

INCREASING ACCESS TO JUSTICE THROUGH EXPANDED “ROLES BEYOND LAWYERS”: PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS¹

DISCUSSION DRAFT
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The Context

Broad agreement exists that many people in the United States – particularly the poor -- who need assistance handling civil justice issues do not obtain it. Daily around the country, thousands of people arrive at court not only without a lawyer to represent them but without an understanding of where to go, what to do, or what will happen while they are there. People are particularly likely to appear without attorney representation, or as “self-represented litigants,” in evictions, family and domestic matters, and debt collection cases. For example, the state of California counted 4.3 million unrepresented court users in 2003, noting that over 90% of defendants in eviction actions and domestic violence restraining order cases appeared unrepresented (Herman 2006). A recent survey of court managers in New York City reported that managers estimated that approximately 75% of Family Court litigants and 90% of Housing court litigants “appear without lawyers for critical types of cases: evictions; domestic violence; child custody; guardianship; visitation; support; and paternity” (Office of the Deputy Chief Administrative Judge 2005: 1). Faced with so great a volume of unassisted court users, courts often do not have sufficient staff to handle the inquiries of so many unassisted litigants. In some kinds of cases, such as evictions and consumer debt, these self-represented litigants often find themselves facing a lawyer who represents the other side.

Emerging strategies for solving this access to justice crisis include a growing number of experiments involving new roles for individuals who are now authorized to provide certain specific services traditionally supplied only by lawyers. In some of these roles, the individuals are supervised by attorneys; in others, they are not. In some, the individuals can participate in court proceedings; in others, they cannot. This project creates a framework for evaluating the functioning and impacts of such programs with a particular focus on their potential to contribute to solving this “justice gap.”

¹ This discussion draft is a joint product on which the authors welcome comment. Rebecca L. Sandefur (rsandefur@abfn.org) took the lead on the evaluation framework; Thomas M. Clarke (tclarke@ncsc.org) took the lead on the program design framework. Both welcome comments and input on any aspect. We gratefully acknowledge financial support for the research from the Public Welfare Foundation through its special initiative on civil legal aid, as well as the comments and suggestions of Katherine Alteneider, Steve Crossland, Judge Fern Fisher, Paula Littlewood, Roger Maldonado, Mary McClymont, Fern Schair and Richard Zorza. Opinions expressed herein are the authors’ own, and any errors or omissions are their responsibility.

The Roles Beyond Lawyers Project. This paper presents initial versions of conceptual frameworks for understanding programs in which people who are not fully qualified attorneys provide assistance that was traditionally only available through lawyers. We term these programs “Roles Beyond Lawyers” (RBLs). Such initiatives provide a range of services to litigants appearing without attorneys, sometimes called “self-represented litigants,” from information to moral support to legal advice. We present these frameworks as both a resource to those who may be envisioning their own RBL projects and as an opportunity for this research project to receive feedback and comment. These will be refined through insights gained from their application to the study of two existing programs and through the input of practitioners, scholars and policy-makers. After the conclusion of this project (summer 2016), final reports will be released, including frameworks that reflect these refinements and additional material on lessons learned from the conduct of the empirical research.

Program Evaluation. To date, while they take many forms, existing Roles Beyond Lawyers programs share common goals. The first section of the paper starts with the common goals that innovations seek to achieve and develops common evaluation criteria that assess achievement of those goals. This framework for evaluation identifies major questions to be asked regarding any such program, as well as means through which those questions can be answered. The approach enables researchers to compare programs using consistent evaluation criteria and method, so that research results reflect the workings of program design and implementation rather than differences in evaluators’ criteria. The evaluation framework provides conceptual, methodological and practical guidance for designing evaluation projects to study RBLs. It is organized as a series of nested, increasingly elaborate (and expensive) evaluation activities. Researchers may select from a range of menus of topics and measures according to their interests and available resources.

Program Design. Programs that employ Roles Beyond Lawyers do exist in many forms and could exist in an even greater variety than currently observed. The second section of the paper builds upon the analysis of program goals and evaluation criteria to develop a framework for classifying the many different types of programs that exist and could be designed to provide legal services or procedural assistance through Roles Beyond Lawyers. Obviously such programs can take on an almost infinite variety of program features and characteristics, so it is necessary to identify key points of difference. Classification of such programs will aid evaluators who wish to compare similar programs for effectiveness and sustainability.

Roles Beyond Lawyers: A Family of Innovations

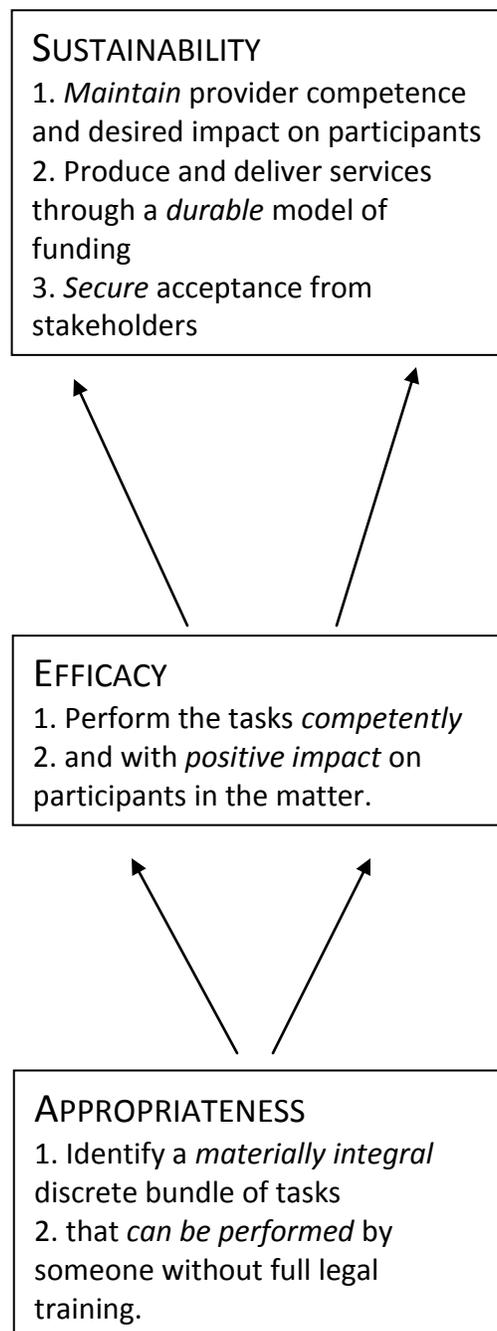
Roles Beyond Lawyers programs attempt to balance the goals of increasing access to justice and ensuring consumer protection through delivering services traditionally provided only by lawyers by means of people who are not fully legally qualified. Achieving the dual goals of access and protection requires programs to respond to the challenges of *appropriateness*, *efficacy*, and *sustainability*. These three challenges are the criteria on which RBLs are evaluated.

- *Appropriateness.* Program designers must identify a discrete bundle of services that can **both** make a material difference in the conduct of justiciable events **and** be competently performed by staff who are not fully trained attorneys. Achieving appropriateness is the foundational goal of any program using RBLs. If this goal is not met, the innovation will be ineffective even if well implemented and sustainable.

- *Efficacy.* The discrete bundle of services provided must be both competently performed and positively impactful on the work of participants in the legal matters served. Participants may include courts and their staff, who have interests in the timely, efficient and lawful processing of cases, and litigants, who have interests in these same goals. Litigants also have interests in the outcomes and experience of justice processes in their own particular matters. Stakeholders may also include attorneys who participate on the “other side” in cases involving RBL-assisted litigants. If appropriateness is meeting the challenge of designing an RBL that could work, efficacy is about implementing it so that it does work in attaining its specific goals for service delivery.
- *Sustainability.* Sustainability is perhaps the greatest challenge confronting any method of delivering appropriate and efficacious services. Services must be produced by personnel managed through durable models of training, supervision, and regulation that ensure the consistent delivery of services of adequate quality. The means of funding production and delivery must be durable, whether the source is public funds, charity or philanthropy, client fees, or some combination of these. Models of service production successful at a small scale may require revision to succeed at a larger scale. Sustainability requires not only maintaining material efficacy, but also legitimacy. Stakeholders, who include the public and organized legal profession as well as individual litigants and courts, must accept and employ the new roles as means of delivering assistance.

These three challenges unfold sequentially in the implementation of innovations. Figure 1, below, represents these graphically from the ground up.

Figure 1. Three Challenges of Legal Services Delivery Innovation



Designing Evaluations of Roles Beyond Lawyers

Like all exercises in evaluation research, this project aspires to determine how well a program, practice or policy achieves certain specific, measurable goals (Rossi, Lipsey and Freeman 2004; Weiss 1998). These goals may be operative at different levels of analysis: for example, observers may want to understand the impact of a program on both individuals who receive its services and the organizations that provide it. The reality of all empirical research is that all factors of interest may not always be feasibly measured, as access to data, resources to create, collect and analyze these data, and time to allow the processes of interest to unfold may all be limited.

Any evaluation must begin with a clear understanding of the goals that program designers seek to achieve. Common motivations for introducing RBLs include aspirations such as increasing access to justice for the public or reducing costs to courts. It is essential to identify what attaining program goals would look like in specific, practical terms. For example, increasing access to justice might mean that more people turn to courts for a specific type of matter; or, it might mean that more people who commence a specific formal legal process, such as dissolving a marriage, formally complete it; or, it might mean that the decisions produced by a formal legal process become more legally accurate. Similarly, reducing costs to courts might mean that fewer people use the courts for a specific type of matter; or, it might mean that a formal legal process comes to require less court staff time; or, it might mean that work formerly funded by the court system is now funded through other means. The reality of many RBLs is that different stakeholders can hold different, sometimes conflicting goals for the RBL, and also that designers may not always have a clear idea of precise goals when they launch the innovation (see, *e.g.*, for the legal aid context specifically, Meeker and Utman 2002).

Any evaluation of an RBL must also begin with a clear description of the role itself. Most importantly, this description identifies the specific bundle of tasks and powers that is foreseen for incumbents of the role. It clarifies the intended limits of the RBL's scope of action and differences between what the RBL is meant to do and what a lawyer's role or an unassisted lay person's role would be in the legal process at issue.

Another essential task in designing evaluations of RBLs is mapping the context into which the RBL will enter. Context mapping includes three key components. The first component of context is the participants in the actual legal process into which the innovation will intervene. Identifying these participants provides a map of the human infrastructure of the legal process as well as a list of groups of people whose work may be affected by the innovation. These are people whose cooperation with incumbents of the RBL is necessary if the RBL is either to gain legitimacy or to function as designed. For example, if an RBL will enter into eviction matters assisting tenants, landlords' attorneys' work will be affected and their interests in maintaining current standard operating practices may be threatened. The second component of context is the participants in the production and delivery of RBL services. These will include not only the incumbents of the RBL, but also the people and organizations who train, supervise and perhaps regulate them. Understanding these two aspects of context is essential because this exercise uncovers sites where unintended consequences of the innovation, whether desirable or undesirable, may develop. This also helps to identify key stakeholders for the later analysis of sustainability (see below, pp. 10-12). The final component is the work environment into which the RBL will enter, its norms and standard operating processes. Some courts are orderly and quiet, with easily visible signage and legible rules about how to move through the legal process. Others are crowded and chaotic contexts in which it is difficult for an outsider to discern where to go or what to do. Standard practice may be that cases

are frequently resolved through settlements worked out in the courthouse hallways, where lay people face alone the attorneys representing their opponents (Lazerson 1982).

Stage 1. Roles, Goals and Context

1. Identify specific goals of the innovation.
2. Describe the role as designed.
3. Map the contexts of service delivery and production.

The first three initial steps document two sets of factors: the intentions of RBL designers in setting up the role and the status quo processes into which the RBL is or will be an intervention. For some evaluation projects, documentary evidence will be available which describes the RBL and its purposes. Such documents may include rules, website descriptions, committee minutes, and the like. A second valuable source of information about the role and its context comes from formal interviews with multiple key informants for each research site, who will include court administrators, practitioners, and those who designed and/or supervise or regulate the RBL. Information collected in Stage 1 will also be relevant to assessing *appropriateness*, *efficacy* and *sustainability*.

Stage 2. Appropriateness and Efficacy

Once the goals for the innovation have been determined, the role has been fully documented and the contexts of delivery and production have been mapped, the next task is to identify measures for the first two evaluation criteria: how well the RBL is meeting the challenges of *appropriateness* and *efficacy*. The design of existing RBLs varies greatly on a range of dimensions (Clarke and Sandefur 2015), and one purpose of this framework is to identify classes of measures that will be available and comparable for all types RBLs.

4. Measure appropriateness and efficacy.

Appropriateness

The question of appropriateness concerns the extent to which the RBL program has created a discrete bundle of legal services that can **both** make a material difference in the conduct of justiciable events **and** be competently performed by staff who are not fully trained attorneys. The tasks in assessing appropriateness empirically involve:

- Identifying the tasks necessary to see the matter successfully through the legal process and noting those tasks where the RBL can intervene and how. For example, if the RBL will provide document preparation assistance, what are the specific documents that must be produced (e.g., parenting plans, answer forms in an eviction action, petitions for the dissolution of marriage), how are the documents actually prepared (e.g., on a computer, on a

paper form), and what has to happen with those documents (e.g., filing, notarization, approval by a judge, etc.)?

- Identifying the specialized knowledge necessary to competently perform these tasks. Some of this necessary knowledge will emerge through the identification of the tasks. Other aspects of the required specialized knowledge can be gained from interviews with people who practice and work in the context into which the RBL will enter. One straightforward way to assess appropriateness is through interviews with practitioners who work in the contexts where the new role will be or has been deployed but who are *not* formally involved in the role's implementation or design. These practitioners serve as local experts for both the formal requirements of carrying out the role and informal aspects of how work is routinely conducted in courts and other legal settings (Sandefur 2015).

Efficacy

Efficacy concerns how competently the role is performed and how it impacts the work of participants in the legal matters served. Most basically, efficacy reflects how well the RBL is able to achieve the goals foreseen for it in its design. However, through the course of the evaluation project, unintended benefits and challenges of the RBL may also emerge. Which elements of efficacy are of greatest interest in any specific evaluation project will depend, in part, on who is paying for the service. Many of these programs are not paid for by client fees, but operate with substantial subsidies from the organized bar, from court systems, or from charitable funders. Other programs, by contrast, may receive some subsidy but are also substantially supported by fees paid by the end users of the services, who are members of the lay public. These different stakeholders often will have different goals for the program. Courts, for example, may be particularly interested in reducing the burdens placed on their work by unrepresented litigants. Litigants, for example, may be particularly interested in receiving what they perceive to be good service and good outcomes from their matters.

Across RBL programs, common elements of efficacy are

- competence, which will be reflected in work product (e.g., legal documents, legal advice, information) of satisfactory quality. This element measures achievement of the widely shared RBL goal of consumer protection. Readily available measures of competence include: (a) produced documents, the quality of which can be assessed by competent auditors such as attorneys who practice in the court. These assessments must be blind: that is, auditors cannot know who produced the document. Documents can be assessed for their accuracy and correctness, and assessments of documents produced by RBLs may be compared with those produced by unassisted litigants and by attorneys (Moorhead, Sherr and Paterson 2003).

Other valuable measures of competence include: (b) observation of the interpersonal work of RBL incumbents, to assess its quality and conformity to the RBLs powers and limits. This must be done guided by clear protocols describing what RBLs may and may not do, as well as what the RBL *should* do to further the interests of his/her client; (c) interviews with other parties to matters involving RBLs, to gain their assessment of how effective is the RBLs

work in participating in the matter in an appropriate and competent way. These parties should be experts (*ie*, not members of the lay public), and include attorneys, judges, court staff and paralegals participating in matters involving RBLs. These interviews should be guided by standard protocols. Information gained will be useful in assessing competence, and may also provide information about legitimacy that is relevant for the issue of sustainability (see below). In analyzing these interviews, it will be important to remember that informants' own interests shape their perspectives on these innovations, and will be reflected in their assessments of competence and legitimacy.

- use, which will be reflected in the rates at which people receive assistance or resolution. This element is a measure of the widely shared RBL goal of expanding access to justice. Depending on the specific goals of the innovation, use might be measured by, for example, time trends in the proportion of relevant documents produced with evidence of RBL assistance. This is a straightforward measure of the extent to which people use the RBLs' services.

In addition, specific programs may have other efficacy goals for the RBL. Common goals include:

- reducing the burdens placed on courts by litigants who appear without lawyer representation. Widely available measures of this impact include: (a) the number of appearances involved in matters where litigants receive assistance from RBLs, in comparison with matters in which litigants receive assistance from attorneys and in which litigants receive no discernible assistance; and, (b) the time elapsed from filing to decision for a given matter for cases involving RBLs, or attorneys or unrepresented litigants.

Additional measures, seldom collected, could include: (c) trends over time in the number of contacts between clerks and unrepresented litigants. If the RBL is effective at reducing burdens on courts, one means through which this might occur would be a decline in the number of these contacts, as clerk contact is replaced by RBL contact; (d) trends over time in the average amount of time court clerks spend with each member of the public answering questions. Similarly, we might anticipate that this would decline if the RBL is effective at achieving the goal of reducing the burden placed on courts. These two measures might be collected in a very precise way, by measuring specific contacts and their duration, or less precisely, by surveying court staff at different points in the implementation of the program to capture their subjective sense of whether their work has changed in this respect.

- procedural justice is widely regarded as an important outcome of the functioning of court and justice processes. When people perceive that the decision process that led to an outcome was fair, incorporated their participation, treated them with respect, and was managed by an impartial adjudicator, they experience procedural justice (Lind and Tyler 1988). Procedural justice is of interest to courts and the legal system not only because it reflects elements of customer satisfaction with court experiences, but also because it has been shown linked to the legitimacy of the legal system and its agents as well as to compliance with the results of court processes, such as judgments (e.g., Tyler 2003). Procedural justice is conventionally assessed by surveying participants in a matter and asking questions about their perceptions of fairness, neutrality, treatment with respect and the like. Standard measures exist for these experiences, and they should be used by researchers studying these roles. The use of

standard measures ensures that findings produced from the evaluations are comparable with the broad procedural justice literature.

- improving litigant understanding. One goal of RBL programs may be to increase litigants' understanding of what happens in their cases and what are next steps required of them by the court process, such as returning to the courthouse at a later date for a hearing or filing a form they have completed. Litigant surveys can assess litigants' understanding of the processes in which they are involved.
- participation. One goal of RBL programs may be to increase the rates at which parties participate in the formal processes involved in the matters in which they are implicated. This is arguably an expansion of access to justice. Unrepresented litigants often enter legal matters as the result of the other party's instigation: for example, tenants in evictions, consumer debtors in collection actions, homeowners facing foreclosure. Rates of default can be very high in these actions, and reducing these rates may be a goal of RBL programs. Research demonstrates that among the clear impacts of assistance to litigants is simply supporting them in actually showing up for scheduled hearings (Larson 2006). Decreases in default rates are a measure of increased participation. These might be measured by comparing ultimate default rates among RBL-assisted cases and cases in which people appear unrepresented or by examining trends in default rates in the RBLs case type overall, comparing the rates before and after the implementation of the RBL.
- changing litigant outcomes. Finally, one goal of RBL programs may be to change the profile of outcomes for the matters into which the RBL is an intervention. Sometimes explicitly stated in program goals, at other times implicit is the belief that if currently unrepresented litigants received even limited assistance they would frequently achieve outcomes more favorable to their interests than they currently do. What change one might expect depends on the nature of the matter, and might take the form of better settlements (from one side's perspective) or agreements reached more quickly or slowly.

For matters like foreclosure, eviction, and consumer debt collection, a better outcome for the assisted litigant could mean a more favorable settlement (*e.g.*, a reduction in the debt or more time to vacate the apartment or forgiveness of arrears in exchange for swift exit from the premises) or the resolution of the matter in a settlement that does not get reported to credit bureaus and other rating agencies – as opposed to an unfavorable judgment that would be (*see, e.g.*, Greiner, Pattanayak, and Hennessey 2013). For matters like divorce, a better outcome for the assisted litigant could mean agreements that are more durable, in that they result in more stable compliance by both parties, or it could mean an agreement that includes more of what a litigant wanted at the commencement of the matter.

Standards of comparison

The goals of the intervention will typically signal what are the appropriate benchmarks or standards of comparison. Sometimes the RBLs work will be best measured in comparison to an absolute standard (*e.g.*, correctness), while in other instances it will be necessary to compare the RBLs work to alternative providers. RBLs are most often designed as interventions into processes where many

people currently obtain neither representation from fully qualified attorneys nor any other form of assistance. Thus, the most common comparison is likely to be the experience of a litigant assisted by an RBL with that of a lay person who receives no assistance, though comparing the work of RBLs to the results produced by other kinds of providers may also be informative.

Stage 3. Sustainability

Once an appropriate and efficacious model of providing assistance has been established, the challenge is continuing its work and taking it to scale. The final stage in RBL evaluations is thus an analysis of sustainability.

5. Measure legitimacy and perceived value.

For an RBL model to be sustainable both over time and when a pilot project is taken to a larger scale, the services must be produced by personnel managed through durable models of training, supervision, and regulation that ensure the consistent delivery of services of adequate quality. The means of funding the production and delivery of services must be durable, whether the source is public funds, bar subsidy, charity or philanthropy, client fees, or some combination of these. Sustainability further requires not only maintaining material efficacy, but also creating legitimacy. Stakeholders, who include the public and organized legal profession as well as individual litigants and courts, must accept and employ the new roles as means of delivering services.

Across RBL programs, common elements of sustainability are

- legitimacy is a shared belief that something is correct, acceptable, and worthy of recognition as such. In social science, legitimacy is often linked with the concept of authority – the belief that a specific group of people, such as an occupation, has the right to carry out certain work (Abbott 1988; Weber 1978). In the case of RBL programs, this acceptance would involve wide acknowledgement that RBLs have the authority to do the specific work that they do (Gorman and Sandefur 2011). Legitimacy is fundamentally subjective, hinging on the degree to which the participants to a legal matter and other stakeholders believe that a specific means of conducting work is a correct and acceptable way of doing so. Legitimacy may be assessed by surveys or interviews with other participants in the matters targeted for RBL intervention. Legitimacy may also be assessed behaviorally, by observing how participants treat the RBL in observed interactions or by reviewing complaints made to regulators or to court staff about RBLs and comparing them to complaints made about attorneys.
- perceived value. For these programs to be sustainable, all key stakeholders must perceive some value in the program. Here, we understand value as the net benefit that results from the comparison of costs and benefits. Typically, three kinds of stakeholders must perceive value: the persons working in the RBL, the litigants using the services provided by the RBL, and the funder/s of the RBL program. To date, the funder has usually been either a court, a bar association, or a philanthropic organization. Value must be determined separately for each stakeholder role, and all stakeholder roles must perceive positive value for the program to be sustainable.

For the people working in the role, the net benefits must be attractive enough to motivate initial and continuing participation. At a minimum, the economic rewards of working in the role must exceed those provided by alternative uses of that work time, and must also exceed the costs of training and participation enough to be worth the trouble. Not all RBLs are paid roles. Relevant economic benefits may be present benefits (in the form of, for example, pay) or anticipated future benefits (in the form of, for example, experience that might be valued by a future employer or training program). Economic benefits will also often not be the only determining factor, since other characteristics of the role, like the ability to work part-time or to be self-employed, may be equally important. Some key data to collect for assessment of value for role participants include the amount of revenue collected, the cost of training (both initial and on-going), and the cost of operating the business.

For litigants, the value proposition balances the perceived cost of alternative service providers, such as lawyers, with the perceived value of the services provided by the RBL. The cost of existing alternative providers, such as attorneys, can be determined from average fee rates charged by role participants for standard types of legal services. The perceived values of the service provided by the RBL is a subjective evaluation that depends on a number of influences including but not limited to quality of services that a litigant believes she receives and the litigant's procedural justice experiences. The perception of value is shaped within the context of the really existing alternatives the litigant faces: in the contexts where these programs operate, the litigant may be making choices between a highly limited range of options: lawyers, the RBL, and no assistance whatsoever. It may not be straightforward to determine what kinds of providers litigants believe to be viable sources of assistance for legal matters, as we now know that many potential litigants utilize informal and nonlawyer sources of advice for legal problems (Sandefur 2014).

For funders, the stakeholder must also perceive net benefits for the program to be sustainable. If there is no subsidy of any kind for the program, it is market-based and the usual forces of supply and demand will determine the fate of the program. To date most programs have been subsidized to a significant extent, so perceptions of value to the funder are critical. Funders of different types are likely to perceive different bundles of costs and benefits.

If the funder is a court or court system, perceived value may include benefits to courts such as reduced clerk time supporting litigants and reduced judge time to dispose cases. Benefits may also include increased confidence in and support for the courts on the part of the public, such as through litigants' improved experiences of procedural justice.

If the funder is a bar association, it is less clear how perceived net benefit is defined or determined. One challenge to the legitimacy of RBL programs is a perception that there exists a conflict of interest between helping litigants at lower cost than what lawyers would charge for the same services and protecting the demand for legal services provided by traditional lawyers. This challenge raises issues of both short-term perception and longer-term material impact. To the extent that the consumer demand served by the RBL does not reduce demand for legal services provided by lawyers, this may dampen the perception of negative impact on the market for legal services. To the extent that the RBLs work serves to increase demand for legal services from lawyers, whether by making litigants more knowledgeable about the legal process and utility of lawyers or by creating relationships of

referral between RBLs and the traditional bar, the traditional profession may perceive value because the work of the new role actually results in some additional new business. If the program is seen to reduce demand for traditional legal services from attorneys, then there may be a perceived net cost of the program to the funder's constituency, the bar. This may then make sustainability problematic.

If the funder is a philanthropic organization, the program must be seen as a better investment than alternative uses of the same philanthropic resources. The population of philanthropies has a wide range of interests. Such organizations may be particularly interested in service to specific populations, such as Veterans or immigrants, or in supporting programs that are perceived to achieve particular goals, such as reducing homelessness or preserving low-income housing units.

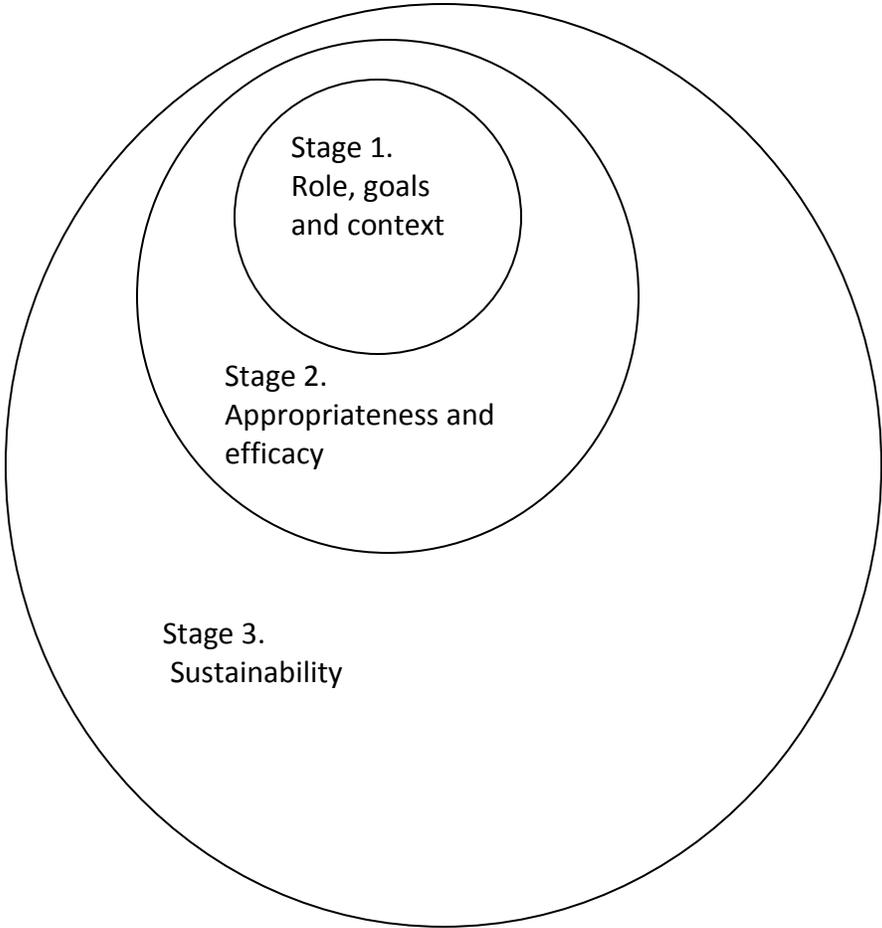
For members of the public, the stakeholder is often passive, but may nonetheless incur potentially significant net costs or benefits. If the RBL program is subsidized by public money generated by the tax dollars of members of the public, and the program proves to be ineffective or unsustainable, then there is a significant opportunity cost, since those funds could be used for other, more effective programs. If the program is both effective and sustainable, it presumably resolves cases in ways that benefit not only the litigants directly, but also society as a whole through a reduction in related costs such as homelessness, petty crime, and perceived improvements in the rule of law. While such social costs can be more difficult to quantify, it is possible to estimate them and they can become sizable in the aggregate.

Most of these costs and benefits are unknowable at the time new roles and programs are being designed and some may not be knowable until the program has operated for some time. Nevertheless, it is very useful to estimate key costs and benefits as well as possible initially, to get a sense of what the probabilities of success will be. This exercise can help identify program characteristics that may cause a program to become unsustainable or, conversely, be essential to long-run success.

A particularly useful form of this exercise is a kind of sensitivity analysis. Although most RBL programs will start as limited pilot projects, sponsors will want to scale up programs perceived to be successful in order to satisfy more of the unmet demand for civil legal services. Scaling up programs can reveal program design weaknesses that are not initially apparent. For example, funding subsidies that cannot be maintained or scaled up will limit success. Training strategies that cannot be scaled up at a viable cost will also put programs in jeopardy. Finally, possible shifts in demand for legal services from traditional lawyers to the new role may become large enough to threaten support from the bar. One can imagine other scaling problems, so the exercise can be illuminating.

Evaluation activities are designed in three concentric stages, each of which provides more information and is also likely to be more expensive to complete. Figure 2 represents this graphically.

Figure 2. Concentric Stages of Evaluation



Roles Beyond Lawyers Program Design: Key Characteristics

Many RBL models could, at least potentially, achieve the dual goals of consumer protection and access to justice through ensuring appropriateness, efficacy and sustainability. As jurisdictions think about how best to close the current gap in the provision of legal services and procedural assistance, the wide range of possible strategies for doing so is arresting. This moment is a time for extensive but responsible experimentation as the legal community explores the possibilities and looks for viable solutions. Given the wide-open nature of the situation and the lack of research-based information on what works, it can be challenging to focus on which types of program characteristics really matter.

All programs for RBLs must balance increased access with consumer protection. In doing so, they must be designed to be appropriate, be efficacious, and be sustainable. These goals necessarily involve making careful tradeoffs that seek to simultaneously maximize all of the goals—an impossible task. Successful programs will probably use a “satisficing” strategy where each goal is achieved “well enough.” When there is no obvious optimal strategy, program design becomes the context for critical decisions in the absence of clear guidance. Going forward, it will be very helpful to simply be able to classify the programs according to meaningful dimensions, so that effective and successful programs can be described and replicated elsewhere.

One useful strategy is to group possible program design features by program goals. That connects program design directly to program success, making rigorous evaluation easier. Following that strategy, the following program classification features are proposed, discussed below, and associated with major design goals.

Role Definition (Restricted Legal Services vs. New Legal Roles)

Some jurisdictions view these roles beyond lawyers as professionals who are authorized to perform a subset of the services traditionally performed by attorneys. Programs designed according to this view are therefore directly based on modified versions of bar rules and policies.

A contrasting approach treats the RBLs more like nurse practitioners, a new medical role that is defined and used as a unique resource. They are not “limited doctors.” For example, they do not go to medical school. The distinction is key, since it influences a number of other program design decisions. For example, treating it as a new role allows the program designers to start from scratch on training, regulation, and quality control. The essence of this distinction is that the new role is designed from the ground up as a new conception.

Training

This is another key program design characteristic. The two obvious starting points are paralegal training programs and law schools. One can choose either of them or a combination. One can also design a completely new training program. The possibilities are broad, with implications for all three design goals.

Service Scope (Facts vs. Advice)

The short-hand description of this characteristic is a bit simplistic, but it captures a key decision point about RBLs. Restricting the RBL to assistance around facts (forms, processes) makes the role more like an existing paralegal (unless there is no requirement for supervision by a lawyer; see Quality Control decision below). Allowing the role to perform some legal services that involve advice, either in or out of the courtroom, requires judgment calls and negotiating skills that are closer to what a lawyer does. Of course, there is a broad and fuzzy area around what constitutes giving advice.

Practice Location Scope (In Court vs. Out of Court)

This program characteristic is related to, but separate from the ability to explain facts versus giving advice. The features may or may not overlap. There is a bit of a fuzzy line on what can be done in court, since a judge may always call on an RBL who is merely watching the case. One should not under-estimate the bond formed by a discussion before a courtroom hearing that can result in better support to the litigant in the hearing, even if direct verbal participation is not allowed.

Regulation Strategy (Regulated vs. Unregulated)

This is an important design characteristic. To date most RBL program have opted for some kind of formal regulation. In theory, one could allow the role to be regulated informally by customer behavior, but that would not directly support the goal of consumer protection. Another informal approach would be for suitable organizations to provide supervisory oversight, either on-site or not, without more formal regulatory machinery.

It is unlikely that states will opt in the near term for totally unregulated strategy, but there are some examples in existence. New firms like Legal Zoom and Rocket Lawyer offer what are essentially legal services and are regulated only by the market. Indeed, this situation is what places the bar in opposition to their operation in many states. There are also some countries that have established similar new roles with little or no formal regulation.

On the other hand, several navigator programs do operate with relatively informal regulation. Supervisors from the court or legal aid non-profits perform training and ensure quality of service and competence.

Role Payment (Market vs. Volunteer)

This is a design feature that will clearly distinguish most programs. Some jurisdictions opt for a form of volunteer staffing, using pro bono lawyers, law school interns or other unpaid staffing resources. In contrast, other programs establish the RBL as a professional paid role, where the staffers expect to get paid and make a living. The medical analogy is roughly between a candy striper and a physician's assistant or a nurse practitioner.

One possible approach that blurs the distinction between payment and non-payment is the use of salaried staff to perform volunteer work not part of their regular job and also not separately or distinctly reimbursed. Such staff use may be unusual, but it could happen.

Role Formality (Formal vs. Ad Hoc)

Formal RBLs come with everything one might expect from that approach: regulation, training, quality control, and many other oversight features. More informal and ad hoc approaches are looser in design. Some navigator programs might function like this. So far, most programs have opted for formality.

Host

This characteristic is related to the regulation feature. If regulated, one must decide who will regulate. Some options so far identified include the courts (usually the state supreme court), the courts delegated to the state bar association, and the state department of licensing. The hosting organization need not be the same as the regulating organization (courts regulate, bar hosts).

Quality Control

This is a broad area that covers a number of important design characteristics, including supervision of the RBLs, ethics policies, conduct processes, and other related features such as certification of training programs. This decision is related to the characteristic about limited practice lawyers versus new roles. If one models after lawyers, then the starting point is how quality control processes operate for the bar. If it is a new role, the quality control processes may be designed from scratch without regard for how it is done for lawyers. If one opts for this latter approach, then the differences between quality control approaches for doctors and nurse practitioners might be instructive.

Marketing Mode

For RBL programs to be effective, litigants must have some way of discovering them and then using them. Approaches may vary widely. Some programs are found only within the physical courthouse. Others are identified on websites. Yet others may involve traditional advertising in at least a limited form. Other program features may drive this decision in many cases, but they need not do so.

Role Permanency (Career vs. Temporary)

This decision is related to the ones about formality and use of the market. Creating a career track definitely affects the sustainability of the program for better or for worse. Use of a constant stream of temporary staffers, as with pro bono or intern programs, affects other design decisions like quality control and training.

Funding Strategy (Subsidy vs. Market)

Most programs to date have started with some form of subsidy from the court or the bar. One can imagine a program that is purely market-based from the beginning. Nurse practitioners have always operated this way. It would require very careful attention to the business case when designing the program.

Each of these program design decisions is listed below the appropriate program goal below. Note that some program characteristics occur under multiple goals, illustrating the extent to which

programs are making tradeoffs among the desired goals. Even from the brief discussions of possible program characteristics above, it is clear that decisions for some program features will tend to naturally group together, since they collectively form a logical and consistent approach to program design. It is not yet clear which subset of the proposed features constitutes this kind of fundamental design choice.

Program Design Decisions

The program design decisions are grouped below by evaluation area. Some program features should be evaluated in more than one way.

Appropriateness:

- Role Definition
- Service Scope
- Practice Location Scope
- Regulation Strategy
- Host
- Quality Control

Effectiveness:

- Role Definition
- Training
- Practice Location Scope
- Marketing Mode
- Role Formality
- Host
- Quality Control
- Role Permanency

Sustainability:

- Role Payment
- Training
- Marketing Mode
- Role Formality
- Host
- Quality Control
- Role Permanency
- Funding Strategy

Conclusion

This paper has presented two frameworks for understanding the functioning and impacts of roles beyond lawyers: new roles for individuals who are now authorized to provide certain specific services traditionally supplied only by lawyers.

In the United States today, access to justice experiences a renaissance (Albiston and Sandefur 2013). The developments appear in many arenas. For example, the US Department of Justice now hosts an Access to Justice Initiative, founded in 2010 to “help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status” (Department of Justice 2015). The National Science Foundation, a principal federal funder of basic science research, released a “Dear Colleague” letter calling specifically for research proposals investigating fundamental questions in the study of civil justice (National Science Foundation 2013). The Legal Services Corporation, the central federal funder of civil legal aid for the indigent, has announced a goal of “100% Access”: the provision of “some form of effective assistance to 100 percent of persons otherwise unable to afford an attorney for dealing with essential civil legal needs” (Sandman 2014). Key to this vision is services provided through a wide range of means in addition to those from traditional full-service attorneys.

These high-level developments are paralleled on the ground. Courts, bar associations, legal aid providers, and law school clinics experiment with new services and models of service delivery. Some of these leverage available information technologies (e.g., Legal Services Corporation 2013), while others employ new ways of using human resources, including the work of nonlawyers (Chambliss 2014; Crossland and Littlewood 2014; Zorza and Udell 2013). Complementing providers’ activity, a new stream of empirical research investigates it, producing basic science as well as knowledge relevant for policy and practice. A growing body of studies includes comparative metrics for justice system performance, such as the World Justice Project (Botero and Ponce 2011) and the US-focused Justice Index (National Center for Access to Justice 2014; see generally, Davis *et al.* 2012); randomized controlled trials of the impact of legal information, advice and advocacy (Greiner and Pattanayak 2012; Greiner, Pattanayak and Hennessy 2013; Seron *et al.* 2001); observational studies of legal services production and delivery both in the US and in international perspective (e.g., Barendrecht *et al.* 2012; Nielsen and Albiston 2006; Sandefur 2009; Steinberg 2011); and, meta-analysis, or systematic synthesis of research literature (Sandefur 2015). A central element of this movement is the mutually enriching engagement of research and practice. In that spirit, the authors present these preliminary frameworks for understanding established and emerging Roles Beyond Lawyers, and invite comment from members of the scholarly, practice and policy communities.

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