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What the Access to Justice Crisis Means for Legal Education

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Despite enormous social, legal, and technological shifts in the last century, the structure of legal education has remained largely unchanged. Part of the reason so little change has occurred is that the current model mostly “works”; it produces a professional class of lawyers to populate the ranks of law firms and government entities. At the same time, for decades, legal education researchers have considered it practically axiomatic that law school has room for improvement.

In this Article, I argue that the access to justice crisis—a deficit of just resolutions to justiciable civil justice problems for everyday people—compels an overdue examination of legal education’s scope and purpose. If we assume that lawyers should have a major role in solving the access to justice crisis, as opposed to simply meeting individual legal needs, law schools must prepare lawyers to serve this role. I point to three categories of improvement that centering access to justice would necessitate: teaching a greater versatility of thinking and problem-solving, imparting a broader understanding of the ecosystem of justiciable problems and lawyers’ place in it, and structuring law school to impart the cognitive cornerstones needed for successful legal practice.

Placing access to justice at the center of legal education would strengthen, not supplant, the traditional model. In addition to equipping lawyers to address everyday Americans’ justice problems, this Article’s proposals would make the legal profession nimbler and more resilient to social, economic, and technological changes, and help overcome some of the profession’s most intractable problems.

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I. ACCESS TO JUSTICE AND LEGAL EDUCATION

Each year, U.S. law schools enroll some of the most incisive thinkers in the country. And although most law schools function reasonably well in their current form, they have enormous untapped potential to produce lawyers who are well equipped not only to practice law in the traditional sense, but to fortify the profession, solve some of our thorniest problems of social inequity, and remain resilient in the face of social, economic, and technological changes. The pressing needs of the access to justice crisis cast light on several ways to bring these ambitious goals within reach.

A. Justice Problems Versus Legal Needs

Defining “justice” in the access to justice sense turns out to be less straightforward than one might suppose. Broadly, “justice” refers to fairness and equality: outcomes on whose moral acceptability most of us would agree. But this social justice understanding is not very useful in delineating what we mean by “access to justice,” because moral acceptability varies interpersonally. *You* might find it unfair or morally unacceptable that the government does not supply free prenatal vitamins to all pregnant women; *I* might find the omission acceptable. Is this lack of free prenatal vitamins an “access to justice” problem? It depends on whom we ask. To lawyers, these kinds of questions are sometimes interesting but rarely useful, and they are the kinds of questions that law students are socialized—sometimes implicitly, sometimes explicitly—not to ask in doctrinal courses: lawyers’ province, after all, is the law.

But one degree narrower than this social-justice-oriented construct of access to justice is what we might call the “justiciability” construct, which defines access

to justice problems as matters that are theoretically actionable under the law. If state law guarantees prenatal vitamins to pregnant people, and a particular pregnant person cannot afford the vitamins and the state has no mechanism by which to deliver them, this would constitute an access to justice problem under the justiciability construct. If, on the other hand, the law was silent on the topic, there would be no access to justice problem under the justiciability definition, even though many of us would view the omission as a social justice problem. Scholars writing and working in the access to justice space often use the justiciability definition for clarity: if law has something to say about access to a *thing*, we can call blocked access to that *thing* an access to justice problem.

The stickier task is defining the universe of potential solutions for justiciable problems within the access to justice realm. Do we need to use law, or lawyers, for access to justice to be achieved? In much of the literature, the answer has been yes.¹ Access to justice is treated as access to lawyers, or at least access to law. But even within the legal realm, is this the most useful definition? In the prenatal vitamin example, we might imagine a number of possible solutions to the pregnant person's inability to afford vitamins to which she is (hypothetically) legally entitled:

- (1) She might consult a lawyer, who could file a claim or write a demand letter to the relevant agency. If no such agency existed, the lawyer could bring a legal claim.
- (2) She might go to court pro se and try to convince a judge to compel the government to give her the vitamins.
- (3) She might go to a nongovernmental public service organization that offers free vitamins and obtain them there.
- (4) She might use leftover prenatal vitamins from a friend who gave birth a few months earlier.

From the pregnant person's perspective, all four solutions could get her the vitamins she needs. Indeed, (3) and (4) might be fastest, and thus preferable. While she might be vexed to learn that she is legally entitled to receive free vitamins but that the government has created no mechanism for making this happen, her concern is not the law's inability to deliver on its promise; her concern is getting the vitamins. The vitamins, not the procedure, are the "justice" she seeks.

In contrast, though, in thinking about how to deliver people the just result to which they are legally entitled, much of the access to justice literature takes a lawyering-centric approach, asking not "How can this person get justice?" but instead, "How can law and the courts get this person justice?" As Rebecca Sandefur writes, "The distinction between a justice problem and a legal need turns out to be crucial, for these two ideas reflect fundamentally different understandings of the

1. See, e.g., Bernice K. Leber, *The Time for Civil Gideon Is Now*, 25 *TOURO L. REV.* 23, 25 (2009); Robert W. Sweet, *Civil Gideon and Confidence in a Just Society*, 17 *YALE L. & POL'Y REV.* 503 (1998).

problem to be solved.² Access to law is, in some cases, a means of accessing justice. It is not, in itself, access to justice.

There are at least two problems with conflating access to justice and access to a lawyer. First, this conflation frames the justice crisis from the perspective of the legal system instead of from the perspective of the people who need resolution of their problems. Putting lawyers first and everyday people second is a little like supposing that the proliferation of colds and flus can best be solved by giving everyone greater access to traditional medical doctors. Doctors might help in a number of ways—identifying viral strains, doling out NyQuil—but even though doctors might be the best ones to come up with overarching preventative strategies and treatment policies, not every person suffering from a head cold needs to see a doctor. The second problem with conflating access to justice and access to traditional lawyering is that there are simply not enough lawyers to meet all the civil justice needs in the United States.³

This all means that, assuming we believe lawyers should be central to solving the access to justice crisis, we need to rethink our assumptions about what lawyers should know and what lawyers should do.

B. What Does Legal Education Have to Do with Access to Justice?

In its current form, a strong legal education equips a newly minted attorney to provide access to law. A client walks into a lawyer's office with a problem the client has identified as a potential legal problem. The lawyer provides a diagnosis, offers one or two possible approaches, and in consultation with the client, takes some action via legality, law, and/or the legal system. Access to law has been granted. But if what we care about is access to *justice*, the flaw in this approach is that most people suffering from justiciable problems will never walk into the lawyer's office at all. Their greatest barrier to doing so will not be steep fees or lawyers' availability, as scholars and practitioners long assumed; rather, it will be that they do not think of their problems as legal in nature.⁴ Nor will they attribute their justice problems to a failure of law or government or the legal system. Rather, they will see the problem as bad luck, karma, God's will, or something else beyond their control.⁵ Faced with a justiciable problem, the average American is vastly more likely to do nothing at all

2. Rebecca L. Sandefur, *Access to What?*, 148 DÆDALUS, Winter 2019, at 49, 50 [hereinafter Sandefur, *Access to What?*]; see also David Luban, *Optimism, Skepticism, and Access to Justice*, 3 TEX. A&M L. REV. 495, 512–13 (2016).

3. See D. James Greiner, Dalíé Jiménez & Lois R. Lupica, *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1122 (2017).

4. Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 116 (Pascoe Pleasence, Alexy Buck & Nigel J. Balmer eds., 2007) [hereinafter Sandefur, *The Importance of Doing Nothing*]; REBECCA L. SANDEFUR, AM. BAR FOUND., ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY (2014) [hereinafter SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA].

5. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 4, at 14.

than to seek legal help.⁶ The legal help sought represents what Sandefur calls the “tip of a gigantic iceberg.”⁷ Most estimates suggest that between seventy and eighty percent of justiciable problems—justice needs—remain unmet.⁸ These civil justice problems lie submerged invisibly beneath the ocean’s surface, where they exact enormous tolls on everyday people’s lives, families, livelihoods, and financial security.⁹

If we want lawyers to solve *only* the visible, tip-of-the-iceberg problems, but more of them, legal education should keep doing what it is already doing, but more of it: more skills courses, clinics, loan forgiveness programs, incentives for students to work in public service, and so on. Plenty of visible iceberg tips are insufficiently attended to,¹⁰ and society would benefit from their just and effective resolution. On the other hand, if what we care about is access to *justice*, we need to think about how legal education can equip future lawyers to grapple with the iceberg’s submerged bulk. How can lawyers become creative, intuitive, knowledgeable, and effective enough to tackle the larger universe of unsolved justiciable problems—problems that the people experiencing them are not thinking about as “legal” at all?

One possible response, of course, is that lawyers’ job does not extend below the iceberg’s tip. But to suggest that access to justice is not the province of lawyers is, I argue, an unnecessarily circumscribed vision of lawyers’ potential as thinkers and problem solvers. If you give smart people useful tools and a problem to solve, very often they will build useful things. Legal education can broaden the problems lawyers see and the tools they know how to use. If we want lawyers to address problems below the ocean’s surface, we need to teach lawyers how to swim.

This Article is part diagnosis, part prescription, and part thought experiment. It stipulates that access to justice, including the fair resolution of justiciable problems, is the province of lawyers, and asks: How could legal education prepare lawyers to do the kinds of work that could solve the severe justice deficit in the

6. Sandefur, *The Importance of Doing Nothing*, *supra* note 4; see LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2017) [hereinafter LSC].

7. Amicus with Dahlia Lithwick, *Lawyers: Who Needs ‘Em?*, SLATE (Aug. 17, 2019, 10:00 AM), <https://slate.com/podcasts/amicus/2019/08/amicus-talks-to-rebecca-sandefur-on-the-civil-legal-system-inequality-access-to-justice-and-whether-lawyers-are-always-the-answer> [https://perma.cc/3AXA-H8LJ] (interviewing Rebecca L. Sandefur).

8. LSC, *supra* note 6, at 33; Hugh Logue, *Civil Needs Unmet: The Latent Demand for Legal Services*, A.B.A.: BUS. L. TODAY (Mar. 16, 2020), https://www.americanbar.org/groups/business_law/publications/blt/2020/04/civil-needs-unmet/ [https://perma.cc/R33Y-CSDJ]; WORLD JUST. PROJECT, GLOBAL INSIGHTS ON ACCESS TO JUSTICE 108 (2019).

9. See generally DEBORAH L. RHODE, ACCESS TO JUSTICE (2004); SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 4, at 9–10; LSC, *supra* note 6, at 25–26.

10. See, e.g., Russell Engler, *Shaping a Context-Based Civil Gideon from the Dynamics of Social Change*, 15 TEMP. POL. & C.R.L. REV. 697 (2006); Andrew Scherer, *Why People Who Face Losing Their Homes in Legal Proceedings Must Have a Right to Counsel*, 3 CARDOZO PUB. L. POL’Y & ETHICS J. 699 (2006).

United States? In the remainder of Part I, I detail why reform is urgent. Then in Parts II, III, and IV, I offer three categories of recommendations.

First, we need to teach lawyers how to think more expansively and effectively. We do a good job teaching them how to think “like lawyers,” but often do a poor job teaching them how to think like the people they serve, whether those people are corporate executives or hold minimum-wage jobs. Additionally, creative problem-solving and design thinking are robust tools for modern professional life—tools other professional schools have increasingly adopted, and from which law schools could benefit as well. Teaching skills like design thinking does not mean tossing out the case method or watering down the logical rigor of doctrinal instruction; it means teaching them that the most effective lawyers are versatile thinkers, and that they can control and deploy different modes of thought when their work calls for it.

Second, we need to impart a broader understanding of the relationship between the legal profession and the justice deficit. New lawyers should know where lawyers are most effective: the substantive and procedural situations where lawyers help most, and where lawyers actually tend to do harm. They need to be introduced to new models of service provision for justiciable problems, including those outside the United States. They need to know when and how to partner with other service providers, including paralegals, limited license legal practitioners, ombudspersons, and other community resources. And they need to know when doing so is the most efficient and effective way to meet justice needs. Moreover, they need to learn how they, as lawyers, can figure out the justice needs of their community—including the justice needs of people who never walk into their offices—and how those needs can be met.

Third, we need to make law schools into places that produce stronger, more resilient lawyers. This includes acknowledging the anxiety and depression that plague law students in great numbers. By making key pedagogical and structural changes to legal education, and by giving new professionals the cognitive tools to address these problems in their own practices, we can strengthen the profession, make lawyers more resilient, and build a foundation for chipping away at the profession’s most bedeviling problems.

Part V is a starting point for contemplating how some of the proposed changes would fit into the existing law school curriculum. I argue that although an alignment of legal education with access to justice goals would necessitate additional courses and training, it could be accomplished with relative ease (and no omissions from the current standard curriculum). However, these changes will have minimal impact if they are adopted piecemeal, as “band-aid” solutions that do not have the kind of structural endorsement that confers legitimacy.

C. Why Now?

Law school reform has long been a popular topic of discussion among scholars of legal education and the legal profession. Economic and social crises are often

identified as fulcrums for curricular change.¹¹ But by and large, no change has come, save the vast and valuable expansion of law school clinics.¹²

In part, the “Why now?” question is rhetorical. If legal education has remained stolid in the face of recessions, wars, and cultural change, why is now a better time than before?

One answer is the coronavirus pandemic, which will create new access to justice problem and deepen existing ones: more debt, more housing instability, more employment difficulties. These kinds of problems are significant in themselves, and frequently cascade to create additional justice problems. The need for access to justice solutions is, and will likely remain for many years, more dire than it has been in a very long time. Law schools and lawyers should be at the forefront of addressing this crisis. And since many law schools are experimenting with new learning modalities to cope with the pandemic’s continuing dangers, the moment may be opportune to rethink other aspects of legal education as well.¹³

Another answer is that, pandemic or no pandemic, change is overdue. Ten years ago would have been a better time than now, and now is a better time than ten years hence. Now is the best time because additional postponement is risky to the legal profession’s health and harmful to ideals of justice. Although there are many areas where we could use more research, we know a lot about the gulf between the justice people need and the justice people get. Whether we call it a crisis, a void, a plague, a dearth, or a desert, we know for certain that the lives of low- and moderate-income Americans are greatly encumbered by unsolved civil justice problems.¹⁴ This is partly because poverty and inequality continue to rise. The

11. See, e.g., Deborah L. Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437 (2013); Kevin R. Johnson, *Some Thoughts on the Future of Legal Education: Why Diversity and Student Wellness Should Matter in a Time of Economic “Crisis,”* 65 BUFF. L. REV. 255 (2017).

12. In this Article, I talk primarily about transforming non-clinical legal education—though even this clarification is, somewhat, a false dichotomy. To be clear, I see law school clinics and experiential courses as natural allies and partners in creating the kind of change I advocate. One reason I am focusing so little on clinics is that while clinical courses have long experimented with different forms of innovative design and experiential learning, this has not been the case for the doctrinal classes we are used to thinking of as the “core” curriculum. My intention is not to bracket clinics off as orthogonal to the reforms I discuss, but rather to acknowledge that many of them already do many of the things I suggest legal education should do. Occasionally in this Article, I will mention specific ways clinical education might be integrated into the reforms I propose, but for the most part I leave this argument as an implicit one.

For discussions of the relationship between clinical legal education and access to justice goals, see Margaret Drew & Andrew P. Morriss, *Clinical Legal Education and Access to Justice: Conflicts, Interests, and Evolution*, in BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA 194 (Samuel Estreicher & Joy Radice eds., 2016); Oluyemisi Bamgbose, *Access to Justice Through Clinical Legal Education: A Way Forward for Good Governance and Development*, 15 AFR. HUM. RTS. L.J. 378 (2015). For an extremely rich discussion of how we might use clinical legal education to fundamentally transform legal education, see Gerald P. López, *Transform—Don’t Just Tinker with—Legal Education*, 23 CLINICAL L. REV. 471 (2017).

13. Kathryn M. Young, *Revealing the Social and Cognitive Processes in Law School that Create Unhealthy Lawyers*, FORDHAM L. REV. (forthcoming 2021).

14. See generally LSC, *supra* note 6, at 14.

economic gap between the bottom fifty percent and the top one percent is larger than ever before.¹⁵ And as economic inequality increases, the need for legal services will grow with it. “Some types of civil cases can be logically tied to growing inequality, such as dealing with family matters, housing, and consumer debt.”¹⁶ For other types of civil justice problems, the connection is less direct. As social safety net programs have diminished, a greater problem-solving burden has fallen on the judicial branch.¹⁷ It is now practically de rigeur for scholarly articles on access to justice to begin by reciting the fact that approximately eighty percent of access to justice needs, variously defined, go unmet.¹⁸ These unmet needs fall disproportionately on the shoulders of poor people and people of color, although middle-income people suffer as well.¹⁹ The access to justice crisis is, as Sandefur points out, partly a crisis of systematic racial and economic inequality.²⁰

The good news is that the access to justice crisis is finally beginning to garner the attention it deserves. Thanks to thoughtful empirical research by Sandefur and others, we know much more about the problem than we did in 2000 or 2010. For example, research is beginning to suggest the ways that individual characteristics,²¹ as well as prior experiences with courts and the law²² shape people’s interactions with the justice system, which will ultimately allow us to create innovative designs for delivering much-needed services. We are learning more about how justice needs differ between groups—for example, those who live in rural areas versus urban ones.²³ We are also building the kinds of scholarly knowledge about the relationship

15. See, e.g., CHAD STONE, DANILO TRISI, ARLOC SHERMAN & JENNIFER BELTRÁN, CTR. ON BUDGET & POL’Y PRIORITIES, A GUIDE TO STATISTICS ON HISTORICAL TRENDS IN INCOME INEQUALITY (2020).

16. Colleen F. Shanahan & Anna E. Carpenter, *Simplified Courts Can’t Solve Inequality*, 148 DÆDALUS, Winter 2019, at 128, 129 (citing JONATHAN LIPPMAN, THE STATE OF THE JUDICIARY 2011, at 1, 6 (2011)).

17. See *id.*

18. See generally LSC, *supra* note 6, at 14 (“Eighty-six percent of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help[.]”); Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 451 (2016) [hereinafter Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*]; Logue, *supra* note 8.

19. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 4, at 9.

20. Sandefur, *Access to What?*, *supra* note 2, at 51–53.

21. See, e.g., Calvin Morrill, Carolyn Tyson, Lauren B. Edelman & Richard Arum, *Legal Mobilization in Schools: The Paradox of Rights and Race Among Youth*, 44 LAW & SOC’Y REV. 651 (2010); Kathryn M. Young & Katie R. Billings, *Legal Consciousness and Cultural Capital*, 54 LAW & SOC’Y REV. 33 (2020).

22. Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1267 (2016).

23. Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219, 312 (2010); Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 115–16 (2018).

between race, poverty, other life circumstances, and access to justice that will enable us to create solutions.²⁴

An access to justice framework also compels consideration of the connection between legal professionals' well-being and access to justice goals—a link that may, at first, not be obvious. But as recent research shows, lawyers' "susceptibility [to anxiety, substance abuse, and depression] begins in law school and eventually has an impact on society by affecting people who rely on lawyers to manage their everyday legal problems."²⁵ Creativity, competence, compassion, and logical reasoning skills are all undercut by the problems from which law students and the legal profession suffer most.

Lawyers' patterns of life dissatisfaction, mental health problems, and struggles with addiction have long been an open secret. However, recent data shows that not only are these problems not improving, but they are worse among newer lawyers than among more seasoned ones.²⁶ Additionally, studies of law school connect the law school experience with unhappiness and inequality in the profession, providing empirical support for the long-held assumption that as an institution, law school cultivates anxiety, risk aversion, a preoccupation with status, and a tendency away from self-reflection.²⁷ This finding is consistent with Sheldon and Krieger's observation that as they continue through law school, law students on average care more about prestige and less about community service, except for its utilitarian function.²⁸ Their internal motivation drops.²⁹ And these changes are associated with mental health problems, like anxiety and depression.³⁰

Moreover, as law schools have diversified their student bodies, they have done a poor job ensuring that the institution matches students' needs. My own survey of 1,100 law students from over 100 American law schools suggests that women, nonwhite students, queer students, very conservative students, very liberal students, religiously observant students, and students from modest class backgrounds all felt excluded—and in rather large numbers.³¹

24. See generally Greene, *supra* note 22; Pruitt & Colgan, *supra* note 23; Pruitt et al., *supra* note 23.

25. Architects of Just: Exploring Access to Just. in Ont., *Improving Health, Improving Service: Well-Being in the Legal Profession and Access to Justice*, CASTRO (Sept. 18, 2018), <https://castro.fm/episode/GxTyVz> [<https://perma.cc/9A8Z-UWVN>].

26. Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 616 (2015) [hereinafter Krieger & Sheldon, *What Makes Lawyers Happy?*].

27. See *id.* at 566–67; Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCIS. & L. 261, 283 (2004) [hereinafter Sheldon & Krieger, *Does Legal Education Have Undermining Effects on Law Students?*].

28. Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 26, at 592.

29. *Id.*

30. *Id.*

31. KATHRYNE M. YOUNG, HOW TO BE SORT OF HAPPY IN LAW SCHOOL 83–101 (2018). Other research identifies a kind of “two-track” system in law school, in which some students, disproportionately white and male, feel a strong sense of identity and belonging and experience law school as a kind, gentle, and supportive place. But the second category, disproportionately women

Law students do not begin law school feeling alienated, depressed, and anxious. At the outset, 1Ls look a lot like their counterparts who are not in law school, with average levels of mental health problems such as depression, anxiety, suicidal ideation, substance abuse, and self-harm.³² Then, beginning in the first year, their subjective well-being plummets. And this is not just a first-year phenomenon; the decline becomes less steep in 2L and 3L year, but it does not recover.³³ Kennon Sheldon and Lawrence Krieger's work sketches a gloomy prototypical trajectory that follows new lawyers into practice.³⁴ About one in six law students screens positive for clinical depression, one in three for clinical anxiety, and one in four for alcohol dependence.³⁵ One in ten reported intentional physical self-harm within the past year.³⁶ Yet, most law schools do little to impart the kinds of metacognitive skills that would reverse these trends, venturing into "wellness" territory only partially, timidly, and uncommittedly, as I will argue, *infra*.

Considering law students' well-being through an access to justice lens is useful for several reasons. It offers a chance to frame innovations as a practical part of lawyers' training, every bit as essential to a new lawyer's professional edification as her ability to interpret a statute or pinpoint relevant caselaw. It also has the advantage of being other-oriented in focus, not only self-oriented. That is, it encourages law students to think about their development as practitioners in a way that serves clients, as opposed to feeling like "self-help," which tends to be stigmatized in the law school environment. The more we know about law students' struggles, and the more we know about these problems' continued manifestation in the legal profession, the more unconscionable it becomes to do so little about them.

Finally, as I will discuss in greater depth below, the legal profession is changing rapidly. Some of these changes are technological: smartphone applications, web-based legal problem-solving and online dispute resolution portals, standardized web forms, and online sources of legal advice have made it more possible for people to solve—or at least, seek to solve—their legal problems via technological innovations. The coronavirus pandemic has accustomed many people to receiving professional services online (e.g., telehealth) that were previously provided in person. Other major changes to the legal profession include a new willingness on states' parts to consider nonlawyer management of law firms and introduce new methods of nonlawyer legal services, including limited license legal

and/or people of color, experiences a different social reality, and finds the same law school aggressive, hostile, and unsupportive. Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209, 1280 (2005).

32. Sheldon & Krieger, *Does Legal Education Have Undermining Effects on Law Students?*, *supra* note 27, at 262, 280.

33. *Id.* at 262.

34. See generally Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 26.

35. Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 145 (2016).

36. *Id.* at 139.

practitioners—in part to address the access to justice crisis. These changes necessitate different ways of thinking about the practice of law and the role of lawyers; we need to equip lawyers to think carefully and critically about these shifts in the profession while they are still in law school.

II. TEACHING VERSATILITY OF THINKING

“Thinking like a lawyer,” albeit variously defined by legal education scholars, has long been a linchpin of U.S. legal education. Under the general pedagogical consensus, it includes logical thinking, the ability to identify relevant parts of an argument, and the ability to mount an argument by applying facts to law. Solving legal problems demands particular types of logic.

But instead of teaching lawyerly thinking as a skill, too often law schools treat “thinking like a lawyer” as a way of life—as a transmogrification of personality. We tend to talk about it in terms of *transforming their brains*. We say things like, “After law school, you will never be able to think the same way again.” And we are largely successful in this transformation—though not always to lawyers’ benefit.

In my survey of 1,100 from over 100 U.S. law schools, many respondents discussed the ways that “thinking like a lawyer” had changed them.³⁷ They discussed becoming unable to think in abstract, nonlawyerly ways. For example:

I came into law school . . . with unwavering ethics, compassion, and understanding. I was someone who questioned everything that didn’t make sense, especially policy. This mindset is cancerous to the law school environment—you can fight back or you can conform. . . . [E]ither way your identity will die.³⁸

Respondents discussed being encouraged to think in ways that created “jaded contempt”³⁹ and changed their personalities. “Thinking like a lawyer is real. And it creates ripples beyond the professional realm,”⁴⁰ one student wrote. Another described the “thinking like a lawyer” as a “necessary evil” to do well in law school.⁴¹ In other words, we show them where the “on” switch is without letting them know that there is also an “off” switch—nor teaching them how to use it.

And, indeed, thinking like a lawyer is a tremendously useful skill in legal practice—perhaps the most useful skill a law student can develop. At the same time, one does not always need to think like a lawyer—certainly not in life, but not even in legal practice. At times, it becomes useful to see things from a client’s point of view, a judge or jury’s point of view, or a policymaker’s point of view. As I have argued elsewhere, “thinking like a lawyer” is no more magical than thinking like a chef, or a psychologist, or an auto mechanic.⁴² Teaching and socializing students as

37. YOUNG, *supra* note 31.

38. *Id.* at 38.

39. *Id.*

40. Survey responses (on file with author).

41. *Id.*

42. YOUNG, *supra* note 31, at 41.

if “thinking like a lawyer” holds mystical, transformative properties, rather than treating it as a tool to deploy in appropriate circumstances, is not only harmful to students, but an unrealistic fit for the demands of practice. (One student described law school as a “3-year boot camp for your brain where they teach you how to think like a lawyer, but not really how to be one.”⁴³)

In the rest of this Part, I point to two other ways of thinking that would be useful to lawyers, could be cultivated in law school, and would be instrumental in equipping legal professionals to solve the access to justice crisis. I do not suggest that we eliminate or de-emphasize traditional modes of legal thinking, but rather that in addition to teaching legal reasoning, we deliberately and systematically require students to learn and practice complementary modes of thinking. One involves teaching law students how nonlawyers think about the law—an area of sociolegal studies known as legal consciousness. The other involves teaching lawyers creative problem-solving in the form of design thinking skills, which are now routinely taught as part of professional development to business and engineering students and could expand lawyers’ ability to tackle complex issues for which legal reasoning is less useful in isolation. I discuss each in turn below.

A. Legal Consciousness: Thinking Like a Nonlawyer

Most people suffering from justiciable problems do not think of their problems as “legal.” This is a crux of the sizeable disjuncture between legal practice and access to justice, where access to justice is defined as the equitable resolution of justiciable problems.⁴⁴ Knowing that the problems they see are only the tip of the “enormous iceberg of civil-justice activity”⁴⁵ would help lawyers gain greater perspective on how traditional lawyering is, and is not, solving people’s problems. More importantly, understanding how people subjectively experience justiciable problems, and why they may or may not seek lawyers for these problems’ resolution, can help lawyers interact more effectively with clients, in ways that incorporate clients’ perspectives.

Nor is legal consciousness equivalent to “understanding how poor people think.” Understanding how *all* nonlawyers think about law is useful whether a new lawyer is works at a community legal aid clinic or does mergers and acquisitions at a large firm. Regardless of whom they serve, when practicing attorneys list the skills they wish they had learned in law school, better interaction with clients is near the top of the list.⁴⁶ Yet the knowledge and skills necessary for effective attorney-client interaction tends to be taught mostly in clinical courses, which are not required by

43. Survey responses (on file with author).

44. See Sandefur, *Access to What?*, *supra* note 2, at 51.

45. *Id.* at 50.

46. Kathryn M. Young, Original Survey Results [hereinafter Young, Original Survey Results] (on file with author).

the American Bar Association,⁴⁷ rarely required by individual law schools,⁴⁸ and typically include one-on-one instruction about a specific client's specific legal problem, as opposed to an overview of how different people think about, understand, and experience various kinds of legal problems.

Simply put, the study of legal consciousness is the study of how nonlawyers think about law: "[T]he ways in which law is experienced and interpreted by specific individuals as they engage, avoid, or resist the law or legal meanings."⁴⁹ It includes understanding the factors that make people eager or reluctant to use law to solve problems, knowing about common client misunderstandings and where they come from, and appreciating how specific groups tend to react to legal procedures and outcomes.⁵⁰ Additional work about people's perceptions of and willingness to use the law is sometimes referred to by other descriptors such as legal cynicism⁵¹ and legal mobilization⁵²—concepts closely related to legal consciousness, and which we might think of legal consciousness as encompassing.⁵³

47. The ABA requirements state that for a law school to be accredited, it must require a student to complete at least six credits' worth of "experiential courses" to practice law which can include field placements, clinical courses, or experiential courses of various types. See AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017–2018, at Standards 303(a), 304 (2017). This was an important curricular reform and a huge step in the right direction.

48. As of October 2018, only forty-three of the more than 200 accredited law schools in the United States required a student to complete a clinic or externship. Peter A. Joy, *Challenges to Legal Education, Clinical Legal Education, and Clinical Scholarship*, 26 CLINICAL L. REV. 237, 238–39 (2019). As legal education scholars have pointed out, law students' experiential requirement for graduation is less than their professional counterparts', such as doctors, social workers, and veterinarians. Peter A. Joy, *Law Schools and the Legal Profession: A Way Forward*, 47 AKRON L. REV. 177, 196 (2014). See generally Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551 (2018).

49. Susan S. Silbey, *Legal Culture and Legal Consciousness*, in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES 8623, 8626 (Neil J. Smelser & Paul B. Baltes eds., 2001).

50. For further foundational reading on legal consciousness within the law and society movement, see, for example, Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. & SOC. SCI. 323 (2005); and Laura Beth Nielsen, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment*, 34 LAW & SOC'Y REV. 1055 (2000). As I have argued elsewhere, legal consciousness is less a narrowly circumscribed subfield, and more a theoretical tool broad enough to encompass and draw together seemingly disparate strands of law and society literature that are concerned with power and relationality. Young & Billings, *supra* note 21, at 34–35.

51. See, e.g., Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 LAW & SOC'Y REV. 777 (1998); David S. Kirk & Mauri Matsuda, *Legal Cynicism, Collective Efficacy, and the Ecology of Arrest*, 49 CRIMINOLOGY 443 (2011); Monica C. Bell, *Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism*, 50 LAW & SOC'Y REV. 314 (2016).

52. See, e.g., Charles R. Epp, *Connecting Litigation Levels and Legal Mobilization: Explaining Interstate Variation in Employment Civil Rights Litigation*, 24 LAW & SOC'Y REV. 145 (1990); MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION (1994); Douglas NeJaime, *The Legal Mobilization Dilemma*, 61 EMORY L.J. 663 (2012).

53. Kennedy et al. make an intriguing and related argument for teaching "place consciousness" in law school, which could certainly be seen as an aspect of legal consciousness as well. Amanda Kennedy, Trish Mundy, Jennifer Nielsen, Caroline Hart, Richard Coverdale, Reid Mortensen, Theresa Smith-Ruig & Claire Macken, *Educating Law Students for Rural and Regional Legal Practice: Embedding Place Consciousness in Law Curricula*, 24 LEGAL EDUC. REV. 7, 9–10 (2014). For a discussion of the

For lawyers to be central to solving the access to justice crisis, they need to be able to identify how and where justiciable needs manifest. This aptitude would help them design outreach programs that would meet the needs of populations with specific justice deficits. One example of this kind of outreach is “legal checkup” programs,⁵⁴ but many other programs model how lawyers’ effectiveness in meeting a community’s justice needs are increased by understanding how people experience problems. And again, although sociolegal scholars often study legal consciousness among middle- and lower-income people, understanding how a client thinks about law is useful to lawyers in virtually every practice setting.

Additionally, understanding how everyday people think about law can help lawyers identify specific hurdles to justiciable problem-solving in particular communities. For example, Sarah Sternberg Greene’s empirical examination of a Cambridge, Massachusetts, housing project suggests that negative experiences with police can make people unwilling to pursue legal solutions even to civil justice problems unrelated to the criminal justice system; from their perspective, “seeking out lawyers and going to court for civil justice issues would mean bringing themselves back into the claws of an institution that they do not understand and in which they feel lost, risking the very same feelings of shame and failure they wish to avoid.”⁵⁵ Similarly, Pascoe Pleasence and Nigel Balmer have found that people who believe that they have handled their own civil legal problems poorly in the past, or who experienced civil legal outcomes they believe were unfair, are less likely to take future problem-solving actions, instead experiencing frustration and resignation.⁵⁶ Additionally, even among people with negative past experiences with the police, Black individuals are less likely to trust legal institutions than white individuals are.⁵⁷ Overcoming or incorporating this distrust into the resolution of justiciable problems is crucial for access to justice to be racially equal. Greene also found that her respondents distrusted no-cost legal services and assumed that a free lawyer would rarely be a good lawyer.⁵⁸ This made it less likely that they would enlist a lawyer’s services to solve their justiciable problems.

significance of time and place in understanding what an injury is, see, for example, INJURY AND INJUSTICE: THE CULTURAL POLITICS OF HARM AND REDRESS (Anne Bloom, David M. Engel & Michael McCann eds., 2018).

54. See, e.g., D.C. Bar Pro Bono Center, *Legal Checkups - Smart Practices for a Healthy Business*, LAWHELP.ORG/DC (May 1, 2018), <https://www.lawhelp.org/dc/resource/podcast-legal-checkups-smart-practices-for-a-healthy-business> [https://perma.cc/J7PH-YZN6]; see also, e.g., *Legal Health Checks*, EQUAL JUST., <https://www.cba.org/CBA-Equal-Justice/Resources/Legal-Health-Checks> [https://perma.cc/69NK-7N6E] (last visited July 18, 2020).

55. Greene, *supra* note 22.

56. Pascoe Pleasence & Nigel Balmer, *Measuring the Accessibility and Equality of Civil Justice*, 10 HAGUE J. ON RULE L. 255 (2018). As the authors discuss, this accords with Sandefur’s (2007) argument that people who repeatedly fail to solve civil justice problems are more likely to respond with inaction in the face of future problems. *Id.* at 286–89; see Sandefur, *The Importance of Doing Nothing*, *supra* note 4.

57. Greene, *supra* note 22, at 1268.

58. *Id.* at 1291.

Thus, providing access to justice for diverse populations requires more than simply offering services. It requires outreach that can overcome past negative experiences, avoid the dehumanization people have experienced in past interactions with government and the courts, and provide services sensitive to these experiences to retain client participation and confidence. It may also entail creating solutions that are technically extralegal, but work in concert with, or orthogonally to, the legal system. That is, both legal and nonlegal solutions to justiciable problems can require knowledge of law and the legal system, as well as understanding of how legal consciousness shapes people's willingness and ability to pursue particular solutions over others. As Greene writes, "[A]ccess problems are broader than just structural and systemic restraints—there are also cultural and cognitive barriers to access that need to be considered."⁵⁹ Knowledge of these variations in legal consciousness is crucial for practicing lawyers.

In addition to helping lawyers understand how everyday people experience and think about the law, deeper knowledge of the legal consciousness literature could be helpful in litigation, particularly where legal issues hinge on subjective perception. To take an example from criminal law, routine litigation of Fourth and Fifth Amendment matters often involve a "reasonable person" standard. To litigate these issues persuasively, lawyers could draw on the social science literature about how different groups of people think about law⁶⁰: when most people have an expectation that their home or belongings will be private from government intrusion, when they feel at liberty to leave an encounter with police, and so on.⁶¹ Instead, lawyers tend to appeal to judges' sensibilities, which differ considerably from everyday people's.⁶² We might even imagine that greater attention to legal consciousness could forge productive collaborations between practicing attorneys and scholars of legal consciousness. Practitioners could help researchers identify key issues of legal or policy significance; researchers could help practitioners understand

59. *Id.* at 1270. It is important to acknowledge a few limitations of Greene's study. For example, it contained little racial variation (only Blacks and whites were studied), no geographical variation, used snowball sampling (meaning that respondents' interpersonal interactions or shared history or narratives may have shaped the results), and little variation along the lines of social class or cultural capital, since her respondents came from a single housing project. *Id.* at 1283–84. Additionally, her questionnaire began with a demographic inventory, which may have primed respondents to think about race, and from her account appears to have asked about experiences with criminal justice before asking about civil justice problems, *id.* at 1286, which may have primed respondents to connect their experiences with the criminal justice system to their subsequent answers about how they would handle civil justice problems. Nonetheless, Greene's work represents a significant step forward in the empirical access to justice research, and her empirical findings underscore the idea that past experiences with law can affect people's approach to civil justice problems they face.

60. Indeed, this empirical approach was suggested by Justice Breyer during oral argument in *Brendlin v. California*. Transcript of Oral Argument at 43, *Brendlin v. California*, 551 U.S. 249 (2007) (No. 06-8120).

61. See Kathryn M. Young & Christin L. Munsch, *Fact and Fiction in Constitutional Criminal Procedure*, 66 S.C. L. REV. 445 (2014); Young & Billings, *supra* note 21.

62. See Kathryn M. Young, *Rights Consciousness in Criminal Procedure: A Theoretical and Empirical Inquiry*, 12 SOCIO. CRIME L. & DEVIANCE 67, 74, 88 (2009).

empirical work that bears upon questions of law that turn social scientific assumptions about the ways people think.

Attaining meaningful access to justice in the United States demands that lawyers know something about the social experiences that shape legal consciousness and the textures and dimensions of legal consciousness itself. A more nuanced understanding of how different groups experience and think about justice problems, as well as a more complete understanding of how people come to hold beliefs and attitudes about the law, and why they do or do not pursue legal solutions to their civil justice problems, are crucial to developing effective solutions to the access to justice crisis. Without it, lawyers are ill equipped to design solutions⁶³ that meet people where they are as individuals, as opposed to assuming that justice solutions necessarily stem from being able to think only like a lawyer.

B. Design Thinking

Although “design thinking” lacks a universally agreed-upon definition, most scholars working in the area consider it to encompass the collection of problem-solving skills relied upon by designers, such as mechanical engineers and business innovators. It uses several specific techniques to generate new solutions to “sticky” (complex) problems, most of which emphasize creativity and collaboration, and has its historical roots in mathematics, art, architecture, and product design.⁶⁴ Thomas Lockwood, past president of the Design Management Institute, defines design thinking as “a human-centered innovation process that emphasizes observation, collaboration, fast learning, visualization of ideas, rapid concept prototyping, and concurrent business analysis.”⁶⁵

In legal education, design thinking offers a particularly powerful counterpart to traditional legal thinking. Whereas “thinking like a lawyer” necessitates the ability to narrow one’s thinking effectively, design thinking

63. As many others have pointed out, there are real obstacles to engaging in many kinds of access to justice work after law school—financial barriers chief among these, and geographic barriers close behind. But with law schools’ commitment and collaboration, these barriers can be surmountable. For example, for discussion of one entrepreneurial model, see Carroll Seron, *Managing Entrepreneurial Legal Services: The Transformation of Small-Firm Practice*, in *LAWYERS’ IDEALS/LAWYERS’ PRACTICES* 63 (Robert L. Nelson, David M. Trubek & Rayman L. Solomon eds., 1992). For a discussion of programs designed to increase access to justice related to the rural lawyer shortage, including law schools’ role in alleviating the rural justice deficit, see Lisa R. Pruitt, J. Cliff McKinney II & Bart Calhoun, *Justice in the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence-Based Solutions to Alleviate It*, 37 U. ARK. LITTLE ROCK L. REV. 573 (2015). South Dakota’s model program offers an initiative, funded partly by the state bar and the counties themselves, that gives stipends to law school graduates who commit to five years of practice in a rural county. Wendy Davis, *No Country for Rural Lawyers: Small-Town Attorneys Still Find It Hard to Thrive*, A.B.A. J. (Feb. 1, 2020 12:00 AM), <https://www.abajournal.com/magazine/article/no-country-for-rural-lawyers> [<https://perma.cc/88RS-5W2G>]; see also Erika J. Rickard, *The Role of Law Schools in the 100% Access to Justice Movement*, 6 IND. J.L. & SOC. EQUAL. 240 (2018).

64. See DESIGN THINKING: INTEGRATING INNOVATION, CUSTOMER EXPERIENCE, AND BRAND VALUE 4–7 (Thomas Lockwood ed., 2009).

65. *Id.* at xi.

necessitates the ability to broaden one's thinking effectively. Margaret Hagan, Director of the Legal Design Lab at Stanford Law School, envisions legal design thinking as being fundamentally “about increasing a person's capacity to make strategic decisions for herself. Its target is more the brain, and less the heart or the wallet. Legal design aims to build environments, interfaces, and tools that support people's smartness—and to shift the balance between the individual and the bureaucracy.”⁶⁶ Like access to justice itself, design thinking in the legal context means centering the person who seeks the justice, as opposed to centering lawyers and the law.

One common design thinking technique, “rapid prototyping,”⁶⁷ entails generating multiple potential solutions in short succession in order to test a large number of ideas before expending resources to pursue them.⁶⁸ Testing assumptions early is economically efficient and teaches people to think beyond a problem's most standard, obvious solutions.⁶⁹ In the legal world, rapid prototyping can help lawyers determine the universe of possible legal and extralegal solutions to meet a client's needs.

Another design thinking methodology, “radical collaboration,” is the skill of effective cooperation, coordination, and/or brainstorming with people who come from very different backgrounds to solve a problem.⁷⁰ For example, in thinking about how to address a particular type of landlord-tenant dispute in a given jurisdiction, a lawyer might seek the collaboration of landlords, tenants, the local housing authority, community organizers, or builders. Part of radical collaboration is learning how to effectively deploy people from different backgrounds to solve a common problem.⁷¹ Since solving the access to justice crisis will require a variety of different approaches to problems, not merely standard legal approaches, teaching lawyers this skill is important.

While design thinking has become popular in business schools, it has only begun to gain real traction in the worlds of legal education and legal practice. Many law schools now offer a small seminar, lab, or clinic focused on design thinking. But with few exceptions, tenure-track faculty do not teach these courses (a problem I will discuss, *infra*), nor are law students required to take them, nor do they enroll more than a very small percentage of each law school class.

66. Margaret Hagan, *Legal Design*, LAW BY DESIGN, <http://www.lawbydesign.co/legal-design/> [https://perma.cc/CTR9-CMYJ] (last visited Dec. 17, 2020).

67. Daniel Schwarz, *What Is Rapid Prototyping?*, INVISION (Nov. 5, 2018), <https://www.invisionapp.com/inside-design/rapid-prototyping/> [https://perma.cc/YK4B-EBE4].

68. See, e.g., Rikke Friis Dam & Teo Yu Siang, *Design Thinking: Get Started with Prototyping*, INTERACTION DESIGN FOUND. (2020), <https://www.interaction-design.org/literature/article/design-thinking-get-started-with-prototyping> [https://perma.cc/3VCQ-JC7L].

69. Schwarz, *supra* note 67.

70. See, e.g., Tad Simons, Arvind Gupta & Mary Buchanan, *Innovation in R&D: Using Design Thinking to Develop New Models of Inventiveness, Productivity and Collaboration*, 17 J. COM. BIOTECHNOLOGY 301, 304–06 (2011).

71. *Id.* at 303–04.

But design thinking holds great transformative potential, particularly in the access to justice realm. Hagan has detailed the ways in which the kinds of participatory design taught in design thinking courses can give lawyers insight “about what tools can provide the assistance that people actually need, and about where and how they are likely to access and use those tools.”⁷² Hagan’s analysis focuses on making sure that technical access to justice innovations, such as online case management systems, online e-filing portals, legal information websites, chat portals, and hotlines actually meet the needs, abilities, and proclivities of intended users.⁷³ She argues that approaching access to justice problems from a design perspective has a number of important advantages:

[It] allows legal organizations to be more intentional about how they spend resources. It empowers community members to help in deciding how funding, technology, and staff time are used in reforming the legal system. It can be a source of promising ideas for innovations and community partnerships, and it can harness stakeholders to help make the system work better for people it is supposed to serve.⁷⁴

Hagan details the ways in which labs, courses, workshops, and other methods can be used to expose law students to design thinking.⁷⁵ Others have begun importing design thinking into various legal education contexts to enhance law students’ development as problem solvers. For example, the James E. Rogers College of Law at the University of Arizona offers multiple courses through its Innovation for Justice Lab, which focuses on “empower[ing] students to design and launch solutions to the justice gap.”⁷⁶ Maine Law School’s Apps for Justice Project enabled the development of web-based applications that enable the state’s residents to address certain justiciable problems, such as tenants’ legal needs and the resolution of basic family law matters.⁷⁷ The project used design thinking as the core of legal application development, which forced participants “to address the fundamental question of how human-centered design can solve problems, uncover new ideas, and make law more accessible, usable, and engaging.”⁷⁸ The team included legal service providers, private attorneys, law students, clinical instructors, as well as input from prospective clients about their comfort with technology and their emotional reactions to specific legal matters.⁷⁹ Rather than merely offering free

72. Margaret Hagan, *Participatory Design for Innovation in Access to Justice*, 148 DÆDALUS, Winter 2019, at 120, 120.

73. *Id.* at 121–25.

74. *Id.* at 125–26.

75. Margaret Hagan, *Design Comes to the Law School*, in MODERNISING LEGAL EDUCATION 109, 115–18 (Catrina Denvir ed., 2020).

76. *Curriculum: Innovation for Justice*, UNIV. ARIZ., JAMES E. ROGERS COLL. L., <https://law.arizona.edu/innovation-for-justice-curriculum> [https://perma.cc/498L-MUJB] (last visited Dec. 17, 2020).

77. Lois R. Lupica, Tobias A. Franklin & Sage M. Friedman, *The Apps for Justice Project: Employing Design Thinking to Narrow the Access to Justice Gap*, 44 FORDHAM URB. L.J. 1363 (2017).

78. *Id.* at 1376.

79. *Id.* at 1376–77.

or low-cost legal services that represented lawyers' understanding of the justiciable problems Maine residents faced, the Apps for Justice Project recognized that "[t]he key to application of design theory is to make the design of systems human-centered. . . . Further, the team recognized that addressing a person's mental state when that person is faced with a high-stakes legal problem is also essential to the app's utility."⁸⁰

To date, much of the work that has explicitly connected design thinking and access to justice has centered around technological development.⁸¹ However, the concepts that underlie design thinking have a vaster reach and a broader application to justice problems. This broader application is important since, as Tanina Rostain points out, there are significant real-world barriers to people's adoption of tech-based tools to address their legal problems, particularly among people who are living in poverty,⁸² as well as those living in rural areas.⁸³ Teaching design thinking in law school has to go well beyond the development of new legal tech tools. Everything from trial preparation⁸⁴ to contract drafting⁸⁵ could benefit from the incorporation of design thinking.⁸⁶ These encompass access to justice goals, but would benefit lawyers in other areas of practice, from copyright⁸⁷ to corporate law⁸⁸ to law firm management.⁸⁹ Albeit a relatively new introduction to the world of legal education, design thinking is already taught in business, medicine, engineering, and other professions to enable new professionals to think creatively, act efficiently, and

80. *Id.* at 1382. Another model of technological innovation is Staudt and Medeiros's Access to Justice and Technology Clinic. See Elizabeth Chambliss, *Afterword*, in MODERNISING LEGAL EDUCATION, *supra* note 75, at 258 (citing Ronald W. Staudt & Andrew P. Medeiros, *Access to Justice and Technology Clinics: A 4% Solution*, 88 CHI.-KENT L. REV. 695 (2013)).

81. E.g., Sari Graben, *Teaching Emerging Technologies as Legal Systems: Proposals for a Changing Law School Curriculum*, OSGOODE HALL L.J. (forthcoming 2021); Dan Jackson, *Human-Centered Legal Tech: Integrating Design in Legal Education*, 50 LAW TCHR. 82 (2016).

82. Tanina Rostain, *Techno-Optimism & Access to the Legal System*, 148 DÆDALUS, Winter 2019, at 93.

83. COLBY LEIGH RACHFAL & ANGELE A. GILROY, CONG. RSCH. SERV., RL30719, BROADBAND INTERNET ACCESS AND THE DIGITAL DIVIDE: FEDERAL ASSISTANCE PROGRAMS (2019). As the FCC's 2020 Broadband Deployment Report noted, rural areas and Tribal lands continue to disproportionately lack access to adequate Internet services. See FED. COMM'NS COMM'N, FCC 20-50, 2020 BROADBAND DEPLOYMENT REPORT (2020).

84. Ctr. on the Legal Pro., Harvard L. Sch., *Designs on the Law: The Arrival of Design Thinking in the Legal Profession*, 5 ADAPTIVE INNOVATION, Jan.–Feb. 2019, <https://theppractice.law.harvard.edu/article/designs-on-the-law/> [<https://perma.cc/CHN4-4MW9>].

85. Helena Haapio & Margaret Hagan, *Design Patterns for Contracts*, JUSLETTER IT (2016).

86. For a broad discussion of design thinking's application to legal practice and beyond, see Amanda Perry-Kessaris, *Legal Design for Practice, Activism, Policy, and Research*, 46 J.L. & SOC'Y 185 (2019).

87. Consider, for example, Rebecca Tushnet's proposition for rethinking our assessment of visual images within copyright doctrine. See Rebecca Tushnet, *Worth a Thousand Words: The Images of Copyright*, 125 HARV. L. REV. 683 (2012).

88. Jay A. Mitchell, *Putting Some Product into Work-Product: Corporate Lawyers Learning from Designers*, 12 BERKELEY BUS. L.J. 1 (2015).

89. Mark Szabo, *Design Thinking in Legal Practice Management*, DESIGN MGMT. INST. REV., Sept. 2010, at 44.

understand the perspective of those whose needs they are learning to serve. In addition to providing legal services, lawyers could benefit from thinking more effectively about how to market legal services to people who do not currently seek them out.⁹⁰

Note, too, that design thinking's emphasis on user experience and participatory design dovetails with legal consciousness. Design thinking and legal consciousness both emphasize the importance of knowing how nonlawyers think about, and interact with, law. Neither legal consciousness nor design thinking should replace traditional legal reasoning or legal writing, but both would be tremendously useful additions to the core curriculum. Law students should not be merely offered *opportunities* to incorporate versatile modalities of thinking into their curricula;⁹¹ rather, versatile modes of thinking should be required components of legal education.⁹² For most practitioners, these versatile modalities are required parts of being a good lawyer.

III. IMPARTING A BROADER UNDERSTANDING OF THE PROFESSION'S ROLE IN SOLVING JUSTICIABLE PROBLEMS

In law school, it makes sense that we teach lawyers to distinguish legally cognizable problems from noncognizable ones. Law students are training to be lawyers, and there is a discrete set of problems about which lawyers, and only lawyers, are permitted to take particular actions. But for legal education to meet the needs of the access to justice crisis, we need to take legal education beyond this reactive, law-centric model. Yes, law students must learn to identify legally cognizable problems. Clinics are already doing this and doing it well. Practicing lawyers consistently report that clinics were their most useful educational experiences in law school,⁹³ partly because clinics help them think about diagnosing legal problems and developing concrete strategies to solve them.⁹⁴ The standard

90. Elizabeth Chambliss, *Marketing Legal Assistance*, 148 DÆDALUS, Winter 2019, at 98 (discussing ways to expand access to justice by marketing legal solutions to everyday people more effectively and arguing that significant innovations are possible even within the constraints of current professional rules).

91. As I will discuss in greater depth, *infra* Part V, making something into an elective sends the message that it is non-essential.

92. Though not a topic to dwell upon in this Article, it is worth noting that these kinds of reforms might prompt reflection on various types of existing implicit and explicit law school hierarchies, including those between clinical and doctrinal instructors and those between various intersections of law and the social sciences.

93. RONIT DINOVTIZER, BRYANT G. GARTH, RICHARD SANDER, JOYCE STERLING & GITA Z. WILDER, THE NALP FOUND. FOR L. CAREER RSCH. & EDUC. & AM. BAR FOUND., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 81 tbl.11.1 (2004). However, as an empirical matter, it is important to note that it is unclear whether there is a connection between a law student's participation in clinical legal education in law school and later involvement in pro bono or public service activities. Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 82 (2009).

94. YOUNG, *supra* note 31, at 202.

classroom setting could incorporate these approaches, focusing more on problem-solving and distributive justice.⁹⁵

For lawyers to have a role in solving the access to justice crisis, we need to teach law students as much as we can about the ecosystem of justiciable problems, where lawyers fit into this ecosystem, when lawyers are and are not useful to everyday people, and how to partner with other actors in the ecosystem—as opposed to training them to focus solely on the narrow legal problem in front of them.

A. The Ecosystem of Justiciable Problems

For decades, legal scholarship, bar associations, and sociolegal scholars assumed that the most significant barrier to people's pursuit of civil legal solutions was a lack of funds to hire an attorney or a shortage of available attorneys practicing in the areas where people need them most.⁹⁶ Given these assumptions, it made sense to address the access to justice crisis by producing more attorneys and making these attorneys accessible to everyday people. Innovations such as civil *Gideon* initiatives⁹⁷ are potentially very useful in resolving people's justice problems, since it remains true that not everyone who would like to retain a lawyer is able to do so, particularly for certain problems, and in certain parts of the United States.⁹⁸

But as Sandefur's research illuminates, a dearth of money and available attorneys are not, in fact, the largest obstacles to people's resolution of their justiciable problems.⁹⁹ Everyday people who experience justiciable civil legal problems do not think about them in legal terms at all, nor do they tend to attribute

95. Deborah Rhode has written: "Relatively few law schools offer specialized courses focusing on issues related to access to justice and the topic is missing or marginal in the traditional core curriculum." Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 545 (2013) [hereinafter Rhode, *An Agenda for Legal Education*].

96. See, e.g., Mary Helen McNeal, *Toward a "Civil Gideon" Under the Montana Constitution: Parental Rights as the Starting Point*, 66 MONT. L. REV. 81, 81 (2005) ("[B]ut many low or moderate income individuals cannot secure free legal assistance and cannot afford to hire lawyers."); Sweet, *supra* note 1, at 503 ("With 36.5 million people at the poverty level in 1996 and 77.45 million with incomes below \$50,000 in 1993, legal services are realistically beyond the reach of many.");

97. See, e.g., Russell Engler, *Toward a Context-Based Civil Right to Counsel Through "Access to Justice" Initiatives*, 40 CLEARHOUSE REV. J. POVERTY L. & POL'Y 196 (2006); Sweet, *supra* note 1; Leber, *supra* note 1; McNeal, *supra* note 96.

98. See, e.g., Leber, *supra* note 1, at 25 ("[T]he Office of Court Administration estimated that seventy-three percent of litigants in New York City Family Court and ninety-three percent in Housing Court appeared without an attorney in matters involving fundamental issues such as evictions, domestic violence, child custody, guardianship, visitation, support, and paternity. Sixty percent of pro se litigants surveyed, with annual incomes ranging from under \$15,000 to more than \$45,000, believed they could not afford an attorney."); Pruitt et al., *supra* note 63.

99. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 4, at 3 ("When people who did not seek any assistance from third parties outside their social circles were asked if cost was one barrier to doing so, they reported that concerns about cost were a factor in 17% of cases. A more important reason that people do not seek assistance with these situations, in particular assistance from lawyers or courts, is that they do not understand these situations to be legal.")

a problem's existence to a failure of law or an absence of law.¹⁰⁰ And since they do not see law, per se, as the problem, they are unlikely to seek out legal aid lawyers as the solution.¹⁰¹ The mere existence of on-the-books legal remedies fails to empower people to pursue solutions to rights violations.¹⁰²

In addition to shedding light on everyday people's relationship to their civil justice problems, research has sketched out a basic picture of the justice landscape more generally. For example, a 2013 study of twelve categories of civil justice problems found that low-income and poor people experience these problems more frequently than others do, and that the vast majority of the time, people pursue no legal remedy even for the most readily solvable justiciable problems.¹⁰³ A 2017 report from the Legal Services Corporation found that one in four low-income households experienced six or more civil justice problems in the past year.¹⁰⁴ Access to justice problems have severe long-term ramifications, resulting in "negative impacts on physical and mental health, being harassed, assaulted or threatened, fear, loss of confidence, loss of income, and damage to relationships."¹⁰⁵ These negative consequences of civil justice problems fall disproportionately on the shoulders of low-income people and people of color.¹⁰⁶ Research also shows that certain populations, such as military veterans and victims of domestic violence, are more likely to face civil justice problems—even problems ostensibly unrelated to their status as a veteran or a domestic violence victim.¹⁰⁷ Rural residents, too, face particular challenges to resolution of their justice problems. That population's most persistent obstacles include a lack of public transit to sources of aid and a lack of technological infrastructure to access alternative solutions.¹⁰⁸ And some justice problems are exacerbated by the co-occurrence of others; for example, civil justice problems can result from interaction with the criminal justice system, even for

100. *Id.*; see also Sandefur, *The Importance of Doing Nothing*, *supra* note 4, at 3.

101. Indeed, many of Greene's respondents incorrectly believed that they were entitled to free legal help for their civil legal problems but still did not pursue any kind of legal solution. Greene, *supra* note 22, at 1290. The barriers, as discussed, *supra*, had to do with the ways that they thought about their problems and about the legal system. This underscores the degree to which the ecosystem approach I propose dovetails with teaching law students about legal consciousness.

102. Deborah L. Brake & Joanna L. Grossman, *The Failure of Title VII as a Rights-Claiming System*, 86 N.C. L. REV. 859 (2008); John G. Levi & David M. Rubenstein, *Introduction*, 148 DÆDALUS, Winter 2019, at 7; Calvin Morrill, Karolyn Tyson, Lauren B. Edelman & Richard Arum, *Legal Mobilization in Schools: The Paradox of Rights and Race Among Youth*, 44 LAW & SOC'Y REV. 651 (2010).

103. Sandefur, *The Importance of Doing Nothing*, *supra* note 4, at 9.

104. LSC, *supra* note 6.

105. Sandefur, *The Importance of Doing Nothing*, *supra* note 4, at 9.

106. Lincoln Caplan, *The Invisible Justice Problem*, 148 DÆDALUS, Winter 2019, at 19; SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 4, at 16.

107. LSC, *supra* note 6.

108. Pruitt & Colgan, *supra* note 23. Indeed, Haksgaard has made a compelling argument that in many situations, rural private practice should be understood and reconceptualized as public interest work, and that loan forgiveness programs should be expanded to encompass a broader view of public interest, given the services rural lawyers perform. Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 ME. L. REV. 209 (2019).

people who face no criminal charges.¹⁰⁹ These are all important parts of the civil justice ecosystem.

Yet despite these strides in mapping access to justice, for the most part we train law students in the classroom as if these advancements have not occurred at all (again, the proliferation of clinical legal education notwithstanding¹¹⁰). That is, we implicitly teach law students that the way to solve people's civil justice problems is to build lots of law offices and wait for people to walk into them. But if we want lawyers to learn how to be active solvers of justice problems, as opposed to passively addressing the tip-of-the-iceberg¹¹¹ problems that materialize in their offices someday, we need to teach them about legal problems as an ecosystem, wherein some problems grow slowly and others quickly, wherein some problems tend to beget others, and wherein legal action is one possible intervention among many. Instead of an approach that asks, "How can we best match lawyers to all the legal problems in the world," the ecosystem approach would ask, "How can lawyers be most useful in helping people live their lives unencumbered by justice problems?"

Approaching civil justice as an ecosystem is different from the typical law school approach for at least three reasons. First, it suggests that lawyers have a responsibility to make proactive, not simply reactive, interventions in the access to justice crisis. Second, it encourages lawyers to think about a given justice problem not as an isolated legal issue, but as part of a network of the interrelated problems a person encounters in everyday life. Third, it suggests that lawyers should think of their role beyond legal problem-solving and conceive of themselves partly as "community connectors" who—as former U.S. Supreme Court Justice Robert H. Jackson put it— "understand[] the structure of society and how its groups interlock and interact."¹¹² Nor would the ecosystem approach supplant traditional doctrinal courses. Instead, it would supplement and contextualize the traditional model of lawyering we already teach, helping the next generation of lawyers think

109. See ALEXES HARRIS, *A POUND OF FLESH: MONETARY SANCTIONS AS A PUNISHMENT FOR THE POOR* (2016); ALEXANDRA NATAPOFF, *PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL* (2018); Pamela S. Karlan, *The Paradoxical Structure of Constitutional Litigation*, 75 *FORDHAM L. REV.* 1913 (2007).

110. See Drew & Morriss, *supra* note 12; Chambliss, *supra* note 80.

111. Sandefur, *Access to What?*, *supra* note 2, at 50.

112. David F. Levi, Dana Remus & Abigail Frisch, *Reclaiming the Role of Lawyers as Community Connectors*, 148 *DÆDALUS*, Winter 2019, at 30, 31 (citing Robert H. Jackson, *The County Seat Lawyer*, 36 *A.B.A. J.* 497 (1950)). The authors write:

Regarding access to justice, the legal profession can produce lawyers and judges who have a day-to-day understanding of the entire range of social life in a community. . . . These lawyers can better understand what it means to be poor or disabled or a member of a minority group and, at the same time, can understand how aggregations of power and wealth are organized and motivated in business, government, and elsewhere. They can put this broad knowledge and experience to good use in solving difficult and recurring social problems for the benefit of individuals and the community.

Id. at 32.

about pursuing justice, not simply about identifying the legally actionable components within a complex situation.

Understanding the civil justice ecosystem requires a careful assessment of lawyers' own role in the system. This includes understanding clients' perceptions of particular types of interventions (relating, again, to legal consciousness), knowing when to deploy extralegal interventions, and understanding which interventions make the most (or least) difference to client satisfaction and substantive outcomes. Knowing something about when lawyers do and do not matter can help lawyers direct their efforts toward places where they are likely to make a difference, and away from places where they are not likely to do so, perhaps relegating the latter category to other types of actors. For example, a study of the impact of legal representation on tenants in housing court showed that legal representation mattered a great deal to case outcomes, regardless of the legal merits of the case.¹¹³ A meta-analysis of studies of lawyers' effect on case outcomes revealed that "lawyers' impact comes more from managing relatively simple legal procedures than from deploying the complex legal theories or doctrines that are the stuff of formal legal education Lawyers' impact also reflects their relationship to the court as professionals who understand how to navigate a rarefied interpersonal world."¹¹⁴ In other words, lawyers tend to be especially good at helping people navigate procedures that the lawyers themselves view as relatively simple. Lawyers are also good at ensuring that that courts do not become haphazard about following rules.¹¹⁵ The lawyerly roles that matter most are a good deal more prosaic than, for example, specialized substantive legal expertise, which turns out to make less of a difference to case outcomes than one might expect.¹¹⁶ Understanding the importance of this relational expertise¹¹⁷ to clients may help law students think strategically about the skills they wish to develop during law school. Indeed, practicing lawyers report wishing that they had devoted more time to relational skill development in law school, including developing the ability to work effectively with clients and opposing counsel.¹¹⁸

113. Carroll Seron, Martin R. Frankel, Gregg Van Ryzin & Jean Kovath, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419 (2001); see also Emily S. Taylor Poppe & Jeffrey J. Rachlinski, *Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes*, 43 PEPP. L. REV. 881, 900–10 (2016).

114. Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers' Impact*, 80 AM. SOCIO. REV. 909, 926 (2015) (citing WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SCHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007)).

115. *Id.* at 910.

116. *Id.*

117. *Id.* at 909; see also Stephen R. Barley, *Technicians in the Workplace: Ethnographic Evidence for Bringing Work into Organizational Studies*, 41 ADMIN. SCI. Q. 404 (1996).

118. Young, Original Survey Results, *supra* note 46.

B. Other Actors in the Ecosystem

Teaching lawyers about the civil justice ecosystem includes educating them about the root causes of justice problems. Shanahan and Carpenter argue that doing so will encourage the legal profession to hold government actors accountable for lapses in social safety nets that have caused the proliferation of justice problems. They write:

Any change must begin with courts and lawyers refusing to blindly accept the courts as a last resort against the legislative and executive branches' failures to address inequality. . . . It is in the profession's self-interest and consistent with lawyers' role as stewards of law and justice to . . . advocate for courts doing less of what they are not well-suited to do and more of what they are.¹¹⁹

In addition to teaching law students how the modern civil justice ecosystem emerged, it is crucial to teach them how to work effectively within it. This includes knowing not just about the landscape of problems, but about the nonlawyer professionals, volunteers, community members, and others who are part of it and have—or could have—a role in identifying and remedying civil justice problems. It also includes knowing about the justice landscape beyond one's own practice area. A study by Sudeall and Richardson, for example, details numerous practical opportunities for civil justice intervention for people who are represented by public defenders, and explains how the siloing of criminal and civil practice is an underrecognized barrier to access to justice goals.¹²⁰

One important category of resources comprises nonlawyer legal professionals, such as paralegals and limited license legal technicians, who can perform certain services usually performed by lawyers, but at lower cost.¹²¹ Law students are not generally taught about the roles nonlawyer legal professionals play in the legal system (besides the boundaries of the unauthorized practice of law), which ill-equips them to think critically or creatively about how the legal profession's structure influences the resolution of particular types of justice problems, or about which restrictions on the practice of law are or are not ethically advantageous to various client populations. Indeed, anecdotal evidence suggests that practicing lawyers are ill informed about how to work with limited license legal practitioners. They tend to approach such programs with skepticism about competition, as opposed to an eye toward collaboration, especially among small-firm lawyers and solo practitioners.¹²² Nonetheless, these service providers have significant potential to

119. Shanahan & Carpenter, *supra* note 16, at 133.

120. Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Justice Needs*, 52 U.C. DAVIS L. REV. 2105 (2019).

121. For example, Washington State's Limited License Legal Technician program was designed to aid people with family law problems. THOMAS M. CLARKE & REBECCA L. SANDEFUR, NAT'L CTR. FOR STATE CTS. & AM. BAR FOUND., PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM (2017).

122. Mary Juetten, *The Limited License Legal Technician Is the Way of the Future of Law*, A.B.A. J. (Dec. 8, 2017, 8:30 AM), http://www.abajournal.com/news/article/the_limited_license_

expand the delivery of services in the access to justice space.¹²³ Members of state bar organizations will be called upon to weigh in about regulation and certification,¹²⁴ and a few initiatives, such as the Utah Implementation Task Force on Regulatory Reform, have been spearheaded by attorneys—in Utah’s case, the State Supreme Court.¹²⁵ New lawyers need tools to think carefully about how to incorporate nonlawyer legal practitioners into the profession; increasingly, they will be called upon to do precisely this.¹²⁶ As Chambliss points out, most legal profession courses are behind the curve in this regard and devote little or no attention to the most pressing regulatory debates, focusing on existing rules without discussing the empirical assumptions that underpin them.¹²⁷ Yet, “[l]aw students need to be exposed to these debates if they are to act as competent stewards of the profession over the course of their careers,”¹²⁸ and in the access to justice context, these debates are more important than ever.¹²⁹

Some nonlawyer volunteers are promising access to justice partners as well. For example, the volunteers in New York City’s Court Navigator program assume a variety of roles, including helping courthouse visitors figure out where to go,

legal_technician_story_start_with_why [https://perma.cc/5CY2-E52F]; see, e.g., Christopher Coble, *No More Lawyers? CA Bar Endorses Legal Technicians*, *Legal Tech*, FINDLAW: STRATEGIST (July 10, 2019, 2:07 PM), <https://blogs.findlaw.com/strategist/2019/07/no-more-lawyers-ca-bar-endorses-legal-technicians-legal-tech.html> [https://perma.cc/TWV3-GCTU]. For a discussion about the impacts of various aspects of deregulation on access to justice, see generally Milan Markovic, *Juking Access to Justice to Deregulate the Legal Market*, 29 GEO. J. LEGAL ETHICS 63 (2016).

123. REBECCA L. SANDEFUR & THOMAS M. CLARKE, AM. BAR FOUND. & NAT’L CTR. FOR STATE CTS., *INCREASING ACCESS TO JUSTICE THROUGH EXPANDED “ROLES BEYOND LAWYERS”*: PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS (2015); see also Benjamin P. Cooper, *Access to Justice Without Lawyers*, 47 AKRON L. REV. 205, 217–21 (2014). *But cf.* Rebecca M. Donaldson, *Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice*, 42 SEATTLE U. L. REV. 1, 2 (2018) (arguing “that the LLLT model is not designed to increase access to justice for those from low-income populations”).

124. For a discussion of how this works in several different states, see Lori W. Nelson, *LLLT—Limited License Legal Technician: What It Is, What It Isn’t, and the Grey Area in Between*, 50 FAM. L.Q. 447, 448–68 (2016). For thoughtful structural cautions about nonlawyer representation programs, see generally Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *Can a Little Representation Be a Dangerous Thing?*, 67 HASTINGS L.J. 1367 (2016).

125. See UTAH LEGAL REGULATORY REFORM: BASIC FACTS, <https://www.utahbar.org/wp-content/uploads/2020/05/UTAH-Communications-Fact-Sheet-FINAL.pdf> [https://perma.cc/LF6K-RWGU] (last visited Jan. 22, 2021).

126. For examples of the types of evaluative frameworks that would be useful to lawyers in thinking about the roles of non-lawyer legal professionals, see generally Rebecca L. Sandefur & Thomas Clarke, *Designing the Competition: A Future of Roles Beyond Lawyers? The Case of the USA*, 67 HASTINGS L.J. 1467 (2016).

127. Elizabeth Chambliss, *Evidence-Based Lawyer Regulation*, 97 WASH. U. L. REV. 297, 341–43 (2019).

128. *Id.* at 341–42.

129. Presumably, law schools will also have some role in training LLLTs and other non-lawyer legal practitioners, and it will be incumbent on us to figure out what that relationship should look like. “Law school clinics are also a natural setting for introducing students to evidence-based program assessment and the value and limits of different methods of measuring the impact of legal assistance.” *Id.* at 343.

present the correct documents, and answer a judge's factual questions about their case.¹³⁰ For example, one branch of the New York City Court Navigators Program is the Housing Court Answers Navigators Pilot Project, which is situated in the Brooklyn Housing Court.¹³¹ Volunteers help tenants write a response to a landlord's petition for unpaid rent, asserting defenses to nonpayment.¹³² An evaluation of that program found that volunteers were helpful in several ways, helping tenants articulate defenses ("litigants assisted by [volunteer navigators] asserted more than twice as many defenses as litigants who received no assistance"), explain their circumstances to judges ("tenants assisted by a [volunteer navigator] were 87 percent more likely than unassisted tenants to have their defenses recognized and addressed by the court"), and to obtain redress from neglectful landlords ("judges ordered landlords to make needed repairs about 50 percent more often in Navigator-assisted cases").¹³³ These functions are fairly simple, but their impact is impressive, particularly in courts as busy and crowded as New York City's. Numerous other jurisdictions, such as Baltimore City District Court, are experimenting with similar initiatives, and programs such as the Illinois JusticeCorps have involved college students in court navigation.¹³⁴ There is a particular need to understand how these programs would work in rural areas, which suffer disproportionately from lawyer deficits,¹³⁵ and whose residents may have very different orientations toward the law than do residents of more densely populated counties.¹³⁶ Lawyers, who operate daily in the court system and understand its contours, are well suited to support nonlawyer volunteer programs and spearhead

130. Fern Fisher, *Navigating the New York Courts with the Assistance of a Non-Lawyer*, 122 DICK. L. REV. 825, 829 (2018). See also *Court Navigator*, N.Y.C. SERV., <https://www.nycservice.org/opportunities/9186> [<https://perma.cc/A68G-PCMM>] (last visited Dec. 17, 2020), for a description of a court navigator in New York City.

131. REBECCA L. SANDEFUR & THOMAS M. CLARKE, AM. BAR FOUND. & NAT'L CTR. FOR STATE CTS., ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND RESEARCH REPORT OF AN EVALUATION OF THE NEW YORK CITY COURT NAVIGATORS PROGRAM AND ITS THREE PILOT PROJECTS 4 (2016).

132. *Id.*

133. *Id.*

134. *Court Navigator Pilot Project*, UNIV. BALT., <http://www.ubalt.edu/academics/prelaw/court-navigator-pilot-project.cfm> [<https://perma.cc/REG6-LQ4V>] (last visited Aug. 29, 2020); *Illinois JusticeCorps*, ILL. BAR FOUND., <https://www.illinoisbarfoundation.org/illinois-justicecorps> [<https://perma.cc/8VFA-SJLD>] (last visited Aug. 29, 2020).

135. See generally Pruitt et al., *supra* note 23. And the problem is growing. For example, in Illinois, fifty-two counties admitted fewer than five lawyers in the last five years. Ninety-five of the state's counties share just ten percent of its lawyers. Mark C. Palmer, *The Disappearing Rural Lawyer*, 2CIVILITY (Aug. 27, 2019), <https://www.2civility.org/the-disappearing-rural-lawyer/> [<https://perma.cc/YX96-SZJ3>].

136. See generally Pruitt et al., *supra* note 23. Anthropologist Michele Statz makes a compelling argument that many existing access-to-justice solutions are implicitly urbanormative and either fail to address rural Americans' lived realities or incorporate stereotypes about rural residents. The Rural A2J Guide on the Northland Access to Justice Project's website offers several concrete suggestions for working toward rural access to justice in a non-urbanormative way. Michele Statz & Jon Bredeson, *Concerned About Rural Access to Justice? Start Here First.*, NORTHLAND ACCESS TO JUST. (2020), <https://www.northlandproject.org/the-rural-a2j-guide> [<https://perma.cc/S5LT-3A83>].

new ones. Better knowledge of nonlawyers' capacities to improve civil justice outcomes, particularly coupled with the design thinking instruction discussed above, holds the potential for lawyers to be transformative and proactive in the access to justice crisis.

Additionally, we can train lawyers to identify nonlegal actors who can aid in the identification, resolution, prevention, or recurrence of particular civil justice problems. It is critical to teach lawyers *how* to build and use these networks within a justice ecosystem, as opposed to simply telling them that these relationships can be important. After all, community norms, structures, and resources vary tremendously and effective partners for collaboration are not always obvious. For example, a Pew Research report details the ways that different groups approach and use library resources differently, suggesting several ways that libraries might be used as sites for legal assistance.¹³⁷ One successful medical clinic partnered with barbershops and hair salons to deliver care.¹³⁸ A community's racial and cultural composition, rurality, literacy, economic health, relationship with local government entities, technological infrastructure, and the existence of formal or informal community centers will all shape the ways that justice problems might best be resolved within that community. For lawyers to have a major role in addressing the access to justice crisis, we need them to have a deeper knowledge of the communities experiencing the crisis¹³⁹ and the myriad of nonlegal actors who can also work to help solve it. We might imagine teaching law students how to map the resources, existing programs, and potential problem-solving allies in a community to which they are new—or teaching them how to leverage their existing knowledge of a community to solve legal problems in nonobvious ways.

137. Rostain, *supra* note 82, at 95 (citing JOHN B. HERRIGAN, PEW RSCH. CTR., HOW PEOPLE APPROACH FACTS AND INFORMATION (2017), http://assets.pewresearch.org/wp-content/uploads/sites/14/2017/09/12135404/PI_2017.09.11_FactsAndInfo_FINAL.pdf [<https://perma.cc/J6MP-KFYM>]). For additional discussion of law libraries' important role in serving access to justice goals, see generally AM. ASS'N OF LAW LIBRS., ACCESS TO JUSTICE: BEST PRACTICES FOR PUBLIC LAW LIBRARIES (2018), <https://www.aallnet.org/gllsis/wp-content/uploads/sites/9/2018/01/sellguide5.pdf> [<https://perma.cc/2NPZ-77SW>]; Thomas Sneed, *The Academic Law Library's Role in Cultivating the Rural Lawyer*, 64 S.D. L. REV. 213 (2019).

138. Rostain, *supra* note 82, at 95 (citing Ronald G. Victor, Kathleen Lynch, Ning Li, Ciantel Blyler, Eric Muhammad, Joel Handler, Jeffrey Brettler, Mohamad Rashid, Brent Hsu, Davontae Foxx-Drew, Norma Moy & Anthony E. Reid, *A Cluster-Randomized Trial of Blood-Pressure Reduction in Black Barbershops*, 378 NEW ENG. J. MED. 1291 (2018)).

139. Again, this is another opportunity for standard classroom education and clinical education to work in concert. We might imagine expanded models that would foster collaboration between lawyers and nonlawyers; indeed, some models for this exist already, such as access to justice clinics that partner with community organizations and medical-legal clinics. Problem-solving courts are another example of this more holistic approach to justice problems and community resources. Lawyers need to be trained to forge new types of relationships within a community for the proactive resolution of civil justice problems—something some clinics already emphasize, but which is essentially absent from the standard law school classroom.

IV. PRODUCING STRONGER, MORE RESILIENT LAWYERS

To achieve access to justice goals, we need lawyers to come out of law school energized: ready to collaborate, tackle complex issues, and create innovative approaches to vexing problems. Instead, many of them graduate with poor mental health and newfound pessimism about the law. They know more law and may “think like lawyers,” but as a group, they are less hopeful, less intrinsically motivated, and more risk averse.¹⁴⁰ While traditional legal education has anchored the profession for more than a century and has innumerable strengths, it is also rife with counterproductive pedagogies. As institutions, law schools produce and reproduce harmful social structures, and sometimes even demonstrate willful ignorance of students’ mental health. If we want to equip professionals to transform access to justice, we need them to emerge from law school with the mental fortitude to do so.

Law school needs to be an institution in which every student it admits can reach their potential as a member of the legal profession. It needs to be less destructive, particularly in the first year, and prepare students for the realities of a challenging professional life. In the sections that follow, I make three suggestions which, in addition to the other recommendations I have outlined above, would produce more resilient lawyers who are better equipped to tackle the access to justice crisis.

First, we need to disrupt the most problematic structural patterns in law school, which would benefit law students’ social cognition, mental health, and ability to improve as legal thinkers and writers. Second, we need to give law students more metacognitive tools—that is, tools for thinking about thinking—to help law students understand themselves as legal professionals, contextualize the challenges they face in law school, and anticipate the problems they are likely to face in legal practice. Third, we need to go beyond teaching law students about the inequalities within the legal profession and help them think about how to change or interrupt these inequalities. Enabling them to think about the legal profession as something evolving and capable of change, as opposed to a stagnant structure they are entering, will create a greater sense of self-efficacy among new lawyers.

A. Dismantling Destructive Patterns in Legal Education

To the extent that access to justice entails access to lawyers, it must also mean access to competent, healthy ones who are psychologically and practically equipped to meet client needs. Law students’ mental health problems are an open secret in legal education. Anxiety and distress severely disrupt students’ social and intellectual lives, and this has been documented since at least the 1960s.¹⁴¹ Comparing law

140. Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 26, at 566; Sheldon & Krieger, *Does Legal Education Have Undermining Effects on Law Students?*, *supra* note 27, at 280–82.

141. See, e.g., Lawrence Silver, *Anxiety and the First Semester of Law School*, 4 WIS. L. REV. 1201 (1968); see also James M. Hedegard, *The Impact of Legal Education: An In-Depth Examination of*

students to similarly situated populations, both in professional school and outside of it, reveals significantly higher rates of depression and psychological distress among law students.¹⁴² The Survey of Law Student Well-Being (SLSWB) looked in depth at students attending fifteen U.S. law schools and found that the rate of clinical anxiety among law students was about one in three, the rate of clinical depression was one in six, and one in ten had engaged in physical self-harm in the past year.¹⁴³ Nor are law students themselves unaware of the effects law school has on them. My own mixed-methods study of law students at over 100 U.S. law schools revealed student responses consistent with the SLSWB results.¹⁴⁴ They pointed to depression, anxiety, and personality changes. They said things like, “Law school has made me into the worst version of myself,” and “Sudden bouts of sadness and depression were something I never experienced before law school.”¹⁴⁵

In 2014, the Yale Law School Mental Health Alliance found that seven in ten students experienced some form of mental health challenge in law school, but that most sought no help even when their academic and social lives suffered, in large part because they were afraid of the stigma associated with seeking help.¹⁴⁶ Other research has found that stigma is particularly a deterrent for students from poor and working-class backgrounds.¹⁴⁷ At minimum, law schools need to encourage help-seeking behavior among law students, normalize multiple types of help seeking, and give students concrete strategies for doing so. Indeed, a common theme among the 250 law school alumni I surveyed was a sense of regret that they had not sought more help while they were still in law school.¹⁴⁸ And a common theme among current law students was a sense of alienation that they related to innumerable factors, including gender identity or gender presentation, sexual orientation, conservative political leanings, liberal political leanings, religious affiliation, disability, mental health diagnosis, social class background, familial background, military background, or any one of innumerable characteristics that

Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students, 4 AM. BAR FOUND. RSCH. J. 791, 835–38 (1979).

142. G. Andrew H. Benjamin, Alfred Kaszniak, Bruce Sales & Stephen B. Shanfield, *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. BAR FOUND. RSCH. J. 225, 225–33 (1986); Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55, 55–67 (1999).

143. Organ et al., *supra* note 35, at 136–39. Possible alcohol abuse and prescription drug use were rampant as well: one in four and one in seven, respectively. *Id.* at 128–36.

144. YOUNG, *supra* note 31.

145. Young, Original Survey Results, *supra* note 46.

146. JESSIE AGATSTEIN, ZACH ARNOLD, RACHEL DEMPSEY, JOYA SONNENFELDT & JOSH WEISS, YALE L. SCH. MENTAL HEALTH ALL., FALLING THROUGH THE CRACKS: A REPORT ON MENTAL HEALTH AT YALE LAW SCHOOL 3–4 (2014).

147. Katie R. Billings & Kathryn M. Young, How Cultural Capital Shapes Mental Health Disparities on College Campuses (Jan. 2, 2021) (unpublished manuscript) (on file with author).

148. A handful of law schools have been proactive in this regard, retaining a full-time psychologist as part of the law school staff. Unfortunately, this approach remains relatively unusual.

distinguished them from the majority of their law school peers.¹⁴⁹ Even students for whom these characteristics had never been particularly salient before law school found them salient during law school. They described a “cliquish” or “high-school-like” atmosphere that “discourages showing any sign of weakness,” “takes mental tolls you don’t expect,” and creates a tremendous amount of pressure to make it seem to their peers as if they are doing fine.¹⁵⁰ The following excerpts from law students I surveyed represent the character of these kinds of responses:

The summer before 1L began, I read several books about how to succeed in law school and what to expect in my first year. None of these books, however, prepared me for the loneliness, the feeling of isolation, and the pressure that accompanies the law school experience. To my classmates, I’m sure I appear happy and fine. That is because, at school, I pretend that I am.¹⁵¹

For me, the academic expectations and the workload were not a problem. However, the feeling of alienation, needing to hide who I am and censor what information about my life I let slip was extremely stressful. To the point where I needed to take a quarter off to focus exclusively on maintaining my mental health.¹⁵²

Given the pervasiveness of anxiety, depression, and general dissatisfaction, some law schools have taken steps outside the classroom to provide law students with additional mental health support. Some law schools, such as the UC Davis School of Law, retain a full-time psychologist who provides law students direct mental health support.¹⁵³ Unfortunately, more institutions have taken a piecemeal approach, directing students to university health care centers that specialize in undergraduate mental health, or bringing in a psychologist for limited amounts of time, such as a few days a month, for one-time appointments with students in distress.¹⁵⁴ Even worse, many law students have a legitimate concern that seeking help may require them to disclose personal mental health information on the character and fitness portion of their state bar exam.¹⁵⁵ Thus, the reasons law

149. See generally YOUNG, *supra* note 31.

150. Young, Original Survey Results, *supra* note 46.

151. *Id.* This student was a 1L who identifies as Middle Eastern, attended a top-100 law school, and was the first in her family to pursue a law degree.

152. *Id.* This student was a white joint-degree student at a top-100 law school whose parents held professional degrees and who had lawyers in her family.

153. See *Wellness*, U.C. DAVIS SCH. L., <https://law.ucdavis.edu/student-affairs/wellness.html> [<https://perma.cc/72ZV-H9S6>] (last visited Nov. 2, 2020).

154. Karen Sloan, *Law Schools Tackle Mental Health*, LAW.COM (May 9, 2016, 12:00 AM), <https://www.law.com/nationallawjournal/almID/1202757012950/Schools-Tackle-Mental-Health/?sreturn=20201003132123> [<https://perma.cc/2EM4-VCBP>].

155. Margaret Hannon & Scott Hiers, *Law Students, Law Schools Lead Efforts to Remove Mental Health Questions from Character & Fitness Equation*, A.B.A. FOR L. STUDENTS: STUDENT LAW BLOG (Oct. 9, 2019), <https://abaforlawstudents.com/2019/10/09/law-students-law-schools-mental-health-character-and-fitness/> [<https://perma.cc/V69Q-G6D5>]. Unfortunately, counterparts to these formal and informal barriers to seeking help exist in other high-stress professions as well, such as regulatory and workplace barriers for doctors who specialize in surgeries. See Charles M. Balch, Julie

students are unlikely to seek mental health help are not just personal, but social and structural.

The ever-present anxiety students face is compounded by its cultural—and, I would argue—structural normalization. A number of law students I interviewed said that they were so used to being anxious and overwhelmed that during the few times they were not suffering from anxiety, they became anxious that they were not working hard enough. As I will argue below, everything from the grading structure to the frontloading of doctrinal courses contributes to the normalization of anxiety. From the beginning, law school prizes toughness, resilience, and analytical rigor. Simply reminding students to get enough sleep and exercise, while frontloading so much of law school and giving students little opportunity for guided practice in their first year, as I discuss below, sends the message that if they fail to suck it up, they might not “have what it takes.” This idea is related to what Sturm calls the “gladiator” model of legal education, which values competition over problem-solving.¹⁵⁶ Sturm makes a persuasive case that this model is not only counterproductive to training lawyers but deeply gendered as well—a framework that Knize, former Editor-in-Chief of the *UC Davis Law Review*, takes up in her nuanced analysis of the ways the gladiator model manifests within the social context of law review membership.¹⁵⁷

In addition to stigmatizing help-seeking and providing insufficient support for the enormous number of law students who need it, law schools have done little to curb structural sources of law student anxiety. Tolstoy famously wrote that all happy families look alike, but that all unhappy families are unhappy in their own way. In my own study of law students, I expected to find something similar—that the unhappiest law students would all be unhappy for idiosyncratic reasons. But this turned out not to be so. The corrosive anxiety law students experience comes from a few main sources.

One of these, to which I just alluded, is the structure of grading and exams—the “winner-take-all” model wherein one final (or, if a student is “fortunate,” one final and one midterm) determines a student’s entire semester grade—grades which, if unimpressive, can immediately exclude them from prestigious opportunities such as clerkships, law review membership, or certain summer jobs. As Carol Dweck and other social psychologists have shown, the most effective learners are those who cultivate a “growth” mindset rather than a “fixed” one.¹⁵⁸ Growth-mindset learners believe in their own capacity for improvement.

A. Freischlag & Tait D. Shanafelt, *Stress and Burnout Among Surgeons: Understanding and Managing the Syndrome and Avoiding the Adverse Consequences*, 144 *ARCHIVES SURGERY* 371, 372 (2009).

156. See generally Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 *DUKE J. GENDER L. & POL'Y* 119 (1997).

157. Megan S. Knize, *The Pen Is Mightier: Rethinking the “Gladiator” Ethos of Student-Edited Law Reviews*, 44 *MCGEORGE L. REV.* 309, 325–31 (2013).

158. CAROL S. DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* 16–32 (Ballantine Books 2007) (2006).

They receive a C-minus on a Torts midterm and think, “I need to figure out which mistakes I’m making and study harder so that I can become more skilled at analyzing Torts questions.” A fixed-mindset learner receives the same grade and thinks, “I’m terrible at Torts,” or concludes, “I studied hard and did poorly, so law school grades are arbitrary.” Dweck’s work shows that people with a growth mindset are better at solving complex problems: they are more persistent and generate cleverer solutions.¹⁵⁹ But the structure of most 1L courses is practically guaranteed to produce fixed-mind-setters. Perhaps most significantly, it incorporates few or no opportunities for low-stakes guided practice: chances for law students to try out their new skills, receive feedback, adjust their approach and try again, receive more feedback, and so on. Guided practice is the most effective way for people to get better at just about anything. But the first time a student’s efforts officially “count” is usually on the final exam. This structure creates uncertainty about grades, causing anxiety, and cultivates a fixed mindset, communicating to law students that the skills they have developed over the course of a semester can be boiled down to performance on one assessment. Faced with just one or two chances for evaluation by an instructor over a fifteen-week semester, it is practically impossible for students to escape the conclusion that they are being tested at how inherently “smart” or “good” they are at a particular kind of law.

If we want new lawyers to enter the profession with a growth mindset, and if we want to give them opportunities to develop their reasoning with the benefit of feedback, we should teach them differently. There are many ways to improve law school pedagogy, but perhaps the most obvious example is the use of graded problem sets throughout the semester that comprise a significant part of a student’s course grade.¹⁶⁰ This kind of regular assessment not only helps students focus on incremental improvement, reducing anxiety, but narrows achievement gaps in higher education¹⁶¹—including the race, gender, and income-based gaps that materialize in law school grading.¹⁶²

159. *See generally id.*

160. I have experimented with this structure in a seventy-five-person, law school-style evidence course for advanced undergraduates. Students were assigned problem sets every two weeks, which were cumulative in the substance they tested. The obvious drawback is that grading problem sets takes a good deal of time, even with the help of a teaching assistant. But I realized at least two benefits of this approach. First, seeing students grapple with written application of evidence law throughout the semester allowed me to calibrate my teaching style and identify consistent flaws in student reasoning that were not evident from their oral participation. Second, it gave students an opportunity to improve their legal reasoning skills; importantly, this structure helped to equalize initial grade disparities that seemed clearly to align with cultural capital, such as having lawyers in one’s family.

161. *See, e.g.,* James W. Pennebaker, Samuel D. Gosling & Jason D. Ferrell, *Daily Online Testing in Large Classes: Boosting College Performance While Reducing Achievement Gaps*, 8 PLOS ONE, Nov. 2013, at 1.

162. Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 25 BERKELEY LA RAZA L.J. 1, 15 (2015).

Disparities between incoming 1Ls in foundational knowledge about law school mechanics, including exams and grades, are an important cause of the race-, class-, and gender-based achievement gaps in law school.¹⁶³ In other words, when we test students with one final at the end of the semester—particularly in their first semester—we are not just testing what they have learned and how well they can apply it; we are also testing how well their backgrounds have prepared them to apprehend the law school endeavor. This is particularly the case 1L year. First semester, we pile on four or five doctrinal courses in brand-new subjects for fifteen weeks, give them one exam, then rank them against each other and dole out the ever-important first semester grades that sort them into, or out of, contention for opportunities such as clerkships, journal memberships, and competitive summer positions. Why *wouldn't* they adopt a fixed mindset and a gladiator mentality? We have structurally socialized them into believing that this is what being a law student means.

Achievement disparities are also deepened by “stereotype threat,” a well-known and extensively researched social psychological phenomenon wherein a person’s performance is hampered by a fear that they will end up confirming negative stereotypes about members of a group to which they belong.¹⁶⁴ As both quantitative¹⁶⁵ and qualitative¹⁶⁶ work has demonstrated, race, class, and gender are all sources of stereotype threat in law school.¹⁶⁷ Nor is stereotype threat an inevitable fixture of law school classrooms. Simple pedagogical interventions make a difference. For example, one study suggests that reducing class size and making small modifications to assessment practices in doctrinal classes can reduce gender gaps in performance.¹⁶⁸

Cultivating a growth mindset, eliminating stereotype threat, and combating anxiety normalization are three examples of achievable goals in legal education. Yet, despite some changes around the margins, and shifts in clinical education notwithstanding, law school pedagogy looks a great deal like it did fifty years ago—especially for 1Ls. One reason for this lack of evolution is that law school is taught by law professors, and by and large, law professors represent a group that excelled under the current system. They may think that being so anxiety plagued that it hinders one’s exam performance is a sign of weakness or ineptitude, because law school anxiety did not hinder their own performance. They may not know what it feels like to be too depressed to ask for clerkship recommendation letters. They may not know what it feels like to make up excuses about why they cannot accept

163. *Id.* at 6.

164. *E.g.*, Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCH. 797 (1995).

165. Darling-Hammond & Holmquist, *supra* note 162.

166. YOUNG, *supra* note 31, at 75–106.

167. *See generally* YUNG-YI DIANA PAN, INCIDENTAL RACIALIZATION: PERFORMATIVE ASSIMILATION IN LAW SCHOOL (2017).

168. Daniel E. Ho & Mark G. Kelman, *Does Class Size Affect the Gender Gap? A Natural Experiment in Law*, 43 J. LEGAL STUD. 291, 308–10 (2014).

classmates' invitations out to dinner—when, in reality, it is too expensive. And they may never have been forced to think seriously about the connection between the social and pedagogical structure of law school and the prevalence of inequality and mental health crises in the profession. In other words, if we think that certain strategies were relatively good at teaching *us* the law, we are likely to believe it is the way the law *should* be taught—particularly if we have no formal pedagogical instruction, no structural support (e.g., teaching assistants to help with increased grading loads, teaching releases for course redesigns, or funds to attend teaching conferences), and no incentive to do things differently.

B. Cognitive Cornerstones of a Stronger Profession

As the previous Section detailed, one of the problems law students face is that they are so mired in the law school world that they tend to lose touch with the people, ideals, and activities that mattered to them before law school. On average, they become more insecure and more risk averse, grow less intrinsically motivated, and become extremely focused on attaining badges of law school success.¹⁶⁹ The pervasiveness of these changes, coupled with the persistence of law students' anxiety, depression, substance abuse, and self-harming behaviors into their professional practice, point to a need to teach students about metacognition. That is, we need to teach them to think about thinking: to track their own thought processes, to observe changes in it, and to reflect on the ways that their mind is and is not changing as they become lawyers. A recent survey of nearly 13,000 practicing lawyers in nineteen states suggest that major risk factors, such as problematic levels of alcohol consumption, are actually more prevalent among newer lawyers.¹⁷⁰

Cognitive phenomena like imposter syndrome and stereotype threat, social challenges like alienation and loneliness, problematic behaviors like drug abuse and alcohol abuse, victimizations like sexual and racial harassment, and mental health problems like depression, anxiety, and suicidal ideation are so rampant in law school and the legal profession that statistically speaking, a new lawyer is virtually guaranteed to experience at least one of them or to have a close friend who does. Yet by and large, we give them no metacognitive tools for handling these problems, and generally integrate nothing into the core curriculum that would systematically

169. See JEAN STEFANCIC & RICHARD DELGADO, HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS (2005).

170. BREE BUCHANAN, JAMES C. COYLE, ANNE BRAFFORD, DON CAMPBELL, JOSH CAMSON, CHARLES GRUBER, TERRY HARRELL, DAVID JAFFE, TRACY KEPLER, PATRICK KRILL, DONALD LEMONS, SARAH MYERS, CHRIS NEWBOLD, JAYNE REARDON, DAVID SHAHEED, LYNDA SHELY & WILLIAM SLEASE, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 7 (2016), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf> [<https://perma.cc/4YVJ-MBGK>]; Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 46–52 (Jan./Feb. 2016), https://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx [<https://perma.cc/M6KD-5LXH>].

combat them. Instead, these topics tend to be relegated to optional brown-bag talks and “wellness” reading lists.

A profession plagued by the kinds of problems so prevalent among lawyers is unlikely to be able to engage in the kinds of outside-the-box thinking that serious reduction of the justice deficit will require. Indeed, lawyers who are unhappy in general, or who suffer from mental health problems, are significantly less likely to adequately perform even the most basic services for their clients; this is already a significant challenge in the delivery of competent legal services.¹⁷¹

Textbooks for law school courses on the legal profession typically identify the profession’s most widespread problems, touching on topics from prevalence of alcohol abuse to the persistence of various diversity shortcomings, including race and ethnicity, gender, and sexual orientation. However, teaching students *that* these things are problems in the legal profession does not teach them how to overcome them—nor could this realistically be done within most already-packed syllabi of existing courses on Legal Ethics and the Legal Profession. The other half of students’ education about the legal profession should be about their professional responsibility to reverse negative trends, coupled with concrete strategies for doing so. Currently, most women law students learn that they are statistically unlikely to become law firm partners.¹⁷² However, neither they, nor their male colleagues, are routinely equipped with the tools to recognize gender inequality in microinteractions or how to hold their own law firms accountable for inclusion. And as Deborah Rhode has pointed out, “Even legal ethics courses, which are logical forums for [issues of inequality and access to justice], typically focus on the law of lawyering and often omit broader questions about the distribution of legal services.”¹⁷³ Southworth and Fisk’s *The Legal Profession: Ethics in Contemporary Practice* offers some excellent examples of how legal profession courses can effectively draw on interdisciplinary scholarship and the use of small-group problem-solving to illustrate to students the centrality of these issues to the practice of law.¹⁷⁴ These exercises give students a chance to try on their own sense of agency as legal professionals, and social science research could be leveraged to build on Southworth and Fisk’s pedagogical innovations even more, giving concrete strategies for addressing substantive problems.

Like mental health, topics related to professional inequality tend to be the subject of lunch talks or small elective seminars. This relegation sends the implicit message that these kinds of problems are not, per se, the responsibility of the entire

171. Rhode, *An Agenda for Legal Education*, *supra* note 95, at 531.

172. AM. BAR ASS’N, A CURRENT GLANCE AT WOMEN IN THE LAW 2 (2019), https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf [<https://perma.cc/8V4K-RM63>] (showing that 22.7% of partners are women, 19% of equity partners are women, and 22% of managing partners at the largest 200 law firms are women).

173. *Id.* at 545.

174. See generally ANN SOUTHWORTH & CATHERINE L. FISK, *THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE* (2d ed. 2019).

profession, but only of those who choose to think about it. But just as students who would prefer not to think about contracts are still required to understand offer and acceptance, students who would prefer not to engage with wellness in the legal profession should still be required to come out of law school equipped with the tools to, say, recognize a microaggression or intervene when a colleague shows signs of depression. These cognitive tools are not icing on the cake; they are at the core of the profession. Until we make law schools into places that produce healthier, stronger, more resilient lawyers, it is unrealistic to suppose that they will produce lawyers who can effectively address the tremendously diverse justice needs of everyday people in their communities.

V. HOW COULD IT HAPPEN?

I often speak at law schools about issues related to student success and law school happiness. As a part of my visits, I am sometimes invited to lunch by the faculty chair of the curriculum committee, or the Dean, or the Dean of Students, to talk about law school reform. They begin by telling me that they realize their students are depressed and anxious, that much of the law school curriculum is disconnected from practice, and that students tend to lose a sense of purpose about the practice of law before even finishing their 1L year. Inevitably, my host asks, “How can we make *this* law school a better place?” A few minutes into my answer: the color drains from their face. “Uh—” they interrupt, chuckling apologetically. “I was thinking more along the lines of a lunch talk or a speaker series.”

Lunch talks, speaker series, book clubs, and the like can be useful. It would be incorrect to dismiss them as mere band-aids, but it would also be incorrect to think that they represent the deeper and more permanent kinds of change that law schools so sorely need. Additionally, instead of thinking about how legal education and law school’s social structures could create better-prepared lawyers, it puts the onus on law students to fit even more events and organizations into their already packed schedules.

Law students are socialized to be status conscious and attuned to institutional prestige. Telling students that particular types of training are important, then keeping these types of training optional, pass/fail, and decentral to the “core” curriculum sends the institutional message that these types of knowledge are not important enough for the law school to invest serious resources. Similar messages are sent when guest speakers and instructors for particular courses are almost invariably not tenured or tenure-track law school faculty members. I am not suggesting that tenure-track faculty members are better teachers than non-tenure-track faculty members, only that students apprehend the different level of structural and financial institutional commitment involved in each teaching assignment.

Imagine that in lieu of actually teaching Contracts, a law school offered a series of brown-bag talks about Contracts-related topics or encouraged its students to start a Contracts club. Or imagine what it would do to the perceived importance of

Property if a law school decided that henceforth Property would meet once per week, taught as an optional seminar by an adjunct instructor. Justifiably or not, the importance of these subjects would diminish in students' eyes; students' dedication to the course would lessen, and the doctrinal subject would quickly come to be seen as less important than required courses. To create law students who are versatile enough thinkers and resilient enough professionals to tackle the access to justice crisis, we need to allocate our structural resources accordingly. If we want the topics I discussed in the previous Section to make a difference in law schools, we need them to be part of the law school curriculum's backbone.¹⁷⁵ We might imagine any number of creative ways that the suggestions above could be incorporated into required law school courses. For example, we could add a few new required classes while giving students more flexibility about when to take some of the doctrinal classes usually required in 1L year.¹⁷⁶ We might imagine counterparts to traditional doctrinal classes, such as a semester-long civil justice system course to complement a traditional course on Civil Procedure, or a course on solving problems in the profession to complement a traditional course on Legal Ethics and the Legal Profession. The ABA's requirements leave a great deal of leeway for innovation.¹⁷⁷

There are hurdles, of course. Foremost, law schools are understandably sensitive to their place in the *U.S. News and World Report (USNWR)* ranking, which makes them risk averse.¹⁷⁸ For this reason, the most likely candidates for serious change may be those least affected by the ranking: law schools toward the very top of the *USNWR* heap (where innovation is unlikely to threaten their rank or their

175. I should note that we need more longitudinal research on law students, particularly during 1L year, to understand the dynamics of socialization that law students undergo and its effects. In Bliss's in-depth longitudinal qualitative examination of law students' "public interest drift" at one top law school, he argues that giving students more curricular opportunities to think about professional identity, particularly in their first year, will help them find practice settings where they can be more satisfied and more effective. John Bliss, *From Idealists to Hired Guns? An Empirical Analysis of "Public Interest Drift" in Law School*, 51 U.C. DAVIS L. REV. 1973, 1973-74 (2018); see also John Bliss, *Divided Selves: Professional Role Distancing Among Law Students and New Lawyers in a Period of Market Crisis*, 42 LAW & SOC. INQUIRY 855, 855 (2017) (finding that at the elite law school he studied, students bound for big firms reported increased professional role distancing, while students who pursued public interest careers ended up with a more integrated notion of professional identity). See generally CARRIE YANG COSTELLO, PROFESSIONAL IDENTITY CRISIS: RACE, CLASS, GENDER, AND SUCCESS AT PROFESSIONAL SCHOOLS (2005).

176. Property and constitutional law are the obvious candidates to shift out of the 1L rotation, since a handful of law schools have experimented with this already, but arguments could be made for others as well; I will not take up that discussion here. This would also have the benefit of allowing room for more advanced skills instruction, such as negotiation, mediation, and advanced legal research, earlier in their law school careers.

177. Nor am I suggesting that, in and of itself, curricular reform will suddenly produce well-designed, equitably distributed legal services. But I would argue that it is a necessary condition for the legal profession to take meaningful steps toward these goals.

178. As flawed as the rankings are, they also reflect prestige; for many students, the rankings greatly influence where they apply to law school and where they choose to attend. Nor is law school ranking unrelated to job placement after law school. See *Top 50 Law Schools*, ABOVE L., <https://abovethelaw.com/law-school-rankings/top-law-schools-2020/> [https://perma.cc/XD4V-32QR] (last visited Jan. 22, 2021).

students' job placements); law schools toward the very bottom (where innovation may help and probably would not hurt); and perhaps most promisingly, law schools that dominate a particular region of the United States or are the only ABA-accredited law school in their state (because their unique situation often puts them in less direct competition with other law schools for high-scoring entering students and job placements for graduates).¹⁷⁹ Other potential hurdles include faculty hiring,¹⁸⁰ student resistance,¹⁸¹ and institutional inertia.

But none of the substantive proposals I have offered in this Article are especially radical. Indeed, some are well worn, familiar territory to anyone familiar with the legal education and/or access to justice literature. Yet on the occasions I have shared these ideas with law school deans or faculty chairs of curriculum committees, I have been struck by their predictions about the resistance these proposed changes would meet: faculty would never approve, faculty would see these changes as too “touchy-feely,” faculty would interpret course additions as threats to their own curricular domains.

But I am not convinced that—in the current political moment, faced with an enormous justice deficit, growing social inequality in the wake of a continuing global pandemic, a rapidly changing legal profession, and a student body plagued with anxiety, depression, and alcoholism—they are correct. Nor am I convinced that if they are provided with support and structural incentives to implement the changes, and evidence that the changes will help students become better lawyers, most faculty members would oppose the main curricular additions and pedagogical changes I have outlined. Presumably, no one wants students to experience stereotype threat, or develop drinking problems, or be ignorant of how nonlawyers think about law, or become so entrenched in particular thought patterns that they cannot

179. Law schools in this third category include, for example, the William S. Richardson School of Law at the University of Hawaii, *Hawaii Law Schools*, JUSTIA, <https://www.justia.com/law-schools/hawaii/> [<https://perma.cc/A5CL-NVAB>] (July 2020); the University of New Mexico School of Law, *New Mexico Law Schools*, JUSTIA, <https://www.justia.com/law-schools/new-mexico/> [<https://perma.cc/R8RA-8H4E>] (July 2020); the University of South Dakota School of Law, *South Dakota Law Schools*, JUSTIA, <https://www.justia.com/law-schools/south-dakota/> [<https://perma.cc/X5US-J54Y>] (July 2020); the University of Maine School of Law, *Maine Law Schools*, JUSTIA, <https://www.justia.com/law-schools/maine/> [<https://perma.cc/6QEX-AXT8>] (July 2020); and the Alexander Blewett III School of Law at the University of Montana, *Montana Law Schools*, JUSTIA, <https://www.justia.com/law-schools/montana/> [<https://perma.cc/4CLD-HZAM>] (July 2020).

180. People in a given position tend to think that new people they select for that position should have backgrounds like their own. Hiring tenure-track professors who could teach courses that incorporate access to justice, legal consciousness, social psychology, mindfulness, design thinking, or other subjects I have discussed may mean occasionally prioritizing a less traditional or more interdisciplinary scholar over a “safer” one who ticks the usual boxes (federal clerkship, a year or two at a law firm, etc.). For a discussion of how “our lack of adequate research on access to justice is partly attributable to structural problems in the market for legal scholarship,” see Rhode, *An Agenda for Legal Education*, *supra* note 95, at 542–44.

181. For example, we might imagine that law students would worry about whether any curricular changes could put them at a disadvantage, relative to their peers at other law schools, for summer jobs, clerkships, and other opportunities.

contemplate extralegal solutions to clients' justice problems. Research has given us the tools to create a better legal profession; we would be foolish to keep doing what we are doing as if we do not know any better. Now we do.

CONCLUSION: AN ACCESS TO JUSTICE MODEL OF LEGAL EDUCATION

In this Article, I have taken seriously the idea that access to justice, defined as the equitable resolution of justiciable problems via legal or nonlegal means, can and should fall partly on the shoulders of the legal profession. I then asked: If we wanted legal education to most effectively address the access to justice crisis, how might law schools change?

I have suggested that prioritizing access to justice compels reconsidering aspects of legal education in at least three major areas: greater versatility of thinking and problem-solving, including understanding how everyday people think about law; imparting a broader understanding of the ecosystem of justiciable problems and a critical evaluation of lawyers' place in it; and structuring law school to help reduce the incidence of several pernicious problems, including mental health issues, that have plagued the profession for decades. We need lawyers who can parse statutes *and* work with their communities to create proactive interventions, who can read contracts *and* combat microaggressions, and who can write answers to legal complaints *and* understand the factors that make clients feel heard. Placing access to justice at the center of legal education would not threaten or supplant the traditional model. It would create lawyers who—instead of reactively meeting legal needs—can proactively help solve our civil justice crisis.