

2018

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Recommended Citation

Deborah L. Rhode, Kevin Eaton, and Anna Porto, *Access to Justice Through Limited Legal Assistance*, 16 NW. J. HUM. RTS. 1 (2018).
<https://scholarlycommons.law.northwestern.edu/njihr/vol16/iss1/1>

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Access to Justice Through Limited Legal Assistance

Deborah L. Rhode,^{*} Kevin Eaton,^{} and Anna Porto^{***}**

This article describes an empirical survey of a limited legal assistance program designed to assist low-income individuals with family law matters. It begins by exploring the need for such research, given the nation's shameful level of unmet legal needs, and the lack of rigorous evaluation of strategies designed to address those needs. The article discussion then describes the methodology of a survey of Alaska Legal Services' limited legal assistance program, and the survey's major findings. Among the most critical conclusions are that limited assistance is a cost-effective use of resources, but that more effort should center on provision of hands-on assistance in form completion. A final section of the article places these findings in the context of broader strategies to increase access to justice for those who need it most.

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INTRODUCTION

For a nation with one of the world's highest concentrations of lawyers, the United States does a shamefully inadequate job of making legal services available to individuals who need those services most.¹ According to the World Justice Project, the United States ranks 94th of 113 countries in the accessibility and affordability of civil justice.² One response to this justice gap has been limited legal assistance programs, which provide services to individuals short of full representation. Although such programs have become the dominant form of civil aid to the poor in the United States, relatively little research has assessed their effectiveness. The study described in this article aims to add to that literature. At the request of the federal Legal Services Corporation [LSC], Stanford law school researchers evaluated the limited legal assistance program for family law cases at one of the legal services offices that the LSC funded. The discussion that follows details the study's findings and recommendations, and places them in the context of other research on limited legal assistance.

That discussion proceeds in four parts. Part I explores the challenges of securing access to justice in the United States, and limited legal assistance as one commonly proposed response. Part II describes the methodology of the survey that we conducted to evaluate one representative limited legal assistance program for the poor. Part III summarizes findings from that survey. Among the most important findings are that limited legal assistance programs can often be cost-effective means by which to secure legal services for low-income individuals, and that some forms of assistance, such as hands-on help with form completion, are more successful than others. Based on these results, Part IV concludes with recommendations for the structure of limited legal assistance initiatives and for further research on their effectiveness.

I. THE CHALLENGE OF ACCESS TO JUSTICE AND THE ROLE OF LIMITED LEGAL ASSISTANCE

A. *The Justice Gap*

The exact extent of unmet legal need in the United States is unknown, but estimates suggest that the numbers are staggering. A 2013 American Bar Foundation survey found that two-thirds of adults had experienced at least one "civil justice situation" in the previous eighteen months.³ These situations included basic human needs, such as those involving debt, housing, and children, and they resulted in significant negative consequences nearly half the time.⁴ Unsurprisingly, poor people were the most likely group to report these situations and their

¹DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* 30 (2015). The United States has the world's second highest per capita number of lawyers, second only to Israel. The American per capita count is created by comparing the ABA's lawyer count with the census count for U.S. citizens. See 'Lawyer Population Survey' (n.1); United States Census Bureau, 'Population Estimates' <www.census.gov/popest/data/historical/>. On Israel, see Drew Combs, *The Global Legal Market: By the Numbers*, AM. LAW., Oct. 23, 2014, at 2, LEXISNEXIS LNSDUID-ALM-AMLAWR-1202671042330).

²U.S. Rank On Access To Civil Justice In Rule Of Law Index Drops To 94th Out Of 113 Countries, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL (Oct. 27, 2016), http://civilrighttocounsel.org/major_developments/217; See AGRAST ET AL., *THE WORLD JUSTICE PROJECT, RULE OF LAW INDEX* 175 (2016).

³REBECCA L. SANDEFUR, AM. BAR FOUND., *ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY* 3, 7 (2014).

⁴*Id.*

accompanying negative consequences but the least likely to resolve them through the legal system.⁵ Of course, just because a problem has not been resolved legally does not mean it has gone unaddressed.⁶ However, other data paint a sobering portrait. Surveys by the federal Legal Services Corporation, for example, have suggested that over four-fifths of the poor's legal needs are unmet, a number that has held steady for more than a decade.⁷ These unresolved legal issues often result in severe hardship to individuals and negative consequences to society at large.⁸ In the context of family law alone, which is the focus of our empirical research here, failure to address unmet legal needs may put at lives at risk through domestic violence, and result in loss of child custody by deserving parents, children left in physically dangerous, psychologically traumatic, or financially inadequate family settings, and related problems.⁹ Taxpayers also pay a price for these broken lives through increased crime, incarceration, emergency medical care and so forth. It is a dispiriting irony that a country that prides itself on its rule of law does so little to make it accessible to those who need it the most.

Part of the problem is that most individuals who encounter the legal system either by choice or by necessity lack legal representation. In state courts, at least one party is without an attorney in more than two thirds of cases.¹⁰ For family law matters, the focus of our study, this number is much higher, with at least one party appearing *pro se* almost eighty percent of the time.¹¹ A variety of factors have contributed to the spike in self-represented litigants. Federal funding for legal services has dramatically decreased over the past three decades, while the availability and need for self-help assistance has dramatically increased.¹² Increased divorce rates, and individuals' desire to maintain control over sensitive personal issues have also

⁵ Russell Engler, *And Justice For All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 *FORDHAM L. REV.* 1987, 2047 n.263 (1999); Sarah Sternberg Greene, *Race, Class and Access to Civil Justice*, 101 *IOWA L. REV.* 1263, 1266 (2016) (citing surveys).

⁶ See Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 *S.C. L. REV.* 443, 451 (2016) (“People are perfectly capable of handling some situations on their own without understanding the legal aspects of those problems, in the sense that the problem is resolved in a way that is roughly consistent with the law but without reference to it or contact with it.”).

⁷ LEGAL SERVICES CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW INCOME AMERICANS* 6 (estimating that eighty-six percent of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help); See also *LSC Releases Report On Justice Gap In America*, Legal Services Corp., <https://www.lsc.gov/media-center/press-releases/2011/lsc-releases-report-justice-gap-america> (Oct. 17, 2005) (“[A]t least 80% of the civil legal needs of low-income Americans are not being met.”).

⁸ See PASCOE PLEASANCE ET AL., *Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems*, in *TRANSFORMING LIVES: LAW AND SOCIAL PROCESS* 67, 79, 83-85 (2006); Sandefur, *supra* note 6, at 457; Deborah L. Rhode & Scott L. Cummings, *Access to Justice: Looking Back, Thinking Ahead*, 30 *GEO. J LEG. ETHICS* 485, 488 (2017); PASCOE PLEASANCE ET AL., *supra* note 8 at 79, 83-85; Sandefur, *supra* note 6, at 457.

⁹ See DEBORAH L. RHODE, *ACCESS TO JUSTICE* 3 (2004).

¹⁰ Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 *GEO. J. POVERTY L. & POL'Y* 453, 459 (2011); Jed S. Rakoff, *Why You Won't Get Your Day in Court*, *N. Y. REV. BOOKS*, Nov. 24, 2016, at 4.

¹¹ See Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relations Matters Involving Litigation*, 2 *ST. MARY'S J. LEGAL MALPRACTICE & ETHICS* 166, 203 (2012) (“In some states, as many as 80% of cases in family court involve at least one unrepresented party.”).

¹² The federal legal services budget has declined almost 40% over the last three decades. The 1986 budget for the Legal Services Corporation was, in 2014 dollars, \$631,504. LEGAL SERVICES CORP., *LSC BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS* 3 (2014). The 2016 budget was \$385 million. LEGAL SERVICES CORP., *FISCAL YEAR 2017 BUDGET REQUEST* 1. For access to self-help materials, see BENJAMIN H. BARTON, *GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION* 88-103 (2015).

contributed to the increase in unrepresented parties.¹³ Predictably, a disproportionate number of these family-law litigants are poor people and people of color.¹⁴ Although commentators have labeled the influx of unrepresented litigants a “*pro se* crisis,” it is in fact the new “reality in today’s justice system.”¹⁵

In our view, the appropriate response to these unmet needs is not necessarily to increase the number of lawyers available to provide full legal representation to people of limited means. Rather, the solution lies in finding the most cost-effective way to address their underlying problems. As we will argue later, limited legal assistance, whether available through licensed members of the bar, or other non-law providers and online information services, is part of the answer. But we need additional research to determine what strategies are most effective and efficient in addressing particular needs. This article aims to supply some of the data that are necessary.

B. Strategies for Increasing Access to Justice and the Potential of Limited Legal Assistance

Strategies for addressing the justice gap are not in short supply. They include:

- recognition of a right to counsel in civil cases where fundamental interests are at issue and a lawyer’s assistance is critical to ensure basic fairness (Civil Gideon);¹⁶
- increased pro bono representation by private lawyers;¹⁷
- increased requirements of pro bono services for applicants to the bar;¹⁸
- increased reliance on trained non-lawyers to provide routine legal services;¹⁹

¹³ See, e.g., Russell Engler, *Pursuing Access to Justice and Civil Right to Counsel in a Time of Economic Crisis*, 15 ROGER WILLIAMS U. L. REV. 472 (2010).

¹⁴ Russell Engler, *Reflections On A Civil Right To Counsel And Drawing Lines: When Does Access To Justice Mean Full Representation By Counsel, And When Might Less Assistance Suffice?* 9 SEATTLE J. SOC. JUST. 97, 99 (2011).

¹⁵ Marsha M. Mansfield, *Litigants Without Lawyers: Measuring Success in Family Court*, 67 HASTINGS L.J. 1389, 1392 (2016). Indeed, legal aid offices and pro bono organizations recognized the prevalence of pro se litigants “decades ago.” D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Philip Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 911 (2013). In 2000, the Conference of State Court Administrators concluded that “the recent surge in self-represented litigation is unprecedented and shows no signs of abating.”

¹⁶ For discussion of the origins of and limitations of a right to counsel, see Rhode, *supra* note 1, at 51; see also Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 FORDHAM URB. L.J. 37, 43 (2010). The American Bar Association has supported a resolution in favor of appointing counsel in areas of “basic human need,” defined as shelter, sustenance, safety, health, and child custody. AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES 13 (2006).

¹⁷ Only a third of lawyers report meeting the ABA’s aspirational standard of 50 hours a year. AM. BAR ASS’N, SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS VI (2013); MODEL RULES OF PROF’L CONDUCT r. 6.1 (AM. BAR ASS’N 2015). See also Deborah L. Rhode, *Equal Justice Under Law: Connecting Principle to Practice*, 12 WASH. U. J.L. & POL’Y 47, 62 (2003) (“It is a professional disgrace that pro bono service occupies less than one percent of lawyers’ working hours.”).

¹⁸ For instance, New York currently requires applicants for admission to the New York bar to have completed 50 hours of pro bono services. 22 NYCRR 520.16 (2015) (Pro bono requirement for bar admission). California has considered adding a similar requirement.

www.abajournal.com/news/article/following_new_yorks_lead_california_bar_officials_plan_to_require_pro_bono/.

¹⁹ See RHODE, *supra* note 1, at 40 (noting that “from the standpoint of the public, the objective is more access to justice, not necessarily to lawyers”).

- technological innovations that enable individuals to more readily access legal forms and assistance online;²⁰ and
- online dispute resolution, which allows litigants to resolve problems outside of the courtroom using web-based programs powered by algorithms.²¹

The organized bar, however, has been hostile to many of the strategies involving technology and non-lawyers that undercut its market for legal services.²²

One critical strategy for increasing access to justice has involved limited “unbundled” legal assistance that provides less than full representation to clients.²³ These services include providing brief advice, drafting letters and complaints, helping complete forms, making telephone calls, or some combination of these. State courts, ethical authorities, and bar associations have generally embraced such assistance as a way not only to help *pro se* litigants but also to reduce the burden that they place on the judicial system.²⁴ In 2002, the American Bar Association (ABA) amended its Model Rules of Professional Conduct to explicitly authorize unbundled legal services.²⁵ States have also altered other ethical rules to address potential dilemmas arising from limited representation.²⁶

Given the resource constraints facing legal aid offices, and the bar’s growing acceptance of limited legal services, they are now the primary form of assistance at these offices across the country.²⁷ Currently, nearly every state has at least one formal program offering unbundled legal assistance, and limited legal services are also offered at clinics, and through hotlines and websites.²⁸ Most commonly, unbundled *pro se* assistance is available at court-based self-help centers, which give “in-person advice, document assistance and web-based information” to nearly 3.7 million people each year.²⁹ Family law, child support, and domestic violence cases are the primary cases in which self-help centers offer assistance.³⁰

The LSC, the primary funder of legal services for low-income individuals, has also embraced *pro se* assistance.³¹ Such assistance is the primary offering at LSC grantee offices. In 2014, LSC attorneys provided “counsel and advice” in sixty percent of cases, but offered

²⁰ RHODE & CUMMINGS, *supra* note 8, at 490.

²¹ For example, new “apps” help low-income individuals navigate legal proceedings and connect them with free or low-cost lawyers. Joe Dysart, *20 Apps to Help Provide Easier Access to Legal Help*, A.B.A. J. (Apr. 1, 2015), http://www.abajournal.com/magazine/article/20_apps_providing_easier_access_to_legal_help.

²² See Benjamin H. Barton & Deborah Rhode, *Legal Services Regulation in the United States: A Tale of Two Models*, in INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES, 27 (Andrew Boone ed., 2017); Deborah L. Rhode & Lucy Ricca, *Unauthorized Practice Enforcement: Protection of the Public or the Profession*, 82 FORDHAM L. REV. 2587, 2588 (2014); Richard Zorza & David Udell, *New Roles for Non-Lawyers to Increase Access to Justice*, 41 FORDHAM URB. L.J. 1259, 1278 (2014).

²³ *Pro se* assistance may include providing a client advice, drafting a single court document, or representing a client in a specific proceeding. These limited actions comprise the “entire lawyering relationship,” and the client proceeds *pro se* the rest of the action. See Steinberg, *supra* note 10, at 461.

²⁴ Greiner et al., *supra* note 15, at 912.

²⁵ Struffolino, *supra* note 11, at 215.

²⁶ Greiner et al., *supra* note 15, at 912.

²⁷ See generally Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421 (1994).

²⁸ See JOHN M. GREACEN, MICH. ST. BAR FOUND., RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE “STATE OF THE ART” 44 (2011).

²⁹ Mansfield, *supra* note 15, at 1393-94.

³⁰ AM. BAR ASS’N, THE SELF-HELP CENTER CENSUS: A NATIONAL SURVEY 15 (2014).

³¹ The Legal Services Corporation supports 812 offices across the country. LEGAL SERVICES CORP., LSC BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS 1 (2015).

“extensive services” in less than four percent of cases.³² LSC hotlines are a common way that this brief advice is available to low-income clients.³³ Operated in nearly every state, these hotlines allow clients to receive answers to legal questions from attorneys and paralegals, and provide referrals to other lawyers for fuller assistance.³⁴

Limited legal services have obvious appeal. Maximizing the numbers of individuals who receive assistance appears to be an efficient way of allocating limited funds. It enabled LSC grant recipients to serve nearly 1.9 million people in 2014 while spending only about \$5.40 per eligible client.³⁵ Given that an increase in government funding for legal services appears unlikely in today’s political climate, offering limited services seems better than offering nothing at all to the vast majority of people in need of assistance.³⁶

Yet the proliferation of limited legal services raises important questions about how effectively they address the justice gap. Some criticize limited legal services for low-income people as institutionalizing a system that fails to advance their collective interests and the need for societal reforms.³⁷ Programs that assist individuals in responding to an eviction notice or filling out divorce forms will not bring structural changes that address systemic poverty. A second concern is that limited services institutionalize apartheid justice: partial services for the poor and full representation for those who can afford it.³⁸

These are legitimate concerns. But the question is always, compared to what? The problems to which limited service programs respond involve fundamental, urgent needs. Unrepresented parties in family law cases may forfeit vital resources such as maintenance and child support, and may have difficulty securing essential protection from domestic violence.³⁹ It is by no means clear that the poor would be better off if the resources now invested in limited assistance for hundreds of thousands of individual legal needs were diverted to more social impact litigation. With respect to the second concern involving the effectiveness of such assistance, we lack sufficient well-designed research that speaks to the issue, as the following discussion indicates.

³² *Id.* at 16.

³³ *Id.* at i.

³⁴ Steinberg, *supra* note 10, at 463.

³⁵ LEGAL SERVICES CORP., *supra* note 7 at 2, 9.

³⁶ Greiner et al., *supra* note 15, at 912.

³⁷ *See, e.g.*, Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *Can a Little Representation Be a Dangerous Thing?*, 67 HASTINGS L.J. 1367, 1376 (2016).

³⁸ Similar criticisms have been raised about allowing non lawyers to perform legal tasks. *See, e.g.*, *Washington Supreme Court Adopts Limited Practice Rule for “Legal Technicians”*, ATJ WEB (July 16, 2012), <http://www.atjweb.org/washington-supreme-court-adopts-limited-practice-rule-for-legal-technicians/> (noting that a Washington state rule allowing non-lawyers to provide services “may create a ‘two-tiered’ system of justice, where only people of financial means have access to comprehensive legal assistance, while poorer individuals are ‘relegated to a system that does not provide the full measure of service and justice to which all should be entitled’”); Rita L. Bender & Paul A. Bastine, *Legal Technicians: Myths and Facts*, 62 WASH. ST. BAR NEWS 23, 25 (June 2008) (arguing non-lawyers would provide “second-class representation” because “they cannot appear in court or negotiate a case”).

³⁹ Mansfield, *supra* note 15, at 1392; Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U.J. GENDER SOC. POL’Y & L. 499, 511-12 (2003). *See* the discussion in the text accompanying notes *infra*.

C. Prior Research on the Effectiveness of Limited Legal Services

Although limited legal services have become increasingly prevalent, research assessing their effectiveness remains sparse. The few studies that have evaluated such assistance for *pro se* parties have significant methodological limitations. Often, the studies do not randomly assign participants to receive limited legal assistance (rather than full-representation or no representation).⁴⁰ As a result, the research does not control for characteristics that may lead a client to seek assistance and influence its outcome. Moreover, these non-randomized studies do not account for the merits of a client's case, which may affect the likelihood that an individual will seek and secure assistance in the first place.⁴¹ However, despite these limitations, such studies provide some data about parties' objective outcomes and subjective experiences. Accordingly, we review both non-randomized and randomized studies that bear on the effectiveness of legal representation in general and limited services in particular.

Non-randomized studies have reached mixed results, but those involving family law matters suggest that full legal representation significantly improves outcomes.⁴² For example, a 1992 study of California families found that whether a client was represented influenced legal custody arrangements.⁴³ A 2006 Maryland study similarly found that representation affected the type of custody granted, especially in contested cases.⁴⁴ Mothers were awarded sole custody in 54.8% of cases where they were the *only* represented party, but were awarded sole custody in only 13.4% of cases where the fathers had representation and the mothers did not.⁴⁵ Research on domestic violence cases suggests that representation has an even more extreme impact on outcomes. Women with lawyers had an 83% success rate in obtaining a protective order, while women without lawyers received protective orders only 32% of the time.⁴⁶

Non-randomized studies on the satisfaction of legal aid recipients across multiple substantive areas yield conflicting results. A 2016 study of self-represented family law litigants in Wisconsin compared two groups of family law cases: one where neither party was represented by counsel, and another where self-represented parties received legal assistance from students at a family court clinic.⁴⁷ Litigants who had student-provided aid reported that they were more likely to successfully complete their legal actions and these litigants also expressed greater satisfaction with the legal process.⁴⁸ By contrast, other non-randomized studies have found that

⁴⁰ Engler, *supra* note 16, at 85-86.

⁴¹ *Id.*

⁴² Because our empirical study involved family law assistance, our review of research here also focuses on family cases. However, some studies in other substantive areas reach similar results. Non-randomized studies of tenants in housing court, for example, suggest that representation can decrease rates of eviction. *See id.* at 46-66. In small claims court cases, whether a party was represented was critical to the party's favorable judgment and the size of the award. *Id.*

⁴³ *See generally* ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY (1992).

⁴⁴ WOMEN'S LAW CTR. OF MD., FAMILIES IN TRANSITION: A FOLLOW-UP STUDY EXPLORING FAMILY LAW ISSUES IN MARYLAND 48 (2006).

⁴⁵ *Id.*

⁴⁶ Murphy, *supra* note 39, at 511-12. Presumably the individuals without lawyers did not receive other legal assistance, but the study does not discuss the possibility.

⁴⁷ Mansfield, *supra* note 15, at 1391.

⁴⁸ *Id.* at 1416.

limited assistance had no impact on case outcomes.⁴⁹ A UCLA study evaluated the effectiveness of a self-help center in a Los Angeles county courthouse.⁵⁰ The study compared outcomes of tenants who had received limited assistance from the center with tenants who had received no legal assistance. The study found that clients receiving aid “fare[d] no better (and no worse)” than housing court litigants in the general population.⁵¹ A 2009 study in a California county court reached a similar conclusion.⁵² It found that “recipients of unbundled aid fared no better than their unassisted counterparts in ultimate outcomes,” while those who received full representation fared substantially better.⁵³

The few existing randomized studies of full legal representation also have mixed findings but generally suggest that having a lawyer improves outcomes.⁵⁴ One study of New York City’s Housing Court compared a group of low-income tenants who were represented by legal counsel with a control group of tenants who proceeded *pro se* and found that legal representation had a strong, positive effect on the tenants’ outcomes: only 22% of represented tenants had final judgments entered against them, compared to 51% of unrepresented tenants.⁵⁵ The researchers attributed this discrepancy “solely to the presence of legal counsel,” and because the study was randomized, they concluded the results were “independent of the merits of the case.”⁵⁶

Only two randomized studies have evaluated the effect of limited legal services on client outcomes, and their results are less conclusive. In the first study (“District Court Study”), Massachusetts tenants seeking legal assistance in housing litigation were randomly assigned to two groups. The first group received limited help from a clinic that assisted clients in filling out

⁴⁹ For other examples of observational studies evaluating the effectiveness of unbundled legal assistance, see SHOSHABBA ERLICH & LANAE DAVIS, AARP, LEGAL HOTLINES CLIENT OUTCOME STUDY (2006), available at <http://legalaidresearch.org/wp-content/uploads/aarp-legal-hotlines-client-outcome-study-2006.pdf>; BONNIE ROSE HOUGH, EVALUATION OF INNOVATIONS DESIGNED TO INCREASE ACCESS TO JUSTICE FOR SELF-REPRESENTED LITIGANTS, available at <https://www.srln.org/system/files/attachments/Evaluation%20of%20Innovations%20Designed%20to%20Increase%20Access%20to%20Justice.pdf>; FERN A. FISHER ET AL., VOLUNTEER LAWYER FOR A DAY PROJECT REPORT: A TEST OF UNBUNDLED LEGAL SERVICES IN THE NEW YORK CITY HOUSING COURT (2008), available at https://www.nycourts.gov/courts/nyc/housing/pdfs/vlfdreport_0208.pdf.

⁵⁰ EMPIRICAL RESEARCH GROUP, UCLA SCHOOL OF LAW, EVALUATION OF VAN NUYS LEGAL SELF-HELP CENTER, FINAL REPORT (2001).

⁵¹ *Id.* at 3.

⁵² Steinberg, *supra* note 10, at 482.

⁵³ *Id.* Tenants who received unbundled aid did significantly outperform unassisted tenants in “evading default judgment and in asserting valid, doctrinally cognizable defenses to their eviction,” although this did not ultimately produce better substantive results.

⁵⁴ One study comparing represented and unrepresented individuals in unemployment proceedings found that those who were represented had worse outcomes than those who were not. D. James Greiner & Cassandra Wollos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118, 2125 (2012). A study of attorneys’ impact in American juvenile cases found that in one city, the presence of an attorney had “a profound impact on the outcomes of cases,” while in another city, “no significant differences appear between the adjudicative results reached in the experimental and control groups.” W. VAUGHAN STAPLETON & LEE E. TEITELBAUM, IN DEFENSE OF YOUTH: A STUDY OF THE ROLE OF COUNSEL IN AMERICAN JUVENILE COURTS 67 (1972).

⁵⁵ Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment*, 35 L. & SOC’Y REV. 419 (2001).

⁵⁶ *Id.* at 429. Critics, however, have questioned the extent to which the findings can be generalized, given certain limitations in the study’s methodology. See John Pollock & Michael Greco, *It’s not Triage if the Patient Bleeds Out*, 161 U. PENN. L.R. 40, 47, n.40 (2012); Jeffrey Selbin et al., *Service Delivery, Resource Allocation, and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 YALE L.J. ONLINE 45, 51 (2012).

answer and discovery request forms, while the second received full legal representation. The study found that the first group fared substantially *worse* than the fully-represented group, both in terms of retaining possession of their units and achieving positive financial outcomes.⁵⁷

The second study (“Housing Court Study”) randomly divided tenants in a Massachusetts housing court into two groups: one receiving full representation and one receiving limited assistance.⁵⁸ This study found that full representation did not affect the outcome of the case: the individuals who received limited assistance achieved roughly the same results in terms of financial outcome and retaining possession of their housing as those who received full representation.⁵⁹

How to interpret these findings is not self-evident. One possibility is that limited assistance was as effective as full representation. Another possibility is that neither the limited assistance program nor the one offering full representation was particularly effective. This second explanation is bolstered by the fact that the success rate for both groups was far lower than the success rate for the full representation group in the District Court Study.⁶⁰ The authors of the Housing Court Study attribute its low success rate for clients with attorneys to those attorneys’ “non-confrontational style.”⁶¹ This litigation approach may have been insufficiently assertive to protect the clients’ rights.⁶²

The most definitive conclusion from this body of research is the need for more rigorous studies. The conflicting outcomes, methodological limitations, and competing explanations of prior work underscore the need for more data. Even non-randomized studies, however, can provide valuable insights into parties’ experience with limited legal assistance, which affects the legitimacy of the justice system.

II. METHODOLOGY

To gain a better understanding of the effectiveness of limited legal assistance for low-income individuals, we wanted to find a legal services office that operated such a program and was interested in cooperating with researchers. James Sandman, President of the Legal Services Corporation, put us in touch with Alaska Legal Services Corporation (ALSC). ALSC provided an ideal research forum because it was very receptive to our interests and interested in improving the provision of legal services in their state. In addition, Alaska was an ideal forum for our study given that “[it] is the geographically largest, least densely populated, and most ethnically diverse state in the U.S.”⁶³ ALSC’s director, Nikole Nelson, agreed to provide us with contact information for individuals who sought assistance regarding family law matters in 2014 and 2015 and who either received limited services or no services at all. A randomized survey was not possible because ALSC uses merit-related criteria to determine who receives limited legal assistance and who does not. Because of limited resources, ALSC considers not only income, but

⁵⁷ Greiner et al., *supra* note 15 at 912.

⁵⁸ D. James Greiner et al., *How Effective are Limited Legal Assistance Programs? A Randomized Experiment in Massachusetts Housing Court* (Sept. 1, 2012) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1880078.

⁵⁹ *Id.* at 1.

⁶⁰ John Pollack, *Recent Studies Compare Full Representation to Limited Assistance in Eviction Cases*, 42 NAT’L HOUSING L. BULL. 72, 75 (2012).

⁶¹ Greiner et. al., *supra* note 58, at 47.

⁶² *Id.* at 48.

⁶³ Stacey Marz, Mara Kimmel, & Miguel Willis, *Alaska’s Justice Ecosystem, Building a Partnership of Providers*, www.courtrecords.alaska.gov/webdocs/jfa/docs/plan.pdf.

also other criteria, including the merits of the case and whether the office has classified the matter at issue as a high, medium, or low priority.⁶⁴

We chose to study family law because it is an area of huge unmet need, often involving concerns of enormous personal significance, and is an area where limited assistance is common. For example, recent statistics from Alaska indicate that family law cases have constituted “nearly 25% of the caseload of judges for a number of years, and over 75% of these cases have involved self-represented litigants.”⁶⁵ The large number of *pro se* parties helps explain in part why limited assistance is becoming more common in family law cases, and why a focus on this area seemed appropriate.

Between 2015 and 2016, Stanford students enrolled in a policy lab course attempted to conduct telephone interviews with enough individuals to generate a sample of at least one hundred respondents.⁶⁶ Jonathan Berry-Smith, Robert Curran, Kevin Eaton, Akiva Friedlin, Cindy Garcia, Zach Glubiak, Anna Porto, Lauren Schneider, Laura Vittet-Adamson, and Tamar Weinstock succeeded in reaching that goal. The final sample consisted of 112 individuals: 71 had received limited legal assistance (LLA recipients) and 41 received no services.⁶⁷ Seventy-percent were female, 47% were white, 81% had incomes below 150% of the federal poverty line, 32% were American Indian or Native Alaskan, 8% were African-American, 5% were Hispanic, and 4% were Asian/Pacific Islander.⁶⁸

This Stanford study was limited by a number of factors. No interviews were conducted with unrepresented parties who did not receive aid. Nor did the study directly compare individual outcomes of those assisted by the clinic with those that were unrepresented, because some unrepresented litigants opposed represented parties, who were excluded from the data. Furthermore, some individuals that sought the clinic’s assistance did not proceed with a court action, but were simply looking for advice. Still, the study provides useful insights into the effectiveness of limited advice services and strategies that could improve them.

⁶⁴ See *Eligibility*, ALASKA LEGAL SERV. CORP., <http://www.alsc-law.org/eligibility> (specific office priority checklists, classifying a range of issues as high, medium, or low priority, is available on request) (last visited Mar. 4, 2018).

⁶⁵ Stacey Marz, *Early Resolution for Family Law Cases in Alaska’s Courts*, 31 ALASKA JUSTI. F. 13 (2014).

⁶⁶ Stanford Law School offers over twenty policy practicums that enable students to work on pressing issues for actual clients in a wide variety of substantive areas. See *Law & Policy Lab*, STAN. L. SCH., <https://law.stanford.edu/education/only-at-sls/law-policy-lab> (last visited Mar. 4, 2018).

⁶⁷ Deborah Rhode et al., *Measuring and Improving Limited Legal Advice* (Aug. 2016), available at <https://law.stanford.edu/wp-content/uploads/2017/03/ALSC-Briefing-Paper-Final.pdf> [hereinafter *Measuring and Improving Limited Legal Advice Report*]. In acquiring the sample pool, students made multiple efforts to reach individuals, and ultimately were able to contact about a quarter of those who had sought aid from ALSC. Of the individuals contacted, 90% agreed to be interviewed.

⁶⁸ *Id.* at 17. One percent of the sample reported being multiracial and four percent did not report race.

The Nature and Effectiveness of Limited Assistance Programs

As Table 1 indicates, respondents sought assistance on an array of family matters, with custody and visitation constituting almost half (49%) of all of the cases. Many sought aid on multiple issues.

Table 1: Distribution of Case Types

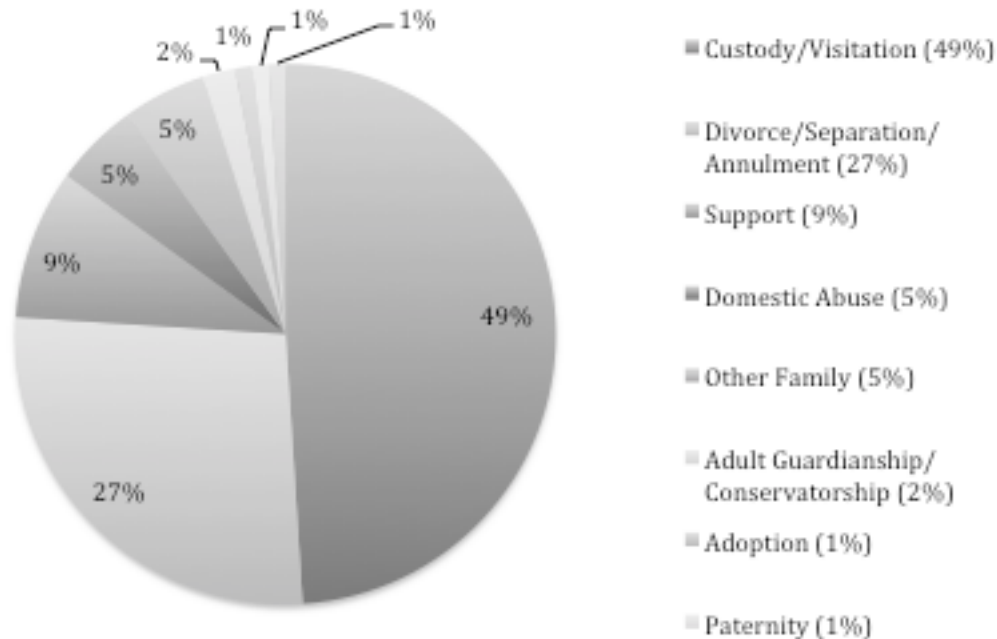


Table 1: Breakdown by type of case: Custody/Visitation (55 cases, 49% of respondents); Divorce/Separation/Annulment (30 cases, 27% of respondents); Support (10 cases, 9% of respondents); Domestic Abuse (6 cases, 5% of respondents); Other Family (6 cases, 5% of respondents); Adult Guardianship/Conservatorship (2 cases, 2% of respondents); Adoption (1 case, 1% of respondents); Paternity (1 case, 1% of respondents); Other (1 case, 1% of respondents).

One-third of respondents did not have any other source of legal help: 29% of those receiving limited legal assistance and 41% of those who received no assistance from Alaska Legal Services Corporation were in this group of no help.⁶⁹ The primary additional or alternative source of assistance was the Internet (21%), followed by another legal services organization (19%), a private lawyer (17%) and the Alaska Family Law Self Help Center (7%).⁷⁰

The most common form of limited legal assistance provided by Alaska Legal Services Corporation was legal advice, which almost three quarters (71%) of LLA respondents indicated receiving, and the other most frequent type of help involved assistance with forms.⁷¹ ALSC lawyers and staff either directed the individual to the correct forms (21%) or helped them

⁶⁹ *Id.* at 20-21.

⁷⁰ *Id.* at 22.

⁷¹ *Id.*

complete those forms (18%).⁷² Over 85% of the individuals who received advice understood it and nearly 71% reported following it.⁷³ Some respondents decided to pursue their case despite advice not to. For example, two of these individuals advanced custody claims that ALSC lawyers thought unlikely to succeed. Other respondents failed to follow advice because they became overwhelmed, encountered other difficulties (such as medical problems), or were confused or unable to remember what to do next.⁷⁴

Although most limited assistance involved advice and identification of the right forms, the aid that respondents found most useful was hands-on-help in filling out the forms. Throughout the study, and especially in the divorce and custody cases, respondents consistently rated highly assistance with legal forms (selection, completion, and filing).⁷⁵ Less than a quarter (22%) listed any part of the assistance provided by ALSC as unhelpful, and the vast majority of individuals who did so indicated that their displeasure was not with ALSC itself, but rather with the fact that they ultimately did not achieve the outcome they sought.⁷⁶

By contrast, recipients of other forms of limited assistance, such as oral advice, had nearly double the rate of negative perceptions of the help they received compared with recipients of assistance in form completion (44% versus 22%).⁷⁷ Some respondents expressed frustration because they had followed ALSC advice to retain an attorney, but that individual was unable to resolve their case.⁷⁸

Another striking difference between individuals who received concrete assistance with forms and other limited service recipients was in the rates of follow-through and reported positive outcomes. Tables 2 and 3 show the comparison in these rates between the general population of limited legal assistance respondents and those respondents who received help filling out forms.

⁷² *Id.* Trained paralegals provided some of this assistance completing forms. However, ALSC only has four paralegals on staff statewide, so most of the assistance in completing forms came from ALSC attorneys.

⁷³ *Id.* at 24.

⁷⁴ *Id.* at 38-40.

⁷⁵ *Id.* at 47.

⁷⁶ See Deborah Rhode et al., Data on Improving Limited Legal Advice, 2015-2016 [hereinafter ALSC Data Set] (unpublished data set) (on file with authors). A number of respondents expressed gratitude for the aid they received in filling out forms that they found complicated; some noted that staff had even helped type the forms. Other respondents reported benefitting from ALSC's periodic group workshops where attorneys guided several individuals through the same process (i.e. filling out an application for a temporary restraining order).

⁷⁷ *Id.*

⁷⁸ See Measuring and Improving Limited Legal Advice Report, *supra* note 67, at 45.

Table 2: Correlation between Type of Assistance and Outcome

		Ask client: "It sounds to me from what you are saying that overall, the outcome was ..." [In...			Total
		Positive	Negative	"Not much has changed"	
What did happen when you contacted Alaska Legal Services?	Advice	24	10	15	49
	Gave me forms	18	6	4	28
	Helped complete forms	16	4	2	22
	Wrote letter(s)	2	1	0	3
	Made phone calls	5	2	1	8
	Referral	3	1	0	4
	Other	2	3	4	9
Total		33	16	19	68

Table 3: Outcome Rates

	Follow-Through on ALSC Advice	Reported Positive Outcome
LLA Respondents (General)	75%	47%
LLA Respondents (Forms)	95%	72%

Comparison of Follow-Through and Case Outcome Rates for General LLA Respondents and LLA Respondents who obtained help in the form of filling out forms.

For many respondents, general legal advice about what to do and what forms to fill out was only minimally helpful. As one individual put it, "legal advice was just advice;" she was hoping for more "hands-on help with filling out the forms."⁷⁹ Other respondents indicated that merely identifying which form to fill out was not much use because the forms themselves were complicated and involved legal jargon that they could not understand. About 15% could not understand the advice that they received, and about 30% lacked the ability to follow through on advice.⁸⁰ As one respondent explained, Alaska Legal Services staff "did everything they could. But, the issue that they helped most on was just the tip of the iceberg."⁸¹

The individuals who found legal advice most helpful tended to be those who had experienced domestic violence. Respondents indicated particular appreciation that Alaska Legal

⁷⁹ Telephone Interview with participant (Fall 2015).

⁸⁰ See Measuring and Improving Limited Legal Advice Report, *supra* note 67, at 25-26.

⁸¹ Telephone Interview with participant (Fall 2015).

Services staff did not “make them feel less than” [others] because of their life experiences,” and one respondent noted that their help “provided a needed level of moral support” and the knowledge that they could “call someone for help.”⁸² Another survivor noted that the aid from ALSC gave her the confidence to “push forward [a claim] for custody at a time when [she] was emotionally vulnerable.”⁸³ For many of those respondents, having an attorney listen to them with compassion and insight provided benefits regardless of the outcome of their legal case.

For other individuals, however, advice was not enough. The disparity between understanding the advice received and following through on that advice was particularly pronounced for certain demographic groups and for certain types of cases. For instance, of those individuals who had been a victim of domestic violence, almost all (96%) reported understanding the advice they received, but just over three quarters of them actually followed through.⁸⁴ Others were hesitant to pursue action out of fear of retaliation.

This disparity between understanding and pursuing advice was also pronounced in divorce cases. Although every respondent seeking a divorce case reported understanding the legal advice provided, only two-thirds followed through on that advice. Of those who did not, almost all explained that they were “not really ready for divorce.”⁸⁵

Alaska’s rural population also encountered particular difficulties when advice only was available. ALSC only has permanent divisions in major population centers such as Fairbanks and Juneau. As a consequence, rural residents had less access to the hands-on form-related assistance that was most likely to be useful. Although rural and non-rural respondents reported receiving general legal advice at similar rates, only 20% of rural respondents reported getting help filling out forms compared to 33% of other LLA recipients.⁸⁶ The vast majority of rural recipients of LLA reported that their primary forms of assistance were information about what the legal process was going to be like and/or what issues would be most important (70%) and what forms to fill out (40%).⁸⁷ Moreover, because of their geographical isolation, rural respondents received most of their assistance by phone, rather than in person, which increased their difficulties in understanding the advice received. Although 89% of non-rural respondents reported understanding the advice they received, only 78% of rural respondents had that same understanding of the advice that they received.⁸⁸

Compounding this problem was the inaccessibility of other forms of reliable legal assistance for rural residents. Table 4 compares the kind of legal help apart from Alaska legal services between rural and non-rural limited legal assistance respondents.

Table 4: Outside Help For Rural and Non-Rural Residents

Source of Outside Help	Non-Rural LLA	Rural LLA
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⁸² Telephone Interview with participant (Fall 2015).

⁸³ Telephone Interview with participant (Fall 2015).

⁸⁴ See ALSC Data Set, *supra* note 76.

⁸⁵ Telephone Interview with participant (Fall 2015).

⁸⁶ See ALSC Data Set, *supra* note 76.

⁸⁷ Deborah Rhode et al., *Measuring and Improving Limited Legal Advice* (Aug. 2016) 29-30, available at <https://law.stanford.edu/wp-content/uploads/2017/03/ALSC-Briefing-Paper-Final.pdf>.

⁸⁸ *Id.*

Another Legal Services Organization	27%	12.5%
Private Lawyer	22%	12.5%
Internet	22%	25%
Court Officials	11%	25%
Friends or Family	11%	25%
NONE	24%	63%

Comparison of Outside Help Rates between Rural and Non-Rural LLA Respondents. Percentages in each column will exceed 100% because respondents, naturally, indicated in many cases that they received outside help from more than one source.

As Table 4 shows, rural respondents were less likely to seek additional help than their non-rural counterparts and were less likely to get the most reliable forms of assistance, such as aid from another legal service organization or a private attorney.

From the limited data available in our sample, race was generally not a particularly significant factor in determining the effectiveness of limited legal assistance except with respect to the small number of African-Americans in the sample.⁸⁹ As Tables 5 and 6 indicate, whites and non-whites had somewhat different rates of understanding (91% versus 81%) and following advice (66% and 76%). However, the cross-tabulations below were not statistically significant and the disparity that was observed was smaller between whites and non-whites than between other groups such as rural and non-rural respondents.⁹⁰

Table 5: Correlation Between Race and Ethnicity and Comprehension

		Client Ethnicity [As indicated on the intake form]							Total
		Not Reported	Multiple	White	Hispanic	African American	Native American	Pacific Islander	
Did you understand the advice you received?	Yes	2	0	29	2	1	19	2	55
	No	0	0	3	0	1	4	0	8
	Total	2	0	32	2	2	23	2	63

⁸⁹ *Id.* at 32. Only four of the respondents were African American.

⁹⁰ *Id.* at 29-30, 32. Moreover, caution is warranted in reading too much into the disparity observed between whites and non-whites because the non-white sample includes six racial and ethnic groups and is much smaller than the sample of white respondents.

Table 6: Correlation Between Race and Ethnicity and Following Advice

		Client Ethnicity [As indicated on the intake form]							Total
		Not Reported	Multiple	White	Hispanic	African American	Native American	Pacific Islander	
Did you follow the advice you received? Did you do what Alaska Legal Services suggested?	Yes	2	0	21	2	1	16	1	43
	No	0	0	11	0	0	6	1	18
	Total	2	0	32	2	1	22	2	61

However, as Table 7 indicates, positive outcomes were somewhat greater for whites than non-whites (52% versus 44%). All African-American respondents reported negative outcomes. Given their small number, it is impossible to generalize about whether the reasons are idiosyncratic or whether this group faces special challenges. Further research will be necessary to clarify this issue.

Table 7: Correlation Between Race and Ethnicity and Outcome

		Client Ethnicity [As indicated on the intake form]							Total
		Not Reported	Multiple	White	Hispanic	African American	Native American	Pacific Islander	
Ask client: "It sounds to me from what you are saying that overall, the outcome was ..." [In...	Positive	3	0	17	2	0	10	1	33
	Negative	0	0	5	0	4	6	1	16
	"Not much has changed"	0	0	11	0	0	7	1	19
	Total	3	0	33	2	4	23	3	68

Because the objective of our partnership with Alaska Legal Services Corporation was to help the organization evaluate and improve its limited legal assistance program, we focused most of our attention on respondents who had received such aid. However, we did ask some questions of the respondents who received no services at all, and a brief comparison between the two groups bears mention.

The greatest disparity between the recipients who had received aid and those who had not is the frequency and source of outside help. Table 8 compares the rates of assistance from sources other than Alaska Legal Services Corporation between these respondents.

Table 8: Outside Help for Recipients of Limited Legal Assistance or No Assistance

Source of Outside Help	Limited Assistance	No Assistance
Court Officials	13%	11%
Family or Friends	13%	0%
Another Legal Services Organization	22%	14%
Private Lawyer	20%	14%
Internet	22%	19%
None	29%	41%

Respondents who received no services from Alaska Legal Services were also less likely to receive any additional legal assistance from other sources. Although this was the group presumably most in need of outside help, almost half did not obtain it.

Not surprisingly, the difference in case outcomes between these two groups also varied. Of respondents who received limited legal services from ALSC, 48% reported favorable outcomes, 28% said that not much had changed, and only 27% reported negative outcomes.⁹¹ By comparison, only 23% of respondents who received no services from ALSC reported favorable outcomes.⁹² Even among that group, perceptions of the outcome were not as satisfactory as among those respondents who received limited legal services. For instance, one respondent noted that “other means were expensive, but eventually [the case] was resolved, I guess, after several thousands of dollars and lots of time.”⁹³ Other respondents reported deciding not to pursue the matter, or indicated that their cases were partially resolved or still ongoing. Individuals who had received no help from Alaska Legal Services also expressed more negative perceptions about the legal process (46.3%) than those who had obtained limited legal assistance (8.69%).⁹⁴

Of course, some of these differences may reflect the merit-based criteria used to select who gets limited assistance. As noted earlier, those who have stronger cases are more likely to receive aid, so their more favorable outcomes may purely be due to the skewed nature of the sample rather than the quality of the assistance. More research using randomized samples is necessary to test the degree to which limited legal assistance matters. Still, based on the data here, as well as other studies noted earlier, having access to help will matter to some of those at risk. As one respondent summed up the situation: “I wish that [Alaska Legal Services] had the

⁹¹ *Id.* at 23.

⁹² See ALSC Data Set, *supra* note 76.

⁹³ Telephone interview with participant (Spring 2016).

⁹⁴ See ALSC Data Set, *supra* note 76.

resources to help when people need it. It really sucks that the kids are gone and I don't have any help getting them back. They need to come home, and I can't do it all by myself."⁹⁵

III. RECOMMENDATIONS

Our survey findings suggest several lessons about limited legal assistance programs for poor people. The first is that these programs appear to be a cost-effective use of resources. Most recipients are able to understand and follow the advice received and are more likely to obtain positive outcomes than those who receive no assistance. However, it is clear that advice alone is of limited help, and programs that want to maximize effectiveness should focus more resources on providing direct contact with staff for hands-on assistance in completing forms. Funding constraints will, of course, limit how much individualized attention legal services offices can provide. But workshop settings in which lawyers or trained non-lawyers guide multiple individuals through the process of completing their forms is likely to provide many of the benefits of individualized attention while minimizing the cost.

The same is true of self-help online services and publications that provide examples of correctly filled out forms, explanations of legal processes and deadlines, and/or automated form completion tools.⁹⁶ The most basic level of online help is forms that come with instructions. These are common in almost every state.⁹⁷ For example, Alaska has a selection of forms and instructions online, as well as a toll-free "helpline" for users who need assistance with the forms or procedures.⁹⁸ Other examples for family law matters include the Texas Supreme Court's online E-filing system for divorces⁹⁹ and Los Angeles's JusticeCorps online forms for paternity and custody.¹⁰⁰

Online videos explaining forms and court processes are also becoming more common. For example, California has its own YouTube Channel for legal self-help.¹⁰¹ It provides guided interviews and forms based on A2J Author, a free online platform that State Supreme Courts, Legal Aid Societies, Law School Clinics, Pro Bono Projects, and others have used to automate self-help.¹⁰² A2J Author is online in 38 States and has produced over 3 million legal documents

⁹⁵ Telephone interview with participant (Spring 2016).

⁹⁶ One program, funded through the Legal Services Corporation's LawHelp Interactive, uses "technology to improve the legal form and document preparation process for low-income people and the attorneys who assist them." It is currently in use in 40 states. *Technology Initiative Grant Highlights and Impact*, LEGAL SERVICES. CORP., <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/technology-initiative-grant-program/technology> (last visited Mar. 4, 2018).

⁹⁷ See *Forms and Document Assembly*, NAT'L CTR. FOR ST. CTS., <http://www.ncsc.org/sitecore/content/microsites/access-to-justice/home/Topics/Forms-and-Document-Assembly.aspx> (last visited Mar. 4, 2018) ("Nearly every state has some type of court form online. Some of these forms are combined with instructions, information, or document assembly software that make them more useful to the self-represented litigant. Nearly 40 states have some kind of self-help website that complements the online forms.").

⁹⁸ See *Self Help Center: Family Law*, ALASKA CT. SYS., <http://www.courts.alaska.gov/shc/family/selfhelp.htm> (last visited Mar. 4, 2018).

⁹⁹ See *Interactive Forms – Texas Supreme Court Approved Divorce Form Kit*, LAWHELP.ORG, <http://texaslawhelp.org/resource/commonly-used-fill-in-forms-online> (last visited Mar. 4, 2018).

¹⁰⁰ See *Forms & Rules*, CAL. CTS., <http://www.courts.ca.gov/justicecorps-about.htm> (last visited Mar. 4, 2018).

¹⁰¹ CaliforniaCourts SelfHelp, *Introduction to Legal Self Help*, YOUTUBE (Mar. 4, 2018), <https://www.youtube.com/californiacourtselfhelp>.

¹⁰² See A2J Author, *History of A2J Author*, <http://www.a2jauthor.org/content/history-a2j-author> (last visited Jan. 20, 2017).

for unrepresented individuals.¹⁰³

Such online services would be particularly useful for rural populations who lack ready access to workshops and personalized assistance. Efforts by the organized bar to curtail such assistance require reassessment; these efforts serve professional rather than public interests.¹⁰⁴

Courts could also facilitate access to justice by allowing trained non-lawyers to provide limited legal assistance on matters such as routine form preparation. As some of us have argued elsewhere, rules governing unauthorized practice of law should be interpreted to permit such assistance where the benefits to consumers outweigh the risks.¹⁰⁵ Judges should follow the lead of courts that have weighed the public interest in determining whether to ban non-lawyer assistance. For example, the Colorado Supreme Court upheld a system enabling non-lawyers to represent claimants in unemployment proceedings; the Court reasoned that lay representation had been accepted by the public for fifty years and “poses no threat to the People of the State of Colorado. Nor is it interfering with the proper administration of justice. No evidence was presented to the contrary.”¹⁰⁶ Similarly, the Washington State Supreme Court, after considering factors such as cost, availability of services, and consumer convenience, concluded that it was in the public interest to allow licensed real estate brokers to fill in standard form agreements.¹⁰⁷ Such a consumer-oriented approach would make for a more socially defensible regulatory structure than conventional bans on non-lawyer practice irrespective of its quality and cost-effectiveness.

Research on contexts permitting non-lawyers to provide legal advice and assist with routine documents does not suggest that their performance has been inadequate.¹⁰⁸ In a study comparing outcomes for low-income clients in the United Kingdom on matters such as welfare benefits, housing, and employment, non-lawyers generally outperformed lawyers in terms of concrete results and client satisfaction.¹⁰⁹ After reviewing their own and other empirical studies, the authors of that study concluded that “it is specialization, not professional status, which appears to be the best predictor of quality.”¹¹⁰ Ontario also allows licensed paralegals to represent individuals in minor court cases and administrative tribunal proceedings, and a five-year review reported “solid levels of [public] satisfaction with the services received.”¹¹¹ In the United States, research on lay specialists who provide legal representation in bankruptcy and

¹⁰³ *Id.*

¹⁰⁴ For a critical analysis of the bar’s efforts, see Deborah L. Rhode & Benjamin H. Barton, *Legal Services for Routine Needs: AVVO Meets Bar Regulators* (unpublished article; on file with law review or SSRN cite); Deborah L. Rhode & Benjamin H. Barton, *Rethinking Self-Regulation: Antitrust Perspectives on Bar Governance*, 20 CHAP. L. REV. 267, 268 (2017).

¹⁰⁵ RHODE, *supra* note 1, at 49; Rhode & Ricca, *supra* note 22 at 2608.

¹⁰⁶ Supreme Court of Colorado v. Emp’rs. Unity, 716 P.2d 460, 463 (Col. 1986).

¹⁰⁷ *Cultum v. Heritage House Realtors*, 694 P. 2d 630 (Wash. 1985).

¹⁰⁸ See Deborah L. Rhode, *Access to Justice: Again, Still*, 73 *Fordham L. Rev.* 1013 (2004); Julian Lonbay, *Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union*, 33 *FORDHAM INT’L L. J.* 1629, 1636 (2011) (discussing Swedish legal advice providers); Herbert Kritzer, *Rethinking Barriers to Legal Practice*, 81 *JUDICATURE* 100, (1997) (discussing English Citizen’s Advice Bureaus with trained non lawyer volunteers).

¹⁰⁹ Richard Moorhead, Alan Paterson & Avrom Sherr, *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 *L. & SOC’Y REV.* 765, 785-87 (2003). For further discussion, see Deborah J. Cantrell, *The Obligation of Legal Aid Lawyers to Champion Practice by Nonlawyers*, 73 *FORDHAM L. REV.* 883, 888-90 (2004).

¹¹⁰ Moorhead, Paterson & Sherr, *supra* note 109, at 795.

¹¹¹ DAVID B. MORRIS, REPORT TO THE ATTORNEY GENERAL OF ONTARIO 12 (Nov. 2012).

administrative agency hearings finds that they generally perform as well or better than attorneys.¹¹² Extensive formal training is less critical than daily experience for effective advocacy.¹¹³

States should build on this research and develop licensing systems that would enable qualified non-lawyers to offer limited legal assistance on routine matters. Consumer protections could be required concerning qualifications, disclaimers, ethical standards, malpractice insurance, and discipline.¹¹⁴ “Under their inherent powers, courts could oversee the development of such licensing systems or could approve legislatively authorized structures as consistent with the public interest.”¹¹⁵ More states should follow the lead of Washington and New York, which have already taken steps in this direction. Washington has developed a system of limited license legal technicians in family law, although overly restrictive qualifications may limit its usefulness in closing the justice gap.¹¹⁶ New York has adopted a pilot program allowing non-lawyer “navigators” to assist pro se litigants in selected courts.¹¹⁷

Finally, we recommend more research focusing on limited legal assistance, particularly to poor people who need help most. Randomized studies across a range of substantive areas could help identify contexts in which limited assistance is most cost effective. Additional research should also target groups for whom positive outcomes appear least likely; our study suggests that African Americans and rural communities merit further inquiry. Finally, researchers should monitor the effectiveness of new limited legal assistance initiatives in terms of recipients’ subjective experiences and objective outcomes. Asking clients what, if anything, staff could have done better given resource constraints may yield illuminating suggestions. It may also remind us all of the grim insight one of our respondents offered: “ALSC could not have improved in any way but . . . they need a lighter caseload because they do things correctly but are simply overwhelmed.”

IV. CONCLUSION

The United States urgently requires more effective systems for delivering legal aid to those who need it most. Limited legal assistance programs are one of the most promising strategies. In the wake of cutbacks in federal support for civil legal aid, many offices have relied on these brief advice and form completion initiatives to assist the vast majority of applicants. Our findings confirm that these efforts are a cost-effective strategy, but suggest that more resources should focus on personalized assistance with completing forms. That assistance need not come from lawyers. Trained non-lawyer providers can provide the same quality services, and judicial doctrine on unauthorized practice of law should recognize as much. Technological improvements in on-line assistance should also be a priority and the bar should be aiding, not obstructing, that effort.¹¹⁸

¹¹² HERBERT KRITZER, *LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK* 76, 108, 148, 190, 201 (1998).

¹¹³ *Id.* at 76, 149, 201; Kritzer, *supra* note 108, at 101; Emily A. Unger, *Solving Immigration Consultant Fraud Through Expanded Federal Accreditation*, 29 *LAW & INEQ.* 425, 448 (2011).

¹¹⁴ Steven Gillers, *How to Make Rules for Lawyers*, 40 *PEPP. L. REV.* 365, 417 (2013).

¹¹⁵ Deborah L. Rhode, *What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers*, 67 *S. CAR. L. REV.* 429, 438 (2016); RHODE, *supra* note 1, at 48-51; Zorza & Udell, *supra* note 22, at 1306.

¹¹⁶ Wash. Ct. APR 28 (2015), For a critique of the unduly restrictive requirements that the state bar developed for these technicians, see Gillian K. Hadfield and Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 *HASTINGS L. J.* 1191, 1222 (2016).

¹¹⁷ CHIEF JUDGE’S COMMITTEE ON NONLAWYERS AND THE JUSTICE GAP, *NEW YORK STATE COURT NAVIGATOR PROGRAM, NAVIGATOR SNAPSHOT REPORT* (Dec. 2014).

¹¹⁸ See Rhode & Barton, *supra* note 104.

We also urgently need more comprehensive research evaluating these efforts. More partnerships between scholars and service providers will be critical in narrowing the justice gap, particularly given the frequent inability of cash-strapped legal aid programs to evaluate their initiatives without outside support. Only through such collaborations are we likely to reduce barriers to justice that are now a national disgrace.