



**Utah State Courts  
Utah State Bar**

***Non-Lawyer Legal Assistance Roles  
Efficacy, Design, and Implementation***

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## Non-Lawyer Legal Assistance Roles Efficacy, Design, and Implementation White Paper

### The Problem of Unmet Civil Legal Needs

The courts, legal aid organizations, and others have for years offered various kinds of legal information and assistance to litigants. Such resources have grown with the unprecedented surge in self-represented litigants and access to information of all kinds on the Internet. Rising rates of college education have given more litigants the perception that they can adequately handle their case with appropriate types of assistance other than full representation by a traditional lawyer.

At the same time, many studies indicate two huge shortfalls in legal assistance. Research on unmet civil legal need suggests that around 80% of such need does not make it into a court. At the same time, legal aid organizations are able to satisfy less than half of those who request legal help. Multiple forms of pro bono assistance, court self-help centers, and online assistance appear unlikely to match the need. They simply cannot scale up to the resource levels required to solve the problem.

Given this troublesome situation, there is a strong feeling that something needs to be done and that “that something” will have to be a new approach. At the same time, there is a sense that the problem is too big for any one solution to fix. Instead, courts need a sort of “ecosystem” of legal assistance to mitigate the shortfall in legal assistance.

### An Ecosystem of Legal Assistance

There is certainly nothing wrong with the various traditional types of legal assistance and nobody wants to see them go away. The real question is how best to supplement them in a complementary way. What ecosystem of new services might best accomplish the goal of providing every litigant with the legal assistance they require?

In 2013, the Legal Services Corporation (LSC) published one possible answer in their white paper, “The Summit on the Use of Technology to Expand Access to Justice.” The LSC set out the goal of “providing some form of effective assistance to 100% of persons otherwise unable to afford an attorney for dealing with essential civil legal needs.” The paper then laid out five broad strategies for accomplishing their goal. The five strategies are: document assembly, business process analysis, expert systems and intelligent checklists, mobile technologies, and statewide legal portals. These five strategies were perceived to be mutually reinforcing and complementary in nature. In fact, a well-designed portal might encompass the other four strategies.

**Document assembly** is perhaps both the most traditional and most developed strategy. Many states already offer services that assist litigants in producing valid legal documents to file. Many of them utilize TurboTax-like interactive dialogues to do so. Presumably, the goal is to generalize these capabilities in a more comprehensive way and further improve their user friendliness.

**Business process analysis** is an idea that comes from other industries and has been used there to great effect. Standard techniques for improving business processes are now being applied to non-profit and government organizations, often with significant positive impacts. For example, one hospital in Virginia was able to reduce the time and cost of one core business process by 60% using this approach. Since courts are essentially using processes that have been in place for decades, if not centuries, the scope for improvement is potentially huge.

**Expert systems and intelligent checklists** are very interesting ideas. Expert systems are a kind of decision support system that comes in both deterministic and probabilistic forms. For example, doctors use such systems to better diagnosis medical issues, since no one doctor can possibly recall the symptoms for thousands of diseases. The case for intelligent checklists is probably best made by Atul Gawande in his recent best seller, “The Checklist Manifesto.” He argues persuasively that the use of well-designed checklists reduces complexity and improves quality.

**Mobile technologies** are seen as a rapidly emerging access issue primarily because so many people now own and use smartphones. Many now use smartphones as their primary access to the Internet and an equally large number utilize real-time capabilities like texting. Creating appropriate legal assistance and court access applications for smartphones could be a game changer.

**Statewide legal portals** are intended to provide a sort of “one stop shopping” capability to litigants. Such portals could include all of the other strategies in a more integrated and persistent format. When further integrated to courts for electronic filing and to legal aid organizations for necessary assistance, portals start to look like very powerful tools indeed.

To support these new capabilities, courts may need to reorganize their business processes and modify the roles and skill sets of their own internal staff. In a 2015 book by Flango and Clarke, “Reimagining Courts,” the authors express strong concern about the cost, time to disposition, inconvenience, and complexity of the typical court case. Although all of those considerations are probably important to litigants, it is cost that usually gets the most attention.

A study by the National Center for State Courts (NCSC) in 2013, “Estimating the Cost of Civil Litigation,” reports that the average costs for typical civil court cases put the courts beyond the financial means of many litigants. Indeed, the costs are so high that even those who can afford to litigate may not regard any possible favorable outcome as worth the investment. Thus, the courts have both an absolute cost problem and a value problem.

Finally, a study by John Greacen in 1999, “How Fair, Fast, and Cheap Should Courts Be?,” found very significant gaps between the cost and time to disposition that courts in New Mexico could achieve and those considered adequate by the public.

The expected outcome of these trends is a decrease in the use of the civil courts. That is exactly what is now being seen. Over the last six years for which the NCSC has national data, civil filings have declined at an average of 2%, with the most recent year showing an 8% drop. Some of these potential litigants appear to be moving to online dispute resolution websites. These sites

offer much lower costs, quicker resolutions, much more convenience, and possibly more predictable outcomes to medium and small business as well as individual litigants.

As the monopoly of the courts on civil dispute resolution starts to erode and some either try to resolve their legal problems outside the courts or do nothing, Flango and Clarke suggest several possible ways that the courts could modify their traditional business processes to improve their services and make them both more attractive and more accessible to potential litigants. Although it is difficult to assess the relative impact of the strategies they suggest, four initiatives seem the most promising: case triage, automation of business processes, online dispute resolution, and new legal roles.

One particularly enticing possibility is **case triage** which involves the use of expert systems to help both litigants and courts better “triage” their cases in several ways. Litigants can get advice on whether or not to file a case in court, whether or not to seek full legal representation, what other forms of legal assistance might be appropriate, what actions to take in their case, and—when overlapping jurisdiction makes it possible—within what court and what case type to use to pursue their case.

Similarly, courts can initially triage cases automatically into what is presumptively the correct case processing type (streamlined, general, or complex). Subsequent rounds of human review may look at the issues of a case, the status of those issues, and litigant preferences (cost, time, and due process) to determine if a case should remain in that case processing type or be transferred to another one.

**Automation** of current court business processes is a strategy with a very broad potential for improving court services and lowering court costs. Consider that in other industries where the labor force primarily performed low skill tasks such as handling forms, payments, and scheduling, online automation was able to reduce labor costs by well over 90%. If the courts were able to achieve even a fraction of those labor savings, they could apply the cost savings to improving services through automation, different kinds of staff services (case management or assistance to self-represented litigants), and perhaps additional judicial officers.

**Online dispute resolution** is an approach that is currently growing rapidly in the commercial world. Courts are long used to complex civil cases disappearing to private arbitration, but they are now seeing low to middle complexity business cases and even personal small civil and small claims cases going to online dispute resolution websites. Their business models vary quite a bit, but all seem to include voluntary participation by both sides and agreement to comply with the resulting decisions. They also usually contain a fixed price and a fixed time to resolution—both of which are significantly lower and faster than what would typically happen in a court. Finally, their processes include asynchronous automated decisions, asynchronous human decisions, and synchronous hearings and decisions. Courts might find it difficult to reproduce the automated capabilities by themselves, but the latter two processes could be done without a commercial partner.

**New legal assistance roles** are also getting a lot of attention over the last couple of years. The American Bar Association is finalizing a new resolution on the future of the legal profession that

focuses on what kinds of new roles might be acceptable. New York City and several other jurisdictions are experimenting with various forms of court navigators. Washington State has attracted considerable interest in their new Limited Licensed Legal Technician role. These new roles can be designed and implemented in a wide variety of ways, with equally disparate impacts on goals like efficiency and access to justice.

The first three of these strategies (case triage, automation of business processes, and online dispute resolution) have been strongly advocated for in a soon to be published white paper by the Conference of Chief Justices. The fourth strategy (new legal roles) has been considered by at least seven other states over the last three years. The purpose of this paper is to consider the efficacy, design, and implementation of such new legal assistance roles.

### **Assessment of New Legal Assistance Roles**

It may seem premature to talk first about assessing the new legal assistance roles, but experience teaches that planning for program assessment up front is much easier than trying to do it as an afterthought. Thinking about assessment also forces a focus on the specific characteristics of the program that are intended to add value and on how they will make a difference. Jurisdictions must make explicit connections between what the new role will be and how it will help achieve the intended goals.

The tradeoff with new legal assistance roles beyond lawyers is between trying to increase access to justice while continuing to provide adequate protection against incompetent legal assistance. Any attempt to appropriately balance those two goals must consider the appropriateness of the role, the efficacy of the role, and the sustainability of the role. Consider each of those evaluation dimensions in turn.

**Appropriateness** can be defined as 1) a discrete set of *tasks* that will make a significant difference in access and 2) the *knowledge* required to competently perform those tasks. The tasks should map to gaps in access if the new role is to make a difference. That can take the form of doing tasks that are not being done at all right now or doing currently performed tasks in a significantly different way that increases access (perhaps because of lower cost, quicker task completion, or more convenient availability to litigants).

**Efficacy** can be measured by several criteria, depending on program goals. Two criteria that should always matter are *competence* and *use*. If the persons in the new legal roles are not performing their tasks competently, then efficacy is definitely not achieved. If they are competent but nobody uses their services, then no improvements in access to justice are obtained. Some possible secondary goals under efficacy include reduced burden on courts from self-represented litigants, improvements in procedural justice, improvements in litigant understanding, increased utilization rates of courts for legal problems, and improved litigant outcomes such as reduced costs, greater satisfaction, and more timely resolutions.

Appropriate benchmarks must be chosen to measure the impact of the new role on the secondary goals. If the effective alternative for most litigants is no assistance, then that is a better

benchmark than comparison with a lawyer that the litigant would never have been able to use in the first place. Of course the two primary goals of competence and use must always be achieved for efficacy to be proven.

**Sustainability** of the role is a function of *perceived legitimacy* and *economic viability*. Persons performing the new role may be competent, but they must be perceived to be so if litigants are going to use them. In the same vein, litigants must also perceive value for cost or they will again not take advantage of the legal services provided by the new role. The perceived value requirement applies for all critical stakeholders: litigants, the persons in the new role, the courts, the bar and regulators, and the trainers.

### **Assessment Recommendations**

Assessment attention usually focuses first and most on the appropriateness of what the new role can do and, secondarily, on how well it does those things. Doing something well still does not necessarily ensure that there will be a significant impact on the problems the new role is intended to solve. For example, the new role might involve helping litigants prepare court documents and those in the role may do an excellent job of preparing documents, but document preparation may not be used enough by litigants to make a difference.

After it is established that the new role does make a difference, it still may not be sustainable for a variety of reasons. Key support may come from a few individuals, who then move on. Temporary funding subsidies may dwindle or disappear. Market-based programs may fail to find a market. Regulatory and training strategies may prove to be too costly. So, an effective program is not automatically a sustainable one.

### **Recommendations:**

1. Determine what assessment approach will be able to evaluate whether or not the program is making a difference, measured against the specific goals.
2. Determine what assessment approach will be able to evaluate if the program can be sustained over the long-term.

### **Design Decisions for New Legal Assistance Roles**

New legal assistance roles can be designed in many different ways. Current programs have only scratched the surface and explored a few alternatives (basically, navigators, super paralegals, and real estate technicians). It is likely that further experimentation by other jurisdictions will reveal improved models for increasing access to justice in a safe and cost effective way.

It is safe to say that, to date, existing programs have been severely constrained in design by local politics and available resources. That means they may diverge quite a bit from optimal designs if improved access to justice is the goal. As a community, we are so far from meeting the LSC access goal that fairly radical approaches will probably be needed to make a real difference.

Incremental strategies like enticing a few more pro bono lawyers or adding a bit of funding to a legal aid program are unlikely to scale up to the magnitude of the crisis.

Courts should also consider that such programs have focused on the supply side of the problem, as economists would say. The attention has been on providing additional services. It may be equally valid and sometimes more cost effective to also look at the demand side of the problem. That is, could courts design their processes and services differently to reduce both the need for legal assistance and the ability of potential litigants to surmount current barriers to access?

In thinking about how these programs could be designed, a small number of key design decisions probably matter the most:

#### *Scope*

- Role definition
- Practice location scope
- Service scope

#### *Oversight*

- Regulation strategy
- Hosting
- Training
- Quality control

#### *Institutionalization*

- Role permanency
- Role formality
- Role funding strategy
- Role payment

#### *Discovery*

- Marketing mode

It should be clear from a review of this list that several of the decisions are somewhat dependent on others. Thus, program designs may cluster into a relatively small number of approaches as jurisdictions make certain sets of decisions in the same way. The decisions are grouped and separated to indicate the likely sets of decisions that are co-dependent. Let's consider some of these dependencies before discussing what an optimal set of decisions might look like.

The set of **scope** decisions includes *role definition*, *practice location scope*, and *service scope*. Role definition is about what the conception of the new role is. Practice location scope is about where they can do it. Service scope is about what the new role can do.

The set of **oversight** decisions includes *regulation strategy*, *hosting*, *training*, and *quality control*. Although it may seem obvious and the appropriate answer even more so, it is a key decision to regulate the new role or let the market provide feedback and control. To date, all states have wanted to regulate the new roles, and that seems like a responsible approach until

much more is known about them. In the same vein, all new roles have been hosted either by the state bar association (indirect court regulation) or by the courts. Some states have considered passing enabling or supporting statutes as well. State courts have sometimes changed or added general court rules. In all cases, the regulator was responsible for establishing training requirements, overseeing training, and ensuring quality control (including any disciplinary processes).

The set of what might be called **institutionalization** decisions includes *role permanency*, *role formality*, *role funding strategy*, and *role payment*. The two underlying decisions are really permanency and use of the market. If a jurisdiction envisions that the new role will exist for the foreseeable future, then it makes sense to define it in a more formal way. If the role needs to scale up and not be vulnerable to inevitable fluctuations in budgets, then it needs to avoid reliance on political subsidies and instead live viably in the market.

The ability of litigants to **discover** the services provided by the new role is critical to its success. Most people may be unaware that it even exists. Many will be confused about its scope and when to utilize it. Appropriate *marketing* approaches for the new role are still essentially virgin territory.

Most of these roles are so new that marketing to date has been relatively direct and informal: presiding judges dictate implementation and use; role participants announce their availability in courthouses; bar associations communicate availability to their members via newsletters; court rules are published.

Actual commercial advertising has not yet been observed.

### **Program Design Recommendations**

The **scope** of new roles is a key consideration. The roles must either provide new services or old services in a better way or both to make a difference in access to justice. Limiting the scope too much will reduce the impact on access to justice. Treating the new roles like slightly different versions of existing roles like (dumbed down) lawyers or (super) paralegals also seems problematic. It is better to identify what tasks are really needed to impact access to justice and design a new role to perform those tasks well from scratch.

#### **Recommendations:**

3. Define the scope of the new role from scratch, based on identified tasks to improve access to justice, rather than modifying the role from attorney or paralegal baselines.
4. Enable the new role to practice inside and outside the courtroom.
5. Enable the new role to assist on process, the facts of the case, and a clearly defined but limited ability to practice law in specific ways and areas.

**Oversight** is an equally critical aspect. Making the regulatory requirements too onerous will make the role unattractive and uneconomic to potential participants. On the other hand,

deferring all regulatory control to the market is going too far for such a new kind of program without much experience in the real world.

Leveraging existing regulatory capabilities like courts and the bar makes sense, but only if they can truly treat the new role as a legitimate standalone role and not as a kind of bastardization of an existing role. A further concern with existing regulatory structures is a natural political tendency to constrain it in ways intended to protect vested interests. One could let the state executive branch licensing department handle regulation, but that defers oversight to a different branch of government.

It is also practical in many cases to leverage existing training capabilities as much as possible, whether through paralegal programs at community colleges or law courses at law schools. If doing so is not consistent with existing business models for those kinds of organizations, then the ability to scale up and institutionalize the training becomes problematic.

Quality control is a difficult issue when these kinds of roles are so new. The easiest approach is to modify existing bar processes, but that may lead to crippling levels of control and processes that are overkill. It may be better to design the quality control processes from scratch as well, shaping them to the specific scope of the new role.

Since it makes sense to free the new role from mandatory lawyer oversight, a parallel step should be for the new role to be able to both own and run independent firms and partner with lawyers in joint ownership of firms that deliver legal services.

### **Recommendations:**

6. The courts should regulate the new role.
7. Court regulation should be implemented by creating a new regulatory body under court authority.
8. The new role should be able to perform its tasks without oversight by lawyers.
9. The new role should be able to own firms both independently and jointly with lawyers.
10. Training for the new role should leverage existing paralegal courses (if that is appropriate content for its intended tasks).
11. Training for the new role may require new legal content. If so, it should be provided as part of one integrated curriculum offered by the training institution.
12. If necessary, training should be offered remotely to facilitate access.

Decisions about **institutionalization** will be the key to long-run success. In general, the best strategy is to formalize the approach and rely as little as possible on volunteers and subsidies.

### **Recommendations:**

13. The role should be formalized as a permanent new form of assistance.
14. The role should be market-based to the extent possible.

Awareness and **discovery** are critical aspects of program design. The role cannot be effective and make a difference if nobody knows about it or litigants do not understand the scope of what the role can do.

**Recommendation:**

15. Regulation should minimize constraints on the ability to market, so that the public can understand what the new role can do for them and easily contact a person in the new role when desired.

**Implementation of New Legal Roles**

The optimal method of implementing new legal assistance roles is not yet known. There is a definite tension between the desire to minimize risk and maximize success by piloting the new role on a small scale on the one hand and scaling up rapidly to make a difference on the other hand.

Perhaps the most difficult aspect of implementation is establishing the training capability. Most of the appropriate training organizations have very bureaucratic processes for instituting new kinds of courses. Training business models may have difficulty accommodating the new requirements. Even having the new regulatory body identify the training requirements may take significant time, especially if there is controversy or doubt about the scope of the new role (defined by the tasks it can and should perform).

Pushback from the bar should be anticipated, so implementation may face political obstacles. When healthcare organizations created nurse practitioner and physician assistant roles, it was in the context of a shortage of doctors, especially general practitioners. The legal profession is facing the opposite situation: too many lawyers and not enough business. While experience to date suggests that new legal assistance roles will not reduce business for lawyers because many litigants cannot afford them in the first place, that may not mitigate concerns from the bar.

Most critically, everyone needs to have a clear understanding of what tasks the new role should perform to improve access for litigants. That link between scope and impact is what matters the most if the new role is to help achieve the goal of appropriately assisting litigants. Since many of the tasks can be either performed in other ways or mitigated in other ways, it is not a trivial issue to place the new role within an ecosystem of capabilities to help litigants. It would be a waste of resources for the legal system to perform one task in six different ways and another necessary task not at all.

The most common set of tasks proposed for such new roles include document preparation, assistance with the legal and court process, support and/or assistance during courtroom hearings, and advice about possible actions in a case and/or negotiations with opposing parties. Notice that these tasks “escalate” from relatively uncontroversial skill sets to abilities that are hard to define and more difficult to oversee for quality control.

In a period of rapidly evolving rules, institutions, and services, some tasks performed by the new role may be useful in the short-term, but become out-competed by other service providers in the long-term. Document preparation may shift relatively quickly to private or non-profit online providers or document assembly capabilities hosted by legal aid organizations, the courts, or still other sources.

Similarly, assistance on legal and court processes will certainly be useful in the short-run, but may be superseded in the long-run by process-based litigant portals. Much like tax preparation software now shielding the public from the complexity of the American tax code, such portals may guide litigants through the processes with notifications, prompts, and reminders to aid successful process completion and compliance.

The kinds of legal assistance most likely to remain useful over the long-term are providing support during courtroom hearings and giving legal assistance about the case during negotiations. Portals may partly overlap legal assistance about cases by presenting cogent information about key case decisions and alternatives, but without actually giving advice in the form of a direct recommendation. Of course, if included in the scope of the new legal role, these less fact-based and more controversial legal tasks will be harder to agree on, define, and oversee.

### **Recommendations:**

16. If the new legal role is limited to document preparation, provide as little oversight and training as possible. Rely as much as is responsible on market regulation.
17. If possible, include within the scope of the new role the ability to support litigants in courtroom hearings and case negotiations.

### **The Big Picture**

The possible creation of new non-lawyer roles for providing legal services should be placed within the context of other reforms that may occur in the near future. The most directly relevant innovations resolve around legal services.

One dimension of change is regulation around who can own a law firm or an organization that in some way provides legal services. In American states, only lawyers can own a law firm and no other kinds of companies can offer legal services. Other countries have experimented quite a bit with looser approaches such as allowing non-lawyers to be part-owners of legal firms and even permitting other kinds of organizations to offer certain types of legal services.

To date, attempts to make similar changes in the United States have been successfully opposed, although one can find many online companies whose services tread very close to the line. If that line were moved in a more flexible or open direction, it is easy to imagine a wide variety of new services being offered to litigants with competitive prices. These kinds of innovators leverage technology, scale economies, and management best practices to offer more cost effective legal services.

More flexible ownership and legal practice rules might favor the use of new non-lawyer roles. Such roles might perform many legal tasks for new kinds of firms and online sites, as well as more traditional law firms and courts. The use of technology by new kinds of firms might quickly take on a more threatening pose. Much of what courts and bar associations envision new legal roles doing could and to a certain extent already has been automated. This includes document preparation, document filing, process assistance, and so forth. Even negotiation and settlement services are now being partially automated and/or offered at much lower rates than a traditional lawyer and court would charge.

A counter argument to this caution might point to the success of new healthcare roles empowered to deliver medical services. The two primary examples are nurse practitioners and physician's assistants. While there are some interesting parallels, there are also some significant differences. Perhaps most important, these new roles expanded to fill a serious shortage of doctors which persists today. In contrast, lawyers are not in short supply. Quite the contrary is the case.

Nurse practitioners (NPs) are state regulated, but not by doctors. They are usually regulated by the same body that oversees and licenses registered nurses. NPs have their own set of educational requirements, including a masters or doctorate degree and a separate national examination. Although they may or may not require some form of oversight by doctors, the trend is clearly toward no oversight and the ability to perform a wider range of medical services.

Physician's assistants (PAs) are usually regulated by the same bodies that license doctors. They also have unique educational requirements and certification tests, but they are almost always formally supervised to some extent by doctors. The shortage of healthcare practitioners has again pushed them in the direction of less oversight and wider ranges of medical services.

These roles evolved over a period of several decades and some variability exists between states. Both of them require considerably more education and training than any new legal role to date. In fact, both of them often exceed lawyers in the number of years of graduate or specialized training required.

One could argue that new legal assistance roles are similar to NPs and PAs to the extent that there exists a large amount of unmet legal need that is partially due to a cost barrier. There is some evidence for that position, so there would probably be a healthy market for those services if the fees were significantly lower than those required by lawyers. How much lower those costs would need to be to make a sizable dent in the unmet need is unknown. Court fees would remain unchanged, but overall court costs might fall if assistance from the new role results in faster and more streamlined case resolutions.

### **Making a Difference**

Given scarce resources, it is useful to ask which innovations will have the greatest impact on the unmet civil legal need and access to justice at the lowest cost. Nobody really knows the answer

to that question today, but some speculation is possible. For purposes of this discussion, assume no major changes in the current regulatory monopoly on legal services by lawyers and law firms.

**Online dispute resolution (ODR)** is clearly the most attractive strategy if it is implemented in the right way. It offers legal decisions at potentially much lower cost and better convenience. It needs to encompass all of the case types and legal problems that typically see high frequencies of self-represented litigants or are identified as having large numbers of persons with problems who do not utilize the legal system at all. Litigants may not care if such ODR is offered by private industry or real courts, but courts have a strong interest in capturing that market.

Unfortunately, ODR does not solve a big piece of the problem. Litigants still need legal assistance to take advantage of ODR. Otherwise, they risk being party to an unjust or unfair decision through ignorance that just happens faster and costs less. This is where three different strategies offer similar or complementary services, depending on how these are designed.

A **litigant portal** can help with process complexity and a lot of what is now sometimes considered legal assistance but is really not. The ability to offer some kinds of **low level legal assistance online** (think Legal Zoom, but not necessarily always owned by lawyers) could also provide both timely and inexpensive assistance at a level that addresses a large proportion of actual legal problems and cases. There are all sorts of innovative services now being offered in this space involving traditional lawyers. An interesting example are legal broker websites that act as connectors between litigants and lawyers, with the latter bidding to answer legal questions. A large chunk of this market could probably be automated without too much innovation, judging from what already exists.

If these are the strategies that matter, what needs to happen to implement them? Much of the online innovation could be spurred simply by loosening regulatory controls on the provision of legal services as discussed above. Proper and comprehensive requirements for litigant portals will soon be available. The biggest constraint on them may be the forms of governance required to create and maintain them. Almost by definition they must be a partnership of the major access to justice stakeholders, including courts and legal aid organizations. To date, attempts to create simple portals have either been run by legal aid organizations to streamline their intake or by courts to reduce the cost of handling cases involving self-represented litigants. None have taken seriously a fundamentally litigant-centered design because that would require coordination on a level not yet seen.

Perhaps most daunting is the ability of courts to offer effective ODR. Courts are barely starting to handle videoconferencing and virtual services in a competent way. Their business processes remain byzantine and heavy with jargon, due process that may not matter, and rules that make no sense in the modern world. Even if those process issues could be conquered by judges and administrators almost wholly without modern management training, they would probably need to partner with private industry to offer the kinds of automated assessment and decision services that private ODR sites are beginning to offer. Those capabilities require deep knowledge of sophisticated academic research and strong software development capabilities—neither of which courts are known for. Still, even partial support for the ODR strategy would probably make a big difference.

## **Summary**

It would be fair to say that this paper raises more questions than it answers. There are good reasons for that state of affairs. It isn't known what specific tasks by a new legal assistance role would most improve access. It isn't known what exact ODR services would be most attractive to those without current access to the courts. It isn't known if the requirements for litigant portals address sufficiently the barriers that keep so many with legal problems out of the courts. Hopefully, the kinds of strategies discussed here will help and suppose they will by lowering costs, reducing complexity, and providing more convenience—if properly implemented. Only time will tell if those suppositions are true. In the meantime, it would be prudent to regularly assess new programs to see if they are really making a difference, and in a cost effective way.