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The Role of Law Schools in the 100% Access to Justice Movement

Erika J. Rickard*

ABSTRACT

As the latest incarnation of the access to justice movement gains footing and justice system stakeholders convene, law schools have an important role to play. At the intersection of emerging technologies, innovations in practice, historical and theoretical and interdisciplinary perspective, law schools can provide a critical missing link to advancing state civil legal systems toward justice for all. Law schools can simultaneously address gaps in their local civil justice system and serve their own goals of developing future lawyers and advancing the legal profession by contributing more to local and national access to justice collaborations. Several law schools have launched initiatives to strengthen the relationship between legal education and practice in the service of access to justice. This article recommends expansion, replication, and better use of those initiatives.

INTRODUCTION

The civil justice system does not adequately address the essential civil legal needs of most low- and moderate-income individuals and families in the United States. Over the past 50 years, scholars and practitioners have formulated ideas and innovations to address the access to justice gap. This article provides a brief overview of the access to justice movement and its origins, with an emphasis on its latest incarnation of “100% access to justice.”¹ I describe three priorities of the access to justice movement that have been in circulation for several cycles, and focuses on the institutional design challenges that pose barriers to successful implementation of those priorities.

The latest iteration of the access to justice movement is the opportunity to take ideas new and old and channel them into implementation and action. Looking at the role of law schools generally as a stakeholder in the civil legal system and as an

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1 Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, 94 JUDICATURE 156, 167 (2011) (to the author’s knowledge, the first time “100 percent” was used in describing the access to justice goal); REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE, LEGAL SERVS. CORP. 1 (Dec. 2013), <http://www.lsc.gov/media/in-the-spotlight/report-summit-usetechology-expand-access-justice>.

observer of it, I argue that law schools can take a lead role in closing the gap and bringing the justice system closer in line with its ideals, benefiting today's justice system and tomorrow's lawyers through improved legal education and closer connection between students and lived experiences of end users.² Coming from the perspective of a participant in a state-level access to justice collaboration, I offer some practical recommendations and highlight some successful initiatives already underway that have the potential to move closer to the vision of justice for all.

I. REVOLUTIONS TOWARD 100% ACCESS TO JUSTICE

In 2015, the national Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) passed Resolution 5 in support of “the aspirational goal of 100 percent access to effective assistance for essential civil legal needs.”³ The passage of the resolution is the result of decades of work. What is now the access to justice movement originated with the movement for a right to the assistance of legal counsel, first in criminal proceedings and later in civil ones.⁴ Civil legal aid in the United States gained traction in the 1960s as part of the War on Poverty, with the Office of Economic Opportunity (“OEO”) creating the first federally funded Legal Services Programs in 1965.⁵

The term “access to justice” was used in earnest beginning in the 1970s.⁶ Since that time, what started as a right to counsel movement has become a more diverse

² See *infra* nn. 54, 66 (describing the purposes of legal education).

³ CONFERENCE OF CHIEF JUSTICES & CONFERENCE OF STATE COURT ADMINS., RESOLUTION 5 (2015), available at http://www.ncsc.org/~media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All_final.ashx. The shift to “100%” appears to have originated in the Report of the Summit on the Use of Technology to Expand Access to Justice. LEGAL SERVS. CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE, 1 (Dec. 2013), <http://www.lsc.gov/media/in-the-spotlight/report-summit-usetechology-expand-access-justice>.

⁴ DEBORAH L. RHODE, ACCESS TO JUSTICE 57-65 (Oxford Univ. Press 2004) (outlining the history of advocacy for right to counsel in criminal proceedings, rise of civil legal aid, and growth of pro bono representation). See also MAURO CAPPELLETTI, JAMES GORDLEY, & EARL JOHNSON, TOWARD EQUAL JUSTICE: A COMPARATIVE STUDY OF LEGAL AID IN MODERN SOCIETIES (1975) (comparing the origins of civil legal aid in Western countries).

⁵ Title I of the Economic Opportunity Act of 1964 (42 U.S.C. §§ 2701-981 (1970), repealed in part, Act of Dec. 28, 1973, Pub. L. No. 93-203, 87 Stat. 833); Economic Opportunity Amendments of 1965, Pub. L. No. 89-253, § 12, 79 Stat. 973, amending Economic Opportunity Act of 1964, § 205(a), 42 U.S.C. § 2785(a) (1970) (identifying legal services programs as community action programs); E. Cahn & J. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964). After the demise of the OEO, legal services were funded by the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378 (1974). See generally EARL JOHNSON, JR., JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM (Russell Sage Foundation, 1974). See also, e.g., RHODE, *supra* note 4, at 59 (noting the change from “the earlier OEO rhetoric of ‘law reform and social change’ . . . to the more neutral goal of enhancing ‘access to justice.’”); Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805 (1967).

⁶ Bryant G. Garth & Mauro Cappelletti, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFFALO L. REV. 181, 185 (1978) (defining access as “the means by which rights are made effective.”) “The words “access to justice” are admittedly not easily defined, but they

(or diluted) access to justice movement.⁷ Civil justice system stakeholders have taken up the access to justice mantle in succession, from the American Bar Association⁸ to the Legal Services Corporation⁹ to the Conference of Chief Justices.¹⁰ Each provides its own lens on how to define the justice gap, and ways to solve it. In each iteration of the access to justice conversation, stakeholder understanding grows, and new consensus emerges on the same common themes: need for attorneys, expanding available services, effective triage methods, and simplifying legal processes.¹¹

A. Continuum of Services¹²

In addition to calls for increased funding for legal aid and establishing a right to counsel in expanded legal matters, the focus on access to attorneys has expanded to include access to civil legal assistance more broadly—namely, diversifying the types

serve to focus on two basic purposes of -the legal system-the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state. First, the system must be equally accessible to all; second, it must lead to results that are individually and socially just. Our focus here will be primarily on the first component, access, but we will necessarily bear in mind the second. Indeed, a basic premise will be that social justice, as sought by our modern societies, presupposes effective access.” *Id.* at 182.

7 See, e.g., Marc Galanter, *The Duty Not to Deliver Legal Services*, 30 U. MIAMI L. REV. 929 (1976), David Trubek, *Review of Balancing the Scales of Justice: Financing Public Interest Law in America*, 1977 WIS. L. REV. 303, 310 (advocating “simpler or nonadversary dispute systems” where appropriate); Tom Ehrlich, *A Year in the Life . . . The Legal Services Corporation*, 34 NLADA BRIEFCASE 63, 67 (1976-1977) (“...[I]ncreased legal services are essential, but that is only part of the solution of access to justice for the poor.”); Russell Engler, *Shaping a Context-Based Civil Gideon From the Dynamics of Social Change*, 15 TEMP. POL. & CIV. RTS. L. REV. 697 (2006).

8 See AM. BAR ASS’N, REPORT OF THE COMMISSION ON THE FUTURE OF LEGAL SERVICES, at vi–vii (2016), http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf (spawning the American Bar Association Center for Innovation).

9 See generally LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

10 See Richard Zorza, *Table Comparing Three New Different ATJ Sets of Recommendations Should Help Move Collaboration Forward*, RICHARD ZORZA’S ACCESS TO JUSTICE BLOG (Sept. 3, 2016), <https://accesstojustice.net/2016/09/03/table-comparing-three-new-different-atj-sets-of-recommendations-should-help-move-collaboration-forward/>; see also Laura K. Abel, *Evidence-Based Access to Justice*, 13 U. PA. J. L. & SOC. CHANGE 295, 296 (2009); Russell Engler, *Toward a Context-Based Civil Right to Counsel Through “Access to Justice” Initiatives*, 40 CLEARINGHOUSE REV. 196, 200 (2006); Zorza, *Emerging Consensus*, supra note 1, at 156–57. See generally LEGAL SERVICES FOR THE POOR: TIME FOR REFORM (Douglas J. Besharov ed., 1990); Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1816–18 (2004).

11 See, e.g., Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 LOY. L.A. L. REV. 869, 877 (2009) (imagining a full access system where lawyers are available in areas where they are “cost-effective,” coupled with “simplification of legal processes, more nonlawyer assistance, collaboration with other legal and social services providers, and expanded pro bono and law school programs”); Austin Sarat, *The Litigation Explosion, Access to Justice, and Court Reform: Examining the Critical Assumptions*, 37 RUTGERS L. REV. 319, 323–24 (1984). Sarat summarizes the importance of access to legal processes as akin to the right to vote and lays out three categories of barriers to access to justice. Notably, viewing the system from the perspective of the user is at the fore, even in 1984 when Sarat’s article was published.

12 John M. Greacen, Amy Dunn Johnson & Vincent Morris, *From Market Failure to 100% Access: Toward a Civil Justice Continuum*, 37 U. ARK. LITTLE ROCK L. REV. 551, 551 (2015).

of assistance available to address the diverse needs of those with “justiciable events.”¹³

By way of example, the Massachusetts Justice for All Initiative adopted the visual representation of a “service pyramid,” with the more scalable services depicted at the base, and the more resource-intensive, customized services at the top.”¹⁴



Figure 1: Massachusetts Service Pyramid

Access to private attorneys.¹⁵ In recognition of the fact that legal aid and pro bono representation cannot meet the needs of all who need legal help, justice system stakeholders have considered avenues to increase access to private attorneys. The primary avenue is unbundled legal services. Through limited scope or discrete task representation,¹⁶ litigants can engage an attorney for part of the case—a crucial

13 Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in *TRANSFORMING LIVES: LAW AND SOCIAL PROCESS* 15 (Pascoe Pleasence et al. eds., 2007) (citing HAZEL GENN, *PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW* 12 (Oxford: Hart 1999)).

14 MASSACHUSETTS JUSTICE FOR ALL STRATEGIC ACTION PLAN 1, 20 (Dec. 2017), adapted from JEANNE CHARN & RICHARD ZORZA, *CIVIL LEGAL ASSISTANCE FOR ALL AMERICANS: THE REPORT OF THE HARVARD LAW SCHOOL BELLOW-SACKS PROJECT ON THE FUTURE OF ACCESS TO CIVIL LEGAL SERVICES* 54 (Dec. 2005), <http://www.garybellow.org/Text.pdf>. “LAR” refers to limited assistance representation. *Id.*

15 See generally Luz E. Herrera, *Rethinking Private Attorney Involvement Through a “Low Bono” Lens*, 43 *LOY. L. REV.* 1 (2009); 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 (2010)

16 Unbundling is referred to in different jurisdictions as discrete task representation, limited scope representation, limited assistance representation, or unbundled legal services. SARA SMITH & WILL HORNSBY, *UNBUNDLED LEGAL SERVICES: AT THE TIPPING-POINT?* ABA STANDING COMMITTEE ON THE

event, like the case management conference or a motion to dismiss—without the costs of full representation for the entirety of a case. The attorney and litigant enter into a detailed agreement defining what tasks the attorney will be responsible for and what tasks the litigant will be responsible for. Unbundled legal services as a concept has been debated, promoted, and critiqued since at least the mid-1990s.¹⁷ The call for unbundling has resulted in forty-five jurisdictions now providing a formal rule permitting limited appearances in the courtroom without requiring judicial permission.¹⁸

While it is a hallmark of most state visions for access to justice, the rise of court rules authorizing limited appearances in court has not led to a boom in private practice addressing essential civil legal needs of low income families.¹⁹ Alternative business models beyond unbundled legal services, such as provision of attorneys' fees, have had still less success in the access to justice space.²⁰

Non-lawyer roles. In addition to expanding access to attorneys and attorney-supervised law students, non-lawyers providing legal help emerged as an access-to-justice trend as early as the 1970s.²¹ This trend is not unique to the U.S.: Rebecca

DELIVERY OF LEGAL SERVICES 1 (Apr. 2018), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_tipping_point_article.pdf.

17 See Forrest Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAMILY L. QUARTERLY 421 (1994); Fern Fisher-Brandveen & Rochelle Klempner, *Unbundled Legal Services: Untying the Bundle in New York State*, 29 FORDHAM URB. L.J. 1107 (2002).

18 Justice Index, Self-Representation Access: Support for Self-Represented Litigants, responses to Questions 6 and 7, <http://justiceindex.org/2016-findings/self-represented-litigants/> (documenting that 45 of 52 jurisdictions authorize limited scope representation, but only 9 jurisdictions provide judicial training).

19 Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN L. REV. 741, 743-44 (2015); Molly M. Jennings & D. James Greiner, *The Evolution of Unbundling in Litigation Matters: Three Case Studies and a Literature Review*, 89 DENV. U. L. REV. 825, 827 (2012). Further, there has been little evaluation of the effects of unbundled legal services that would give rise to the level of support for unbundling. *Id.*

20 Contingency fee legal services is widespread in personal injury and medical malpractice. In housing, consumer debt, and others, jurisdictions also have statutes, regulations, and court rules that authorize the provision of reasonable attorney's fees to the prevailing party – a policy that, if it were implemented more widely by attorneys and authorized by judges, could expand the availability of private attorney representation to those who would otherwise not be able to afford it. See Gerry Singen, et al., *Dollars and Sense: Fee Shifting*, in ABA STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES REINVENTING THE PRACTICE OF LAW (Luz Herrera ed., 2014); Erika Rickard, *The Agile Court: Improving State Courts in the Service of Access to Justice and the Court User Experience*, 39 W. NEW ENG. L. REV. 227, 235-36 (2017).

21 Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons*, 85 CAL. L. REV. 79, 151 (1997) (writing in 1997, "The increased use of lay advocates has long been viewed as a component of a program to expand access to the legal system."), citing Gary Bellow & Jeanne Kettleon, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337, 387 n.195 (1978). See also Garth & Cappelletti, *supra* note 6, at 278; Lester Brickman, *Expansion of the Lawyering Process Through a New Delivery System: The Emergence and State of Legal Paraprofessionalism*, 71 COLUM. L. REV. 1153 (1971); Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STANFORD L. REV. 1, 98 (1981) (pairing a recommendation for the role of nonlawyers with other system reform, as "decreasing the profession's hegemony in certain fields of practice might

Sandefur points out, other countries permit non-lawyers to address a much higher percentage of civil justice issues than is the case in the United States.²²

Improved self-help. The category of “self-help” captures a range of materials, content, and information to assist those navigating the legal system. Just as legal assistance exists along a continuum, self-help tools can also be divided along a continuum, from static text at the most widely available to interactive, multimedia tools as the more resource-intensive, tailored to individual needs.²³ The goal for self-help content, as articulated by Massachusetts access to justice advisor Hon. Dina Fein, is to become “targeted, accessible, deployable, multilingual, multimedia, and available for widespread distribution to the public.”²⁴ The judiciary and legal community lag behind the executive branch (at the municipal, state, and federal levels) in the implementation of plain language and multilingual information.²⁵

B. Triage and Service Coordination

Following from the expansion of available services along the continuum is the question of how people with legal needs obtain one or more of those services. Coordination of services is a prerequisite to a functioning justice ecosystem, and to

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- remove some of the most potent political obstacles to reform.”); Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice*, 23 N.Y.U. REV. L. & SOC. CHANGE 101 (1996).
- 22 Rebecca L. Sandefur, *The Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy*, 42 LOY. L.A. L. REV. 939, 951 (2009). See also Rebecca L. Sandefur & Thomas M. Clarke, *Designing the Competition: A Future of Roles Beyond Lawyers? The Case of the USA*, 67 HASTINGS L.J. 1467, 1471 (2016); Gillian K. Hadfield, *Higher Demand, Lower Supply—A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 143 (2010); Anna Carpenter, Alyx Mark, & Colleen Shanahan, *Trial and Error: Lawyers and Nonlawyer Advocates*, 42 L. & SOC. INQUIRY 1023 (2017). Studies from other countries are not clear on the point of whether nonlawyers service providers truly enhance access to justice. *Id.*
- 23 Greacen et al., *supra* note 12, at 563 & n. 54 (2015) (citing Katherine Altoneder, *Introduction of SRLN National Self-Help Services Inventory, ATJ Tiers & Discussion*, SELF-REPRESENTED LITIG. NETWORK, <http://www.srln.org/node/49/conferencesrln-2015-equal-justice-conference-pre-conference-austin-2015>).
- 24 Dina E. Fein, *Access to Justice: A Call for Progress*, 39 W. NEW ENG. L. REV. 211, 219 (2017) (citing D. James Greiner, Dalié Jiménez & Lois R. Lupica, *Self-Help Reimagined*, 92 IND. L. J. 1119 (2017)).
- 25 The executive branch has experienced the combination of court decisions, American Bar Association recommendations, and scholarship on best practices that the justice system also enjoys. *E.g.*, *Walters v. Reno*, 145 F. 3d 1032 (9th Cir. 1998); Resolution of American Bar Association, adopted by House of Delegates, 9-10 August 1999; Michael G. Byers, *Eschew Obfuscation—The Merits of the SEC’s Plain English Doctrine*, 31 U. MEM. L. REV. 135 (2000). In addition, federal and state legislation and regulations have created a more unified vision and mandate to adopt plain language instructions. Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861. In the area of multilingual information (both written translation and oral interpretation), the clarity provided by federal legislation, regulations, and interpretations thereof have resulted in clear requirements for how to prioritize language access in administrative agencies. In the judiciary, by contrast, the disconnect between the federal courts and the admonitions that have come from the federal Department of Justice directed at state courts highlights the lack of unified vision and priority-setting across justice systems. See Laura K. Abel, *Language Access in the Federal Courts*, 61 DRAKE L. REV. 593 (2012).

creating a system for diagnosing legal problems, assessing options, and connecting to potential resources.²⁶

Collaboration among providers implies that there is some solution that would emerge to the benefit of those seeking providers' services, meaning that those who are eligible for services would be routed to the services that best meet their needs.²⁷ Practitioners and legal scholars have grappled with the difficult question facing legal aid attorneys: who receives full representation when it is not available to all?²⁸ Triage, or assigning some users to a more or less resource-intensive resource when resources are scarce, is a necessary element to most "100% access" initiatives at the state level.²⁹

C. System Reform and Process Simplification³⁰

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- 26 For example, web-based triage portals include everything from diagnosis and assessment through intake. CHARN & ZORZA, *supra* note 14, at 54; LIZ SCHOTT & SHARON PARROTT, USING THE INTERNET TO FACILITATE ENROLLMENT IN BENEFITS PROGRAMS: ELIGIBILITY SCREENERS AND ONLINE APPLICATIONS, CTR. FOR BUDGET AND POL'Y PRIORITIES (2005), <http://www.srln.org/node/251>; THOMAS M. CLARKE, BUILDING A LITIGANT PORTAL: BUSINESS AND TECHNICAL REQUIREMENTS, NAT'L CTR. FOR STATE COURTS (Nov. 2015), <http://www.srln.org/system/files/attachments/Report%20Building%20a%20Litigant%20Portal%20%28Clarke%202015%29.pdf>; TOM CLARKE, RICHARD ZORZA, & KATHERINE ALTENEDER, TRIAGE PROTOCOLS FOR LITIGANT PORTALS: A COORDINATED STRATEGY BETWEEN COURTS AND SERVICE PROVIDERS 3 et seq. (2013), http://www.srln.org/system/files/attachments/Triage_Protocols_for_Litigant_Portals__A_Coordinated_Strategy_Between_Courts_and_Service_Providers.pdf; RICHARD ZORZA, THE SELF-HELP FRIENDLY COURT: DESIGNED FROM THE GROUND UP TO WORK FOR PEOPLE WITHOUT LAWYERS, NAT'L CTR. FOR STATE COURTS, 22 (2002), http://www.zorza.net/Res_ProSe_SelfHelpCtPub.pdf.
- 27 Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37 (2010). See also Alan W. Houseman, *Civil Legal Assistance for Low-income Persons: Looking Back and Looking Forward*, 29 FORDHAM URB. L.J. 1213, 1235 et seq. (2001).
- 28 Carol Ruth Silver, *The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload*, 46 J. URB. L. 217, 221 (1968); Gary Bellow & Jeanne Kettleon, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337 (1978); Carrie Menkel-Meadow & Robert G. Meadow, *Resource Allocation in Legal Services: Individual Attorney Decisions in Work Priorities*, 5 LAW & POL'Y Q. 237 (1983); Mary Helen McNeal, *Report of the Working Group on Limited Legal Assistance*, 67 FORDHAM L. REV. 1819 (1999); COREY S. SHDAIMAH, NEGOTIATING JUSTICE (2011); Justine A. Dunlap, *I Don't Want to Play God: A Response to Professor Tremblay*, 67 FORDHAM L. REV. 2601 (1999); Paul R. Tremblay, *Acting a Very Moral Type of God: Triage Among Poor Clients*, 67 FORDHAM L. REV. 475, 2491-2 (1998) (different principles driving triage decisions); DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY 306 et seq. (Princeton Univ. Press 1988).
- 29 Kenneth V. Iserson & John C. Moskop, *Triage in Medicine, Part I: Concept, History, and Types*, 49 ANNUALS OF EMERGENCY MEDICINE 275, 278 (2007) (defining triage as rationing treatment "in situations of at least modest scarcity, according to an assessment [by a professional] and the application of an established sorting system or plan"); Richard Zorza, *The Access to Justice 'Sorting Hat': Towards a Triage and Intake that Maximizes Access and Outcomes*, 89 DENVER UNIV. L. REV. 859, 866 (2013). Opinions about triage priorities vary. See, e.g., Sargent Shriver Civil Counsel Act, AB 590 ch. 2.1, § 68561(b)(7)(H) (Cal. 2009) ("merits of the case"), available at https://www.brennancenter.org/sites/default/files/legacy/Justice/LSC/CA_ab_590_bill.pdf; I. Glenn Cohen, *Rationing Legal Services*, 5 J. LEGAL ANALYSIS 221, 427 et seq. (2013) (comparing different triage priorities, e.g., "priority to the worst-off"); Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC'Y REV. 95, 97 (1974) (describing Repeat Players). See, e.g., STACEY MARZ, FASTER, CHEAPER, & AS SATISFYING: AN EVALUATION OF ALASKA'S EARLY RESOLUTION TRIAGE PROGRAM 1, 4 (2016),

At the same time that civil legal aid was expanding as part of the War on Poverty, its thought leaders were also advocating for complete system reform.³¹ More than simply access to the system, true access to *justice* is in no small part the actual substantive outcome of legal proceedings or other resolution of legal problems. Simplification of court processes is a way of “making it easier for persons to satisfy the standards for a given legal remedy.”³² Court and other adjudicatory processes have gotten increasingly complex over time.³³ “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.”³⁴ Simplification of adjudicatory processes within courts and administrative agencies also serves to increase availability of resources across the system. For example, when court procedures are more straightforward, what once required attorney assistance may become more feasible for litigants to navigate with self-help materials or non-attorney navigators, thereby freeing up the attorney to assist someone with a more complex need.

II. OVERCOMING CHALLENGES TO IMPLEMENTATION

The 100% access conversation follows a well-trod path of discussing the flaws and failures of the state level civil justice system and proposing alternative solutions. Just as the problems with the civil justice system are not new, neither are the proposed solutions or the explanation behind them. And yet adoption and implementation of access to justice innovations have not yet resulted in a substantive difference in the lived experience of low- to moderate-income individuals and families with civil legal needs. Despite decades of discussion and attempts at problem-solving, the civil justice system continues to be plagued by “a fundamental absence of coordination in the system, fragmentation and inequality in who gets served and how, and arbitrariness in access to justice depending on where one lives.”³⁵ Progress has been slow, and evaluation of that progress still slower, as proposed solutions have not

<http://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2016/Faster%20Cheaper%20as%20SatisfyingAn%20Evaluation%20of%20Alaskas%20Early%20Resolution%20Triage%20Program.ashx>

- 31 E. Cahn & J. Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME L. REV. 927, 937 (1966) (“New legal service programs for the poor cannot ...rest with providing the poor with greater opportunity to use a legal system which the middle class has found to be obsolete, cumbersome-and too expensive in monetary, psychological and temporal terms.”).
- 32 Garth & Cappelletti, *supra* note 6, at 287 & n. 384 (citing “no-fault divorce” as an example of process simplification). *See also id.* at 242 (“What is novel in the [access to justice effort] is the large-scale attempt to give effective rights to the ‘have-nots’ against the ‘haves’: the unprecedented pressure to confront and attack the real barriers faced by individuals. More than simply the creation of specialized courts has been found to be necessary; new approaches to civil procedure must also be devised.”).
- 33 Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 DRAKE L. REV. 845, 851 (2013).
- 34 CHARN & ZORZA, *supra* note 14, at 17.
- 35 REBECCA L. SANDEFUR & AARON C. SMYTH, AM. BAR. ASS’N, ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT ix (2011).

gained the necessary momentum to move from idea to reality.³⁶ While the revisiting of familiar solutions can be frustrating, it is also heartening. At this point, it seems that the primary obstacle is not that there is some obvious solution just beyond our imagination.³⁷ The challenge lies, rather, in implementing the innovations that we identify.

Successful implementation requires “clearly articulating what the change is to accomplish and generating a perceived need for it; a governance structure and process that coordinates individuals’ activities and assigns accountability for results; and meaningful performance measures to help both implementers and overseers gauge progress.”³⁸ Limited capacity and lack of resources of course hinder progress, but resource constraints alone do not explain the fragmentation and failures of the civil justice system.³⁹ Effective implementation of access to justice priorities does not necessarily require new solutions, but rather “collective will” to accomplish agreed-upon goals.⁴⁰

A close examination of efforts thus far reveals structural and institutional obstacles within the civil justice system that must be overcome in order to achieve 100% access. The justice system faces a collective action problem.⁴¹ The justice

36 Much like “one cannot *read* a book, one can only reread,” it seems that the civil justice system cannot propose solutions, but only re-propose. VLADIMIR NABOKOV, LECTURES ON LITERATURE 3 (Fredson Bowers, ed., 1980). Of course, one of the reasons that these entities tend to echo the same ideas back to one another is that legal professionals are the only ones in the room. See Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 104 (2013) (noting the “tendency for researchers to frame research questions to fit policy makers’ definitions of a problem and their policy goals for addressing that problem.”).

37 Or is it? Perhaps if we started with a different initial inquiry, with a broader or different coalition of stakeholders, we would come up with completely different proposed solutions for improving the civil justice system, or justice even more broadly defined.

38 James S. Kakalik, Terence Dunworth, Lural A. Hill & Daniel McCaffery, *Just, Speedy, and Inexpensive? An Evaluation of Judicial Case Management under the Civil Justice Reform Act*, 49 ALA. L. REV. 17, 48–49 (1997). Kakalik et al. address court reform in particular, but the lessons from court reform are equally applicable to multilateral access to justice community. “Studies of change also document that members of organizations are more likely to change their behavior when leadership and commitment to change are embedded in the system, appropriate education is provided about what the change entails, relative performance is communicated across parts of the organization, all supporting elements in the organization also make desired changes, and sufficient resources are available.” *Id.* at 49.

39 In terms of human as well as financial resources, the investment in access to justice continues to be woefully inadequate. As the Justice Index indicates, the number of civil legal aid attorneys is dwarfed by the number of people in poverty in all jurisdictions, and particularly in rural ones. THE JUST. INDEX, <http://justiceindex.org/> (last visited Feb. 8, 2018). That said, even where resources have been devoted, e.g., majority of state court systems have designated staff to address access justice issues, designated staffing has not yet manifested in widespread adoption of plain language rules, language access, or other access to justice solutions. *Id.*, *Self-Representation Access: 2016 Findings*, Questions 6, 8, 10 (20-16), available at http://justiceindex.org/wp-content/uploads/2016/05/Self-Representation_Highlights.pdf.

40 Greacen et al., *supra* note 12, at 572.

41 See generally MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION; PUBLIC GOODS AND THE THEORY OF GROUPS (Harvard Univ. Press 1971); THOMAS C. SCHELLING, THE STRATEGY OF CONFLICT (Harvard Univ. Press 1960); Mark Lubell, Mark Schneider, John T. Scholz, & Mihriye Mete, *Watershed Partnerships and the Emergence of Collective Action Institutions*, 46 AM. J. POL. SCI. 148, 156-60 (2002) (describing

ecosystem as a whole may very well benefit from cooperation, but questions persist as to where and whether access to justice work fits within the overarching structure of each of the respective stakeholder institutions, including the court, legal aid, private bar, and law schools. Each constituency brings its own perspective, and its own constraints, which may slow or even prevent collective goals from being achieved. As Deborah Rhode describes,

[S]takeholders in the reform process have concerns that sometimes tug in different directions. The organized bar worries about the economic effects of procedural simplification and nonlawyer competition. Government officials focus on how much the public values subsidized legal assistance in comparison with other needs. Judges and court administrators are interested in efficiency: how to clear dockets and promote confidence in judicial decision making. Legal services providers focus on resources: how to secure the staff and support structures necessary for addressing unmet needs. Clients and the nonprofit groups that represent them care about both procedural and substantive fairness; they want processes and outcomes that will secure their rights and address their social and economic disadvantages. These different interests often lead to different reform priorities, which complicate the challenges of securing significant progress on civil justice issues.⁴²

Efforts to enhance access to justice are generated by individual stakeholders, each of which is limited both by its own self-interest and by the dearth of knowledge about effective ways of addressing legal needs.⁴³ Within the broader civil justice system, there is no underlying process or structure for moving toward a comprehensive solution or system improvement.⁴⁴ Interests of each constituency may be in conflict with one another, and are compounded by each organization's own institutional inertia. While there may be some agreement among access to justice leaders that unbundled legal services, for example, is a priority for improving the civil justice system, entrenched interests or longstanding practices can prevent their adoption.⁴⁵ At the same time, in the absence of empirical evidence about which forms

“watershed partnerships,” an analogous construction to civil justice system convenings, in which problem severity, financial incentives, and political incentives)

42 Rhode, *Whatever Happened*, *supra* note 11, at 872.

43 Laura K. Abel, *Designing Access: Using Institutional Design to Improve Decisionmaking About the Distribution of Free Civil Legal Aid*, 7 HARV. L. & POLY REV. 66 et seq. (2013) (applying institutional design theory to decision-making in the context of civil legal aid resource allocation).

44 *Id.*

45 Katherine Alteneder & Linda Rexer, *Consumer Centric Design: The Key to 100% Access*, 16 J.L. SOC'Y 5, 20 (2014); Sandra E. Lundy, *Change from Within: The Massachusetts Trial Court's Access to Justice Initiative*, 47 NEW ENG. L. REV. ON REMAND 69, 79 (2012). Consensus among stakeholders does not necessarily imply that there is evidence to support stakeholders' priorities.

of assistance to priorities, collective discussions remain vulnerable to the positions of those with the loudest voices.⁴⁶

The collective action problem facing the civil justice system is in part due to the lack of clear governance structure. Historically, the charge to drive access to justice collaborations has largely fallen to legal services providers.⁴⁷ The Legal Services Corporation (“LSC”) promoted the priorities of expanded and integrated services.⁴⁸ In letters to its funded programs in 1998 and 2000, LSC asked funded organizations to integrate service delivery statewide, and develop priorities, as well as provide a “continuum of services” extending beyond traditional “full” attorney-client representation.⁴⁹ Unfortunately, the promotion of service integration and diversification were in response to budget cuts, and ultimately were associated with the consolidation and reduction of LSC-funded programs across the country.⁵⁰ Legal services providers, as a result, are rightfully wary of conversations that echo this language.

What is required is not further demands of legal services providers, but rather concerted action by all other stakeholders outside of legal services, i.e., courts, private bar, law schools, administrative agencies, and nontraditional stakeholders in the civil justice system.

A. *The Tipping Point*

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- 46 See Abel, *Designing Access*, *supra* note 43, at 61, 80 & n. 102 (recommending a “long-term goal of creating a body of empirical information on which to base allocation decisions,” via state-level Commissions or a national body).
- 47 See, e.g., KRIS SHEPARD, RATIONING JUSTICE: POVERTY LAWYERS AND POOR PEOPLE IN THE DEEP SOUTH (LSU Press 2007); ALAN W. HOUSEMAN & LINDA E. PERLE, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN AMERICA, CTR. L. & SOC. POL’Y (2007); Jeanne Charn, *Legal Services for All: Is the Profession Ready*, 43 LOY. L.A. L. REV. 1021, 1045 (2008) (describing the challenges of a lack of information sharing, best practices, efficient use of resources), *available at* <https://static1.squarespace.com/static/53bc3a4ce4b0ee8f70d1c712/t/550472fde4b023db6723b965/1426354941746/MPSAdraft.4.pdf>.
- 48 The American Bar Association created its first standards for the provision of legal aid (then called “civil legal services for the poor”) in 1961, and in its 1986 revision, included a standard that “a legal services provider should interact effectively with poor persons in its service area to be aware of their legal needs; and based on that interaction and other relevant information should engage in comprehensive planning to establish priorities for the allocation of its resources . . .” AM. BAR ASS’N, STANDARD 6.1 (1986).
- 49 Letter from John A. Tull, Vice President for Programs, Legal Servs. Corp., to all LSC Program Directors 9 (Feb. 12, 1998) [hereinafter LSC Program Letter 98-1], *available at* <https://www.lsc.gov/about-lsc/laws-regulations-guidance/program-letters> (referencing state planning efforts that were first promulgated by LSC in 1995); Letter from Randi Youells, Vice President for Programs, to all LSC Program Directors 4 (Dec. 13, 2000), *available at* http://www.lsc.gov/program/pl/p12000_7.pdf [hereinafter Program Letter 2000-7] (requiring legal services programs to consider and assess “to what extent has a comprehensive, integrated client-centered legal services delivery system been achieved in a particular state?”).
- 50 Houseman, *supra* note 27, at 1216-17 & n. 27. Houseman also describes goals of sharing information across providers and integrating service delivery and intake, including expansion beyond the legal community. *Id.* at 1235 et seq.

While access to justice initiatives and ideas have evolved over decades, we have reached a tipping point.⁵¹ What makes this latest iteration of the access to justice movement—the “100% access” movement—likely to succeed where its predecessors have faltered is its emphasis on collaboration, and in particular the convening power of court-led collaborative efforts.⁵²

One great success of the 100% access movement is the elevated involvement of state courts.⁵³ State-level Access to Justice Commissions, comprised of “leaders representing, at minimum, the state’s highest court, the organized bar, legal aid providers, and other key stakeholders,” have grown rapidly in recent years.⁵⁴ More recently, the Justice for All initiative led by the National Center for State Courts and Public Welfare Foundation, has motivated a majority of states to bring together a consortium of key actors to collaborate on a strategic action plan for the future, whether under the auspices of the state’s Commission or as a separate consortium.⁵⁵ Launched in response to Resolution 5, the Justice for All initiative has provided incentives to encourage states to bring stakeholders together to work collaboratively to address access to justice issues with a sense of shared purpose. Access-to-justice partners at the state level include court systems, legal aid organizations, private attorneys and bar associations, and law schools. As part of the 100% access

51 Richard Zorza, *New CCJ/COSCA Resolution on 100% Access, and How to Get There, Is a Tipping Point*, RICHARD ZORZA’S ACCESS TO JUSTICE BLOG (Aug. 11, 2015), <http://accesstojustice.net/2015/08/11/new-ccjcosca-resolution-on-100-access-and-how-to-getthere-is-a-tipping-point/>.

52 Richard Zorza notes that the emphasis on collaboration and the shared responsibility for the justice gap and access to justice crisis is in part thanks to Prof. Laurence Tribe in his role in creating the federal Department of Justice Access to Justice Initiative under President Barack Obama. See Department of Justice, *Laurence Tribe, Keynote Remarks at the Annual Conference of Chief Justices*, (Jul. 26, 2010), available at <https://www.justice.gov/opa/speech/laurence-h-tribe-senior-counselor-access-justice-keynote-remarks-annual-conference-chief> (praising judicial leadership in Commission development as “one of the most important justice-related developments in the past decade.”); see also *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/commission-directory.html (last visited Feb. 8, 2018).

53 Jeanne Charn & Jeffrey Selbin, *The Clinic Lab Office*, 2013 WIS. L. REV. 145, 151 (2013); see also Chief Justice Karla M. Gray & Robert Echols, *Mobilizing Judges, Lawyers, and Communities: State Access to Justice Commissions*, 47 JUDGES J. 33, 33 (2008); see also Judge Jonathan Lippman, *The Judiciary as the Leader of the Access-to-Justice Revolution*, 89 N.Y.U. L. REV. 1569, 1572 (2014). See also Hon. Nathan L. Hecht & Hon. Thomas L. Kilbride, *Access to Justice Commissions: Lessons from Two States*, TRENDS IN ST. CTS. 43–45 (2014) (providing a detailed timeline of the access to justice movement).

54 AM. BAR ASS’N RES. CTR. FOR ACCESS TO JUSTICE INITIATIVES, DEFINITION OF AN ACCESS TO JUSTICE COMMISSION (2011), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_definition_of_a_commission.authcheckdam.pdf. The ABA explains the charge of an Access to Justice Commission as “assessing [the state’s] civil legal needs, developing strategies to meet them, and evaluating progress” through “planning, education, resource development, coordination, delivery system enhancement, and oversight.” *Id.*

55 See JUSTICE FOR ALL: LESSONS FROM THE FIELD, NAT’L CTR. FOR STATE COURTS 1,6 <http://www.ncsc.org/~media/Microsites/Files/access/JFALessonsLearnedFinal2018.ashx> (describing participants and governance structures in the Justice for All grant process). The Kresge Foundation and the Open Society Foundation have also joined the Justice for All initiative. *Id.*

movement, states are encouraged to widen their circles to include previously unrepresented stakeholders, as well as client populations themselves.⁵⁶

Commissions and related state-level collaborations provide a structure for stakeholders come together and speak with one voice.⁵⁷ However, even assuming that the convening power of the state-level Access to Justice Commission and/or Justice for All collaboration can address some of the barriers to building momentum, there are still some gaps that must be addressed.⁵⁸ As a commissioner on the Massachusetts Access to Justice Commission, I use my own experience as an anecdote that may be illustrative. Massachusetts ranks among the most ambitious jurisdictions in the access to justice movement, as demonstrated by its high rank in the Justice Index,⁵⁹ a chief of the state judiciary and a trial court judge nationally recognized for their leadership on access to justice within the courts, and full-time court staff positions dedicated to access to justice policies and practices within the court.⁶⁰ The Commonwealth's Justice for All initiative includes the courts, leaders of the largest legal aid providers, private attorneys, law school clinics, national experts, and a variety of non-traditional stakeholders.⁶¹ This is the optimal setting for accomplishing real change, and yet there are some critical gaps.⁶²

B. *What is Missing from the Current Structure*

To overcome the collective action problem, each state-level convening of justice system stakeholders requires building a “collective will” to address institutional inertia and collaborate across the system to create change. The Commission or “100% access” framework provides a foundation for collective implementation. The next key ingredient is a contextual and empirical framework to improve both the strategic vision and the tactical implementation of that vision.

Law schools can contribute to the overall knowledge base by “expos[ing] the historical, structural, and ideological underpinnings of current legal norms and to assess their social value.”⁶³ Specifically, law schools can actively participate “in

56 *Justice for All Project*, NAT'L CTR. FOR STATE COURTS, <http://www.ncsc.org/jfap> (last visited Jan. 27, 2018).

57 CHARN & ZORZA, *supra* note 14, at 35.

58 See Abel, *Designing Access*, *supra* note 43, at 61.

59 *Composite Index: Overall Scores and Rankings*, THE JUST. INDEX, <http://justiceindex.org/2016-findings/findings/> (last visited Feb. 8, 2018). See full discussion of Justice Index, *infra*.

60 *Id.* See also Press Release, Massachusetts Trial Court, Massachusetts Ranks Second in Nation in Justice Index Measuring Access to Justice (May 11, 2016), available at <http://www.mass.gov/courts/news-pubs/sjc/2016/massachusetts-ranks-second-in-nation-in-justice-index-measuring-access-to-justice.html>.

61 The legislature and court users are absent from the group.

62 The gaps might not themselves be identical from state to state, but they do point to a larger trend that would certainly benefit this state, and likely others, as well.

63 See, e.g., RHODE, *supra* note 4, at 33 (describing historical perspectives); Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1338 (2002) (describing interdisciplinary and other streams of legal scholarship, and arguing, “one of the most important functions of legal scholarship is to expose the

generating ideas and information about the legal system” and cultivating knowledge about “how the world is and what is possible.”⁶⁴ In so doing, law schools, either individually or as consortia, can also hold the state to account—both the individual stakeholders (e.g., the courts) and the collaborative endeavors.

III. EXPANDING THE ROLE OF THE LAW SCHOOL

Each law school can take on the responsibility of strategic identification of the role it is playing in moving toward 100% access to justice.⁶⁵ Law schools have long contributed to their local and/or national legal ecosystem, but that does not always translate into a deep understanding of access to justice. The pieces of work that a law school (or entities within a law school) take on may fit within the larger framework of access to justice, but are not often initiated with that larger framework in mind.

Much has already been written about possible changes to law school curricula to strengthen the link between legal education and practice, particularly local practice, and the consequences for students and law schools.⁶⁶ Another article in this issue also includes a discussion of the various connections between schools of legal scholarship and access to justice initiatives.⁶⁷ Rather than elaborate on those topics, this article focuses instead on the potential contributions that law schools as institutions can make right now to their surrounding legal community in the 100%

historical, structural, and ideological underpinnings of current legal norms and to assess their social value.”)

64 Marc Galanter, *Pursuing Justice in an Unjust World: Arjuna in America*, 40 CLEV. ST. L. REV. 379, 384-85 (1992) (arguing that law schools have a “comparative advantage . . . in generating ideas and information about the legal system,” particularly because “...the legal world scandalously underinvests in R&D [research and development] . . . Justice seeking is about how the world is and what is possible. The law school cannot be a plenary actor for justice until it accepts its responsibility to cultivate that knowledge continuously and cumulatively.”)

65 Richard Zorza, *Dean Minnow’s Retirement From Harvard Law Deanship Reminds Us of Law Schools Importance to and Potential For Access to Justice*, RICHARD ZORZA’S ACCESS TO JUSTICE BLOG (Jan. 3, 2017), <https://accesstojustice.net/2017/01/03/dean-minnows-retirement-from-harvard-law-deanship-reminds-us-of-law-schools-importance-to-and-potential-for-access-to-justice/>. Richard Zorza advocates “the need to hold law schools accountable and strongly to encourage their participation in Access to Justice Commissions, in projects deriving from the Justice For All Strategic Planning process and the Chief’s 100% Resolution, in the training and certification of those in “roles beyond lawyer” initiatives, in expanding the role of incubators, in research into access issues, in development of international access networking, in simplification and system reform, and, of course, ensuring the integration of access into the curriculum as a whole.” *Id.* (citations omitted).

66 Jon M. Garon, *Take Back the Night: Why an Association of Regional Law Schools Will Return Core Values to Legal Education and Provide an Alternative to Tiered Rankings*, 38 U. TOL. L. REV. 517, 531 n.45 (2006) (citing several law review articles advocating for legal scholarship that has a closer connection to practice); AM. BAR. ASS’N, Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development: An Educational Continuum*, REPORT OF THE TASK FORCE ON LAW SCHOOLS: NARROWING THE GAP 330 (1992) (recommending that the ABA expand its emphasis on professional skills development in law school, which were later adopted and expanded upon, *see* AM. BAR. ASS’N, Section of Legal Educ. & Admissions to the Bar, ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 302(a)(4) (2005–2006)).

67 *See* Hagan, *in this issue*.

access movement.⁶⁸ Put simply, where are the gaps, and can the law school fill those gaps?

While each state is in a different stage and has different needs, there are some general themes where law schools can take on a much-needed role in the 100% access movement. As described in Part II, law schools can resolve the disconnect between ideas and implementation and resolve uncertainty about best practices, by increasing access to information about what has been done, what works, and what is needed. More concretely, the actions that law schools can take include: filling gaps in the surrounding state's continuum of services, increasing availability of services and resources at all levels; taking a lead role in coordinating and sharing resources, information, and best practices within and across jurisdictions; and providing the empirical and interdisciplinary framework to create real change in the civil justice system writ large.

A. *Expanding the Continuum of Services*

Historically, the strongest link between legal education and the access to justice movement has been connecting students to clients in the form of direct service and provision of legal assistance to underserved populations.⁶⁹ To the extent that law schools already engage with justice system stakeholders in their respective jurisdictions, the primary consideration is the cultivation of future lawyers, through experiential learning and “practice-ready curriculum,” as well as developing and promoting a culture of public service.⁷⁰ Each of the services that law schools engage in can grow and further embed law schools as part of the surrounding justice ecosystem. Law schools can join in state efforts to improve resources all along the service pyramid, while educating students in the process. In so doing, law schools can adopt the model set by medical schools, and embed practice opportunities into legal education.

Law school legal clinics present the most resource-intensive legal assistance that law students can provide. Clinics are often the strongest formal link that law schools have to the surrounding community, meaning both the service population and

68 See generally, STEWART MACAULAY, LAWRENCE MEIR FRIEDMAN, & ELIZABETH MERTZ, *LAW IN ACTION: A SOCIO-LEGAL READER* (2007).

69 This is in no small part because access to justice has been marginalized within legal education. See WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH W. WEGNER, LLOYD BOND, & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 141, 187 (2007).

70 “Law Schools’ Work and Access to Justice,” *Access to Justice Forum*, LEGAL SERVS. CORP., (HARV. L. SCH., Oct. 16, 2017), available at <https://www.facebook.com/LegalServicesCorporation/videos/vb.119095738221297/1064401023690759/?type=2&theater>. See Roy Stuckey, *The American Bar Association's New Mandates for Teaching Professional Skills and Values: Impact, Human Resources, New Roles for Clinical Teachers, and Virtual Worlds*, 51 WAKE FOREST L. REV. 259 (2016) (outlining changes made to the American Bar Association Standards for law schools, requiring more experiential learning, e.g., ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2015–2016 Standard 303(a)(3) (AM. BAR ASS'N 2015); Robert R. Kuehn, *Universal Clinic Legal Education: Necessary and Feasible*, 53 WASH. U. J.L. & POL'Y 89 (2017).

fellow practitioners. Clinical legal education has had a profound impact on legal education overall.⁷¹ It has had less of a role than was perhaps originally envisioned as a way to analyze and improve upon the delivery of legal services or other access to justice considerations.⁷² Even so, law school clinics are at their best a laboratory of practice and a place to connect practice and lived experience with theory learned in the classroom.⁷³

Often a more limited engagement is pro bono participation by students while in school.⁷⁴ Pro bono opportunities can certainly be more heavily utilized, taking direction from where there are gaps in services in the surrounding community. Despite a push from practitioners for decades, only a minority of schools require students to engage in any pro bono activities as a condition of graduation.⁷⁵ Still fewer place any similar expectations on faculty.⁷⁶

Clinics and pro bono opportunities can certainly be expanded, but they are not the only offerings that law students can make to the legal community. As legal services delivery moves from the traditional “bespoke” model to a more “commoditized” one,⁷⁷ law schools and legal educators are thinking differently about the skills and perspectives that future lawyers will need. While these pedagogical changes are not directly related to access to justice, there is significant overlap. Law schools can make a more explicit connection between the focus on the future of the legal profession and more creative ways of providing more commoditized legal assistance to those addressing essential civil legal needs without traditional attorney representation.

For example, the hypothetical scenarios posed to 1L classes could be replaced with more complex, real-world questions from online sources.⁷⁸ Law students can provide legal research to generate responses for interactive self-help tools. Almost every state has adopted the ABA Free Legal Answers, which is an entry point for low-

71 See Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57 (2009).

72 See Charn & Selbin, *supra* note 53, at 153–54.

73 See Stephen Wizner & Dennis Curtis, “Here’s What We Do”: *Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673, 678–79 (1980).

74 See Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 FORDHAM URB. L.J. 1227, 1254–55 (2014) (describing the ongoing effort to expand pro bono requirements and opportunities for law students).

75 As of October 2017, according to the American Bar Association, 42 out of 183 U.S. law schools had some form of pro bono or public service requirement as a condition of graduation. *Pro Bono Programs Chart*, AM. BAR. ASS’N,

https://www.americanbar.org/groups/probono_public_service/resources/directory_of_law_school_public_interest_pro_bono_programs/pb_programs_chart.html (last visited Feb. 8, 2018).

76 *Faculty and Administrative Pro Bono*, AM. BAR. ASS’N,

https://www.americanbar.org/groups/probono_public_service/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pb_faculty.html.

77 RICHARD SUSSKIND, *TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* 25 (2nd ed. 2016).

78 See reddit, *Rapid Fire Tech Talks*, LEGAL SERVS. CORP., INNOVATIONS IN TECHNOLOGY CONFERENCE 108 et seq. (New Orleans Jan. 11, 2018), <https://lsc-live.app.box.com/v/2018ITConMaterials> (discussing reddit’s legal advice subreddit).

income clients seeking pro bono legal advice.⁷⁹ The success of the program depends on sufficient supply of individuals responding to legal questions. Law students cannot provide answers themselves, as attorneys must be licensed to participate in the program. Suffolk Law School provides one model for how students can contribute, while at the same time providing an educational experience: MassLegalAnswersOnline (the Massachusetts site) submits hypothetical questions to a Suffolk class, based on real questions.⁸⁰ Students research the questions and draft responses, under faculty supervision. Those responses can be refined into model “stock answers” or background reading for lawyers who are responding to live client questions.

Written information requires the least intensive allocation of resources, but its value is contingent upon its content being both accessible and usable.⁸¹ Whether a printed pamphlet or a website, any static content runs the risk of becoming obsolete, outdated, or inaccurate. Imagine a course dedicated to keeping online information up to date. Law students will have the opportunity to learn about a legal topic, to learn about the legal resources in the local community, and to add value to courts and legal aid organizations through this maintenance. With guidance and education, the lack of legal experience of students entering law school can be a real asset. It is also an opportunity to learn a legal topic in a way that is grounded in reality.

Developing such interventions provides practical opportunities to apply legal concepts as early as the 1L curriculum, while at the same time providing a lens to view the experience of the system from the perspective of the user. Legal questions from ordinary people highlight the interconnected nature of legal and other issues in ways that can better prepare future lawyers for the kinds of questions that they may encounter when practicing law. Law students are particularly well-positioned to take on the activities of digesting complex legal procedures and explaining them to a non-lawyer audience. While more extensive direct service such as legal clinics provides the opportunity to learn skills such as interviewing, cultural competence, and interpersonal skills, there are smaller ways that can make important contributions to the availability of legal assistance along the continuum of services. At a minimum, these services can expand the number of schools that meet the suggested number of pro bono hours set by the American Bar Association.⁸² More fundamentally, this shift can promote a culture of public service.

i. Leading the Bar

79 As of the end of 2017, 40 states had adopted a version of ABA Free Legal Answers. CTR. FOR INNOVATION, AM. BAR ASS'N., <http://abacenterforinnovation.org/in-the-spotlight-aba-free-legal-answers>.

80 Suffolk Univ. L. Sch., *Students Provide Low Income Residents Digital Pro Bono*, Suffolk Institute on Legal Innovation & Technology (May 24, 2017), <https://sites.suffolk.edu/legaltech/2017/05/24/students-provide-low-income-residents-digital-pro-bono/>.

81 See Greiner et al., *supra* note 24, at 1123.

82 See *Pro Bono Programs Chart*, *supra* note 75, at 163–64.

Law schools are a part of the legal ecosystem, not only as the cultivators of future lawyers, but also as a stakeholder in the accreditation and training of lawyers. Law schools contribute to state bars, in supply of new lawyers, in ongoing conversations about legal ethics, bar exams, and other points of eligibility for entry into the profession.⁸³ By virtue of that connection, law schools have an opportunity to fill gaps in the continuum of services not only with law schools, but by educating the bench and bar.

One opportunity is in the bar exam itself. Historically, states have held their own exams to be admitted to their respective bar, each selecting their own categories of law that warrant testing. The legal topics on that exam can include topics that are relevant to the 100% access movement, which can itself trigger curriculum changes and broader engagement between law schools and the access to justice community. For example, Massachusetts added “access to justice” as a category on its state bar exam in 2015, including subtopics such as limited assistance representation, specific areas of law that affect low- and moderate-income clients, and ethics for pro bono attorneys.⁸⁴

Law schools have extended their reach into post-graduate years as well. Incubator programs, which originated at City University of New York (“CUNY”) School of Law in 2007, provide on-the-ground learning experiences for recent law school graduates.⁸⁵ Often a combination of mentorship, facilities, and built-in intake and referrals, incubators provide an opportunity for new lawyers to hone their craft in areas of law that serve clients with modest means (e.g., family law, housing). There are now over sixty incubator programs across the country.⁸⁶ While incubators may

83 See generally Sarah Valentine, *Flourish or Founder: The New Regulatory Regime in Legal Education*, 44 J.L. & EDUC. 473 (2015).

84 Robert Ambrogi, *In First, Mass. Adds ‘Access to Justice’ to Bar Exam*, LAW SITES BY ROBERT AMBROGI (May 9, 2014), <https://www.lawsitesblog.com/2014/05/mass-first-state-add-access-justice-bar-exam.html>. Starting with the July 2018 bar exam, Massachusetts joined 28 other states in adopting the uniform bar exam (“UBE”), which means that the state access to justice essay questions will no longer be asked unless and until the national conference of bar examiners adds such questions to the uniform / multistate exams. Mass. Bd. Bar Overseers, *About the Uniform Bar Exam* (Mar. 1, 2018); Nat’l Conference of Bar Examiners, *Understanding the Uniform Bar Examination* (July 2017), <https://www.mass.gov/service-details/about-the-uniform-bar-exam>; <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F209>. Multiple choice questions on access to justice will continue to be asked as a part of the Massachusetts Law Component, a precursor to the bar exam. Mass. Bd. Bar Overseers, *The Massachusetts Law Component* (Mar. 1, 2018), <https://www.mass.gov/how-to/the-massachusetts-law-component-mlc>. See also Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 549 (2013) (recommending that access to justice be an additional topic on the bar exam in a way that would encourage expanding law school curricula to address issues such as civil legal needs of low-income households).

85 Standing Committee on the Delivery of Legal Services, Legal Incubators, Am. Bar Ass’n, https://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main.html.

86 See Richard Zorza, *Celebrating 50 Incubators, and Raising a Research and Evaluation Challenge*, RICHARD ZORZA’S ACCESS TO JUSTICE BLOG (Aug. 27, 2015), <https://accesstojustice.net/2015/08/27/celebrating-50-incubators-and-raising-a-research-and-evaluation-challenge/> (recommending the development of a research consortium of incubator programs, to develop

send mixed messages about the education and preparation provided to students during law school,⁸⁷ the strongest programs do offer a mentoring relationship that is beneficial to senior attorneys in the provision of pro bono legal help, as well as the new attorneys learning the practice area.⁸⁸ Law schools with incubator programs can better leverage the expertise of mentor attorneys, with a focus on bridging the justice gap.

Mentorship and connection to senior attorneys is not limited to incubator programs. The infrastructure that law schools build to connect students to their future careers can be leveraged to connect students and practitioners to do real work today, driven by actual needs on the ground. The Pro Bono Collaborative at Roger Williams University Law (“RWU”) is one successful example.⁸⁹ The law school recognized a gap in the recruitment, retention, and deployment of pro bono lawyers, and worked with the community in Rhode Island to build a mentorship network. Through this collaborative approach, RWU resources can be brought to bear on the justice gap in Rhode Island, while at the same time strengthening the connection that lawyers and law students have to direct service and to their local communities.

Law schools can also work with the state bar to reimagine ways that licensing can expand services and service providers, including roles beyond lawyers. One example where a law school has worked together with its state authorizing entity is Washington State through the Limited License Legal Technician.⁹⁰ As of this writing, Washington continues to be the only jurisdiction to have developed a second license and education in the legal arena, short of law school and bar passage.

ii. Leveraging Technology Along the Continuum

Law schools recognize the increasing role and importance of technology skills, primarily for private practice.⁹¹ As a result, law schools across the country are adding

an inward-looking research and evaluation agenda to better understand the role that incubator programs play in the access to justice movement).

87 *But see Accelerator-to-Practice Program*, SUFFOLK U. L. SCH. (2018), <http://www.suffolk.edu/accelerator> (program offered to students while in school).

88 *See* University of Massachusetts School of Law, *Bridging the Justice Gap*, LEGAL.IO, <https://www.justice-bridge.org/> (last visited Feb. 8, 2018).

89 Laurie Barron, et al., *Don't Do It Alone: A Community-Based Collaborative Approach to Pro Bono*, 23 GEO. J. LEGAL ETHICS 323, 325–26 (2010).

90 THOMAS M. CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF WASHINGTON'S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 3, 5 (2017), <https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/405>., *See also* Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 LAW & SOC'Y REV. 79, 88-89 (2007) (describing legislatures' and lawyers' responses to nonlawyers filling legal roles for indigent clients).

91 *See, e.g.*, Duke Law Tech Lab, www.dukelawtechlab.com/; Suffolk University School of Law Legal Innovation and Technology Lab; coding for lawyers' courses that have emerged in several law schools. Georgetown Law Center is a notable exception, with the IronTech Lawyer program and the recent hiring of a technology fellow in collaboration with the Self Represented Litigation Network. <https://www.law.georgetown.edu/academics/centers-institutes/legal-profession/legal-technologies/iron->

technology skills in their offerings available to students.⁹² Technology is also a component of a growing focus on LegalTech and innovation, where lessons from technology such as business processes and design thinking are incorporated into legal education.⁹³ Indeed, many foretell of a major disruption that is coming to the legal profession as a whole as a result of technology innovations.⁹⁴

Law schools can raise the level of technology usage in the service of access to justice.⁹⁵ For example, machine learning can be used to improve searches, information-gathering, and online triage.⁹⁶ Unbundled legal services can be provided through virtual law practice.⁹⁷ Robust data sets from online chat systems can be mined for general themes about problematic legal processes.⁹⁸ Expert systems and document assembly programs are growing, and stand to benefit from a critical eye on both their content and their communication with other systems.⁹⁹ Online dispute resolution and electronic filing of case files have power to transform court processes.¹⁰⁰ Law schools are uniquely suited to refining these tools and securing their implementation in the local legal community.

B. Coordinating Existing Efforts and Resources

Law schools as academic institutions can provide more than additional legal services. Whether a new technology or a longstanding practice, the civil justice system suffers from a lack of research and development about what exists, what is

tech/ Likewise, Chicago-Kent's collaboration with CALI on document assembly has an access to justice lens. <https://www.cali.org/organizations/chicago-kent-college-law>.

92 See generally Dan Jackson, *Human-Centered Legal Tech: Integrating Design in Legal Education*, 50 LAW TCHR. 82 (2016).

93 E.g., Northeastern's NULawLab, NULawLab.org; Center for Legal Services Innovation at Michigan State, legalrnd.org/; LawX Lab at Brigham Young University Law, <https://twitter.com/lawxlab>; Georgia State University Center for Access to Justice, <http://law.gsu.edu/center-access-justice/>; and Stanford University Legal Design Lab, <http://www.legaltechdesign.com/>. See Hagan, *supra* note 67 (discussing research through design).

94 See, e.g., Greacen et al., *supra* note 12, at 554 (comparing changes in the legal industry to the kind of disruptive innovation exemplified by the ride-sharing app Uber).

95 See Margaret Hagan, *The User Experience of the Internet as a Legal Help Service: Defining Standards for the Next Generation of User-Friendly Online Legal Services*, 20 VA. J. L. TECH. 394, 398–409 (2016) (describing the roles that technology can play in enhancing access to justice, and the potential pitfalls to avoid); see also LEGAL SERVS. CORP., *supra* note 1, at 8.

96 See *Understanding the Role of Artificial Intelligence and Machine Learning in Delivering Legal Services*, LEGAL SERVS. CORP., INNOVATIONS IN TECHNOLOGY CONFERENCE (Jan. 2017), <https://2017tigconference.sched.com/event/8ydS/understanding-the-role-of-artificial-intelligencemachine-learning-in-delivering-legal-services>.

97 Vince Morris, *Navigating Justice: Self-Help Resources, Access to Justice, and Whose Job is It Anyway?*, 82 SUPRA 161, 175 (2013).

98 RICHARD ZORZA, THE SUSTAINABLE TWENTY-FIRST CENTURY LAW LIBRARY: VISION, DEPLOYMENT AND ASSESSMENT FOR ACCESS TO JUSTICE (2012), https://www.srln.org/system/files/attachments/Zorza%2021st%20Century%20Library_0.pdf.

99 See David Colarusso & Erika J. Rickard, *Speaking the Same Language: Data Standards and Disruptive Technologies in the Administration of Justice*, 50 SUFFOLK U. L. REV. 387, 409–10 (2017). See also discussion in AM. BAR ASS'N, *supra* note 8, at 18–19.

100 Chris Johnson, *Leveraging Technology to Deliver Legal Services*, 23 HARV. J.L. TECH. 259 (2009).

working, and what is most effective.¹⁰¹ Legal scholarship, and more specifically connection between scholarship and practice, can provide the contextual framework for implementing change in and across jurisdictions.

i. Law School as Information Hub

Sharing best practices and lessons learned from different jurisdictions over time would require the law school to serve as a repository of access-to-justice initiatives.¹⁰² Such a repository would fill a critical gap: storing, curating, and sharing information about evolving tools and resources. While the term “repository” may convey the notion of passive data storage, the proposed information hub would be truly active. The proposed role for the law school is an active one, both institutional memory and connective tissue, between practice on the ground and knowledge about that practice. What works? What has been tried before? What didn’t work, and why? What ideas have already been floated in other jurisdictions, and what was their reception? At a minimum, a repository of information about (i) access-to-justice priorities and topics, (ii) where they have been tried and what the results were, and (iii) evaluation of interventions to better understand their impact, would be tremendously helpful in moving forward in ways that are constructive and not duplicative.

Technology, for example, is an area that is constantly evolving. Law schools, legal aid practitioners, and to a lesser extent, private court consultants, have each taken snapshots at moments in time of existing and ideal technologies in the service of access to justice.¹⁰³ Such a snapshot provides some contribution, but in the absence of maintenance, curation, or recommendations and best practices, its utility is limited.

Other types of access to justice interventions that would benefit from a repository include forms and instructions; glossaries of plain language and translated terms (with explanations); technology tools such as video software, remote computing, text messaging, case management, data analysis, expert systems and document automation, websites, and interpreter tools; incubators, accelerators, and other apprenticeship type models for new lawyers; policies and template business documents for unbundled legal services; and court rules.¹⁰⁴

101 See Galanter, *Arjuna*, *supra* note 64.

102 See discussion of the Justice Index, *infra*.

103 See National Technology Assistance Project Tech Library, LEGAL SERVS. CORP., <https://lsntap.org/tech-library> (last visited Feb. 8, 2018); PHIL MALONE ET AL., BERKMAN KLEIN CTR. FOR INTERNET & SOC’Y AT HARVARD UNIV., PRELIMINARY REPORT: BEST PRACTICES IN THE USE OF TECHNOLOGY TO FACILITATE ACCESS TO JUSTICE INITIATIVES (2010), http://cyber.harvard.edu/sites/cyber.harvard.edu/files/A2J_Report_Final_073010.pdf.

104 *Justice Index*, National Center for State Courts, National Association of Court Management, Self-Represented Litigation Network, LSNTAP, and LegalAidResearch.org each have taken up the storage and of some of these.

One model of connecting law school research with access to justice initiatives is the Justice Index.¹⁰⁵ The National Center for Access to Justice (NCAJ) at Fordham Law School supports research and policy analysis that can help people to obtain justice in the courts. NCAJ is the home of the Justice Index, justiceindex.org, a website that uses data, indicators and indexing to make selected best policies for access to justice highly visible, and to rank the fifty states, Puerto Rico, and Washington, D.C., on their adoption of those policies. By combining data in a way that enables users to quickly scan and compare information across jurisdictions, the Justice Index makes it easy to replicate the policies, and creates incentives for doing so. The NCAJ anticipates next steps for the Justice Index that include (i) extending its coverage to new best policies,¹⁰⁶ (ii) incorporating expert opinion and an evidence base into its matrix to deepen understanding of why the selected practices are considered and/or determined best, and (iii) creating individuated state analyses of Justice Index findings to use the Justice Index to draw a reform agenda for reformers in each state.

The law school location of NCAJ and its Justice Index is important: NCAJ staff collaborate with law students and pro bono law firm volunteers, which is critical to the Justice Index's quality and success. There are also legal education gains to be made for students who carry out the research, and who can learn the skills of policy advocacy by relying on the findings to identify and champion reforms.¹⁰⁷ Moreover the independence of the Justice Index from the courts is key, as neither the states nor the courts themselves are well positioned to evaluate their own performance, or to compare themselves to one another.

Law school information hubs like the Justice Index will not replace existing national repositories. The American Bar Association maintains lists of various initiatives, the Legal Services Corporation hosts examples of research on LegalAidResearch.org, and the National Center for State Court maintains lists of court statistics and court-based initiatives (e.g., language access policies).¹⁰⁸ But each of these serves a separate interest. A law school information hub could knit together those separate interests and move closer toward implementation of a more unified vision.

105 JUST. INDEX, *supra* note 18.

106 The initial findings focus on the number of civil legal aid lawyers and on policies for expanding access to people who are self-represented, people who have disabilities, and people who have limited English proficiency. *Id.*

107 Interview with David Udell (Mar. 6, 2018).

108 Nat'l Ctr. for State Courts, Language Access Programs by State, <http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/Resources-for-Program-Managers/LAP-Map/Map.aspx>. The American Bar Association maintains state-by-state analyses of, e.g., adoption of ABA pro bono service rules, https://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html; Am. Bar Ass'n, Inventory of Innovations, https://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/inventory.html.

ii. Maximizing Existing Resources

A hub of information that includes best practices raises the question, how do we decide which practices are identified as “‘best?’”¹⁰⁹ Empirical research is sorely lacking in the civil justice system, in ways that would be “unthinkable in other major social policy arenas.”¹¹⁰

Legal scholars can conduct observational research on what is actually happening, and in some cases, they do.¹¹¹ In addition, law schools can assess the intended outcomes of legal interventions in order to enhance our understanding of effectiveness.¹¹² Armed with that information, we can conduct more rigorous evaluations of existing and new interventions to determine effective services and resources for different legal needs.¹¹³

Access to Justice Lab. Housed within the Center on the Legal Profession at Harvard Law School, the Access to Justice Lab contributes new research that is driven by the needs of practitioners, with direct bearing on lawyers’ and courts’ operations. The Access to Justice Lab adapts lessons learned from other fields, such as medicine and public health, to legal interventions. Researchers work with field partners to pinpoint access to justice problems, design interventions to address those problems, and evaluate the effectiveness of legal interventions through randomized control trials. For example, one ongoing study asks whether well-designed self-help

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- 109 See Jamie Gamble, Nat’l Ctr. for Access to Justice, *What Helps us Determine if ‘Selected’ Practices are ‘Best’ Practices that Actually Support 100% Access for Self-Represented Litigants?*, Remarks, SELF-REPRESENTED LITIG. NETWORK (Feb. 23, 2018).
- 110 Charn & Selbin, *supra* note 53, at 155. Some notable exceptions include the Community Needs and Services Study conducted by the American Bar Foundation. See REBECCA L. SANDEFUR, AM. BAR FOUND., *ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 1* (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf. See also Albiston & Sandefur, *supra* note 36, at 117; Ken Young, Deborah Ashby, Annette Boaz, & Lesley Grayson, *Social Science and the Evidence-Based Policy Movement*, 1 SOC. POL’Y & SOC’Y, 215, 218 (2002) (“The rush of enthusiasm for evidence-based policy making overlooks the fact that a great deal of research has already been carried out on a wide range of social problems, providing policy makers with pointers that they rarely follow.”, citing Nancy Shulock, *The Paradox of Policy Analysis: If It is not Used, Why do we Produce so Much of It*, 18 J. POL’Y ANALYSIS & MGMT. 226, 244 (1999); Harold L. Wilensky, *Social Science and the Public Agenda: Reflections on the Relation of Knowledge to Policy in the United States and Abroad*, 22 J. HEALTH POLITICS, POL’Y & L. 1241 (1997); Philip Davies & Robert Boruch, *The Campbell Collaboration: Does for Public Policy what Cochrane does for Health*, 323 BRITISH MED. J. 294 (2001).
- 111 See Jane H. Aiken & Stephen Wizner, *Measuring Justice*, 2013 WIS. L. REV. 79 (2013). See generally Rebecca L. Sandefur, *Paying down the Civil Justice Data Deficit: Leveraging Existing National Data Collection*, 68 S.C. L. REV. 295, 310 (2016).
- 112 See, e.g., Albiston & Sandefur, *supra* note 36, at 110–11; LIZ CURRAN, A LITERATURE REVIEW: EXAMINING THE LITERATURE ON HOW TO MEASURE THE ‘SUCCESSFUL OUTCOMES’: QUALITY, EFFECTIVENESS AND EFFICIENCY OF LEGAL ASSISTANCE SERVICES (2012); Richard Zorza, *Poster Proposal: Outcome Measures: A Critical Need*, ZORZA’S ACCESS TO JUSTICE BLOG, <http://accesstojustice.net/2012/11/13/maybe-these-poster-proposals-from-srln-will-stimulate-ideas/> (follow “Outcome Measures” hyperlink).
- 113 See Steven Eppler-Epstein, *Passion, Caution, and Evolution: The Legal Aid Movement and Empirical Studies of Legal Assistance*, 126 HARV. L. REV. 102, 105–06 (2013).

materials can assist self-represented litigants in navigating complex service and notice procedures in guardianship cases.¹¹⁴ Law students and researchers worked with legal aid lawyers and court staff to understand the problem, design self-help materials, and implement a study in which some guardianship petitioners will be randomly assigned to the “treatment” group, and receive the self-help booklet, while others will be randomly assigned to the “control” group, and receive status quo services. Researchers and law students will review court files to assess the impact that self-help materials have on the guardianship petitioner population. While the guardianship service of process project is only one randomized study, it highlights the potential for rigorous evaluations to generate lessons for researcher-practitioner collaborations, as well as the relationship between legal advice, self-help materials, and simplification of court processes.

iii. Iterative Cycles of Research and Practice

Empirical analysis of legal services delivery is underutilized in legal education and law practice alike.¹¹⁵ This requires both (i) expansion of empirical legal studies that focus on state-level civil justice issues, and (ii) application of that research into practice.

Law school clinics are particularly well positioned, due to their close relationships with clients and communities, and can directly benefit from evidence as to best practices when providing services.¹¹⁶ If we start to think of law schools more like teaching hospitals, we can see a clear connection between experience-based, clinical legal education, and empirical research on the profession, best practices, legal services, and access to justice.¹¹⁷ Law schools as teaching hospitals, whether in clinics or in other direct forms of legal assistance, would mean both reflection on micro-level practice decisions, as well as larger trends across the legal profession.¹¹⁸ A clinical

114 Sandy North, *The Lab's New Guardianship Service of Process Study Has Launched!*, ACCESS JUST. LAB (2017), <http://a2jlab.org/new-guardianship-study-has-launched/>.

115 CHARN & ZORZA, *supra* note 14, at 51 (“Law schools are ideally situated to undertake a meaningful and sustained empirical research program to study legal services delivery and management and to produce data and analysis useful to legal services policy makers and providers. Such a program would enhance the core research and teaching missions of law schools, increase constructive collaboration between the academy and the practicing bar, offer law students opportunities to work with faculty on research relevant to important legal services policy debates, and produce better understandings within law schools of the challenges of preparing their graduates to represent legal aid clients and manage first-rate legal services offices.”).

116 Charn & Selbin, *supra* note 53, at 162–64.

117 *See e.g.*, Charn & Selbin, *supra* note 53, at 161 (citing Jeanne Charn, *Service and Learning, Reflections on Three Decades of The Lawyering Process at Harvard Law School*, 10 CLINICAL L. REV. 75 (2003)).

118 *See* Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 998–1001 (2004) (describing the Harvard Law School model and explaining the tension between clinics as learning by doing /legal services, and clinical education academic and a pedagogical instrument). Gary Bellow founded the model of clinical legal education that we see today. *See also* Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn From Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284, 287 n.10 (1981) (describing theories of practice and theories of action).

legal research agenda, if elevated to its rightful status in legal scholarship, strengthens the connections between clinicians' research agendas, clinical pedagogy, and practice.¹¹⁹

C. Reform and Change

In addition to populating an information hub and perhaps informing the work of law school clinics, a solid evidence base of empirical research can inform advocacy efforts within the courts, the legislature, administrative agencies, and legal practice.

While the power and voice of the state court system—and the court-created Access to Justice Commission—is well-suited to the role of convener, the court cannot also effectively serve as the arbiter of system-wide policy discussions. The court is necessarily limited in its ability to advocate for change, particularly of the court itself.

The stakeholder that might be the most independent of pressure is actually the law school.¹²⁰ Law schools train those who will become the lawyers on “both sides of the v.”—representing both landlord and tenant, consumer and debt collector—as well as future judges and court staff. As an independent entity, law schools have the ability to mediate conversations among advocates and between constituencies.

Court reform and process simplification, for example, are among the most important but least prioritized access to justice efforts.¹²¹ This is in part because litigants do not have advocates within the court system comparable to other constituencies, such as the organized bar, the business community, and judges and clerks.¹²²

Law schools may also be a force for more ambitious changes to the legal system as a whole. Law schools may have more flexibility than any other civil justice stakeholder to explore experimental envelope-pushing strategies that improve the experience of people navigating legal questions. By working hand-in-hand with the

119 Rhode, *Access to Justice: An Agenda*, *supra* note 84, at 544–45 (explaining that empirical research is not consistently taught in law school, but models exist that would both elevate the empirical legal training of law students and promote collaborations with other graduate programs.) *See, e.g., Empirical Legal Training in the US Academy*, in OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 1, 8 (Oxford Handbooks 2012) (describing the JD/PhD program at NYU); Charn & Selbin, *supra* note 53, at 161 (discussing stakeholder resistance and inertia that make it difficult to implement a research agenda within law school clinics).

120 *See* Abel, *Designing Access*, *supra* note 43, at 62, 68 et seq. (describing pressures on courts and other stakeholders, including political pressure and self-interest).

121 *See* CHARN & ZORZA, *supra* note 14. *See also* Galanter, *Haves*, *supra* note 29, at 149 (“The system has the capacity to change a great deal at the level of rules without corresponding changes in everyday patterns of practice or distribution of tangible advantages. Indeed, rule change may become a symbolic substitute for redistribution of advantages.”).

122 LSC requires that client community members serve on the boards of LSC-funded organizations; some Access to Justice Commissions have client representatives; and the Self-Represented Litigation Network serves as a voice for court users, albeit as a network of service providers.

local access to justice community, a law school may be able to engage stakeholders to explore alternative approaches to longstanding practices and processes.¹²³

D. *Interdisciplinary Approaches*

Much as the civil justice system seeks to work across legal and other community organizations to address problems holistically, law schools can bring together law and other fields entirely to promote interdisciplinary innovations. In so doing, the law school can truly spearhead the university's engagement in access to justice.

From the user perspective, legal needs do not fit neatly into the boxes set by courts or legal assistance providers, but rather are interconnected across areas of law, financial, health, and social issues.¹²⁴ Including stakeholders almost exclusively from within the justice system further constrains the perspective. The law school has the proximity and the power to stand outside the legal echo chamber and come up with a richer understanding of individual needs, and more creative solutions.

Several schools have begun to use these interdisciplinary approaches to move beyond convening and into concrete action. At Boston College, for example, the Juvenile Rights Assistance Project pairs law students and social work students to provide services to those in the juvenile justice system.¹²⁵ The University of Maine is also working on breaking down silos that often plague universities, including the new Maine Center, an innovation and interdisciplinary graduate education program intended to be "responsive to real world problems in rural communities" regardless of whether those needs are legal.¹²⁶ In Colorado, a Resource Center for Divorcing and Separating Families combines the interdisciplinary approach and the scholar-to-practice approach to create a singular partnership.¹²⁷

CONCLUSION

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- 123 See, e.g., GILLIAN HADFIELD, RULES FOR A FLAT WORLD: WHY HUMANS INVENTED LAW AND HOW TO REINVENT IT FOR A COMPLEX GLOBAL ECONOMY 1 (2017); Alice Woolley & Trevor Farrow, *Addressing Access to Justice through New Legal Service Providers: Opportunities and Challenges*, 3 TEX. A&M L. REV. 549, 550-51 (2016); Laurel A. Rigertas, *The Legal Profession's Monopoly: Failing to Protect Consumers*, 82 FORDHAM L. REV. 2683, 2683-84 (2014).
- 124 See Pascoe Pleasence, Nigel J. Balmer, Alexy Buck, Marisol Smith & Ash Palmer, *Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems*, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 67 (Pascoe Pleasence et al. eds., 2007).
- 125 *Juvenile Rights Advocacy Project*, B.C. L. SCH. (2018), <https://www.bc.edu/bc-web/schools/law/academics-faculty/experiential-learning/clinics/jrap.html>; Vincent D. Rougeau, Dean, Bos. Coll. Law Sch., Address at Access to Justice Forum, *supra* note 70 (describing Juvenile Rights Advocacy Project as well as a new program that will pair law students and entrepreneurship students in a re-entry program for recently incarcerated adults, "working at the intersection of education and social work to think about the problem differently, focusing on tools to prevent interaction with the legal system.").
- 126 Nick McCrea, *Alfond Foundation Offers \$7.5 Million Boost for Maine Graduate Center*, BANGOR DAILY NEWS (Jul. 18, 2017), available at <https://bangordailynews.com/2017/07/18/education/alfond-foundation-offers-7-5-million-boost-for-maine-graduate-center/>.
- 127 Natalie Anne Knowlton & Melinda Taylor, *A New Out-of-Court Process for Divorce and Separation*, 43 COLO. LAW. 5, 6 (2014).

State-level access to justice collaborations have an opportunity to move farther forward than ever before in the direction of achieving 100% access to justice in meeting the essential civil legal needs of ordinary people. The priorities that stakeholders collectively set can only be made real through a concerted effort to engage across stakeholders to make new resources available, collaborate with one another, and reform systems in ways that serve the public.

Law schools can make a tremendous difference in the access to justice movement by making substantive contributions to existing collaborative efforts. More than any other part of the system, law schools can democratize access to legal resources, court data, and legislative solutions, and can empirically analyze interventions. Law schools can and should think creatively about a role that is useful to the practitioners that their students will soon become.