

STRUCTURED DISCRETE TASK REPRESENTATION TO BRIDGE THE JUSTICE GAP: CUNY LAW SCHOOL'S LAUNCHPAD FOR JUSTICE IN PARTNERSHIP WITH COURTS AND COMMUNITIES

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INTRODUCTION

The Great Recession¹ and shrinking availability of low-income legal assistance² have accelerated the need for innovative and effective approaches to providing legal representation to under-resourced and under-represented individuals and communities. The deep and protracted recession has made more visible the long-standing need for legal services to address the urgent needs of low- and moderate-income litigants.³ The financial crisis created by the subprime and mortgage-backed securities meltdown⁴ resulted in

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¹ See, e.g., Marsha Mansfield & Louise G. Trubek, *New Roles to Solve Old Problems: Lawyering for Ordinary People in Today's Context*, 56 N.Y.L. SCH. L. REV. 367, 384 (2011–2012); Nathan Coppel, *Bar Raised for Law Grad Jobs*, WALL ST. J., May 6, 2010, at A3.

² See generally NEETA PATEL, BRENNAN CTR. FOR JUSTICE, CUT OFF AND CUT OUT, FUNDING SHORTFALLS FORCE MORE LOW-INCOME FAMILIES TO FACE CRITICAL LEGAL NEEDS ALONE (2011), available at <http://www.brennancenter.org/page/-/New%20needs%20update%20FINAL%20as%20of%205-19-11.pdf>.

³ For examples of myriad reports that document the severity of the justice gap over many years, see AM. BAR ASS'N [ABA] CONSORTIUM ON LEGAL SERVS. AND THE PUB., LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS: MAJOR FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY (1994), available at <http://www.abanet.org/legal-services/downloads/selaid/legalneedstudy.pdf>; ABA, AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE vii (1996). The current recession is raising an alarm in that legal needs are exploding and the societal costs of denying equal access to justice are becoming more apparent and immediate. See, e.g., LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET LEGAL NEEDS OF LOW INCOME AMERICANS (2009), available at http://www.lsc.gov/pdfs/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

⁴ Lisa van der Pool, *Lawyer Builds Case Against Law Schools*, BOSTON BUS. J. Mar. 30, 2012, <http://www.bizjournals.com/boston/print-edition/2012/03/30/lawyer-builds-case-against-law-schools.html> (stating that “[o]verall, the legal sector lost 45,000 jobs during the ‘Great Recession,’ according to the National Association for Law Place-

record home foreclosures,⁵ job losses, and evictions.⁶ These effects have prompted a need to devise new ways to address significant legal needs with limited and diminishing resources.⁷

At the same time, law schools are experiencing a combined reality check and identity crisis.⁸ The myth of abundant, high-paying legal jobs has been dispelled for the vast majority of law graduates.⁹ The complaint that there are too many lawyers is meeting the crisis of too little access to legal representation for all but the wealthy. These combined realities highlight the need for law schools to take an active role in addressing the “justice gap”¹⁰ while preparing law students for new, nimble, and effective approaches to practice.

The City University of New York School of Law (“CUNY Law”), long at the vanguard of public interest legal education and social justice lawyering,¹¹ is engaged in several initiatives designed to address the justice gap, some of which use structured discrete task representation.

This Article will consider the state of the justice gap and briefly review the national conversation about the use of “unbun-

ment (“NALP”) in Washington, D.C. Law school graduates from the class of 2010 faced the worst job market since the mid-1990s, with an employment rate of 87.6, a drop from 91.9 in 2007, which had been a 20-year high, per NALP.”).

⁵ See, e.g., *Failure to Recover: The State of Housing Markets, Mortgage Servicing Practices, and Foreclosures*, Hearing Before the Committee on Oversight and Government Reform, 112th Cong. 132–44 (2012) (testimony of Meghan Faux, Deputy Director, South Brooklyn Legal Services).

⁶ See generally NAT’L COMM’N ON THE CAUSES OF THE FIN. & ECON. CRISIS IN THE U.S., THE FINANCIAL CRISIS INQUIRY REPORT 408–10 (2011), available at <http://www.fcic.gov/report/>.

⁷ See generally N.Y. STATE COURTS, ACCESS TO JUSTICE 2 (2010), available at www.courts.state.ny.us/ip/nya2j/.

⁸ See Mansfield & Trubek, *supra* note 1; see also Kirsten A. Dauphinais, *Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in its Wake*, 10 SEATTLE J. FOR SOC. JUST. 49 (2011).

⁹ Ameet Sachdev, *Joblessness, Debt Mount for Recent Law School Grads*, CHICAGO TRIBUNE, June 22, 2012, http://articles.chicagotribune.com/2012-06-22/business/ct-biz-0622-chicago-law-20120622_1_law-school-law-placement-job-market (explaining that “[s]lightly more than half of the Class of 2011—55 percent—had found full-time, permanent jobs as lawyers nine months after graduation. It was the worst job market in more than 30 years, according to the National Association for Law Placement.”).

¹⁰ The “justice gap” refers to the gap between the aspirational goals of equal justice and legal representation for all, and the reality that the vast majority of low- and moderate-income individuals in need of legal assistance are unable to obtain a lawyer either on their own or through legal services providers who are oversubscribed and underfunded. See generally Alizabeth Newman, *Bridging the Justice Gap: Building Community by Responding to Individual Need*, 17 CLINICAL L. REV. 615, 621–30 (2011).

¹¹ Michelle Weyenberg, *The Best Law Schools for Public Interest*, PRELAW MAG., Winter 2011, at 26.

dled legal services,”¹² noting the tension between the ideal of full scope legal representation for low-income litigants facing serious legal challenges—like the loss of a home or the loss of parental rights—and the practical, fiscal, and structural realities impeding full scope representation. It will then note the role of the legal academy, generally, in addressing the justice gap. The Article will describe several innovative efforts to address the justice gap through law school post-graduate programs that provide continuing support for pro bono representation, with a focus on CUNY Law’s programs.

Most notably, the Article will describe the LaunchPad for Justice (“LaunchPad”), a project of CUNY Law’s Community Legal Resource Network (“CLRN”). In partnership with the New York State Unified Court System’s Access to Justice efforts, CUNY Law’s CLRN created a structure to support the provision of supervised, limited scope representation to low-income, self-represented litigants in housing court and elsewhere. Working with the courts, local lawyers, communities, and elected officials, LaunchPad is a first-of-its-kind program designed to position CUNY Law’s public-interest-minded graduates to provide urgently needed legal services in a program of training and supervision that will help them launch their own solo and small firm practices. The LaunchPad focuses on two persistent urgent needs exacerbated by the current economic crisis: the need for lawyers to represent low-income people facing eviction, foreclosure, or other legal crises, and the need to provide training and meaningful work for recent law graduates and to lay the foundation for solo and small firm practice in a lean and unforgiving job market.

Finally, the Article will note the ways in which these promising, practical approaches to discrete task representation—providing structure, supervision, and community context—can serve as models that are responsive to concerns about unbundling. For example, it will note ways in which the LaunchPad addresses the promise and challenge of providing quality unbundled legal services to communities in need. The Article will close by briefly noting lessons learned, opportunities for replication, and work yet to

¹² In this Article, I use the terms “unbundled legal services,” “discrete task representation,” and “limited scope representation” interchangeably. For purposes of the LaunchPad discussion that follows, the focus is on discrete task representation in limited court appearances and settlement conferences. See William Hornsby, *Challenging the Academy to a Dual (Perspective): The Need to Embrace Lawyering for Personal Legal Services*, 70 MD. L. REV. 420, 433–35 (2011).

be done regarding efforts to respond appropriately to the legal needs of unrepresented litigants.

I. ADDRESSING THE JUSTICE GAP

The urgent need to increase and improve the availability of legal services to low-income litigants unable to secure legal representation is beyond debate.¹³ Ongoing debate exists, however, about how best to address the “justice gap” in effective, fair, and sustainable ways.¹⁴ Discrete task representation has emerged as one among several approaches to address the justice gap.

Some proposals focus on the need to increase the funding for and availability of full scope civil legal services programs, including proposals for “Civil *Gideon*”—establishment of a right to counsel in civil matters involving important interests.¹⁵ Others focus on eliminating restrictions on legal services that prohibit engagement in certain classes of impact cases that could foster substantive change more effectively than individual representation alone.¹⁶ Some advocates and scholars support pro se court reform measures such as simplifying the litigation process and providing mechanisms such as user-friendly forms, manuals, and web sites to help self-represented litigants navigate relatively routine matters more simply and quickly.¹⁷ A few favor deregulation and a loosening of unauthorized practice restrictions so that paralegals and other non-lawyers may represent litigants in certain routine matters in particular areas of specialization.¹⁸ Some propose tapping particular communities of lawyers to increase available pro bono legal assistance, such

¹³ See, e.g., LEGAL SERVS. CORP., *supra* note 3, at 5–6 (noting the continued and increased need for legal services for low-income litigants and the decline in available resources to serve them); TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK (2011), available at www.nycourts.gov/ip/access-civil-legal-services [hereinafter TASK FORCE REPORT].

¹⁴ See generally Quintin Johnstone, *Law and Policy Issues Concerning the Provision of Adequate Legal Services for the Poor*, 20 CORNELL J.L. & PUB. POL’Y 571 (2011).

¹⁵ The Civil *Gideon* movement is the most prominent among these proposals. As set forth in a 2006 ABA Resolution, Civil *Gideon* proponents encouraged legislatures to “provide legal counsel as a matter of right at public expense to low-income persons in those categories of adversarial proceedings where basic human needs are at stake.” Mark C. Brown, *Establishing Rights Without Remedies? Achieving an Effective Civil Gideon by Avoiding a Civil Strickland*, 159 U. PA. L. REV. 893, 894 (2011); see also Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37, 43–44 (2010).

¹⁶ DEBORAH RHODE, ACCESS TO JUSTICE 66–68 (2011).

¹⁷ See Forrest S. Mosten, *Unbundled Legal Services Today—and Predictions for the Future*, FAMILY ADVOCATE, Fall 2012, at 14.

¹⁸ See, e.g., Laurel A. Rigertas, *Stratification of the Legal Profession: A Debate in Need of a Public Forum*, 2012 J. PROF. LAW, at 79 (arguing in favor of establishing classes of non-

as retired and emeritus attorneys¹⁹ and recent law graduates.²⁰

A growing number argue that all of these approaches and more are needed to address the current situation in which eighty percent of income-eligible persons in need of legal assistance are unable to retain a lawyer.²¹ Indeed, there is increasing recognition that a range of approaches is needed to address the justice gap:

Despite the best and continuing efforts of the civil Gideon and access to justice movements, and the need for greater funding for legal services provision, it may be time to face the fact that there will never be enough funding to provide a full attorney-client relationship with a competent lawyer to all low-income persons interacting with, or contemplating interaction with, the legal system. This is probably true even in areas of so-called “basic human needs.”²²

Given this recognition, attention has focused on providing immediate, limited scope representation where appropriate while simultaneously continuing efforts to secure full scope representation for poor and low-income litigants in important civil matters.

A. *Discrete Task Representation*

Discrete task representation takes a variety of forms. Indeed, the fairly exhaustive *ABA Handbook on Limited Scope Legal Assistance*²³ identifies thirteen types of limited scope representation. These include: centers that provide information, self-help resources, and advice; hotlines; online information, self-help resources, and limited advice; stand-alone interviews and advice; mediation coaching; “collaborative lawyering”; preparing or reviewing documents and pleadings; coaching throughout litigation; representation, including coaching, in litigation with limited dis-

lawyer service providers to provide certain classes of legal services at lower cost); RHODE, *supra* note 16, at 87–91.

¹⁹ See generally Kelly S. Terry, *Do Not Go Gentle: Using Emeritus Pro Bono Attorneys to Achieve the Promise of Justice*, 19 GEO. J. ON POVERTY L. & POL’Y 75 (2012).

²⁰ See Chief Judge Jonathan Lippman’s *Law Day 2012 Remarks*, N.Y.L.J. (online) May 1, 2012 (announcing the initiation of a requirement that recent law graduates provide at least fifty hours of pro bono service as a prerequisite to bar admission).

²¹ See, e.g., Russell Engler, *Pursuing Access to Justice and Civil Right to Counsel in a Time of Economic Crisis*, 15 ROGER WILLIAMS L. REV. 472 (2010).

²² James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118, 2209–10 (2012).

²³ ABA, SEC. OF LITIG., *HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE: REPORT OF THE MODEST MEANS TASK FORCE* (2003), available at <http://apps.americanbar.org/litigation/taskforces/modest/report.pdf> [hereinafter *HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE*].

putes; representation in an initial case or proceeding that affects the result in a subsequent case or proceeding in which the litigant appears pro se; hybrids; lawyer of the day programs; and group representation.²⁴

Clients often seek “segmented” services from lawyers—“different lawyers may conduct ‘due diligence’, [sic] give a legal opinion, provide tax advice, and prepare legal documents in a single, major transaction.”²⁵ Segmented representation also may occur in the litigation context, with in-house counsel working as a team with outside counsel. Solo and small firm lawyers also provide limited scope representation through client consultation, advising, or document preparation assistance without entering an appearance in the case.²⁶ In the context of unrepresented low-income litigants, legal services and pro bono counsel also provide limited scope assistance.

All forms of pro bono and limited scope representation require careful thought and planning to ensure that the assistance offered is thorough, effective, and accessible and that it improves the position of self-represented litigants in handling important legal matters. There is also concern that institutional pro bono efforts in “bottom-line” driven law firms provide appropriate and necessary legal services and do no harm.²⁷ A related concern has to do with cultural competence and the need to ensure that lawyers understand the cultural and structural contexts surrounding the representation.²⁸

Much discussion about how best to address the justice gap and about the benefits and drawbacks of various forms of discrete task representation takes place in the legal services community, courts, and bar associations. The conversation includes problem-solving

²⁴ *Id.* at 18–40.

²⁵ *Id.* at 5.

²⁶ *Id.* at 6.

²⁷ See Lenore F. Carpenter, “We’re Not Running a Charity Here”: Rethinking Public Interest Lawyers’ Relationships with Bottom-Line Driven Pro Bono Programs, 29 BUFF. PUB. INT. L.J. 37, 56 (2010–2011) (citing Deborah Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027 (2008)).

²⁸ See, e.g., Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Community Through Case Supervision in a Client Service Legal Clinic*, 28 WASH. U. J.L. & POL’Y 37, 54–56 (2008) (describing the importance of cultural competence and providing an example of cultural issues in representation that involved Navajo blankets); ABA, STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID § 2.4 (2006) available at <http://apps.americanbar.org/domviol/trainings/Interpreter/CD-Materials/civillegalaidstds2006.pdf>; see also Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001).

approaches designed to meet urgent needs as well as significant concerns about effective and ethical representation.²⁹

B. Discrete Task Representation to Bridge the Justice Gap: The National Conversation

The provision of unbundled or limited scope legal services as a response to the plight of low-income unrepresented litigants faces a number of concerns and critiques. Indeed, the ongoing national conversation about how to address the justice gap has long included discussions about the pros and cons of limited scope representation.³⁰ One of the main issues is how to ensure that the representation is competent, ethical, and valuable.³¹ Competent representation requires that an attorney have a fairly sophisticated understanding of the area of law and of the procedures, operations, and customs of the court.³² This can be understood to mean that only attorneys familiar with the particular area of law and the procedures and customs of the relevant courts should serve as limited scope volunteers in that legal subject and those courts. More pragmatically, it means that volunteer attorneys must obtain sufficient education, training, and supervision before they provide discrete task representation in an area of law that is new to them.³³ This then raises concerns about how to organize a limited scope volunteer attorney program that is efficient, ethical, cost-effective, and sustainable.

Another frequently raised concern is informed consent—the requirement that litigants understand clearly the scope and limits of the representation and affirmatively consent to being represented for the discrete task only. This requires careful attention to how litigants are counseled about the nature and scope of the rep-

²⁹ See, e.g., Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL'Y 453, 455–56 (2011) (noting ethical and efficacy concerns about unbundling); Kaitlyn Aitken, *Unbundled Legal Services: Disclosure Is Not the Answer*, 25 GEO. J. LEGAL ETHICS 365 (2012).

³⁰ See Laura K. Abel, *The Role of Speech Regarding Constraints on Attorney Performance: An Institutional Design Analysis*, 19 GEO. J. ON POVERTY L. & POL'Y 181, 224–28 (2012); see also Elizabeth McCulloch, *Let Me Show You How: Pro Se Divorce Courses and Client Power*, 48 FLA. L. REV. 481 (1996).

³¹ See, e.g., Steinberg, *supra* note 29.

³² See MODEL RULES OF PROF'L CONDUCT, R 1.1 (2012) (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”).

³³ HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE, *supra* note 23, at 64 (advising attorneys of the requirement of competence in limited scope representation and advising that lawyers stay within their field of practice).

resentation. It calls for drafting careful, tailored retainer agreements defining the nature of the attorney-client relationship, along with its scope, purposes, and limits. Informed consent also requires consideration of the range of issues that may arise in representation, including potential conflicts, and, as noted above, the lawyer's degree of competency to handle the matter. These concerns relate to core notions of lawyer ethics, professionalism, and client protection. Indeed, the ethical implications of discrete task representation have gained significant attention over the last several years.³⁴

A related issue has to do with the role of the court and the degree to which the court is made aware that the lawyer and client appearing before it have a limited scope engagement.³⁵ This concern relates to the court's role vis-à-vis self-represented litigants and the risk that limited scope representation, if poorly done, could place the litigant, her adversary, or the court in a worse position than if the litigant appeared entirely pro se. For example, some judges have expressed concern about documents written by attorneys and presented by pro se clients because they create questions of candor and attorney accountability. Others have expressed concerns about attorney accountability for poor drafting, or for failure to uncover important issues related to the particular tasks for which lawyer assistance is provided.³⁶

Another, broader concern about the promotion of unbundled legal services to help address the justice gap relates to whether such an approach is in tension with and might serve to thwart efforts to gain traction in supporting Civil *Gideon*—public funding for full scope representation of the indigent in essential civil legal matters like eviction.

Some observers, particularly those concerned with gaining greater support for full scope representation for low-income litigants in important civil matters, raise the concern that providing structured limited scope representation will be viewed as a panacea. They argue that an approach that begins as a much-needed quick fix may come to be viewed as having solved all or enough of the problem of unequal access to justice, establishing a two- or multi-tiered system of justice with the unintended consequence of placing an imprimatur on unequal access to justice.³⁷ Some of these concerns became more pronounced as unbundling garnered

³⁴ See *id.* at 82–115.

³⁵ See, e.g., Aitken, *supra* note 29.

³⁶ See *id.*; see also Abel, *supra* note 30, at 226–27.

³⁷ See, e.g., Abel *supra* note 30, at 227–28.

support among court systems, advocates, and bar associations as a mechanism for addressing, even partially, tremendous unmet legal need.³⁸

Over time, there has been an increased realization of the fiscal limits of Civil *Gideon* as well as the reality that even with robust funding, significant unmet legal need will remain. Setbacks in efforts to attain Civil *Gideon* requirements have caused some observers to focus more squarely on discrete task representation and various forms of unbundled and court-sponsored assistance as more attainable and more feasible ways to assist self-represented civil litigants.³⁹ These concerns also may be heightened in response to arguments explicitly advocating for stratification of the legal profession and for greater leniency with respect to unauthorized practice restrictions on paralegals and other lay providers of legal and quasi-legal assistance.⁴⁰ While there clearly is a need to expand the options available to those in dire need of legal assistance, attention also must be given to applying standards to support client protection and effective representation.⁴¹

One response to concerns about the increased use of alternative forms of pro bono assistance to litigants in the wake of the current economic crisis is the realization that neither discrete task representation nor Civil *Gideon* will come close to meeting extant civil legal needs. The economic crisis has drawn back the curtain to reveal the immensity of the need for civil legal services for people facing life-altering legal problems who cannot afford a lawyer.⁴² Now more than ever, there is widespread realization that equal access to justice is virtually unattainable under the current structure.⁴³ Given the scope and seriousness of immediate needs, every available mechanism should be utilized to improve access to justice.

³⁸ HANDBOOK ON LIMITED SCOPE LEGAL REPRESENTATION, *supra* note 23, at 4 (noting the belief that limited scope representation may help provide legal services where unavailable).

³⁹ See Russel Engler, *Reflections on a Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel and When Might Less Assistance Suffice*, 9 SEATTLE J. SOC. JUST. 97, 99 (2010).

⁴⁰ Rigertas, *supra* note 18, at 128–36 (delineating several proposals to support lay advocacy).

⁴¹ See, e.g., Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, 94 JUDICATURE 156 (2011); Carpenter, *supra* note 27, at 37; RHODE, *supra* note 16, at 81–91.

⁴² LEGAL SERVS. CORP., *supra* note 3, at 5.

⁴³ See, e.g., Helaine Barnett, “Justice for All,” 40 STETSON L. REV. 861 (2011) (discussing the impact of the recession on legal services for the poor, as well as needs and challenges of providing such services).

C. *Effective Approaches to Discrete Task Representation*

At the same time, attention must be paid to the quality of the services provided and to evaluating various programs to determine their efficacy. Providers of unbundled legal services must consider the appropriateness of the classes of cases that are included, the manner in which clients are informed about the scope and limits of representation, and how best to manage cases in which clients are represented in certain components only.

Consideration also must be given to the kinds of legal services that lend themselves to limited scope representation. Structural, funding, and ethical issues must be taken up before a program is implemented. Capacity also must be considered with respect to judges, court staff, program administrators, and volunteer attorneys. The volume of cases and limitations of time, attention, and resources all require careful consideration of various issues if the provision of unbundled legal services is to operate effectively.

To the extent that law school clinics and programs engage in poverty law, law faculty and administrators have added important perspectives to the discussion of how best to provide both full and limited scope services and have implemented a variety of clinical models.⁴⁴ There is a growing acknowledgement that the legal academy as a whole has much to contribute to efforts to close the justice gap. Law schools also have a central role in training future lawyers and inculcating the importance of service to the poor and under-represented as a component of professional responsibility and a broad commitment to justice.⁴⁵

II. THE LEGAL ACADEMY'S ROLE IN SUPPORTING PRO BONO
EFFORTS AND DISCRETE TASK REPRESENTATION
TO ADDRESS THE JUSTICE GAP

Recognition of the legal academy's important role in supporting the profession's commitment to public interest practice and to pro bono service is growing.⁴⁶ For example, in recent reports and amendments to its accreditation standards, the ABA has expressed

⁴⁴ See, e.g., TASK FORCE REPORT, *supra* note 13, at app. 17 (listing examples of law school programs that address the "essentials of life").

⁴⁵ See, e.g., Linda F. Smith, *Fostering Justice Throughout the Curriculum*, 18 GEO. J. ON POVERTY L. & POL'Y 427, 446 (2011).

⁴⁶ See, e.g., TASK FORCE REPORT, *supra* note 13; Marcy L. Karin & Robin R. Runge, *Toward Integrated Law Clinics that Train Social Change Advocates*, 17 CLINICAL L. REV. 563 (2011); Deborah Maranville et al., *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 523 (2011) (discussing the social justice roots of clinical legal education); Antoinette Sedillo Lopez,

an increased commitment to pro bono and public service requirements by law schools.⁴⁷ In addition, in New York State, Chief Judge Jonathan Lippman recently imposed a pro bono requirement on all law graduates and others seeking admission to the bar. The increase in pro bono service requirements must be supported by the development of structured training, monitoring, and evaluation to ensure that the services provided add value and succeed in creating a more level playing field for otherwise unrepresented litigants. Support structures should be efficient and sustainable, making the best use of attorney time and providing effective mechanisms for training, supervision, consultation, evaluation, and continuing education. The legal academy is an important source of models and an important partner in improving the provision of legal services for the poor and unrepresented.

Law school clinics often provide opportunities for students and faculty to serve communities in need.⁴⁸ Indeed, many note that law school clinics provide an excellent model for addressing public service and pro bono requirements among law students. However, pedagogical requirements and limited time and supervisory capacity can make it difficult to expand the scope of services and methods of teaching, preparation, and supervision to serve a broad number of students and litigants. Because clinics are necessarily limited by time and number of students and litigants served, their focus generally is, and should be, on ensuring that clinical experiences give students the solid, deep, and transferable legal skills that prepare them to represent litigants effectively in practice and through pro bono lawyering.⁴⁹

As noted below, there is much that clinics can do to lay a foundation for thoughtful, structured pro bono efforts that provide meaningful legal assistance to support individuals and communities in need. However, whether or not students have engaged in a

Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training, 7 CLINICAL L. REV. 307 (2001).

⁴⁷ See generally ABA DIV. FOR LEGAL SERVS., MODEL RULE 6.1, http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html (last updated Nov. 29, 2006) ("Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono public legal services per year . . .").

⁴⁸ See, e.g., *Clinics & Concentrations*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/clinics.html> (last visited Mar. 13, 2013); Karin & Runge, *supra* note 46, at 567.

⁴⁹ See generally Victor M. Goode, *There Is a Method(ology) to this Madness: A Review and Analysis of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223 (2000) (detailing the importance and depth of the clinical feedback process).

clinic that models effective limited scope representation, there is a need to support law school graduates not only in fulfilling pro bono requirements, but in helping them to do so in a manner that is meaningful, professional, and effective. It is also important to instill in law students a sense of professional obligation to help narrow the justice gap by providing legal services to poor and unrepresented litigants. In addition to its well-known clinical programs, CUNY Law offers pro bono post-graduate models to assist in this endeavor.

A. *CUNY Law's Public Interest Initiatives: Efforts to Close the Justice Gap*

CUNY Law's mission⁵⁰ is to train students to become excellent public interest and public service lawyers.⁵¹ The law school's motto, "law in the service of human needs," describes its mandate to be responsive to the urgent legal needs of under-resourced and under represented communities in New York City and State, around the nation, and indeed globally.⁵² To realize its mission, CUNY Law develops innovative approaches to legal education designed to support public interest practice. These approaches include establishing partnerships with communities,⁵³ governmental entities,⁵⁴ legal services organizations,⁵⁵ non-profits,⁵⁶ and the private bar to find

⁵⁰ See, e.g., *Trustees*, CUNY SCHOOL OF LAW, <http://www.cuny.edu/about/trustees/hearings/queens/law.html> (last visited Mar. 13, 2013) ("[CUNY School of Law] trains lawyers to serve the underprivileged and disempowered and to make a difference in their communities.").

⁵¹ See, e.g., *Employment Data for the J.D. Class of 2011 (as of 9 months after graduation)*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/career/employment-statistics.html> (last visited Mar. 13, 2013) (showing approximately 41% of CUNY Law graduates in public interest jobs and 12% in public service, such as government work and judicial clerkships).

⁵² See N.Y. EDUC. LAW § 6201 (McKinney 2012) (setting forth the purpose of the City University of New York).

⁵³ See, e.g., Press Release, First In Nation Collaboration: NY State Courts and CUNY Law School Pilot "LaunchPad For Justice" (Nov. 13, 2009), available at <http://www1.cuny.edu/mu/law/2009/11/13/first-in-nation-collaboration-ny-state-courts-and-cuny-law-school-pilot-launchpad-for-justice/>; Bill Egbert, *Tenants Win Free Year of Rent*, N.Y. DAILY NEWS, Mar. 22, 2009, <http://www.nydailynews.com/new-york/tenants-win-free-year-rent-article-1.371381>.

⁵⁴ See *Mediation: A Conversation with Beryl Blaustone*, CUNY LAW MAG., Spring 2010, at 17.

⁵⁵ *Economic Justice Project*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/clinics/ejp.html> (last visited Mar. 13, 2013) (recognizing these efforts, the New York State Bar Association selected the Project for the President's Pro Bono Service Law Student Group Award in 2002, and the Clinical Legal Education Association gave the Project its Award for Excellence in 2004).

⁵⁶ See *Mediation: A Conversation with Beryl Blaustone*, *supra* note 54, at 17.

ways to better serve legal needs related to fundamental life issues like economic viability, shelter, and family relations, among others.

In carrying out this mission, CUNY Law consistently has developed and implemented approaches to legal education that merge theory and practice in service of its public interest mission.⁵⁷ That work includes practical training for all students through required third year clinic and concentration programs that engage every law student in supervised client representation as a prerequisite to graduation.⁵⁸

It also includes the concept of the “longitudinal law school,” in which CUNY Law extends the concepts behind its sequenced curriculum, merges theory and practice, and provides structured practical support for social justice lawyering through and beyond law school graduation. Through CLRN and other programs, the law school commits to continued engagement with its graduates and alumni by providing training, continuing legal education, networking, and mentoring. This work has earned CUNY Law’s CLRN the ABA 2010 Louis M. Brown Award for Legal Access,⁵⁹ among other recognitions.

CUNY Law’s curricular work in support of public interest practice and its commitment to continued support for solo, small firm, non-profit, and other social justice practices provides opportunities for graduates to serve communities in need effectively and sustainably. The persistence and immediacy of the need for legal representation in low- and moderate-income communities across New York City and State and across the United States highlights the need for multiple creative efforts to address the justice gap.⁶⁰

⁵⁷ For examples of CUNY Law faculty scholarship merging theory and effective practice strategies in clinical and practice contexts addressing social justice issues, see, e.g., Newman, *supra* note 10, at 615; Carmen Huertas-Noble, *Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change*, 17 CLINICAL L. REV. 255 (2010); Beryl Blaustone & Carmen Huertas-Noble, *Lawyering at the Intersection of Mediation and Community Economic Development: Interweaving Inclusive Legal Problem Solving Skills in the Training of Effective Lawyers*, 34 WASH. U.J. L. & POL’Y 157 (2010); Joseph A. Rosenberg, *Poverty, Guardianship, and the Vulnerable Elderly: Human Narrative and Statistical Patterns in a Snapshot of Guardianship Cases in New York City*, 16 GEO. J. ON POVERTY L. & POL’Y 315 (2009).

⁵⁸ CUNY SCHOOL OF LAW, STUDENT HANDBOOK 2012–2013 2–3 (2012).

⁵⁹ See Press Release, CUNY School of Law, CLRN to Receive ABA 2010 Louis M. Brown Award for Legal Access (Jan. 28, 2010), *available at* <http://www1.cuny.edu/mu/law/2010/01/28/cuny-laws-community-legal-resource-network-clrn-to-receive-the-american-bar-associations-2010-louis-m-brown-award-for-legal-access/>.

⁶⁰ See, e.g., CHARLES L. OWEN ET AL., ACCESS TO JUSTICE: MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS 3 (2002) (noting the dramatic increase in self-repre-

In addition to traditional clinics and internships, CUNY Law and CLRN's pro bono initiatives can provide models for the broader legal academy and the legal profession. They can also establish and strengthen partnerships among law schools, lawyers, communities, and the courts. CLRN⁶¹ is one of the more robust examples of CUNY Law's significant support for graduates engaged in or seeking to establish solo and small firm community practices.

With a focus on serving individuals and communities often priced out of legal services,⁶² CLRN was designed to support the development of "low bono" and community-based practices designed to meet this legal services need. The LaunchPad, discussed more fully below,⁶³ extends concepts of clinical training, lifelong learning, longitudinal learning, and social justice lawyering by structuring pro bono service through a robust apprenticeship model. In this way, CLRN and the LaunchPad respond to various concerns about using discrete task representation to serve indigent clients.⁶⁴

B. *The Community Legal Resource Network ("CLRN")*

CUNY Law's CLRN⁶⁵ is a lawyer collaborative that supports CUNY Law graduates and alumni as they work to set up and run solo or small-group law practices devoted to serving pressing needs of the low- and moderate-income communities that are underserved by lawyers.⁶⁶

sented litigants, particularly in courts of limited jurisdiction, many involving essential human needs).

⁶¹ See discussion *infra* section II.B.

⁶² See, e.g., Editorial, *Addressing the Justice Gap*, N.Y. TIMES, Aug. 24, 2011, at A22.

⁶³ See discussion *infra* section II.C.

⁶⁴ See discussion *infra* section III.

⁶⁵ See Kristen Booth Glen, *To Carry It On: A Decade of Deaning After Haywood Burns*, 10 N.Y. CITY L. REV. 7, 26–38 (2006). CLRN was founded in 1998 as a project conceived by CUNY Law Dean Kristen Booth Glen and Clinic Director Sue Bryant. Fred Rooney was hired to implement CLRN and has served as its Director since fall of 1998, establishing the Incubator for Justice and LaunchPad for Justice, among other initiatives. While serving as CUNY Law's Academic Dean, it was my particular privilege to support the establishment of the LaunchPad, its funding efforts, and program support. Through the addition of a law school course on Access to Justice taught by Justice Fern Fisher, law students had the opportunity to study the legal and structural bases for the justice gap and learned law, procedure, and practice related to representing low-income litigants in housing, family, and consumer matters in New York. The course strengthened court partnerships and expanded participation in the LaunchPad and Volunteer Lawyer for a Day programs.

⁶⁶ See *Community Legal Resource Network*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/clrn.html> (last visited Feb. 6, 2013) (providing an overview and description of CLRN and its programs).

CLRN is designed to support successful community law practice by providing the networking, infrastructure assistance, business planning, sharing of legal and law practice expertise, and continuing legal education options that are taken for granted in large law firms serving wealthy clients.⁶⁷ The goal is to support excellent representation of low- and moderate-income clients through a network of solo and small firm practices committed to providing access to justice. The personal and professional rewards of such practice can be great,⁶⁸ and increasing access to justice in underserved communities is an enormously important sector of public interest law—the focus of CUNY Law’s mission. Without mentoring support and additional training, it is easy for new attorneys to founder in isolated, economically precarious situations.⁶⁹ CLRN, based at CUNY Law, also helps new attorneys find one another for networking opportunities through virtual connections such as e-mail lists, other networking technologies, and opportunities to meet through continuing legal education opportunities and networking events. Individual members thus retain autonomy and the ability to practice in a community of their choice while, at the same time, tapping into a virtual and actual community of more than 200 lawyers.

In late 2007, CLRN established a project, the Incubator for Justice (“Incubator”), in Manhattan. The Incubator trains CLRN members over eighteen months in basic business issues such as billing, record-keeping, technology, bookkeeping, and taxes.⁷⁰ At the

⁶⁷ See Margaret Graham Tebo, *Help for ‘Store Front’ Lawyers: CUNY’s Community Legal Resource Network is Thriving—And Growing. Now, Other Law Schools are Joining to Support Solo and Small-Firm Practitioners*, A.B.A. J., Jan. 2003, at 44, 46–48; *Continuing Legal Education*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/clrn/cle.html> (last visited Feb. 6, 2013) (describing CLRN’s continuing legal education program).

⁶⁸ Indeed, participants in CLRN programs designed to support community-based social justice practice and to support pro bono representation consistently report great satisfaction in this work when it is well structured and supported by training. This information is on file with CLRN. The number of registered attorneys is 250, though any CUNY Law alumnus may become part of the network.

⁶⁹ See, e.g., Leslie C. Levine, *The Ethical World of Solo and Small Firm Practitioners*, 41 HOUS. L. REV. 309 (2004) (noting that generally small firm practitioners face difficulties in obtaining formal advice from colleagues, staying up-to-date on the law, and lack of systems for checking conflicts of interest, among other things); Luz E. Herrera, *Reflections of a Community Lawyer*, 70 MOD. AM. 39 (Special Summer–Fall Issue, Special Insert Commemorating the Tenth Annual Hispanic Law Conference) (2007); Barbara Curran, Comment, *Unavailability of Lawyers’ Services for Low Income Persons*, 4 VAL. U. L. REV. 308 (1970) (stating that few small practitioners engage in pro bono or low bono work because of difficulty bearing the financial burden).

⁷⁰ *Continuing Legal Education*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/clrn/cle.html> (last visited Feb. 6, 2013).

same time, the Incubator facilitates participants' involvement in larger justice initiatives and in subject-based training in immigration law, labor and employment law, and other topics that will arise continually as participating attorneys build their practices. Since its inception, the Incubator has supported the establishment of solo and small firm practices, including community practices designed to provide legal support to address the difficulties brought on by the recession, ongoing economic crisis, and systemic issues requiring creative legal responses.

Through networking, planning, modeling, and providing continuing legal education tailored to members' needs, CLRN's vision is to support each lawyer's success while also supporting collective work to establish effective legal services options to improve access to justice for underserved low- and moderate-income people. CLRN seeks to help CUNY Law alumni engage in work that addresses significant areas of unmet legal need. CLRN's programs, including the LaunchPad, exemplify ways in which law schools can play an important role in supporting pro bono, community-based, and public interest practice by applying the concept of the "longitudinal law school."⁷¹

C. Development of the LaunchPad for Justice

The LaunchPad is an example of an effort to address the justice gap that draws upon CUNY Law's extensive clinical experience as well as its post-graduate efforts to support the development of excellent community-based legal practices, and its partnership with the court system's access to justice efforts. The LaunchPad is an example of resourcefulness and partnerships that can engage law schools, law graduates, seasoned attorneys, and courts in structured, ongoing access to justice efforts.

The LaunchPad is an innovation developed in response to multiple urgent needs. First, the Great Recession that began in 2008 made access to legal services both more urgent and less availa-

⁷¹ The longitudinal law school concept considers training for law practice as involving the development of skills for lifelong learning and engagement with the social justice goals of the profession. To support this notion, the law school provides continuing support to its alumni engaging in community based and social justice practice. For CUNY law school, the longitudinal law school concept is the logical extension of a sequenced curriculum, that is designed to build students' skills and knowledge on a strong foundation, increasing expertise and responsibility over time through planning, action, critique, and reflection. See, e.g., WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 64-67 (2007).

ble.⁷² The already huge proportion of litigants unable to afford legal representation exploded as a result of foreclosures, evictions, debt collections, and bankruptcies incident to the economic meltdown.⁷³ Second, law school graduates, particularly those interested in pursuing public service practice, were finding that because of funding declines for public interest law practices and overall declines in the job market, legal work was difficult to come by⁷⁴ even as legal needs for low-income people were increasing exponentially.⁷⁵ In addition, the traditional funding streams to support the provision of free and low-cost legal services were drying up. Funding from Interest On Lawyer Accounts (“IOLA”), which connects legal services to government funding from private sources, has declined.⁷⁶

The LaunchPad was developed as a problem-solving innovation and, in some ways, as a natural extension of CLRN’s Incubator program and CUNY Law’s clinical Access to Justice efforts. The LaunchPad’s focus is on new CUNY Law graduates, extending CLRN’s goals and outreach to recent graduates facing a difficult job market and a local New York City community facing urgent legal needs. The LaunchPad is designed to provide these new lawyers training and mentoring that starts while they await formal admission to the bar and, in many cases, continues through the development of their practice.

The LaunchPad prepares and supports recent law graduates in providing limited scope representation or unbundled legal services to meet urgent legal needs within the capacity of the graduates and their attorney supervisors to handle professionally. A key component of the LaunchPad is its partnership with the New York

⁷² See, e.g., TASK FORCE REPORT, *supra* note 13, at 15–18 (noting the urgent need for civil legal services for low-income individuals and families and the impact of the recession in worsening the “justice gap”).

⁷³ See *Failure to Recover: The State of Housing Markets, Mortgage Servicing Practices, and Foreclosures*, Hearing Before the Committee on Oversight and Government Reform, 112th Cong., 132–44 (2012) (testimony of Meghan Faux, Deputy Director, South Brooklyn Legal Services); see also PATEL, *supra* note 2.

⁷⁴ Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, Aug. 25, 2009, at B1.

⁷⁵ See LEGAL SERVS. N.Y.C., NEW YORKERS IN CRISIS 4 (2009), available at http://www.legalservicesnyc.org/storage/lsny/PDFs/new_yorkers_in_crisis.pdf.

⁷⁶ TASK FORCE REPORT, *supra* note 13, at 48–52 (noting the precipitous decline in IOLA funds due to the decline in interest rates following the 2008 financial crisis and continuing through today); Chief Judge Jonathan Lippman, *The City University of New York Presents a Conversation with Chief Judge Jonathan Lippman*, 14 CUNY L. REV. 3, 8–12 (2010).

State Unified Court System's Access to Justice Program.⁷⁷ In particular, the Volunteer Lawyer for a Day ("VLFD") program provides an excellent mechanism for training and partnering with CUNY Law and recent graduates to assist unrepresented litigants by providing structured, supervised limited scope representation.

VLFD is "the first court-sponsored limited scope representation program in New York City."⁷⁸ It is "focused on nonpayment proceedings in the Housing Court, Resolution Part. Housing Court matters, however, are only one of the types of proceedings in which limited scope representation is useful. The court has launched limited scope representation programs in other areas, including areas of consumer debt, foreclosure and family matters."⁷⁹ The VLFD program primarily engages experienced practicing attorneys who participate as part of their pro bono service or personal interest in volunteering. Practicing attorneys use their expertise to provide free limited scope representation in high need areas of law without having to commit to full scope representation that likely would not be feasible given the lawyers' practices and other commitments.

The LaunchPad partners with VLFD through a structured apprenticeship model. Through the LaunchPad, CUNY Law graduates are trained in substantive law and procedural practice in areas of particular need such as eviction proceedings in housing court, consumer bankruptcy issues, or family law issues.⁸⁰ Participants receive intensive training in the key legal issues in the context of current issues unrepresented litigants are bringing to court.⁸¹ The training includes a review of key areas of law, detailed procedural requirements, court forms, and the interaction of the New York State and City housing laws and rules with federal funding and other requirements and restrictions.

For example, the New York City Housing Court training in-

⁷⁷ See *Court-Sponsored Volunteer Attorney Programs*, N.Y. STATE UNIFIED COURT SYS., <http://www.nycourts.gov/attorneys/volunteer/vap/index.shtml> (last visited Feb. 20, 2013).

⁷⁸ HON. FERN FISHER, BEST PRACTICES FOR THE ADMINISTRATION OF COURT-SPONSORED VOLUNTEER LAWYER FOR THE DAY PROGRAMS (LIMITED SCOPE/UNBUNDLED LEGAL SERVICE PROGRAMS) 2 (Jan. 2010), http://www.nycourts.gov/ip/nya2j/pdfs/NYSA2J_BestPracticesVLFD.pdf.

⁷⁹ *Id.*

⁸⁰ Most recently, the LaunchPad will expand to include a program for uncontested divorces. E-mail from Ben Flavin, Cmty. Legal Res. Network, to author (Jan 11, 2013 10:17 EST) (on file with author).

⁸¹ *Id.* For example, the training for Spring 2013 LaunchPad fellows includes training on how to advocate for repairs, conduct traverse hearings, analyze rent breakdowns, and conduct intakes, as well as the fundamentals of landlord-tenant law. LAUNCHPAD FELLOWSHIP TRAINING SCHEDULE SPRING 2013 (on file with author).

cludes courses in handling non-payment,⁸² holdover,⁸³ and Housing Part actions;⁸⁴ conducting traverse hearings; and an extensive ethics course on landlord-tenant representation and volunteer lawyering. Course participants are instructed in the legal, procedural, and practical components of such actions. The training is designed to equip the graduates with not only the general law and big picture issues, but also with specific and pressing issues that arise when representing low-income tenants faced with eviction.

The training enhances the general information, guidance, and forms provided to pro se litigants and volunteer attorneys, alerting LaunchPad participants to key issues and concerns that might be more familiar to seasoned volunteer attorneys. For example, attention is given to current issues and practices with respect to the complex maze of public housing regulations. The training also places the representation within the broader social context as it relates to the lack of adequate housing, jobs, and public assistance, as well as issues related to poverty and existing imbalances in access to justice.⁸⁵ Finally, the training incorporates issues of cultural competence and the dynamics of particular court practice.⁸⁶

The program then connects participants with a supervising attorney who works in conjunction with the New York State Unified Court System's VLFD or other access to justice initiatives in the

⁸² See *Starting a Case*, N.Y. STATE UNIFIED COURT SYS., <http://www.nycourts.gov/courts/nyc/housing/startingcase.shtml#requirements> (last visited Mar. 20, 2013) (defining a nonpayment case as one brought by the landlord to collect unpaid rent and explaining that a tenant may be evicted for non-payment of rent).

⁸³ See *Starting a Holdover Case*, N.Y. STATE UNIFIED COURT SYS., <http://www.nycourts.gov/courts/nyc/housing/startingholdover.shtml> (last visited Mar. 20, 2013) (defining a holdover case as one brought to evict a tenant or a person in the apartment who is not a tenant for reasons other than simple nonpayment of rent and explaining that a holdover case is much more complicated than a nonpayment case and can have many variations).

⁸⁴ See *Starting an HP Proceeding to Obtain Repairs*, N.Y. STATE UNIFIED COURT SYS., <http://www.nycourts.gov/courts/nyc/housing/startingcase.shtml#requirements> (last visited Mar. 20, 2013) (defining "HP actions" as those involving rent withholding because of a landlord's alleged failure to complete necessary repairs and explaining that such actions generally are brought through an Order to Show Cause Directing the Correction of Violations and that such actions require an inspection by the New York City Department of Housing Preservation and Development's Division of Code Enforcement in support of the Order to Show Cause and accompanying petition).

⁸⁵ See *Poverty Simulation*, N.Y. STATE UNIFIED COURT SYS., <http://www.nycourts.gov/ip/nya2j/PovertySimulation.shtml> (last visited Mar. 20, 2013) (describing the poverty simulation conducted by the New York State Court's Access to Justice Program, in which volunteers play the role of community resource person).

⁸⁶ The 2013 LaunchPad training includes daily Housing Part observations. LAUNCHPAD FELLOWSHIP TRAINING SCHEDULE SPRING 2013 (on file with author); see also Email from Ben Flavin, *supra* note 80.

subject areas of focus in the training. The participants conduct intake, counseling, and sometimes limited scope representation, depending on their degree of training and experience, the nature of the client's case, and the appropriateness of the model of representation to the circumstances. Important components of the success of the LaunchPad program include its well-matched partnership with the New York State courts' robust and active Access to Justice efforts and its establishment through CUNY Law's CLRN.

D. The New York State Unified Court System's Access to Justice Efforts Supporting Discrete Task Representation

The leadership of the New York State Unified Court System has long recognized the need for creative ways to provide legal representation to poor and middle-class litigants in New York State and across the country.⁸⁷ Legal services providers and pro bono attorneys providing full scope representation alone do not come close to meeting the vast need for free and low cost legal representation.⁸⁸ The provision of limited scope representation—or “discrete task representation” or “unbundled legal services”⁸⁹—is another way to help serve the legal needs of self-represented litigants who cannot afford to retain a lawyer.⁹⁰ With limited scope representation “the lawyer and client agree that the lawyer will provide some, but not all of the work involved in traditional full-service representation.”⁹¹ Thus, rather than an arrangement in which the lawyer and client agree upon a full scope of representation, both agree on discrete legal tasks to be performed. The delivery of legal services in this way allows the client and the lawyer to identify those tasks best matched to the lawyer's expertise and available time,

⁸⁷ N.Y. STATE COURTS, *supra* note 7; *see also* Engler, *supra* note 15, at 40–43 (2010); Rochelle Klempner, *Unbundled Legal Services in Litigated Matters in New York State: A Proposal to Test the Efficacy Through Law School Clinics*, 30 N.Y.U. REV. L. & SOC. CHANGE 653, 654 (2006).

⁸⁸ *See* TASK FORCE REPORT, *supra* note 13, app. 7 (noting that “99 percent of tenants are unrepresented in eviction cases in New York City and 98 percent are unrepresented outside of the City, 99 percent of borrowers are unrepresented in hundreds of thousands of consumer credit cases filed each year in New York City, 97 percent of parents are unrepresented in child support matters in New York City, and 95 percent are unrepresented in the rest of the state; and 44 percent of homeowners are unrepresented in foreclosure cases throughout [the] State.”). Of course, the provision of limited scope representation is meant to address urgent current needs and is not meant to displace efforts to provide full, fair, and equal representation to low-income litigants facing the loss of key needs.

⁸⁹ FISHER, *supra* note 78, at 4.

⁹⁰ HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE, *supra* note 23, at 4.

⁹¹ Klempner, *supra* note 87, at 654.

keeping the client's costs down, while permitting the lawyer flexibility to manage her or his caseload and while serving critical legal needs.⁹²

The New York State courts have taken a remarkably active leadership role in establishing and supporting limited scope representation to help address the urgent needs of self-represented litigants.⁹³ The Access to Justice efforts implemented under Chief Judge Lippman's and Justice Fisher's leadership take a variety of forms, including volunteer attorney programs, do-it-yourself forms for litigants, community outreach to educate the public about the justice system, and assigned counsel projects serving senior citizens in housing court, among others.⁹⁴ Indeed, the New York State Access to Justice program includes virtually all of the thirteen kinds of unbundled legal services identified in the *ABA Handbook on Limited Scope Legal Assistance*.⁹⁵

As noted above, discrete task representation is routinely provided outside of the litigation context. Because there are many ways in which lawyers and others might assist individuals facing issues involving legal documents or a court appearance, it should be noted that the limited scope assistance discussed here "involves the exercise of legal judgment and the application of law to facts to help clients resolve legal problems."⁹⁶ The VLFD program is unusual in that it involves limited scope representation tailored to in-court appearances in housing, family, and consumer matters.

Recognizing the urgent need to provide legal representation in cases involving fundamental human needs like shelter, financial subsistence, and family composition, the New York State Unified Court System has explored ways in which unbundled legal services can be delivered effectively, ethically, and responsibly in connection with crucial court appearances.⁹⁷ Understanding that the

⁹² See, e.g., Fern Fisher-Brandveen & Rochelle Klempner, *Unbundled Legal Services: Untying the Bundle in New York*, 29 FORDHAM URB. L. J. 1107 (2002).

⁹³ See N.Y. STATE COURTS, *supra* note 7 (describing various Access to Justice initiatives established in the New York State Courts).

⁹⁴ *Id.*

⁹⁵ The New York State Courts Access to Justice website contains a number of resources to assist self-represented litigants. See *id.*; see also HANDBOOK ON LIMITED SCOPE REPRESENTATION, *supra* note 23, at 18–40.

⁹⁶ HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE, *supra* note 23, at 7 (noting that "lawyers who provide this assistance create attorney-client relationships with the people whom they help. We distinguish this assistance from 'legal information,' which lawyers (and others) can provide without creating an attorney-client relationship.").

⁹⁷ See VOLUNTEER LAWYER FOR A DAY PROJECT REPORT: A TEST OF UNBUNDLED LEGAL SERVICES IN NEW YORK CITY HOUSING COURT, apps. 4–6, at 69–100 (2008) [hereinafter VLFD REPORT], available at <http://www.nycourts.gov/courts/nyc/housing/pdfs/vlfd>

court system's ability to provide direct assistance is limited by both its role and its capacity, efforts have been made to establish structures and partnerships with the bar, legal services organizations, and the legal academy to improve access to justice by providing assistance to litigants who cannot afford to hire a lawyer and for whom essential needs hang in the balance.⁹⁸

Among the most promising efforts for purposes of partnering, reaching litigants at pivotal points, and capacity building is the provision of structured discrete task representation for key court appearances on critical matters including shelter, family relations, and basic fiscal well-being. The VLFD program is supported by a structure through which pro bono attorneys can assist unrepresented litigants through limited scope representation at important junctures in their cases.⁹⁹ The program provides training, supervision, and a structure that helps both volunteer lawyers and self-represented litigants gain an understanding of the scope and limits of the representation and provide useful and effective assistance during court appearances when litigants tend to be most in need of legal assistance.¹⁰⁰ For example, the housing court program operates in Civil Court on Tuesday and Thursday in Manhattan, and Monday and Wednesday in Brooklyn.¹⁰¹ During those times, a supervising attorney is present. The volunteer lawyers advise the program coordinator and supervising attorney of the days and times that they will be participating.¹⁰² Some volunteers serve in an intake capacity. They greet self-represented litigants and talk with them to determine whether those interested in seeking limited scope representation are eligible for the program.¹⁰³ Those litigants deemed eligible are provided detailed information orally and in writing about the program and the scope and limits of representation. They are provided limited scope retainer agreements and are assigned a volunteer attorney.¹⁰⁴ The volunteer attorney meets with the litigant to go over the case, ask questions, review any docu-

dreport_0208.pdf (setting forth results of surveys and evaluations of unbundled legal services efforts and volunteer lawyer for a day programs and describing structures and training components).

⁹⁸ See TASK FORCE REPORT, *supra* note 13.

⁹⁹ VLFD REPORT, *supra* note 97, at 11–16.

¹⁰⁰ *Volunteer Lawyer for the Day Program Prospective Volunteers*, N.Y. STATE UNIFIED COURT Sys., http://www.courts.state.ny.us/courts/nyc/housing/vlfd_hsg_prospective_attys.shtml#overview (last visited Mar. 23, 2013).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ VLFD REPORT, *supra* note 97, app. 3 at 11–14.

¹⁰⁴ *Id.*

mentation that the litigant has, and prepare with the litigant for the day's court appearance. The volunteer attorney may consult with the supervising attorney, who is very experienced in both the subject area and local practice, to determine whether additional information should be gathered or additional avenues of relief should be considered.¹⁰⁵ The volunteer attorney then appears on behalf of the litigant and may engage in settlement discussions with the opposing counsel.¹⁰⁶

E. The LaunchPad Partnership With VLFD: Strengthening the Model

The LaunchPad partners with the VLFD program while also serving as an apprenticeship that builds upon graduates' law school and clinical experiences. The LaunchPad adds a process and structure for intensive training, continuing legal education, and mentoring to the law graduates before they represent litigants in a limited scope capacity.¹⁰⁷

When funding is available, the LaunchPad also provides modest stipends to the graduates who are yet to obtain employment to help carry them through the program period. Funding for the LaunchPad has come from a variety of public and private sources including the City University of New York's Workforce Development Initiative. Given the dearth of available jobs—legal or otherwise—the modest stipends go a long way in enabling recent law graduates to sustain themselves while engaging in this important work and gaining legal skills in high need practice areas.

The program generally begins with an application process in early August, following the bar exam. Fellows are selected and the fellowship begins in early September with orientation, training, and shadowing current attorney volunteers and supervisors.¹⁰⁸ The LaunchPad fellows begin volunteering in late September to early October and commit to a minimum of six months of service.¹⁰⁹ The fellows are required to commit significant time to training and continuing education. They then work with a supervising attorney and more experienced volunteer attorneys to engage in representation in housing court, family court, and small claims court.

While observing the operation of the LaunchPad as it operates

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ E-mail from Ben Flavin, *supra* note 80; Fellowship Application Materials, Cmty. Legal Res. Network (2013) (on file with author).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

with the VLFD program, I had the occasion to talk with a few volunteer lawyers and with some of the litigants they represented. Both the litigants and the volunteer lawyers I talked with described significant positive experiences with the program. The litigants I met with were amazed and relieved that they had the opportunity to be represented in housing matters that were so important to them, yet for which they had been unable to find legal assistance. One litigant said that he had been to housing court several times and did not know that had he shared with the court information about the condition of his apartment or his public assistance status, he might have avoided an earlier eviction that wound up costing him and the state more money than necessary.¹¹⁰ Another litigant told me that when she arrived at court, she had no idea what she was going to tell the judge. She was relieved when the volunteer lawyer not only reviewed her case and represented her in her court appearance, but also helped her to arrange a settlement with the landlord's attorney that would prevent eviction and get necessary repairs done.

Several litigants noted that the involvement of the volunteer lawyer helped them to avoid eviction by gathering necessary facts, bringing pertinent information to the court's attention, and encouraging the landlord's attorney to negotiate a favorable settlement. All of the volunteer law graduates in the LaunchPad with whom I spoke commented on how energized they felt about being able to assist litigants facing imminent eviction and the dire consequences that would follow. They noted that the program provided effective training to support their representation, but that they learned a great deal more each day in the program—about law, procedure, and how to work effectively with litigants, opposing counsel, the courts, and colleagues.¹¹¹ The volunteers said that having a supervising attorney on-site at the courthouse and available for consultation helped them feel confident in their representation and accelerated their learning.¹¹²

Several said that the learning curve while in the program was steep, but the climb was both quick and effective. After a few weeks of representation, their knowledge and understanding of the relevant law, regulations, and court procedures increased significantly as did their level of confidence.¹¹³ All of the volunteers I spoke with

¹¹⁰ TASK FORCE REPORT, *supra* note 13, at app. 10.

¹¹¹ VLFD REPORT, *supra* note 97, at app. 5.

¹¹² *Id.*

¹¹³ *Id.*

said that they would continue to provide pro bono service as an attorney based on the experience with the LaunchPad and the observation of the extent of urgent, unmet legal needs in the courts.¹¹⁴ Indeed, most of the participants continued to serve as volunteers well after the official program period ended and some continued to volunteer even after obtaining employment.

Important to LaunchPad's success is its emphasis on structured training, supervision, reflection, and feedback. These elements draw upon components of effective clinical pedagogy and practice. In turn, clinical programs are establishing innovative approaches to providing more extensive assistance to communities in need through structured discrete task representation models that incorporate both individual and systemic issues.

III. THE LAUNCHPAD: A MODEL RESPONSIVE TO CONCERNS ABOUT DISCRETE TASK REPRESENTATION BY LAW GRADUATES AND LAWYERS

In identifying structures and mechanisms for the delivery of unbundled legal services, planners and providers must be attentive to concerns about efficacy and equity.¹¹⁵ Segmented services must be delivered in a manner that appropriately serves clients, ensures that lawyers meet their professional and ethical responsibilities, helps rather than hinders the provision of justice, and supports improved outcomes.¹¹⁶ There has been much discussion among scholars, practitioners, and judges about the benefits and risks of using discrete task representation as a mechanism to improve access to justice for low-income unrepresented litigants.¹¹⁷

Over time, the most virulent opposition to the use of limited scope representation in the areas of poverty law has given way to increased realization of the scope of unmet need and the lack of resources to support full representation. Still, many of the concerns voiced by opponents of the use of unbundled legal services as a primary mechanism for addressing unmet civil legal needs de-

¹¹⁴ *Id.*

¹¹⁵ See generally RHODE, *supra* note 16 (citing critiques of discrete task representation and ways to address them).

¹¹⁶ See generally Richard Zorza, *Discrete Task Representation Ethics and the Big Picture*, 40 FAM. CT. REV. 19 (2002).

¹¹⁷ Mansfield & Trubek, *supra* note 1, at 384 (noting the "resistance and fear" within the legal profession to re-envisioning the lawyer's role and the practice of law. Such fears relate to the use of cooperative efforts, technology, social science research, and other innovations as potentially undermining lawyer professionalism).

serve consideration.¹¹⁸

Indeed, a national conversation about how best to address the justice gap and whether and how the provision of unbundled legal services fit as part of that effort has long been underway and has evolved over time.¹¹⁹ Many of the concerns raised go to the heart of structural injustice embedded in our social and legal systems.¹²⁰ Some of the more particular concerns focus on the needs and realities facing litigants and the legal profession.

A. *How the LaunchPad Model Responds to Issues and Needs in Providing Unbundled Legal Services*

Building on the notion of a social justice lawyering apprenticeship, the LaunchPad provides a structure and support for in-court discrete task representation that goes beyond the court system's capacity to train and prepare recent law school graduates. The LaunchPad design builds on and strengthens lawyering skills—fact gathering, research, legal drafting, advocacy, negotiation, cultural competency, and collaboration—developed through the law school's sequenced curriculum and capstone clinics. It does this in a fast paced, high stakes, and high need environment.

The model also approaches the work in a manner that gives attention to the realities of the particular court environment and to the social and structural backdrop of the legal issues presented. Building on CUNY Law's clinical models and attention to lawyer competencies, LaunchPad training includes reference to the legal, social, cultural, and practical dynamics at work in a particular court. Ethical issues, as well as the roles that judges, court staff, lawyers, and litigants play in the system, are considered as recent law graduates navigate not only the legal landscape of housing or family law, but also the interaction among all of the players in housing court, family court, or other tribunals.

The availability of a supervising attorney together with a cohort of participants helps make the process of unpacking the dynamics of the particular system explicit and likely more quickly and easily mastered. The combined circumstances of training, teamwork, and supervision also help participants identify mechanisms

¹¹⁸ See generally Richard Zorza, *An Overview of Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue*, 43 FAM. L.Q. 519 (2009).

¹¹⁹ Engler, *supra* note 21, at 68 (detailing the evolution of Civil Gideon and discrete task support for self-represented litigants over time).

¹²⁰ See generally RHODE, *supra* note 16; Sameer Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008).

for problem-solving that both respect and flex the boundaries outlined by the roles of each of the key players in the process.

The LaunchPad is therefore much more than a one-shot pro bono program. Its goal as a social justice legal apprenticeship is not only to train graduates in the particular legal matters to be addressed. It is also meant to broaden and deepen participants' experience and expertise in the range of lawyer competencies in areas of particular legal need and to create and support a culture of service among new lawyers.

The LaunchPad accomplishes these goals while providing much needed "work" to recent law graduates and helping them to understand that there is no shortage of social justice work to be done, especially, though not exclusively, in times of economic crisis.¹²¹ Viewed as an apprenticeship and as a component of the longitudinal law school concept, the LaunchPad inculcates in recent law graduates the understanding that pro bono and public service are important professional obligations central to the goal of improving justice for all.

New York Chief Judge Jonathan Lippman's recent requirement of at least fifty hours of pro bono service as a prerequisite to bar admission¹²² is an explicit and concrete articulation of this professional obligation. The ABA Section on Legal Education's attention to law student pro bono participation demonstrates a national trend to consider robust pro bono participation as part of a lawyer's professional commitment.

The LaunchPad provides a model for effective pro bono apprenticeship in the context of limited scope representation. It identifies important planning and structural considerations which other law schools can reference to support effective student and graduate pro bono efforts.

This model responds to several concerns about the provision of unbundled representation of otherwise self-represented litigants unable to afford a lawyer. For example, the LaunchPad provides a model for training and supervision that, although far more limited than what is provided in a law school clinical setting, draws on practical, structural, and contextual approaches found in clinical legal education. The LaunchPad model gives attention to detailed

¹²¹ The LaunchPad is designed to last beyond the particular exigencies presented by the Great Recession. The legal job market may improve and transform over time. Changes in the economy as well as projected reductions in the number of people applying to law school support this prediction. Less likely to change in the foreseeable future is the constant and continued need to address the justice gap.

¹²² See Chief Judge Jonathan Lippman's *Law Day 2012 Remarks*, *supra* note 20.

training in the area of law, as well as to overarching socioeconomic, court-based, and legal policy issues. The model provides on-site supervision by attorneys with expertise, while maintaining high expectations of each LaunchPad participant, emphasizing their responsibility for excellent independent representation in keeping with professional norms and responsibilities.

The LaunchPad also keeps clear the role of the court as a supportive, yet sufficiently neutral partner. While working cooperatively with the court system, LaunchPad organizers ensure that participants work independently on behalf of the clients they represent. Ethical and professional issues, including the scope and limits of the lawyer's role, particular issues that arise in the limited scope context, and the importance of informed consent and of cultural competence, are addressed in the program.

As the LaunchPad begins its fourth year of operation, evaluation and the consideration of options for replication and expansion are paramount concerns. This is particularly important given that the degree of legal need is not likely to abate, and given the New York State courts' efforts to expand pro bono service. Evaluation of the LaunchPad to date has shown positive results from the perspective of litigants served and program participants' experience. Most evaluation focuses on the experiences of all participants in the court setting.

Additional review and evaluation is needed to determine the degree to which the LaunchPad can support more systemic changes in courts and communities. Consideration also should be given to the extent to which the model might be used in other settings, such as mediation and transactional work related to foreclosures, consumer debt cases, and other matters.

CONCLUSION

The Great Recession has highlighted the need to develop innovative and effective ways to deliver pro bono assistance to address urgent unmet legal needs. The legal academy has an important role in helping to meet those needs by preparing law students for professional practice that includes the professional and ethical commitment to support and improve access to justice for the poor and underserved. CUNY Law, consistent with its mission, has long taken that role seriously, establishing innovative clinics and programs to provide urgent legal services to underserved individuals and communities.

With the announcement of pro bono requirements as a pre-

requisite to bar admission, New York State's Chief Judge has concretized the professional obligation of lawyers to contribute to improving access to justice by engaging in pro bono representation. In establishing models to support pro bono efforts among students and recent graduates, New York law schools and legal organizations have a ready partner in the New York State Unified Court System.

The LaunchPad for Justice provides a model for effective supervised pro bono practice that helps to address legal needs and to respond to concerns about unbundled representation. The LaunchPad's apprenticeship approach and structural supports provide a model and framework that can be replicated and reimagined for other areas of pro bono discrete task representation.