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 over four fifths of the individual legal needs of the poor and a majority of the needs of middle-income individuals Americans remain unmet. The inadequacies have been compounded in the recent downturn. High rates of unemployment, bankruptcies, foreclosures, and reductions in social services have created more demands for legal representation at the same time that many of its providers are facing cutbacks in their own budgets. As a consequence, legal aid 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 and the cost-effectiveness of various strategies to address them. And to build a coalition for progress, we need a more informed profession and public about what passes for justice among the have-nots.

I. The recent creation of an office on Access to Justice within the United States Department of Justice under the Obama administration responds to 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, and one of its first initiatives has been 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 legal scholars and educators in focusing on the fairness and legitimacy of the American justice system, and to create constituencies more informed and motivated to address its challenges.

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 is justice in a procedural sense: access to legal assistance and legal processes that will assist in a prompt resolution of law-related concerns? Or is it justice in a substantive sense: ways of promoting a just resolution of legal disputes and social problems? Participants in the access debate have different conceptions of justice and of the strategies best able to promote it. Clients, judges, court administrators, bar associations, legal aid programs, public interest organizations, and pro bono leaders 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 suggesting the cost-effectiveness of non-lawyer competitors and procedural simplification.

Although the importance of evidence-based practice has gained widespread recognition in other professions and social sciences, its application to the justice system has lagged behind. Unlike public assistance programs in other fields such as health and education, and in other countries with similar legal systems, United States legal aid structures lack independent, well-developed research capacities. The Legal Services Corporation’s Research Institute lost funding
in the 1980s and has never been reestablished. Decision making often proceeds without reliable information about the amount and funding of services provided, the dimensions and drivers of unmet needs, and the relative effectiveness of different delivery models. 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.

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 centralized organization responsible for collecting such data. Although bar associations, the Legal Services Corporation, state access to justice commissions, and various court administrative bodies have all made some 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, and proposals to repeat it have been rejected as too expensive and unnecessary. 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. The Corporation also reports that about half of those who seek assistance at federally funded offices are turned away, and other surveys of regional providers find much higher rates, as many as eight out of ten in New York City. What little comparative data are 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 to 18 percent in most other countries. The difference lies not in the proportion who
contacted lawyers, but in those who consulted other sources of assistance.

Although useful to a point, these studies also have inherent limitations. 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 due to disability, language barriers, geographic isolation, insufficient information, or
lack of confidence about the value of seeking assistance. Nor do these studies reflect the needs of
the near poor and moderate-income individuals who cannot realistically afford legal
representation or who find the price excessive in light of the expected outcome. Moreover,
counting unmet problems gives no sense of their relative importance or complexity, or 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. Some disparities in
access are a product of limited services; others are related to cognitive, structural, and
information barriers that affect different population groups differently. Little systematic
research is available about how these barriers operate and how they might best be addressed.
B. The Supply Side of the Market: Service Providers

Comprehensive data are lacking with respect to the supply as well as demand side of the legal market. What are the range of services available for particular types of 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 often leaves out certain providers, such as attorneys providing pro bono or “unbundled” partial representation, and certain forms of assistance such as advice-only hotlines, courthouse pro se services, and online guided interview programs. No national data are available on the number of self-represented litigants and the aid that they receive.\(^\text{14}\) One survey found that only eleven states had comprehensive programs to help pro se parties, fourteen had highly limited programs and eight states did not bother to respond.\(^\text{15}\)

Equally lacking are comprehensive data on funding for various forms of assistance. Many programs operate with a mix of revenue sources, and no centralized coordinating structure is available to oversee distribution of financial support in light of 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.\(^\text{16}\)

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 provided, 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 whether their concerns were fairly represented in proceedings affects the legitimacy of the legal process.\(^\text{17}\) But
satisfaction alone is scarcely sufficient 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 among 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 representation, organizing, economic development, institutional reform, and policy work might best promote that objective?\textsuperscript{18}

For certain forms of assistance, such as pro bono service, systematic evaluation is almost entirely lacking. 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.\textsuperscript{19} 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.\textsuperscript{20} Yet what limited data are available suggest that performance concerns are not always well addressed. In a recent 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.\textsuperscript{21} Clients and nonprofit partners may not always have sufficient information or sense of entitlement to question the adequacy of aid that they receive free of charge. Rarely have providers of pro bono assistance or third party brokers made systematic efforts to monitor its quality and impact. For example, in the aftermath of 9/11, 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 obtain “feedback from clients concerning the effectiveness of the legal relief programs and the legal representation that they received.”\textsuperscript{22}
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.\textsuperscript{23} However, when clients are asked about satisfaction with results, the findings are more mixed. One sobering study found more unhappiness among parties who had received assistance from a self-help center than among those who received no aid.\textsuperscript{24} The pro se staff apparently had been helpful in explaining tenants’ legal rights, but not in communicating what was likely to happen when parties attempted to exercise them. By contrast, unassisted litigants were less well informed about what they might achieve and therefore less disappointed when it failed to happen.\textsuperscript{25} Other research suggests that satisfaction may be affected by other factors apart from outcome, such as why individuals were proceeding without representation, how they were treated by judges and court staff, and whether opposing parties had counsel.\textsuperscript{26}

The few studies that compare case outcomes of assisted and non-assisted pro se parties reach inconsistent results. Some surveys find greater rates of success for parties who received aid, some find lower rates, and others find about the same results.\textsuperscript{27} The significance of these findings is further limited by the absence of a random design. The cases of parties who seek out aid may differ from those who do not in ways that affect outcome. We lack randomized studies that can eliminate such selection bias and compare different delivery methods in terms of cost, outcome, and satisfaction.

The same is true of research concerning the impact of legal representation. What 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 randomized trials, and these reached conflicting results. 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. 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 no differences in probability of victory, but a delay in obtaining benefits.

The extent to which such findings can be generalized is not self-evident. In these and other settings, the results may in part reflect factors such as the quality of representation, the forms of aid that unrepresented parties receive, and the way that the proceedings are conducted. One meta-analysis that attempted to control for relevant variables in non-randomized studies challenged conventional wisdom about when lawyers are most useful. The study found that the impact of legal representation on case outcomes depended less on whether the case was complicated than on whether the tribunal handled cases in a perfunctory manner or frequently violated its own procedures. Moreover, immediate case outcomes are not the only or necessarily the most important measures of impact; they are simply the easiest to measure. 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? 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? In short, we need more comprehensive well-designed research concerning the impact of legal representation and the circumstances in which it makes the most difference.
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 affect 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 very important in their choice, but we don’t whether other initiatives, such as scholarships or fellowships, might have been even more influential. 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 just expanding the number of individuals who can afford to apply for the limited slots available. Research could also shed light on initiatives most likely to encourage more private practitioners to do “low bono” and unbundled legal work. What alternative financing, delivery, and support structures could enable more lawyers to make a reasonable livelihood addressing unmet needs? What initiatives from other nations might be effective in the American system? What might induce law firms to increase the quantity and monitor the quality of their pro bono work? What can we learn from jurisdictions that require lawyers to report contributions or that make such contributions a factor in allocating paid legal work?

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.” Legal scholars with no training in social sciences methodology
run the risks of sloppy survey techniques and non-generalizable findings, and student-run journals lack the expertise to supply correctives. 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.” 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.”

Researchers interested in access to justice confront additional obstacles. Randomized studies 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 effectiveness of their services and jeopardize their status and funding. Randomization also makes triage systems uncomfortably visible, and cuts against some practitioners’ preferences for selecting cases that appear “most meritorious.” Yet these are the cases where expert assistance may be least essential to produce a just result, and without randomized research, the relative value-added of lawyers or other services remains unclear.

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? These efforts are not oxen that researchers want to gore.

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 affecting access to justice. As a consequence, researchers with findings uncongenial to bar interests have had “no place to put policy proposals on the agenda.” Nor does the public appear well informed about the inadequacies of the civil justice system. 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. 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. Their stories displace statistics, and most researchers have lacked the ability, incentives, or resources to effectively convey more accurate 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. How much the public is prepared to pay to realize that goal is, of course, another matter, and one on which neither the ABA nor other researchers have probed. Still, despite the challenging budgetary climate, a few states have recently expanded rights to counsel or awards of attorneys’ fees. A growing number of government and bar programs are also incorporating evaluation. Examples include California’s “Civil Gideon” pilot programs of guaranteed representation for specified cases and 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. 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. Networks that help identify research topics and link them to scholars and potential funders could also be established with support from institutions such as the Consortium described here, law school and other university research centers, the DOJ’s Access to Justice Initiative, the American Bar Foundation, the Legal Services Corporation, the Brennan Center for Justice, Equal Justice Works, and relevant sections of the Association of American Law Schools. Regional partnerships could pursue similar objectives with local law schools, bar associations, service providers, and access to justice commissions. Linking research projects to graduate and law school courses could substantially expand the students available for work on access to justice, and build commitment to the issue among future scholars and practitioners.

To encourage such initiatives, more coordination, resources, rewards, and recognition should be available. A centralized body would be extremely useful to help develop research, maintain an accessible data base, and disseminate findings. One proposal is to create an Access to Justice Institute in partnership with both public and private organizations. Even in the absence of such a centralized 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 to the topic. The point of all these efforts should be to build sustained
collaboration among the individuals and institutions concerned with justice issues, and to
develop the knowledge base necessary to address them.

II. Mapping the Challenges for Legal Education

Legal education could play a more active role on access to justice issues, not only in
supporting research but also in integrating those issues into the curriculum 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.

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. 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. In one national
survey, only one percent of law school graduates recalled coverage of pro bono obligations in
their professional responsibility class or orientation program. Although many legal clinics offer
some first hand 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 specialized course focusing on access to justice and 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 that 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, organizing, lobbying, communications, policy, and program assessment.\(^5\) Required first year courses could all include coverage of topics relevant to underserved groups. Constitutional, criminal, and civil procedure classes could focus on limitations in the right to counsel and its enforcement. Property classes could address landlord tenant, environmental justice, and urban development concerns. Upper level courses such as family and administrative law can address the role of alternative delivery structures and non-lawyer providers of assistance. For certain courses, such as those in professional responsibility, poverty, and public interest law, material is already available in some casebooks.\(^5\) Other materials are under development through support from the California Endowment. It is funding a series of Social Justice Lawyering modules that will assist professors in incorporating topics such as legislative and administrative policy work, media strategies, negotiation skills, and remedial frameworks.\(^5\) For student orientation programs, at least one module is obtainable in unpublished form.\(^5\) Groups like the Consortium could facilitate other curricular development initiatives, create an on-line 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 justice, law schools
could appoint a special committee or delegate the task to a standing curricular committee or academic dean.

B. 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.” 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 amounts required are quite minimal. 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. Law schools could and should do more, and a number have developed models that could be widely replicated. An example is the Roger Williams Law School Pro Bono Collaborative, in which faculty oversee some thirty initiatives involving students, profit organizations, and pro bono attorneys who assist low-income individuals.

A few schools have pioneered other replicable strategies to support public interest work. Some have public interest tracks, scholarships, or certificate programs that provide specialized courses and mentoring. Sixteen schools have been part of a Law School Consortium Project, which helps solo and small-firm practitioners provide affordable services to low- and moderate-income communities. Project participants have received 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 academic 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 with other clinics, access to justice commissions, and local providers in an effort to link effective pedagogical approaches with areas of greatest unmet needs.

C. 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.” 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 could develop materials for such efforts as well as proposals for AALS workshops and panels.

The American Bar Association is another possible partner. 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.” More specifically, its standards call on schools to “encourage students to participate in pro bono activities and provide opportunities for them to do so.” Schools also “should” address full-time faculty members’
“[o]bligations to the public, including participation in pro bono activities.” Enforced by a lack of teeth. The ABA is currently reviewing its accreditation process, and this could be a timely moment to propose that schools 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 the issue more visible in the accreditation could also draw schools’ attention to the adequacy of their initiatives.

Another nudge could come from the National Conference of Bar Examiners. If they added questions concerning Americans’ limited rights to civil assistance and lawyers’ obligations to respond, that would undoubtedly prompt greater curricular coverage. Although multiple choice formats and concerns about ideological neutrality would constrain treatment of certain issues, having some attention to 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 topics in areas such as landlord-tenant, consumer, and constitutional law.

Finally, legal education would also benefit from more systematic research concerning its own efforts concerning access to justice. What experiences are students having through clinics, pro bono programs, substantive courses, and intern or externships? How many are falling through the cracks? How do students, graduates, and experts in the field evaluate the effectiveness of current curricular and programmatic initiatives? What improvements might they suggest? 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 for action is an invitation to the legal academy to rethink its responsibilities to 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 concerning 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.

1Founding members 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, and 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; 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, UPDATE American Bar Foundation; Jeffrey Selbin, Professor, University of California, Berkeley School of Law, and 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 Office on Access to Justice, United States Department of Justice.


3 Emily Savner, Expand Legal Services Now, National Law Journal, June 28, 2010 (reporting increases in demand and 75 percent drop in IOLTA funds between 2007 and 2009); RA, Need a Lawyer, Good Luck, New York Times, October 14, 2010; Karen Sloan, Perfect Storm Hits Legal Aid, National Law Journal, January 2011, 1, 4 (noting decline in funds from government IOLTA (Interest on Lawyers Trust Fund Accounts), and tight private fundraising climate, together with increased demand for services); Erik Eckholm, Interest Rate Drop Has Dire Results for Legal Aid Groups, N.Y. TIMES, Jan. 19, 2009, at A12 (reporting a 30 percent increase in requests for legal aid); Richard Zorza, Access to Justice: Economic Crisis Challenges, Impacts, and Responses 8-9 (Self Represented Litigation Network 2009), available @ http://www.Selfhelpsupport.org (survey finding that a majority of judges reported increase in pro se caseloads, but that 39 percent also reported cuts in self-help services budget).


Charn & Selbin, Legal Aid, 30; Abel, Evidence Based Access to Justice, 295, 311 (discussing research budgets of Department of Education’s Institute of Education Sciences and the National Institute of Health).

Alan Houseman, Past and Current Efforts to Ensure Quality within the Civil Legal Assistance Community 4 (2004).


Legal Services Corporation, Documenting the Justice Gap.

Id; Sloan, Perfect Storm, 4; New York Task Force Report, available at http://www.nycourts.govlp/access-civil-

legal-services.


Id. at 151.


Legal Services Corporation, Documenting the Justice Gap, 2.


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For an overview of this research see Nourit Zimerman & Tom R. Tyler, Between Access to Counsel and Access to Justice: A Psychological Perspective, 37 Fordham Urban Law Journal 473, 482-489 (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 & Society Review 103, 128 (1988) (finding that assessments of fairness are more important than outcomes in participant’s evaluation of the legal system).


Id. at 2402-2403.


Blasi, How Much Access, at 869-870.

Id.


Abel, Evidence Based Access to Justice, at 302.

Update?


Abel & Vignola, Economic and Other Benefits, 150-151 (discussing research).

Update. Mention Cummings Abel Proposal?


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 (September, 2008). Participation rates in other states with mandatory reporting vary, as do implementation structures (whether data is publicly available, whether sanctions are imposed for non compliance, 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 Rhode, Pro Bono in Principle, at 167-169; David Wilkins, Doing Well By Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers, 41 Houston Law Review 1, 83-84 (2004).


Greiner & Pattanayak, supra note 28; text at notes 258.


Hadfield, Higher Demand, Lower Supply, at 155.


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 (April, 2009), available at http://www.abanow.org/wordpress/wp-content/files/flutter 1268261059_20_7_upload_file.pdf.


51 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 Institute in partnership with the Department of Justice’s Access to Justice Initiative, the Legal Services Corporation, and the American Bar Foundation).


53 For discussion of “legal ethics without the ethics,” see Rhode, In the Interests of Justice, at 200; Sullivan et. al, Educating Lawyers, at 149.


57 for discussing “legal ethics without the ethics,” see Rhode, In the Interests of Justice, at 200; Sullivan et al., Educating Lawyers, at 149.

58 Eric Wright has developed materials on the right to counsel for Santa Clara Law School’s orientation program that are available at . ERIC ADD


60 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 Standing Committee on Professionalism, Report of Survey on Law School Professionalism Programs 46-47 (2006).


62 Laurie Barron et al., The Pro Bono Collaborative: Building Bridges Between Law Firms, Low-Income Communities, and Law Students (Dec. 11, 2008) (unpublished manuscript on file with the author).

63 Chicago-Kent College of Law maintains a public interest certificate program. Chicago-Kent College of Law, offers a certificate program, UCLA Law School offers the Program in Public Interest Law and Policy. See Abel, Choosing, Nurturing, Training and Placing Public Interest Law Students, 1564. New York University Law School offers Root Tilden Scholarships, and Georgetown University School of Law. CHECK


65 Association of American Law Schools, ABA Bylaws, 6-1b. Core Values.

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

67 American Bar Association, Standards for Approval 302(b)(2).

68 Id. Standard 404 (a).