

Access to Justice: An Agenda for Legal Education and Research

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for the
Consortium on Access to Justice

The recent economic recession has brought new urgency to longstanding problems in the delivery of legal services. For decades, bar studies have consistently estimated that more than four-fifths of the individual legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.¹ Our failures in providing access to justice have been compounded in recent years. High rates of unemployment, bankruptcies, foreclosures and reductions in social services have created more demands for legal representation

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Founding members of the Consortium on Access to Justice included: Laura Abel, Interim Co-Director, Justice Program at the Brennan Center for Justice; Catherine R. Albiston, Professor of Law, University of California, Berkeley School of Law; Jeanne Charn, Director, Bellow-Sacks Access to Civil Legal Services Project, Senior Lecturer, Harvard Law School; Scott Cummings, Professor of Law, University of California, Los Angeles School of Law; Russell Engler, Director of Clinical Programs and Professor, New England Law School; James Greiner, Professor of Law, Harvard Law School; Peter Joy, Vice Dean and Henry Hitchcock Professor of Law, Washington University in St. Louis; Antoinette Sedillo Lopez, Professor, University of New Mexico School of Law; Michael Pinard, Professor and Co-Director, Clinical Law Program, University of Maryland School of Law; Deborah L. Rhode, Ernest W. McFarland Professor of Law, Director, Center on the Legal Profession, Stanford University; Rebecca Sandefur, Senior Research Social Scientist, American Bar Foundation, Professor of Sociology, University of Illinois; Jeffrey Selbin, Professor, University of California, Berkeley School of Law, Faculty Director, East Bay Community Law Center; David Stern, CEO Equal Justice Works; and Eric Wright, Professor of Law, Santa Clara University Law School. Participants at the Consortium's founding meeting included Melanca Clark, Karen Lash and Deborah Leff from the Access to Justice Initiative, United States Department of Justice.

1. For a discussion of legal needs among low-income individuals, see Legal Services Corporation, Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low Income Americans 1-13 (2009), *available at* http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf. Surveys find that between two-fifths and three-quarters of the needs of middle-income individuals are unaddressed, with most finding at least half. See Deborah L. Rhode, Access to Justice 3, 79 (Oxford Univ. Press 2004); Luz E. Herrera, Rethinking Private Attorney Involvement in the Delivery of Civil Legal Services for Low and Moderate Income Clients, 42 Loy. L. Rev. 1 (2009).

at a time when many of its providers have faced cutbacks in their own budgets.² As a consequence, legal aid and public interest programs are often being asked to do more with less.

In this context, the need for greater research and education about the justice gap assumes increasing importance. To allocate scarce funds wisely, we need better information about unmet legal problems, the gaps in service provision and the cost-effectiveness of possible responses. And, to build a coalition for progress, we need a profession and public more informed about what passes for justice among the have nots.

The creation in 2010 of an Access to Justice Initiative in the United States Department of Justice under the Obama administration reflects these concerns. The office's interest in building bridges to legal academics prompted a meeting at Stanford University in 2011 under the sponsorship of the Stanford Center on the Legal Profession, the American Bar Foundation and the Harvard Program on the Legal Profession. One result of that meeting was the creation of a Consortium on Access to Justice. The mission of the consortium is to promote research and teaching on access to justice. One of its first initiatives was to propose and then assist preparation of this report. Although the consortium's primary focus is on civil matters, many challenges that it identifies are equally apparent in indigent criminal defense. The point of this overview is to enlist more academics in focusing on the fairness of the American justice system and to create constituencies that are more informed and motivated to address its challenges.

I. Charting a Research Agenda

One central problem in discussions about access to justice is a lack of clarity or consensus about what exactly the problem is. To what should Americans have access? Is it justice in a procedural sense: access to legal assistance and legal processes that can address law-related concerns? Or is it justice in a substantive sense: access to a just resolution of legal disputes and social problems? Participants in this debate have different conceptions of justice and of the strategies best able to secure it. Clients, judges, court administrators,

2. More Bloodletting at Legal Services, Blog of the Legal Times, January 26, 2012 (describing 14 percent cutback in federal Legal Services Corporation budget for 2012 and previous cutbacks); Steven Seidenberg, *Unequal Justice*, ABA J., June 2012, at 58 (describing reduced budgets and increased needs); David Ingram, *Cutting To the Bone*, Nat'l Law Journal, July 18, 2011, at 1, 9 (describing federal and state budget cuts to legal aid offices); Emily Savner, *Expand Legal Services Now*, Nat'l Law Journal, June 28, 2010 (reporting increases in demand and 75 percent drop in IOLTA [Interest on Lawyers Trust Fund Accounts] funds between 2007 and 2009); Editorial, *Need a Lawyer*, Good Luck, N.Y. Times, Oct. 15, 2010, at A32; Karen Sloan, *Perfect Storm Hits Legal Aid*, Nat'l Law Journal, Jan. 2011, at 1, 4 (noting decline in funds from government IOLTA, and tight private fundraising climate, together with increased demand for services); Richard Zorza, *Access to Justice: Economic Crisis Challenges, Impacts, and Responses 8-9* (Self Represented Litigation Network 2009), available at <http://www.Selfhelpsupport.org> (finding that a majority of judges reported increase in pro se caseloads, but that 39 percent also reported cuts in self-help services budget).

bar associations, legal aid programs and public interest organizations all have concerns that may argue for different research and policy priorities. To take only the most obvious example, the organized bar has a much stronger economic interest in promoting lawyers' services than in promoting research and policies that support greater reliance on qualified non-lawyers and procedural simplification.³

Although the importance of evidence-based practice has gained widespread recognition in other contexts, its application to the United States justice system has lagged behind.⁴ Unlike other fields, such as health and education, and other countries with similar legal systems, American legal aid lacks independent, well-developed research capacities.⁵ The Legal Services Corporation's Research Institute lost funding in the 1980s and has never been reestablished.⁶ Decision making often proceeds without reliable information about the amount, type, and funding of services provided, the dimensions and drivers of unmet needs and the relative effectiveness of different delivery models along multiple dimensions. Although we do not lack for studies on certain topics, much of the data we have is too limited in scope and methodology to supply a rational basis for policy making. And much of what we know is not presented or disseminated in ways that adequately inform delivery structures or political debates about subsidized legal services.⁷

A. The Demand Side of the Market: Unmet Needs

Efforts to understand the distribution of legal services and unmet needs have suffered from the absence of any central organization responsible for collecting such data. Although bar associations, the Legal Services Corporation, state access to justice commissions and various court administrative bodies have

3. For the bar's resistance to such non-lawyer initiatives, see Deborah L. Rhode, *supra* note 1, at 87-88; Deborah L. Rhode, Whatever Happened to Access to Justice?, 42 *Loy. L.A. L. Rev.* 869, 885-86 (2009).
4. See Laura K. Abel, Evidence-Based Access to Justice, 13 *U. Pa. J.L. & Soc. Change* 295, 297 (2010); Jeanne Charn & Jeff Selbin, Legal Aid, Law School Clinics and the Opportunity for Joint Gain, *Mgmt. Info. Exch. J.*, Winter 2007, at 31, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1126444; David M. Eddy, Evidence Based Medicine: A Unified Approach, 24 *Health Affairs* 9 (January/February 2005); *Foundations of Evidence-Based Social Work Practice* (Albert R. Roberts & Kenneth R. Yeager, eds., Oxford Univ. Press 2006).
5. Charn & Selbin, *supra* note 4, at 30; Abel, *supra* note 4, at 295, 311 (discussing research budgets of Department of Education's Institute of Education Sciences and the National Institute of Health).
6. Alan Houseman, Past and Current Efforts to Ensure Quality within the Civil Legal Assistance Community 4 (Center for Law and Social Policy 2004), available at http://lri.lsc.gov/sites/default/files/LRI/docs/04houseman_quality.pdf.
7. For political debates, see Rhode, Access to Justice, *supra* note 1, at 108-10. For delivery structures, see Wayne Moore, Delivering Legal Services to Low Income People xxviii-xxix (CreateSpace Independent Publishing Platform 2011).

all made efforts to map the demand side of the legal market, their cumulative efforts provide only a partial, and not readily accessible, picture.

One common approach is to ask a random sample of low-income (and sometimes moderate-income) individuals whether they have experienced specified problems that could be addressed by law and how they have responded. The most recent national study was published by the American Bar Association in 1994. Proposals to repeat it have been rejected as too expensive and unnecessary.⁸ However, the Legal Services Corporation has compiled information from more recent state surveys. They typically find that low-income households encounter two to three legal problems a year and that they seek help from an attorney (private or publicly funded) for only about a fifth of their problems.⁹ The corporation also reports that about half of those who seek assistance at federally funded offices are turned away. Other surveys of regional providers find much higher rejection rates, as many as eight of ten in New York City.¹⁰ The limited comparative data available indicate that the percentage of Americans who take no action in response to legal problems is much higher than in other countries. About a quarter of middle-income individuals and between a fifth to half of low-income individuals did nothing in the United States, compared with 5 percent to 18 percent in most other countries.¹¹ The difference lies not in the proportion who contacted lawyers, but in those who consulted other sources of assistance.¹²

Although useful to a point, these studies also have inherent limits. They likely underestimate unmet need because they rely on subjective perceptions of individual problems, and many individuals may be unaware of rights and remedies. Consumers may not know that their loans or housing fail to comply with legal standards. Nor do such studies capture collective problems that public interest organizations address, such as environmental risks or inequitable school financing structures. Surveys documenting the numbers of eligible individuals turned away by legal aid offices give no indication of the much larger number with legal problems who fail to make contact with providers because of disability, language barriers, geographic isolation, insufficient information or lack of confidence in the value of seeking assistance. Nor do these studies reflect the needs of the near poor and moderate-income

8. American Bar Association, *Legal Needs and Civil Justice: A Survey of Americans: Major Findings from the Comprehensive Legal Needs Survey* (A.B.A. 1994); Legal Services Corporation, *supra* note 1, at 3.
9. Legal Services Corporation, *supra* note 1.
10. *Id.*; Sloan, *supra* note 2, at 4; Report of the Task Force to Expand Access to Civil Legal Services in New York: Report to the Chief Judge of the State of New York 1 (2011), available at <http://www.nycourts.gov/ip/access-civil-legal-services>.
11. Gillian Hadfield, Higher Demand, Lower Supply?: A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans, 37 *Fordham Urb. L. J.* 129, 135-42 (2010). The exception is Japan, where a quarter took no action. *Id.* See also Seidenberg, *supra* note 2, at 58 (describing other countries' higher rates of access to justice for the poor).
12. Hadfield, *supra* note 11, at 151.

individuals who cannot realistically afford legal representation or who find the price excessive in light of the expected outcome. Yet some of these individuals face significant risks of poverty if their housing, employment, benefits or related problems are not addressed. Moreover, counting unmet needs gives neither a sense of their relative importance or complexity nor what responses might be most cost effective.

Neither do legal needs studies provide an adequate understanding of the stratification of access to justice by characteristics such as race, ethnicity, age, gender and geographic region. The fragmentary research available reveals considerable disparities in the amount of aid available. Certain subgroups are chronically underserved; the rural poor and non-English speaking immigrants face particular obstacles.¹³ Some disparities in access are a product of limited services. Others are related to psychological, structural and information barriers to seeking aid that affect population groups differently.¹⁴ Little systematic research is available on how these barriers operate and how they might best be addressed.

B. The Supply Side of the Market: Service Providers

Comprehensive data are lacking on the supply side of the legal market as well. What is the range of services available for particular problems for low-income clients, how are they funded and how do they compare in cost and accessibility? Although various groups collect some information, it is highly fragmentary and frequently leaves out certain providers, such as attorneys offering pro bono, “low bono” (reduced rate) or “unbundled” (partial) representation. Also often omitted are certain forms of assistance such as advice-only hotlines, courthouse pro se services and online form preparation programs.¹⁵ No national data are available on the number of self-represented litigants and the aid they receive.¹⁶ One survey found that only 11 states had comprehensive programs to help pro se parties, 19 states had partially integrated programs, 14 had highly limited “emerging” programs and eight states did not bother to respond and were assumed to offer little or no assistance.¹⁷

13. Jeanne Charn & Richard Zorza, *The Bellow-Sacks Access to Civil Legal Services Project, Civil Legal Assistance for All Americans* 51 (2005), available at <http://www.garybellow.org/Text.pdf>; Seidenberg, *supra* note 2, at 56.
14. Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 *Loy. L. Rev.* 913, 935 (2009) [hereinafter *Framing Access to Justice*]; Gary Blasi & John Jost, *System Justification Theory: Implications for Law, Legal Advocacy, and Social Justice*, 94 *Cal. L. Rev.* 1119, 1156-57 (2006).
15. The Pursuing Law’s Promise initiative at the American Bar Foundation is preparing a first-ever state-by-state map of available sources of civil legal assistance. Although this report is the most comprehensive to date, its coverage is highly limited. Much of the necessary information is simply not available. Rebecca L. Sandefur, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project* (2011).
16. Legal Services Corporation, *supra* note 1.
17. Alan W. Houseman, *Civil Legal Aid in the United States: An Update for 2007* 20-21 (2007) (discussing survey by Kathleen Sampson, which presumably included the District

Equally lacking are comprehensive data on funding for various forms of assistance. Many programs operate with a mix of revenue sources and no central coordinating structure is available to oversee distribution of financial support in relation to the urgency of needs. Programs such as the Interest on Lawyers Trust Fund Accounts (IOLTA) often allocate subsidies in ways that have more to do with prior funding policies than current patterns of underrepresentation.¹⁸ Systematic information is needed about the advantages and drawbacks of different revenue models in terms of uncertainty or instability of funding, restrictions on the activities of service providers and the potential for less formal programmatic control by foundations and other donors.¹⁹

We also lack information comparing the cost effectiveness of various delivery mechanisms. To make rational allocations of resources, decision makers need to know what outcomes different forms of assistance produce, how long they take, how much they cost, how satisfied recipients are with the services and results, how much stress and instability recipients experience before their legal problems are resolved and what long-term social impact results. All of these measures are important. Satisfaction matters because a wealth of psychological research makes clear that people's subjective perceptions of how their concerns were represented affects the legitimacy of the legal process.²⁰ But satisfaction alone is insufficient from the perspective of substantive justice because clients often have inadequate information and expertise to judge quality and outcomes and because unrealistic expectations may skew their assessments. Moreover, neither the subjective perceptions nor objective outcomes for individual clients is an adequate gauge of other social effects of assistance, such as deterring unlawful behavior, mobilizing subordinate groups and securing policy changes. If, for example, a primary goal of a legal aid provider is to reduce homelessness, what mix of individual

of Columbia and Puerto Rico), *available at* http://www.clasp.org/publications/civil_legal_aid_2007.pdf. Perceptions of judges about the rise in pro se litigation are reported in Self Represented Litigant Network, *Access to Justice: Economic Crisis: Challenges and Response* (National Ctr. on State Courts 2009).

18. For example, the distribution of IOLTA funds to legal services programs in California is determined by statute, leaving little discretion to the funder. *See* Cal. Bus. & Prof. Code § 6210 *et seq.*; Legal Services Trust Fund Program, *Allocation of Grant Funds* (2009).
19. *See, e.g.*, Catherine Albiston & Laura Beth Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General*, 54 *UCLA L. Rev.* 1087, 1118-31 (2007); Deborah Rhode, *Public Interest Law: The Movement at Midlife*, 60 *Stan. L. Rev.* 2027, 2056-57 (2008).
20. For an overview of this research, see Nourit Zimmerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective*, 37 *Fordham Urb. L. J.* 473, 482-89 (2010). For one of the key studies, see Tom R. Tyler, *What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 *Law & Soc'y Rev.* 103, 128 (1988) (finding that assessments of fairness are more important than outcomes in participant's evaluation of the legal system).

representation, organizing, economic development, institutional reform and policy work might best promote that objective?²¹

For certain forms of assistance, such as pro bono service by private lawyers, systematic evaluation is almost entirely lacking. We know very little about the range and quality of services provided. The most comprehensive survey of coordinators of pro bono programs in large firms found that none made formal efforts to assess the impact of aid or the satisfaction with services among clients and non-profit partners.²² Nor did the vast majority of firms monitor quality in any rigorous fashion. Rather, the prevailing view was that someone would complain if problems arose.²³ Yet the limited data available suggest that performance issues are not always adequately addressed. In a survey of heads of leading public interest legal organizations, about three-fifths expressed concerns about the quality of pro bono assistance that they received from the private bar.²⁴

Clients and nonprofit partners, however, may not always have sufficient information or sense of entitlement to question the adequacy of the free aid they received. And rarely have bar associations or other third-party matching services made systematic efforts to monitor quality and impact. For example, in the aftermath of the 9/11 attack, the Association of the Bar of the City of New York coordinated a massive program of pro bono assistance to victims but did not include efforts to evaluate quality or to obtain “feedback from clients concerning the effectiveness of the legal relief programs and the legal representation that they received.”²⁵

For other forms of assistance, such as hotlines and pro se assistance programs, evaluation research is also highly inadequate. Most surveys simply ask clients and court personnel about the services provided and generally find high rates of satisfaction.²⁶ However, when clients are asked about satisfaction with results, the findings are more mixed. One sobering study found more

21. For discussion of these issues, see Blasi, Framing Access to Justice, *supra* note 14, at 920-23, 936-39; Gary Blasi, How Much Access? How Much Justice?, 73 *Fordham L. Rev.* 865, 871 (2004).
22. Scott L. Cummings & Deborah L. Rhode, Managing Pro Bono: Doing Well by Doing Better, 78 *Fordham L. Rev.* 2357, 2401, 2405 (2010).
23. *Id.* at 2402-03.
24. Rhode, Public Interest Law, *supra* note 19, at 2071.
25. Association of the Bar of the City of New York, Public Service in a Time of Crisis: A Report and Retrospective on the Legal Community’s Response to the Events of September 11, 2001 (2004), reprinted in 31 *Fordham Urb. L. J.* 831, 938 (2004). For critical analysis of this oversight, see Deborah L. Rhode, Pro Bono in a Time of Crisis: Looking Forward by Looking Back, 31 *Fordham Urb. L. J.* 1011, 1018 (2004).
26. Blasi, How Much Access?, *supra* note 21, at 873; Russell Engler, Connecting Self-Representation to Civil *Gideon*: What Existing Data Reveal About When Counsel is Most Needed, 37 *Fordham Urb. L. J.* 37, 66-73 (2010); John Greacen, Resources to Assist Self-Represented Litigants: A Fifty-State Review of the “State of the Art” 15 (2011), available at <http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf>.

unhappiness among people who had received assistance from a self-help center than among those who received no aid.²⁷ The pro se staff apparently had done a good job in explaining tenants' legal rights, but not in communicating what was likely to happen when a litigant attempted to exercise them. By contrast, unassisted parties were less well informed about the remedy they might achieve and therefore less disappointed when they failed to obtain it.²⁸ Other research suggests that satisfaction may be significantly affected by other factors apart from results, such as why individuals were proceeding without representation, how they were treated by judges and court staff and whether opposing parties had counsel.²⁹

The few studies that compare case outcomes of assisted and non-assisted pro se parties show conflicting results. Some surveys find greater rates of success for parties who received aid, some find lower rates and others find about the same results.³⁰ The significance of these inconsistent results is further limited by the absence of a random design. The cases of parties who seek aid may differ from those who do not in ways that affect outcome. We lack random studies that can eliminate selection bias and compare different pro se services in terms of cost, outcome and satisfaction.

The same is true of research on the impact of legal representation. The difference lawyers make has generated significant attention but empirical findings are inconsistent and limited by methodological constraints. One comprehensive overview of four decades of research on the effects of legal representation in civil proceedings identified only three studies that involved random trials, and these reached conflicting results.³¹ A now-dated study of juvenile delinquency proceedings found no effect of an offer of counsel in one jurisdiction and a medium effect in another.³² By contrast, a New York Housing Court study found strong positive effects, and a Boston study of offers of representation in unemployment benefits cases found little if any difference in probability of victory but a delay in obtaining benefits.³³

27. Blasi, *How Much Access?*, *supra* note 21, at 869-70.

28. *Id.*

29. Zimmerman & Tyler, *supra* note 20, at 498-500. For the treatment of litigants, see Russell Engler, *Ethics in Transition: Unrepresented Litigants and the Changing Judicial Role*, 22 *Notre Dame J. L. Ethics & Pub. Pol'y* 367 (2008); Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, 17 *Geo. J. Legal Ethics* 423 (2004).

30. Abel, *supra* note 4, at 302.

31. D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: Report of a First Study, A Critical Review of the Literature, and Prospects for the Future*, 121 *Yale Law Journal* 2118 (2012).

32. W. Vaughn Stapleton & Lee E. Teitelbaum, *In Defense of Youth: A Study of the Role of Counsel in American Juvenile Courts* (Russell Sage Found 1972).

33. Carroll Seron, Martin Frankel, Gregg Van Ryzin, & Jean Kovath, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a*

The extent to which general conclusions can be reached from such findings is not self-evident. The results may in part reflect factors such as the quality of representation, the other forms of aid that unrepresented parties receive and the way proceedings are conducted. One meta-analysis that attempted to control for relevant variables in non-random studies challenged conventional wisdom about when lawyers are most useful. The study found that the impact of legal representation on outcomes depended less on whether the matter was complicated than on whether the tribunal handled cases in a perfunctory manner or frequently violated its own procedures.³⁴

Moreover, immediate outcomes are not the only, or necessarily the most important, measures of impact. They are simply the easiest to assess. But for some kinds of cases, knowing more about long-term impacts would help in assessing the relative effectiveness of legal representation. For example, how much does winning a landlord-tenant case help in terms of stabilizing a party's living situation or producing improvements in building conditions?³⁵ If, as some research suggests, providing counsel helps low-income parents avoid losing custody in abuse and neglect proceedings, what long-term impact does it have on the children themselves in terms of school performance, psychological well-being and related measures?³⁶ And if, as data from other countries suggests, some problems like domestic violence or evictions are triggering events for clusters of other legal difficulties or are likely to have particularly devastating consequences, does channeling more services and outreach efforts to those areas yield greater social benefits?³⁷ In short, we need more comprehensive, well-designed research concerning the impact of legal representation, the circumstances in which it makes the most difference and the most effective systems for coordinating and delivering assistance.

We also need better data on the factors that motivate, sustain and support attorneys who serve underrepresented groups. What factors most affect the career paths of these lawyers? To what extent do educational experiences, loan repayment programs, fellowship opportunities and market structures influence participation in legal aid and public interest work? For example, one large-scale study found that about half of public interest lawyers reported that loan forgiveness was important in their choice but we don't know whether other

Randomized Experiment, 35 *Law & Soc'y Rev.* 419 (2001); Greiner & Pattanayak, *supra* note 31.

34. Rebecca L. Sandefur, *Elements of Expertise: Lawyers' Impact on Civil Trial and Hearings Outcomes* (2011) (unpublished paper on file with the author).

35. See Laura K. Abel & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 *Seattle J. for Social Justice* 139, 148-50 (2010) (describing studies attempting to quantify long-term consequences); Blasi, *Framing Access to Justice*, *supra* note 14, at 920-23, 936-39; Blasi, *supra* note 21, at 871 (discussing a case in which a slum landlord declined to make necessary improvements despite a series of litigation losses).

36. Abel & Vignola, *supra* note 35, at 150-51 (discussing research).

37. Wayne Moore, *Delivering Legal Services to Low Income People 20-22* (CreateSpace Independent Publishing Platform 2011).

initiatives, such as scholarships or fellowships, might have been even more influential.³⁸ Nor do we know whether the recent passage of federal debt relief is significantly increasing the number of graduates who take public interest and public service positions or whether it is just expanding the number of individuals who can afford to apply for the limited slots available.³⁹

Research could also shed light on initiatives most likely to encourage more private practitioners to provide “low bono” reduced fee services and “unbundled” legal assistance (ie. help on discrete tasks rather than full representation). What alternative financing, delivery and support structures could enable greater numbers of lawyers to make a reasonable livelihood addressing unmet needs? What initiatives from other nations might be effective in the American system?

Related research should also address the growing disconnect between legal needs and employment patterns. Since the 2008 recession, the American legal profession has suffered significant job loss.⁴⁰ According to the director of the National Association of Law Placement, the 2011 job market was the worst in 15 years.⁴¹ NALP data indicates that fewer than two-thirds of recent graduates have full-time legal positions within nine months of graduation, and fewer still have positions that are permanent.⁴² To what extent such unemployment will persist as the economy improves and applications to law school fall remains unclear.⁴³ But at least some of the problem is structural and not simply a function of the downturn. Our restrictive legal licensing and law school

38. Ronit Dinovitzer, et al., *After the JD: First Results of a National Study of Legal Careers* 72 (American Bar Foundation and The NALP Foundation for Law Career Research and Education 2004). For research suggesting the importance of scholarships and fellowships, see Erica Field, *Educational Debt Burden and Career Choice: Evidence from a Financial Aid Experiment at NYU Law School*, Working Paper #469, Princeton University Industrial Relations Section (October 2002).
39. See *College Cost Reduction and Access Act*, Pub. L. no 110-84, 121 Stat. 784 (2007).
40. The number of legal services jobs has shrunk almost 8 percent since 2007. Anna Stolley Persky, *Law School? Bag It, Bloggers Say: More Disgruntled Graduates are Scramblogging Their Job Frustration*, ABA Journal, Feb. 2011, at 16. The National Law Journal estimates that the 250 largest firms have cut 10,000 lawyers. See Jane Genova, *Top 250 Law Firms: Headcount Drain About 10,000 Lawyers Since 2008*, Newstex Web Blogs, Law and More, Apr. 25, 2011. A Northwestern study similarly finds a loss of about 15,000 lawyer and legal staff positions at those firms. David Segal, *Is Law School a Losing Game?* N.Y. Times, January 9, 2011, at BU1.
41. Adam Sichkio, *Report: Toughest Job Market for Law Students Since 1996*, The Business Review, June 2, 2011, available at <http://www.bizjournals.com/albanay/blog/2011/06/report-toughest-job-market-for-law.html>.
42. Paul Campos, *Served: How Law Schools Completely Misrepresent Their Job Numbers*, New Republic, April 25, 2011.
43. According to Law School Admission Council Data, law school applications are down 11 percent in 2011, and are likely to hit the lowest level in a decade. The decline is commonly attributed to information about the tight job market. See Martha Neil, *Law School Applications Drop 11.5 percent, a 10-year low*, ABA Journal online, Mar. 16, 2011, available at <http://www.abajournal.com/news/article/lawschool-apps-drop-11.5-percent-a-10-year-low/>.

accreditation structures have long worked to price legal services out of reach of those who need them most. The limited data available suggest that many routine needs of low- and moderate-income individuals could be met by those with less expensive educational preparation.⁴⁴ More comprehensive research on alternative licensing frameworks could point the way toward a more cost-effective educational structure.

More information is also necessary about the challenges facing public interest legal organizations and pro bono programs, as well as the responses that have been most successful.⁴⁵ One analysis of data from more than 200 such organizations found that shifts in reliance from foundation support to state and federal grants had resulted in increasing restrictions on lawyers' activities.⁴⁶ Those restrictions, together with adverse legal decisions in areas such as attorney's fees and sovereign immunity, had significantly limited responses to unmet needs.⁴⁷ More comprehensive information is needed about the intersecting political, doctrinal and financial constraints that hobble public interest work and what might best address them. Research is also critical concerning efforts to increase the quantity and monitor the quality of pro bono work.⁴⁸ What can we learn from jurisdictions that require lawyers to report contributions or that make such contributions a factor in allocating paid legal matters?⁴⁹ Would promulgating best practices or model surveys on

44. Rhode, *supra* note 1, at 89.

45. For a survey of the heads of leading public interest organizations concerning challenges and strategies, see Rhode, *supra* note 19.

46. Laura Beth Nielsen & Catherine Albiston, *The Organization of Public Interest Practice: 1974-2004*, 84 N. Carolina L. Rev. 1591 (2006).

47. Albiston & Nielsen, *supra* note 19.

48. See Deborah L. Rhode, *Rethinking the Public in Lawyers' Public Service: Pro Bono, Strategic Philanthropy, and the Bottom Line*, 77 *Fordham L. Rev.* 1435, 1450-53 (2009); Cummings & Rhode, *supra* note 22, at 2431-33.

49. Florida, the first state to adopt such a requirement, initially saw substantial increases in contributions. The number of lawyers serving needs of the poor has increased by 35 percent, hourly contributions have increased by 160 percent, and financial contributions have increased by 243 percent. Florida Bar Standing Committee on Pro Bono Legal Service, *Report to the Supreme Court of Florida, The Florida Bar and the Florida Bar Foundation on the Voluntary Pro Bono Attorney Plan* (2006). However, since 2000, participation rates have not increased and are lower than national averages. Kelly Carmody & Associates, *Report Prepared for the Florida Supreme Court and the Florida Bar's Standing Committee on Pro Bono Legal Services, Pro Bono: Looking Back, Moving Forward* 1, 9 (Sept. 2008). Participation rates in other states with mandatory reporting vary, as do implementation structures. Differences include whether data is publicly available, whether sanctions are imposed for noncompliance, and whether self-reports are viewed as accurate. See *id.* at 9, 85. Comparative data on the impact of various reporting systems is lacking. So is research on the effectiveness of policies by government and corporate counsel offices here and abroad that have begun considering pro bono contributions in allocating paid work. For discussion of programs, see Deborah L. Rhode, *Pro Bono in Principle and in Practice* 167-69 (2005); David Wilkins, *Doing Well By Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 *Hous. L. Rev.* 1, 83-84 (2004).

quality and satisfaction make a difference? It is not enough for lawyers to label their assistance “pro bono publico.” They also need to know to what extent the public is actually benefitting.

C. The Market for Research

Our lack of adequate research on access to justice is partly attributable to structural problems in the market for legal scholarship. Compared with other work, empirical research has higher costs and lower rewards. It is typically more expensive and time consuming than doctrinal or theoretical scholarship, requires greater interdisciplinary expertise and risks dismissal in some circles as “merely descriptive.”⁵⁰ Legal scholars with no training in social sciences methodology run the risks of sloppy survey techniques and findings that cannot be generalized. Student-run journals often lack the expertise to monitor quality.⁵¹ Few of the outlets for legal research are peer reviewed, and those that are often have lengthy delays in publication. Empirical work also poses risks beyond authors’ control. Response rates can be too small or unrepresentative to yield reliable findings. Key informants can decline to participate or to provide candid responses. Despite considerable effort and expense, the results can appear too obvious: they “‘merely’ confirm what everybody (especially in retrospect) already knows.”⁵² The result, as former Harvard President and Law School Dean Derek Bok noted, is that the legal academy has done “surprisingly little to seek the knowledge that the legal system requires.”⁵³

Researchers interested in access to justice confront additional obstacles. Studies that reduce bias and irrelevant variables through random selection require cooperation from service providers whose work will be subject to evaluation. These individuals are often understandably wary of findings that may call into question the cost effectiveness of their services and jeopardize their status and funding. Randomized studies also make triage systems uncomfortably visible and cut against some practitioners’ preferences for selecting cases that appear “most meritorious.”⁵⁴ Yet these are the cases where lawyers’ assistance may be least essential to produce a just result, because parties themselves have assembled the necessary evidence.⁵⁵ Randomized research is a crucial way to identify where the additional benefits from attorneys are greatest.

50. Lawrence M. Friedman, *Law Reviews and Legal Scholarship: Some Comments*, 75 *Denv. U. L. Rev.* 661, 667 (1998).

51. *See* sources cited in Deborah L. Rhode, *Legal Scholarship*, 115 *Harv. L. Rev.* 1327, 1328 (2002).

52. Peter H. Shuck, *Why Don’t Law Professors Do More Empirical Research?*, 39 *J. Legal Educ.* 323, 331 (1989).

53. Derek Bok, *Harvard University President’s Report 1981-82*, at 17 (1983), *quoted in* Robert B. McKay, *Too Many Bright Law Students?*, 33 *J. Legal Educ.* 596, 597 (1983).

54. Greiner & Pattanayak, *supra* note 31, at note 258.

55. *Id.*

Researchers' own commitments pose further complications. Many enter the field because they share the values of legal service providers. Why, then, should scholars invest considerable effort and risk in research that may undermine those providers' support and be misused by their opponents? Moreover, on some issues, the likelihood that empirical findings will have a constructive real-world influence is limited. To a much greater extent than in other countries, policies affecting the delivery of legal services and the scope of the professional monopoly in the United States are controlled by the profession. Courts have asserted inherent authority to regulate legal practice, and legislatures generally have been unwilling to challenge the profession's authority on matters such as lay competition.⁵⁶ As a consequence, researchers with findings uncongenial to bar interests have had "no place to put policy proposals on the agenda."⁵⁷ Nor has the public been sufficiently interested in access to justice to demand a political response. Part of the problem is lack of information. Despite decades of data on the high levels of unmet needs, about four-fifths of Americans incorrectly believe that the poor are entitled to counsel in civil cases.⁵⁸ About the same percent also believe that the country has too many lawsuits, a perception fed by media accounts of aberrant cases and conservatives' indictment of rampant litigiousness.⁵⁹ All too often, stories displace statistics, and most researchers lack the ability, incentives or resources to effectively convey more representative messages.

The recent economic crisis, however, may have created a more receptive climate for informed discussion of access issues. In a 2009 survey commissioned by the American Bar Association, 88 percent of Americans agreed that a nonprofit provider of legal services should be available to assist those who could not otherwise afford legal help. Two-thirds supported federal funding for such assistance.⁶⁰ How much the public is prepared to pay to realize that

56. For discussion of the logjam in regulatory reform, see Benjamin H. Barton, *The Lawyer-Judge Bias in the American Legal System* 133-38 (2011); Benjamin H. Barton, *Do Judges Systematically Favor the Interests of the Legal Profession?*, 59 *Ala. L. Rev.* 453, 456, 459 (2008); Benjamin H. Barton, *An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation—Courts, Legislatures, or the Market?*, 37 *Geo. L. Rev.* 1167, 1204, 1207 (2003); Deborah L. Rhode, *In the Interests of Justice* 13-22, 158-67, 207-13 (Oxford Univ. Press 2000).
57. Hadfield, *Higher Demand, Lower Supply*, *supra* note 11, at 155.
58. ABA, *Perceptions of the U.S. Justice System* 63 (1999), *available at* <http://www.abanet.org/media/perceptions/pdf>; Earl Johnson Jr., *Toward Equal Justice: Where the United States Stands Two Decades Later*, 5 *Md. J. Contemp. Legal Issues* 199, 201 (1994).
59. David G. Savage, *The Race to the White House: A Trial Lawyer on the Ticket Has Corporate U.S. Seeing Red*, *L.A. Times*, Sept. 13, 2004, at 1 (citing poll). For survey data and examples, see Rhode, *supra* note 1, at 28-29.
60. Fifty-five percent strongly agreed that it was essential that services be available; 33 percent somewhat agreed. Thirty-six percent strongly supported federal assistance and 31 percent somewhat supported assistance. ABA Survey Summary, *Economic Downturn and Access to Legal Resources* (Apr. 2009), *available at* http://www.abanow.org/wordpress/wp-content/files/flutter_1268261059_20_7_upload_file.pdf.

goal is, of course, another matter and one that neither the ABA nor other researchers have studied. Still, despite the challenging budgetary climate, a few states have recently expanded rights to counsel or awards of attorneys' fees in certain civil matters.⁶¹ A growing number of government and bar programs are also incorporating evaluation in project design. One example is California's "Civil Gideon" pilot programs of guaranteed representation for specified cases.⁶² Another is the ABA's Immigration Justice Project for San Diego, which has partnered with Georgetown University's Institute for the Study of International Migration to assess the impact of pro bono legal representation in removal proceedings.⁶³ This is, in short, an opportune moment to capitalize on public concerns and to develop rigorous research that can inform them.

D. Building Research Capacity

Enhancing research on access to justice issues will require expanding the pool of potential researchers and the support available for their work. Law schools and funding organizations could play a more active role by inviting proposals and providing grants. National networks could help identify research topics, link them to scholars and potential funders and assist with grant proposals.⁶⁴ Regional partnerships could pursue similar objectives with local law schools, bar associations, service providers and access to justice commissions. One recent example is the forum on Senior Lawyers Serving Public Interests, cosponsored by Stanford's Center on the Legal Profession and Civic Ventures, a non-profit organization that supports socially engaged second-stage careers. Participants included the presidents of the Legal Services Corporation, Pro Bono Institute and Pro Bono Net, representatives from the American Bar Association's Committee on Pro Bono and Public Service and its Commission on Law and Aging, the director of Stanford's Center on Longevity, and leaders of various pro bono programs targeting senior attorneys. The group will continue to work on research and programmatic efforts to support such initiatives.

Linking research projects to graduate and law school courses also could expand substantially the number of students available for work on access to justice and build commitment to the issue among future scholars and practitioners. More could be done as well to build bridges between legal

61. Sargent Shriver Civil Counsel Act, A.B. 590, 2009 Leg. Reg. Sess. (Cal. 2009); New York courts are guaranteeing counsel in foreclosure cases. David Streitfeld, *State Effort to Assure Legal Aid In Housing*, N.Y. Times, Feb. 16, 2011, at B1.

62. Sargent Shriver Civil Counsel Act, *supra* note 61.

63. ABA Commission on Immigration, *Immigrant Justice Project of San Diego*, available at http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/immigration_justice_project_iip_of_san_diego.html.

64. Potential Partners include the consortium described here, the Justice Department's Access to Justice Initiative, the American Bar Foundation, the Legal Services Corporation, the Brennan Center for Justice, Equal Justice Works, the National Center for Access to Justice, the Stanford Center on the Legal Profession, the Harvard Program on the Legal Profession, and relevant sections of the Association of American Law Schools.

scholars and social scientists with the methodological expertise to design quality empirical research.

To encourage such initiatives, more coordination, resources, rewards and recognition should be available. A central body, perhaps in partnership with key public and private organizations, could develop research, maintain an accessible database and disseminate findings.⁶⁵ Even in the absence of such a structure, groups such as those identified above could collaborate on a range of continuing initiatives. For example, they could assist with grant proposals, sponsor conferences, develop best practices for access-related research, provide prizes and publicity for outstanding work and assist scholars in communicating results to public, press and policy audiences. Law school and bar publications could also showcase such work and law reviews could devote symposia like this one to the topic. The point of all of these efforts should be to build sustained collaboration among institutions and academics committed to improving the effectiveness of the justice system.

II. Mapping an Agenda for Educational Reforms

Legal education could play a more active role on access to justice issues not only by supporting research but also by integrating those issues into curricular and programmatic activities. Unlike medicine, which has well-developed courses, schools and concentrations devoted to public health, law does little to prepare practitioners to address structural problems in the delivery of legal services and the administration of justice. As a consequence, many students graduate without an informed understanding of how the law affects those who cannot afford to invoke it. These graduates also miss opportunities to hone their professional skills through partnerships that would advance research and provide assistance for underserved communities.

A. Curricular Integration

Relatively few law schools offer specialized courses focusing on issues related to access to justice and the topic is missing or marginal in the traditional core curriculum.⁶⁶ Even legal ethics courses, which are logical forums for these issues, typically focus on the law of lawyering and often omit broader questions about the distribution of legal services.⁶⁷ In one national

65. Jeffrey Selbin, Josh Rosenthal & Jeanne Charn, *Improving Civil Legal Assistance for Low and Moderate Income Americans: Building an Evidence-based Approach to Service Delivery* (2011) (proposing an Access to Justice Institute in partnership with the Department of Justice's Access to Justice Initiative, the Legal Services Corporation, and the American Bar Foundation).

66. For the marginal treatment of substantive issues generally, see William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007) [hereinafter *Carnegie Report*]; Gene R. Nichol, *Wages, Work, Privilege, and Legal Education*, 5 *Harv. L. & Pol'y Rev.* 1, 11-12 (2011).

67. For discussion of "legal ethics without the ethics," see Rhode, *supra* note 56, at 200; *Carnegie Report*, *supra* note 66, at 149.

survey, only one percent of law school graduates recalled coverage of pro bono obligations in their professional responsibility class or orientation program.⁶⁸ Although many legal clinics offer some firsthand exposure to what passes for justice among low-income communities, not all students take these courses. And given the need to provide both skills training and knowledge of relevant substantive and procedural law, even the best clinics rarely find time to provide in-depth coverage of structural concerns in the delivery of assistance.

To address these curricular gaps, schools should offer at least one course that focuses substantial attention on access to justice and should encourage integration of the topic and required skill sets into the core curriculum. Given the profession's aspiration that all lawyers should provide pro bono services to those who cannot afford assistance, all law students should have some exposure to the expertise that it requires, including not only substantive knowledge but also cultural competence and related skills.⁶⁹ Required first-year courses could include coverage of topics relevant to the justice gap. For example, constitutional, criminal and civil procedure classes could focus on limits on the right to counsel and its enforcement. Property classes could address landlord/tenant, environmental justice and community development concerns. Upper-level courses such as family and administrative law could address the role of alternative delivery structures and non-lawyer assistance. For certain courses, such as those in professional responsibility, poverty and public interest law, coverage is already available in some casebooks.⁷⁰ Other materials are under development through support from the California Endowment which is funding a year-long social justice/community lawyering skills course consisting of modules that schools could adopt in whole or in part. The course will include topics such as community organizing, policy advocacy, media strategies and negotiation.⁷¹ Access to justice materials and topics have also been designed for orientation, research and writing and moot court programs.⁷² Groups like the Consortium on Access to Justice could facilitate other curricular development initiatives, create an online clearinghouse of materials and encourage editors of leading casebooks to incorporate relevant topics. To ensure adequate coverage of issues and skills related to access to

68. Rhode, *supra* note 49, at 162.

69. Shin Imai, A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering, 9 *Clinical L. Rev.* 195, 196 (2002); Sameer M. Ashar, Law Clinics and Collective Mobilization, 14 *Clinical L. Rev.* 355 (2008). UCLA's Program in Public Interest Law and Policy offers such skills. See Richard L. Abel, Choosing, Nurturing, Training and Placing Public Interest Law Students, 70 *Fordham L. Rev.* 1563, 1566-67 (2002).

70. See Deborah L. Rhode & David Luban, *Legal Ethics* 850-930 (Foundation Press, 5th ed. 2009); Geoffrey C. Hazard Jr., Susan P. Koniak, Roger C. Cramton, George M. Cohen & W. Bradley Wendel, *The Law and Ethics of Lawyering* 977-1023 (Foundation Press, 5th ed. 2010); Allen Chen & Scott Cummings, *Law, Lawyering, and Social Change* (forthcoming 2012).

71. Email Communication from Lisa Mead, May 5, 2011 (on file with the author).

72. Stanford's Center on the Legal Profession is in the process of developing a website that will make curricular integration materials available.

justice, law schools could delegate the task to a new or standing committee or to an academic dean.

Proposals for curricular innovation often bump up against resistance from faculty who worry that additions will require cuts and believe that nothing in their courses is expendable. Yet, if faced with the necessity, as when schools revamp their first-year curricula or shift from the semester to the quarter system, everyone seems to cope. Moreover, the proposals suggested here would require only modest adjustments: adding a few issues and the readings would not demand major realignments. The subject is sufficiently important to our society and our profession for faculty to make that effort.

A. Programmatic Initiatives

Law schools also have a variety of ways to promote understanding and commitment on issues involving access to justice. One is to sponsor lectures, panels, workshops, conferences, mentoring programs and student initiatives that focus on such concerns. Another is to reinforce the value of pro bono service. A decade ago, a commission of the Association of American Law Schools recommended that every institution “make available for every student at least one well-supervised pro bono opportunity and either require participation or find ways to attract the great majority of students to volunteer.”⁷³ We remain a considerable distance from that goal. Only a small minority of schools require pro bono work, fewer still impose specific obligations on faculty and in many institutions the requirements are minimal.⁷⁴ Although other schools have voluntary programs, their scope and supervision is sometimes open to question and many students still graduate without pro bono work as part of the educational experience.⁷⁵ Legal education could do better, and models are available that could be widely replicated. An example is the Roger Williams Law School Pro Bono Collaborative, in which faculty oversee some 30 initiatives involving students, nonprofit organizations and pro bono attorneys who assist low-income individuals.⁷⁶

Other strategies have been designed to support public interest careers as well as pro bono and “low bono” work. Some schools have public interest

73. Association of American Law Schools, Commission on Pro Bono and Public Service Opportunities in Law Schools, *Learning to Serve: A Summary of the Findings and Recommendations of the AALS Commission on Pro Bono and Public Service in Law Schools 2* (1999).

74. Thirty-nine schools require students to provide service as a condition of graduation. See http://apps.americanbar.org/legalservices/probono/lawschools/pb_programs_chart.html. In many of these schools, the number of hours is under ten a year. ABA Standing Committee on Professionalism, *Report of Survey on Law School Professionalism Programs 46-47* (2006).

75. *Law School Survey on Student Engagement 8* (2004).

76. Laurie Barron, et al., *The Pro Bono Collaborative: Building Bridges Between Law Firms, Low-Income Communities, and Law Students* (unpublished manuscript on file with the author).

tracks, scholarships or certificate programs that provide specialized courses and mentoring.⁷⁷ Sixteen schools have participated in the Law School Consortium Project, which helps solo and small-firm practitioners provide affordable services to low- and moderate-income communities.⁷⁸ Project participants offer technical assistance, legal information, law management training and a support network. More initiatives along these lines would be helpful, particularly if developed in collaboration with other disciplines and public interest partners. For example, schools could offer a joint law and public policy degree program on the justice system. They could also create ongoing partnerships between their legal clinics, local providers, and access to justice commissions in an effort to link effective pedagogical approaches with areas of greatest unmet needs.

B. Pressure for Change

As these examples indicate, we do not lack for strategies to make social justice issues more central in legal education. The fundamental challenge is how to create the necessary impetus for change. An obvious first step is to take every available opportunity to remind schools of their unique opportunity and corresponding obligation to address these concerns. One potential ally in this effort is the Association of American Law Schools. Its “core values” for member schools include a commitment to “fostering justice and public service in the legal community.”⁷⁹ To reinforce that commitment, the association could help ensure that topics related to access to justice receive attention in its membership review process, its workshops for deans and new law teachers and its annual meetings. Groups like the Consortium on Access to Justice could develop materials for such efforts as well as proposals for AALS workshops and panels.

Outside funders could also make a difference. A model of their effectiveness is the support for conservative initiatives in law schools during the 1980s and 1990s.⁸⁰ Leading foundations on the right funded Federalist Society chapters, which offered programs and professional networks. These foundations also supported law and economics initiatives, which sponsored courses, research

77. Chicago-Kent College of Law maintains a public interest certificate program. See <http://www.kenlaw.iit.edu/academics/jd-program/certificate-programs/public-interst-law>. UCLA Law School offers the Program in Public Interest Law and Policy. See Abel, *supra* note 69, at 1564. New York University Law School offers Root Tilden Scholarships. See <http://www.law.nyu.edu/financialaid/scholarships/jdscholarships/publicinterestscholarships/roottildenkernscholarshipprogram/index.htm>.

78. See Law School Consortium Project, Member Law Schools, *available at* <http://www.lawschoolconsortium.net/members/index.html>.

79. Association of American Law Schools, AALS Bylaws, 6-1b. Core Values, *available at* http://www.aals.org/about_handbook_bylaws.php.

80. Steven M. Teles, *The Rise of the Conservative Legal Movement* 70 (Princeton Univ. Press 2008); Ann Southworth, *Lawyers of the Right: Professionalizing the Conservative Coalition* 20 (Univ. of Chicago Press 2008).

fellows, conferences, and summer institutes.⁸¹ Such support helped channel activism and research in conservative directions. Similar initiatives now could enhance interest in access to justice.

The American Bar Association is another possible partner in such efforts. The Preamble to the ABA Standards for Approval of Law Schools states that each ABA-accredited law school “must provide an educational program that ensures that its graduates...understand the law as a public profession calling for performance of pro bono legal services.”⁸² More specifically, its standards instruct schools to “encourage students to participate in pro bono activities and provide opportunities for them to do so.”⁸³ Schools also “should” address full-time faculty members’ “[o]bligations to the public, including participation in pro bono activities.”⁸⁴ Enforcement of these standards has had little teeth. The ABA is currently reviewing its accreditation process, and this could be a timely moment to begin requiring schools to supply more detailed information concerning their coverage of social justice issues and participation rates in pro bono activities. Equal Justice Works already collects some information for its public interest guide for students but making standardized data more readily accessible could draw greater attention to schools’ performance.⁸⁵

Another nudge could come from the National Conference of Bar Examiners. If they added questions on matters such as Americans’ limited rights to civil assistance and lawyers’ pro bono obligations, that would undoubtedly prompt greater curricular coverage. Although multiple choice formats and concerns about ideological neutrality would constrain treatment of certain issues, putting the subject on bar exams might encourage more faculty to consider the topic in greater detail. If the bar is seriously committed to encouraging lawyers to assist underserved groups, it should ensure that they have some exposure to relevant issues.

Finally, legal education would also benefit from more systematic research on its own efforts concerning access to justice. How much coverage are students actually getting through clinics, pro bono programs, substantive courses and intern or externships? How do students, graduates and experts in the field evaluate the effectiveness of current curricular and programmatic initiatives? What improvements might they suggest? What kinds of law school experiences affect students’ subsequent involvement in pro bono work and

81. For Federalist Society Support, see Teles, *supra* note 80, at 141-48; Southworth, *supra* note 80, at 140-41. For the Olin Foundation’s support of law and economics programs, see Teles, *supra* note 80, at 101-12, 188-91.

82. American Bar Association Section of Legal Education and Admission to the Bar, Standards for Approval of Law School, Preamble.

83. *Id.* at 302(b)(2).

84. *Id.* at 404 (a).

85. Equal Justice Works publishes an electronic guide that provides information to students on public service opportunities, available at <http://www.equaljusticeworks.org/newsletters/1107.htm>.

public interest legal careers?⁸⁶ Without some external assessment, it is easy for schools to conflate good intentions with good outcomes. Empirical data could be a useful corrective to complacency and a source of educational innovation.

This agenda invites the legal academy to rethink its responsibilities concerning social justice. Surely the nation with the world's highest concentration of lawyers can do better in ensuring assistance to those who need it most. To make that possible, legal educators must do more to educate themselves, their students and the public about the systemic failures in our delivery of legal services. If the academy is seriously committed to instilling values of equal justice in its students, then its own priorities must reflect that commitment.

86. One model for such research is Rebecca L. Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 *Clinical L. Rev.* 57 (2009), which uses data from the American Bar Foundation's After the JD study to determine the effects of clinical courses on graduates' subsequent involvement in pro bono, public interest, or other community work.