

There's an App for That?

Leveraging Technology to Provide Legal
Services Triage & Access to Justice in
Massachusetts



THE SYSTEMIC JUSTICE PROJECT AT HARVARD LAW SCHOOL

There's an App for That?



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About the Systemic Justice Project

The Systemic Justice Project (“SJP”) is a policy innovation collaboration, organized and catalyzed by Harvard Law School students devoted to identifying injustice, designing solutions, promoting awareness, and advocating reforms to policymakers, opinion leaders, and the public. While targeting specific policy challenges, SJP is devoted to understanding common and systemic sources of injustice by analyzing the historical, cultural, political, economic, and psychological context of particular problems. Toward that end, SJP is committed to collaborating with scholars, lawyers, lawmakers, and citizens and to working with existing institutions in promoting attainable, pragmatic, and lasting policy solutions.

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EXECUTIVE SUMMARY

Civil legal cases often deal with fundamental aspects of life: housing, child custody, disability benefits, and divorce, among many others. But for those who cannot afford legal assistance, navigating civil cases or securing legal rights can feel impossible. Though American courts promise litigants justice, the current system often leaves the most deserving with the least support. As this report details, low-income litigants in Massachusetts and across the United States experience often overwhelming obstacles to accessing justice in the civil legal system, including both difficulty in gaining legal representation and favorable outcomes.

This report examines how new technology could provide a means for low-income litigants to better access legal services and justice in the Commonwealth. Though systemic forces cause and propel this crisis, creative technological solutions may ameliorate some of the access gaps. This report focuses on how responsive websites and mobile device applications could assist the triage process of civil legal aid to better identify (1) whether existing organizations could help potential litigants and (2) what type of help is needed. It also explores how such a program could also give legal information to potential litigants and connect them to services beyond legal aid organizations.

In Part I, this report explores the scope of the access to justice problem both across the United States and within Massachusetts, demonstrating how this problem disproportionately affects specific demographic groups. Through all stages of litigation, systemic forces often work against those most in need of legal assistance. This Part details historical, institutional, and psychological barriers contributing to this issue, illustrating that any successful intervention must examine the problem holistically. Part I continues with an explanation of the triage process and its importance as an intervention point in increasing access to justice.

In Parts II & III, this report explores potential benefits of new technological solutions, identifies pre-existing technological interventions in the access to justice field, and reviews our major takeaways:

- Legal barriers exist to the creation of a mobile-friendly triage program, but there is momentum building for such technological solutions, and these legal barriers are not insurmountable.
- Any technology-based solution should communicate and coordinate with pre-existing interventions.
- Technological solutions need to be concerned with accessibility in terms of language, comfort with technology, legal knowledge, literacy, and other demographic needs.
- No technological intervention will be a true solution without significant input from the communities it seeks to serve.

This report then explores in Part IV a proposed legal services triage app or responsive website as a case study. Based on research into triage, this report presents a preliminary proposal for how an app or responsive website could both steer potential litigants to the right organizations and begin providing legal service organizations with relevant information. This report concludes with an examination of what steps would be needed to complete a project of this type, as well as addressing anticipated questions.

TERMINOLOGY

Access to Justice

How successful individuals are at achieving “fair outcomes in matters that are of major importance to the way they live.”¹ These matters include issues from divorce, foreclosure, and child custody. This term incorporates access to civil courts and legal representation.²

App

A self-contained software program that is downloaded to a mobile device such as a smartphone or tablet.

Active App

An app that gathers, sends, or retrieves information.

Passive App

An app with a purpose solely related to displaying or distributing information or media.

Common Interest Agreement

An extension of the Joint Defense Agreement (see below) to the non-litigation context.

Conflict of Interest

A conflict between an individual’s private interests and their professional responsibilities, or between competing duties. In the legal context, this is often experienced through a lawyer’s representation of clients with opposing interests.³

Joint Defense Agreement (JDA)

An agreement among multiple parties with a common interest in a legal matter to share confidential information otherwise protected by attorney-client privilege and work-product protection.⁴

Legal Services Organization (LSO)

An organization that assists those requiring legal help who have limited or no financial means. These organizations are often funded publicly. They consider applicants' resources, determine if there is a legitimate need for legal services, provide counseling or mediation, and may prepare documents or provide legal assistance in court. LSOs focus almost exclusively on civil legal issues.

Responsive Web Design

Website design aimed at providing an optimal viewing and interaction experience by adapting the website to the user's particular device (e.g., smartphone, tablet, desktop computer).

Triage

The process of determining eligibility for legal services, the type of legal problem a potential litigant has, and that problem's priority level. This often occurs through the in-person or phone intake process of an LSO and can sometimes include diversion to other services.

Unauthorized Practice of Law (UPL)

The performance of professional legal services, such as giving personalized legal advice, by a person who is not licensed by the state to do so.⁵

Unbundling of Legal Services

"A form of legal services in which the lawyer breaks down the tasks associated with a legal matter and provides representation to the client only pertaining to a clearly defined portion of the client's legal needs."⁶

Organization Acronyms

- BBA: Boston Bar Association
- GBLS: Greater Boston Legal Services
- LARC: Legal Advocacy and Resource Center
- MLAC: Massachusetts Legal Assistance Corporation
- LSC: Legal Services Corporation

PART I: THE PROBLEM

Scope of the Problem

**LSC estimates
that there is only
one free legal
services attorney
for every 6,415
low-income
people.**

In his 2015 “State of the Judiciary” address, Chief Justice Ralph D. Gants of the Massachusetts Supreme Judicial Court announced the goal of providing all litigants meaningful assistance in their attempts to obtain just outcomes in their cases.⁷ While this call to action is widespread across the United States, many lawyers, policymakers, and scholars consider the access to justice problem a “crisis.”⁸ Those most in need of assistance are rarely able to get adequate legal aid, and this situation is largely the result of the limited resources of legal service organizations (LSOs) and the confusing, time-consuming, and demoralizing nature of seeking help.

What adequate access to justice looks like is contested, but many argue that the United States fails to meet even the lowest bar.⁹ According to the World Justice Project’s 2011 Rule of Law Index, the United States sits at twenty-one out of sixty-six nations in terms of “access to civil justice.”¹⁰ Numerous state-sponsored commissions have made efforts to solve the problem,¹¹ and leading figures in the American legal system have made clear that the need for reform is urgent.¹²

Despite national and state commitments to improve access to justice, the vast majority of low-income individuals’ civil legal needs remain unmet in the United States.¹³ According to the Legal Services Corporation (LSC), the largest single funder of civil legal aid in the United States, less than one in five low-income people had the help of a lawyer while dealing with a legal issue in 2009.¹⁴ LSOs had to turn away millions who requested legal assistance that year,¹⁵ following a pattern throughout the past decade where programs have turned away as many as half of those asking for legal help.¹⁶ LSC estimates that there is only one free legal services attorney for every 6,415 low-income people.¹⁷ For many, this means that there is simply no meaningful opportunity to pursue a legal claim, access the court system, or even acquire the information necessary to assert a legal right.¹⁸

For most who enter the court system, self-representation is the only alternative to legal aid services. Private attorneys are often

A recent study found that legal representation can increase a litigant's odds of winning a case by 75 percent.

too expensive, and clients are usually responsible for paying court costs and the costs of paralegal time.¹⁹ Unfortunately, self-representation comes at a serious price to litigants. Research shows that a majority of judges believe that self-representation negatively affects litigants,²⁰ and further studies show that most individuals without representation by lawyers lack the resources or skills to uncover the necessary facts prior to filing their complaints.²¹ Those who choose to represent themselves may not be aware that they lack a strong legal claim or be able to effectively state legal arguments. Recent estimates suggest that legal representation increases a litigant's odds of winning a case by 75 percent.²² This is of little surprise in a system that requires wading through complex documents, knowledge of archaic rules of evidence, and experience with procedural quirks.²³ Lack of representation impacts the court system as well: unrepresented litigants take considerably more court time than represented clients, further exacerbating the case backlog in courts around the nation.²⁴ For many others unable to access legal services and unwilling or unable to represent themselves in court, legal needs simply remain unaddressed.²⁵

Legal Aid in Massachusetts

Access to representation is also a pressing issue in Massachusetts. Although the scope of the access to justice problem is difficult to estimate—particularly as many potential litigants opt out of the court system due to the lack of legal services—the number of self-represented individuals provides some insight into just how scarce resources are in the Commonwealth. Between 50 percent and 75 percent of all litigants in Probate and Family Courts in Massachusetts were unrepresented in 2013.²⁶ In Housing Court, approximately 90 percent of tenants versus 41 percent of landlords represented themselves in summary process cases in 2013.²⁷ Funders estimate that in 2013, legal aid programs in the state turned away almost two-thirds of income eligible individuals.²⁸ Inadequate funding is a major factor in this high turn-away rate.²⁹

As in most states, civil legal services in Massachusetts are a public-private endeavor.³⁰ The vast majority of free civil legal assistance comes from legal aid agencies, such as Greater Boston Legal Services (GBLS), South Coast Legal Services, Metro

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West Legal Services, and Community Legal.³¹ These organizations may provide legal advice, represent civil defendants in court, or help individuals in developing a case. Private-sector lawyers also provide pro bono services, and law school programs attempt to fill some of the unmet need through clinical opportunities.³² Increasingly, the Massachusetts court system assists people without representation through services like the Court Service Centers, where litigants can fill out forms and receive basic information about their claims, or receive referrals to other organizations.³³ In 2013, the Commonwealth provided about one-third of the total direct funding for civil legal aid programs.³⁴ The rest of the funding came from law firms, individual donors, foundations, the federal government, and local governments.³⁵ Private attorneys providing pro bono assistance to those who could not afford a lawyer contributed an estimated \$17.6 million value in additional legal services work.³⁶

The Boston Bar Association estimates that current funding for civil legal aid programs in Massachusetts is approximately \$56 million per year.³⁷ Funding from the Massachusetts Legal Assistance Corporation (MLAC), a state-created nonprofit, accounts for about a third of that amount.³⁸ Funding from MLAC supports fourteen civil legal aid programs that collectively cover the entire Commonwealth.³⁹ That funding enables a significant amount of work. In 2014, LSOs in Massachusetts were able to close 24,225 cases, assist 74,000 people, and employ 199 full-time attorneys based on \$17.5 million in MLAC funding.⁴⁰ The majority of the remaining revenue came from foundations, individuals, law firms, and federal and local governments.⁴¹ The Legal Services Corporation (LSC) provided about \$5 million of the remaining funding.⁴²

Despite the limited resources of LSOs, their positive effects on communities cannot be overstated. Often, these organizations' work concerns fundamental aspects of daily life, whether through representation in litigation or more limited provision of legal advice. GBLS, for example, regularly advocates on behalf of low-income individuals on cases related to wage theft,⁴³ wrongful denial of unemployment benefits,⁴⁴ divorce and paternity actions,⁴⁵ restraining orders for domestic violence victims,⁴⁶ nursing home eviction cases,⁴⁷ and assistance in gaining admission to shelters,⁴⁸ among many other vitally important legal matters.

While organizations effectively measure how many they turn away, none are able to identify how many litigants do not take the first step to find legal assistance.

Legal Triage: Widening the Access Gap

The numbers on those served by civil legal aid do not capture the many individuals who have a legal problem but do not complete a request for services. While organizations can measure how many they turn away, none are able to identify how many litigants, knowing they may be turned away or face long wait times, or not understanding where or how to find help, do not seek legal assistance. However, first opportunities for contact are critical.

The triage process is the primary initial opportunity for legal aid organizations to connect with potential litigants. LSOs use triage as a means to allocate people who self-identify with a given legal problem to relevant services.⁴⁹ Like in medical triage, this process uses basic questions along a decision tree to identify the legal problem, what services are required or desired, and priority level. LSOs generally conduct their own intake process, but most are conducted over the phone using a set script.⁵⁰

The current intake system in Massachusetts is far from perfect. Organizations generally use a combination of phone lines, walk-in appointments, and referrals. The Legal Advocacy and Resource Center (LARC), an intake hotline organization used by many LSOs in eastern Massachusetts, reported that over 50 percent of those who seek help over the phone hang up after having waited for between thirty minutes and two hours.⁵¹ The average phone wait time was thirty-eight minutes.⁵² For litigants seeking help from more than one organization, this could translate to hours of waiting only to be told that the organization cannot assist them. In this system, in which initial contact itself likely discourages many from seeking help, it is difficult to know the true demand for civil legal aid.

Demographic Disparities in Access

Low-income populations face overburdened and underfunded legal service offices, nationally and in Massachusetts. Even within low-income populations, though, the lack of access to civil legal services affects some demographic groups more than others. The following section examines the greater impact this access gap has on already marginalized populations.

Even within a low-income population, the lack of access to civil legal services affects some demographic groups more than others.

First, many people who cannot afford private lawyers' fees are excluded by the methods of determining who qualifies for free legal aid. The Federal Poverty Income Guidelines (FPIG) are used to measure eligibility for federally funded programs, including civil legal aid.⁵³ In Massachusetts, for instance, a low-income potential litigant would have to fall below 125 percent of the FPIG to qualify for free legal aid. A minimum wage worker working forty hours a week would earn over 150 percent of the FPIG for a household of one and would therefore not qualify for free legal services under these guidelines.⁵⁴ These income parameters, therefore, often exclude some of the nation's poorest, even though their ability to find legal representation in the private market is severely limited. For LSOs, the FPIG cut off is a key component of the triage process, but it is one that many potential litigants may be unaware exists.⁵⁵

Figure 1: Federal Poverty Level Guidelines⁵⁶

100% of the Federal Poverty Level Guidelines			
Family Size	Annual	Monthly	Weekly
1	\$11,880	\$990	\$228
2	\$16,020	\$1,335	\$308
3	\$20,160	\$1,680	\$388
4	\$24,300	\$2,025	\$467
5	\$28,440	\$2,370	\$547
6	\$32,580	\$2,715	\$627
7	\$36,730	\$3,061	\$706
8	\$40,890	\$3,408	\$786
Each Add'l	\$4,160	\$347	\$80

Source: MassLegalServices.org

Figure 2: Qualifying for Civil Legal Aid in Massachusetts⁵⁷

125% of the Federal Poverty Level Guidelines			
Family Size	Annual	Monthly	Weekly
1	\$14,850	\$1,238	\$286
2	\$20,025	\$1,669	\$385
3	\$25,200	\$2,100	\$485
4	\$30,375	\$2,531	\$584
5	\$35,550	\$2,963	\$684
6	\$40,725	\$3,394	\$783
7	\$45,913	\$3,826	\$883
8	\$51,113	\$4,259	\$983
Each Add'l	\$5,200	\$433	\$100

Source: MassLegalServices.org

The gap between need and provision of legal services disproportionately impacts people of color, women, LGBTQ individuals, people with disabilities, and those with lower levels of formal education.

The gap between the need for, and provision of, legal services disproportionately impacts people of color, women, LGBTQ individuals, people with disabilities, and those with lower levels of formal education. Inequality between classes, races, and genders is reproduced through “the unequal distribution of resources and costs” as well as “groups’ distinct subjective orientations to law or to their experiences, and differential institutionalization of group or individual interests.”⁵⁸ Additionally, while this report focuses primarily on urban areas, low-income litigants in areas without robust social services are at a particular disadvantage. Rural areas face even larger problems due to an inability to achieve economies of scale and a lack of funding sources.⁵⁹ Fewer public institutions (such as churches, clubs, associations, and service organizations) in rural areas may make it even more difficult to find already-scarce legal resources, as citizens have fewer civic connections with public life that might provide that information.⁶⁰

Not only do these demographic groups disproportionately fall into lower-income brackets, and therefore more often qualify for the free civil legal services that are most difficult to obtain; they are also less likely to seek or receive services. This lack of services, in turn, manifests in lower success rates in legal outcomes among these groups.⁶¹ For example, while people of color are more likely than White individuals to report experiencing civil legal problems,⁶²

they are less likely to resolve them within the court system.⁶³ Other state-level studies show that racial minorities and women make up a larger proportion of litigants without representation.⁶⁴

Low-income individuals experiencing legal problems are unlikely to seek formal legal help, and a lack of trust in the courts creates racial disparities that further exacerbate these access gaps.⁶⁵ A 1994 study found that three-quarters of low-income individuals experiencing one or more legal problems did not take the first step of finding out what legal help they might be able to receive.⁶⁶ The same study showed that the rates of seeking legal help were lower for Black respondents than for White respondents.⁶⁷ Among White respondents, 40 percent said they would seek formal legal help for a civil legal issue, while only 9 percent of Black respondents said the same.⁶⁸ The rates of seeking help correlated strongly with levels of trust in the courts overall.⁶⁹ They also correlated with negative experiences with the criminal justice system, which may help explain the lack of trust in the justice system writ large.⁷⁰ As one respondent in the same study answered regarding the difference between the civil and criminal legal system: “I’m not really sure. To me it’s all law and courts and bad. Stay away from the law, that is my M.O. It’s good advice.”⁷¹ When people are unsuccessful in accessing services or have negative experiences with the justice system, it appears to reinforce the aversion to seeking services, widening access gaps even further.

Almost since the inception of a federally-funded legal services body, funding has been subject to cutbacks and political attacks.

Systemic and Organizational Factors

Distrust in the civil legal process is intimately tied to the systemic forces that create the access crisis. Many scholars contend that the legal system was not created for oppressed groups, has been used historically to maintain the status quo, and should not be perceived as neutral.⁷² For these scholars, the law has simply reaffirmed oppressive regimes, resulting in the current imbalance in access to courts.⁷³ While access to meaningful legal services may not be a panacea for oppressed voices in a broken and non-neutral system, expanding access would at least empower individual litigants, allowing them to achieve more just outcomes in individual cases. This section explores the historical and political factors affecting access and funding to legal services

organizations in the United States, and more specifically within Massachusetts.

Funding: Scarcity, Uncertainty, and Accountability

Unfortunately, almost since the inception of a federally funded legal services body, funding has been subject to cutbacks and political attacks. The following section provides a brief history of the inception and decline of federally funded legal services in the United States and examines the organizational and systemic issues inherent in that history.

The historical and political tug-of-war over legal services funding, as epitomized by the fight over LSC appropriations, has had significant consequences for the structure of the legal aid system. Any proposal meant to increase access to justice in Massachusetts must analyze the structural issues present in the civil legal services system, their implications for legal aid organizations' ability to deliver services and individuals' ability to receive them, and the key considerations for addressing these issues moving forward.

Funding — or, more accurately, the lack thereof — is often cited as the root of the access to justice gap.⁷⁴ The most obvious consequence of that shortage is its constraining effect on the availability of civil legal aid. As noted elsewhere in this report, LSOs turn away approximately two-thirds of eligible Massachusetts citizens because they lack sufficient resources, including numbers of attorneys and other personnel, to meet the demand.⁷⁵

Ironically, funding cutbacks may in fact cost the state of Massachusetts more money. In its October 2014 report, the Boston Bar Association found that “for every additional dollar spent in civil legal aid to combat homelessness and domestic violence, the return to the state is two dollars, and for every additional dollar spent in civil legal aid to assist Massachusetts residents to recover federal benefits, the return is close to five dollars.”⁷⁶ This report concluded with the recommendation of “increasing state funding for [the Massachusetts Legal Assistance Corporation] by \$30 million over three years.”⁷⁷

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Although more funding would help to alleviate some of the resource pressures faced by legal aid organizations, funding is both scarce and uncertain.⁷⁸ The current system is vulnerable to market volatility and political fluctuations.⁷⁹ Additionally, the grant-driven nature of LSOs requires even the largest of the organizations to re-apply for funding periodically.⁸⁰ Raised funding levels for a given period do not guarantee stability of the system in the long term.

Further, organizations find it difficult to assess their own efficiency. Experts cite a “lack [of] sufficient data concerning the satisfaction of clients, the quality of assistance, and its impact on the individuals and communities served.”⁸¹ Without sufficient funding for systematic data collection and analysis, these kinds of studies are rare. For instance, the ABA released a 1994 study measuring ability for service providers to meet low- and moderate-income litigants’ needs, but the ABA deemed updating that study in 2005 “unnecessary and too expensive.”⁸²

There is also a notable lack of academic research into legal intake systems. Indeed, there has been no major study of triage within the last ten years.⁸³ This gap in the data impedes organizations and practitioners from identifying which programs are working, whether they are serving a representative portion of the population at large, and other possible areas of improvement. In light of these issues of scarcity, uncertainty, and accountability, it is important to note the potential gaps that would still exist in the system, even if funding were increased.

Politicization and Legislative Dependence

Funding is driven by political forces at both the national and the state level. This may be unsurprising, obtaining civil legal aid is “a political act,” with consequences for both the litigant and the status quo:

Going to court is a political act. Contesting a governmental action that threatens to terminate benefits is a political act. Demanding that the landlord maintain a home in a habitable condition as a condition of being paid is a political act. All of these acts are assertions or expressions of power or of a right . . .

providing those without power or resources with the means to attempt to obtain some is as much a political issue as the protection of those with power and resources.⁸⁴

Political opposition to legal aid programs is expected as these programs alter power relationships. Legal aid, for instance, makes it more difficult for a governmental agency to terminate benefits or for a landlord to evict without properly maintaining a home. As such, legal aid is as an “adversarial good” in that it “increases costs to opposing parties.”⁸⁵ That is, “allocation of services to a client may set back the interests of the client’s opponent as against a counterfactual world where the [legal services provider] did not assist.”⁸⁶

Whatever the actual cause of political opposition to legal aid, dependence upon government appropriations contributes to both the scarcity and uncertainty of funding. LSC, funded through congressional appropriations, and MLAC, funded primarily by state appropriations, are at the mercy of the political forces that drive the U.S. Congress and the state government. Legal aid “has become . . . an issue of partisan debate”⁸⁷ in these fora, and a glance at the historical context on both a national and state level demonstrates the effects that debate can have on funding for legal services.

LSC History & National Funding Structure

Controversy has surrounded federal funding of legal services for more than half a century. In 1971, President Richard Nixon, despite originally voicing support, vetoed Congress’s first attempt to establish the Legal Services Corporation.⁸⁸ In 1974, after three years of fierce legislative conflict and mere months after Nixon’s resignation, Congress passed the Legal Services Act, thereby creating the Legal Services Corporation (LSC). Following the terms of the Act, LSC is a publicly funded 501(c)(3) nonprofit⁸⁹ that provides direct funding to legal services programs in all fifty states. In the originating 1974 legislation, Congress set out the following:

The Congress finds and declares that—

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(1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;

(2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;

(3) providing legal assistance to those who face an economic barrier to adequate counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this Act;

(4) for many of our citizens, the availability of legal services has reaffirmed faith in our government and laws . . . ⁹⁰

**To this day,
adjusting for
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percent.**

Throughout the 1970s, legal services provision proliferated and expanded. However, access remained elusive for many Americans, especially for those in rural areas. A pivotal 1980 LSC report found that in this early era “over 40 percent of the nation’s poor people lived in areas not served by legal services programs and many of the remainder had only token access.”⁹¹ As such, LSC proposed the “minimum access” framework, a barometer for measuring the lowest level of requisite federal funding.⁹² LSC defined “minimum access” as providing two lawyers “with adequate support” per 10,000 low income individuals.⁹³ To reach this threshold, LSC successfully lobbied Congress for increased appropriations, which resulted in a 1981 appropriations increase to \$321 million.⁹⁴ To this day, adjusting for inflation, LSC funding has not surpassed the amount received in 1981, even though the population of impoverished Americans has risen by 14 percent.⁹⁵

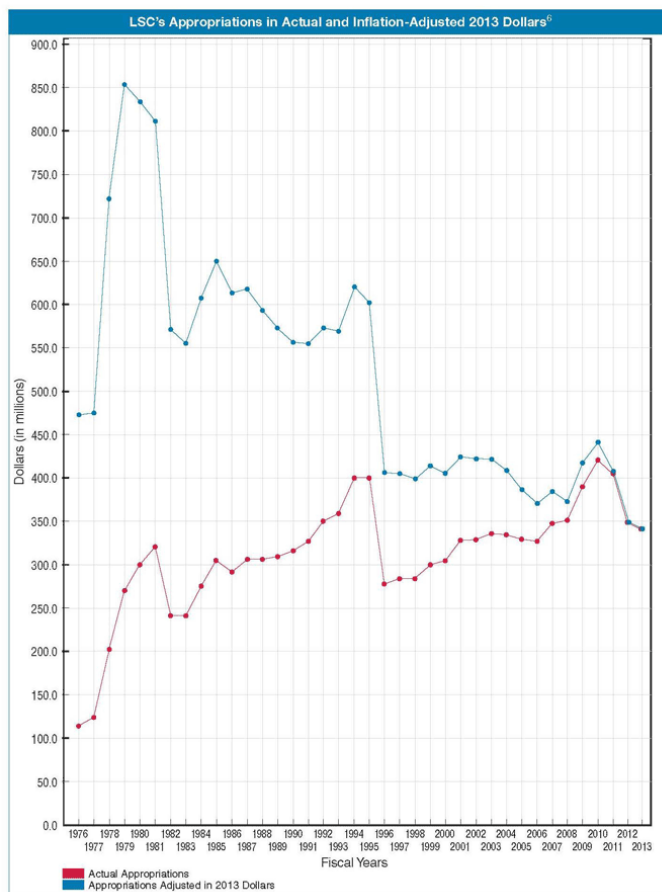
Just one year later, in 1982, newly elected President Ronald Reagan slashed funding by 25 percent. Additionally, Reagan used his recess power to oust all eleven LSC board members and replace them with individuals antagonistic to federally funded legal services.⁹⁶ Under the neoliberal view redefining American spending, public services such as legal aid should be privatized and removed from the government’s purview.⁹⁷ In building its arguments against funding for the LSC, the Reagan

Administration emphasized the program’s “political activism,” the fact that it “provid[ed] cash for lawyer salaries rather than poor people directly,” and its “economic inefficiency.”⁹⁸

Another major blow to LSC funding came in 1994 after Republicans captured majorities in both the House and Senate. Led by Speaker of the House Newt Gingrich, Republican legislators drafted their “Contract with America,” which advocated for the elimination of LSC altogether.⁹⁹ Appropriations fell once more; in 1996, Congress cut LSC funding by one third.¹⁰⁰

Today, LSC funding is near its lowest level in history, adjusting for inflation.¹⁰¹ Although politicians may have rhetorically moved away from the outright hostility exhibited in the 1980s and 1990s, the system is a long way from “the notion that legal aid should be a matter of right, and not privilege.”¹⁰²

Figure 4: LSC Appropriations, 1976-2013¹⁰³



Source: Massachusetts Legal Assistance Corporation

In addition to slashing funding, since the 1980s Congress has increasingly placed limits on the types of actions that LSC-funded organizations can take, further limiting access for low-income litigants.¹⁰⁴ Among other restrictions, LSC-funded organizations must not:

- Initiate or participate in a class action suit
- Defend clients in public housing eviction proceedings if the client was charged with a drug-related offense
- Provide legal assistance to “ineligible aliens”
- Participate in any activity related to redistricting
- Participate in civil litigation on behalf of an incarcerated person
- Assist in any election-related activities
- Lobby
- Participate in public demonstrations, boycotts, pickets, or strikes (“during workout hours”)
- Run for office
- Engage in “civil disturbances”
- Support or conduct training sessions that advocate for “particular public policies”
- Form a union
- Represent clients in criminal proceedings¹⁰⁵

Welfare reform efforts in the 1990s echoing President Reagan’s policies drastically reduced federal funding for LSC and limited the actions of LSC-funded organizations. Similar problems plague legal aid organizations at the state level.

State-Level Funding

Massachusetts legislatures are historically less antagonistic to legal services provision. Massachusetts funds legal services through MLAC more consistently, even providing funding during the 2008 financial crisis.¹⁰⁶ Typically, the Massachusetts legislature approves an increase of approximately \$1 million per year toward legal services.¹⁰⁷

However, funding levels have failed to approach the amount required to address “the unmet need for critical civil legal aid.”¹⁰⁸

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In January 2016, at the annual Walk to the Hill event, legal service providers and supportive legislators lobbied for \$27 million to provide minimum access to legal services in Massachusetts.¹⁰⁹ On April 13, 2016, the House Ways & Means Committee of the Massachusetts state legislature recommended \$18 million in civil legal aid funding for the 2017 fiscal year, an increase of \$1 million over 2016.¹¹⁰ This fell far short of the Boston Bar Association Task Force's recommendation that funding be increased by \$10 million each year over three years, with an eventual increase of \$30 million.¹¹¹

Market Volatility

In addition to state government appropriations, MLAC relies on earnings from Interest on Lawyers' Trust Accounts (IOLTA). Each state operates its own IOLTA program.¹¹² The Massachusetts Rules of Professional Conduct stipulate that "lawyers holding funds on a client's behalf must place the funds either in an account which pays interest to the client or in an IOLTA account. An IOLTA account is selected if the funds are relatively modest, or large amounts [are] held by the lawyer for only a short period of time."¹¹³ MLAC then directs the interest earned from IOLTA accounts toward funding legal aid programs.

Although an innovative way to earn revenue for legal aid programs without raising additional taxes, IOLTA programs are particularly vulnerable to economic downturns. Interest rates themselves are down during these times of economic stress, leading to an even lower amount of interest earned on these accounts.¹¹⁴ Further exacerbating the unpredictability of IOLTA income is that even increased economic activity "is no guarantee of more IOLTA funding."¹¹⁵ Despite the rebound in the economy since the recession of 2008, there remains "an 85 percent drop in IOLTA revenue from \$31.8 million in 2007 to \$4.5 million in 2014." This drop "has forced MLAC-funded legal aid organizations to lay off nearly 40 percent of their attorneys since 2008."¹¹⁶ Dependence upon IOLTA revenue thus exacerbates issues of scarcity and uncertainty and is an ultimately unreliable funding source.

This has also impacted the ability of Massachusetts' legal services providers to reach low-income litigants, as reflected in the number of potential litigants legal service organizations must turn away

**“If we all make
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mistakes in our
decisions, then
why not
develop new
strategies,
tools, and
methods to help
us make better
decisions and
improve our
overall well-
being?”**

Dan Ariely

due to financial constraints. Compounding the issue, low-income individuals experienced a marked uptick in legal actions since the 2008 crisis.¹¹⁷ Many more Massachusetts residents also became eligible for free civil legal services: the numbers skyrocketed from 800,000 in 2008 to 974,277 in 2014.¹¹⁸ A Boston Bar Association survey suggested that the number of self-represented litigants increased dramatically during this time.¹¹⁹ And as in other states, unrepresented litigants in the Commonwealth have worse outcomes than those with representation.¹²⁰

Psychological and Mind Science Barriers

Beyond external impediments such as LSO budgetary constraints, low-income individuals also face psychological barriers to meaningful access to justice. Actors within the legal system are assumed to be “rational actor[s]” and “enjoy the freedom to order their actions as they see fit.”¹²¹ While significant areas of law rely upon this “dispositionist model,” the assumptions about human behavior ignore the situational factors that can limit and influence how individuals think about, evaluate, and choose actions in their environment.¹²²

Identifying these “systematic mistakes in our decisions” can help reformers “develop new strategies, tools, and methods to help us make better decisions”¹²³ Equally important is recognizing the unique psychological burdens borne by low-income, potential litigants that can influence how they approach seeking legal aid. As discussed earlier, the access to justice gap does not affect all groups equally. Low-income and minority populations are far less likely to have access to adequate representation than the general public.¹²⁴ LGBTQ populations, women, people of color, and people with disabilities are also less likely to have sufficient access to legal resources.¹²⁵

The effects of systemic disenfranchisement can have lasting psychological and physiological repercussions.¹²⁶ Those in poverty are more likely to have lower levels of self-efficacy,¹²⁷ experience higher rates of social exclusion¹²⁸ and social exhaustion,¹²⁹ and show the negative affects of chronic stress.¹³⁰ Experiences of racism can lead to post-traumatic stress disorder¹³¹ as well as heightened rates of anxiety and depression.¹³² Similar psychological responses plague other at-risk groups, such as

Understanding of these burdens offers insight into changes that could be made to create truly accessible systems.

LGBTQ communities.¹³³ Understanding these burdens on those most likely to need civil legal aid offers insight into changes that could be made to create truly accessible systems.

While responding to the access to justice gap requires responding to these unique psychological characteristics of the groups most in need of legal services, there is a danger in using the mind sciences to analyze poverty. Some organizations have drawn upon principles of psychology to claim that communities experience poverty due to their own limitations.¹³⁴ This position is steeped in racist and classist assumptions. Rather, the mind sciences, sociology, and psychology provide insight into the effects of poverty and systemic discrimination. With this understanding, interventions can shape systems to be more responsive to community needs.

Self-Efficacy, Social Exclusion, and Social Exhaustion

This section explores a series of relevant phenomena identified by social scientists that are relevant to creating interventions that are more responsive to community needs. These include self-efficacy, social exclusion, and social exhaustion.

Albert Bandura's theory of self-efficacy¹³⁵ explains how an individual's self-perception of agency affects that person's actual agency.¹³⁶ The theory established that self-conception of ability affects visualization of realistic goals which, in turn, affects willingness to approach new challenges.¹³⁷ The causes of low self-efficacy are multi-faceted and still being researched, but considerable evidence indicates that socioeconomic status plays a determinative role.¹³⁸ For example, a 2000 study found that neighborhood socioeconomic status was an additional indicator of whether an individual has high or low levels of self-efficacy.¹³⁹

Low self-efficacy can limit a person's ability and willingness to navigate new circumstances.¹⁴⁰ In the legal context, this could include reaching out for legal services and interacting with courts, among other new objectives. The communities in Massachusetts that are the least likely to have adequate access to justice are among the most likely to suffer from low levels of self-efficacy.¹⁴¹ Attempts to improve access to justice for these communities

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should account for the ways that systems could be made more navigable for communities with low levels of self-efficacy.

Bandura identifies four factors that increased self-efficacy levels: performance accomplishments, vicarious experience, verbal persuasion, and physiological states.¹⁴² The factors that enhance self-efficacy should be considered in designing legal institutions, particularly those systems intended to promote access.¹⁴³ The first factor, *performance accomplishments*, measures an individual's experience of mastering skills.¹⁴⁴ For example, if an individual has regularly used a computer and developed computer skills, that person will feel more comfortable on a computer-based system and would likely enjoy higher levels of self-efficacy when completing new or unfamiliar computer-based tasks. A more accessible legal intake system, therefore, could use technologies familiar to community members as this would likely reduce the negative effects of low self-efficacy.¹⁴⁵

An efficient intake system could also benefit from a consideration of the second factor, *vicarious experience*. Vicarious experience describes the positive effects of behavior modeling; when an individual sees others in their community comfortably and successfully navigating systems and experiences, they will feel more comfortable approaching that system themselves.¹⁴⁶ An intake system could incorporate the self-efficacy maximizing effects of vicarious experience by intentionally crafting a system focused on community use.¹⁴⁷ A system that would allow someone to refer a friend, for example, could make the system more accessible. Additionally, integrating community services into an intake system could increase the number and diversity of users. This would likely increase the likelihood that a potential litigant will know someone who understands the legal intake system, even if their underlying legal problems are very different. Finally, in dispersing information about legal services and legal intake, going through community channels could help to maximize self-efficacy when using the system.¹⁴⁸

Interventions might also consider the third factor, *verbal persuasion*, which is encouragement from another.¹⁴⁹ Encouraging potential litigants to request information and representation early on in the intake process and reassuring litigants that it is reasonable to seek out these services could help

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to maximize self-efficacy within the system. An intake process might begin with a short statement of reassurance or by requiring confirmation before a litigant leaves the intake system.¹⁵⁰

Finally, an accessible intake system might aim to reduce *stress responses*, the fourth factor of self-efficacy, by minimizing the barriers that must be overcome to access legal services.¹⁵¹ Minimizing the time, travel, financial and emotional costs associated with the traditional intake system could make the process less stressful and in turn, more accessible.¹⁵²

Another psychological force that affects low-income litigants' ability and willingness to navigate systems of justice is *social exhaustion*. While research on social exhaustion primarily focuses on the workplace,¹⁵³ studies show that the effects of social exhaustion can substantially affect an individual's psychological well-being.¹⁵⁴ The Maslach Burnout inventory is a tool used to measure the effects of social exhaustion, identifying three distinct stages: exhaustion, depersonalization, and decreased personal accomplishment.¹⁵⁵

Social exhaustion effects vary. Heightened levels of social exhaustion are related to an increased risk of depression.¹⁵⁶ Each stage of the Maslach Burnout Model also presents distinct responses to social exhaustion. In the exhaustion phase, individuals experience greater levels of frustration and dissatisfaction in their work.¹⁵⁷ In the cynicism phase, people are more likely to have more negative, critical feelings about others.¹⁵⁸ In the inefficiency phase, people are more likely to feel negatively about their own worth, value, or accomplishments.¹⁵⁹ The causes of social exhaustion, much like self-efficacy, also put individuals with a low socioeconomic status at a higher risk.¹⁶⁰ Recognizing that populations that most need increased access to justice are also likely to have a higher risk of social exhaustion and burnout can allow organizations to structure systems around the community's needs.

Similarly, low-income litigants would also be at greater risk of suffering from *social exclusion*.¹⁶¹ This term describes ways in which poverty substantially limits social participation.¹⁶² Social exclusion is an important component of poverty analysis, in part because it allows researchers to see the interrelation of causes

Psychological considerations are valuable because they help to bring clarity to both the causes of large-scale systemic injustice, as well as potential solutions to those problems.

and results of poverty.¹⁶³ One can also use an analysis of this phenomenon to determine an individual's or community's willingness to interact with a system.¹⁶⁴

To respond to the dual concerns of social exhaustion and social exclusion, systems aimed at increasing access to justice could incorporate access to other social services, such as low-cost mental health care. When a low-income litigant seeks representation they face significant external obstacles to representation; depression or other psychological issues due to unaddressed social exhaustion only intensify the challenge.¹⁶⁵

Relatedly, offering validation about the efficacy of the justice system could help people to feel less social exhaustion when approaching the system to receive services. Communities often feel that the justice system is broken, so validation that some part of the system can help them may increase willingness to participate in the system. Connecting access to justice to access to other community organizations and resources could help to minimize the negative effects of social exclusion.¹⁶⁶

Relevance to Legal Systems

This mind sciences analysis raises questions about whether the fundamental assumptions underlying current legal service models are accurate. In most cases, legal service provision operates under a dispositionist model of human behavior. Based on the view of humans as rational actors, this view holds that individuals make decisions based exclusively on rationality and personal preference.¹⁶⁷ However, this dispositionist model of human behavior is not an accurate reflection of how people think, act, and make decisions in the world.

Despite this model's historical dominance in legal analysis, is fundamentally inaccurate according to contemporary sociological and psychological research.¹⁶⁸ Some in the legal field have advocated for a shift from the dispositionist model to the situationist model of human behavior.¹⁶⁹ Organizations interested in crafting efficient systems of access to justice should consider the ways in which the current system reflects the traditional, inaccurate, dispositionist model. By considering the effects of psychology on access to justice and shaping intake systems

around these needs, organizations can better serve the communities most in need.¹⁷⁰

Similarly, it could be valuable to consider whether the current top-down approach to legal services is the most efficient way of allowing people access to justice. While law is primarily a service profession, the current model of access—one where a single litigant must reach out to multiple organizations—seems to run counter to the reality of how low-income communities interact with the justice system. If science shows that the communities most in need of access to justice would also face the most obstacles in accessing that justice, it is valuable to reconsider whether the current intake system adequately serves these communities.¹⁷¹

Psychological considerations are valuable because they help to bring clarity to both the causes of large-scale systemic injustice, as well as potential solutions to these problems. Understanding how this information can work in conjunction with other solutions will create an efficient, accessible, legal intake system.

PART II: THE OPPORTUNITY

Technology and Access to Justice

The fiscal and psychological barriers to legal services are imposing. However, technology has rapidly advanced in the last twenty years, and technological breakthroughs allow for creative and unprecedented solutions to the entrenched, systemic problems of legal services triage. This section examines the opportunity that technological advances present and explores some of the existing services, including online intake systems.

Though technology is not a panacea, it can provide information and services to certain overlooked and underserved communities. Technology, when used in a planned and purposeful way, can allow low-income communities to connect with legal services in a way that was not possible prior to the growth of mobile products and the internet. Though there are populations who do not have access to technology, and thus will not benefit from such a shift, the potential benefits are significant.

**As of 2012,
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Americans
reported using
the internet**

Internet use among Americans is skyrocketing. As of 2012, almost 90 percent of Americans reported using the internet.¹⁷² Though rates of internet access among low-income communities were significantly lower than the national average, a recent survey showed that 62 percent of low income Americans have access to the internet.¹⁷³ Internet use offers easy access to large quantities of information, and, perhaps more importantly, it can connect people to information, organizations, and resources quickly. While access to the internet is still not available to all populations, it is an increasingly important part of everyday life.

The potential for the use of technology in accessing legal resources is significant. Approximately 20 percent of Americans qualify for legal aid, meaning that they were considered to be low-income based on the FPIG. Because over 60 percent of low-income individuals have access to the internet, it stands to reason that a significant number of the low-income clients served by legal aid organizations would have access to the internet. Some studies suggest the number of potential legal aid clients with access to the internet could be higher than 30 million people.¹⁷⁴

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Furthermore, the rise of mobile technology has revolutionized access to previously distant and specialized services. A PEW research study suggests that 90 percent of Americans use cell phones and that a growing number of Americans use internet accessible smart phones.¹⁷⁵ One study found that 66 percent of young adults (ages 25-35) now own smartphones,¹⁷⁶ however, this access is not limited to young adults. A PEW survey noted the following:

“Groups that have traditionally been on the other side of the digital divide in basic internet access are using wireless connections to go online. Among smartphone owners, young adults, minorities, those with no college experience, and those with lower household income levels are more likely than ever to say that their phone is their main source of internet access.”¹⁷⁷

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Some LSOs have already begun to reach out to mobile users through apps or mobile friendly websites. LSOs in Illinois and Arkansas have pioneered *passive apps* to inform litigants about their rights, court procedures, and helpful resources that are available to them. Illinois Legal Aid, one of these apps, offers a wealth of information about a broad range of fields.¹⁷⁸ A user can select a subject area and find a list of common problems or questions. For example, a user might first narrow their search to “Family” and then select “Getting a Divorce in Illinois.”¹⁷⁹ The app would then take that user to a page listing an introduction to the problem, common questions about that problem, common forms needed to file for a divorce, instructions on how and where to file, related articles discussing the issue and, finally, a list of legal aid organizations that specialize in that field.¹⁸⁰

A team of Arkansas developers and attorneys created a similar app, iProBono, that allows attorneys to search for pro bono cases.¹⁸¹ An attorney can scan cases in the area and choose among these cases for a pro bono client. Both the Illinois Legal Aid app and the iProBono app connect legal service organizations and potential litigants to useful information from a quick, easily accessible device.

Another example is PocketDACA, an app which offers legal information to immigrants concerned about deportation.¹⁸² The

app asks a series of questions to establish a user's eligibility for programs that defer deportation based on the user's age when they entered the country. Like the legal aid apps discussed above, Pocket DACA also provides legal information about DACA including what the program is, how to apply, and links to organizations that may help. The PocketDACA app also showcases another benefit to providing access to legal services using mobile technology; users who may not feel comfortable speaking with an attorney or law enforcement official directly can still acquire helpful information.

Many legal service organizations are also attempting to “unbundle” the traditional lawyer-client relationship,¹⁸³ by offering one attribute of a lawyer-client interaction while excluding others.¹⁸⁴ For example, instead of establishing an attorney-client relationship based on the promise of full representation, an unbundled service would allow an LSO to offer legal information without offering legal advice, or would provide opportunities to offer partial representation. Though the process of unbundling may seem like it provides much less help than the traditional model of legal help, unbundling does allow a litigant to gain legal advice before court in a cheaper and more timely manner while maximizing the impact of the LSO's resources.

LSOs and other organizations are beginning to recognize the importance of online intake and are creating their own tools.

Finally, LSOs and other organizations are beginning to recognize the importance of online intake.¹⁸⁵ The Northwest Justice Project piloted an online application system for legal aid in the state of Washington, in conjunction with the Center for Access to Justice & Technology at the Chicago-Kent College of Law.¹⁸⁶ Their model takes users through an initial assessment, a financial eligibility screening, and asks for demographic information, before sending data directly to Northwest Justice Project's case management system.¹⁸⁷ The tool has been replicated by several other legal aid organizations.¹⁸⁸ Illinois Legal Aid Online has a similar program that connects users to the major LSOs in the state of Illinois, in addition to providing legal information.¹⁸⁹ Community Legal Aid in Worcester County, Massachusetts also uses online forms for intake.¹⁹⁰ Many of these systems were created with funding from LSC's Technology Initiative Grants.¹⁹¹ While none of these programs are available on mobile devices, and only one coordinates intake between multiple LSOs, the growing number indicate that there is demand for online intake systems.

These technological solutions offer some crucial advantages over the traditional lawyer-client legal aid relationship. First and foremost, technology is an increasingly accessible and comfortable tool for many users and may increase access to legal aid services for potential clients who were previously uncomfortable with accessing or unable to access services in person. A low-income litigant could access an app at any time from the comfort of their home, easing the burden on potential litigants without access to transportation or those with limited mobility. The potential litigant is also spared the need to make an initial in-person visit to the legal office, an environment where the power dynamic between attorney and client may be more visible. Furthermore, an app could allow a potential litigant to research areas of the law that they would be uncomfortable speaking with someone about, such as immigration status, without fear of discovery or prosecution.

By and large, the legal service apps presently available are passive apps designed to disseminate information, as opposed to active apps that seek to replace or supplement part of the intake process.¹⁹² Expanding the reach and utility of technology-based intake solutions that allow a user to both give and receive information presents an opportunity to improve access to legal representation and information while easing the resource burdens that constrain legal aid organizations.

This opportunity to reform legal intake, particularly through the use of technology, is gaining prominence within the public sector. The Legal Services Corporation's Technology Initiative Grant Program funds projects that find innovative ways to use technology to improve service delivery, provide legal assistance, and promote access to the judicial system.¹⁹³ The lack of civil legal services for the poor is of increasing concern to government agencies, legal service providers, and independent researchers, and the concern has caused an increased focus on potential solutions to this widespread problem.¹⁹⁴ In response to this increasing attention, the U.S. Department of Justice created the Access to Justice Initiative in 2010,¹⁹⁵ the National Science Foundation announced its hope to fund research on the civil legal system,¹⁹⁶ and the President of the American Bar Association made closing the "legal services delivery gap" his top priority in 2014.¹⁹⁷ In the Commonwealth, the Boston Bar Association created a Task

While a large portion of the population may benefit from tech solutions, many demographics may still be left out due to low tech literacy or limited access to tech products.

Force to Expand Civil Legal Aid in Massachusetts.¹⁹⁸ Additionally, the Chief Justices of the Supreme Judicial Court and the Trial Court established the Access to Justice Initiative to improve access to state trial courts, in part through the establishment of Court Service Centers, staffed by supervising attorneys and volunteers.¹⁹⁹ The opportunity, therefore, for technological solutions to civil legal service challenges is clear, and many organizations are investing the resources and energy to make these solutions a reality.

Access Challenges to Use of Technology

While a large portion of the population may benefit from technological solutions, they may still exclude many demographic groups due to technological illiteracy or limited access to tech products.²⁰⁰ For example, the aforementioned PEW survey found that only 58 percent of senior citizens use the internet.²⁰¹ This finding suggests that senior citizens would be therefore less likely to benefit from tech-focused interventions as compared to other demographics with higher rates of internet use. The PEW survey also revealed low levels of internet use among Latino and Black respondents. Only 78 percent of Black respondents reported using the internet compared to 85 percent of White respondents.²⁰² Of the Latino respondents, 81 percent reported using the internet.²⁰³

Furthermore, help that is accessible only online may deter some groups from seeking legal help. For example, it is possible that undocumented communities may be uncomfortable submitting identifying information to an unknown website due to the risk of deportation. Although these statistics and reflections may not fully represent which populations would be served by a technological response to the access to justice gap, understanding the limitations of this solution is important to determining whether or not it is viable in individual communities.

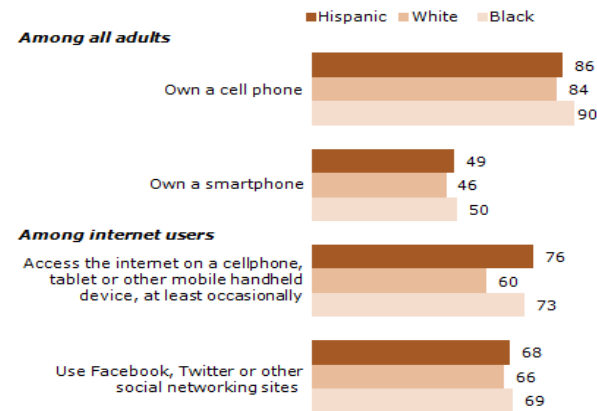
However, the disparities among respondents regarding internet use shrink when looking at internet access through newer forms of technology. While Latino and Black respondents were likely to access the internet in general than White respondents were, both groups were more likely to access the internet on a smartphone or a mobile device.²⁰⁴ It would therefore make sense to offer

access to information and services via smartphones or mobile devices for those that may be unable to use the more conventional broadband internet connections.

Figure 6: Smartphone Ownership, Internet Use and Social Networking Site Use²⁰⁵

Smartphone Ownership, Mobile Internet Use, and Social Networking Site Use, 2012

(% saying they ...)



Notes: Blacks and whites include only non-Hispanics. Hispanics are of any race. Smartphone owners are a subset of cellphone owners. An "internet user" is defined as someone who says they either use the internet OR send or receive email at least occasionally.

Source: For Hispanics, Pew Hispanic Center National Survey of Latinos 2012; for whites and blacks, Pew Research Center for the People & the Press June 2012 Biennial Media Consumption Survey and Pew Research Center for the People & the Press February 2012 Political Survey.

PEW RESEARCH CENTER

**An app or website
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those who are not.**

Adopting technology to fill the access to justice gap does have a disproportionate effect on some demographic groups. However, it also provides an opportunity to connect to those who are excluded by the in-person service provision model. Younger generations that are more comfortable accessing services online would be connected, rural residents would not have to travel for hours to legal service offices, and non-English speakers would not have to rely on the availability of interpreters to tell their stories. Some people with physical disabilities would not have to leave their homes to access services, and technology may be formulated so as to try and improve service provision to those with sensory disabilities. People with cognitive disabilities such as autism who often report discomfort with in-person interactions might be able to connect more comfortably online. Domestic

violence survivors that are being monitored by their abusers would not have to leave their homes to reach out to a legal aid lawyer.

Further, technological solutions are supplemental to, and may be able to ease the burden on intake staff, allowing organizations to allocate more resources towards in-person services. Ideally, those who are more likely to use online services will do so, making in-person intake more accessible and more streamlined for those who will not or cannot use an online intake system. Finally, technological illiteracy may not prove too great of a barrier when considering whether potential litigants would use an online intake system. An app or website could allow social services providers, family, or friends to assist their loved ones as they navigate the app, even if the potential user themselves is uncomfortable or unfamiliar with the technology.

Legal and Doctrinal Challenges

Any technological and other innovative solutions to the access gap to civil legal services must consider potential legal considerations and doctrinal barriers, including rules and regulations concerning unauthorized practice of law, privacy and confidentiality, and conflict of interest. This section addresses how those barriers might apply to tech-based solutions generally, and how a proposal for a responsive website or mobile device application for legal triage would avoid or confront these challenges.

Unauthorized Practice of Law

Non-lawyers are prohibited from practicing law, a prohibition referred to as the unauthorized practice of law (UPL). Over the past century courts and bar associations have made UPL enforcement increasingly strict by eliminating competition and creating a lawyer-held monopoly over activities that used to be unregulated, such as giving legal advice or preparing legal documents.²⁰⁶ UPL is not easily defined, and the definition varies by jurisdiction, but UPL rules generally prohibit non-lawyers—unlicensed individuals that are not members of that state’s bar association—from providing services that “call for the professional judgment of a lawyer . . . [his/her] educated ability to relate the general body and philosophy of law to a specific legal problem of

UPL rules disproportionately affect low-income individuals because of their inability to pay lawyers’ fees or obtain free legal help, and do nothing to address the glaring accessibility gaps in access to civil legal services.

a client.”²⁰⁷ In other words, the practice of law “involves the application of legal knowledge in a personalized way to a particular situation.”²⁰⁸

Laws and regulations disallowing UPL are designed to protect the public interest, not simply to protect the economic interests of lawyers.²⁰⁹ These prohibitions are meant to “protect[] the public against harmful incompetence and unscrupulous conduct” by regulating lawyers through the disciplinary measures provided by courts and bar associations and rewarding lawyers for submitting to such regulation.²¹⁰ Remedies for UPL range from injunctive relief to criminal prosecution.²¹¹ As applied, however, UPL rules disproportionately affect low-income individuals who cannot afford to pay lawyers’ fees or cannot obtain free legal help while doing nothing to address the accessibility gaps they help create.²¹²

Moreover, UPL rules do not necessarily accomplish their stated goals. First, lawyers may not be more competent for specialized tasks than some non-lawyers are; for example, non-lawyer advocates are often more effective at navigating housing court than volunteer lawyers unfamiliar with the system.²¹³ Next, although UPL rules are designed to help regulators punish unethical conduct, other professions have disciplinary measures that could function equally well.²¹⁴ UPL rules assume that users of the legal system are not competent to choose between paying more for a licensed attorney and using a lower-tier service.²¹⁵ Finally, a “tiered competency system” already exists for poor litigants²¹⁶ —allowing non-lawyers to take over some traditional tasks of licensed attorneys would not contribute to an already unequal system.

Technological solutions to the access gap may address some of the concerns that UPL is designed to remedy.

Whatever the merits of the UPL restrictions, any technological solution to the access gap would have to avoid violating them. While UPL prohibitions are not clearly defined, there are some clear exceptions, including self-representation,²¹⁷ do-it-yourself legal kits,²¹⁸ document preparers that do not also provide legal advice,²¹⁹ or a police officer reading someone their Miranda Rights.²²⁰ A technological innovation could avoid UPL questions by restricting what the service offers — for example, a legal information website such as masslegalhelp.org, or even websites that complete standardized forms, depending on the state.²²¹

While information-giving websites and applications merely state the law, services that gather information and then attempt to triage clients could be construed to qualify as giving personalized legal advice. Services that complete legal documents that have traditionally been handled by licensed attorneys may also run afoul of UPL rules. In 2015, H&R Block attempted to create a service that would help non-citizens fill out USCIS forms, but the immigration lawyers' association shut down the service before it began to operate.²²² Private lawyers in Missouri brought a class action suit against LegalZoom, a website that creates legal documents with document assembly software and modifies forms based on an individual's response to questions,²²³ and bar associations elsewhere have protested the service.²²⁴ We The People, a franchise business selling legal forms from storefront offices, went bankrupt after several UPL suits.²²⁵

We suspect, though we are not lawyers and are not hereby giving legal advice, that a legal triage website that simply supplements current intake systems and directs clients towards resources to learn more about their claims or receive representation would likely not violate UPL rules. This website would not attempt to direct clients to take any other action or state legal suggestions or conclusions. Furthermore, technological solutions to the access gap may address some of the concerns that UPL is designed to remedy by enabling a low-income litigant to navigate around exploitative practices that otherwise would be their only resource to get information or representation. For example, unscrupulous people who are often not attorneys, called “notarios,” assist undocumented immigrants with filling out immigration forms for exorbitant fees.²²⁶ If potential litigants had access to better resources they might be able to better avoid the predatory notarios. Similarly, an advocate we spoke to described a practice used in court in Lawrence, Massachusetts. Attorneys would offer to represent clients pro bono, but at the end of the day would try and convince their pro bono client to hire them as full representation for a fee. Technological solutions could allow some litigants to bypass exploitative practices by non-lawyers – practices that UPL rules are designed to prevent.

Privacy

A lawyer must not agree to represent a client if that representation would be “directly adverse to another client” or there is a “significant risk” that the representation will be “materially limited”

Privacy and confidentiality concerns also arise when organizations share information and when databases are not secure. Various federal and state statutes regulate the collection, usage, and storage of personal information, generally requiring companies collecting personal information to clearly state their privacy policies and inform consumers of the intention to share that information with third parties.²²⁷ Many statutes, including those in Massachusetts, regulate only personal information that could be used for identity theft: a name in combination with a social security number, driver’s license, or financial information.²²⁸ However, other states require more stringent privacy protections for any information that could be used to contact an individual online or in person.²²⁹

An application or website collecting legal information would likely require a prominently displayed policy that states the purpose of gathering legal information and the intention to share a user’s personal information with a third party, and provide notice in case of a security breach. It would also likely need a confidentiality warning, to fulfill a lawyer’s ethical obligation to not reveal information relating to representation of a client.²³⁰ For extra confidentiality protections, an online legal triage service could anonymize identifying information until a third party agrees to take a case and attempts to contact an individual.

Conflict of Interest

Another potential legal challenge for an information-sharing app or website is detecting and preventing conflict of interest issues. According to the ABA’s Model Rules of Professional Conduct, a lawyer must not agree to represent a client if that representation would be “directly adverse to another client,” or there is a “significant risk” that the representation will be “materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”²³¹ One risk for websites or other services that connect people with legal services is that it may collect and distribute information of two opposing parties, in a divorce proceeding, for example, or provide an LSO with information about a potential litigant that would create a conflict of interest in an ongoing case.

The potential concerns should not preclude lawyers from imagining and implementing creative technological solutions.

There are several possible solutions to conflict of interest concerns for a legal triage service. Organizations could use software that firms employ in their conflict-checking procedures to determine a conflict of interest *before* the application or website would allow them to access more information about a potential client's case. Joint Defense Agreements and Common Interest Agreements could allow attorneys and organizations to share confidential information about their clients. A Common Interest Agreement is a contract between people with a "common legal interest" that the information generally protected by the attorney-client privilege "that is communicated in the presence of, or shared amongst them" will not "result in a waiver of those protections."²³² A Joint Defense Agreement is similar, and the terms are used interchangeably in some jurisdictions, in others a Joint Defense Agreement requires litigation to be ongoing and allows information-sharing to further a common defense goal.²³³ Further research is needed into the application of these agreements in Massachusetts, but LSOs could potentially share information about clients by agreeing to use a joint intake system.

Finally, there are often relaxed conflict of interest requirements in the legal aid context. The ABA's Model Rule 6.5, adopted in Massachusetts,²³⁴ stipulates that a lawyer who "under the auspices of a program sponsored by a nonprofit organization or court" provides limited legal services for a short period of time to a client without the expectation for continued representation is only subject to conflict of interest rules if the lawyer knows that a conflict of interest exists.²³⁵ The ABA comments that in programs such as "legal-advice hotlines, advice-only clinics or pro se counseling programs" it is "not feasible for a lawyer to systematically screen for conflicts of interest."²³⁶ Several states have also proposed adopting relaxed conflict of interest rules, encouraging pro bono service and paving the way for new services connecting indigent clients to legal services.²³⁷ Organizations could give short term legal advice to clients, and then perform conflict checks for longer-term cases.

Reformers must carefully consider the potential legal challenges to technological innovations. Not only would breaches impact lawyers' own good standing, but they risk violating clients' privacy and safety. However, as the above discussion notes, the potential concerns should not preclude lawyers from imagining creative

technological solutions and exploring ways to address or avoid ethical concerns that they might raise. With these potential concerns in mind, this report moves to a discussion of a framework for evaluating options and the existing models that are most promising.

PART III: SYSTEM LEVEL SOLUTIONS

A Framework for Evaluating Options

The nature of web based services and incentive structures within grant funding can often create the desire to market silver bullet solutions. Providers of legal services are encouraged to think in terms of single initiatives, rather than across existing options or opportunities. However, a single-initiative framework fails to capture the magnitude of the access to justice issue. Rather, organizations should focus on creating system level solutions that encourage collaboration with existing resources.

As discussed in-depth above, organizations rely increasingly upon project-based grant funding from major foundations. This has led to the piecemeal development of disjunctive resources that often are not in dialogue with one another. Another issue is the perpetual struggle to assess whether information remains relevant, timely, and accurate. Thus, the creation of a single resource, if devoid from thought about collaboration and triage strategies, risks getting lost among other less up-to-date or useful resources. This section analyzes a sample of the promising systems-level options for change and reform, including the Court Service Center, Scotland's lay representative model, and Professor Jim Greiner's research into triage and access.

The nature of web based services and incentive structures within grant funding can often create the desire to market silver bullet solutions.

System-Level Options

Courts, researchers, and international legal services organizations are already creating innovative and useful attempts to ameliorate the access to justice gap, particularly at the triage stage. This

section analyzes a sample of the promising systems-level options for change and reform, including the Court Service Center, Scotland's lay representative model, and Professor Jim Greiner's research into triage and access.

Court Service Centers

Under the auspices of the 2005 Access to Justice Committee, Massachusetts Courts have piloted a Court Service Center (CSC) located within Boston Municipal Court, as well as at other locations throughout the state, to guide people, especially PRLs or pro se litigants, through the court system. CSCs help people fill out forms, give information about court rules and practices, interpret court documents, and assist with legal research, in addition to providing contact information for community resources and legal assistance providers.²³⁸ Staffed by attorneys and volunteers, the Centers offers help filing forms and navigating the court system. The CSCs serve as a major element of the Massachusetts court system's efforts to increase access to potential litigants and others navigating the court system.²³⁹

**[The CSC and
CAS model]
radically
decentralizes
the role of
lawyer.**

While the CSCs have only been in existence for a few years, they appear to have had a significant impact on the experience of low income individuals they have served. The resources made available within CSCs will, however, necessarily be limited to those individuals who have the ability to show up in court in the first place. A similar model in Scotland has been in existence for longer, provides more extensive resources, and could represent a next step for low-income litigants in Massachusetts.

Lay Representative Model

Scotland's Citizens Advice Scotland (CAS) model provides a stark contrast to the broader United States' model for legal services provision.²⁴⁰ Scotland is dotted with many CAS satellite offices, in both rural and urban areas. Last year alone, CAS helped 323,000 litigants with over one million legal issues.²⁴¹ The program has an extensive website with information about legal issues, rights and campaigns, which receives 5.4 million views per year.²⁴² CAS also staffs phone lines, where potential litigants can receive information and advice, and in-person offices throughout the country.²⁴³

Studies from analogous contexts, such as emergency rooms and battlefield trauma specialists should be analyzed to improve legal triage.

By far the CAS's most innovative element comes in the lay representative model through which many non-lawyers and volunteers provide clients with needed legal information. This model radically decentralizes the role of lawyers, as CAS relies upon only sixty-one employees but 2,500 volunteers throughout Scotland.²⁴⁴ Lay representatives provide substantive services to self-represented individuals, including pre-court information, out-of-court advice, in-court representation, negotiation representation, legal documents drafting, strategy memos, moral support, and assistance beyond the court date itself.²⁴⁵

Given the current UPL rules in U.S. jurisdictions, discussed above, it is difficult to imagine a situation in the U.S. in which non-lawyers could engage in this range of substantive advice-giving. Nevertheless, many of the functions that CAS provides could still be conducted within the boundaries of the Model Rules of Professional Conduct.

Research and Information on Legal Services Triage

More information is needed on the issue of triage within legal services. Indeed, there has not been a single empirical study within the last ten years on triage within the legal services context. This means that already constricted legal services providers are unclear on what criteria to use in determining which cases are most worthy for full representation.²⁴⁶ Studies from analogous contexts, such as emergency rooms and battlefield trauma specialists, should also be analyzed for relevance within the legal context.²⁴⁷

Professor Greiner is working with a legal services organization in Ohio that is currently unable to represent every litigant seeking orders of protection.²⁴⁸ The organization will provide a third of litigants with self-help materials, a third with self-help materials plus an explanatory phone call, and a third with full representation in their hearing. By examining providers' calculus as to the value added in choosing to represent clients, this study will aim to shed light on the assumptions behind existing value judgments at the triage and intake stage.

These efforts represent three of many potential responses to the access gap in Massachusetts. The decentralization of lawyers

through a multiplatform lay representative model, expanded empirical research and knowledge, and meaningful investment by courts to make pro se services more accessible would all prove invaluable in the quest to provide better legal representation to low income litigants. With these options in mind, we move to a discussion of our proposal for a technological intervention into triage in Massachusetts.

To combat these systemic compilations within legal services intake and triage, we propose creating an app or a mobile-friendly website.

PART IV: THE PROPOSAL

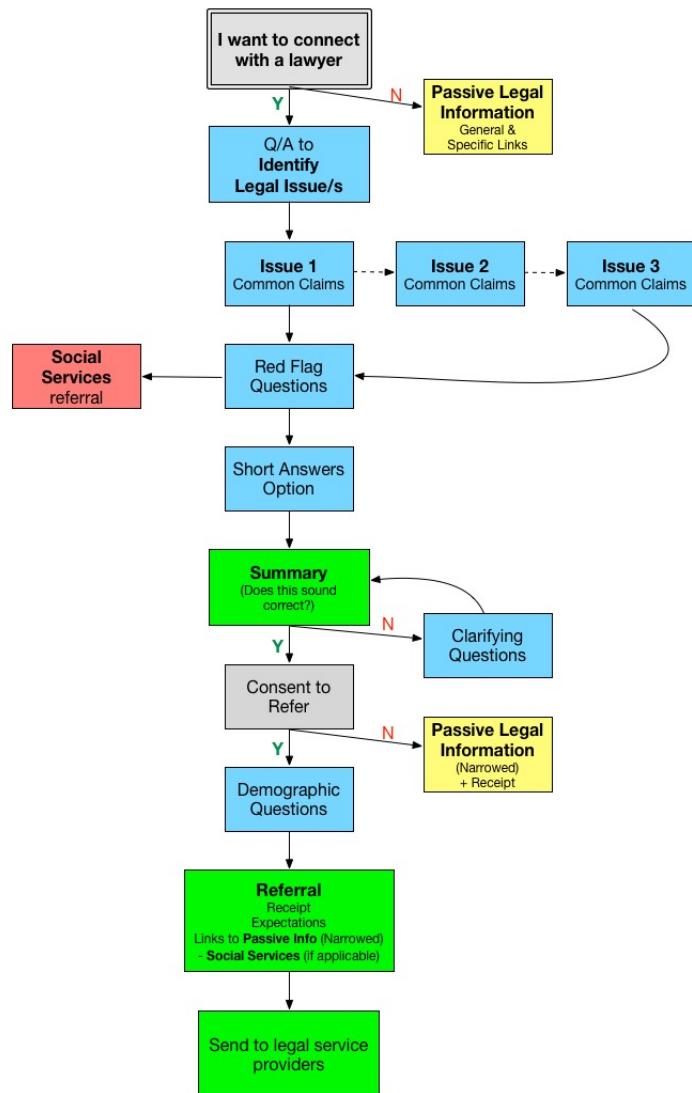
To combat the highlighted systemic complications, LSOs should consider adopting an app or a mobile-friendly website for intake. Not only would such an app likely help litigants quickly and easily apply for legal help, it would likely also allow LSOs to gather and process litigant applications more efficiently. The app would automate the phone bank system of intake. As the intake website would be available via mobile device, litigants could begin the process of seeking legal aid at all hours and in many locations.

The following pages lay out a general framework for the proposed app. Following the app, this report explores the tensions that influenced key design choices. Finally, this report discusses additional concerns that LSOs and reforms must address before such a product could enter the marketplace.

Workflow

The workflow laid out below demonstrates the structure of a user's typical experience going through the intake process with this app:

- The user has an initial opportunity to choose between the passive and active section of the site.
- If a user chooses the option to connect with a lawyer, the app will guide the user through multiple types of questions (multiple choice, dropdown menu, short answer, questions determine urgency and severity of the case, narrative options, responsive clarifying questions) to discern the legal issues being faced.
- The user receives a summary of the identified legal issues and has the opportunity to make any edits before consenting to submit this memo to LSOs.
- The user receives a receipt with their memo, as well as some information about when she should expect to receive a response from an organization.
- At this point, the app would send the user's memo to participating legal services providers.



Proposal Mockups

The following mockups provide a general view of a user's experience with an app-based intake process.²⁴⁹



(1) Welcome Page

The welcome page of the app first asks a user to select their preferred language as many potential users do not speak English as their primary language. To provide greater accessibility, users would also have the option to use Text to Speech software or increase the font size.



(2) Domestic Violence Safety

The app prompts users with a domestic violence safety message. As abusers may monitor devices, this warning alerts users to the safety risk.

www.malegaltriage.gov

MASSACHUSETTS LEGAL TRIAGE
ONLINE INTAKE FOR CIVIL LEGAL SERVICES

Please select one of the following

☐ *I need help finding a lawyer*

☐ *I need legal info & resources*

Back Next

AA [Speaker Icon] Lang

< > [Share Icon] [Bookmarks Icon] [Tabs Icon]

(3) Passive & Active

This portion of the app begins the branching between the passive and active side of the app. Users decide whether they would actively like to seek legal help or whether they simply want resources and information.

www.malegaltriage.gov

MASSACHUSETTS LEGAL TRIAGE
ONLINE INTAKE FOR CIVIL LEGAL SERVICES

Please fill out at least 1 of the following

Email

Phone #

Address

Your information is confidential.
With your permission, we will send this information to potential legal service providers.

Back Next

AA [Speaker Icon] Lang

< > [Share Icon] [Bookmarks Icon] [Tabs Icon]

(4) Basic Contact Information

Instead of requiring people to register—which would take more time and possibly deter some from completing the process—an initial login page prompts the user to provide contact information. This allows organizations to follow up if needed, even if a user does not complete the whole process. A confidentiality notice, either on this page or as a separate agreement, provides notice that information will be shared with third parties.

www.malegaltriage.gov

MASSACHUSETTS LEGAL TRIAGE
ONLINE INTAKE FOR CIVIL LEGAL SERVICES

Please read and confirm the following

[Disclaimer]

We are not your attorney. Lorem ipsum dolor sit amet, consectetur adipiscing elit. Quisque eu vehicula felis, et ultricies arcu. Cras quis elit eu ligula sodales aliquet. Aenean efficitur mauris a vulputate mattis.

However, your information will be kept confidential.

☐ I understand

Back Next

(5) UPL Disclaimer

A disclaimer page alerts the user that the website is not qualified to give legal advice, but rather that it is designed to connect a user to a licensed attorney. This will guard against potential UPL violations.

www.malegaltriage.gov

MASSACHUSETTS LEGAL TRIAGE
ONLINE INTAKE FOR CIVIL LEGAL SERVICES

What are you concerned about?
(Check all that apply)

☐ Housing

☐ Family & Relationships

☐ Work

☐ Finances

☐ Health

☐ Immigration

☐ Other

Back Next

(6) Identify Substantive Issue

A user may not be aware that she is facing legal issues in a certain area, so a broadly framed question allows the user to choose multiple options. Ideally, a legal triage website would eventually also be able to identify areas for referrals to social service organizations instead of or in addition to legal aid.

(7) Common Claims

This section of the app explores legal claims through branching sets of questions, prioritizing efficiently identifying the legal issue.

(8) Red Flag Questions

Additionally, the website would include a mechanism to ensure that users facing an imminent safety risk could be quickly identified for referral to emergency services. This section would ask designated “red flag” questions that would attempt to identify these users.

(9) Short Answer Questions

This section attempts to resolve the tension between autonomous narrative use and directed, efficient questioning. It provides users the opportunity to add short answer or narrative responses, separated out by each identified common claim. This section would not be mandatory for users, but instead would be an optional page.

(10) Summary

After the user finishes answering the questions about their legal problem or issues, the website requests that the user verify that their narrative is accurately reflected.

(11) Space for Narrative

Because the process of seeking legal services is often one in which the personal narratives of potential litigants is lost, this website allows users the option of putting their legal question or issues into their own words. Because some users may be less comfortable with typing or writing out a narrative, the app also would feature an option to leave a voice message.

(12) Consent to Send

This portion of the app allows users to send their information directly to a legal services organization. This "active" side of the website double-checks that a potential litigant wishes to connect with a lawyer, and then would send the information to the organizations that might be able to provide legal help to the user.

www.malegaltriage.gov

MASSACHUSETTS LEGAL TRIAGE
ONLINE INTAKE FOR CIVIL LEGAL SERVICES

Demographic Information

Name

Phone #

Address

Income Age

Size of Household Live with Partner? ☐ Y ☐ N

Optional Questions

Race

Citizenship

[Disclaimer]
Your information is confidential...
We are not your attorney...

Back Next

(13) Demographic Information

To provide the LSO with the information necessary to determine eligibility, the website user will be prompted to fill out basic demographic information. This information will also help to improve data on the demand for legal services, which may help future research in the area. In order to be sensitive to issues of privacy, the app allows users to fill in optional demographic information and reminds users that their information is confidential.

www.malegaltriage.gov

MASSACHUSETTS LEGAL TRIAGE
ONLINE INTAKE FOR CIVIL LEGAL SERVICES

Sent!

Your information has been forwarded to a legal service provider. You can expect to hear back within [timeframe].

A copy of your summary has been emailed / texted to you.

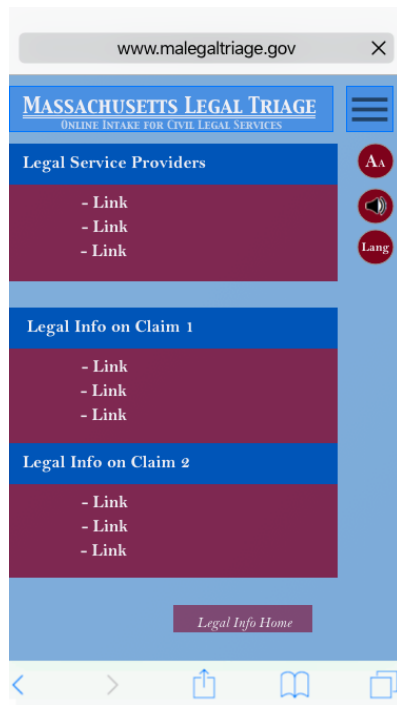
☐ I want to contact a provider directly

☐ I want to get legal information

Finish

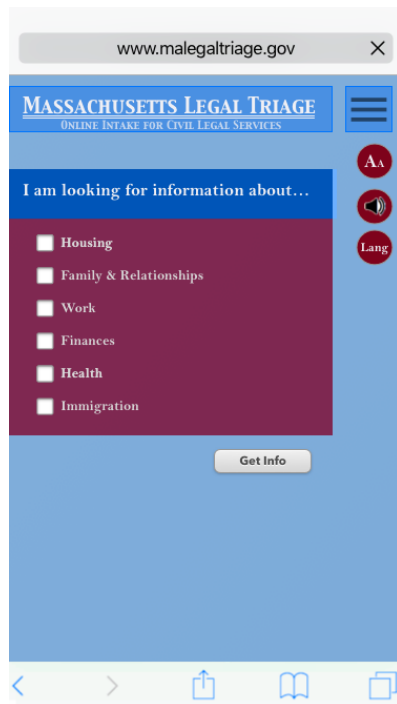
(14) Confirmation

After a referral is sent to a legal services provider, the user receives a copy of the application via email or a pdf file and a timeframe within which the user can expect a response. The user may then request the contact information for a specific provider in the area, and the user is given the option to receive legal information from other sources online.



(15) Passive Information - Narrowed

After finishing the active portion of the website, the user is directed to a page providing general details about legal aid services, in case she wanted to follow up with an organization. The user also receives specific information about the legal claims the website identified. To take advantage of preexisting resources, the website offers links to other information sharing sites.



(16) Passive Information - General

This is the screen a user would see if the user selected the passive, as opposed to the active, side of the website after the welcome message. The user could choose from among different areas of law based on the legal problem, and then see common claims that arise in that area of law. After browsing these areas to determine which description best fits the problem, the user could choose a claim and be provided with links to more information.

A Taxonomy of Tensions

The design above for a mobile friendly intake website attempts to balance several competing considerations. This section explores the major tension points in designing a product aimed at both primary users (potential clients and others seeking legal information) and LSOs.

Choice vs. Clarity

One tension point revolves around increasing the choices available to the user while also maintaining a clear and straightforward interface. Users may have multiple legal issues. For example, a domestic violence problem could mean that a client needs help with a divorce, housing, and child custody simultaneously. While an intake system should allow the user to comprehensively address a legal situation, it should also avoid an overwhelming number of options or an unwieldy amount of information. A potential client may be uncertain of the legal issues implicated, which would likely make a range of options frustrating or confusing.

It is critical to provide all options that a person may want to address but to do so in a clear manner.

Narrative vs. Efficiency

Another tension exists between providing users an opportunity to tell their stories and the desire for an output that an intake specialist or attorney can understand quickly. A user may be uncertain as to what aspects of the problem require legal aid and may feel more comfortable providing information in narrative form. However, a pure narrative approach to intake may reduce the speed with which an organization could process an intake. A complex narrative may require a lengthy follow-up interview, eradicating any gains in efficiency the organization might have received from an automated intake service. A responsive website could balance the competing interests of narrative and efficiency by inviting both longer form answers and multiple choice responses focused on narrowing a legal issue.

Speed vs. Accuracy

A further tension is the one between speed and accuracy for the user.. “Yes” or “No” questions may not fully capture the

complexities of a specific situation, but they are often the most efficient means to narrow down the scope of potential legal problems. A faster process would also reduce the rate of attrition—users failing to complete the intake because of the length of the process. However, there is the concern that an automated feature may not accurately classify the legal issues. User input—gained through the website providing occasional, brief summaries of the information aggregated and asking for confirmation—may help balance speed and accuracy.

Information vs. Privacy

It is critical that the litigants feel safe using the product and that the product is in fact safe for the litigants to use.

Confidentiality and the users' privacy is of particular concern. Many users will be entering sensitive information and could be recounting traumatic events. Potential litigants should have assurance both that the product safeguards their information and that they are safe while using it. This need to protect privacy, however, is in tension with the desire to provide more information to LSOs so that they can make informed triage decisions. For example, while mining data from collected applications could help LSOs understand and anticipate trends in legal services work, users may not want their information shared beyond intake staff, even if anonymized.

Redundancy vs. Breadth

A clear and concise responsive website would not overburden users with large amounts of text related to complex legal problems. To ensure a sleek design and a unique app, a responsive website might limit the information displayed. However, users may be seeking comprehensive information on particular LSOs or their legal rights. A possible solution to this tension is to provide optional links to existing legal information websites or preexisting sources of relevant information.

Our first major design decision was to conceptualize our proposed tool as a responsive website.

The Concept

An “app” generally refers to a program or software that is downloaded onto a smartphone.²⁵⁰ However, an alternative or supplement to standalone apps is the use of *responsive web design*. A responsive website — colloquially termed a mobile website — provides an optimal viewing and interaction experience regardless of what kind of device the viewer is using.²⁵¹ That device could be a smartphone, tablet, or desktop computer. This report argues that a responsive website is the better choice for a mobile intake system.

Although a downloadable app could offer features that a responsive website could not (such as push notifications), a responsive website would maximize the potential reach of the product. An individual seeking civil legal assistance could access the website on her phone, but she could also use a tablet or a desktop computer at her local library or a Court Service Center. Whereas an app is usually coded in either Apple OS or Android (thus requiring a separate development process for each operating system), a user could access a responsive website regardless of her phone’s operating system. For example, an iPhone uses a different operating system than a Samsung phone. While this report occasionally use the word “app” interchangeably with “responsive website” for expediency, the ideal tool would act as a responsive website.

Given that there are many websites and apps providing legal information, we determined that it is important not only to have a “*passive*” side to an app, which would link to general legal information, but also an “*active*” side, which would be a smartphone-based intake process. The active side would engage with the user through solicitation and aggregation of information. This not only would narrow the scope of the legal problem, but also help provide a rough “diagnosis” that could then be sent to a legal aid provider.

The intake structure provided below is modeled on the intake process at Greater Boston Legal Services. Based on the GBLS process and additional research into triage, three central components were identified as central to any triage tool: (1) identification of substantive legal areas of concern; (2)

An individual using the app could either use the passive side or the active side.

This approach would be unique, as it automates a process that would be otherwise be put onto the potential litigant, making the system less accessible.

identification of any red flags that would mark the case as urgent or as needing referral to social services; (3) provision of space for the user to share their narrative in their own voice.

An app user could use both the passive and active components of the app. The passive side of the app would be very similar to currently existing programs; a user would be able to choose from a variety of legal problems and receive information about the doctrine of the problem, their rights or responsibilities, and other relevant information. Because this information is already available, the primary benefit of incorporating this into the app would be to offer a centralized location for intake and information.

The active side of the app would address more of the inadequacies of the current intake system. A user would be prompted through a series of questions, moving from the most general to the most specific, meant to distill the legal claim at the heart of their issue. Often a potential litigant will have more than one legal claim, and by shaping this questioning around the current intake questions used by legal service organizations, the program could be flexible enough to recognize multiple claims. After the user answers questions that allow identification of the claim, the program would then ask a series of red flag questions. These questions would be used to assess the severity of the case. The severity of each claim would be included in the information provided to LSOs such that they can prioritize their incoming caseload. Based on the answers to the red-flag questions, the app would provide the user with links to relevant social and community services to try and provide a more centralized, holistic approach to legal problem-solving.

After the claim and urgency is identified, the app would then prompt users to answer a series of short-answer questions. The answers provided allow the attorneys reviewing the case to assess the validity of the claim. Finally, the user would have an opportunity to provide a longer-form narrative. The information collected would then be compiled into a document that clearly presents the claim, severity, relevant facts, and narrative description of the case at hand. The app would then identify, based on previously provided answers, which legal services the user is likely for and send this memo to all of these organizations.

This approach removes some of the intake burden from both potential litigants and attorneys. Ideally, this system would maximize a user's likelihood of accessing legal services for which he or she could qualify; centralize the search for representation, information, and social services; minimize time spent seeking legal representation; and create a more accessible system than traditional in-person or telephonic intake systems. LSOs would potentially also benefit through this creation of a third-party referral process that supplements existing intake systems. An efficient system could reduce the number of ineligible cases directed to legal service providers through the standardization of fact patterns, increase the collection of helpful data on intake, and automate in part a process that traditionally requires works to spend considerable time on the phone.

Important Considerations

An important caveat to this proposal is that none of the team involved in its conceptualization has a technical background, software development, web design, or user experience. As such, this report relies heavily on advice from the Berkman Center and the NuLawLab. The proposal is primarily exploratory and conceptual in nature. Further work on the project would require more technical expertise.

Any technological tool must, first and foremost, consult its potential user base to ensure that the product addresses their needs in ways that are accessible and effective.

Additionally, because of time and resource constraints as well as research clearance requirements, the proposal was designed without the input of the most important individuals in this process — the potential users. Any technological tool that seeks adoption within a particular community must, first and foremost, consult its potential user base to ensure that the product addresses their needs in ways that are accessible and effective. Further work in this area requires greater input from potential users.

A third concern arising out of our proposed design is that of data security. Since the proposed responsive website turns on collecting, analyzing, and sending information about users, questions about how to store and send the information should be at the forefront of development considerations. Data anonymization is vital given conflict of interest issues arising from the sharing of litigants' information among different LSOs.

Further work should also consider the implications of the fact that the proposed responsive website inverts the dynamics of traditional legal intake in that it puts the impetus of contact on LSOs. This proposal would require a commitment on the part of LSOs using the system to ensure timely responses to users. Stakeholder buy-in is therefore essential, and a design process would have to consider how to involve LSOs.

Finally, this proposed responsive website addresses only the “demand side” of the problem. That is, it attempts to streamline the triage and intake process by making it easier for a potential litigant to identify legal issues and contact a LSO. However, this proposed responsive website does not address the “supply side” of the problem; it does not assist LSOs in managing the intakes that they receive. Future solutions might address this supply side issue by looking to food delivery and ride sharing apps (such as Eat24 or Lyft), which allow restaurants and drivers to accept, track, and manage requests for services. Furthermore, these apps include both demand side and supply side features, depending on whether the user is a customer (e.g., a passenger) or a service provider (e.g., a driver). It is realistic, therefore, to develop a tool that unifies the intake process between potential litigants and LSOs.

NEXT STEPS

The most important step for work on any access to justice intervention is to develop a coalition of affected parties. This first and most important step involves soliciting feedback from and collaborating with individuals who would use the responsive website. This could include conducting surveys to determine a target audience and document comfort levels with the technology across demographic groups. It also means bringing to the table legal service providers, app developers, lawyers, legislators, social service workers, and others who might have interest in the access to justice crisis. This team-based approach serves the dual purpose of providing input for the product and creating early public support that can make the product successful.

Next, funding is a necessary hurdle. An effective tool requires technological proficiency, maintenance, and design expertise that are possible only through hiring outside assistance. There are some funding opportunities through the Legal Services Corporation, but other outside sources could provide support. The FAQ section explores this in greater detail.

Additionally, a plan for sustainability of any technological solution is vital. This requires a detailed timeline not only of the responsive website's creation, but also of its maintenance after it is released to the public. An effective intake tool will need updating to ensure continued responsiveness to community needs.

CONCLUSION

This report is not meant to provide the solution to the problem of access to justice in Massachusetts. Rather, it is a recommendation for a modest intervention that could help empower those who are often left out of the higher-level debates about the legal system. Massachusetts, like the rest of the United States, faces a crisis in access to justice. Tackling such a systemic and entrenched problem requires attention to not only funding and services, but the specific needs and experiences of the communities it seeks to better serve. By making the first step of access to legal services something that an individual could literally carry with them throughout the day, Massachusetts could provide litigants a new avenue to seek justice.

Frequently Asked Questions

1. What is the cost to the user?

The service would be entirely free once it has been produced. Users may access the website on a smartphone or, since it is a website rather than an app, may fill out their information at any computer bank. There would be no additional operating costs.

2. How would you fund the product?

Funding is certainly a major hurdle. However, there are many institutions that may find investing in an online intake system to be an efficient use of resources. Legal service organizations that currently invest significant resources to phone intake may find that investment in online intake may be more cost effective in the long run. There are also many student organizations at area universities and law schools that may be interested in undertaking the project. An example can be found at Harvard University where a computer programming course allows students to create new products every semester.

3. When would the product be finished?

The timeline would largely depend on the funding structure and the stakeholders who commit to realizing the product.

4. Who are the main stakeholders?

There are three broad categories of stakeholders in the legal service industry. First, and most importantly, there are the individuals in low income communities in need of legal services. The product would help these individuals save time and resources finding free legal assistance. Second, legal service organizations are interested in providing quality assistance to as many low income litigants as possible. The institutions could collect user applications quickly with the product. Finally, the courts are also stakeholders. They may be interested in guaranteeing that all litigants have the information they need and any services that could help them navigate the court system. More informed litigants may also help to combat overcrowded courtrooms. Additional stakeholders may include legislators, bar associations, social service organizations, and others.

5. Are there any stakeholders that may disapprove of the product?

Many of the stakeholders (as outlined above) should only serve to benefit from the product. An easy access, streamlined intake application process would help litigants, legal service organizations and courts by saving everyone time and energy. It would connect people faster without cluttering the intake process or undermining existing procedures. However, there may be pushback from private lawyers and those who worry about the service not accurately assessing a potential litigant's needs. These stakeholders would certainly need a seat at the table and would hopefully collaborate to make an web-based intake system stronger.

6. Would the product overlap with any existing Massachusetts resources?

At present, the Mass Legal Resources finder and Mass Legal Help exist to help connect low income litigants with representation.²⁵² Both of these websites provide information to the user about services and resources. Mass Legal Resources finder also offers a listing of organizations that may help the litigant. However, both of these products are limited to a passive display of information without gathering and distributing user information. Mass Legal Resources finder may direct a litigant to contact Greater Boston Legal Services, but the litigant must still traverse the GBLS intake process. Unlike the passive products, an active website would compile user information and distribute that information to legal service organizations thus simplifying the intake process.

7. How would you advertise the product?

There are many options for advertising the product that would be free or limited in cost. The Massachusetts Court Service Centers may inform litigants about the website if they feel it would serve the litigants. Likewise, legal service organizations may be able to advertise the product at their offices or through collaborative community centers. Legal service organizations may also explain the website in an automated message during the phone wait line. As users wait to speak with an intake specialist, they would hear an automated message about the website and the free online application process. That way, users could skip the long phone lines and the legal service organizations would experience less phone traffic.

ENDNOTES

¹ Laurence H. Tribe, Address at the National Telecommunications and Information Administration Announcement of Broadband Grant Recipients (Sep. 16, 2010) (transcript available at <http://www.justice.gov/atj/opa/pr/speeches/2010/atj-speech-100916.html>).

² See Laurence H. Tribe, Keynote Remarks at the Annual Conference of Chief Justices (Jul. 26, 2010) (transcript available at <https://www.justice.gov/opa/speech/laurence-h-tribe-senior-counselor-access-justice-keynote-remarks-annual-conference-chief>).

³ *Conflict of Interest*, MERRIAM-WEBSTER ONLINE DICTIONARY (2016), <http://www.merriam-webster.com/dictionary/conflict%20of%20interest>.

⁴ Joseph A. Kelly, *Joint Defense Agreements*, FROST BROWN TODD LLC (May 10, 2011), <http://www.frostbrowntodd.com/resources-1465.html>.

⁵ *Unauthorized Practice*, BLACK'S LAW DICTIONARY (9th ed. 2009).

⁶ Stephanie L. Kimbro, *Law a la Carte: The Case for Unbundling Legal Services*, 29 GP SOLO Sept.-Oct. 2012, http://www.americanbar.org/publications/gp_solo/2012/september_october/law_a_la_carte_case_unbundling_legal_services.html.

⁷ See Ralph D. Gants, Annual Address: State of the Judiciary (October 20, 2015), (transcript available at <http://www.mass.gov/courts/docs/sjc/docs/speeches/sjc-chief-justice-gants-state-of-judiciary-speech-2015.pdf>).

⁸ See, e.g., *Access to Justice*, OFFICE FOR ACCESS TO JUSTICE, U.S. DEP'T OF JUSTICE (last visited Dec. 6, 2016), <https://www.justice.gov/atj> ("The U.S. Department of Justice established the Office for Access to Justice (ATJ) in March 2010 to address the access-to-justice crisis in the criminal and civil justice system."); *Closing the Justice Gap*, Brennan Center for Justice (Last visited Dec. 6, 2016), <https://www.brennancenter.org/issues/closing-justice-gap> ("Our courts face a crisis of access.").

⁹ See, e.g., Carrie Johnson, *Rights Advocates See "Access To Justice" Gap in U.S.*, NAT'L PUB. RADIO (Mar. 10, 2014), <http://www.npr.org/sections/thetwo->

way/2014/03/10/288225649/rights-advocates-see-access-to-justice-gap-in-u-s.

¹⁰ See Mark David Agrast et al., *World Justice Project Rule of Law Index 2011*, WORLD JUSTICE PROJECT 111 (2011), http://worldjusticeproject.org/sites/default/files/WJP_Rule_of_LawIndex_2011_Report.pdf.

¹¹ See Robert Echols, *Examples of State Access to Justice Commissions: Creation, Structure and Accomplishments*, AM. BAR ASS'N, http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/Is_Article_2008_MIEchols.authcheckdam.pdf.

¹² See, e.g., Tribe, NTIA Address, *supra* note 1; see also Anna Blackburne-Rigsby, *Ensuring Access to Justice for All*, 27 GEO. J. LEGAL ETHICS 1187, 1191 (2014).

¹³ See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 16 (2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf. The numbers indicate that approximately 80 percent of low-income individuals' civil legal needs go unmet due to lack of resources. *Id.* at 14. Federal regulations for legal aid provided through the Legal Services Corporation serve as a good estimate of the number of Americans who qualify for legal services. Eligibility is set at or below 125 percent of the Federal Poverty Guidelines. 5 C.F.R. § 1611.3 (2012).

¹⁴ See LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 16 (2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

¹⁵ See *id.* at 14.

¹⁶ See *id.*; see also *About the Initiative*, U.S. DEP'T. OF JUSTICE (last visited Dec. 6, 2016), <http://www.justice.gov/atj/about-initiative> (noting that more than half of those who seek help are turned away).

¹⁷ Center for American Progress, *Closing the Justice Gap* 18 (2001), https://cdn.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/prose_all.pdf.

¹⁸ This more comprehensive understanding of “access” within the access to justice framework is common in research within the

field. Although “access to justice” is an ill-defined and broad concept, the Washington State Access to Justice Technology Principles provide a helpful overview of how it is used in the legal services field. Access to justice includes “the meaningful opportunity, directly or through other persons: (1) to assert a claim or defense and to create, enforce, modify, or discharge a legal obligation in any forum; (2) to acquire the procedural or other information necessary (a) to assert a claim or defense, or (b) to create, enforce, modify, or discharge an obligation in any forum, or (c) to otherwise improve the likelihood of a just result; (3) to participate in the conduct of proceedings as witness or juror; and (4) to acquire information about the activities of courts or other dispute resolution bodies. Furthermore, access to justice requires a just process, which includes, among other things, timeliness and affordability. A just process also has ‘transparency,’ which means that the system allows the public to see not just the outside but through to the inside of the justice system, its rules and standards, procedures and processes, and its other operational characteristics and patterns so as to evaluate all aspects of its operations, particularly its fairness, effectiveness, and efficiency.” *Access to Justice Technology Principles*, WASHINGTON COURTS (last visited Dec. 6, 2016), https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=am&set=ATJ&ruleid=amatj02principles.

¹⁹ In 2009, the average hourly rate for attorney was \$284, not including other costs such as court fees and paralegals. Center for American Progress, *supra* note 17, at 16.

²⁰ See, e.g., Linda Klein, Am. Bar Ass’n Coal. for Justice, Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts (Preliminary), 3 (2010), http://www.abajournal.com/files/Coalition_for_Justice_Report_on_Survey.pdf (“The judges were asked how the lack of representation impacts the parties. While 37 percent said there was no impact, and 3 percent said that outcomes were better, 62 percent of all judges said that outcomes are worse.”); Bos. BAR ASS’N, INVESTING IN JUSTICE: A ROADMAP TO COST-EFFECTIVE FUNDING OF LEGAL AID IN MASSACHUSETTS 3 (2014), <http://www.bostonbar.org/docs/default-document-library/statewide-task-force-to-expand-civil-legal-aid-in-ma---investing-in-justice.pdf> (“60 [percent] of the judges who

responded felt that lack of representation negatively affected the court's ability to ensure equal justice to unrepresented litigants because they are hindered in the presentation of evidence.”).

²¹ See Ronald W. Staudt & Paula L. Hannaford, *Access to Justice for the Self-Represented Litigant: An Interdisciplinary Investigation by Designers and Lawyers*, 52 SYRACUSE L. REV. 1017, 1026 (2002).

²² See Rebecca L. Sandefur, *Effects of Representation on Trial and Hearing Outcomes in Two Common Law Countries*, presentation at meetings of the Research Committee on the Sociology of Law of the International Sociological Association, Paris 4-5 (July 7, 2005), (available online at <http://www.reds.msh-paris.fr/communication/docs/sandefur.pdf>).

²³ See Klein, *supra* note 20, at 3.

²⁴ See *id.* at 10.

²⁵ See *id.* at 18.

²⁶ See MASS. ACCESS TO JUSTICE COMM’N, FINAL REPORT OF THE SECOND MASSACHUSETTS ACCESS TO JUSTICE COMMISSION 7 (April 2015) <http://www.mass.gov/courts/docs/massachusetts-access-to-justice-commission-final-report-april-2015.pdf>.

²⁷ See *id.*

²⁸ See *id.* at 2.

²⁹ See Klein, *supra* note 20, at 2. The Boston Bar Association estimated that between 2008 and 2013, the number of individuals eligible for civil legal aid in Massachusetts grew from 800,000 to 974,277. *Id.*

³⁰ See Klein, *supra* note 20, at 1.

³¹ See Legal Aid Programs, MASS. LEGAL ASS. CORP. (last visited Nov. 3, 2016), <http://mlac.org/funding/programs/>.

³² See Klein, *supra* note 20, at 14.

³³ See Massachusetts Court System, COURT SERVICE CENTERS (last visited Dec. 6, 2016), <http://www.mass.gov/courts/court-info/court-management/plan-initiatives/court-service-centers.html>; see also Klein, *supra* note 20, at 37 (citing Court Service Centers as a means to provide greater access to justice and support to unrepresented persons in the courts).

³⁴ See Klein, *supra* note 20, at 6.

³⁵ See *id.*

³⁶ See *id.* The Boston Bar Association Report estimates that pro bono attorneys provide about 82,000 hours of free legal services

in Massachusetts annually. *Id.* at 31. Between 2009 and 2011 alone, private attorney and law firm contributions to MLAC-funded programs increased by 72 percent. Ralph D. Gants, Testimony at Walk to the Hill (January 27, 2012) (transcript available at <http://www.massa2j.org/a2jwp/?p=198>).

³⁷ See Klein, *supra* note 20, at 14.

³⁸ FY2014 MLAC grants to civil legal aid programs totaled \$17.5 million. MASS. LEGAL ASSISTANCE CORP., 2014 ANNUAL REPORT 4 (April 2014), <http://mlac.org/wp-content/uploads/2015/08/annualreport2014.pdf>.

³⁹ See *id.*

⁴⁰ See *id.* at 1.

⁴¹ See Klein, *supra* note 20, at 1.

⁴² *State Profile: LSC-Funded Programs in Massachusetts*, LEGAL SERVS. CORP. (last visited Dec. 6, 2016), <http://www.lsc.gov/state-profile?st=MA>.

⁴³ See GREATER BOS. LEGAL SERVS., 2014 ANNUAL REPORT 4, http://www.gbls.org/sites/default/files/gbls_2014_annual_report.pdf.

⁴⁴ See *id.*

⁴⁵ See *id.* at 6.

⁴⁶ See *id.* at 6.

⁴⁷ See *id.* at 8.

⁴⁸ See *id.* at 10.

⁴⁹ See generally 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). Triage may also occur within the court system as a means to determine where cases appear on the docket and to streamline court processes. See, e.g., *Triaging Services*, NAT'L CTR. FOR STATE COURTS (last visited Dec. 6, 2016), <http://www.ncsc.org/microsites/access-to-justice/home/Topics/Triaging-Services.aspx>.

⁵⁰ See Telephone Interview with Teri Ross, Program Director and Attorney, Illinois Legal Aid Online (Oct. 27, 2016).

⁵¹ See Klein, *supra* note 20, at 10.

⁵² See *id.*

⁵³ *Federal Poverty Guidelines 2016*, MASS. LEGAL SERVS., <http://www.masslegalservices.org/content/federal-poverty-guidelines-2016>.

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- ⁵⁴ See *id.*
- ⁵⁵ See Telephone Interview with Teri Ross, *supra* note 50.
- ⁵⁶ See *Federal Poverty Guidelines 2016*, *supra* note 53.
- ⁵⁷ See *id.*
- ⁵⁸ Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOC. 2008. 339, 339 (2008).
- ⁵⁹ See Lisa Pruitt, *Law Stretched Thin*, 59 S.D. LAW REV. 466, 501 (2014).
- ⁶⁰ See *id.* at 502.
- ⁶¹ See, e.g., *Civil Legal Needs Study Update*, SOCIAL & ECONOMIC SCIS. RESEARCH CTR., WASH. ST. UNIV., (2015), <http://ocla.wa.gov/wp-content/uploads/2015/06/CLNS14-Executive-Report-05-28-2015-FINAL1.pdf>.
- ⁶² *Federal Poverty Guidelines 2016*, *supra* note 53.
- ⁶³ REBECCA SANDEFUR, *ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 9* (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa._aug._2014.
- ⁶⁴ This disparity is particularly acute in family court. See MASS. ACCESS TO JUSTICE COMM’N, *supra* note 26, at 4.
- ⁶⁵ Sara Sternberg Greene, *Race, Class, and Access to Civil Justice* (Duke Law School, Working Paper, 2015), http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6141&context=faculty_scholarship.
- ⁶⁶ CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC AMERICAN BAR ASSOCIATION, *LEGAL NEEDS AND CIVIL JUSTICE, A SURVEY OF AMERICANS: MAJOR FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY 11* (1994).
- ⁶⁷ See Klein, *supra* note 20, at 8.
- ⁶⁸ See *id.*
- ⁶⁹ See *id.* Only 22 percent of Black respondents said they trusted the courts, as compared to 75 percent of white respondents. *Id.* at 42.
- ⁷⁰ See *id.* at 56.
- ⁷¹ *Id.* at 60.
- ⁷² See, e.g., Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982).
- ⁷³ See, e.g., *id.*

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- ⁷⁴ See Klein, *supra* note 20, at 2.
- ⁷⁵ See *id.* at 3.
- ⁷⁶ See *id.* at 2.
- ⁷⁷ *Id.* at 3.
- ⁷⁸ See BOS. BAR ASS'N, *supra* note 20, at 15.
- ⁷⁹ See *id.*
- ⁸⁰ See, e.g., 2015 Financial Statements, GREATER BOSTON LEGAL SERVICES 4 (Dec. 31, 2015), <https://www.gbpls.org/sites/default/files/2015-financial-statements.pdf>
- ⁸¹ Deborah L. Rhode, *In the Interests of Justice: A Comparative Perspective on Access to Legal Services and Accountability of the Legal Profession*, 56 CURRENT LEGAL PROBS. 93, 113 (2003).
- ⁸² Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 130 (2010).
- ⁸³ Interview with D. James Greiner, Professor of Law, Harvard Law School, in Cambridge, Mass. (Mar. 7, 2016).
- ⁸⁴ Carrie Menkel-Meadow, *Legal Aid in the United States: The Professionalization and Politicization of Legal Services in the 1980's*, 22 OSGOODE HALL L. J. 29, 30 (1984).
- ⁸⁵ I. Glenn Cohen, *Rationing Legal Services*, 5 J. LEGAL ANALYSIS 221, 239 (2013).
- ⁸⁶ *Id.* at 290.
- ⁸⁷ Menkel-Meadow, *supra* note 84, at 66.
- ⁸⁸ Warren E. George, *Development of the Legal Services Corporation*, 61 CORNELL L. REV. 681 (1976).
- ⁸⁹ Organizations described in section 501(c)(3) of the tax code are charitable organizations. These organizations are restricted in the amount of lobbying they may conduct and must not be organized for the benefit of private interests. See Exemption Requirements - 501(c)(3) Organizations, Internal Revenue Servs. (Jun. 28, 2016), <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations>.
- ⁹⁰ 42 U.S.C. § 2996(1) (1974).
- ⁹¹ See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 1 (2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Irvin Molotsky, *Reagan Chooses Lawyer as Chief of Legal Aid Agency for the Poor*, N.Y. TIMES (Jan. 1, 1982), <http://www.nytimes.com/1982/01/01/us/reagan-chooses-lawyer-as-chief-of-legal-aid-agency-for-the-poor.html> (“A Washington lawyer who reportedly recommended abolishing the Legal Services Corporation last year was named by President Reagan today to head the agency, which provides legal aid to the poor.”).

⁹⁷ See *History of Civil Legal Aid*, NAT’L LEGAL AID & DEF. ASS’N (2011), http://www.nlada.org/About/About_HistoryCivil.

⁹⁸ Menkel-Meadow, *supra* note 84, at 55.

⁹⁹ EARL JOHNSON, *TO ESTABLISH JUSTICE FOR ALL: THE PAST AND FUTURE OF CIVIL LEGAL AID IN THE UNITED STATES* 731 (2014).

¹⁰⁰ Pub. L. 104-134 (1996).

¹⁰¹ See Elizabeth Holland, *Increasing LSC Funding Increases Access to Justice*, AMERICAN ASSOCIATION OF LAW LIBRARIES WASHINGTON BLOG (Apr. 15, 2014), <https://aallwash.wordpress.com/category/access-to-justice/>.

¹⁰² See *2013 LSC By The Numbers*, LEGAL SERVS. CORP., <http://www.lsc.gov/media-center/publications/2013-lsc-numbers>.

¹⁰³ MASS. LEGAL ASSISTANCE CORP., 2010 ANNUAL REPORT 2 (2010), <http://mlac.org/wp-content/uploads/2015/08/annualreport2010.pdf>.

¹⁰⁴ See *About Statutory Restrictions on LSC-funded Programs*, LEGAL SERVICES CORPORATION (last visited Dec. 18, 2016), <http://www.lsc.gov/about-statutory-restrictions-lsc-funded-programs>.

¹⁰⁵ *Id.*

¹⁰⁶ See *id.*

¹⁰⁷ See Klein, *supra* note 20, at 31.

¹⁰⁸ *Id.*

¹⁰⁹ *2016 Walk to the Hill*, EQUAL JUSTICE COALITION (last visited May 2, 2016), <http://equaljusticecoalition.org/walk/walk-to-the-hill-2016/>.

¹¹⁰ Lonnie A. Powers, *Press Release: MLAC Thanks Gov. Baker & Legislature for Supporting Civil Legal Aid Funding*,

MASSACHUSETTS LEGAL ASSISTANCE CORPORATION (July 12, 2016), <http://mlac.org/category/press-release-archives/>.

¹¹¹ See BOS. BAR ASS'N, *supra* note 20, at 5.

¹¹² See *What is IOLTA?*, NAT'L ASS'N OF IOLTA PROGRAMS, <http://www.iolta.org/what-is-iolta>.

¹¹³ *About Us*, MASSACHUSETTS INTEREST ON LAWYERS' TRUST ACCOUNTS, <http://www.maiolta.org/about/index.html>.

¹¹⁴ See Klein, *supra* note 20, at 15.

¹¹⁵ See *id.*

¹¹⁶ Press Release: Offering No Increase, House Ways & Means Committee Proposes \$13 Million in Funding for Civil Legal Aid in Fiscal Year 2015, MASS. LEGAL ASSISTANCE CORP. (2014), <http://www.mlac.org/offering-no-increase-house-ways-means-committee-proposes-13-million-in-funding-for-civil-legal-aid-in-fiscal-year-2015/>.

¹¹⁷ See *id.*

¹¹⁸ *Id.*

¹¹⁹ See *id.* at 8. Some of the evidence is anecdotal, such as evidence from Judge Moriarty, an Associate Justice in Middlesex Probate and Family Court, who noted that, on a given day, seventy percent of the cases before her involve an unrepresented litigant. Elaine Moriarty, *A Crisis in the Delivery of Services: Do Citizens Deserve Better?*, 56 BOS. BAR J. 10, 11 (2012).

¹²⁰ See *id.* at 308–12.

¹²¹ Jon D. Hanson & David Yosifon, *The Situational Character: A Critical Realist Perspective on the Human Animal*, 93 GEO. L.J. 1, 10 (2004).

¹²² See *id.* at 27.

¹²³ DAN ARIELY, PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS 241 (2009).

¹²⁴ See LEGAL SERVS. CORP., *supra* note 13, at 16.

¹²⁵ See Sandefur, *Access to Civil Justice*, *supra* note 58 at 339.

¹²⁶ See J.D. Boardman & S.A. Robert, *Neighborhood Socioeconomic Status and Perceptions of Self-Efficacy*, 43 SOC. PERSP. 117, 117 (2000).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See D. Barbier, *The Burnout Syndrome Of The Caregiver*, 33 PRESSE MEDICARE 394, 394 (1983).

¹³⁰ See G. W. Evans & M.A. Schamberg, *Childhood Poverty, Chronic Stress, and Adult Working Memory*, 106 PROC. NAT'L ACAD. SCI. 6545 (2009).

¹³¹ See Ericka Jenifer, Anger, Racism, Caste Discrimination and Posttraumatic Stress Disorder in African-American and Indian College Students (2009) (unpublished Ph.D. dissertation, Howard University) (on file with the Howard University Library).

¹³² See K. Bhui, S. Stansfeld, K. McKenzie, S. Karlsen, J. Nazroo & S. Weich, *Racial/Ethnic Discrimination and Common Mental Disorders Among Workers: Findings from the EMPIRIC Study of Ethnic Minority Groups in the United Kingdom*, 95 AM. J. PUB. HEALTH 497, 498 (2005).

¹³³ See Sandefur, *Access to Civil Justice* *supra* note 58 at 339.

¹³⁴ See M. Corcoran, *Rags to Rags: Poverty and Mobility in the United States*, 21 ANN. REV. OF SOCIOLOGY 243-44 (1995). Corcoran discusses studies that claim that "low IQs cause parental poverty; poor children are likely to inherit their parents' low IQs; and these children's low IQs, in turn, cause the children to be poor as adults." *Id.*

¹³⁵ A. Bandura, *Self-Efficacy: Toward a Unifying Theory of Behavioral Change*, 84 PSYCHOL. REV. 191, 193 (1977).

¹³⁶ See Mark Sheher et al., *The Social Efficacy Scale: Construction and Validation*, 51 PSYCHOL. REP. 663, 663 (1982).

¹³⁷ See Bandura, *supra* note 135 at 193.

¹³⁸ See, e.g., E.J. Callander & D.J. Schofield, *The Potential for Poverty to Lower the Self-Efficacy of Adults with Asthma: An Australian Longitudinal Study*, 8(2) ALLEGERY, ASTHMA & IMMUNOLOGY RES. 141, 143 (2016).

¹³⁹ Boardman & Robert, *supra* note 126, at 117.

¹⁴⁰ *Id.*

¹⁴¹ This proposition derives from the fact that low-income communities are the least likely to be able to access justice. *Cf.* Callander & Schofield, *supra* note 138; Sandefur, *Access to Civil Justice*, *supra* note 58.

¹⁴² See Bandura, *supra* note 135, at 195.

¹⁴³ See generally Frank Pajares & M. David Miller, *Role of Self-Efficacy and Self-Concept Beliefs in Mathematical Problem Solving: A Path Analysis*, 82 J. EDUC. PSYCHOL. 193 (1994).

¹⁴⁴ See Bandura, *supra* note 135, at 195.

¹⁴⁵ *Cf. id.*

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- ¹⁴⁶ *Id.* at 196.
- ¹⁴⁷ *Cf. id.*
- ¹⁴⁸ *Cf. id.*
- ¹⁴⁹ *Id.* at 198.
- ¹⁵⁰ *Cf. id.*
- ¹⁵¹ *Id.* at 200.
- ¹⁵² *Cf. id.*
- ¹⁵³ See generally CHRISTINA MASLACH, BURNOUT: THE COST OF CARING (1982).
- ¹⁵⁴ See CHRISTINA MASLACH, *Burnout: a Multidimensional Perspective*, in PROFESSIONAL BURNOUT: RECENT DEVELOPMENTS IN THEORY AND RESEARCH 1, 7 (T. Mark, W. B. Schaufeli, & C. Maslach, eds., 1993).
- ¹⁵⁵ Christina Maslach & Susan E. Jackson, *The Measurement of Experienced Burnout*, 2 J. ORG. BEHAV. 99, 99 (1981).
- ¹⁵⁶ See *id.* at 100.
- ¹⁵⁷ See Christina Maslach, Wilmar B. Schaufeli, & Michael P. Leiter, *Job Burnout*, 52 ANN. REV. PSYCHOL. 397, 403 (2001).
- ¹⁵⁸ See *id.*
- ¹⁵⁹ See *id.*
- ¹⁶⁰ See D. Barbier, *The Burnout Syndrome Of The Caregiver*, 33 Presse Medicare 394, 394 (1983).
- ¹⁶¹ See M. Z. Gonzalez, et al., *Adolescent Neighborhood Quality Predicts Adult dACC Response to Social Exclusion*, 10 Soc. COGNITIVE & AFFECTIVE NEUROSCIENCE 921 (2015).
- ¹⁶² RUTH LEVITAS, ET AL, THE MULTI-DIMENSIONAL ANALYSIS OF SOCIAL EXCLUSION 9 (2007).
- ¹⁶³ See *id.* at 10.
- ¹⁶⁴ See *id.* at 37.
- ¹⁶⁵ *Cf. id.*
- ¹⁶⁶ *Cf. id.*
- ¹⁶⁷ See Adam Benforado & Jon D. Hanson, *The Great Attributional Divide: How Divergent Views of Human Behavior are Shaping Legal Policy*, 57 EMORY L.J. 8 (2008).
- ¹⁶⁸ See *id.*
- ¹⁶⁹ See *id.*
- ¹⁷⁰ *Cf id.*
- ¹⁷¹ *Cf id.*
- ¹⁷² ANDREW PERRIN & MAEVE DUGGAN, PEW RESEARCH CENTER, AMERICANS' INTERNET ACCESS: 2000-2015 (2015).

¹⁷³ *Id.*

¹⁷⁴ *See id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *See* Joe Dysart, *20 Apps to Help Provide Easier Access to Legal Help*, ABA J. (Apr. 24, 2016), http://www.abajournal.com/magazine/article/20_apps_providing_easier_access_to_legal_help.

¹⁷⁹ *See id.*

¹⁸⁰ *See id.*

¹⁸¹ *See id.*

¹⁸² *See id.* DACA refers to Deferred Action for Childhood Arrivals.

¹⁸³ ABA Model Rule 1.2(c) allows for lawyers to unbundle services. The rule states “a lawyer may limit the scope of the representation if the limitation is reasonable under circumstances and the client gives informed consent”. *See* Stephanie Kimbro, *Using Technology to Unbundle in the Legal Services Community*, HARV. J. L. & TECH. OCCASIONAL PAPER SERIES (2013).

¹⁸⁴ Otherwise termed disaggregated legal services, Professor Stephanie Kimbro describes unbundling services as “a form of legal services in which the lawyer breaks down the tasks associated with a legal matter and provides representation to the client only pertaining to a clearly defined portion of the client’s legal needs” *Id.*

¹⁸⁵ *See, e.g., Replicable TIG Projects—Online Intake & Triage*, LEGAL SERVICES CORPORATION (2016), <http://www.lsc.gov/online-intake-tig-projects>.

¹⁸⁶ *CLEAR*Online*, NORTHWEST JUSTICE PROJECT (last visited Dec. 18, 2016), <https://waoi.legalserver.org/modules/a2j/intake.php>; *Center for Access to Justice & Technology*, CHICAGO-KENT COLLEGE OF LAW, ILLINOIS INSTITUTE OF TECHNOLOGY (last visited Dec. 18, 2016), <https://www.kentlaw.iit.edu/>.

¹⁸⁷ *See CLEAR*Online supra* note 185.

¹⁸⁸ *See, e.g., Request Legal Help from Legal Aid of North Carolina*, LEGAL AID OF NORTH CAROLINA (2016), <http://ww2.legalaidnc.org/apply/Default.aspx>.

¹⁸⁹ *Get Legal Help*, ILLINOIS LEGAL AID ONLINE (2016), <https://www.illinoislegalaid.org/get-legal-help>.

¹⁹⁰ <http://www.communitylegal.org/apply-online>

¹⁹¹ See *supra* note 184.

¹⁹² See, e.g., Illinois Legal Aid Online, *Legal Information*, <https://www.illinoislegalaid.org/about/our-work> (last visited Dec. 12, 2016).

¹⁹³ See LEGAL SERVS. CORP., *Our Grant Programs*, <http://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig> (last visited Dec. 13, 2016).

¹⁹⁴ See MASS. ACCESS TO JUSTICE COMM'N, *supra* note 26, at 6.

¹⁹⁵ OFFICE FOR ACCESS TO JUSTICE, U.S. DEP'T OF JUSTICE, *About the Office*, <http://www.justice.gov/atj/about-atj.html> (last visited Dec. 13, 2016),

¹⁹⁶ Dear Colleague Letter – Stimulating Research Related to the Use and Functioning of the Legal System, NAT'L SCI. FOUND (Mar. 15, 2013) (available at <http://www.nsf.gov/pubs/2013/nsf13076/nsf13076.jsp>).

¹⁹⁷ James Podgers, *New ABA President William Hubbard Wants to Close Legal Services Delivery Gap for the Poor*, ABA JOURNAL, http://www.abajournal.com/magazine/article/new_aba_president_william_hubbard_wants_to_closing_the_gap_in_legal_service/s (last accessed Dec. 13, 2016).

¹⁹⁸ *BBA Statewide Task Force to Expand Civil Legal Aid in MA*, BOSTON BAR ASSOCIATION, <http://www.bostonbar.org/public-policy/civil-legal-aid-in-ma> (last accessed Dec. 13, 2016).

¹⁹⁹ See *Access to Justice*, Massachusetts Court System, <http://www.mass.gov/courts/court-info/court-management/plan-initiatives/access-to-justice-gen.html> (last accessed Dec. 13, 2016).

²⁰⁰ See PERRIN & DUGGAN, *supra* note 172.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ AARON SMITH, PEW RESEARCH CENTER, U.S. SMARTPHONE USE IN 2015 (APR. 1, 2015).

²⁰⁵ Gretchen Livingston, PEW RESEARCH CTR., LATINOS AND DIGITAL TECHNOLOGY, 2010 (2011), <http://www.pewhispanic.org/2011/02/09/latinos-and-digital-technology-2010/>.

²⁰⁶ See Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. R. 2581, 2583 (1999).

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- ²⁰⁷ Model Code of Prof'l Responsibility EC 3-5 (1980).
- ²⁰⁸ Ray Worthy Campbell, *Rethinking Regulation and Innovation in the U.S. Legal Services Market*, 9 N.Y.U. J.L. & Bus. 1, 37 (2012) [hereinafter Campbell, *Rethinking Regulation*]. Campbell notes that a "blue ribbon ABA task force labored and failed" to define the practice of law. *Id.*
- ²⁰⁹ See Matthew Longobardi, *Unauthorized Practice of Law and Meaningful Access to the Courts: Is Law Too Important to be left to Lawyers?*, 35 CARDOZO L. REV. 2043, 2048 (2014).
- ²¹⁰ Denckla, *supra* note 206, at 2581.
- ²¹¹ See *id.* at 2592.
- ²¹² See Longobardi, *supra* note 209 at 2046.
- ²¹³ See *id.* at 2594.
- ²¹⁴ See *id.* at 2595.
- ²¹⁵ See CHARLES W. WOLFRAM, MODERN LEGAL ETHICS 825, 831 (practitioner's ed. 1986).
- ²¹⁶ *Id.*
- ²¹⁷ Longobardi, *supra* note 209, at 2053.
- ²¹⁸ See *In re Thompson*, 574 S.W.2d 365, 361 (Mo. 1978).
- ²¹⁹ See Denckla, *supra* note 206, at 2591-92.
- ²²⁰ See Campbell, *Rethinking Regulation*, *supra* note 208, at 37.
- ²²¹ See Kathleen E. Justice, Note, *There Goes the Monopoly: The California Proposal to Allow Nonlawyers to Practice Law*, 44 VAND. L. REV. 179 (1991). Completion of forms available to the public is generally not a violation of UPL. See *Dressel v. Ameribank*, 664 N.W.2d 151, 157 (Mich. 2003).
- ²²² See Richard Granat, *H&R Block Forced to Shut Down Immigrant Document Service by the Bar*, ELAWYERING BLOG (Mar. 14, 2015), <http://www.elawyeringredux.com/2015/03/articles/competition/hr-block-shuts-down-immigrant-document-service/>.
- ²²³ See *Janson v. LegalZoom.com, Inc.*, F. Supp. 2d 1053, 1057 (W.D. Mo. 2011).
- ²²⁴ See Campbell, *Rethinking Regulation*, *supra* note 208, at 45.
- ²²⁵ See *id.* at 46.
- ²²⁶ See e.g., Anne E. Langford, *What's in a Name? Notarios in the United States and the Exploitation of a Vulnerable Latino Community*, 7 HARV. LATINO L. REV. 115 (2004).
- ²²⁷ See, e.g., Federal Trade Commission (FTC) Act, 15 U.S.C. § 45(a). The Act regulates companies that make statements about

their privacy policies and then do something contrary to those policies, for example sharing information with third parties contrary to a written privacy policy. *Id.*; see also, e.g., *Gateway Learning Corps.*, FTC File No. 022-3047 (2004); *Standard for the Protection of Personal Information of Residents of the Commonwealth*, 201 CMR 17.00 MASS. GEN. LAWS ch. 93H (2009), <http://www.mass.gov/courts/docs/lawlib/201-209cmr/201cmr17.pdf>.

²²⁸ See *Standard for the Protection of Personal Information*, *supra* note 227.

²²⁹ See, e.g., California Online Privacy Protection Act (CALOPPA), CAL. BUS. & PROF. CODE § 22575-79 (West 2003).

²³⁰ See Model Rules of Prof'l Conduct R. 1.6(a) (1983).

²³¹ *Id.* at R. 1.7.

²³² Daniel W. Linna Jr. & Jessica M. Warren, *Common-Interest or Joint-Defense Agreements: Legal Requirements, Potential Pitfalls, and Best Practices*, 32 MICH. BUS. L.J. 11, 12 (2012).

²³³ See J. Randolph Evans & Shari L. Kleven, *Joint Defense and Common Interest Agreements: What's the Difference?*, DAILY REP. (Sept. 21, 2015), <http://www.dentons.com/en/insights/newsletters/2015/september/30/daily-report-in-practice/joint-defense-vs-common-interest-agreements>.

²³⁴ See Mass Rules of Prof'l Conduct R. 6.5 (2013).

²³⁵ Model Rules, *supra* note 230 at R. 6.5.

²³⁶ *Id.* at R. 6.5 cmt.

²³⁷ See, e.g., Brian D. Wassam, *Removing an Ethical Barrier to Serving the Poor*, MICH. BAR J. 54 (2002).

²³⁸ Interview with Erika Rickard, Access to Justice Coordinator for Massachusetts Trial Courts (Mar. 7 2016). Notes on file with authors.

²³⁹ See *id.*

²⁴⁰ See CITIZENS ADVICE SCOTLAND, <http://www.cas.org.uk>; see also Emails with Lauren Bruce, Citizens Advice Scotland (2016) (on file with the authors).

²⁴¹ CITIZENS ADVICE SCOTLAND, *supra* note 240.

²⁴² See *id.*

²⁴³ See *id.*

²⁴⁴ See *id.*

²⁴⁵ See *id.*

²⁴⁶ See Interview with Prof. D. James Greiner, Harvard Law School (Feb. 18, 2016). Notes on file with authors.

²⁴⁷ See, e.g., Kenneth V. Iserson & John C. Moskop, *Triage in Medicine, Part I: Concept, History, and Types* 49 ANNALS MOD. MEDICINE 275, 279 (2007).

²⁴⁸ See Greiner, *supra* note 246.

²⁴⁹ Please note that these mockups are not intended to showcase the app's possible graphic design; rather, they are meant to demonstrate the potential for an app-based triage or intake process.

²⁵⁰ App, DICTIONARY.COM (last visited Dec. 6, 2016), <http://www.dictionary.com/browse/app>.

²⁵¹ See *Responsive Web Design: What It Is and How to Use It*, SMASHING MAGAZINE (Jan. 12, 2011), <https://www.smashingmagazine.com/2011/01/guidelines-for-responsive-web-design/>.

²⁵² *Legal Resource Finder – Find Legal Aid*, MASSLEGALSERVICES, <http://www.masslegalservices.org/>; MASSLEGALHELP, <http://www.masslegalhelp.org/>.