

## THE CLINIC LAB OFFICE

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## INTRODUCTION

*[W]e have undertaken to construct and demonstrate what we have been pleased to call a “model” of a law-school-affiliated legal-services program. Stripped of pretension and reduced to practicality, what this means to me is that we are committed to a continuing effort to generate alternative methods, to put into operation whatever recommends itself to our objective appraisal, and to evaluate remorselessly our fondest pet notions.*

—Frank I. Michelman<sup>1</sup>

*We should think about practice as a setting not only for the application of knowledge but for its generation.*

—Donald A. Schön<sup>2</sup>

In this essay, we describe the potential for law school clinics to serve as sites of empirical research to answer pressing questions about delivery of legal services in low-income communities. With others, we have noted the research imperative in legal services,<sup>3</sup> made the case for infrastructure to support such research,<sup>4</sup> and advocated renewed ties between law school clinics and legal services programs.<sup>5</sup> For the reasons set out more fully below, we believe that now is the time for law school clinics to heed Michelman’s commitment “to evaluate remorselessly our fondest pet notions” and to answer Schön’s call to become “a setting not only for the application of knowledge but for its generation.”<sup>6</sup> We call this opportunity the “Clinic Lab Office.”

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1. Frank I. Michelman, *The Legal Profession and Social Change: The Challenge to the Law Schools*, in *THE PATH OF THE LAW FROM 1967: PROCEEDINGS AND PAPERS AT THE HARVARD LAW SCHOOL CONVOCATION HELD ON THE ONE-HUNDRED FIFTIETH ANNIVERSARY OF ITS FOUNDING* 125, 128 (Arthur E. Sutherland ed., 1968).

2. Donald A. Schön, *Knowing-in-Action: The New Scholarship Requires a New Epistemology*, *CHANGE*, Nov.–Dec. 1995, at 27, 29.

3. Jeffrey Selbin, Jeanne Charn, Anthony Alfieri & Stephen Wizner, *Service Delivery, Resource Allocation, and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 *YALE L.J. ONLINE* 45 (2012), <http://yalelawjournal.org/images/pdfs/1099.pdf>.

4. JEFFREY SELBIN, JOSH ROSENTHAL & JEANNE CHARN, *CTR. FOR AM. PROGRESS, ACCESS TO EVIDENCE: HOW AN EVIDENCE-BASED DELIVERY SYSTEM CAN IMPROVE LEGAL AID FOR LOW- AND MODERATE-INCOME AMERICANS* (2011), <http://www.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/evidence.pdf>.

5. Jeanne Charn & Jeffrey Selbin, *Legal Aid, Law School Clinics and the Opportunity for Joint Gain*, *MGMT. INFO. EXCH. J.*, Winter 2007, at 28, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1126444](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1126444).

6. Michelman, *supra* note 1; Schön, *supra* note 2.

In Part I, we map the common origins and current landscapes of the legal services and clinical legal education movements. The movements have drifted from their early, common agendas in order to achieve a measure of stability and security. In Part II, we identify the need for civil justice research to inform a complex, decentralized legal services delivery system. We lack critical information about the demand, supply, and efficacy of existing models, but new national efforts bode well for the future of such research.

In Part III, we argue that law school clinics are well positioned to undertake empirical research and provide examples of some early projects. Clinics have much to offer legal services in the research dimension and much to gain. Such engagement can improve clinic work, deepen student learning, and make a distinct scholarly contribution. We conclude by identifying challenges to realizing the full potential of the Clinic Lab Office.

## I. LEGAL SERVICES AND LAW SCHOOL CLINICS

The modern clinical legal education and legal services movements have shared roots in the activism of the 1960s that challenged the nation to dismantle segregation and eliminate conditions of abject poverty. For more than a decade, legal services and law school clinics were partners in a common agenda on behalf of those who had been excluded from law and its remedies. By the 1970s, their paths diverged.

Today, legal services programs have survived multiple existential threats and are part of a much larger and more diverse delivery system. Law school clinics have become institutionalized to a degree unimaginable to early proponents. Both look very different than they did four decades ago. In this Part, we describe the common origins and current features of legal services and law school clinics.

### *A. Common Origins and Goals*

President Lyndon B. Johnson's landslide victory in 1964 brought with it a Democratic Congress that enacted major civil rights and antipoverty legislation.<sup>7</sup> President Johnson's "War on Poverty" was ambitious in scope and unique in its support for local activists. Its goal was to attack the root causes of poverty and bypass state and local governments in order to enlist the "maximum feasible participation" of

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7. ROBERT A. CARO, *THE PASSAGE OF POWER: THE YEARS OF LYNDON JOHNSON* 604 (2012). Medicare, Medicaid, food stamps, Head Start, and affordable housing programs were among the notable achievements. *Id.*

the poor.<sup>8</sup> Many of these programs—including legal services—had been piloted in antipoverty programs funded by the Ford Foundation in the early 1960s.<sup>9</sup> By the end of the decade, the Ford Foundation would also be the principal funder and catalyst of clinical legal education.

### I. LEGAL SERVICES

The legislation that established the Office of Economic Opportunity (OEO) did not mention legal services.<sup>10</sup> However, Ford Foundation antipoverty pilot programs included a legal services component, and lawyers from those pilots persuaded OEO Director Sargent Shriver to create and fund a legal services program for the poor.<sup>11</sup> Mirroring the ethos of the larger antipoverty program, OEO lawyers understood themselves as frontline soldiers in the war on poverty. They were recruited as social change agents who would challenge, bend, and remake the law to protect and advance the interests of the poor.

In its most activist iteration, legal services sought to redistribute power and redirect resources to low-income communities.<sup>12</sup> As the founding OEO legal services director put it to state bar presidents in 1965:

We cannot be content with the creation of systems of rendering free legal assistance to all the people who need but cannot afford a lawyer's advice. This program must contribute to the success of the War on Poverty. Our responsibility is to marshal the forces of law and the strength of lawyers to combat the causes . . . of poverty. . . . [,] remodel the system which generates the cycle of poverty[,] and design new social, legal and political tools and vehicles to move poor people from

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8. John Kilwein, *The Decline of the Legal Services Corporation: 'It's Ideological, Stupid!'*, in *THE TRANSFORMATION OF LEGAL AID* 41, 45 (Francis Regan et al. eds., 1999).

9. EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM* 21–35 (1978); see Stephen K. Huber, *Thou Shalt Not Ration Justice: A History and Bibliography of Legal Aid in America*, 44 *GEO. WASH. L. REV.* 754, 758 (76).

10. See Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 202(a), 78 Stat. 508, 516 (1964). OEO was the executive office of the War on Poverty.

11. See, e.g., BRYANT GARTH, *NEIGHBORHOOD LAW FIRMS FOR THE POOR* 25 (1980); JOHNSON, *supra* note 9, at 39–40, 135; Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 *YALE L.J.* 1317 (1964).

12. GARTH, *supra* note 11, at 231; see also JACK KATZ, *POOR PEOPLE'S LAWYERS IN TRANSITION* (1982).

deprivation, depression, and despair to opportunity, hope and ambition.<sup>13</sup>

This explicitly redistributive agenda energized the new poverty lawyers, but it also generated controversy that would threaten the new program. By the time President Richard Nixon signed into law the 1974 act establishing the Legal Services Corporation (LSC) as the successor to OEO legal services, the program was already moving in a less political direction.<sup>14</sup>

## 2. LAW SCHOOL CLINICS

The prospect of thousands of federally funded jobs for lawyers serving the poor inevitably impacted law schools and played a central role in the emergence and contours of modern law school clinics in the late 1960s.<sup>15</sup> Law students were increasingly dissatisfied with a century-old legal education paradigm that did not fit the politics and ambitions of the times.<sup>16</sup> They demanded new subject matter and new teaching methods that would prepare graduates to serve the poor, minorities, and other marginalized groups and causes.

The same Ford Foundation leaders who shaped OEO legal services created the Council on Legal Education for Professional Responsibility (CLEPR).<sup>17</sup> Through clinics, CLEPR aimed to make law schools relevant to the career aspirations of antipoverty lawyers and to urgent calls for social and economic justice.<sup>18</sup> CLEPR leaders believed that engagement with the legal dimensions of poverty and civil rights was important not only to lawyers' professional responsibility, identity, and values, but also to the ultimate success of the legislative achievements of the era.<sup>19</sup>

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13. JOHNSON, *supra* note 9, at 119–20 (quoting E. Clinton Bamberger, Jr., Address to the National Conference of Bar Presidents (Feb. 19, 1966)).

14. In the 1974 LSC Act, Congress declared “there is a need to provide equal access to the system of justice [and] to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel.” Legal Services Corporation Act of 1974, Pub. L. No. 93-355, § 1001, 88 Stat. 378, 378 (1974).

15. See Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 72–76 (2009) (providing a brief history of clinical legal education).

16. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 234 (1983); Sandefur & Selbin, *supra* note 15, at 75.

17. Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1933 (2002).

18. See Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 374 (1973); Michael Meltsner & Philip G. Schrag, *Report from a CLEPR Colony*, 76 COLUM. L. REV. 581, 586–87 (1976).

19. See Meltsner & Schrag, *supra* note 18, at 627.

As Michelman's 1967 description of "a law-school-affiliated legal-services program" makes clear, clinics and legal services offices were often indistinguishable in the early days.<sup>20</sup> CLEPR provided grants to clinics that co-located with neighborhood law offices (what we now think of as "externships") and advocated for clinics within and funded by law schools (what we now call "in-house" clinics).<sup>21</sup> The founding generation of clinical faculty drew heavily from civil rights, legal aid, and public defender programs and included some of the most respected legal services lawyers of the era.<sup>22</sup> These close ties, however, did not last long.

### 3. RETRENCHMENT AND DIVERGENCE

Within a decade of their founding, the legal services and law clinic movements diverged. A conservative backlash cooled the zeal for change and compelled legal services lawyers and law school clinicians to temper their politics and prioritize institutional concerns.

Right-wing assaults forced legal services into decades of struggle for survival. In the face of withering attacks by political opponents, legal services moved toward a more procedural conception of its mission, most notably under the mantle of "access to justice."<sup>23</sup> As LSC President John McKay described in 2000, "[the] Board and supporters were able to preserve federally sponsored legal services by adopting a new vision that focused on a strong, professional, nonpartisan LSC, emphasizing bipartisan support for access to justice for *all* Americans, including low-income persons."<sup>24</sup> For legal services, then, the price of government funding was a retreat from its more activist ambitions.

In law schools, CLEPR was gone, student unrest had abated, and deans were reluctant to assume the costs of incorporating clinics and their (largely) adjunct staff into the traditional curriculum and faculty. As a result, clinicians fought to secure their programs and status in the academy. Most often, this required them to conform their priorities to the

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20. Michelman, *supra* note 1, at 128. Some of the earliest OEO legal services grants supported law school clinics, including the program referred to by Frank Michelman. *See id.* at 129.

21. Meltsner & Schrag, *supra* note 18, at 608 (citing COUNCIL ON LEGAL EDUC. FOR PROF'L RESPONSIBILITY, INC., SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION 1974-75 iv, vi (1975)).

22. *See id.* at 582. For example, founding clinical faculty included Tony Amsterdam, Gary Bellow, Edgar and Jean Cahn, Mike Meltsner and Phil Schrag.

23. *See* Jeanne Cham, Foreword, *Civil Gideon and Legal Services in America*, 7 HARV. L. & POL'Y REV. 1, 6 (forthcoming 2013).

24. John McKay, *Federally Funded Legal Services: A New Vision of Equal Justice under Law*, 68 TENN. L. REV. 101, 110 (2000).

teaching and scholarly logic of the university.<sup>25</sup> For clinicians, the price of academic citizenship was the turn to skills training and scholarship.

### *B. The Present Landscape*

The access agenda in legal services and the teaching and scholarship agenda in clinics have been successful on their own terms. After decades of struggle, the federally funded legal services program has survived. Clinics have achieved an important measure of security within the academy. As a result, however, both movements operate in dramatically altered landscapes today.

#### 1. LEGAL SERVICES TODAY

Legal services has undergone a radical transformation. What began as a program of nationally funded neighborhood legal aid offices has become a complex, mixed-model delivery system supported primarily by state and local funding.<sup>26</sup> This new terrain includes several notable features.

Diverse, decentralized funding: While fighting to save the federal program, supporters of legal services sought new funding. Today, total civil legal aid resources approach \$1.5 billion.<sup>27</sup> LSC remains the single largest funder and the only funder present in every state, but more than two-thirds of the sector's resources now come from state, local, and private sources.<sup>28</sup>

Increased role for the courts: State courts confronting millions of unrepresented litigants have developed onsite self-help centers, simplified forms, and other user-friendly mechanisms. Working independently and through entities like the Self-Represented Litigation Network,<sup>29</sup> judges and court administrators now play key policy and leadership roles in the access to justice movement.

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25. See Michael Lounsbury & Seth Pollack, *Institutionalizing Civic Engagement: Shifting Logics and the Cultural Repackaging of Service-Learning in US Higher Education*, 8 ORGANIZATION 319, 328–31 (2001) (observing this general trend in university service-learning programs).

26. Jeanne Charn, *Legal Services for All: Is the Profession Ready?*, 42 LOY. L.A. L. REV. 1021 (2009).

27. ALAN HOUSEMAN, CTR. FOR AM. PROGRESS, THE JUSTICE GAP: CIVIL LEGAL ASSISTANCE TODAY AND TOMORROW 7 (2011), <http://www.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/justice.pdf>.

28. *Id.* at 7–10.

29. SRLN.org, [www.srln.org](http://www.srln.org) (last visited Feb. 24, 2013).

Increased role for the private bar: Since the 1990s, pro bono has become an institutionalized force in the private bar and law schools.<sup>30</sup> As leading sociolegal scholars recently noted, legal services now rests on a tripartite foundation of “government[] support, institutional philanthropy, and private lawyer charity[, each of which] has become indispensable and interdependent.”<sup>31</sup>

Service delivery innovations: Diversity in funding and new stakeholders have led to a proliferation of service innovations such as discrete task representation (“unbundled” legal services), technology-centered services, and information hotlines. These innovations are changing the way people seek help, how lawyers practice, and how legal assistance is delivered.

The increasing complexity and diversity of civil legal services offers consumers more choice and suggests that less lawyer-centric modes of service delivery can be effective. At the same time, LSC has been eclipsed as a policy and funding leader. Statewide coordination and management has increased through the formation of access to justice commissions, but remains weak.<sup>32</sup> Critically important policies—substantive case-taking priorities, modes of services offered, and extent of collaboration with other legal aid providers—continue to be determined at the local program level.

## 2. LAW SCHOOL CLINICS TODAY

Clinics, too, look very different from their community-based roots in the 1960s. For decades, organized clinicians have sought to increase their influence in law schools through the pursuit of equal status and governance rights. This effort has born considerable fruit as law schools have responded over time with greater security of position and perquisites. In exchange for such benefits, however, many clinicians are now required—or have the opportunity, depending on your view—to participate in law school administration, produce more scholarship, and teach outside the clinic. As a result, modern clinics include features that early proponents would hardly recognize.

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30. See LEGAL SERVS. CORP., REPORT OF THE PRO BONO TASK FORCE 1–2 (2012), available at [http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF\\_%20Report\\_FINAL.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf).

31. Scott L. Cummings & Rebecca Sandefur, *Beyond the Numbers: What We Know—and Should Know—about American Pro Bono*, HARV. L. & POL’Y REV. (forthcoming 2013) (manuscript at 1) (on file with authors).

32. See Laura Abel, *Designing Access: Using Institutional Design to Improve Decisionmaking about the Distribution of Free Civil Legal Aid*, HARV. L. & POL’Y REV. (forthcoming 2013) (manuscript at 2–4) (on file with authors).



Programmatic diversity: Clinics now operate in dozens of subject matters and clinicians have pioneered a dizzying array of delivery models serving not only low-income clients, but also institutional clients and causes locally, nationally, and globally.<sup>33</sup> Relatively few clinics, however, have maintained close ties to low-income communities and legal services programs.

Distinctive scholarship: Clinicians have produced a voluminous scholarship focused (among other things) on the microdynamics of lawyer-client relationships, program case studies, and teaching methods.<sup>34</sup> Because of the relatively narrow theoretical and descriptive focus on what we do, our scholarship is influential primarily within clinical circles.

New pedagogy: Clinicians have developed and refined a sophisticated pedagogy based mostly on modest caseloads and discrete aspects of lawyering, including best practices for teaching and training law students.<sup>35</sup> There is some debate within the community about this development,<sup>36</sup> but the narrow focus is driven at least in part by increased institutional demands on clinicians' time.

Institutional commitments: Clinicians play a growing role in law school administration and governance, including participation in faculty meetings and service on committees. These important forms of institutional engagement reduce the time clinical faculty have to supervise students, serve clients, and interact with the practicing bar, including legal services lawyers and their clients.

Beyond serving as a pedagogic corrective to longstanding deficits in legal education—and even as clinics have changed in response to the institutional imperatives noted above—these modern features suggest that clinics have had a broad impact on law schools.<sup>37</sup> Yet, early clinic ambitions to subject the workings of law practice to rigorous scrutiny have not been fully realized. One way to leverage clinics' strengths and

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33. See DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., THE 2010–11 SURVEY OF APPLIED LEGAL EDUCATION 4, 7–9 (2012), available at <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf>.

34. See generally J.P. Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography*, CATHOLIC UNIV. AM. (2005), <http://faculty.cua.edu/ogilvy/biblio05clr.htm>.

35. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 7–9 (2007).

36. See, e.g., Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008); Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333 (2009).

37. For a fuller discussion, see Sandefur & Selbin, *supra* note 15; WILLIAM SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

expand their reach is to serve as sites of inquiry in emerging civil justice research. We turn next to the basic need for such an agenda, and the efforts underway to build a sustained, national research capacity.

## II. CIVIL JUSTICE RESEARCH

Empirical claims have dominated debates about legal services since its inception, but they have rarely been tested.<sup>38</sup> Since most of the important questions in the field cannot be resolved by normative debate, research is needed to fill the evidence gap. For example, on the demand side, empirical data and analysis can tell us a great deal about consumer needs and preferences. On the supply side, research can help us understand existing substantive practices, service delivery models, and geographic distribution of services. Research can also help us assess efficacy—the costs and merits of various models in relation to need.<sup>39</sup>

In this Part, we set out the case for a program of empirical research on civil access to justice.<sup>40</sup> We also describe recent efforts of legal services lawyers, clinicians, and researchers to build a sustained empirical research capacity. If done well, research can help us allocate scarce resources more effectively and make the case for greater investments.<sup>41</sup> It will also enable us to assess whether our most deeply held convictions hold up under empirical scrutiny.

### *A. The Research Vacuum*

Civil justice research in the United States peaked in the early 1980s. From 1975 to 1981, Congress mandated comparative studies and LSC

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38. Bryant G. Garth, *Introduction*, in PROCEEDINGS OF THE CONFERENCE, RESEARCH ON LEGAL SERVICES FOR THE POOR AND DISADVANTAGED: LESSONS FROM THE PAST AND ISSUES FOR THE FUTURE 1, 10 (Univ. Wis. Law Sch. Disputes Processing Research Program Working Paper No. 1983-11, 1983) (“Each side, it can be seen, gives enormous political importance to the legal services program. We need to inquire if that assessment can be justified by either supporters or critics.”).

39. Richard Moorhead & Pascoe Pleasence, *Access to Justice after Universalism: Introduction*, 30 J.L. & SOC’Y 1 (2003); see also Gregg G. Van Ryzin & Marianne Engelman Lado, *Evaluating Systems for Delivering Legal Services to the Poor: Conceptual and Methodological Considerations*, 67 FORDHAM L. REV. 2553 (1999).

40. See Selbin, Charn, Alfieri & Wizner, *supra* note 3. A detailed discussion of empirical methods is beyond the scope of this Essay. For a list of six foundational elements of empirical work, see Richard K. Neumann, Jr. & Stefan H. Krieger, *Empirical Inquiry Twenty-Five Years after The Lawyering Process*, 10 CLINICAL L. REV. 349, 355–60 (2003) (open-mindedness, concrete and narrow theory design, unbiased data, valid and reliable rules for measuring data, critical analysis, and public accessibility).

41. See Selbin, Charn, Alfieri & Wizner, *supra* note 3.

maintained a research institute.<sup>42</sup> From 1979 to 1981, the Civil Litigation Research Project employed social science theory and survey research methods to study the nature and dynamics of civil dispute resolution.<sup>43</sup> Even at its height, which coincided with some of the most intense battles about LSC's future, there was little research about what actually took place in legal aid offices.<sup>44</sup>

Since then, neither the field nor the legal academy has engaged in significant empirical study of the legal needs of the poor or the services provided to them.<sup>45</sup> On the demand side—consumer needs, preferences, and problem solving behaviors—the last meaningful study was conducted twenty years ago.<sup>46</sup> On the supply side, we lack critical data about funding, services (types and amounts), quality, outcomes, accessibility, and cost-effectiveness.<sup>47</sup> These longstanding data gaps, which would be unthinkable in other major social policy arenas, compound the management, coordination, and funding challenges noted above.<sup>48</sup>

#### *B. Demand Side: Consumer Needs and Preferences*

Survey research findings in other countries have produced a nuanced picture of how laypeople understand and deal with the family,

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42. HOUSEMAN, *supra* note 27; ALAN W. HOUSEMAN & LINDA E. PERLE, CTR. FOR LAW & SOC. POLICY, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES (2007), available at <http://www.clasp.org/admin/site/publications/files/0158.pdf>.

43. DAVID M. TRUBEK ET AL., CIVIL LITIGATION RESEARCH PROJECT FINAL REPORT (1983); Herbert M. Kritzer, *Bibliography of Publications and Papers of the Civil Litigation Research Project*, UNIV. OF WIS. DEPARTMENT POL. SCI., <http://users.polisci.wisc.edu/kritzer/research/clrpbib.htm> (last updated Dec. 28, 2004).

44. As one person involved in research efforts at the time noted, “what is striking is that, while it is clear that we all do have our own ideas about what legal services in fact does, is capable of doing and must do to be useful, it is remarkable how little research can be cited to support one position or another.” Garth, *supra* note 38, at 11.

45. See Garth, *supra* note 38; Deborah Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. (forthcoming 2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1903769](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1903769); Selbin, Charn, Alfieri & Wizner, *supra* note 3, at 53–54.

46. See INST. FOR SURVEY RESEARCH AT TEMPLE UNIV., FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY (1994).

47. Gary Bellow & Jeanne Charn, *Paths Not Yet Taken: Some Comments on Feldman's Critique of Legal Services Practice*, 83 GEO. L.J. 1633, 1636–37 (1995) (noting the historical lack of a comprehensive system for evaluating legal services); Mary Helen McNeal, *Limited Legal Assistance*, 67 FORDHAM L. REV. 1819, 1821 (1999) (there are “no baseline data on the success of traditional representational models or limited legal assistance models, and no shared vision of how one might measure success.”).

48. SELBIN, ROSENTHAL & CHARN, *supra* note 4, at 5–7.

housing, consumer, employment, public benefits, and similar problems that result from the pervasiveness of law in their daily lives.<sup>49</sup> What is now termed “justiciable problems” research focuses on issues that have “legal aspects, legal consequences, and (potentially) legal solutions,” but which people may not perceive as legal problems.<sup>50</sup> For example, if a homeowner falls behind on her mortgage, she may see the problem as resulting from a layoff or unexpected out-of-pocket medical expenses but not think, or even be aware, of legal implications or remedies unless the arrearage escalates to foreclosure and imminent loss of her home.

Beginning in the 1990s, researchers in the United Kingdom and Scotland—and later in Canada and other countries—conducted pioneering civil justice surveys.<sup>51</sup> This now large body of survey research challenges the conventional wisdom of many legal services funders and providers that the access to justice crisis is fundamentally a problem of inadequate supply. The findings of civil justice research suggest that: (1) the vast majority of law-related problems people encounter are never brought to lawyers, even in countries where access is guaranteed;<sup>52</sup> (2) cost is not the most common reason people do not seek legal help,<sup>53</sup> and (3) when they have a choice, people prefer informal advice services to lawyer help, at least in the first instance.<sup>54</sup>

Justiciable problems are not only common, they are consequential. In Canadian studies, nearly sixty percent of those surveyed reported that these problems “made their day-to-day lives somewhat to extremely difficult,” and nearly ninety percent reported that “resolving the problem was somewhat to extremely important.”<sup>55</sup> Increasingly refined survey data document that problems cluster and that some appear to trigger a cascade of problems. These compounding and cascading effects correlate

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49. AB CURRIE, DEP’T OF JUSTICE CAN., *THE LEGAL PROBLEMS OF EVERYDAY LIFE: THE NATURE, EXTENT AND CONSEQUENCES OF JUSTICIABLE PROBLEMS EXPERIENCED BY CANADIANS* (2009).

50. Rebecca L. Sandefur, *The Fulcrum Point of Equal Access to Justice: Legal and Non-Legal Institutions of Remedy*, 42 *LOY. L.A. L. REV.* 949, 951 n.5 (2009) (citing HAZEL GENN ET AL., *PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW* 12 (1999)).

51. *E.g.*, GENN ET AL., *supra* note 50; HAZEL GENN & ALAN PATERSON, *PATHS TO JUSTICE SCOTLAND: WHAT PEOPLE IN SCOTLAND DO AND THINK ABOUT GOING TO LAW* (2001); *see* CURRIE, *supra* note 49, at 11–12 (summarizing research in seven countries).

52. Sandefur, *supra* note 50, at 955; *see also* William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 *LAW & SOC’Y REV.* 631 (1981) (positing that a multistage process results in only a small fraction of potential claims ever reaching a lawyer or a legal institution).

53. CURRIE, *supra* note 49, at 56; Sandefur, *supra* note 50, at 953–55.

54. CURRIE, *supra* note 49, at 55, 59–61.

55. *Id.* at 35–36.

with reports of negative outcomes such as emotional and physical health problems.<sup>56</sup>

Understanding how people perceive and deal with justiciable problems is essential for building a responsive, consumer-centered legal services delivery system. Fortunately, the American Bar Foundation recently launched a justiciable problems research project. The two-year Community Needs and Services Study (CNSS) will investigate:

public experience with civil justice problems and the resources available to assist people in responding to them. The Study focuses on a core set of commonly experienced problems surrounding issues such as personal finances, housing and family relationships. These problems are carefully selected to be those that have civil legal aspects, raise civil legal issues and have consequences shaped by civil law. The CNSS is the first-ever study to pair an investigation of the civil justice problems people experience with an investigation of the legal and non-legal resources available to assist them in handling those problems.<sup>57</sup>

This ambitious study will significantly advance our understanding of how consumers perceive and respond to justiciable problems, but we need ongoing surveys at multiple sites. In a country as large and diverse as the United States, we would expect to find differences by region and demographics and to see the problems most often encountered change as economic and social conditions change.

### *C. Supply Side: Civil Justice Resources*

As the civil legal services delivery system has become more diverse and complex, the decentralization of resources and management make it challenging to map. We lack basic data about the amount and nature of civil justice resources. In many states, we do not know: (1) the number of programs; (2) the size and composition of the advocacy staff at each program (attorneys, law students, fellows, and paralegals); (3) whether funders restrict grants to specific populations or substantive problems; (4) the types of services provided by each program (e.g., impact cases,

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56. *Id.* at 49–55, 73–83.

57. *Access to Justice*, AM. B. FOUND., [www.americanbarfoundation.org/research/A2J.html](http://www.americanbarfoundation.org/research/A2J.html) (last visited Feb. 24, 2013). For more on demand-side research questions, see Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 117–19.

full representation, hotline services, limited advice, unbundled assistance, or some combination thereof); (5) the extent of resource disparities among states; or (6) the prevalence within states of “service deserts” where no assistance is available. Despite their prominent role, we also know little about the pro bono and court-based self-help phenomena.<sup>58</sup> Of great importance, we do not have sufficient comparative data about service delivery to guide consumers to the assistance most likely to meet their needs.

A rough picture of the system is emerging thanks to the publication of a recent report. In 2011, the LSC, the United States Department of Justice, and the American Bar Foundation commissioned a study to map the nation’s civil justice infrastructure.<sup>59</sup> Led by sociolegal scholar Rebecca Sandefur, “*Access Across America* is the first-ever state-by-state portrait of the services available to assist the U.S. public in accessing civil justice.”<sup>60</sup> The report compiled data on six aspects of the current system, including: (1) *eligibility*—who is entitled to what services; (2) *delivery*—how services are provided and where; (3) *connection*—how people access civil justice resources; (4) *funding*—how civil justice programs are resourced; (5) *coordination*—how programs and funding are coordinated; and (6) *rules*—how rules are changing to enable subsidized and market-based sources of assistance.<sup>61</sup> This project is an important first step, but we need a much more granular understanding of the supply side of legal services if we hope to build a more comprehensive and responsive delivery system.<sup>62</sup>

#### *D. Efficacy: Toward Evidence-Based Practice*

In addition to basic questions about supply and demand, we also know almost nothing about the comparative efficacy of various service delivery models in terms of outcomes or cost-effectiveness. Because we cannot—and arguably *should* not—provide government-funded lawyers in all civil matters, we must determine when, where, for whom, and at what cost different modes of service delivery match up with consumers’

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58. See Cummings & Sandefur, *supra* note 31, at 4.

59. REBECCA L. SANDEFUR & AARON C. SMYTH, AM. BAR FOUND., ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT (2011), <http://www.americanbarfoundation.org/research/A2J.html>. We served as the project’s advisory board.

60. *Id.* at v.

61. *Id.*

62. For more on supply-side research questions, see Albiston & Sandefur, *supra* note 57, at 114–16.

legal needs.<sup>63</sup> Where some form of substantive justice is the goal, questions of efficacy take on even greater import and complexity.<sup>64</sup>

Three path-breaking efficacy studies conducted by Jim Greiner and his colleagues,<sup>65</sup> with more in progress, have fundamentally changed this field of research. The studies are randomized controlled trials comparing access to legal representation with various configurations of limited advice and assistance. The first study involved litigants appealing denials of unemployment insurance claims or defending initial approvals against employer appeals.<sup>66</sup> The study found that claimants offered representation fared no better than those who were not offered representation.<sup>67</sup> The study produced immediate controversy because the result directly challenged deeply held beliefs among legal services lawyers and the bar in general that self-help is always a second best alternative to legal representation.<sup>68</sup>

Two subsequent studies compared access to lawyer representation with access to court-based limited assistance for tenants in eviction proceedings.<sup>69</sup> One study showed no difference in results based on source of assistance,<sup>70</sup> but the other study documented significant advantages for tenants represented by attorneys.<sup>71</sup> These studies have received disproportionate attention because the research is unprecedented in legal services and the results run counter to the lawyer-centric narrative about law and justice. At a minimum, the studies suggest that in some circumstances less-than-full-lawyer representation can be effective, but we need much more research to provide an adequate evidentiary basis for

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63. For more on efficacy research questions, see *id.* at 111–14.

64. See Jane H. Aiken & Stephen Wizner, *Measuring Justice*, 2013 WIS. L. REV. 79.

65. D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118 (2012); D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901 (2013) [hereinafter Greiner et al., *District Court*]; D. James Greiner et al., *How Effective Are Limited Legal Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court* (Sept. 1, 2012) [hereinafter Greiner et al., *Housing Court*] (unpublished manuscript) ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1880078](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1880078)). For background on prior civil impact-of-counsel studies, see Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. SOC. JUST. 51 (2012).

66. Greiner & Pattanayak, *supra* note 65, at 2132–44.

67. *Id.* at 2144–58.

68. Jeanne Charn, *Celebrating the Null Finding: Evidence-Based Strategies for Access without Lawyers*, YALE L.J. (forthcoming 2013).

69. Greiner et al., *District Court*, *supra* note 65, at 913–19; Greiner et al., *Housing Court*, *supra* note 65, at 8–15.

70. Greiner et al., *Housing Court*, *supra* note 65, at 15–37.

71. Greiner et al., *District Court*, *supra* note 65, at 919–36.

advising clients and making service delivery or resource allocation decisions.

Efficacy research would also inform the “civil *Gideon*” movement, an organized effort to secure an entitlement to lawyer assistance in civil matters that parallels the entitlement in criminal matters enunciated by the Supreme Court in *Gideon v. Wainwright*.<sup>72</sup> In 2011, a unanimous Supreme Court held that due process does not require the state to provide counsel to an indigent parent facing incarceration at a civil contempt hearing for failure to pay child support, *provided* that the court has in place “procedural safeguards” to reduce the risk of an erroneous deprivation of liberty.<sup>73</sup> The Court did not foreclose the possibility of circumstances where expert lawyer assistance would be constitutionally mandated, but it made clear that such a finding would require evidence—presumably empirical evidence—that nothing short of lawyer assistance could assure due process. As one commentator noted in the wake of *Turner v. Rogers*,<sup>74</sup> with regards to when lawyers are constitutionally required in civil matters, “[w]hile one can state the equation, one cannot do the math because the data are missing.”<sup>75</sup>

#### *E. Building Research Capacity*

We are among a handful of clinicians participating in an initiative to build a national civil justice research capacity. An emerging consortium of researchers and practitioners is coordinating information, cultivating funding streams, and circulating the results of early studies. We are drawing institutional support from the American Bar Foundation and the United States Department of Justice, both of which recently established access to justice initiatives.<sup>76</sup> The National Legal Aid and Defender Association (NLADA), the leading national legal services organization, has launched a research arm and is hiring a trained social scientist to run it.<sup>77</sup>

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72. 372 U.S. 335 (1963).

73. *Turner v. Rogers*, 131 S. Ct. 2507 (2011).

74. *Id.*

75. Judith Resnik, *Fairness in Numbers: A Comment on AT&T v. Conception, Wal-Mart v. Dukes, and Turner v. Rogers*, 125 HARV. L. REV. 78, 158 (2011).

76. See SANDEFUR & SMYTH, *supra* note 59, at 2–4. One of the Department of Justice Access to Justice Initiative’s primary goals is to “[e]xpand research on innovative strategies to close the gap between the need for, and the availability of, quality legal assistance.” *Access to Justice Home*, U.S. DEPARTMENT JUST., <http://www.justice.gov/atj/> (last visited Feb. 24, 2013).

77. Per the December 2012 job announcement, a master’s degree is required and a Ph.D. preferred. *Research Director/Justice Standards, Evaluation & Research Initiative*, MGMT. INFO. EXCHANGE, <http://mielegalaid.org/jobs/research-director-justice-standards-evaluation-research-initiative> (last visited Mar. 2, 2013).



In late 2012, the National Science Foundation recognized the significance of these efforts by awarding a workshop grant to convene stakeholders in civil justice research.<sup>78</sup> In December, social scientists, legal scholars, judges, court administrators, and legal services lawyers gathered in Chicago during the annual NLADA conference. Researchers facilitated a town hall meeting at the conference to solicit input and concerns from the legal services field, and practitioners participated in an all-day workshop with scholars to develop a civil justice research agenda.

These developments represent a once-in-a-generation opportunity to deepen and advance our understanding of legal services needs, delivery, and efficacy. As we discuss next, law school clinics can play a central role in this effort.

### III. THE CLINIC LAB OFFICE

We have spent most of our careers in community-based clinics at the intersection of legal education and legal services. Like all clinics, ours have a dual teaching-service mission. To this dual mission, we propose to add a third major function: research.<sup>79</sup> Conceptualized in this way, clinics would serve as the institutional hub for practice-based education, community-based service, and evidence-based research—much like teaching hospitals.<sup>80</sup>

In this Part, we describe the assets clinics bring to the research enterprise, the benefits to clinics of involvement in research, and examples of research from our own clinics. We also note a clinical initiative that provides a foundation upon which to build the Clinic Lab Office.

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78. See *Access to Justice*, *supra* note 57.

79. We are not the first to suggest a research role for clinics. See, e.g., Steven H. Leleiko, *Clinical Education, Empirical Study, and Legal Scholarship*, 30 J. LEGAL EDUC. 149 (1979) (describing the potential of clinics to contribute to empirical legal scholarship). Though we focus here on practice and service delivery research, clinic teaching methods and learning outcomes are also ripe for empirical assessment. See Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807 (2007); Neumann & Krieger, *supra* note 40, at 349.

80. See Jeanne Charn, *Service and Learning: Reflections on Three Decades of The Lawyering Process at Harvard Law School*, 10 CLINICAL L. REV. 75 (2003).

*A. Research Assets of Clinics*

Law school clinics offer many advantages as sites for producing knowledge about practice in general and legal services delivery in particular. Here we sketch just a few of the research assets of clinics.

Personal and positional capital: Clinics are directed and staffed by people with decades of experience advocating for social and economic justice. Such insider commitments and knowledge can help to frame salient civil justice research questions. Some clinics remain deeply connected to client communities and others can reestablish such ties.<sup>81</sup> From a research perspective, these relationships are rich with potential to explore client needs, delivery models, and service efficacy.

Access to expertise and data: Most clinics are located within large research institutions that can provide the requisite labor, expertise, and detachment to undertake serious, replicable research efforts. We want answers and researchers want access.<sup>82</sup> Experts can help us collect, analyze, and interpret various kinds of data, including: (1) existing data, generated for purposes other than study; (2) survey data, gathered through questionnaires or interviews; (3) field research in a naturally occurring environment, such as clinics; and (4) experiments, which isolate and test one or more variables.<sup>83</sup>

Institutional independence: Law school clinics are not generally restricted to particular clients or substantive areas. We can establish research-relevant client selection criteria and experiment with service delivery approaches. Clinicians can conduct research that meets both our professional responsibility to clients and our institutional obligations to research subjects. Although clinics have been subject to political attack<sup>84</sup>—especially those engaged in impact work involving powerful local industries—we have been relatively free from political interference.

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81. Karen Tokarz et al., *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359 (2008).

82. John Baldwin & Gwynn Davis, *Empirical Research in Law*, in THE OXFORD HANDBOOK OF LEGAL STUDIES 880, 893 (Peter Cane & Mark Tushnet eds., 2003).

83. ROYCE A. SINGLETON, JR. & BRUCE C. STRAITS, *APPROACHES TO SOCIAL RESEARCH* 7–11 (4th ed. 2005).

84. Robert R. Kuehn & Peter A. Joy, *Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility*, 59 J. LEGAL EDUC. 97, 104 (2009); Robert R. Kuehn & Bridget M. McCormack, *Lessons from Forty Years of Interference in Law School Clinics*, 24 GEO. J. LEGAL ETHICS 59 (2011); Jeff Selbin, *Defending Law School Clinics from Political Interference*, DAILY J. (L.A.), Apr. 13, 2010, at 6.

*B. Research Benefits to Clinics*

Clinics have as much to gain from conducting civil justice research as they have to offer. Among the many potential upsides of engaging in such research, we point to several interrelated benefits driven by our service, teaching, and scholarly missions.

Improving client service: Many of our clinics provide client services similar to those provided by legal aid programs. Therefore, as we generate vital knowledge for legal services, we will inevitably improve our own programs. We will be able to produce and document better outcomes for our clients and increased efficiency and cost effectiveness in service delivery. Evidence-based practice is becoming the norm in the provision of many complex services, but so far it has had little impact on delivery of legal services.<sup>85</sup> Clinics can and should be leaders in developing a strong evidence base for our service protocols.

Enhancing student reflection: Critical reflection is central to what we do, yet we have not empirically tested the impact or efficacy of our services. We model critical reflection when we subject our service convictions to rigorous evaluation and make changes when evidence warrants. In an increasingly client-driven and price-sensitive profession, our students need to develop the capacity: (1) to identify and challenge assumptions about their work; (2) to monitor the quality, effectiveness, and relative value of their services; and (3) to learn how to understand and act upon data and empirical findings.

Contributing distinctive scholarship: Civil justice research has ready-made audiences. The attention garnered by the Greiner studies confirms how little we know and how much outcomes matter to legal services providers and policy makers. We can stake a claim to an important area of public policy research. Such scholarship—including empirical legal studies and the new legal realism—has increased currency within the academy.<sup>86</sup> And government and private funders alike are demanding evidence of efficacy to maintain or increase support of social interventions like legal aid.<sup>87</sup> Though not without potential costs

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85. Laura K. Abel, *Evidence-Based Access to Justice*, 13 U. PA. J.L. & SOC. CHANGE 295 (2009–10).

86. Empirical legal studies is a positivist-quantitative strand associated with law and economics. See Elizabeth Chambliss, *When Do Facts Persuade? Some Thoughts on the Market for "Empirical Legal Studies,"* LAW & CONTEMP. PROBS., Spring 2008, at 17, 23, 31–32 (2008). The new legal realism is an interpretivist-qualitative strand associated with sociolegal studies. See Howard Erlanger et al., Foreword, *Is It Time for a New Legal Realism?*, 2005 WIS. L. REV. 335, 336, 340.

87. See SELBIN, ROSENTHAL & CHARN, *supra* note 4, at 6.

and limits,<sup>88</sup> we can partner with our empirically minded colleagues to produce knowledge that matters in the real world.

### *C. Research Examples in Clinics*

We have begun to engage in civil justice research with colleagues at our respective institutions. Though we claim no special expertise about the myriad research questions, methods, and possibilities, we describe these efforts as examples of the relatively straightforward ways in which clinicians can begin to undertake modest but valuable research projects.

#### 1. EBCLC CLEAN SLATE STUDIES

For the last decade, the East Bay Community Law Center (EBCLC) has been assisting people with criminal records to “expunge” prior convictions.<sup>89</sup> People with criminal records face substantial barriers to community reentry generally and employment opportunities in particular. Gainful employment significantly reduces recidivism and its attendant social and economic consequences.<sup>90</sup> Legal aid programs, public defender offices, and law school clinics like EBCLC have begun offering expungement services with the goal of reducing barriers to employment. Since we have little information about whether these efforts actually achieve this goal, we are conducting two companion studies to measure the impact of EBCLC’s Clean Slate Clinic.<sup>91</sup>

Earnings study: In collaboration with a labor economist, we are conducting a pilot study of the impact of obtaining criminal record

88. See Rhode, *supra* note 45, at 11 (arguing that within the legal academy, empirical research has higher costs and lower rewards than doctrinal or theoretical scholarship); Austin Sarat & Susan Silbey, *The Pull of the Policy Audience*, 10 *LAW & POL’Y* 97 (1988) (urging sociolegal scholars to maintain distance from policy makers’ definitions and goals when framing research questions).

89. E. BAY CMTY. LAW CTR., STUDENT INFORMATION SHEET 3 (2012–13), [http://www.ebclc.org/documents/EBCLC\\_Information\\_Sheet.pdf](http://www.ebclc.org/documents/EBCLC_Information_Sheet.pdf). EBCLC was founded in 1988 as the community-based clinic of the University of California, Berkeley, School of Law. *Id.* at 1. EBCLC trains more than 100 law students and serves over 5000 low-income clients each year. *Id.*

90. See Richard P. Seiter & Karen R. Kadela, *Prisoner Reentry: What Works, What Does Not, and What Is Promising*, 49 *CRIME & DELINQ.* 360, 379–80 (2003).

91. Prior examples of studies assessing service interventions at EBCLC include the Family Advocacy and Services Team study, EDWARD BARNES & LIAM GALBRETH, E. BAY CMTY. LAW CTR., LIFTING WELFARE EMPLOYMENT SANCTIONS IN THE CALWORKS PROGRAM: THE EXPERIENCE OF THE FAMILY ADVOCACY AND SERVICES TEAM (FAST) (2001), available at [www.calegaladvocates.org/library/attachment.76054](http://www.calegaladvocates.org/library/attachment.76054); and REBECCA HALL, BERKELEY CMTY. LAW CTR., EVICTION PREVENTION AS HOMELESSNESS PREVENTION: THE NEED FOR ACCESS TO LEGAL REPRESENTATION FOR LOW INCOME TENANTS (1991).

remedies on clients' subsequent earnings. We hypothesize that subjects will experience a "bump" in reported earnings to the Social Security Administration in the years following treatment. While this pilot study will not answer all of the significant questions about effective reentry practices, to our knowledge, it will be the first attempt to assess whether such programs actually increase clients' earnings. It should provide initial baseline data that can inform practices while identifying additional avenues for research. Over time, this may allow providers to deliver more targeted and effective services to facilitate community reentry, increase employment prospects, and reduce recidivism.

Dignity study: In collaboration with a criminologist, we are assessing the dignitary benefits experienced by clinic clients. We are currently analyzing data that include 180 client satisfaction surveys, three focus groups comprised of fifty-one clients, and seventeen in-depth, qualitative interviews. EBCLC clients describe many benefits of having their criminal records cleared, including the sense of relief they experience and the renewed sense of dignity they feel at the end of the process. We hypothesize that the expungement process functions as a ritual, which serves to reintegrate people with criminal records into the social fabric of their communities. We also hypothesize that dignity works in a mutually reinforcing way with improved employment outcomes. This work will inform theories about the role ritual—and lawyers—can play in the reentry process.

## 2. HLS FORECLOSURE AND DEBT ADVICE STUDIES

In 2002, Harvard Law School's WilmerHale Legal Services Center began representing low-income households facing foreclosure.<sup>92</sup> We undertook an associated empirical research effort by charting outcome data,<sup>93</sup> which showed that Center staff and students had achieved considerable success in the first sixty-one cases completed. In forty of those cases, homeowners retained their homes on affordable terms due to refinancing, principal write-downs, settlement of predatory lending claims, or work-outs in bankruptcy. In sixteen of the twenty-one cases in which clients did not retain their homes, they benefitted from sales to

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92. The Legal Services Center of Harvard Law School was founded in 1979 with a dual teaching-service mission. *The WilmerHale Legal Services Center*, HARVARD L. SCH., <http://www.law.harvard.edu/academics/clinical/lsc/> (last visited Mar. 1, 2013). It is the law school's largest single clinic offering and a major provider of legal services in the Boston area.

93. Jeanne Charn, *Preventing Foreclosure: Thinking Locally, Investing in Enforcement, Playing for Outcomes* (Mar. 2006) (unpublished manuscript) (on file with author). Because we have continued to chart outcomes since compiling the data in the 2006 manuscript, the figures reported here will differ from those noted in this manuscript.

immediate family members or market sales that retained equity ranging from \$20,000 to \$155,000. In another case, an elderly client died during the representation, but the center helped her children probate her estate and retained a valuable asset for the client's heirs. Only four of the sixty-one cases had unfavorable results—two foreclosures and two short sales.

In a second stage of research, we followed up on thirty-eight cases that had been closed for at least six months. We examined public records to identify whether clients who kept their houses avoided subsequent debt or delinquency problems. The results revealed: four market sales, four foreclosures, one transfer with a buy-back option (that might have been a rescue scam), ten refinanced properties, and two tax/municipal liens. The market sales and refinance transactions may (or may not) have benefited the homeowners, and the two tax liens were for modest amounts unlikely to threaten ownership. At a minimum, the four subsequent foreclosures raise important questions about the extent to which advocates and their clients can assume that success on complex legal claims will result in the ultimate goal of stable housing and opportunities for building equity.

These studies also raise questions about defining the scope of legal assistance required to resolve a client's problem. Having invested many hours of high-level legal expertise to prevent foreclosure, we might extend services to include post-crisis advice and support on managing debt, meeting future needs for credit, and offering other forms of transactional and preventive assistance. These relatively low-cost investments could consolidate the gains achieved by the earlier, intensive legal intervention.

### 3. AALS BELLOW SCHOLAR RESEARCH

We are not alone in embarking upon clinic-related civil justice research. A decade ago, the Association of American Law Schools' (AALS) Section on Clinical Legal Education established the Bellow Scholar Program to honor Gary Bellow's lifelong commitment to legal services and clinical education.<sup>94</sup> The Bellow Scholar Program encourages empirical work on legal services delivery, the substantive legal problems of poor and moderate income people, and the role of clinical education in preparing law students for careers as legal services lawyers and public defenders.<sup>95</sup> A standing committee of the Clinical Section solicits applications every two years and designates one or more

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94. Jeanne Charn, Foreword, *The Work of the Bellow Scholars*, 16 UDC/DCSL L. REV. 1, 1–5 (2012).

95. *Id.* at 5–6.

Bellow Scholars working on projects that are sufficiently developed to warrant empirical assessment and scrutiny.<sup>96</sup>

Bellow Scholars and interested clinicians meet at the annual spring clinical conference and at a workshop each fall to share experiences and engage in critical discussions about the projects.<sup>97</sup> Clinical scholars in the last two cohorts have begun writing up their research and findings, including studies of: (1) litigation practices by debt buyers in Texas,<sup>98</sup> (2) the administrative hearing process for unemployment insurance claimants in Washington, D.C.,<sup>99</sup> (3) judicial debt collection practices in Indiana,<sup>100</sup> (4) “shadow inventory” and the foreclosure crisis in New Jersey,<sup>101</sup> and (5) trauma-sensitive schools in Massachusetts.<sup>102</sup>

These and other active Bellow Scholar projects originated when law students and clinicians identified a problem that arose in their practice. They pursued research to understand client needs, improve client services, and propose systemic solutions. In every project, clinicians partnered with a social scientist who brought relevant substantive and methodological expertise. As a result of these activities, Bellow Scholars have been invited to testify before policy makers, advise public agencies, and recommend remedial legislation.

These clinic research examples are illustrative, not exhaustive, of what is possible. While other clinicians have conducted similar studies, we have only begun to scratch the surface in terms of our potential contribution to civil justice research.

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96. *Id.*

97. *Id.* at 6.

98. Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 VA. L. & BUS. REV. 257 (2011); Mary Spector, *From Representation to Research and Back Again: Reflections on Developing an Empirical Project*, 16 UDC/DCSL L. REV. 55 (2012).

99. Enrique S. Pumar & Faith Mullen, *The Plural of Anecdote Is Not Data: Teaching Law Students Basic Survey Methodology to Improve Access to Justice in Unemployment Insurance Appeals*, 16 UDC/DCSL L. REV. 17 (2012).

100. Judith Fox, *Do We Have a Debt Collection Crisis? Some Cautionary Tales of Debt Collection in Indiana*, 24 LOY. CONSUMER L. REV. 355 (2012); Judith Fox, *How Forum Determines Substance in Judicial Debt Collection*, BANKING & FIN. SERVICES POL’Y REP., Aug. 2012, at 11.

101. Linda E. Fisher, *Shadowed by the Shadow Inventory: A Newark, New Jersey Case Study of Stalled Foreclosures and Their Consequences*, U.C. IRVINE L. REV. (forthcoming).

102. *Education Law Clinic/Trauma Learning Policy Initiative*, HARV. L. SCH., <http://www.law.harvard.edu/academics/clinical/clinics/education.html> (last modified Mar. 1, 2013).

## CONCLUSION

There are many challenges associated with undertaking a meaningful and sustained research agenda of the kind we suggest here. First, if involvement in research is a zero sum activity for clinicians, it will encroach on existing teaching and service obligations. But the zero sum view rests on assumptions about what is at the core of our work. In our view, serious and sustained research should be an important dimension of clinical work. We have a particular focus on legal services and the examples we provide draw on what we know, but they by no means define what is surely a much wider range of possibilities for clinic-based research. To the extent that developing distinctive research interests is consistent with career development, so much the better.

Second, since most clinicians are not trained social scientists, we will need to collaborate with faculty and graduate student experts in our law schools and universities. They will have scholarly agendas that may not map onto our own, and their methodological strengths will come with professional habits that differ from ours. On the other hand, new and interesting partnerships have a big upside for clinicians required or desiring to produce high-quality scholarship and to impact important public policy issues related to increasing access to legal services. They will also expose nonclinical faculty members to the complexity, demands, and possibilities of our work.

Third, while we advocate a policy-relevant, empirical research agenda, we must find the right balance between seeking data and evidence for what it reveals without fetishizing or over-reading the results of our inquiries. A number of critiques leveled at evidence-based medicine and research more generally are relevant here: (1) absence of evidence of benefit is not the same thing as proof of ineffectiveness, so we should interpret findings with caution; (2) the clinical expertise of practitioners matters, so we should not discount the importance of context and judgment; and (3) some social interventions cannot, for ethical or practical reasons, be tested by the research gold standard (randomized controlled trials), so we should think broadly about ways of measuring our work.<sup>103</sup> In a data-starved profession under increasing scrutiny, however, we can no longer rely on conviction alone.

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103. See, e.g., W.A. Rogers, *Evidence-Based Medicine and Justice: A Framework for Looking at the Impact of EBM upon Vulnerable or Disadvantaged Groups*, 30 J. MED. ETHICS 141, 144 (2004) (offering a social justice critique of evidence-based medicine); Mark R. Tonelli, *The Limits of Evidence-Based Medicine*, 46 RESPIRATORY CARE 1435, 1438 (2001) (arguing that clinical experience differs in kind, not degree, from empirical evidence and should not be lower in the decision-making hierarchy).



Fourth, we will have to overcome stakeholder resistance—or perhaps inertia—to undertake a sustained and meaningful research effort in clinics. Our professional culture of advocacy can be in tension with the social science frame of “subject[ing our] hypothesis to every conceivable test and data source . . . .”<sup>104</sup> Like our colleagues in legal services, clinicians may worry that research findings will be used against us and that researchers just do not “get” what we do.<sup>105</sup> The irony of the protective impulse is that we simultaneously deny ourselves and others evidence of the impact of our work. And the burgeoning field of behavioral psychology suggests that many professionals overestimate their expertise, especially in “low-validity” (complex, uncertain, and unpredictable) environments like ours that call for the exercise of judgment.<sup>106</sup>

Finally, we will need to think seriously about how to engage our client communities in such activities. Human subjects are all too often left out of the development of academic and policy-driven research, so we will want to include clients in research design and implementation. Fortunately, other disciplines have been pioneering models of inquiry known as “community-based participatory research” (CBPR)<sup>107</sup> and “participatory action research” (PAR).<sup>108</sup> CBPR has emerged as a new paradigm to make research more inclusive and relevant by bringing together academics and communities to address community priorities. PAR strives to produce knowledge and change at the same time.

Challenges abound, but so do opportunities. The potential for clinics to help answer pressing questions about community needs, delivery models, and service efficacy has never been greater. Through the Clinic Lab Office, we can generate actionable knowledge for the legal services field, deepen our own service and teaching missions, and make good on long-standing antipoverty commitments.

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104. Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 9 (2002). Arguably, though, the best lawyers do precisely this.

105. See Selbin, Charn, Alfieri & Wizner, *supra* note 3, at 48.

106. See DANIEL KAHNEMAN, THINKING, FAST AND SLOW 222–33 (2011); Baldwin & Davis, *supra* note 82, at 887–88 (“[T]he view that legal processes can only be described and evaluated by practitioners and professional commentators—or even that they are *best* evaluated by these professional insiders—is one that has been effectively challenged through empirical research.”).

107. Sarah Flicker et al., *Ethical Dilemmas in Community-Based Participatory Research: Recommendations for Institutional Review Boards*, 84 J. URB. HEALTH 478 (2007).

108. ALICE MCINTYRE, PARTICIPATORY ACTION RESEARCH (2008).