aid and public interest attorneys? Unfortunately, to date, experts and academics have refrained from specifying the types of legal problems or categories on which low-income populations would be entitled to assistance and the type of assistance they would be entitled to.²⁶² This is in large part due to the time-intensive task of considering social and economic issues—considerations of power, expertise, and resources; and the complexity of the court system and substantive law.

As a means of expanding the benefits of a “state-of-the-art” triage system, however, this Article will attempt to differentiate among the legal needs within the civil legal aid practice based on their level of complexity. It is important to note that this analysis is not a perfect science and is merely a starting point for further research and reflection on how to redesign a cohesive legal aid delivery system.

The analysis reflected in the below chart is based on the author's experience in the pro bono practice as well as on various sources that provide guidance as to the complexity of certain legal problems. In order to characterize legal problems as involving a lower level or higher level of complexity, the author considered the imbalance of power between a low-income individual and the opposing party, system complexity, and simple bias on behalf of the courts, agencies, and other participants.

261. *Id.* at 21.

262. *Id.* (“While we do not specify the types of legal problems on which consumers will be entitled to assistance, we recognize that defining the coverage of a full access system is an essential task, one that should reflect local social, economic and demographic considerations.”).

While we may not know the full range of cases in which nothing short of counsel will suffice, we know that the greater the power lined up against a litigant and the more vulnerable the litigant, the greater the likelihood litigants will forfeit important rights, absent representation. Based on power dynamics alone, counsel presumptively would be more important in a custody case where the opposing party is represented by counsel and where the litigant is a victim of domestic violence. Counsel in small claims cases would be more important where the plaintiff is a business interest or other repeat player. Counsel presumptively would be needed in a higher percentage of eviction cases given the orientation of the housing courts, and the data showing that unrepresented tenants lose swiftly regardless of the landlord's representation. Limited representation models vary in terms of the extent of the assistance provided and who provides assistance. The greater the power imbalance, the more extensive the assistance and the greater the skill level of the advocate need to be. If fewer hurdles face unrepresented litigants, a lower level of involvement might suffice.²⁶³

Studies also suggest that limited or non-legal assistance is most effective when it involves completing forms as a means of assisting an individual with gaining access to the court system.²⁶⁴

Although the author supports moving away, in certain instances, from direct representation by lawyers,²⁶⁵ it is important to note that the mere presence of an attorney can potentially affect the outcome of the matter, leading to more favorable results for low-income populations.²⁶⁶ This is primarily because of bias and power imbalance.

Where the law favors landlords, creditors, employers or the government, that source of power will be stacked against tenants, debtors, and claimants. Where the procedural rules are complex, those familiar with the forum or with representation will better navigate the system, while those unfamiliar and unrepresented will be tripped up.

263. Engler, *supra* note 252, at 81–82.

264. *Id.* at 75–76.

265. Charn, *supra* note 125, at 2234 (“While I do not doubt that skilled lawyers will be needed due to inherent legal complexity, if swaths of problems can be resolved effectively with less or even no lawyer input, then lawyer services can be triaged where we have evidence that they *are* needed and will make a difference.”) (emphasis added).

266. See SANDEFUR, CIVIL LEGAL NEEDS AND PUBLIC LEGAL UNDERSTANDING HANDOUT, *supra* note 244, at 69 (2010) (“[L]awyer-represented people are more likely to win than are unrepresented people in every study.”); Engler, *supra* note 252, at 39–40 (“[P]arties represented by lawyers are between 17% and 1380% more likely to receive favorable outcomes in adjudication than are parties appearing pro se.”); Leandra Lederman & Warren B. Hrungr, *Do Attorneys Do Their Clients Justice? An Empirical Study of Lawyers’ Effects on Tax Court Litigation Outcomes*, 41 WAKE FOREST L. REV. 1235, 1281 (2006) (“[T]axpayer representation has a significant effect on financial outcome in cases that go to trial.”).

Where judges favor one category of litigants, such as landlords or employers, that dynamic provides a third source of power. Where housing courts seemed geared to provide judgments for the landlords, and small claims courts operate to benefit business plaintiffs, the orientation of the forum provides a fourth source of power.²⁶⁷

As such, though system redesign will naturally call for leveraging technology, self-help, non-lawyers, and pro bono lawyers, the importance of having not just any advocate but one with specialized expertise should not be overlooked for certain legal problems.²⁶⁸

Practice	Lower Level of Complexity	Higher Level of Complexity²⁶⁹
Civil & Human Rights	Reparations Voting Rights (Election Protection)	Constitutional Rights Disability Rights Discrimination Women's Rights Rights of the Elderly LGBT Rights Prisoner's Rights Privacy & Cyber Law Voting Rights
Civil Litigation	Small Claims Litigation (non-consumer)	Complex Disputes (e.g. torts and contracts)
Consumer & Finance ²⁷⁰	Advice/Counsel/ Negotiation: Bankruptcy/Debtor Relief Debt Collection Contracts/Warranties Loans/Installment Purchase Public Utilities	Litigation: Bankruptcy/Debtor Relief Debt Collection Predatory Lending Practices

267. Engler, *supra* note 252, at 78.

268. *Id.* at 79–81.

269. In the author's view, all impact litigation and appellate cases fall within the "higher level of complexity" category and require specialized legal advocates. As such cases can arise within various legal substantive areas, the broad categories of "impact litigation" and "appellate litigation" are not reflected in the chart.

270. Consumer law cases reflect a stark power imbalance of a typically unrepresented litigant pitted against a highly skilled lawyer representing a creditor. *See generally* THE LEGAL AID SOCIETY ET AL., DEBT DECEPTION: HOW BUYERS ABUSE THE LEGAL SYSTEM TO PREY ON LOWER-INCOME NEW YORKERS 26 n. 89 (2010), <http://www.mfy.org/wp-content/uploads/reports/DEBT-DECEPTION.pdf> (finding that 26 debt buyers who filed 457,322 lawsuits between January 2006 and July 2008 were awarded roughly \$1.1 billion in judgments and settlements, and within a 365-case sample, not a single debtor was represented by an attorney).

Consumer & Finance (continued)		Contracts/Warranties Loans/Installment Purchase Public Utilities Collection Practices/ Creditor Harassment Unfair/Deceptive Practices
Domestic & Family	Uncontested Proceedings: Adoption Guardianship Divorce/Separation Custody/Visitation Alimony & Other Support Temporary Orders of Protection ²⁷¹ Name Change Paternity	Contested Proceedings: ²⁷² Adoption Guardianship Divorce/Separation Custody/Visitation Alimony & Other Support Permanent Orders of Protection Family Preservation ²⁷³
Economic Sustainability (assisting nonprofit organizations and low- income entrepreneurs)	Start-Up Assistance Basic Contracts Basic Governance Basic Tax Advice Basic Employment	Complex Contracts Complex Governance Complex Tax Advice Complex Labor & Employment Tax Dispute Intellectual Property Financings Mergers, Acquisitions & Joint Ventures Restructuring, Insolvency & Dissolution

271. As seeking a TRO involves completing forms and a brief *ex parte* hearing before the judge (e.g., only petitioner is present) explaining why a restraining order is necessary, opportunities exist to leverage technology and self-help centers; however, as domestic violence victims are traumatized and the threat of violence is prevalent, appearing in court can be daunting, and studies suggest that outcomes are more favorable with representation even at this stage. *See e.g.*, MD. TASK FORCE, *supra* note 119, at 20.

272. It may be feasible to avoid in-depth representation in contested family law proceedings, but it will likely rest on the power dynamic of the parties involved in the litigation (i.e., whether the other party is represented by counsel).

273. Family preservation covers advocacy for families in the child welfare system that are inappropriately indicated for abuse or neglect by the state department of child and family services. As the power imbalance is stark and as the stakes are high (e.g., children are removed from care of their parents or parents have a record of abuse and neglect impacting employment), specialized counsel is warranted in this area. *See* THE FAMILY DEFENSE CTR., <http://www.familydefensecenter.net> (last visited Sept. 7, 2016).

Education* ²⁷⁴	Individualized Education Plans Behavior Plans	Due Process Hearings ²⁷⁵ Expulsion or Suspension ²⁷⁶
Employment & Taxes	Employment Benefits Tax Advice/Counsel EITC (Earned Income Tax Credit) Expungement & Clemency*	Employee Rights Employment Discrimination Sexual Harassment Wage Claims & Other FLSA Tax Controversy
Health* (insurance and Medicaid/Medicare)	Basic Advice and Counsel	Complex Counsel & Litigation
Housing	Habitability Security Deposits Homeownership/Real Property (not foreclosure)	Eviction ²⁷⁷ Federal Subsidized Housing* Public Housing* Housing Discrimination Mortgage Foreclosure Predatory Lending
Immigration*	U-Visa VAWA Affirmative Asylum DACA/DAPA	Defensive Asylum Deportation Detention Special Immigrant Juvenile

274. Litigation matters reflected in the chart are more than likely adjudicated in the state courts, and occasionally the federal courts. An asterisk indicates that the legal issue is often handled, at least initially, by federal or state administrative agencies.

275. Due to power imbalance, unrepresented parents do not fare well in due process hearings. *See, e.g.,* EQUIP FOR EQUALITY, DUE PROCESS HEARINGS AND OTHER CONFLICT RESOLUTION OPTIONS 4 (2005), <http://www.equipforequality.org/wp-content/uploads/2014/03/Due-Process-Hearings-and-Other-Conflict-Resolution-Options.pdf> (noting that parents without representation at due process hearings won only a little more than 16%, where represented parents won 49% of hearings).

276. As an expulsion or other disciplinary action can harm a child's academic career in profound ways, and as school districts, particularly in depressed neighbors and with children with undiagnosed disabilities, often use disciplinary action even when unwarranted, legal representation for families is critical. *See generally* EMILY MORGAN ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR., THE SCHOOL DISCIPLINE CONSENSUS REPORT: STRATEGIES FROM THE FIELD TO KEEP STUDENTS ENGAGED IN SCHOOL AND OUT OF THE JUVENILE JUSTICE SYSTEM 26 (2014), https://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf (“[A]n overreliance on suspensions, expulsions, and arrests has been shown as counterproductive to achieving many of a school's goals and has had tremendously negative consequences for youth.”).

277. Housing courts are characterized by high volume and overwhelmingly *pro se* tenants. As the power imbalance is stark, with landlord representation rates in some courts as high as ninety percent, studies argue that representation for tenants causes the likelihood of eviction to drop precipitously. *See* Matthew Desmond, *Tipping the Scales in Housing Court*, N.Y. TIMES (Nov. 29, 2012), http://www.nytimes.com/2012/11/30/opinion/tipping-the-scales-in-housing-court.html?_r=1.

Income Maintenance*	Initial Applications: TANF (welfare) SNAP (food stamps) Social Security Social Security Disability Income (SSDI) Supplemental Security Income (SSI) Veterans Benefits Unemployment	Appeals: TANF SNAP Social Security SSDI SSI Veterans Benefits Unemployment
Juvenile	Emancipation Minor Guardian/Conservatorship	Delinquent Neglected/Abused/ Dependent
Public Rights		Environmental Protection Animal Rights Historical Preservation Peace-Building & Democracy
Trafficking	T-Visa Victim/Witness Criminal Litigation	Civil Litigation Against Trafficker
Trust & Estates	Wills & Powers of Attorney Advance Directives	Probate Trusts & Estates Litigation

C. Avoiding Duplication & Promoting Efficacious Legal Services

Despite implementing a state-of-the-art triage system and embracing BPI/BPA within our system, practically speaking, given the immense demand and limited supply, it is unrealistic to think that full representation for every American—short of a complete system overhaul—is feasible in the foreseeable future. Therefore, it is important to recognize and embrace that the civil legal aid system will continue to be fragmented, particularly in light of the rise in limited-scope representation.²⁷⁸ Further, it is important to note that low-income populations often face more than one legal problem in a given year and often those legal problems are interrelated (e.g., unemployment, which leads to eviction, which leads to criminal charges for sleeping in public). However, our

278. See Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL'Y 453, 454–455 (2011) (“Many courts, government agencies, and lawyers for the poor have championed unbundling . . . on the belief that granting some legal aid to a broad swath of the indigent population will create greater access to justice than a model that provides full representation to a small fraction of low-income litigants and zero representation to the remainder. The working assumption . . . is that, given the tremendous scarcity of resources for civil legal aid, half a lawyer is better than none at all.”).

civil legal aid system often treats those problems as distinct, independent issues, rather than intimately intertwined.

So, the question becomes: how can we provide effective advice and counsel when we often do not see the entire picture? While it is true that we can attempt to rely on our clients to provide the full picture, such expectations do not take into account our clients' reality. Clients eligible for civil legal aid are often experiencing homelessness, suffering from abuse, and facing food scarcity and unemployment; they are often undereducated, have limited English proficiency and do not have bank accounts, safes, or secure locations for physical possessions. Therefore, it is unrealistic to expect our clients to come prepared with all of their relevant documentation (copies of their leases, receipts, court filings, prior legal advice or letters written on their behalf, etc.) or with a clear understanding of any prior legal advice or assistance. So, do we proceed with representing our low-income clients on limited or incomplete information? Do we require our clients to cover the same ground as past legal aid providers have done? That's not how we typically treat our paying clients. For paying clients, we want to provide the best advice possible. That is why we want to know and see everything. We also do not want to waste our paying clients' time. So we do our research ahead of time, actively obtaining all information possible to allow us to provide our paying clients' efficient, effective and high quality legal services. Don't our civil legal aid clients deserve the same treatment? It is the author's contention that they do.

As such, this Article advocates for the development of legal information exchange organizations (LIEOs). Mirroring regional health information organizations (RHIOs), LIEOs would bring public interest stakeholders together within a defined geographic area and govern legal information exchange among them for purposes of improving access to justice in that community.²⁷⁹ They would allow legal aid providers to share information concerning the representation of their clients in an efficient manner as a means of providing existing counsel with a holistic picture of the client's legal problem(s), helping to eliminate ambiguity and inconsistencies and avoid recreating the wheel and duplication of efforts.

1. The Vision

The impetus behind creating LIEOs is very similar to the vision that led to the creation of the District of Columbia Regional Health Information Organization (DC RHIO), a health information exchange launched in the District in March 2010 and managed by the District of Columbia Primary Care Association (DCPCA), a nonprofit health reform organization concerned about the increasingly poor health outcomes for the District's most vulnerable residents

279. See *What is a regional health information organization (RHIO)?* U.S. DEP'T OF HEALTH AND HUMAN SERVS., <http://www.hrsa.gov/healthit/toolbox/RuralHealthITtoolbox/Collaboration/whatisrhio.html> (explaining the purpose of a RHIO, and the benefits such structures can provide).

due to a shortage of primary healthcare.²⁸⁰ Unlike the national trend to develop RHIOs, the primary driver behind the creation of the DC RHIO was the uninsured, mobile, and fragmented patient population in the District that frequents numerous neighborhood health clinics and emergency rooms. Traditionally, this underserved, urban, low-income population exhibits chronic healthcare problems, including chronic lung disease, diabetes, cardiovascular conditions, asthma and other respiratory conditions and hypertension that are not being adequately treated due to disparate and incomplete health information available to the multiple physicians serving any one of these patients.²⁸¹ The DC RHIO aimed to provide a unified and integrated system of electronic medical records that would, in turn, permit physicians to provide competent healthcare and avoid medical errors.²⁸²

Similarly, due to the fractured nature of civil legal aid, which requires low-income populations to seek legal assistance from multiple legal services organizations, LIEOs would provide an integrated system of specific legal information that would permit legal aid and pro bono lawyers to provide efficacious legal services. The need for LIEOs appears more obvious in large urban centers. Let's take Chicago, Illinois as an example. In its report entitled *Pro Bono: Volunteer Opportunities for Attorneys in the Chicago Area*, the Chicago Bar Foundation includes a chart that reflects pro bono opportunities available at twenty-nine legal aid and public interest organizations in Chicago²⁸³ (which represents roughly half of the legal aid and public interest programs in Chicago).²⁸⁴ Although its purpose is to educate members of the private bar as to various pro bono opportunities, it is a great depiction of the complexity of the system, particularly when viewed through the eyes of a low-income American. Pursuant to the complexity chart, multiple legal services organizations handle the same types of legal matters. For example, almost half of the organizations handle "housing issues," over a fourth of the organizations handle "domestic violence" matters, and another fourth handle "consumer" issues.²⁸⁵ Moreover, more than a fifth of the organizations focus on "civil rights," another fifth cover

280. See RITU AGARWAL ET AL., *CTR. FOR HEALTH INFO. & DECISION SYS., THE DISTRICT OF COLUMBIA REGIONAL HEALTH INFORMATION ORGANIZATION (DC RHIO) CURRENT PROGRESS AND THE ROAD AHEAD 10* (2010), <http://www.rhsmith.umd.edu/files/Documents/Centers/CHIDS/DCRHIOAssessmentReport.pdf>.

281. *Healthcare in the District of Columbia: Access to Primary Care and Affordable Health Insurance: Hearing Before the Subcomm. on the District of Columbia of the S. Comm. on Appropriations*, 109th Cong. 6 (2006) (Statement of Brenda Donald Walker, Deputy Mayor, Children, Youth, Families and Elders, District of Columbia).

282. *Id.*

283. CHI. BAR FOUND., *PRO BONO: VOLUNTEER OPPORTUNITIES FOR ATTORNEYS IN THE CHICAGO AREA 32* (2014), <http://chicagobarfoundation.org/pdf/pro-bono/opportunities-guide.pdf>.

284. See *Public Interest Websites*, LOYOLA UNIV. CHI., http://www.luc.edu/law/career/pubint_links.html (last visited Sept. 10, 2016) (listing many of the public interest organizations in Chicago and across Illinois, but excluding law school clinics).

285. CHI. BAR FOUND., *supra* note 283, at 32.

“employment law,” another fifth handle “public benefits,” and another fifth undertake “guardianship” matters.²⁸⁶ The chart also reflects that over half of the organizations offer brief advice and counsel, over a third leverage hotlines, and almost a fourth deliver legal services through clinics.²⁸⁷ Some of the organizations serve individuals and families earning at or below 125% of the poverty guidelines, while others are more flexible. In such a fragmented and overlapping legal aid environment, the benefits of a LIEO are profound.

But let’s consider a smaller legal aid market, such as Boise, Idaho. For a low-income individual facing a housing issue, for example, there are five organizations in Boise that may potentially offer assistance. One organization provides limited advice and counsel;²⁸⁸ another focuses exclusively on fair housing issues;²⁸⁹ another acts as a referral organization to members of the private bar and focuses on placing predominately family law cases;²⁹⁰ another likewise focuses on family and elder law and therefore due to limited resources takes on limited housing cases;²⁹¹ and the final program, while focusing on full-representation in eviction, habitability, and security deposit cases, is housed in a law school and therefore also experiences resource constraints.²⁹² So, once again, it is feasible that the low-income individual may receive limited advice and counsel from one or more of the organizations and then seek more robust counsel or representation from a different organization. Now, you may wonder why not just call or email, after all there are only five organizations. Each organization, however, is very slimly staffed, often with one or two individuals who may only work part-time. As such, contacting each organization every time you take on a new client is simply not feasible; it is inefficient and places an unnecessary burden on the organizations.

2. The Structure

In shaping the framework for LIEOs, the author envisions that the LIEO would operate similarly to the DCPCA, which currently “hosts and maintains

286. *Id.*

287. *Id.*

288. See *ITLA Street Law Clinic*, IDAHO TRIAL LAWYERS ASS’N, <https://www.itla.org/index.cfm?pg=StreetLawClinic> (last visit Nov. 5, 2016).

289. See *About Us*, INTERMOUNTAIN FAIR HOUSING COUNCIL, <http://www.ifhcidaho.org/index.php/aboutus> (last visited Nov. 5, 2016).

290. See *Idaho Volunteer Lawyers Program*, IDAHO LAW FOUND., <https://isb.idaho.gov/ilf/ivlp/ivlp.html> (last visited Nov. 5, 2016); *What Case-Types does the IVLP accept?*, IDAHO LAW FOUND., https://isb.idaho.gov/ilf/ivlp/seeking_legal_assistance.html#Case (last visited Nov. 5, 2016).

291. See *Client Services*, IDAHO LEGAL AID SERVS., <http://www.idaholegalaid.org/node/2173/client-services> (last visited Nov. 5, 2016).

292. See *Housing Clinic Legal Representation*, CONCORDIA UNIV. SCH. OF LAW, <http://law.cu-portland.edu/community-engagement/housing-clinic-legal-representation> (last visited Nov. 5, 2016).

electronic health records for seven community health center providers.”²⁹³ The LIEO, which could be a new nonprofit organization, perhaps a program under a state’s bar association or foundation or housed within legal aid technology organizations, such as ILAO or Pro Bono Net, would likewise host and maintain electronic legal records for the legal aid organizations within the particular city, county or state; provide access to such records to participating legal services organizations; and promote the expansion of streamlined electronic legal record adoption throughout the relevant geographic area.

It is important to take stock, though, of the lessons learned through the creation of the DC RHIO. The DC RHIO was originally funded by a three-year grant from the District of Columbia.²⁹⁴ After the initiative went live in 2010, it struggled to secure a sustainable source of funding, forcing it to temporarily close its doors in October 2011 and then permanently shut down in late 2012.²⁹⁵ According to various sources, the issue of sustainability has plagued many health information exchanges, and the District’s reaction was to move away from the concept of a RHIO and promote the use of Direct Secure Messaging, a lower-cost, scaled-down platform that permits physicians to share sensitive patient data through a secure email portal.²⁹⁶

The primary concern with respect to sustainability for the DC RHIO centered on the complexity of the technology and the related cost.²⁹⁷ In the context of healthcare, this is understandable. As participating health centers and hospitals retain information on different platforms and use differing abbreviations and terminology for tests and procedures, the technology was required to overlay and interpret multiple platforms as well as translate the information provided on those platforms into a consistent framework.²⁹⁸

For the LIEOs, a highly robust system of shared documentation, akin to providing access to one’s case management system, would be of course ideal. Legal aid organizations would have ready access to the documentation obtained,

293. See *Health Information Technology*, D.C. PRIMARY CARE ASS’N, <http://www.dcpca.org/health-information-technology> (last visited Aug. 31, 2016).

294. See AGARWAL ET AL., *supra* note 280, at 7.

295. See Ben Fischer, *D.C. health data exchange dead*, WASH. BUS. J. (Nov. 8, 2012, 1:47 PM), <http://www.bizjournals.com/washington/blog/2012/11/dc-health-data-exchange-dead.html>.

296. See *id.*; Kyle Murphy, PhD, *DC HIE Carries On Without RHIO*, EHR INTELLIGENCE (Nov. 12, 2012), <https://ehrintelligence.com/news/dc-hie-carries-on-without-rhio/>; Jennifer Bresnick, *D.C. Launches Direct Secure Messaging HIE to Replace Defunct RHIO*, INST. FOR HEALTH TECH. TRANSFORMATION (Nov. 29, 2012), <http://ihealthtran.com/wordpress/2012/11/d-c-launches-direct-secure-messaging-hie-to-replace-defunct-rhio/>.

297. See AGARWAL ET AL., *supra* note 280, at 42.

298. See *id.* at 50–53; *DC Primary Care Association Selects Microsoft Amalga to Improve Patient Care for the Underserved*, HIMSS (Aug. 7, 2008), <http://www.himss.org/News/NewsDetail.aspx?ItemNumber=5171> (“Microsoft Amalga addresses a common and critical challenge of healthcare providers—integrating vast amounts of clinical, administrative, and financial information that flow in and out of disparate information systems, and tailoring that information for use by physicians, analysts, laboratory technicians, nurses and administrators.”).

generated and filed on behalf of the client. But learning from the struggles of the DC RHIO and recognizing the practical limitations of such a system (including funding, attorney-client privilege, access and authentication issues), the complexity inherent in such a system is simply too great.

As such, the proposed structure for the LIEOs would be akin to a simple repository. Participating legal services organizations would provide information for all individuals they touch. Such information would include the individual's (or potentially the organization's) name, demographic information, subject matter of representation, status of matter (e.g., reflecting whether the representation (regardless of level) is open or closed), and level of service (e.g., intake only, brief advice, unbundled service, full representation). When a participating legal services organization takes on a new client (or before it refers it to a pro bono volunteer), it would not only upload its information to the LIEO,²⁹⁹ but also leverage the LIEO to immediately identify if the new client has received prior legal advice or assistance from a different participating legal services organization (either related to the direct issue at hand or a separate, but interrelated issue), and be able to immediately contact that participating legal services provider, ideally through a request function on the platform, to obtain all relevant documentation associated with the representation.

As with RHIOs, authentication issues would be handled via contracts for participating legal services organizations. In other words, if a participating legal provider receives a request for documentation pertaining to a current or former client, the requesting organization is understood to have permission to request the files by virtue of executing a participation agreement with the LIEO binding itself to contractual obligations, which should be firmly grounded in our ethical requirements, for accessing and requesting client information.

Although it is true that such a structure would require resources by the legal services organizations to upload information and respond to requests for files, participating in a LIEO is more of a benefit than a burden. LIEOs would allow legal services organizations to collaborate more effectively and share information more seamlessly to assist poor populations within their particular state.

IV. CONCLUSION

With more and more Americans falling into poverty every day and with private and government funding for legal aid retracting in the wake of economic recession, the public interest community faced an incredible dilemma. Rather than stand by and watch as the justice gap widened into a chasm, the community

299. Ideally, the "state-of-the-art" triage system would work seamlessly with the LIEO platform. With such interrelated technology, the LIEO platform could leverage information collected via the triage system, pulling that information into the repository, which lessens the work required by the legal services providers, and as noted above, potentially streamlines the intake process.

boldly launched a plethora of initiatives to stem low-income individuals and families from falling into an abyss of inequity and injustice.

But unfortunately the delivery system for legal aid is broken. It is now too diffuse, too fragmented, and too complex. Such a delivery model actually perpetuates the inequities of poverty, making poverty the great unequalizer to justice.

Before launching any new isolated initiatives, which act more as band-aids on an ever-growing problem, it is time for us to critically evaluate our civil legal aid infrastructure and streamline the jumble of existing delivery mechanisms. The proposed reforms—the creation of a “state-of-the-art” triage system, the infusion of business process improvement into the public interest community, and the development of legal information exchange organizations—will, if implemented, be transformative, scalable, and sustainable. Such reforms will ignite change that will ripple throughout the country and will lead to the creation a cohesive, navigable delivery system for legal services to the poor. But most importantly, the proposed reforms will give rise to a more just society, one in which the phrase “Equal Justice Under Law,” as inscribed on the front of the U.S. Supreme Court, is a reality not just for the wealthy, but for all.