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## Foreword: With People Struggling and the Law Failing, What Are the Solutions to the Access to Justice Crisis in America?

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**FOREWORD: WITH PEOPLE STRUGGLING AND  
THE LAW FAILING, WHAT ARE THE SOLUTIONS  
TO THE ACCESS TO JUSTICE CRISIS IN  
AMERICA?**

*David S. Udell\**

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## INTRODUCTION

On February 9, 2024, the National Center for Access to Justice, the Louis Stein Center for Law and Ethics, the *Fordham Urban Law Journal*, and Fordham Law School jointly hosted a symposium titled, *With People Struggling and the Law Failing, What Are the Solutions to the Access to Justice Crisis in America?* More than 500 people gathered during the course of the day for panel presentations and conversation about leading-edge policy solutions to the crisis in access to justice.

The *Fordham Urban Law Journal* follows up now with the publication of this foreword and seven articles authored by Symposium panelists that align with the Symposium's sessions on abolition, civil right to counsel, democratization of law, and safeguards apart from legal representation, including approaches that prioritize racial justice.

In bringing the Symposium's ideas to readers of the *Journal*, I will share my own thoughts on the access to justice movement, drawing on my own experiences in reform initiatives in New York and at the national level. In doing so, I will suggest that the movement has evolved as follows: (1) creation of the civil legal services bar in response to urban crises; (2) innovation in response to self-represented litigants with millions of legal problems in the American state courts; and (3) acceleration of the movement in light of the tens of millions of additional legal needs of people without counsel who are entirely outside of the American state courts. In this foreword, I also introduce the Symposium's four sessions and seven writings.

### I. EMPOWERING COMMUNITIES WITH CIVIL LEGAL SERVICES LAWYERS

When I became a legal services lawyer in New York City, it was not so long after Richard Nixon, entering his final months as president, signed into law the Legal Services Corporation Act.<sup>1</sup> The idea was simple — coming out of the urban riots in the late 1960s, people should have access to lawyers to help solve their legal problems and the government should fund this function.<sup>2</sup> It would be better for everyone to rely on the rule of law to resolve

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1. Legal Services Corporation Act, Pub. L. No. 93-355, § 2, July 25, 1974, 88 Stat. 378 (codified as amended at 42 U.S.C. § 2996), [https://www.lsc.gov/sites/default/files/LSC/images/pr\\_act.pdf](https://www.lsc.gov/sites/default/files/LSC/images/pr_act.pdf) [<https://perma.cc/SG3X-4UJ3>].

2. See generally Jean C. Cahn et al., *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1317–52 (1964). This Symposium foreword discusses a specific set of events in which the civil legal aid bar was involved during the 1980s. There is a substantial literature describing the origin and earlier history of the civil legal aid movement, long pre-dating the creation of the Legal Services Corporation, including policy reform initiatives in the areas of

their disputes rather than the law of the streets. The roots of the civil legal aid movement predated the founding of the Legal Services Corporation (LSC), but the national commitment of the Nixon administration in the form of the LSC Act elevated the importance of legal aid. Even though this model meant dedicating government revenue to activities that included suing the government, the commitment would be worth it to reduce poverty, discourage civil unrest, and help society flourish in America.<sup>3</sup>

Here in New York City in the early 1980s, I believed in the value of civil legal services lawyers and in the importance of our work at MFY Legal Services, one of the first legal aid organizations in the country.<sup>4</sup> In addition to responding to urban homelessness, which emerged as an acute problem across the City at that time, my colleagues and I were focused on a crisis created by the Reagan administration, which had launched a nationwide campaign to review and terminate people's federal disability benefits.<sup>5</sup>

Through the Social Security and Supplemental Security Income (SSI) disability benefits programs the federal government makes monthly payments to people determined unable to work due to physical and mental impairments.<sup>6</sup> In the early 1980s, the Reagan administration abruptly stopped paying many people their anticipated monthly benefits: children, older individuals, even people who were sick and frail, were told they were

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welfare rights, food stamps, and more. *See, e.g.*, MARTHA DAVIS, BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT 1960–1973 (1993); EARL JOHNSON, JR., TO ESTABLISH JUSTICE FOR ALL (2013).

3. *See generally* Jamein P. Cunningham & Rob Gillezeau, *The Effects of the Neighborhood Legal Services Program on Riots and the Wealth of African Americans*, 4 RUSSELL SAGE FOUND. J. SOC. SCIS. 144, 144–57 (2018).

4. The organization was founded in 1962 as Mobilization for Youth Legal Services, established itself as an independent organization in 1968 with the name MFY Legal Services, and more recently adopted the name Mobilization for Justice Legal Services, also known as MFJ Legal Services. *See Our Mission and History*, MOBILIZATION FOR JUST., <https://mobilizationforjustice.org/about/about-mfy> [<https://perma.cc/3P2G-94HY>] (last visited July 29, 2024).

5. *See generally* Donald E. Chambers, *The Reagan Administration's Welfare Retrenchment Policy: Terminating Social Security Benefits for the Disabled*, 5 POL'Y STUD. REV. 230, 230–40 (1985), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1541-1338.1985.tb00353.x> [<https://perma.cc/X3FF-T2FY>]; *see also* Robert Pear, *Reagan Suspends Benefits Cutoff*, N.Y. TIMES (April 14, 1984) [hereinafter Pear, *Reagan Suspends Benefits Cutoff*], <https://www.nytimes.com/1984/04/14/us/reagan-suspends-benefits-cutoff.html> [<https://perma.cc/2BBX-9QXC>]; Robert Pear, *Fairness of Reagan's Cutoffs of Disability Aid Questioned*, N.Y. TIMES (May 9, 1982) [hereinafter Pear, *Fairness of Cutoffs*], <https://www.nytimes.com/1982/05/09/us/fairness-of-reagan-s-cutoffs-of-disability-aid-questioned.html> [<https://perma.cc/H7PP-GUNW>] (“Federal officials acknowledge that several people committed suicide after being told that they were losing disability benefits.”).

6. *See SSI/Social Security Disability Benefits*, N.Y. STATE OFF. OF TEMP. & DISABILITY ASSISTANCE, <https://otda.ny.gov/programs/disability-determinations/> [<https://perma.cc/4YCY-QWQV>] (last visited July 29, 2024).

not actually disabled even though they had been receiving benefits based on individual findings by the government that they were disabled.<sup>7</sup>

People who had been chronically hospitalized in psychiatric centers here in New York City and across the country, people with various disabling physical impairments from heart disease to arthritis to cancer — tens of thousands of individuals — had their benefits terminated and their lives interrupted. Many were evicted onto the streets. The Lower East Side, where I worked at MFY, was a front line. People delusional from mental illness would wander into our offices for help or arrive assisted by relatives. People in wheelchairs who were told they had no disability, people with chronic heart disease and people unable to breathe who were told they were fine, all were appearing in our office.

At MFY Legal Services we handled hundreds of administrative and federal court appeals, and civil legal services lawyers across the country handled thousands more. Among the first lessons I learned was the value of direct legal services. I learned that as an attorney I could make a difference in a client's life. We won virtually all those cases, restoring people's disability benefits and stability in their lives.

As important as the role of the lawyers was, it also became evident to me that legal help could often make just as great a difference when provided by people who were not trained as lawyers. Paralegals in my own legal services organization and social services staff members in community-based organizations were doing the work that was needed to help many people win administrative disability claims at that time, even though these frontline advocates had not attended law school. They, too, were changing outcomes and saving lives. Working under the supervision of attorneys (including me), it was their personal competence and their specific training on disability benefits advocacy (not three years of legal education) that appeared to make the difference.

Another lesson I learned at the time is that access to justice depends on the fairness of the underlying laws themselves. After you have represented the fifth person who is hallucinating in your office, and after you see the government officials ignoring people's own doctors who submitted statements explaining people's treatment for mental illness or heart disease, you start to grasp that the administrative agency decisionmakers are just rubber-stamping the termination of people's benefits pursuant to legal standards that, as construed and applied by the agency, did not require them to do anything different.

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7. See *Cutting Social Security Disability Benefits Can Backfire Horribly*, NOSSCR, <https://nossr.org/cutting-social-security-disability-benefits-can-backfire-horribly/> [https://perma.cc/R2MF-QVJV] (last visited July 29, 2024).

A trained advocate could sometimes help, but something more was often necessary because in many cases, a lawful and favorable result could only be obtained if the matter were appealed to a fully independent judge in federal court able to apply the correct legal standard, free of the agency's interpretation. I saw that in some circumstances, fixing the underlying agency policies would therefore matter more than securing a hearing. In a series of lawsuits, some of which I was directly involved in, many brought by other attorneys and law offices across the country, we were able to reverse a string of unjust disability benefits decisions as well as the agency policies supporting them.

For example, in one case, we challenged an agency policy that had given excessive weight to a single test for heart disease-related disability without regard for other evidence.<sup>8</sup> Another lawsuit challenged a policy of terminating benefits by declaring that disabling conditions were "not severe."<sup>9</sup> Another challenged a policy of declaring mental illness in younger individuals to be not disabling.<sup>10</sup> Another challenged a policy of prohibiting agency decisionmakers from considering the combined effect of multiple impairments.<sup>11</sup> Another challenged a policy the government had used to pressure agency judges to deny and terminate disability benefits claims, instead of allowing the judges to perform their jobs neutrally.<sup>12</sup> Another challenged the agency's policy of terminating ongoing disability benefits in violation of judicial precedent that required the agency to consider whether the person's disability had medically improved.<sup>13</sup> These lawsuits, and others advancing additional claims, led to reopening and redeciding of tens of thousands of people's disability benefits cases.<sup>14</sup> An administrative hearing

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8. *See New York v. Heckler*, 755 F.2d 33 (2d Cir. 1985) (cardiac treadmill test case, holding that single test result should not be accorded dispositive weight relative to treating physician's opinion).

9. *See Dixon v. Heckler*, 589 F. Supp. 1512 (S.D.N.Y. 1984), *class cert. granted*, 600 F. Supp. 141 (S.D.N.Y. 1985), *aff'd in part, vacated in part*, 785 F.2d 1102 (2d Cir. 1986).

10. *See City of New York v. Heckler*, 578 F. Supp. 1109, 1112–13 (S.D.N.Y. 1984), *aff'd*, 796 F.2d 59 (2d Cir. 1986) (mental impairments litigation).

11. *See Sullivan v. Zebley*, 493 U.S. 521, 529 (1990) (children's disability impairments litigation).

12. *See Ass'n of Admin. L. Judges v. Heckler*, 594 F. Supp. 1132, 1133 (D.C. Cir. 1984) (Bellmon Review case).

13. *See Heckler v. Lopez*, 463 U.S. 1328, 1329 (1983). The agency's policy of refusing to assess medical improvement prior to terminating disability benefits was initially paused by the Reagan administration and ultimately reversed permanently by an act of Congress which established "the medical improvement" standard as federal law and which directed the reinstatement of benefits to those individuals whose benefit payments had not yet been restored by other means. *See Social Security Disability Benefits Reform Act of 1984*, Pub. L. No. 98-460, 98 Stat. 1794.

14. *See generally* Robert Pear, *Reagan Reported Prepared to Stop Cuts in Disability Benefits*, N.Y. TIMES (Mar. 24, 1984) [hereinafter Pear, *Reagan Prepared to Stop Cuts*],

makes little difference when the underlying law supporting it is unjust. Fixing the law was all the difference.

Interestingly, I also saw that it was not always a class action that was needed. Sometimes a lawyer's presence on even one case, or the active presence of advocates on a series of cases, could produce justice beyond those represented, helping to domesticate an otherwise lawless environment by reminding decisionmakers of the need for greater fairness. In that period, we provided representation to as many people as possible, and also held "pro se" classes to educate people about how to assert their own rights in the cases when this could be helpful to them in the early stages of their proceedings (before the hearing level stage where our office's staff would enter the case). "Brief assistance" and "brief advice" seemed at the time to offer definite value for some people, but what has also become clear to me over time — as a distinct lesson — is that there is also a pressing need for research that evaluates the effectiveness of interventions such as these.

Through these experiences and lessons, my own view of access to justice took form. Today, at the National Center for Access to Justice, we rely on a definition recognizing that access to justice means that people are able to (1) understand their rights, (2) assert their rights, (3) in a neutral process, (4) pursuant to the fair rule of law, and (5) enforce the result.<sup>15</sup> We understand that each of these five elements is important, and also that at each level there is often a need for policy advocacy and also a need for research.

In the end, the Reagan era benefits terminations prompted a set of responses that I came to recognize as essential elements of the movement for access to justice. Civil legal services organizations were at the core of the response. But there were other actors and institutions whose engagement mattered. The work, itself, included individual appeals, class actions, legislative advocacy initiatives, organizing efforts, communications outreach, and city, state and private bar participation in lawsuits against the federal government. The institutions and institutional players included new city and state initiatives that funded the civil legal aid bar to do disability advocacy work, as well as the involvement of law students, paralegals, social services providers, the pro bono bar, the legal academy, and even the federal judiciary. Journalists and members of the public also performed vitally important roles.

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<https://www.nytimes.com/1984/03/24/us/reagan-reported-prepared-to-stop-cuts-in-disability.html> [<https://perma.cc/VFG6-Y49N>]; Pear, *Reagan Suspends Benefits Cutoff*, *supra* note 5; Matthew Diller & Alexander A. Reinert, *The Second Circuit and Social Justice*, 85 *FORDHAM L. REV.* 73, 99–110 (2016).

15. See *What Is Access to Justice?*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/what-access-justice> [<https://perma.cc/6PY6-68GY>] (last visited July 29, 2024).

Although these efforts were comprehensive and powerful, they were not adequate to preserve justice for all, as so many people suffered hardship – and for some, even death – from the government’s actions.<sup>16</sup> But, they made a substantial difference. They reversed the Social Security Administration’s interpretation of the law in numerous respects, including by setting a new statutory “medical improvement standard” in place in the Social Security Act that would, going forward, require a finding of medical improvement prior to any future termination of benefits. They compelled the reopening and readjudication of adverse benefits decisions. They restored disability benefits to tens of thousands of people who were the anonymous beneficiaries of these efforts.<sup>17</sup>

Working in a civil legal aid organization as my first job helped me to understand and value the importance of a creative and comprehensive approach to access to justice, an approach that sees the need for policy solutions and that also appreciates how a wide range of stakeholders can come together to insist on access to justice.

## II. RESPONDING TO SELF-REPRESENTED LITIGANTS’ MILLIONS OF LEGAL NEEDS IN THE COURTS

Jimmy Carter famously observed, “90 percent of our lawyers serve 10 percent of our people.”<sup>18</sup> Although the data are described as “murky,” it is evident that the number of people in court without lawyers rose substantially in recent decades.<sup>19</sup> Other scholarly work suggested that “it is . . . highly likely that at least sixteen million unrepresented parties cycle through the civil justice system annually.”<sup>20</sup> The gap in legal representation has also been documented by the Legal Services Corporation in its several “Justice Gap” studies.<sup>21</sup>

16. See Pear, *Fairness of Cutoffs*, *supra* note 5 (reporting that federal officials acknowledged multiple suicides prompted by terminations of benefits).

17. See Chambers, *supra* note 5, at 233–38. See generally Pear, *Reagan Prepared to Stop Cuts*, *supra* note 14; Pear, *Reagan Suspends Benefits Cutoff*, *supra* note 5.

18. Martin Tolchin, *President Says Lawyers Foster Unequal Justice*, N.Y. TIMES (May 5, 1978), <https://www.nytimes.com/1978/05/05/archives/president-says-lawyers-foster-unequal-justice-knew-maneuvers-carter.html> [https://perma.cc/K25Z-3SSC].

19. See Nora Freeman Engstrom & David Freeman Engstrom, *The Making of the A2J Crisis*, 75 STAN. L. REV. (2024) (describing the data that is available and its limitations), <https://www.stanfordlawreview.org/online/the-making-of-the-a2j-crisis/> <https://www.stanfordlawreview.org/online/the-making-of-the-a2j-crisis/> [https://perma.cc/LBM7-L3N8].

20. Jessica K. Steinberg, *Adversary Breakdown and Judicial Role Confusion in “Small Case” Civil Justice*, 2016 BYU L. REV. 899, 903.

21. See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA (2d ed. 2007), <https://justicegap.lsc.gov/resource/2005-justice-gap-report/> [https://perma.cc/K28L-AWNQ] (first report from 2005, updated periodically since, calling attention to the number of civil



While many institutions joined in building out the civil access to justice movement in response to increased awareness of the justice gap (see discussion below), Chief Judge Jonathan Lippman of the New York Judiciary earned particular credit for his role in elevating the importance of the cause in New York and nationally.<sup>22</sup> Aware that the civil legal aid bar was vitally important but under regular and damaging attack,<sup>23</sup> and mindful that most people in the New York Court System had little to no legal help in the courts, Chief Judge Lippman said (in my own recollection): “What’s the point of having courts? If people cannot use them to protect their rights, we might as well shut them down.”<sup>24</sup> This was a radical statement from a chief judge. And there was a corollary. The Chief Judge also said that we must turn over every stone to see what works and what does not work, and that we cannot allow ourselves to be afraid to try the things that are impossible or seem impossible, or the things that are controversial.<sup>25</sup>

Indeed, access to justice activists in New York and in other states began turning over big stones. Although no one was speaking explicitly of “abolition” in this civil justice context at that time — a conversation was started about upstream solutions that would eliminate many of the disputes that were reaching the courts, resolving them in advance of litigation. We could work to keep all those disputes, all those demands for debt payment, all those potential evictions, from ripening into court cases. The operative

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legal problems experienced by people who had no access to counsel). For updated Justice Gap studies, see *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans*, LEGAL SERVS. CORP. [hereinafter *The Justice Gap*], <https://justicegap.lsc.gov/> [https://perma.cc/P52V-9Y48] (last visited Aug. 6, 2024).

22. See, e.g., Liz Farmer, *Jonathan Lippman: A Crusader for the Poor and Drug-Addicted*, GOVERNING (Aug. 27, 2014), <https://www.governing.com/archive/gov-jonathan-lippman-new-york-judge.html> [https://perma.cc/44BM-Y3MC]; see also Jonathan Lippman, *The Judiciary as the Leader of the Access-to-Justice Revolution*, 89 N.Y.U. L. REV. 5 (2014).

23. In 1996, the federal government had imposed restrictions on the Legal Services Corporation that had limited the claims, clients, and tools available to lawyers in grantee organizations, in part establishing the demand for expansion of the access to justice movement in the states. See generally David S. Udell, *The Legal Services Restrictions: Lawyers in Florida, New York, Virginia, and Oregon Describe the Costs*, 17 YALE L. & POL’Y REV. 337 (1998).

24. See *New York State Chief Judge Jonathan Lippman: A Conversation at the Center for Court Innovation*, CTR. FOR JUST. INNOVATION (Feb. 2015), <https://www.innovatingjustice.org/publications/new-york-state-chief-judge-jonathan-lippman-conversation-center-court-innovation> [https://perma.cc/NHK9-HBUB] (“To me, if they’re open but what’s inside is not equal justice, you might as well close them. Don’t give me the funding. Because to me, if I could keep the courtrooms open, but it wasn’t a level playing field, then I don’t want to keep them open.”).

25. See *id.* (“Think out of the box. Take people on. Take the system on. Try new things. Energize us. And you know what usually happens is, the average judge is not thinking about the things that you do all day, and I do a good part of my day — about how to change, how to change the world. But when you expose that average judge to new ideas, a new way of doing things, they love it.”).

question was, how could people resolve problems and also reduce court dockets.<sup>26</sup>

Likewise, almost no one was optimistic that the legal aid budget, always austere, could be radically increased in New York. But Chief Judge Lippman launched an initiative that sought 100 million new dollars in annual state funding to be phased in over four years for civil legal aid.<sup>27</sup> And he asked to put this revenue under the wing of the courts, recognizing how important legal representation is to the fairness of the courts and prioritizing it even over other needs of the court.<sup>28</sup> This arrangement, placing legal aid in the court budget, was controversial at the time, but it was a success.<sup>29</sup>

This period also marked the start in a real way of the movement for a civil right to counsel for tenants, which gathered momentum and then culminated in a mayoral signing ceremony producing the nation's first such law in New York City on August 11, 2017.<sup>30</sup> Right to Counsel NYC, the coalition which drove the campaign, recalls: "We developed a wide base of supporters that includes landlords, bar associations, unions, advocates for homeless people, advocates for seniors, advocates for disabled people, almost every civil legal services agency in the city, and many more."<sup>31</sup>

And while no one was yet speaking about "democratizing the law" as did the agenda for this Symposium, advocates were beginning to talk and write about the unauthorized practice of law rules and how it would make sense and be possible to modify those rules to expand the contributions of people

26. See THE TASK FORCE TO EXPAND ACCESS TO CIV. LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK I (2011), [https://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-2011TaskForceREPORT\\_web.pdf](https://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-2011TaskForceREPORT_web.pdf) [<https://perma.cc/H3WD-D3A3>] ("Averting or reducing litigation by prioritizing the provision of early intervention and preventive civil legal services and the implementation of alternative conflict resolution initiatives.").

27. See William Glaberson, *Judge's Budget Will Seek Big Expansion of Legal Aid to the Poor in Civil Cases*, N.Y. TIMES (Nov. 28, 2010), <https://www.nytimes.com/2010/11/29/nyregion/29lawyers.html> [<https://perma.cc/EK6S-YE5M>].

28. See *id.*

29. See *id.*; Jonathan Lippman, *The Judiciary as the Leader of the Access-to-Justice Revolution*, 89 N.Y.U. L. REV. 1569, at 1574 (2014) (reporting increase, at that time, to budgeted amount for civil legal aid of \$70 million).

30. *Mayor de Blasio Signs Legislation to Provide Low-Income New Yorkers with Access to Counsel for Wrongful Evictions*, THE OFF. WEBSITE OF THE CITY OF N.Y. (Aug. 11, 2017), <https://www.nyc.gov/office-of-the-mayor/news/547-17/mayor-de-blasio-signs-legislation-provide-low-income-new-yorkers-access-counsel-for#0> [<https://perma.cc/MA73-NWRK>] (last visited Sept. 10, 2024).

31. *History of the Right to Counsel NYC Coalition*, RT. TO COUNS. NYC, [https://d3n8a8pro7vhmx.cloudfront.net/righttocounselnyc/pages/10/attachments/original/1517948094/history\\_of\\_RTC.pdf?1517948094](https://d3n8a8pro7vhmx.cloudfront.net/righttocounselnyc/pages/10/attachments/original/1517948094/history_of_RTC.pdf?1517948094) [<https://perma.cc/WGD4-MZGN>] (last visited Aug. 14, 2024).

in addition to lawyers.<sup>32</sup> Relatedly, the New York Courts adopted a rule requiring performance of 50 hours of pro bono service as a precondition to seeking admission to the New York Bar.<sup>33</sup> Then, Chief Judge Lippman established a working group on how people besides lawyers might provide legal assistance.<sup>34</sup> The group developed the idea, later adopted and implemented in housing court in New York City, for “court navigators” who could attend court proceedings and provide information to litigants.<sup>35</sup> It also proposed authorizing “court advocates” who were not lawyers to represent people in certain eviction and debt collection proceedings — a proposal which New York has not adopted.<sup>36</sup>

The movement also included a focus on access to justice solutions that did not involve the provision of legal representation, such as software initiatives, automated pleadings, avatars that would walk a person through the drafting of an answer online, and other uses of technology. The Legal Services Corporation’s annual congressional budgetary appropriation had been modified in 2020 to dedicate a portion of the revenue exclusively to providing grant support for technology initiatives.<sup>37</sup> These initiatives

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32. See, e.g., Richard Zorza & David Udell, *New Roles for Nonlawyers to Increase Access to Justice*, 41 FORDHAM URB. L.J. 1259 (2014).

33. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16 (2013); see also David Udell, *Invitation to a Dialogue: Pro Bono Requirement*, N.Y. TIMES: OPINION (May 29, 2012), <https://www.nytimes.com/2012/05/30/opinion/invitation-to-a-dialogue-pro-bono-requirement.html> [<https://perma.cc/2B6S-FHGX>]; David Udell, *Sunday Dialogue: Public Service for Lawyers*, N.Y. TIMES: OPINION (June 2, 2012), <https://www.nytimes.com/2012/06/03/opinion/sunday/sunday-dialogue-public-service-for-lawyers.html> [<https://perma.cc/T53U-2Y92>].

34. See Press Release, New York State Unified Court System, Chief Judge Names Members of Committee Charged with Examining How Non-Lawyer Advocates Can Help Narrow New York’s Justice Gap (May 28, 2013), [https://ww2.nycourts.gov/sites/default/files/document/files/2018-05/PR13\\_07.pdf](https://ww2.nycourts.gov/sites/default/files/document/files/2018-05/PR13_07.pdf) [<https://perma.cc/XU8Q-M329>].

35. See REBECCA L. SANDEFUR & THOMAS M. CLARKE, ROLES BEYOND LAWYERS 3–4 (2016) (evaluating navigator model in New York Courts); see also MARY McCLYMONT, THE JUST. LAB AT GEORGETOWN L. CTR., NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS 11–12 (2019), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0024/53691/Justice-Lab-Navigator-Report-6.11.19.pdf](https://www.ncsc.org/_data/assets/pdf_file/0024/53691/Justice-Lab-Navigator-Report-6.11.19.pdf) [<https://perma.cc/K5J2-JBSN>] (collecting examples of navigator programs from across the country).

36. See reference to this “court advocates model” as an option that a Working Group in 2020 ultimately elected not to further pursue in COMM’N TO REIMAGINE THE FUTURE OF N.Y.’S CTS., REPORT AND RECOMMENDATIONS OF THE WORKING GROUP ON REGULATORY INNOVATION 3 n.1 (2020), [https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation\\_Final\\_12.2.20.pdf](https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf) [<https://perma.cc/MT9X-HEK6>].

37. See generally *Technology Initiative Grant Program*, LEGAL SERVS. CORP., <https://www.lsc.gov/grants/technology-initiative-grant-program> [<https://perma.cc/6WQ8-8JT4>] (last visited Aug. 6, 2024).

generated models that proliferated across the country.<sup>38</sup> For example, JustFix in Brooklyn, developed a set of software tools to enable people to use their mobile phones to tee up letters demanding that their landlords restore their heat and hot water.<sup>39</sup> In New York, and in other states, courts also began moving to a new model in which they would increasingly provide a broad range of supportive services (including computer terminals) to self-represented litigants with matters in and outside of the courthouse.<sup>40</sup>

Advocates also started to work more on how to change the underlying laws and practices to increase fairness. In New York, consumer debt advocates made the case for a new law that would require creditors' pleadings to demonstrate ownership of the alleged debt as a prerequisite to proceeding with collection lawsuits, with the effort culminating in adoption of a judiciary rule and then a statute that imposed this pleading requirement on newly filed consumer debt collection complaints<sup>41</sup> — illustrating the concept that a change in policy that reduces the number of potential lawsuits effectively reduces the need for counsel, increasing access to justice.

Finally, a substantial number of national organizations and entities with initiatives responsive to the justice gap have come online in recent years. These have included for example, the American Bar Association (supporting the creation of Access to Justice Commissions),<sup>42</sup> the Brennan Center for Justice (producing seven pamphlets to raise the profile of civil legal services, and litigating *Legal Services Corp. v. Velazquez*, a lawsuit challenging restrictions imposed on federally funded civil legal aid organizations),<sup>43</sup> the

38. See REBECCA L. SANDEFUR, LEGAL TECH FOR NON-LAWYERS: REPORT OF THE SURVEY OF US LEGAL TECHNOLOGIES 3 (2019), <https://www.americanbarfoundation.org/resources/legal-tech-for-non-lawyers-report-of-the-survey-of-us-legal-technologies/> [<https://perma.cc/7F5V-9E7X>].

39. JUSTFIX, <https://www.justfix.org/en/> [<https://perma.cc/39Z7-N2T2>] (last visited July 30, 2024).

40. See CONFERENCE OF STATE COURT ADMINISTRATORS, CONFERENCE OF CHIEF JUSTICES / CONFERENCE OF STATE COURT ADMINISTRATORS TASK FORCE REPORT (2002), <https://www.srln.org/node/1542/report-conference-chief-justices-conference-state-court-administrators-task-force-report> [<https://perma.cc/8LFX-ECUT>]; ROCHELLE KLEMPNER, N.Y. STATE CTS. ACCESS TO JUST. PROGRAM, BEST PRACTICES FOR COURT HELP CENTERS: A GUIDE FOR COURT ADMINISTRATORS AND HELP CENTER STAFF INSIDE AND OUTSIDE NEW YORK STATE (2015), [https://www.nycourts.gov/LegacyPDFS/ip/nya2j/pdfs/NYSA2J\\_BestPracticesHelpCenter.pdf](https://www.nycourts.gov/LegacyPDFS/ip/nya2j/pdfs/NYSA2J_BestPracticesHelpCenter.pdf) [<https://perma.cc/83QQ-WDKU>].

41. N.Y. C.P.L.R. 3016(j) (McKinney 2022).

42. *Access to Justice Commissions*, AM. BAR ASS'N, [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resource\\_center\\_for\\_access\\_to\\_justice/atj-commissions/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/atj-commissions/) [<https://perma.cc/Y2RR-G3ZL>] (last visited Aug. 6, 2024).

43. See, e.g., BRENNAN CTR. FOR JUST., HIDDEN AGENDAS: WHAT IS REALLY BEHIND ATTACKS ON LEGAL AID LAWYERS? (2001), <https://www.brennancenter.org/sites/default/files/publications/hiddenagendas.pdf> [<https://perma.cc/2PRX-CNVW>]; see also *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533

Legal Services Corporation (publishing *The Justice Gap* to draw attention to the number of civil legal problems experienced by people who had no access to counsel),<sup>44</sup> the National Center for Access to Justice (establishing the Justice Index that tracks and promotes adoption of selected best policies for increasing access to justice),<sup>45</sup> the National Center for State Courts, (pursuing a Court Statistics Project to document the volume of cases in state courts, including those in which a party is proceeding without counsel),<sup>46</sup> the National Coalition for a Civil Right to Counsel (supporting federal, state, and local efforts to establish civil right to counsel programs),<sup>47</sup> the National Legal Aid & Defender Association (supporting civil legal aid lawyers across the country and working in Washington, D.C. to help increase the federal appropriation for civil legal services programs),<sup>48</sup> the Public Welfare Foundation (funding an array of civil legal policy advocacy projects to increase access to justice, and encouraging other philanthropic institutions to support civil access to justice),<sup>49</sup> and the Self-Represented Litigation Network (supporting a network of stakeholders inside and outside of the courts who work on solutions to the practical challenges of proceeding in court without legal assistance, and whose work has included supporting the transition of the state courts into institutions that prioritize providing self-help services to self-represented litigants).<sup>50</sup>

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(2001); *see also, e.g., Language Access in the State Courts*, BRENNAN CTR. FOR JUST. (2009), <https://www.brennancenter.org/our-work/research-reports/language-access-state-courts> [<https://perma.cc/52EU-WJUL>].

44. *See The Justice Gap*, *supra* note 21.

45. The Justice Index includes coverage of selected best policies for legal services representation, self-representation, language access, and disability access, and was subsequently extended to cover best policies for curbing burdensome fines and fees, and for increasing the fairness of consumer debt litigation. *See Justice Index*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/state-rankings/justice-index> [<https://perma.cc/X6FKJCQR>] (last visited Sept. 10, 2024). The Justice Index contains an Attorney Access Index that includes a count of civil legal aid attorneys. *See Attorney Access*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/state-rankings/justice-index/attorney-access> [<https://perma.cc/Y7A6-JDAC>] (last visited Aug. 14, 2024).

46. The National Center for State Courts carried out diverse initiatives, including a Court Statistics Project focused on tracking and publishing data about litigants in the courts without legal representation. *See The Court Statistics Project*, THE NAT'L CTR. FOR STATE CTS., <https://www.courtstatistics.org/> [<https://perma.cc/MM3K-5B3U>] (last visited July 30, 2024).

47. NAT'L COAL. FOR A CIV. RT. TO COUNS., <http://civilrighttocounsel.org/> [<https://perma.cc/D2XV-RTGN>] (last visited Sept. 2, 2024).

48. *See THE NAT'L LEGAL AID & DEFENDER ASS'N*, <https://www.nlada.org/> [<https://perma.cc/8XTL-CB2F>] (last visited July 30, 2024).

49. *See generally Philanthropy Must Step Up for Fairness in Civil Justice*, CHRONICLE OF PHILANTHROPY (Apr. 8, 2016), <https://www.publicwelfare.org/wp-content/uploads/2016/04/COP-Philanthropy-Must-Step-Up-for-Fairness-in-Civil-Justice.pdf> [<https://perma.cc/T24Y-ZA7Q>].

50. SELF-REPRESENTED LITIGATION NETWORK, <https://www.srln.org/> [<https://perma.cc/UJ8R-87CG>] (last visited Aug. 31, 2024).

### III. AN ACCESS TO JUSTICE SYMPOSIUM TO CAPTURE THE MOMENT AND ADVANCE THE MOVEMENT WITHIN AND BEYOND THE COURTS

In 2016, a study by Professor Rebecca L. Sandefur expanded the vision and accelerated the pace of the access to justice movement by drawing attention to the vast number of people who are involved in civil disputes with a legal dimension, but who have not connected with counsel and are not participating in formal court proceedings. In her study, she found that: “The most important reasons that people do not take their civil justice situations to law are: (1) they do not think the issues are legal or consider law as a solution; and (2) they often believe that they understand their situations, and are taking those actions that are possible.”<sup>51</sup> She also found that “[t]he cost of legal services or court processes plays a secondary role in people’s decisions.”<sup>52</sup> She estimated that “well over 100 million Americans are living with civil justice problems.”<sup>53</sup> Another study estimated the unmet number of legal needs in the United States each year at 120 million per year.<sup>54</sup>

Coming on top of longstanding efforts both to grow the legal services bar (including efforts to recognize civil rights to counsel) and to empower self-represented people in the courts, this vision of a landscape extending far beyond the courts has underlined the importance of alternative approaches that solve people’s legal disputes upstream, enable people to get legal help where they are, and even change the law in ways that bear directly on outcomes.

In recognition of the scope of the justice gap and the need for solutions, the National Center for Access to Justice (NCAJ) had joined with Fordham Law School and the *Fordham Law Review Online* in 2018 in holding an Access to Justice Summit that brought national leaders together at Fordham Law to talk about what would be required to build a civil justice movement capable of securing justice for all.<sup>55</sup> The agenda examined the particular

51. Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 443–44 (2016).

52. *Id.* at 444.

53. *Id.* at 446.

54. See HAGUE INST. FOR INNOVATION OF L., INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., JUSTICE NEEDS AND SATISFACTION IN THE UNITED STATES OF AMERICA 6 (2021), <https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf> [<https://perma.cc/7TBU-9HTY>] (estimating 120 million unresolved needs per year).

55. See *The Access to Justice Summit: Bringing the Movement Together*, NAT’L CTR. FOR ACCESS TO JUST., <https://ncaj.org/access-justice-summit> [<https://perma.cc/US3Q-9CQW>] (last visited Aug. 6, 2024); see also David Udell, *Building the Access to Justice Movement*, 87 FORDHAM L. REV. 142, 142 (2019); *The A2J Summit Collection: Cutting Edge Thought on the Movement*, NAT’L CTR. FOR ACCESS TO JUST., <https://ncaj.org/a2j-summit-collection> [<https://perma.cc/SR94-A77Z>] (last visited Aug. 12, 2024).

policy models that appeared to have the greatest potential, considered the resources supporting the movement at that time, and asked what would be needed to move faster and do more.<sup>56</sup> At the Summit, participants focused on a civil right to counsel, self-representation in the courts, and policies for curbing government-imposed fines and fees. With these (and many other) initiatives in their relative infancy, the Summit participants looked for inspiration to the immigrant rights movement and to the mass decarceration movement for transferable lessons from their strategies and victories.<sup>57</sup>

Six years later, the civil access to justice movement has expanded well beyond what Summit participants envisioned in 2018. Today's movement continues that essential work, while also now prioritizing research,<sup>58</sup> data,<sup>59</sup> and technology;<sup>60</sup> focusing on policy change in the areas of eviction<sup>61</sup> and debt;<sup>62</sup> carrying out real world experiments with new roles for advocates who

56. See *Agenda for the A2J Summit*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/sites/default/files/2024-07/Agenda%20for%20the%20A2J%20Summit%20FINAL%202009.25.18.pdf> [<https://perma.cc/PH8R-LJTG>] (last visited Aug. 12, 2024).

57. See *The Access to Justice Summit: Bringing the Movement Together*, NAT'L CTR. FOR ACCESS TO JUST. (Oct. 2, 2018), <https://ncaj.org/access-justice-summit> [<https://perma.cc/US3Q-9CQW>] (navigate to the videos on this webpage).

58. See *The ABF/JPB Foundation Access to Justice Scholars Program*, AM. BAR FOUND., <https://www.americanbarfoundation.org/program/the-abf-jpb-foundation-access-to-justice-scholars-program> [<https://perma.cc/987R-GDQ2>] (last visited Aug. 6, 2024); *A2J Scholarship Project: Growing the Field of Access to Justice Scholarship*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/tools-for-justice/nsf-social-scientists-project> [<https://perma.cc/BN6A-C535>] (last visited Aug. 31, 2024); *Making Justice Accessible: Legal Services for the 21st Century*, AM. ACAD. OF ARTS & SCIS., <https://www.amacad.org/project/making-justice-accessible> [<https://perma.cc/RE9S-T5DX>] (last visited Aug. 6, 2024); ACCESS TO JUST. LAB AT HARV. L. SCH., <https://a2jlab.org> [<https://perma.cc/QY27-G64W>] (last visited Aug. 6, 2024); *Access to Justice*, ORG. FOR ECON. & CULTURAL DEV., <https://www.oecd.org/en/topics/access-to-justice.html> [<https://perma.cc/QX2Y-8DM7>] (last visited Aug. 6, 2024); See *Justice Index*, *supra* note 45 (tracking selected best policies for access to justice in the states). INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., <https://iaals.du.edu/> [<https://perma.cc/62AL-6P9J>] (last visited Aug. 14, 2024); *Innovation for Justice*, THE UNIV. OF ARIZ.: JAMES E. ROGERS COLL. OF L., <https://law.arizona.edu/academics/programs/innovation-justice> [<https://perma.cc/SW76-L4LT>] (last visited Sept. 10, 2024).

59. Civil Justice Data Commons, *Georgetown Justice Lab*, GEO. L.: INST. FOR TECH. L. & POL'Y, <https://www.law.georgetown.edu/tech-institute/initiatives/georgetown-justice-lab/civil-justice-data-commons/> [<https://perma.cc/FA3J-DS39>] (Sept. 10, 2024).

60. See, e.g., *The Legal Design Lab*, STAN. L. SCH., <https://law.stanford.edu/organizations/pages/legal-design-lab/> [<https://perma.cc/TYB4-KS59>] (last visited Aug. 6, 2024); *Georgetown Justice Lab*, GEO. L.: INST. FOR TECH., L. & POL'Y, <https://www.law.georgetown.edu/tech-institute/initiatives/georgetown-justice-lab/> [<https://perma.cc/J9LQ-HNRH>] (last visited Aug. 6, 2024).

61. See EVICTION LAB, <https://evictionlab.org> [<https://perma.cc/J2BK-RPPC>] (LAST VISITED AUG. 6, 2024).

62. See DEBT COLLECTION LAB, <https://debtcollectionlab.org/> [<https://perma.cc/J9RG-PGP3>] (last visited Aug. 6, 2024); NAT'L CONSUMER L. CTR., <https://www.nclc.org/>

are not trained as lawyers;<sup>63</sup> sharpening its focus on removing racial bias in the system;<sup>64</sup> drawing support from law school centers that focus their work on increasing access to justice;<sup>65</sup> and realizing the value of the support of the federal government.<sup>66</sup> While the growth and diversification of these initiatives (and many more) is cause for appreciation, there is plain value in fostering debate and reflection among stakeholders about the continuing challenges and their potential solutions.

With this perspective, the National Center for Access to Justice worked with Fordham's *Urban Law Journal* and Stein Center for Law and Ethics to create this Symposium entitled, *With People Struggling and the Law Failing, What Are the Solutions to the Access to Justice Crisis in America?* Our goal was to examine the leading edge of the movement, policy solutions. And, our method was to rely on a series of expert panels and a collection of

[<https://perma.cc/D3XA-4P7U>] (last visited Aug. 6, 2024); see also NCAJ, *Consumer Debt Litigation Index*, <https://ncaj.org/state-rankings/consumer-debt> [<https://perma.cc/256Z-4DLP>] (LAST VISITED AUG. 6, 2024).

63. See FRONTLINE JUST., <https://www.frontlinejustice.org/> [<https://perma.cc/9FKD-DRBZ>] (last visited Aug. 6, 2024); *Allied Legal Professionals*, IAALS, <https://iaals.du.edu/projects/allied-legal-professionals> [<https://perma.cc/YA9T-JPXQ>] (last visited Aug. 6, 2024); *Legal Empowerment*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/tools-for-justice/legal-empowerment> [<https://perma.cc/92KP-CDE4>] (last visited Aug. 6, 2024); DAVID FREEMAN ENGSTROM ET AL., *LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE* (2022), <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf> [<https://perma.cc/GDW3-2E56>].

64. See JEH CHARLES JOHNSON, *REPORT FROM THE SPECIAL ADVISOR ON EQUAL JUSTICE IN THE NEW YORK STATE COURTS* (2020), <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf> [<https://perma.cc/UN6A-M5NF>]; see also Lizzie Presser, *Their Family Bought Land One Generation After Slavery: The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It*, PROPUBLICA (July 15, 2019), <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/> [<https://perma.cc/78CM-85T6>].

65. See, e.g., INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., <https://iaals.du.edu/> [<https://perma.cc/62AL-6P9J>] (last visited Aug. 14, 2024); *Innovation for Justice*, THE UNIV. OF ARIZ.: JAMES E. ROGERS COLL. OF L., <https://law.arizona.edu/academics/programs/innovation-justice> [<https://perma.cc/SW76-L4LT>]; *Georgetown Justice Lab*, GEO. L., <https://www.law.georgetown.edu/tech-institute/initiatives/georgetown-justice-lab/> [<https://perma.cc/AY28-WPV7>] (last visited Aug. 14, 2024); NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org> [<https://perma.cc/7XZZ-W3MP>] (last visited Aug. 31, 2024) (National Center for Access to Justice at Fordham Law School); *Access to Justice*, VAND. UNIV. L. SCH. <https://law.vanderbilt.edu/access-to-justice/> [<https://perma.cc/SRH8-H678>] (last visited Aug. 14, 2024); *Access to Justice*, UNIV. OF S.C.: JOSEPH F. RICE SCH. OF L., [https://www.sc.edu/study/colleges\\_schools/law/centers/professionalism/a2j/](https://www.sc.edu/study/colleges_schools/law/centers/professionalism/a2j/) [<https://perma.cc/65VS-HAR9>] (last visited Aug. 14, 2024).

66. See *Office for Access to Justice*, U.S. DEP'T OF JUST., <https://www.justice.gov/atj> [<https://perma.cc/MG2J-HDAB>] (last visited Aug. 6, 2024); see also *Legal Aid Interagency Roundtable*, U.S. DEP'T OF JUST., <https://www.justice.gov/atj/legal-aid-interagency-roundtable> [<https://perma.cc/B49J-4WFV>].



writings, as described below, with the goal of advancing the movement's progress by holding the proposed solutions up to the light and promoting dynamic discussion around them. In the section that follows, we introduce the Symposium's panels and the writings they generated.

#### A. Panel I: The Abolitionist Movement for Civil Access to Justice

This panel introduced an abolitionist framework for reducing or eliminating the flow of civil legal disputes into the courts. An abolitionist approach is now something that we talk explicitly about, along with an understanding that, much like the critique of the criminal legal system, the civil legal system, too, is burdened by the history of slavery and the continuing problems of racial prejudice. In considering the concept of abolition in context of the civil legal system, the panelists discussed such questions as:

- Can less surveillance and more social services reduce the number of family law neglect proceedings and parental rights termination proceedings?
- Is it effective policy for municipalities to pay debt or subsidize rent as a means of preventing court evictions?
- Can approaches shown to reduce incarceration — restorative justice, diversion, mental health care — also serve as models for policy solutions that would end or reduce evictions, debt collections, and prosecutions of parents for neglect?
- Should the civil access to justice movement screen proposed policy solutions by asking, as abolitionist activists do, whether the proposed solution would reduce entanglement in the civil legal system?

Moderator Lauren Sudeall<sup>67</sup> led this panel with Norrinda Brown,<sup>68</sup> Tehra Coles,<sup>69</sup> Andrew Scherer,<sup>70</sup> and Neil Steinkamp<sup>71</sup> on the value to civil justice reform initiatives of the abolitionist vision that has emerged in the decarceration movement, and on prioritizing policy solutions that reduce the

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67. Professor and Director, Vanderbilt Access to Justice Initiative, Vanderbilt Law School. *2024 Symposium – With People Struggling and the Law Failing, What Are the Solutions to the Access to Justice Crisis in America?*, FORDHAM URB. L.J. [hereinafter *2024 Symposium Speakers*], <https://news.law.fordham.edu/fulj/symposia/> [<https://perma.cc/HHT3-SRAR>] (last visited Aug. 19, 2024).

68. Associate Professor of Law, Fordham Law School. *2024 Symposium Speakers*, *supra* note 67.

69. Executive Director, Center for Family Representation. *2024 Symposium Speakers*, *supra* note 67.

70. Professor of Law, New York Law School; Policy Director, Wilf Impact Center for Public Interest Law; Director, The Right to Counsel Project; Co-Director, Housing Justice Leadership Institute. *2024 Symposium Speakers*, *supra* note 67.

71. Managing Director, Stout. *2024 Symposium Speakers*, *supra* note 67.

civil legal system's entanglement in people's lives.<sup>72</sup> This Symposium Issue includes two writings from this session:

- ***Stop the Violence: A Taxonomy of Measures to Abolish Evictions.***<sup>73</sup> Andrew Scherer describes policy solutions deployed in countries other than the United States where novel methods are used to reduce the number of evictions. These include, for example, prohibiting eviction until the tenant has an alternative place to live, eliminating wintertime evictions altogether, and using municipal grants and the provision of social services to enable tenants to remain in the home.
- ***Maximizing Housing Stability and Minimizing Evictions: Evidence-Based Models That Keep Tenants in Their Homes and Out of the Courts.***<sup>74</sup> Neil Steinkamp identifies the landlords' incentives to avoid court proceedings and instead to work cooperatively with tenants to keep them in their homes. He describes numerous policy solutions, many in active operation, in envisioning a future in which resort to the courts for eviction would be "the exception, not the rule."

#### **B. Panel II: The Movement for a Tenants' Civil Right to Counsel**

Although the concept of right to counsel has been viewed by civil legal aid lawyers as vitally important since recognition of the federal categorical right to counsel in criminal matters, it was not obvious that there would be civil right to counsel laws for tenants. However, since August 11, 2017, when New York City recognized a civil right to counsel for tenants, we have seen states and cities across the country recognizing, in one form or another, a right to counsel for tenants.<sup>75</sup> But there are challenges for the civil right to counsel movement, including:

- Can communities recruit and retain enough lawyers to effectuate the right?
- Will civil right to counsel for tenants displace service to other clients and communities in matters for which there is no right to counsel?
- Should social services providers have a role alongside counsel as part of the right?

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72. See Fordham L. Sch., *Abolitionist Solutions Panel I – Sudeall, Steinkamp, Scherer, Coles, Brown (NCAJ, FLS, ULJ Solutions Symposium)*, VIMEO (Mar. 6, 2024, 10:46 AM), <https://vimeo.com/920089936>.

73. Andrew Scherer, *Stop the Violence: A Taxonomy of Measures to Abolish Evictions*, 51 FORDHAM URB. L.J. 1329 (2024).

74. Neil Steinkamp, *Maximizing Housing Stability and Minimizing Evictions: Evidence-Based Models that Keep Tenants in their Homes and Out of the Courts*, 51 FORDHAM URB. L.J. 1385 (2024).

75. See NAT'L COAL. FOR A CIV. RIGHT TO COUNS., *supra* note 47.

- How should communities prioritize between a civil right to counsel and other policy solutions that offer relief to tenants, for example, traditional civil legal aid, legal help by advocates who are not lawyers, government subsidy of rent, creation of new low-cost housing, stronger rent stabilization laws, and more?
- Can advocates who are not lawyers, competently fulfill the responsibilities traditionally handled by counsel, and is that model more scalable, or stronger in other ways, than relying only on lawyers?

Moderator Rasheedah Phillips led discussion among Larisa G. Bowman,<sup>76</sup> Bob Glaves,<sup>77</sup> John Pollock<sup>78</sup> and Radhika Singh<sup>79</sup> on the progress of the civil right to counsel movement and the challenges it is encountering as it advances.<sup>80</sup> This Symposium Issue includes one writing from this session:

- ***Right to Counsel for Tenants Facing Eviction: Justifications, History, and Future.***<sup>81</sup> John Pollock provides an overview of the civil right to counsel movement for tenants, touching on its treatment in the Supreme Court, its vision for full and effective legal representation, the power imbalances it addresses, and the challenges it faces in implementation. The author acknowledges that the civil right to counsel is not a “silver bullet,” arguing instead that it is an important solution that earns a place alongside other policy solutions including, for example: “affordable housing development,” “zoning reform,” “warranty of habitability,” “just cause for eviction,” “rent control,” and “rent stabilization.”<sup>82</sup>

### C. Panel III: The Movement Toward Democratizing the Law

This panel examined on the potential power of people to rely for legal assistance on individuals who serve as advocates but who are not trained as lawyers. The models take many forms and participants are sometimes

76. Court Innovation Fellow, Deborah L. Rhode Center on the Legal Profession, Stanford Law School, *2024 Symposium Speakers*, *supra* note 67.

77. Executive Director, Chicago Bar Foundation. *2024 Symposium Speakers*, *supra* note 67.

78. Attorney and Coordinator, National Coalition for a Civil Right to Counsel. *2024 Symposium Speakers*, *supra* note 67.

79. Vice President, Civil Legal Services & Strategic Policy Initiatives, National Legal Aid & Defender Association. *2024 Symposium Speakers*, *supra* note 67.

80. See Fordham L. Sch., *Civil Right to Counsel for Tenants Panel II – Phillips, Glaves, Bowman, Pollock, Singh (NCAJ, FLS, ULJ 2-9-24)*, VIMEO (Mar. 6, 2024, 11:57 AM), <https://vimeo.com/920119305?share=copy>.

81. John Pollock, *Right to Counsel for Tenants Facing Eviction: Justifications, History, and Future*, 51 FORDHAM URB. L.J. 1439 (2024).

82. See generally *id.*

referred to as “justice workers.”<sup>83</sup> In the past, it was difficult if not impossible to evaluate the potential and actual performance of non-lawyer advocates because the law flatly prohibited their activity. Today new models for these advocates are now able to move forward in Alaska, Arizona, and Utah.<sup>84</sup> The potential for these models to help people is starting to be realized, and evaluative research on their performance is now possible.

In discussing the current momentum and potential of the new movement, as well as its challenges, panelists debated questions that included:

- What are the goals? Should the only constraint be that it will remain illegal to say you are a lawyer when you are not?
- What are the new models that are being tried within and outside of the courts, in nonprofit settings and in for-profit settings, with attorney supervision, and without, or with new models of attenuated or asynchronous supervision?
- What types of evaluation are important to assuring that people will be able to receive the assistance they need from those capable of providing it, and what is the empirical record to date?
- What considerations should inform decisionmaking about which models are both effective and capable of being scaled up?
- For what types of legal disputes does training as an attorney remain essential, and what factors should inform decisionmaking about whether and when responsibility might be handed off to an attorney?

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83. See *The Diverse Landscape of Community-Based Justice Workers*, IAALS (Feb. 22, 2024) [hereinafter *The Diverse Landscape*], <https://iaals.du.edu/blog/diverse-landscape-community-based-justice-workers> [<https://perma.cc/5CHL-7Z7A>]; see also FRONTLINE JUST., *supra* note 63.

84. See *The Diverse Landscape*, *supra* note 83.

Moderator Bruce Green<sup>85</sup> led this panel<sup>86</sup> with Nikole Nelson,<sup>87</sup> Michele Pistone,<sup>88</sup> Tanina Rostain,<sup>89</sup> and Rebecca Sandefur<sup>90</sup> on the emerging value of models that empower people to obtain legal help from individuals who are trained as advocates but not credentialed as lawyers. This Symposium Issue includes two writings from this session:

- ***Measures of Justice: Researching and Evaluating Lay Legal Assistance Programs.***<sup>91</sup> Tanina Rostain and co-author James Teufel describe a series of innovative models in place in certain states in which communities are relying on justice workers to deliver legal advice to individuals. The authors contribute a novel evaluation scheme that prioritizes factors of fidelity, harm avoidance, and social impact.
- ***A People-Centered Approach to Designing and Evaluating Community Justice Worker Programs in the United States.***<sup>92</sup> Rebecca L. Sandefur and Matthew Burnett propose an evaluation system for prioritizing among multiple models of justice workers that would rely on criteria of effectiveness, scalability, and sustainability.

#### D. Panel IV: The Creation of Alternative Safeguards

Our fourth panel discussed “alternative safeguards,”<sup>93</sup> specifically, policy solutions that are important in the absence of legal representation. The panel

85. Louis Stein Chair of Law; Director, Stein Center, Fordham Law School. *2024 Symposium Speakers*, *supra* note 67.

86. See Fordham L. Sch., *Democratization of Law & UPL Reform Panel III – Green, Nelson, Pistone, Rostain, Sandefur (NCAJ, FLS, ULJ, 2-9-24)*, VIMEO (Mar. 6, 11:58 AM), <https://vimeo.com/920119702?share=copy>.

87. Founding CEO, Frontline Justice. *Nikole Nelson*, FRONTLINE JUST., <https://www.frontlinejustice.org/team/nikole-nelson> [<https://perma.cc/QT9D-SFFP>] (last visited Aug. 6, 2024).

88. Professor of Law, Founder and Faculty Director for the Strategic Initiative for Migrants + Refugees, Founder & Faculty Director for Villanova Interdisciplinary Immigration Studies Training for Advocates (VIISTA), Villanova University Charles Widger School of Law. *2024 Symposium Speakers*, *supra* note 67.

89. Agnes Williams Sesquicentennial Professor of Justice Innovation, Georgetown University Law Center. *2024 Symposium Speakers*, *supra* note 67.

90. Professor and Director, School of Social and Family Dynamics, Arizona State University; Faculty Fellow, American Bar Foundation; Co-Founder, Frontline Justice. *2024 Symposium Speakers*, *supra* note 67.

91. Tanina Rostain & James Teufel, *Measures of Justice: Researching and Evaluating Lay Legal Assistance Programs*, 51 FORDHAM URB. L.J. 1481 (2024).

92. Matthew Burnett & Rebecca L. Sandefur, *A People-Centered Approach to Designating and Evaluating Community Justice Worker Programs in the United States*, 51 FORDHAM URB. L.J. 1509 (2024).

93. In *Turner v. Rogers*, 564 U.S. 431 (2011), the opinion in which the Supreme Court declined to recognize a federal categorical right to counsel for individuals facing incarceration for alleged failure to pay child support, the Court used the term “alternative procedural safeguards” to describe cautionary steps — such as a social services worker’s use of a

discussed the use of new technologies, innovation in the role of judges, the importance of law enforcement (for example, wage and hour enforcement by attorneys general), and the changes in actual laws and practices (procedural and/or substantive) that increase the fairness of our legal system (for example with respect to judicial determinations of a person's ability to pay court-imposed fines and fees). Questions included:

- What are these new approaches and do they respond adequately to the hard problems, such as court avoidance, racial discrimination, intimidation in the civil legal system, and the systemic injustices that persist over time?
- Are these approaches being implemented, evaluated, and shown to be effective?
- What is next on the horizon and will it make effective use of artificial intelligence?
- What is the role of law enforcement, including attorneys general, in the civil access to justice movement, and can law enforcement do more to support access to justice?
- Can we change our state laws and practices to increase access to justice (for example, establishing fairer statutes of limitations, pleading requirements, ability to pay determinations, and rights to place rent into escrow to compel provision of heat and hot water by landlords)?
- Can policy solutions that seek changes in law and practice be established where the power imbalance in our society pushes back to preserve the status quo?

Moderator Sateesh Nori<sup>94</sup> led the discussion among panelists Ray Brescia,<sup>95</sup> the Honorable Glenn Grant,<sup>96</sup> Lauren Jones,<sup>97</sup> and Janet Sabel<sup>98</sup> on alternative safeguards — policy solutions apart from legal representation

questionnaire — that could prove essential in a given case to preserving due process for an individual without counsel. *See id.* at 448. The term was used more broadly at the Symposium to describe a broad range of approaches for increasing fairness for people without counsel in a broad range of contexts.

94. Clinical Adjunct Professor, New York University School of Law. *See Sateesh Nori, Executive Director-JustFix*, NYCOURTS.GOV, <https://ww2.nycourts.gov/accesstojusticecommission/tc/2023confNori.shtml> [<https://perma.cc/55D7-59BJ>] (last visited Aug. 6, 2024).

95. Associate Dean for Research and Intellectual Life, Hon. Harold R. Tyler Chair in Law and Technology, Albany Law School. *2024 Symposium Speakers*, *supra* note 67.

96. Administrative Director of the New Jersey Courts. *2024 Symposium Speakers*, *supra* note 67.

97. Legal and Policy Director, National Center for Access to Justice. *2024 Symposium Speakers*, *supra* note 67.

98. Director, Access to Justice Initiative, Center on Civil Justice, New York University School of Law; Adjunct Professor of Law, New York University School of Law. *2024 Symposium Speakers*, *supra* note 67.

— that increase access to justice.<sup>99</sup> The Symposium edition contains two writings from this session:

- ***Robots vs. Predators: Can Generative Artificial Intelligence Help to Address the Justice Gap in Consumer Debt Litigation?***<sup>100</sup> Raymond Brescia plays out the possibilities for policy solutions that would deploy artificial intelligence software applications to help people obtain essential legal advice and assistance when targeted for collection of alleged consumer debt in civil lawsuits.
- ***Ability to Pay: Closing the Access to Justice Gap with Policy Solutions for Unaffordable Fines and Fees.***<sup>101</sup> Lauren Jones describes specific laws and practices, already in place in some states, missing and urgently needed in others, that enable judges to make fairer determinations as to whether people have the actual ability to pay government-imposed fines and fees otherwise demanded by the court, often on threat of incarceration, driver's license suspension, and other sanctions.<sup>102</sup>

### CONCLUSION

We hope readers will find the ideas in this Symposium Collection both useful and provocative in elevating the essential question of how best to move forward with policy solutions that can secure access to justice for all in our society. The challenges include whether, with all the ideas and resources at hand, the current movement will be able to meet the moment in empowering millions of Americans to understand the law, protect their rights, and obtain fair resolution of their claims. We must also ask whether the access to justice community is prepared today to summon the level of multi-institution, multi-vector, comprehensive effort that succeeded in turning back the Reagan era attacks on federal disability beneficiaries. We

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99. See Fordham L. Sch., *Additional AtJ Solutions Panel IV – Nori, Brescia, Grant, Jones, Sabel* (NCAJ, FLS, ULJ, 2-9-24), VIMEO (Mar. 6, 12:00 PM), <https://vimeo.com/920120448?share=copy>.

100. Raymond H. Brescia, *Robots vs. Predators: Can Generative Artificial Intelligence Help to Address the Justice Gap in Consumer Debt Litigation?*, 51 FORDHAM URB. L.J. 1553 (2024).

101. Lauren Jones, *Ability to Pay: Closing the Access to Justice Gap with Policy Solutions for Unaffordable Fines and Fees*, 51 FORDHAM URB. L.J. 1593 (2024).

102. See *Fines and Fees*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/state-rankings/justice-index/fines-and-fees> [<https://perma.cc/XZ9D-L2AE>]. The article draws on the underlying findings in this Index, which, itself, is a component of NCAJ's Justice Index. See *Justice Index*, *supra* note 45.

invite you to consider the answers provided in the Symposium videos of the panels<sup>103</sup> and in the Symposium Collection below.

In the words of our closing speaker, Rasheedah Phillips, Director of Housing Policy, Legal Link, “[l]et us leave here, and not just with a new sense of urgency, but with a renewed commitment to action as well . . . . [T]ransformation is possible if we stay engaged and stay the course.”<sup>104</sup>

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103. *See id.* We also invite readers to engage with the collected articles from the Summit on Access to Justice that NCAJ held at Fordham Law School in 2018, available from the *Fordham Law Review Online*. *See supra* note 55 and accompanying text.

104. *See* Fordham L. Sch., *Closing Remarks AtJ Symposium – Phillips, Udell, Gomez* (*NCAJ, FLS, ULJ 2-9-24*), VIMEO, at 07:16, 08:38 (Mar. 6, 12:01 PM), <https://vimeo.com/920120950?share=copy>.