

LAW AND TECHNOLOGY:
ONLINE LEGAL SERVICES THAT HELP BRIDGE
THE ACCESS-TO-JUSTICE GAP

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*Katelyn N. Ringrose**

"It is neither easy nor comfortable to embrace innovation, but we must do so now. As lawyers, we have so much to offer to those who need help, but millions cannot access our services. This has to change, and we must drive that change. If we want to make justice for all a reality, we need to listen to different perspectives and open ourselves to new approaches and ideas, all while following our core value of protecting the public."

- Linda A. Klein, Former ABA President 2015-2016¹

INTRODUCTION

The American Bar Association requests that lawyers perform a minimum of 50 hours of pro bono service annually, which lawyers currently exceed by performing, on average, 56.7 hours per year.² Despite an uptick in pro bono work and the emergence of new technologies over the past decade or more, it is estimated that, at least in 2017, low-income Americans approached Legal Services Corporation³ funded legal aid organizations for support with an estimated 1.7 million problems,⁴ but they receive only limited or no legal help for more than half of these problems due to a lack of resources.⁵ A report that focused on the pro bono effects of 128 firms found that, in 2017, 3.92% of all billable hour work went to pro bono causes and. In 2018, that number remained high, but actually

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¹ AM. BAR ASS'N COMM'N ON THE FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES, 37 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

² Scott Flaherty, *Big Law's Pro Bono Hours Tick Upward*, THE AMERICAN LAWYER (July 1, 2017) ("Am Law 200 lawyers dedicated slightly more time to pro bono matters last year than they did the year before."), <https://www.law.com/americanlawyer/almID/1202791117587/?slreturn=20191008155533>.

³ LEGAL SERVICES CORP., 2017 ANNUAL REPORT JUSTICE GAP (2017), <https://www.lsc.gov/media-center/publications/2017-annual-report-justice-gap>.

⁴ LEGAL SERVICES CORP., *supra* note 3.

⁵ LEGAL SERVICES CORP., *supra* note 3, at 7. It is estimated that 71% of low-income households experienced at least one civil legal problem in the last year, including problems with health care, housing conditions, disability access, veterans' benefits, and domestic violence. Common civil legal problem areas include health, consumer and finance, rental housing, children and custody, education, disability, and income maintenance.

dropped slightly, to 3.81%.⁶

Today's legal technologies offer innovative ways to facilitate pro bono work.⁷ The access-to-justice gap is manifest in the difference between the legal needs of low and medium income Americans and the availability of legal resources meeting those needs.⁸ By connecting attorneys with clients online, giving clients access to forms and information, and creating online dashboards to manage pro bono clients, online legal services are increasing accessibility to legal advice. Although these technologies threaten to disrupt the current pro bono landscape, that disruption is a positive force as the technologies allow more legal services to be delivered to those in need.⁹

This note explores various pro bono technologies available on the legal market as well as looks to how firms will conduct pro bono work in the future and what the drivers of change are within the industry. Addressing barriers to adoption of certain technological offerings,¹⁰ as well as how

⁶ PRO BONO INSTITUTE, REPORT ON THE LAW FIRM PRO BONO CHALLENGE INITIATIVE (2018), <http://www.probonoinst.org/wpps/wp-content/uploads/2018-Report-on-the-Law-Firm-Pro-Bono-Challenge-Statistics-6.10.19.pdf>.

⁷ U.S. DEP'T OF JUSTICE EXEC. OFFICE FOR IMMIGRATION REVIEW, *List of Pro Bono Legal Service Providers* (2019), <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>; see also 8 C.F.R. § 1003.61(a)(2) (2019) ("Pro Bono legal services are those uncompensated legal services performed for indigent aliens or the public good without any expectation of either direct or indirect remuneration, including referral fees (other than filing fees or photocopying and mailing expenses), although a representative may be regularly compensated by the firm, organization, or pro bono referral service with which he or she is associated.").

⁸ LEGAL SERVICES CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

⁹ See *id.* at 6 (According to the Legal Services Corporation's 2017 Justice Gap Report, in the past year, 86% of the civil legal problems reported by low-income Americans received inadequate or no legal help).

¹⁰ JANET BUCZEK ET AL., THE ABA STANDING COMM. ON PRO BONO AND PUB. SERV., SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 20 (2013), https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lc_pb_Supporting_Justice_III_final.pdf (Attorneys overwhelmingly mentioned time constraints as the top factor that most discouraged them from providing more pro bono services, especially among corporate attorneys. Lack of desire or interest in doing pro bono was not a highly discouraging factor. The overall influential factors that discourage pro bono services are as follows, in order of negative influence: lack of time, commitment to family obligations, lack of skills or experience in the practice areas needed, competing billable hour expectations and policies, too costly and financially burdensome to the practice, a lack of malpractice insurance, lack of administrative support, and a lack of information about opportunities.); see also Briana Cummings, *The Hidden Costs of Pro Bono*, BRANCHING LEGAL (Apr. 19, 2013), <https://www.branchinglegal.com/2013/04/19/the-hidden-costs-of-pro-bono/> (arguing that "pure" pro bono work is financially unsustainable).

those offerings can and should be evaluated, is important to finding aspects of legal technologies that can aid in solving legal problems. This note, in Part I, looks at the disruptive nature of online legal technologies before turning to state specific reporting requirements, which sets the stage for how many hours are required of attorneys per year. Part II looks at how certain lawyers perform pro bono work online and analyzes the drivers of change within firms. In this section, high performing firms, chosen on the basis of their Vault 100 ratings,¹¹ are analyzed and pro bono partners at those firms discuss challenges associated with adopting technology, as well as what technologies are currently employed in their firm's respective pro bono departments. Part III concentrates on which areas of pro bono work are currently on the rise and delves into the business models and the technology employed by current market offerings, including Paladin, ABA Free Legal Answers, and Pro Bono Net. The paper concludes in Part IV with a look to the future of pro bono legal work as it is increasingly paired with technology.

I. THE DISRUPTIVE NATURE OF ONLINE LEGAL SERVICES

According to Clayton Christensen, the legal profession is in the midst of a monumental and transformative disruption.¹² Disruptive innovation “describes a process by which a product or service takes root initially in simple applications at the bottom of a market and then relentlessly moves up market, eventually displacing established competitors.”¹³ Disruptive innovation, in short, “transforms a product that historically was so expensive and complicated that only a few people with a lot of money and a lot of skill have access to it. Disruptive innovation makes it so much more affordable and accessible that a much larger population have access to it.”¹⁴ Online legal service technologies began to appear in the mid-1990s, shortly after the advent of the internet; during these early beginnings, they were basic databases of legal information that provided viewers with simple

¹¹ Vault 100 surveys rank the most prestigious firms in the country, retrieved from <https://www.vault.com/best-companies-to-work-for/law/top-100-law-firms-rankings> (last visited Mar. 24, 2020).

¹² See CLAYTON M. CHRISTENSEN, *THE INNOVATOR'S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL*, (Harvard Bus. Review Press ed., 1997). Clayton Christensen's seminal book on innovation, *The Innovator's Dilemma*, expanded and refined his original notion of “disruptive technologies.”; See also *Disruptive Innovation*, CLAYTON CHRISTENSEN: KEY CONCEPTS, <http://claytonchristensen.com/key-concepts/> (last visited Mar. 24, 2020)

¹³ *Id.*; See also *Disruptive Innovation*, CLAYTON CHRISTENSEN: KEY CONCEPTS, <http://claytonchristensen.com/key-concepts/> (last visited Mar. 24, 2020).

¹⁴ CHRISTENSEN, *supra* note 12.

explanations to common questions.¹⁵ The next phase in the evolution of online legal services took place in 1999 when U.S. Legal Forms¹⁶ began offering pre-prepared documents online.¹⁷ With the rise of accessible pre-prepared forms, standardized legal documents became readily accessible to the public at relatively low costs, and services that were before inaccessible to individuals of low or moderate income were becoming available to the masses. Online technologies offer innovative ways to deliver legal services to those in need. According to one attorney, “by automating tasks traditionally performed by attorneys and by making legal products available on the internet, these technologies make legal services more affordable and accessible.”¹⁸ Over the past five years, there has been an increase of 484% in the number of patents filed covering new legal services technology globally.¹⁹



Legal services are in such high demand that pro bono services are unable to meet the needs of the population; Margaret Hagan whimsically put this

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Chris Johnson, *Leveraging Technology to Deliver Legal Services*, 23 HARVARD J. L. & TECH. 259, 259 (2009).

¹⁹ *Thomson Reuters Analysis Reveals 484% Increase in New Legal Services Patents Globally as Law Firms Around the World Invest in Legal Tech*, THOMSON REUTERS (Aug. 15, 2017), <https://www.thomsonreuters.com/en/press-releases/2017/august/thomson-reuters-analysis-reveals-484-percent-increase-in-new-legal-services-patents-globally.html> (“Top three countries for patent filings are the U.S., China, and South Korea; reflects rise of alternative legal services providers and moves by traditional law firms to outsource work.”).

problem in graphic form as shown above.²⁰ Given the widespread need in lower income communities for affordable legal services, the market is ripe for disruption. Many concerns about the privacy, security, and quality of technological and online legal services persist.²¹ Online legal service, such as those offered by Paladin, ABA Free Legal Answers, and Pro Bono Net will hopefully liberate low and medium income clients from many of the barriers imposed by the legal market.²² Technology can and must play a vital role in transforming legal service delivery so that individuals in need in the United States can obtain some form of effective assistance.²³

II. STATE SPECIFIC REPORTING REQUIREMENTS

According to a recent Access Across America Report, states exhibit a

²⁰ *Access to Justice & Technology*, NEOTA LOGIC (Apr. 16, 2014), <https://www.neotalogic.com/2014/04/16/access-to-justice-technology/> (showcasing a list of statewide technology initiatives, and thoughts from leading leaders in law and technology).

²¹ See Texas's site for ABA Legal Answers for an example of how the platform addresses client fears around privacy. *Attorney Agreement*, AM. BAR ASS'N: TEXAS, <https://texas.freelegalanswers.org/Attorneys/Account/Agreement> (last visited Mar. 24, 2020).

²² For more technologies that are bridging the access to justice gap, see Mary Juetten, *Two Nonprofit Companies that are Bridging the Access-to-Justice Gap with Tech*, ABA J. (Nov. 10, 2017, 8:00 AM), https://www.abajournal.com/news/article/access_to_justice_with_non_profit_technology; see also Mary Juetten, *What is the Technology Needed for Access to Justice?*, ABA J. (Oct. 13, 2017, 8:30 AM), https://www.abajournal.com/news/article/the_technology_needed_for_access_to_justice; see also Mary Juetten, *How Can Technology Solve Our Access to Justice Crisis?*, ABA J. (Sept. 8, 2017, 8:00 AM), https://www.abajournal.com/news/article/how_can_technology_solve_our_access_to_justice_crisis; See also William E. Hornsby, *Gaming the System: Approaching 100% Access to Legal Services through Online Games*, 78 CHI.-KENT L. REV. 917, 944 (2013) (writing that the utilization of games about the law could inform people about the accessibility of legal services; "games are a resource to enhance engagement and bring the legal profession one step closer to its goal of 100 percent access to legal services").

²³ See LEGAL SERVICES CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE, 2 (Dec. 2013), <https://www.lsc.gov/media-center/publications/report-summit-use-technology-expand-access-justice> ("The strategy for implementing this vision has five main components: 1. Creating in each state a unified 'legal portal' which, by an automated triage process, directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire legal process 2. Deploying sophisticated document assembly applications to support the creation of legal documents by service providers and by litigants themselves and linking the document creation process to the delivery of legal information and limited scope legal representation 3. Taking advantage of mobile technologies to reach more persons more effectively 4. Applying business process/analysis to all access-to-justice activities to make them as efficient as practicable 5. Developing 'expert systems' to assist lawyers and other services providers.').

“great diversity of delivery models for civil legal assistance.”²⁴ The Civil Justice Infrastructure Mapping Project collected information about the existence in each state of eleven different mechanisms through which civil legal assistance may be delivered to eligible populations, including: “staffed civil legal aid offices; organized civil pro bono programs; formal judicare programs; clinical programs that serve a high volume of clients; telephone hotlines delivering legal advice; telephone hotlines delivering legal information; courthouse lawyer-for-a-day programs; computer kiosks in courthouses that provide assistance to *pro se* civil litigants; staffed assistance centers in courthouses that provide assistance to *pro se* civil litigants; court websites that provide court forms; [and] court websites that provide information about accessing and using courts.”²⁵ Technology is at the forefront of these mechanisms. Although the American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually, states have the discretion to choose a higher or lower number of hours of annual service²⁶ according to local needs and conditions.²⁷ Washington D.C. for example, although not a state, has set a minimum pro bono goal for DC law firms to dedicate 3% or 5% of total client billable hours, or alternatively an average of 60 or 100 hours per lawyer each year.²⁸ Three methodologies have arisen in regards to reporting hours attorneys spend conducting pro bono work: mandatory reporting, voluntary reporting, and not reporting.²⁹

In states with mandatory reporting requirements,³⁰ a failure to report pro bono hours can lead to disciplinary actions such as fines or, at worst, a removal from the master roll of barred lawyers in that state.³¹ Proponents of mandatory reporting argue that mandatory reporting is a simple mechanism for attempting to increase delivery of legal services to those in need as well as an effective data collection tool to assist in evaluating client

²⁴ REBECCA L. SANDEFUR & AARON C. SMYTH, ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT, v (Oct. 7, 2011), http://www.americanbar-foundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf.

²⁵ *Id.* at 11.

²⁶ These hours may be expressed as a percentage of a lawyer's professional time.

²⁷ MODEL RULES OF PROF'L CONDUCT r. 6.1 (AM. BAR ASS'N 2018).

²⁸ See D.C. BAR PRO BONO INITIATIVE, 2018 PRO BONO INITIATIVE REPORT (2019), <https://www.dcbar.org/pro-bono/resources-and-training/upload/2018DCBarProBonoInitiativeReport.pdf>.

²⁹ See ABA: STANDING COMM. ON PRO BONO & PUB. SERV., *Policy: Pro Bono Reporting*, https://www.americanbar.org/groups/probono_public_service/policy/arguments/ (last visited Mar. 24, 2020).

³⁰ *Id.* (the following states have required reporting policies: New York, New Mexico, Nevada, Mississippi, Maryland, Indiana, Illinois, Hawaii, and Florida.).

³¹ See Ill. Sup. Ct. R. 756(h).

needs.³² The current need for free legal services vastly exceeds the number of public interest attorneys working in the United States, and given this disproportionality, one of the best ways to combat the shortage of free legal services is to increase private practice attorneys' participation in pro bono service.³³

Leslie Boyle, a partner at Holland & Hart LLP, argues that mandatory reporting can go far in ensuring that private practice attorneys step up in their involvement with pro bono work.³⁴ Such reporting, coupled with the implementation of technologies that allow attorneys to meet with more clients with greater efficiency, can help address the problem of disproportionality when it comes to access to justice.³⁵ Individuals that argue against mandatory reporting are often concerned with a lack of privacy, that issue is of incredible importance because mandatory reporting often requires data from the firm, attorney, and client.³⁶ Opponents also argue that such data collection would burden both firms and the state.³⁷

Voluntary reporting is easy to implement, inexpensive, and can raise monetary contributions to those in need.³⁸ Opponents to voluntary reporting argue that this method collects insufficient data to draw statistically valid conclusions and that a complete analysis of the collected data is rendered further impossible because of the optional nature of the personal identifiers used to understand which clients are utilizing which pro bono services.³⁹ The majority of states have no reporting policies.⁴⁰

In order to create reporting standards where there are none, firms

³² See Leslie Boyle, *Meeting the Demands of the Indigent Population: The Choice Between Mandatory and Voluntary Pro Bono Requirements*, 20 GEO. J. LEGAL ETHICS 415, 426 (2007) (Other positive factors include the peer pressure mandatory reporting fosters, as well as increased recognition of lawyers who do good work and increase awareness surrounding issues that disproportionately affect minority populations.).

³³ *Id.*

³⁴ *Id.* at 420-25.

³⁵ See Ronald W. Staudt, *Cyberclinics: Law Schools, Technology and Justice*, (2011) (noting that the justice system is failing to meet the needs of its most vulnerable and needy customers).

³⁶ ABA STANDING COMM. ON PRO BONO & PUB. SERV., *supra*, note 29 (this is because reporting divulges the names and other identifying information of recipients of pro bono aid.).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Those jurisdictions include Alabama, Alaska, Arkansas, California, Colorado, D.C., Delaware, Idaho, Iowa, Kansas, Maine, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. *Id.*

typically institute their own required number of hours, matching or exceeding the ABA's 50 hour recommended minimum.⁴¹ This paper will explore how firms regulate pro bono hours and what efficiency metrics they use to measure quality when utilizing externally created platforms to deliver aid, as the pro bono arena is ripe for innovation.

III. ACTUAL PRACTICE AND INTERNAL REQUIREMENTS

Actual practice differs from both ABA and state requirements due to the internal practices of certain firms. This chapter will scrutinize the practice of several Vault 100 firms and answer questions not already addressed in their public reports, including what technologies those firms utilize in their pro bono departments and across their pro bono workload, as well as the firm's internal requirements for pro bono work and the possible repercussions for lawyers not following the firm's internal guidelines. Firms rely heavily on infrastructure created by states or by nonprofits and for-profits.

The Legal Services Corporation (LSC) was created by Congress in 1974 with the mission to expand access to the civil justice system for low-income Americans.⁴² LSC supports civil legal aid organizations across the country, which in turn provide legal assistance to low-income Americans grappling with civil legal issues relating to essential human needs such as safe housing and work environments; access to health care; safeguards against financial exploitation; and assistance with family issues like protection from abusive relationships, child support, and custody.⁴³ Since

⁴¹ See *Law Firm Pro Bono Challenge Initiative*, PRO BONO INSTITUTE <http://www.probonoinst.org/projects/law-firm-pro-bono/law-firm-pro-bono-challenge/> (last visited Mar. 24, 2020) ("The Law Firm Pro Bono Challenge® initiative is a unique, aspirational pro bono standard. Developed by law firm leaders and corporate general counsel, the Challenge articulates a single standard for one key segment of the legal profession - the world's largest law firms."); see also, *Law Firm Pro Bono Challenge Signatories List*, PRO BONO INSTITUTE, <http://www.probonoinst.org/projects/law-firm-pro-bono/law-firm-pro-bono-challenge-signatory-law-firms/law-firm-pro-bono-challenge-signatories-list/> (last visited Mar. 24, 2020.)

⁴² For information about the current state of the Legal Services Corporation, see Lincoln Caplan, *The Justice Gap: America's Unfulfilled Promise of "Equal Justice Under Law"*, HARV. MAG. (NOV.-DEC. 2017), <https://harvardmagazine.com/2017/11/unequal-justice-america> (noting that in places where the access to justice gap is the broadest, Trump support runs rampant. Ironically, the Trump administration's "proposed budget for fiscal year 2018 called for doing away with LSC." According to the Office of Management and Budget shutting down LSC would put more control in local hands and "encourage nonprofit organizations, businesses, law firms, and religious institutions to develop new models for providing legal aid, such as pro bono work, law school clinics, and innovative technologies.").

⁴³ AM. BAR ASS'N COMM'N ON THE FUTURE OF LEGAL SERVICES, *supra* note 1 at 12.

2000, the Legal Services Corporation has run a Technology Initiative Grant Program devoted to leveraging technology to more effectively meet the civil legal needs of low-income people.⁴⁴ From 2000 to 2016, the LSC has awarded \$53.2 million dollars to more than 640 projects.⁴⁵ A few of these projects include the Philadelphia Legal Assistance Center, which created a statewide database of landlord-tenant eviction cases in order to analyze the data to measure outcomes, and Southern Arizona Legal Aid, Inc., which uses video conferencing to engage urban attorneys with rural clients or clients who would not otherwise have access to legal aid due to a lack of transportation, funds to pay for transportation, or the distance to a legal aid foundation.⁴⁶ These statewide initiatives are incredibly important for leveraging technology to meet the needs of a state's population; however, there also is a need for resources that are not bound to a single state, like Paladin, ABA Free Legal Answers, and Pro Bono Net.

According to a 2017 report, 86% of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help.⁴⁷ Furthermore, 71% of low-income households have experienced at least one civil legal problem in the past year.⁴⁸ According to the Commission on the Future, a proposal sponsored by the ABA that worked for two years creating a proposal on solving the access-to-justice gap, "Congress has never fully funded the LSC to adequately address the civil legal needs of people with low incomes."⁴⁹ According to that proposal, "In recent years, the LSC budget has been especially compromised, with Congressional appropriations decreasing from \$420 million in 2010 to \$365 million in 2014 at the very time that needs were increasing."⁵⁰ This decrease is especially

⁴⁴ *Technology Initiative Grant Program*, LEGAL SERVICES CORP. (last visited Mar. 24, 2020), <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig>.

⁴⁵ See Robert Ambrogi, *Real-World Examples Of Using Tech To Narrow The Justice Gap: Great Examples of How Technology Can Enhance the Delivery of Legal Services to the Poor and Underserved*, ABOVE THE LAW (Nov. 28, 2016, 4:55 PM), <https://abovethelaw.com/2016/11/this-week-in-legal-tech-real-world-examples-of-using-tech-to-narrow-the-justice-gap/?rf=1> ("the grants provide tangible examples of how technology can be used to enhance access to justice and the delivery of legal services.").

⁴⁶ *Id.*

⁴⁷ See LEGAL SERVICES CORP., *supra* note 8, at 6.

⁴⁸ *Id.*

⁴⁹ AM. BAR ASS'N COMM'N ON THE FUTURE OF LEGAL SERVICES, *supra* note 1, at 1, 13.; See Victor Li & James Podgers, *Can the Access-to-Justice Gap Be Closed? These Recommendations Might Make It Possible*, THE ABA JOURNAL (Aug. 6, 2016, 8:35 PM), https://www.abajournal.com/news/article/aba_commission_future_legal_services_report_access_to_justice (quoting Linda Klein, stating that the report's publication "marks a real milestone for the ABA and the entire organized bar . . . it's neither easy nor comfortable to embrace change, but we've got to do it.").

⁵⁰ AM. BAR ASS'N COMM'N ON THE FUTURE OF LEGAL SERVICES, *supra* note 1, at 13.

stark once you contemplate the role of inflation.

Estimates suggest that funding for LSC to address “all unmet legal needs” of those living in poverty would require an appropriation from Congress exceeding \$650 million.⁵¹ Furthermore, if the LSC was funded for individuals living in poverty, according to a report commissioned by the ABA, a significant need would remain for medium-income individuals and families.⁵² Although the LSC is the largest source of funding for most legal nonprofits, funding also exists at the state level from governmental and private sources. While this funding can be beneficial, because funding varies across state lines, individual access to legal services will vary depending on where they live.⁵³ According to that ABA-funded report, “geography is destiny.”⁵⁴ Services available to people from “eligible populations who face civil justice problems are determined not by what their problems are or the kinds of services they may need, but rather by where they happen to live.”⁵⁵

IV. AREAS OF PRACTICE

When scrutinizing the areas of practice that lawyers tend to concentrate on when engaging in pro bono work, it is important to note that those areas seem to trend and follow hot-button issues. For example, “while there was a great variety of individual projects handled,” a few themes emerged in last year’s Vault 100 pro bono reports, “with firms spending a significant portion of their pro bono hours on matters in the following three categories: immigration and asylum work, clemency petitions and criminal justice reform, and voting rights cases.”⁵⁶

This paper utilizes data from all of the Vault 100 firms and relies on personal interviews of pro bono partners from Proskauer, Clifford Chance, Akin Gump Strauss Hauer and Feld, Morrison and Foerster, Wilmer Hale,

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Scott Flaherty, *A Good Deed Every Day: Law Firms’ Support of Pro Bono Projects has been a Slow, Steady Rise. But This Year Could be Boom or Bust*, THE AMERICAN LAWYER (July 1, 2017), <http://www.americanlawyer-digital.com/americanlawyer-ipauth/tal201707ip?pg=22#pg22> (“While there was a great variety of individual projects handled, a few core themes emerged, with firms spending a significant portion of their pro bono hours on matters in three categories: immigration and asylum work, clemency petitions and criminal justice reform, and voting rights cases.”); *see also* VAULT LAW 100; 2017 RANKINGS, <https://hls.harvard.edu/content/uploads/2018/08/Vault-Guide-to-Law-Firm-Pro-Bono-2017.pdf> (last visited Mar. 24, 2020).

O'Melveny, K&L Gates, and Millbank.⁵⁷ For purposes of this paper, high performing firms⁵⁸ were chosen to represent the commonalities between firm culture and a firm's understanding of technology.

Chris Herrling, pro bono counsel and coordinator for Wilmer Hale, says that the pro bono work Wilmer Hale engages in is "all over the map."⁵⁹ Despite this variety, he states that recently there has been "sustained interest in immigration, particularly in the wake of DACA, along with an interest in veterans and victims of human trafficking."⁶⁰ Attorneys like Herrling, who are trying to reach out to clients, are combatting the culmination of several barriers to access to justice for impoverished communities. According to Latonia Haney Keith, the author of *Poverty, the Great Unequalizer: Improving the Delivery System for Civil Legal Aid* and the Director of Concordia's Legal Clinical Education Program, "[t]he complexity of the U.S. civil legal system is, in and of itself, a tremendous barrier for low-income populations."⁶¹ Keith goes on to state that, "[a]s a starting point, it is structured in a way that requires an attorney in most, if not all, legal situations. Vulnerable populations, however, simply cannot afford to pay for counsel as they lack the necessary income or assets."⁶² For individuals faced with civil justice issues, for example, a study conducted by the ABA found that 46% of people interviewed, individuals in the middle-class, are likely to address their problems themselves, 16% of people do nothing, and 16% get help from family or friends.⁶³ Only 15% sought formal help, and only 16% even considered consulting a lawyer.⁶⁴

William Silverman, pro bono partner at Proskauer Rose LLP, noted that his firm has had a "big uptick in [lawyers] wanting to do immigration

⁵⁷ Counsel interviewed from these selected firms is as follows: Proskauer, William Silverman; Clifford Chance, Diana Mitchell; Morrison and Foerster, Jennifer Brown; Wilmer Hale, Chris Herrling; O'Melveny, David Lash; DLA Piper, Anne Helms; K&L Gates, Robert Mitchell and Wendy Neiss; Milbank, Anthony Cassino. Interview dates and methods discussed in individual footnotes.

⁵⁸ High-performing firms, for the purposes of this paper, are those that outperform the ABA requirements for pro bono hours.

⁵⁹ Telephone Interview with Chris Herrling, Pro Bono Counsel, Wilmer Hale (Oct. 18, 2017). Numbers self-reported and gathered via Vault 100 reports for the last reported year, varies from 2014-2017.

⁶⁰ *Id.*

⁶¹ Latonia Haney Keith, *Poverty, the Great Unequalizer: Improving the Delivery System for Civil Legal Aid*, 66 CATH. U. L. REV. 55, 65 (2016).

⁶² *Id.*

⁶³ REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 7 (2014).

⁶⁴ AM. BAR ASS'N COMM'N ON THE FUTURE OF LEGAL SERVICES, *supra* note 1, at 13.

work.⁶⁵ Immigration is always a huge chunk of [their] pro bono practice and given all the developments lately, there has been a rise in that area.”⁶⁶ Silverman, in his position at Proskauer Rose LLP, is currently creating an intranet site that serves as a type of dashboard connecting attorneys to clients in need.⁶⁷ He created the site after working for a number of years gathering interest concerning clients by sending out blast emails to associates. Silverman, once he receives interest from a lawyer within the firm, does due diligence on the client and either approves or decides against the firm taking on the new client.⁶⁸ If he decides in the affirmative, he sends out an engagement letter to the potential client. If potential needs for training come up, he sends out emails to individuals within the firm to populate either in-person or video trainings.⁶⁹ This work is fairly financially low-value, and Silverman, in his capacity of partner, hopes that the online dashboard he creates, “LIFT,” will allow him to do a lot of this work via automation.⁷⁰ Silverman notes that firms like Proskauer Rose LLP see innovation as an exciting challenge, but he notes that firms with more conservative cultures don’t “embrace this entrepreneurial thought.”⁷¹

The American Bar Association’s Commission on the Future of Legal Services notes the traditional law-practice business model constrains innovations that would provide greater access to and enhance the delivery of legal services.⁷² Furthermore, limited data can make it difficult to determine the efficacy of certain legal technologies. Perry Teicher, an impact finance attorney at Orrick, noted concerns with pro bono technologies; it’s important to “make sure you’re doing high quality work, and set expectations [with your pro bono clients] early.”⁷³

Advancements in technology continue to change the delivery of legal services. In order to continue developing legal technologies, and in an effort to solve some of the problems mentioned above, the ABA’s

⁶⁵ Telephone Interview with William “Bill” Silverman, Pro Bono Partner, Proskauer Rose LLP, (Oct. 20, 2017).

⁶⁶ *Id.*

⁶⁷ *Id.* For more information on how lawyers can use technology to expand their pro bono outreach, see Presentation by William Jones, Tech., Info. and Content Coordinator, Am. Bar Ass’n Center for Pro Bono, *Using Technology to Support Pro Bono Volunteers Recruitment, Retention and Recognition* (2011), https://www.lsc.gov/sites/default/files/TIG/pdfs/pro_bono_technology_jones.pdf (60.9% of firms surveyed that that their pro bono volunteers utilize a case management system).

⁶⁸ Telephone Interview with William “Bill” Silverman, *supra* note 65.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² AM. BAR ASS’N COMM’N ON THE FUTURE OF LEGAL SERVICES, *supra* note 1.

⁷³ Telephone Interview with Perry Teicher, Impact Finance Attorney, Orrick, Her-
rington & Sutcliffe (Nov. 14, 2017).

Commission has advanced several recommendations.⁷⁴ Those include, inter alia, that all members of the legal profession should keep abreast of relevant technologies and that the ABA should establish a Center for Innovation. Furthermore, the legal profession should partner with other disciplines and the public for insights about innovating the delivery of legal services because increased collaboration with other disciplines can help to improve access to legal services. The recommendations go on to state that “resources should be vastly expanded to support long-standing efforts that have proven successful in addressing the public’s unmet needs for legal services.”⁷⁵ Included in those resources are legal aid and pro bono efforts that must be expanded, fully-funded, and better-promoted.⁷⁶ The commission also promotes further public education about how to access legal services and states that this should be widely offered by the ABA, bar associations, courts, lawyers, legal services providers, and law schools.⁷⁷ The commission, finally, recommends that “outcomes derived from any established or new models for the delivery of legal services must be measured to evaluate effectiveness in fulfilling regulatory objectives.”⁷⁸

V. CLIENT ACQUISITION AND INTAKE STAGE

The initial intake stage for pro bono clients, following client awareness and acquisition, is typically composed of data collection about the individual or individuals in need of pro bono legal aid.⁷⁹ This is the information referenced above in the state-reporting stage of this paper, where personal identifiers are either stripped from reported data or left intact, raising questions about the ethicacy of collecting such data in the first place. Because this stage is largely controlled by common practice in firms, it is best to look into a few firms for insights. Chris Herrling, of Wilmer Hale, states that the intake stage, in regards to acquiring pro bono clients, is currently in the hands of non-profit organizations.⁸⁰ He states that organizations have different modes of reaching out to lawyers, and those include, but are not limited to, sending out “blast emails,” asking for aid on a first-come-first-serve basis, or at worst, according to Herrling,

⁷⁴ AM. BAR ASS’N COMM’N ON THE FUTURE OF LEGAL SERVICES, *supra* note 1.

⁷⁵ *Id.* at 7.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ For an example of the intake process, see Colo. Bar Ass’n Ethics Comm’n, Formal Op. 117 (2007).

⁸⁰ According to Herrling, this intake stage can last anywhere from a few minutes to several days before a client is given advice by an attorney. Telephone Interview with Chris Herrling, *supra* note 59.

asking lawyers to “apply” in order to take on a certain pro bono case.⁸¹

VI. CURRENT COMMERCIAL OFFERINGS

Firms are often hesitant to utilize external software when it comes to meeting their needs.⁸² Chris Herrling states that he believes this is due to the firm having a “better understanding of what [the firm’s] needs are.”⁸³ Herrling says that what is available both commercially and at other firms has convinced him that external software does not suit the needs of Wilmer Hale’s attorneys as well as software that is internally developed.⁸⁴

Despite Herring’s hesitancy, external software offers great benefits in terms of price and usability. Software designed externally has a greater likelihood of being developed by an interdisciplinary team and can be furnished at a lower cost due to the software-as-a-service (SaaS) nature of such technologies. Online legal services connecting attorneys to pro bono clients and furnishing clients with free information work to innovate the client intake system and make accessing an attorney easier for low income clients.

A. *Paladin*

Paladin, a software service based in Chicago, is run by a team of former litigators and engineers⁸⁵. The platform currently focuses on the work of in-house counsel, as well as a few firms, and offers to connect individuals or organizations seeking legal assistance with pro bono attorneys.⁸⁶ Paladin replaces cumbersome email chains and spreadsheets with a centralized portal, enabling attorneys to distribute, connect, and approve activities.

Kristin Sunday, one of the founders of Paladin, states that most pro bono coordinators she meets are using Excel or Google Docs to track pro bono hours reached by their firms.⁸⁷ Sunday says that she hopes to begin

⁸¹ *Id.*

⁸² Pro Bono departments, when utilizing sites or software like those identified above, utilize existing infrastructure in order to train lawyers in using new or existing software. Firms assign such tasks to their IT departments, knowledge managers, and/or secretarial staff.

⁸³ Telephone Interview with Chris Herrling, *supra* note 59.

⁸⁴ *Id.*

⁸⁵ PALADIN, <https://www.joinpaladin.com/> (last visited Mar. 24, 2020).

⁸⁶ *Id.*

⁸⁷ Telephone Interview with Kristen Sunday, Founding Partner, Paladin (Nov. 1, 2017).

expanding Paladin's services into firms.⁸⁸ Moving directly into firms is difficult, Sonday says, because of technology limitations and different administrative burdens.⁸⁹ Sonday notes that the learning curve is steep for firms, and security is the primary aspect of Paladin that most firms are concerned about.⁹⁰ Sonday says that the burden shifts from the in-house counsel's attorneys to the team at Paladin to "demonstrate the program's strength[s] and weaknesses where [Paladin] can supplement their work."⁹¹ Paladin costs, in the words of Sonday, "a few hundred to a few thousand [dollars] a month."⁹²

According to Sonday, in an interview she gave to Forbes, "Paladin is a two-sided marketplace: [o]n one side, attorneys create profiles based on their backgrounds, interests, special skills and availability, and on the other side, legal aid organizations source well-aligned opportunities. Once an attorney indicates interest in a particular case, we facilitate an introduction to the referring organization and help track their case progress and impact."⁹³

Sonday says that most of the issues her site performs on include immigration, civil rights, women's rights, and disaster relief.⁹⁴ Paladin is partnered with legal aid organizations that vet clients and streamline the client intake process. Sonday views Paladin as "scratching the surface of pro bono tech."⁹⁵ She believes that greater integration will happen soon and looks forward to video document automation, chatbots, and an increase in the number of people served by pro bono attorneys.⁹⁶ According to Sonday, Paladin's strength is its ability to move quickly in the market: "we can be nimble, we can move quickly, we are the newer player in the market."⁹⁷

⁸⁸ *Id.* Paladin's business model began with Paladin moving into in-house counsel. The management team chose this route because in-house corporate teams have no infrastructure at all, and allowed Paladin to build their offering, as Sonday says, from "scratch."

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Elana Lyn Gross, *How to Close the Justice Gap by Increasing Legal Aid*, FORBES (July 3, 2017), <https://www.forbes.com/sites/elanagross/2017/07/03/paladin/#256a9ec32b35>.

⁹⁴ Telephone Interview with Kirsten Sonday, *supra* note 87.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

B. ABA Free Legal Answers

Free Legal Answers markets itself as a virtual legal advice clinic.⁹⁸ Currently, thirty state bar associations have live statewide versions of Free Legal Answers, and more bar associations are looking to launch similar ones in the near future.⁹⁹ Qualifying users, in this case clients who pose questions that are not related to criminal law issues, post their legal question to their state's website.¹⁰⁰ Users are then emailed when their question receives a response.¹⁰¹ Attorney volunteers log in to the website, select questions to answer, and provide legal information and advice.¹⁰² Participating states have their own page where qualifying residents will post their question; however, many states have declined to utilize the service.¹⁰³

ABA Free Legal Answers employs a Microsoft reserve platform created by Baker Donelson.¹⁰⁴ The firm developed the platform for work in Tennessee, where it has since been up and running for the past twelve years; the firm initially ran the software by licensing it out to other states before partnering with the American Bar Association.¹⁰⁵ Other legal technologies operating in the free legal aid space are partnering with firms in order to get the funds and volunteer attorneys necessary to create a workable platform.¹⁰⁶

ABA Free Legal Answers differs from other market offerings in that users can pose questions on the site and receive answers back from volunteer attorneys. Neither the attorney, nor the pro bono client, is utilizing his or her own email address and is communicating only through the site.¹⁰⁷

⁹⁸ ABA FREE LEGAL ANSWERS, <https://www.abafreelegalanswers.org/> (last visited Mar. 24, 2020).

⁹⁹ *Id.*; see also Telephone Interview with Cheryl Zalenski, Counsel, Standing Committee on Pro Bono and Public Service and Director, Center for Pro Bono (Nov. 28, 2017).

¹⁰⁰ ABA FREE LEGAL ANSWERS, *supra* note 98.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See Victor Li, *Technology is Making it Easier for Lawyers to Do Pro Bono Work*, ABAJ. (Dec. 1, 2016, 1:35 AM), http://www.abajournal.com/magazine/article/pro_bono_legal_aid_digital (“Alex Gulotta is the executive director of Bay Area Legal Aid. When Gulotta wanted to assess his organization’s existing tech infrastructure last year to determine what kind programs or platforms were needed, he found a company willing to do it. The price tag was the only problem. “We were looking at a \$150,000 bill, and that was with a discount,” Gulotta says. Instead, he reached out to some area law firms and found four (Fenwick & West; Morrison & Foerster; Orrick, Herrington & Sutcliffe; and Wilson Sonsini Goodrich & Rosati) that were willing to do the work for free.”).

¹⁰⁷ *Id.*

According to Cheryl Zalenski, the director of the Center for Pro Bono within the ABA, the volunteer attorneys most often utilizing the site to answer client's questions are primarily stay at home mothers, government, or corporate attorneys.¹⁰⁸ According to Zalenski, stay-at-home mothers with active licenses and are interested in maintaining their skill base utilize the site, as well as government or corporate attorneys are able to answer questions at home in the evening as they are typically disallowed from doing non-work related tasks during work hours.¹⁰⁹

Zalenski cited a PEW research poll when presented with concerns about impoverished clients having access to the internet.¹¹⁰ According to the poll, in 2016, only 13% of Americans did not have access to the internet.¹¹¹ This survey did not take into account access to libraries or schools with internet accessibility.¹¹² This data is particularly poignant as, according to Zalenski, one of the main motivations behind the creation of ABA Free Legal Answers was serving of rural clients who are unable to access siloed resources held by attorneys in high-attorney concentration areas.¹¹³ ABA Free Legal Answers has a unique business model, and according to Zalenski, it follows the simple tenet of "giving it away for free."¹¹⁴ This type of open-sourcing is viable as the project is funded by a network comprised of a private foundation and other private funding streams.¹¹⁵ The site does not have to generate income, and the technology it employs was initially donated and is continually maintained by Baker Donaldson's development team.¹¹⁶

ABA Free Legal Answers has a lot in common with both Paladin and Pro Bono Net. Zalenski notes that Paladin and ABA Free Legal Answers are "different sides of the same coin" when it comes to providing free legal services.¹¹⁷ She states that Paladin is focusing on attorneys being matched to clients, and getting the "opportunities in front of them,"¹¹⁸ whereas ABA

¹⁰⁸ Telephone Interview with Cheryl Zalenski, *supra* note 99.

¹⁰⁹ *Id.*

¹¹⁰ Telephone Interview with Cheryl Zalenski, *supra* note 99; *See Internet/Broadband Fact Sheet*, PEW RESEARCH CENTER (2017), <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/> (last visited Mar. 24, 2020.); *See also, Mobile Technology and Home Broadband 2019*, PEW RESEARCH CENTER (2019)

<https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/> (noting that 37% of Americans now utilize their mobile phones to go online).

¹¹¹ *Mobile Technology and Home Broadband 2019*, *supra* note 110.

¹¹² *Id.*

¹¹³ Telephone Interview with Cheryl Zalenski, *supra* note 99.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

Free Legal Answers approached the issue of a lack of legal information and representation by addressing the needs of the client community.¹¹⁹ ABA Free Legal Answers works closely with Pro Bono Net in order to garner resources to answer common client issues and maintains a presence on Pro Bono Net's directory for legal services.¹²⁰ Zalenski notes that Pro Bono Net has a wider mission and goal than ABA Free Legal Answers and remarks on the support that the non-profit gives to their volunteer attorneys.¹²¹

When asked about barriers to the adoption of ABA Free Legal Answers, Zalenski noted that the general fear or ineptitude surrounding technology can occasionally make volunteer attorneys uncomfortable with utilizing the site.¹²² Legal technologies and the importance of being kept abreast of recent technological innovations are a necessary component in this new era of lawyering.¹²³ If a volunteer attorney is uncomfortable with the platform, Zalenski notes that her team encourages those individuals to work with individuals who are more comfortable with technology to guide or mentor them through the process.¹²⁴ Unfortunately, Zalenski says, "sometimes those individuals are not right for the site."¹²⁵ Zalenski further notes that she very rarely faces barriers in the form of site privacy.¹²⁶ Communication between clients and volunteer attorneys takes place on the site and there has not, in the more than ten years since its inception, been a legal battle concerning any of the advice given on ABA Free Legal Answers.¹²⁷

Another primary concern raised by potential volunteer attorneys is quality control. When posed with questions about how quality can be maintained on a site like this, Zalenski likes to say that, "people don't have to just look at a question, answer quickly, and then hit send."¹²⁸ Rather, they can save the question, access research online, find helpful materials on Pro Bono Net, or even ask a coworker or partner for advice.¹²⁹ She notes

¹¹⁹ *Id.*

¹²⁰ For an example of ABA Free Legal Answers presence on Pro Bono Net, see Alabama Organizations, PROBONO.NET: NATIONAL PRO BONO OPPORTUNITIES GUIDE, <https://www.probono.net/oppsguide/search?state=AL>.

¹²¹ Telephone Interview with Cheryl Zalenski, *supra* note 99.

¹²² *Id.*

¹²³ See Debra Cassens Weiss, *Lawyers Have Duty to Stay Current on Technology's Risks and Benefits, New Model Ethics Comment Says*, ABAJ. (Aug. 6, 2012, 7:46 PM), https://www.abajournal.com/news/article/lawyers_have_duty_to_stay_current_on_tech-nologys_risks_and_benefits ("Lawyers can't be Luddites, according to changes to the model ethics rules approved Monday by the ABA House of Delegates.").

¹²⁴ Telephone Interview with Cheryl Zalenski, *supra* note 99.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

that, in some cases, volunteer attorneys are asked to have all of their answers looked over by a partner.¹³⁰ All of these checks on the answers being provided by attorneys help maintain a high level of quality. This problem with quality control, she states, is “largely over exaggerated.”¹³¹ When asked about the future of the site, Zalenski says that she would like to make it “as user friendly as possible.”¹³²

In order to fulfill this from a design perspective, Margaret Hagan, the director of Stanford’s Legal Design Lab, is looking at data concerning the current use of ABA Free Legal Answers in an effort to propose changes. Margaret Hagan is a proponent of design principles and believes in identifying problems first and then building solutions that attempt to solve problems while always keeping the human user in mind.¹³³ According to the Legal Design Lab:

Legal aid groups are in crisis. They’re understaffed, they cannot serve all of the people who try to access their services, and they have very limited funding to support their work or expand it. Current pro bono initiatives—meant to get well-resourced law firms’ help to these legal aid groups—come up short.¹³⁴

The Lab is launching the “New Modes of Pro Bono Project.”¹³⁵ The goal of the project is to “create new initiatives to get better support to legal aid groups in sustainable, rich ways.”¹³⁶ In addition to design changes for ABA Free Legal Answers, Zalenski looks forward to making the platform available in languages other than English.¹³⁷ She notes that many attorneys

¹³⁰ *Id.*

¹³¹ Zalenski further commented on the act of sending associates to “live clinics,” where typically an attorney is asked questions and asked to answer them on the spot with no opportunity to research. *Id.*

¹³² *Id.*

¹³³ See MARGARET HAGAN, LAW BY DESIGN, <http://www.lawbydesign.co/en/home/>, (last visited Mar. 24, 2020).

¹³⁴ *New Modes of Pro Bono*, LEGAL DESIGN LAB, <http://www.legaltechdesign.com/pro-bono/>, (last visited Mar. 24, 2020) (“We are designing a new service, in which a law firm (or a vendor that this law firm uses) takes care of a legal aid groups’ filing of documents with a court. Our core concept is that we can leverage law firms’ administrative resources to help legal aid groups’ with their admin needs – and use it to open a wider movement of new types of pro bono initiatives. . . . Beyond this pilot, we intend to open up a new conversation in the legal profession about what these new models of pro bono could be & then launch these new models to increase the capacity and quality of services available to moderate and low income people.”).

¹³⁵ *Id.* (to “design and implement better ways of getting more support to legal aid groups. Pro bono initiatives could call upon many more actors (beyond law firm lawyers) and provide many other kinds of resources (beyond legal expertise) to address the overwhelming access to justice crisis in the civil courts.”).

¹³⁶ *Id.*

¹³⁷ Telephone Interview with Cheryl Zalenski, *supra* note 99.

simply do not feel comfortable conducting legal work in other languages,¹³⁸ even when they are conversant in that language, and she is continuing to look into variable options to solve this issue.¹³⁹ This constant revision of the site, with a focus on implementing change that will help the end user, will ultimately lead to the scalability and viability of the site.

C. Pro Bono Net

Pro Bono Net is a national, online resource for legal aid and pro bono attorneys, law professors and students, and related social services advocates. The non-profit offers many types of programs involving pro bono attorneys in community efforts.¹⁴⁰ The site claims to offer collaboration, making it easier for pro bono attorneys to get involved, saving them time and connecting them with opportunities, training events, mentors, and searchable libraries of practice resources they won't find anywhere else.¹⁴¹ The site is organized by topical "practice areas" and geographic regions, and built and maintained by public interest legal organizations and law firms throughout the country.¹⁴²

Pro Bono Net offers a Volunteer Guide which connects legal aid and pro bono organizations in the state inhabited by potential volunteer attorneys.¹⁴³ Pro Bono Net's Learning Center is incredibly popular amongst lawyers at firms looking to acquire new skills in areas outside of their typical expertise; those resources include: conference presentations and materials, LSNTAP/PBN Community Training Series, LawHelp Trainings, LawHelp interactive Trainings, Access to Justice Webinar Series, and other webinars and trainings.¹⁴⁴ The site's "portals" are comprised of the

¹³⁸ *Id.* See *Language Access & Cultural Sensitivity*, LEGAL SERVICES CORP., <https://www.lsc.gov/grants-grantee-resources/resources-topic-type/language-access-cultural-sensitivity> (last visited Mar. 24, 2020) ("As of 2013, more than 20 percent of individuals living in the United States speak a language other than English in their home. Close to 25 million people, about 8 percent of the population, has [sic] limited English proficiency.").

¹³⁹ Telephone Interview with Cheryl Zalenski, *supra* note 99.

¹⁴⁰ PROBONO.NET, <https://www.probono.net/> (last visited Mar. 24, 2020).

¹⁴¹ *Id.*

¹⁴² PROBONO.NET: HELP FOR THOSE WITH LEGAL NEEDS, <https://www.probono.net/our-work/individuals/> (last visited Mar. 24, 2020); PROBONO.NET: OUR SUPPORTERS <https://www.probono.net/about/supporters/> (last visited Mar. 24, 2020).

¹⁴³ PROBONO.NET: NATIONAL PRO BONO OPPORTUNITIES GUIDE, <https://www.probono.net/oppsguide/> (last visited Mar. 24, 2020).

¹⁴⁴ PROBONO.NET: LEARNING CENTER, <https://www.probono.net/learningcenter/> (last visited Mar. 24, 2020); See *Lawyering in the Digital Age Clinic*, COLUMBIA LAW SCHOOL, <https://www.law.columbia.edu/clinics/lawyering-in-the-digital-age-clinic>

international site, the regional and state sites, or the sites determined by practice area. Claudia Johnson, the LawHelp Interactive Program Manager at Pro Bono Net, notes that there needs to be accountability in the realm of online legal services. She states that,

The programs that receive, federal, state, county funds need to prove that they are staffing and handling the cases in the most effective way. That they are incorporating tools and developments to ensure that their practice is attune not only with the demands placed on the system, but also that is responsive to the demands of younger, remote, more tech savvy clients.¹⁴⁵

Evaluations are incredibly important in ensuring that online legal services are constantly being improved in order to ensure the delivery of legal services to those in need.¹⁴⁶ Evaluations are important in figuring out how to use limited resources to guide future technology investments, conduct an assessment of needs, and figure out where technologies can be improved. The following criteria may be used to evaluate these technologies: relevance, effectiveness, efficiency, impact, sustainability, and coherence.¹⁴⁷ In terms of developing metrics in order to determine the efficacy of an online legal service, Johnson states that we need to develop “methodologies to prove that technology improves quality and increases quantity. Methodology needs to be developed to develop the data by the most common technologies being used in legal aid, starting with hotlines (20 or more years of experience and data), to online document assembly (7 years), to online intake (past 2 years) to mobile technologies (6-18 months).”¹⁴⁸ Johnson further notes that triaging is important to take into consideration the needs, in order of priority, of clients. She states, “Disabled, LEP, elderly, and other vulnerable populations need to receive priority when allocating resources for full rep legal services.”¹⁴⁹ Johnson

(last visited Dec. 8, 2017) (noting that the New York City Civil Court had recently developed an online, automated system to respond to eviction proceedings. The page quotes a student working in the clinic at the time, Brian Agboh, who said, “I knew when I signed up for the Lawyering in the Digital Age Clinic that I would be entering new territory in terms of expectations for responsibility and creativity. It was a great experience, and I feel ready for anything now. It is very satisfying to work directly for clients and at the same time to be having an impact on the way law is practiced.”).

¹⁴⁵ Claudia Johnson, *Guest Blogger Claudia Johnson on The Technology Future*, RICHARD ZORZA’S ACCESS TO JUSTICE BLOG (Nov. 9, 2012), <https://accesstojustice.net/2012/11/09/guest-blogger-claudia-johnson-on-the-technology-future/>.

¹⁴⁶ See Claudia Johnson et al., *From Investment to Impact: Recent Outcomes Evaluations of Legal Aid Tech Projects*, LEGAL SERVICES NATIONAL TECHNOLOGY ASSISTANCE REPORT (Aug. 17, 2016), <https://www.slideshare.net/LSNTAP/recent-outcomes-evaluations-of-legal-aid-tech-projects>.

¹⁴⁷ *Id.* at slide 19.

¹⁴⁸ Johnson, *supra* note 145.

¹⁴⁹ *Id.*

echoes Margaret Hagan when she says, “Web design does not always guarantee that usability is being considered on the design of a new tool. It would be helpful to develop usability best practices for the main areas where technology is and could be used in the future.”¹⁵⁰

Evaluation of online legal services in the pro bono realm differs from legal services delivered traditionally;¹⁵¹ online legal services can offer help in the form of answering questions, giving individuals access to necessary forms, and more. Many of the individuals receiving free legal aid online may not be able to afford the cost of an attorney, and as such, the efficacy of online platforms should be evaluated with this in mind.¹⁵² The proper evaluation of a legal service should not be how it performs compared to the best possible lawyer, but how it compares to no legal aid at all and, ultimately, how it compares to other technological offerings.¹⁵³

Before founding Pro Bono Net, Mark O'Brien worked for nearly a decade as pro bono coordinator for law firm Davis Polk & Wardwell.¹⁵⁴ He was initially struck by “a couple of things. One was the lack of incentives that existed for legal organizations to think about collaborative approaches to grow the pro bono pie. One of the reasons that wasn't happening was we didn't think there were very good tools.”¹⁵⁵ He notes that, “There was an opportunity to think about using emerging web technology to create tools to share recommendations and information about pro bono in ways that would necessarily have to recreate the silos that exist within the brick-and-

¹⁵⁰ *Id.*

¹⁵¹ Cf. Gregg G. Van Ryzin & Marianne Engelman Lado, *Evaluating Systems for Delivering Legal Services to the Poor: Conceptual and Methodological Considerations*, 67 *FORDHAM L. REV.* 2553, 2571 (1999) (“[W]e wish to emphasize that evaluation in the legal services field should not be viewed or employed only narrowly as a mechanism to ensure compliance to the restrictions and regulations of government agencies or other funding sources. Rather, evaluation can and should be put to the more productive use of generating insights and information that help improve the delivery of legal services to those who face economic barriers to adequate legal counsel and limited access to justice and opportunity.”).

¹⁵² See Ron Dolin, *UPL, Technology, and Access to Justice* (Apr. 30, 2015), <http://radicalconcepts.com/285/upl-technology-and-access-to-justice/>.

¹⁵³ See *id.* (In his article, *UPL, Technology, and Access to Justice*, Ron Dolin discusses how to evaluate online legal services. Dolin brings up the “Turing Test” as a measure of the quality of the legal service: “Well, if you look at legal work product and you can't tell if it was generated by software or a lawyer, really, how bad could the software be?”); See also, Gabrielle Orum Hernández, *A High-Tech Helping Hand: The Marriage of Pro Bono and Technology*, *LEGALTECH NEWS* (May 31, 2017), <https://www.law.com/legaltech-news/sites/legaltechnews/2017/05/31/a-high-tech-helping-hand-the-marriage-of-pro-bono-and-technology/?slreturn=20191019231311>.

¹⁵⁴ Telephone Interview with Mark O'Brien, Founder Pro Bono Net (Nov. 27, 2017).

¹⁵⁵ *Id.*

mortar world.”¹⁵⁶

Pro Bono Net has collaborated on a number of different online programs, but they generally fall into two categories: attorney-facing programs and client-facing programs.¹⁵⁷ The platforms the organization has built for attorneys typically include lots of different toolkits and easily accessible resources that attorneys can use to find updated information or to consult in doing work in unfamiliar practice areas.¹⁵⁸ Pro Bono Net’s client-facing platforms help connect clients to legal services organizations or information they need to handle legal matters on their own.¹⁵⁹ Because of technology advancements made in recent years, O’Brien has begun to see a way to unite both attorney-facing and client-facing technologies.¹⁶⁰ “We’re beginning to get to a point where we can put the two of those together and put together models for virtual service delivery,” he says.¹⁶¹

According to Liz Keith, the Program Director at Pro Bono Net, “Interactive, online document assembly programs have been incorporated into many pro bono initiatives to support the provision of unbundled legal services, provide additional support for volunteer attorneys, and make service delivery more efficient.”¹⁶² Keith believes that “[t]echnology is also helping to expand the geographic reach of traditional, brick and mortar pro bono programs.”¹⁶³ In terms of volunteer attorneys working on online legal services, Keith states that “[i]n addition to innovations in traditional pro bono services, technology is enabling new modes of volunteering.”¹⁶⁴ Keith believes that online legal services are those disruptive technologies that are

¹⁵⁶ *Id.*

¹⁵⁷ See PRO BONO NET, *supra* note 140.

¹⁵⁸ See Telephone Interview with Cheryl Zalenski, *supra* note 99 (discussing lawyers using the site for collaboration).

¹⁵⁹ See PRO BONO NET, *supra* note 140.

¹⁶⁰ Hernandez, *supra* note 153. O’Brien looks forward to the future of online legal services, saying, “It’s quite remarkable how much the legal aid community has grown, in part because of recognizing scarcity and the need to be inventive.” He says that, “We may have spent a few years dragging people kicking and screaming, but I think it’s actually proving to be a very inventive, engaged community.”

¹⁶¹ *Id.*

¹⁶² Liz Keith, *Innovations in Technology-Enabled Pro Bono*, THE AM. BAR ASS’N (May 19, 2016), https://www.americanbar.org/groups/legal_services/publications/dialogue/volume/19/spring-2016/innovations-in-technology-enabled-pro-bono/; See Stephanie Kimbro, *Using Technology to Unbundle in the Legal Services Community*, HARV. J. L. & TECH. OCCASIONAL PAPER SERIES at 2 (2013), <http://jolt.law.harvard.edu/assets/misc/Kimbro-UsingTechnologytoUnbundleLegalServices.pdf> (describing how unbundling affects legal services and arguing that “the legal profession is on the brink of a fundamental change in the way that both professionals and the public evaluate how legal assistance is provided.”).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

incredibly important to the delivery of aid to individuals in need;

While not every innovation will be a success, technology is clearly creating new opportunities to unlock, and effectively support, a much larger pool of volunteers than ever before. Some of these changes may be disruptive to traditional service models, but if harnessed well, we can make great strides in addressing one our country's fundamental dilemmas—closing the justice gap for the millions of low-income individuals in need of accessible and affordable legal assistance.¹⁶⁵

VII. THE FUTURE

According to an American Lawyer 2017 survey of 200 lawyers, those lawyers interviewed dedicated slightly more time to pro bono matters last year than they did the year before.¹⁶⁶ The firms that responded to the survey logged a total of more than 5.3 million hours on domestic and international pro bono in 2016. The percentage of lawyers who contributed more than 20 pro bono hours was also up, even though that survey saw that figure at its highest level since 2009.¹⁶⁷ The three platforms I chose to analyze operate in different ways; however, most take in mind the triage system, where questions and clients can be accepted in the order of urgency, and utilize business process improvement along with exchanging legal information between each other in order to change alongside new technologies. All three of these factors are important in creating systems that are responsive, innovative, scalable, and sustainable.¹⁶⁸ Ultimately, platforms in this space need to be able to stay innovative in order to be transformative in the pro bono sphere. In their paper, *Using Technology to Enhance Access to Justice*, authors James E. Cabral, et al. envision a:

world in the near future where access to justice means that a potential litigant can easily find legal information about her rights, apply for legal aid electronically, talk to a legal aid attorney over her tablet computer, find and complete the forms she needs to file in court, access the court's e-filing system to file her response and check on the progress of her case, and communicate over the Internet with a lawyer in a larger city if her case becomes complicated.¹⁶⁹

¹⁶⁵ *Id.*

¹⁶⁶ Flaherty, *supra* note 2.

¹⁶⁷ *Id.*

¹⁶⁸ Keith, *supra* note 61, at 116.

¹⁶⁹ James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J. L. & TECH. 241, 247 (2012). The authors look to mobile devices as an appropriate form of

Chris Herrling, pro bono counsel of Wilmer Hale, believes the future of pro bono work lays in “lawyers sitting at their desk providing clients with advice in real time.”¹⁷⁰

CONCLUSION

Firms often seek to mitigate the costs of conducting their pro bono work through the implementation of various technologies, both internally and externally created. The pro bono arena is ripe for innovation, and the implementation of various technologies are allowing attorneys to conduct their pro bono efforts with greater ease and efficiency. Pro bono technologies perfectly exemplify the process of matching relevant technologies to legal problems, and there are several types of technologies that may assist in pro bono work.¹⁷¹ Addressing the types of technologies that may assist with pro bono client’s access to legal information and adequate representation, along with the evaluative process of such technologies, allows us to appropriately gauge the use of such technologies and the impact they will have on the access to justice gap.

communication as the growing number of low-income people with access to smartphones will present future opportunities to provide better access to legal services and information. The authors see “text messaging . . . offer[ing] a form of communication that is ubiquitous to cell phone owners and an untapped resource for the delivery of legal services to this population.” *Id.* at 274.

¹⁷⁰ He notes that his concerns with products offering as much would be waylaid by a simple screening mechanism alerting him, in advance of his conversation with a client, about the questions the client will likely ask and he says that he sees such conversations, taking place over the phone or via a chat function and stripped of the tedium of busy-work, to be the future of client communication. Telephone Interview with Chris Herrling, *supra* note 59.

¹⁷¹ These include Paladin, ABA Free Legal Answers, and Pro Bono Net.