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> Gary Bellow never, ever stopped fighting. . . . Without a trace of self-satisfaction for his many accomplishments or self-pity for his many burdens, he kept pushing the rock of justice inch by inch up the hill that poverty and racism and hypocrisy have placed in the path of far too many people's hopes and dreams.[1]

I. THE LEGACY OF GARY BELLOW

People who knew and worked with my husband, Gary Bellow, remember him vividly. They recall a lawyer of uncommon skill, a master teacher, and, in the way that David Wilkins describes above, a fierce and tireless advocate. They also recall a remarkable human being—a person of great warmth and confidence, genuinely and deeply interested in others. The UDC Law Review describes the arc of Gary's career[2] and touches on his pioneering role in building the Public Defender Service for the District of Columbia, California Rural Legal Assistance (CRLA) and clinical legal education, first at the University of Southern California and then, from the early 1970s until his death in April 2000, at Harvard Law School.[3]

As Gary's partner in work and at home for nearly thirty years, I also know that engaging with Gary was not always soothing. He challenged himself most of all, but he also challenged those he cared about and respected, forcefully and at times

* Senior Lecturer in Law, Harvard Law School; Director, The Bellow-Sacks Access to Civil Legal Services Project.

1 David B. Wilkins, Gary's friend and Harvard Law School colleague.

2 GARY BELLOW: CLINICAL PIONEER AND TIRELESS ADVOCATE FOR SOCIAL JUSTICE, http://www.udclawreview.com/bellow-scholars/ (last visited Dec. 1, 2012).

3 *See* Jeanne Charn, *Service and Learning: Reflections on Three Decades of* The Lawyering Process *at Harvard Law School,* 10 CLIN. L. REV. 75 (2003) (describing the development of the clinical program and the neighborhood law center at Harvard Law School, which became sites for study and experimentation in delivery of legal services).

uncomfortably. This is what drew people to Gary and what they desired to emulate in their own lives.

Many readers of this symposium edition will have had no direct contact with Gary Bellow and have heard little or nothing about his work. So I begin this introduction to the really exciting and valuable work of the Bellow Scholars by devoting a few pages to the words of some of Gary's colleagues, students, and close friends whose recollections capture the energy, whole-hearted engagement, and relentless critique of all forms of complacency that Gary brought to his work:[4]

> Gary's penchant for constant criticism and reflection resulted from his understanding that the kind of mitzvot that he had dedicated his life to, and that those of us working for him were striving to carry out, required a lot more than just good intentions. Complex skills, hard work, and high standards were also required. Gary pissed off a lot of people when he harped on it, but that's the lesson that he taught to the do-gooders in the legal services world, and to his staff and his students: that a big heart alone was not enough. You had to put in the work if you wanted to be a good lawyer, if you wanted to change the world.[5]

> Gary was not a saint. It's not just that, unlike Mother Teresa, Gary liked to gamble—to mention only the most mentionable. His friendship was not saint-like either. Gary did not offer you a soft, enveloping embrace . . . Gary didn't return your phone calls, sometimes he made you mad. . . . Sometimes Gary's critical stance would hurt his friends and allies, even hurt the people he loved. But the hurt was the pain of his constant challenge, a challenge he demanded as much of himself as he did of others. . . . To live the kind of life that Gary lived, we wouldn't have to represent Black Panthers or create legal services for the poor. We wouldn't have to have the incredible courage with which he faced his heart transplant and its aftermath. We would simply have to realize that no aspect of our lives, no human interaction, no problem we face has to be treated as routine. Everything can be engaged; everything can be transformed.[6]

> I have constantly marveled at Gary's ability to incorporate his moral and political commitments into his lawyering. . . . [One] cold Friday before Christmas a tenant in a nearby three-decker came to say that she had no heat. [M]ost lawyers would . . . respond, "There's nothing I can do to help you." . . . A few would probably help by trying to get a TRO ordering the

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4 MEMORIAL CELEBRATION OF MAY 25, 2000, http://www.garybellow.org/Memorial/cover.htm (last visited Dec. 1, 2012).

5 David Grossman, Gary's friend, former student, and colleague at the Legal Services Center.

6 Gerald Frug, Gary's friend and colleague at Harvard Law School.

> landlord to restore heat. . . . Gary took a different approach. He started calling plumbers . . . [and] found one who would talk to him. I forget what he said, though I am sure he mentioned Christmas, the cold and the client's young children . . . he didn't say anything about the client being on welfare. . . . Then just when I thought the conversation was over Gary said to the plumber, "There's one more thing. You might not get paid." . . . I couldn't believe that, having achieved this miracle of persuasion, he was going to risk blowing everything by making the plumber aware of this fact. There was a pause that seemed to me to last a long time, then the plumber said "I know." He went out and fixed the boiler. Of all the vicarious thrills I felt at Gary's many successes, none was stronger than the one I felt when the plumber said "I know." It wasn't enough for Gary that the plumber do the right thing. Gary wanted to give him an opportunity to do it for the right reason, as an act of charity or solidarity rather than as an effect of Gary's manipulative capacities. Gary was no patsy. He could be as tough with adversaries as any lawyer I've known. But he had an extraordinary capacity to recognize and respect people's humanity, even when they were sitting on the other side of the table.[7]

Gary was a teacher in practice at the D.C. Public Defender Service and at CRLA long before he entered the academy. In the best traditions of the profession he taught from his own practice in the law office more than in the classroom, though he had an uncanny ability to bring the strategic, ethical, and moral dilemmas and challenges of law practice into the classroom. His concept of the clinical method involved, at its core, expert practitioners working shoulder to shoulder with novices in a real world professional setting—directing, advising, supporting, and deconstructing the novice's early experiences in the lawyer role. Expert practitioners would, in turn, open their own practice to observation, questioning and critique by their mentees and, in complete candor and with all the precision they could muster, critically assess both the instrumental and the expressive dimensions of their lawyering work.[8] This was the learning process that we developed and practiced at the Legal Services Center. The following reflects one student's

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7 Bill Simon, Gary's friend, former student, and a member of the founding faculty at the Legal Services Institute. The Institute—the neighborhood law office we founded at Harvard as a center for experimentation in the delivery of legal services—had several names throughout its history. Originally the Legal Services Institute, the Institute was renamed the Hale and Dorr Legal Services Center in 1993 after the law firm provided support for a new building. Following a 2004 merger between Hale and Dorr and Wilmer, Cutler & Pickering, the Center began a third iteration as the WilmerHale Legal Services Center. *See* MEMORIAL CELEBRATION, *supra* note 4; *see also* THE WILMERHALE LEGAL SERVICES CENTER, http://www.law.harvard.edu/academics/clinical/lsc/index.htm (last visited Dec. 1, 2012).

8 Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, *in* CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 374, 374 (Council on Legal Educ. for Prof'l Responsibility ed., 1973).

experience of the Lawyering Process course at the Center, on this occasion jointly taught by Gary and me.[9]

> I first met Gary in September 1998, when I enrolled in the "Lawyering Process" course he co-taught with his wife, Jeanne Charn, at the Legal Services Center in Jamaica Plain. . . . That year-long class was transformative for many of us. . . . the curriculum included legal ethics, negotiation strategy, professional development, peer evaluation of clinical work product, incorporation of technology into practice, and more—but also by the manner in which they set themselves to the daunting task. Their appetite for critical discussion was voracious. Their willingness to cast away assumptions or standing models in the face of convincing challenges was unflagging. Their commitment to standards of excellence belied the rote critiques typically leveled at legal services theory and practice. At times the classroom felt like a laboratory, albeit an unusual one in that Gary and Jeanne were right there with us mixing it up at the workbench. Gary provided the closing comments to the students and staff who participated in orientation weekend at the Legal Services Center. . . . It was a long day of training, and we were all eager to burst outside and enjoy what remained of a beautiful day. Without fanfare and without warning, Gary's brief remarks took our breath away. He spoke about moral hazards, ethical dilemmas, and the great seriousness with which we were obliged to pursue our clinical work. . . . Even after almost four decades of direct service legal advocacy, the alliances Gary built with his clients retained their vitality for him and their hold on him. . . . He never shied from the challenges at hand, never provided empty reassurances that just doing the work was doing good enough, never fronted that he had resolved the various tensions in operation. What he did do was to be real and critical and generous and inspirational.[10]

The common threads of these recollections and vignettes are that Gary moved people to action and, by his example, showed us how to test and resist perceived constraints. Gary's legacy is that he made you feel and believe that you could be more competent, perceptive, generous, and, in a deep sense, ethical and open-hearted than you would have imagined possible.

II. THE BELLOW SCHOLAR PROGRAM

The core idea of the Bellow Scholar Program was that, over time, we might develop a collaboration among clinicians interested in a more rigorous explora-

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9 Gary and I co-taught the full-year course during the 1998-99 academic year because Gary was recovering following his April 1998 heart transplant.

10 Sophie Bryan, Gary's and my student in the 1998-99 *Lawyering Process* course and Gary's student in the 1999-2000 *Medical-Legal Connection: A Patient's Perspective* course at the Center.

tion of systemic problems that we identified in our practice and teaching. I talked with clinical colleagues who shared Gary's and my interest in clinics as sites for empirical investigation and study. A more developed concept of an activist community of learners that included both clinicians and social science researchers began to emerge. Gary would have signed up for such an effort. He was an avid reader of the *Law and Society Review* and he spoke often of the need for empirical research on the actual functioning of lawyers and legal institutions. I came to believe that the best way to honor Gary's legacy was to build a capacity for rigorous analysis and investigation, carried out in a community of activists willing to learn from each other and from other disciplines, all with the goal of addressing a problem of significance in the everyday lives of low- and moderate-income people.

Fortunately, Antoinette Sedillo Lopez was Chair of the Association of American Law Schools (AALS) Clinical Section in the year following Gary's death. She had an immediate, positive response to the Bellow Scholar idea. Antoinette's leadership and guidance on how best to institutionalize the project and navigate Section and AALS approval processes were crucial to translating the idea into a program. She revived an existing but inactive Section Committee on Lawyering in the Public Interest and tasked the committee with implementing the program. Her appointments to the small working committee included two people who had worked directly with Gary: Bea Moulton, co-author with Gary of *The Lawyering Process*, and Kim O'Leary, who had been a full year, full-time student in the first years of the Legal Services Center's operation.[11]

We announced the program and solicited the first round of applications in the fall of 2002. We didn't know if anyone would apply and we had nothing to offer but the designation of "Bellow Scholar" and the willingness of a circle of like-minded committee members and clinicians to stay engaged with their projects and to convene at the annual spring clinical conference to offer our advice and support. We decided that we were not looking for the best single proposal but would name one, two, or several Bellow Scholars depending on how many well-thought-out proposals we received. We designated three Bellow Scholars in the first cycle, all of whom happened to have been Gary's students (Jeff Selbin and Sophie Bryan) or individuals who had worked and consulted with him over a long period of time (Doug Smith).

In its tenth year, the Bellow Scholar Program is thriving. The Committee on Lawyering in the Public Interest continues to administer the program, with new co-chairs drawn each year from the previous cadre of Bellow Scholars. The Com-

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11 *See* Charn, *supra* note 3, at 97-99 (describing the combined clinical and poverty law curriculum carried out on-site in the clinical law office in the Jamaica Plain neighborhood of Boston). Twenty-four students spent the entire third year of law school practicing in the clinical office and taking classes relevant to lawyering and substantive areas of practice. Gary and I and the faculty and staff attorneys at the Center taught the courses and practiced law with and supervised the students.

mittee designates new Bellow Scholars every two years. So far, five cycles have resulted in eighteen Bellow Scholar projects.[12] The sixth cycle of solicitations was in the fall of 2012. We introduce new Bellow Scholars at the clinical luncheon during the AALS annual meeting in January and new and past Bellow Scholars with active projects convene at the annual spring clinical section conference for substantive discussion of works in progress. The section events are always open to anyone attending the clinical conference.

In September 2007, Bellow Scholar Brenda Blom organized and hosted a two-day conference at the University of Maryland. Invitees included Bellow Scholars, clinicians interested in empirical research, and social science researchers working with Brenda, with other Bellow Scholars, or whose scholarship focused on delivery of legal services, the legal profession, or social justice lawyering. This interdisciplinary conference was so successful that we were able to obtain financial support from the Clinical Section for a second conference in 2008 hosted by Stanford Law School. When the University of Pennsylvania proposed to host a conference in Fall 2009, we realized that we had institutionalized an annual, two-day fall conference in addition to a two- to three-hour meeting at the annual Clinical Conference.

The UDC conference in November 2010 advanced the Bellow Scholar agenda in two important ways. First, the hosts and planning committee strengthened inter-disciplinary participation by inviting a senior international legal services researcher from the Legal Services Research Centre (the policy research and analysis division of legal services in England and Wales), the director of the National Science Foundation's Law & Social Sciences Program, and representatives from the new Access to Justice Initiative at the Department of Justice. The second important contribution of the UDC conference was the invitation to Bellow Scholars to submit articles based on their research for publication in this symposium volume of the UDC Law Review. This year the University of California at Irvine hosted the fall conference, and, following the structure of the UDC conference, the University of California at Irvine Law Review has invited submission of papers by Bellow Scholars for publication.

Organizers of the fall 2011 Bellow Scholar Conference decided to meet in New York City in conjunction with the annual Clinical Law Review Writer's Workshop. Going forward, the Bellow Scholar Conference will be held in conjunction with the Clinical Law Review Workshop in odd-numbered years (the fall 2013 conference will be in New York City), and at host law schools in even-numbered years (the 2014 conference will be held at the University of Notre Dame Law School).

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12 Mary Spector, *From Representation to Research and Back Again: Reflections on Developing an Empirical Project*, 16 UDC/DCSL L. REV. 55, 69 n.70 lists all of the Bellow Scholars and their projects. There are more than eighteen Bellow Scholars because some projects are partnerships.

Most conference participants, both clinicians and social scientists, attend regularly, and this continuity promotes deeper understandings of ongoing research and produces a common knowledge base that grows from year to year. The common core of participants also contributes to an atmosphere of familiarity and trust that is conducive to frank exchange and debate.[13] The social scientists who attend may be partners in Bellow Scholar Projects or may have scholarly interests in lawyers, institutions of remedy, or modes of dispute resolution. As a result, participating clinicians (who are not all Bellow Scholars) learn how to work on an inter-disciplinary basis with researchers in sociology, anthropology, economics, and statistics.

However, the most remarkable dimension of the Bellow Scholar Program is that it is sustained by the interest of participants, the quality of the projects, and the pleasure of working collaboratively across disciplines on issues of consequence for our clients.

III. THE WORK OF TWO BELLOW SCHOLARS

This symposium volume offers two interesting and important papers (a third Bellow Scholar paper will be published in the next volume of the UDC Law Review). All are products of interdisciplinary empirical research relevant to a corner of the legal system where need or circumstance bring thousands of people into contact with law, its processes, actors, and, ultimately, its outcomes. Both research papers reflect the Bellow Scholar criteria of "important efforts to improve the quality of justice" in the author's respective communities.[14]

The article by Enrique S. Pumar and Faith Mullen concerns the central panel that adjudicates unemployment insurance (UI) appeals in the District of Columbia. The crux of the underlying problem is that 3000 cases are filed each year, but free- or low-cost representation is available for fewer than 600 claimants—less than twenty percent of the claimants who seek review.[15] This scenario is all too common in courts and administrative agencies throughout the country. Demand for legal assistance far outstrips the supply of free or affordable representation. In such circumstances claimants have no choice but to represent themselves. The researchers, with Professor Mullen's clinical law students, carried out a survey of self-represented claimants with the goal of learning if unrepresented parties perceived that they were at a disadvantage. The interview instrument also included inquiries about claimants' understanding of the appeal process and the issues on which the administrative law judge would focus. The findings indicate that most

13 *Id.* at 8-70. In part IV of her article in this volume, Mary Spector describes the value of participation in the Bellow Scholar Program to her project.

14 Enrique S. Pumar & Faith Mullen, *The Plural of Anecdote is Not Data: Teaching Law Students Basic Survey Methodology to Improve Access to Justice in Unemployment Insurance Appeals*, 16 UDC/DCSL L. REV. 17 (2012).

15 *Id.* at 24-25.

claimants believed they would have been better off with counsel, and many lacked a clear understanding of either the process or the contested issues. Moreover, many had little idea how to advocate for themselves with respect to the issues they did understand. The perceptions of claimants were similar to the general views expressed by at least some of the ALJs and advocates involved in UI appeals: Many claimants would benefit from representation.[16]

The researchers acknowledge that the high volume of UI appeals relative to legal services resources makes it "impossible" for every claimant to be represented at a hearing. Fortunately, recent rigorous evidence suggests that some—perhaps many—claimants may be able to effectively self-represent.[17] In a randomized controlled trial in which the "treatment" group was offered representation in a UI hearing and the control group was not offered representation, the study showed no difference in success rates at hearing between the control and treatment groups.[18] The study was inconclusive regarding the effect of actual representation on UI eligibility appeal outcomes.[19] However, the claimants who were offered assistance experienced an average two-week delay in time to outcome as compared to control group claimants.[20] Put bluntly, offers of representation produced no better results but imposed a cost—a cost that validated the concerns of advocates and ALJs that "the presence of more lawyers could complicate hearings and draw them out unnecessarily."[21]

As access to justice and other social justice issues become the subject of more and better empirical analysis, clinicians and advocates must become sophisticated readers and interpreters of empirical study results. Regarding the UI study in Boston and the experience of UI appeals in the District, for example, there may be characteristics of the UI appeal process, the advocacy community, the job market, or the demographics of the labor market in Boston that don't exist in Washington D.C. These factors may account for the finding that offers of representation *did not* impact UI appeal outcomes in Boston.[22]

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16 *Id.* at 22.

17 D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation of Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118 (2012).

18 *Id.* at 2152-58.

19 *Id.* at 2166-70.

20 *Id.* at 2153-58.

21 Pumar & Mullen, *supra* note 14, at 45.

22 *See* Jeffrey Selbin, Jeanne Charn, Anthony Alfieri & Stephen Wizner, *Service Delivery, Resource Allocation and Access to Justice: Greiner and Pattanayak and the Research Imperative*, YALE LAW JOURNAL ONLINE (July 30, 2012), http://yalelawjournal.org/the-yale-law-journal-pocket-part/scholarship/service-delivery,-resource-allocation,-and-access-to-justice:-greiner-and-pattanayak-and-the-research-imperative/ (supporting a strong empirical research capacity while recognizing the dangers of misreading or misuse of data and study outcomes).

More refined studies comparing similar legal cases in different regions may provide a much clearer picture of how much and what type of assistance[23] best matches the needs of particular clients.[24] The sample in the Boston UI study was not large enough to draw any conclusions about whether age, language ability, or other claimant characteristics correlated with better outcomes when representation was available. What we can be certain of is that empirical study, of the sort undertaken by Faith and Enrique, is critical to effectively targeting scarce resources. Their preliminary study sets the stage for follow-up research that looks toward reforms that may make the UI hearing process more accessible for self-represented claimants.[25]

Mary Spector's paper on the pitfalls confronting consumers dealing with "debt buyers" is a wonderful example of ferreting out systemic disadvantage and bias in the seemingly simple cases that didn't initially appear to be challenging even for novice clinic students.[26] Mary's interest was piqued by what appeared to be a pattern of creditors dismissing court claims as soon as a debtor's attorney filed an appearance. Further investigation revealed "a larger pattern in which repeat players appeared to flout rules of evidence, procedure and professional responsibility to transform their delinquent credit card accounts into legally enforceable judgments."[27] Mary then consulted with an empiricist and developed a plan to investigate whether the same patterns appeared in a larger, random sample of cases. Her careful work documented not only similar patterns but evidence of violations of Texas consumer protection laws that might have afforded debtors both a defense and affirmative claims.[28]

On September 13, 2012, Mary testified on "Examining the Uses of Consumer Credit Data" before the U.S. House of Representatives Subcommittee on Financial Institutions and Consumer Credit. Thus, as the title to her paper indicates, Mary and her students began with representation, which led to research and back again—not only to representation but to a role in reforming debt collection practices to better protect vulnerable consumer "one-shot" players.

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23 Trial courts in many states now offer on-site information and assistance, including an opportunity for a brief consultation with a volunteer "lawyer of the day"; many courts also make accommodations for litigants who have opted for "discrete task" or "unbundled" legal services. *See* SELF-REPRESENTED LEGAL NETWORK, http://www.srln.org (last visited Dec. 1, 2012) (describing a creative and active coalition in support of assisted self-representation); *see also* AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON DELIVERY OF LEGAL SERVICES, http://www.americanbar.org/groups/delivery_legal_services.html (last visited Dec. 1, 2012) (collecting exhaustive reports on innovative approaches to affordable legal assistance).

24 Most administrative tribunals permit non-lawyer representation, which may be less costly than appointed counsel; non-lawyer volunteers might also play a helping role.

25 Pumar & Mullen, *supra* note 14, at 46-47.

26 Spector, *supra* note 12, at 57-60.

27 *Id.* at 60.

28 *Id.* at 59-60.

IV. EMPIRICAL SCHOLARSHIP AND THE FUTURE OF CLINICAL LEGAL EDUCATION

Law schools and legal scholars focus almost exclusively on the most prestigious appellate courts that make and interpret law. They pay little attention to the day-to-day, real world functioning of critically important trial courts and administrative tribunals that are the starting and ending point for many thousands of claims that pass through the legal system every year. As we have seen from the papers in this volume, these courts and agencies do not typically function like law school moot courts or trial advocacy simulations. As Gary Bellow put it, "[i]f we went around the corner from most law schools—into the lower courts—we would find the two-minute examination, the fifteen-minute trial, the law of substantial justice—without rules and often without limits."[29]

Law school clinics, clinicians, and their students, like Mary Spector and her students, routinely interact with the private bar and government lawyers. They practice in lower trial courts and administrative agencies. As a result, they are in a position to investigate and document the actual operation of courts, agencies and the bar itself. Clinicians have access to researchers and research expertise within the larger universities of which law schools are a part.[30] All of the Bellow Scholars have been able to recruit expert research partners willing to collaborate on their projects.

In the 1960s and 1970s, when modern law school clinics and federally funded legal services began, empirical research had a role in their operation. For example, researchers at the American Bar Foundation pioneered studies of legal needs and developed an invaluable report on the demographics and employment patterns of the bar.[31] In its first years, the Legal Services Corporation funded empirical research projects relevant to hotly debated policy issues.[32] This early

29 Gary Bellow, *The Limits of Humanistic Law Teaching*, 53 N.Y.U. L. REV. 644, 645 (1978).

30 *See* Jeanne Charn and Jeffrey Selbin, *The Clinic Lab Office*, 2013 WIS L. REV (forthcoming 2013) (arguing for an empirical research effort from law school clinics with substantial client service components).

31 The late Barbara Curran's work in the 1970s set the gold standard on legal need research. *See, e.g.*, BARBARA A. CURRAN, THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY (1977); *see also* Barbara A. Curran, *Research on Legal Needs: Patterns of Lawyer Use and Factors Affecting Use, in* INNOVATIONS IN THE LEGAL SERVICES: RESEARCH ON SERVICE DELIVERY 9, 9 (Erhard Blankenburg, ed., 1980). Beginning in the 1950s, Curran conceived of and, until her death in 2010, produced twice each decade, a pioneering state-by-state statistical demographic overview of the legal profession known as the Lawyer Statistical Report. *See Lawyer Statistical Report*, AMERICAN BAR ASSOCIATION, http://www.americanbarfoundation.org/publications/LawyerStatisticalReport.html (last visited Jan. 7, 2013).

32 ANTHONY CHAMPAGNE, LEGAL SERVICES: AN EXPLORATORY STUDY OF EFFECTIVENESS 3 (1976); *see also* STUART NAGEL, MINIMIZING COSTS AND MAXIMIZING BENEFITS IN PROVIDING LEGAL SERVICES TO THE POOR 1 (1973) (discussing how to use empirical analysis to optimize the allocation of scarce OEO resources between individual casework handling and law reform efforts). The most controversial of these studies compared full-time staffed offices to a private bar "judicare" deliv-

empirical tradition in legal services waned as political assaults on the program grew. As a result, for more than thirty years, from the Reagan administration to the present day, the Legal Services Corporation has lacked an internal capacity to carry out empirical research.[33]

However, in recent years, with leadership from the American Bar Foundation,[34] we have seen a renewed interest in a national program of empirical research on civil legal assistance. At the most basic level there is a vast knowledge gap about the amount and nature of legal services supported by a much larger but also a much more diverse funding base. Decisions about who gets what types of service are made locally and data are sparse and inconsistent. On the positive side, the last ten to fifteen years has seen a proliferation of innovations in service delivery by legal service lawyers, the private bar, and the lower trial courts that has produced many promising approaches, but almost no information on how well these new modes of legal service delivery work for claimants.[35] We need much better information to make the best use of scarce resources. Studies and assessments of the sort carried out by Faith Mullen, Enrique Pumar, and their students are good starting points for developing baseline information against which the impact of existing and future reforms can be measured.

Most important, however, empirical study aids us in continuously challenging our most firmly held convictions about our work. A good example is the study mentioned above that compared results for unemployment insurance claimants

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ery approach. SAMUEL J. BRAKEL, FREE LEGAL SERVICES FOR THE POOR—STAFFED OFFICE VERSUS JUDICARE: THE CLIENT'S EVALUATION (1973), *reprinted in* 2 WIS. L. REV. 532 (1973).

33 In contrast to the United States, peer nations that guarantee access to lawyers to a third or more of their populations all have ongoing research programs. The largest legal aid programs in the world gather annually to present and discuss empirical research related to delivery of legal services. In odd-numbered years, the International Legal Aid Group (ILAG) sponsors a two and a half day by-invitation conference that involves dozens of empirical research paper presentations. *See* INTERNATIONAL LEGAL AID GROUP, http://www.ilagnet.org/ (follow hyperlinks under "ILAG Conferences" menu) (last visited Jan. 7, 2013) (collecting conference agendas and papers from the 2001, 2003, 2005, 2007, 2009, and 2011 ILAG conferences). Through 2012, the UK's Legal Services Research Centre has hosted a similar empirical research conference. *See* LEGAL SERVICES RESEARCH CENTRE, http://www.justice.gov.uk/about/lsrc (last visited Jan. 7, 2013). I have attended these annual research conferences since 2001, and what I have learned at these incredibly valuable meetings in large part inspired the Bellow Scholar Program.

34 REBECCA SANDEFUR LEADS ACCESS TO CIVIL JUSTICE WORKSHOP, http://www.americanbarfoundation.org (last visited Jan. 7, 2013). The American Bar Foundation has hired Rebecca Sandefur as a Senior Research Social Scientist to lead its access to justice research initiative. *See* REBECCA L. SANDEFUR, http://www.americanbarfoundation.org/about/abf-staff/116 (last visited Jan. 7, 2013).

35 See Jeanne Charn, *Legal Services for All: Is the Profession Ready?*, 42 LOY. L.A. L. REV. 1021, 1024-51 (2009) (describing the diversification in the legal services landscape); *see also* Jeanne Charn, *Celebrating the Null Finding: Evidence-Based Strategies for Access Without Lawyers*, 122 YALE L. J. (forthcoming 2013) (arguing for maximum diversity in modes of accessing legal assistance, a preference for lawyer-less or lawyer "lite" approaches, and for empirical study to inform how legal service providers guide consumer choice).

who were offered representation with results for claimants who were not offered representation—a study, by the way, that was conducted in a law school clinic.[36] Many clinicians and legal services providers were astonished at the results because they were contrary to the bar's deeply held belief that lawyers are needed to achieve good outcomes. In this instance, not only did claimants not offered representation have similar rates of success, reaching them took them less time![37] While it would be foolish for a clinic to withdraw from representation of UI claimants based on one study, the research warrants rethinking of the conventional wisdom that lawyers always add value, and suggests possibilities for effectively helping claimants by offering alternatives to lawyer-centric services.[38]

Another realm in which a large body of empirical evidence is changing fundamental assumptions about legal service delivery deals with what have come to be called "justiciable problems"—problems that have "legal aspects, legal consequences, and (potentially) legal solutions" but which "may never be understood or treated as a legal problem."[39] The conventional wisdom, which is now being challenged by decades of in-person interviews, is that, but for cost barriers, people with such problems would be lined up in legal services waiting rooms seeking representation.[40] In a 2009 article,[41] Rebecca Sandefur compared the findings of the English and Welsh Civil Justice Survey[42] with findings of an earlier national survey in the United States.[43] She found that the U.S. and the U.K. were similar in that the experience of justiciable problems was widespread not only among poor people but among working- and middle-class people, most of these problems never make it to lawyers or to any part of the legal system, and cost is usually not the main barrier that prevents these problems from reaching the legal

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36 Greiner & Pattanayak, *supra* note 17.

37 The legal group blog Concurring Opinions sponsored an online symposium discussing Greiner and Pattanayak's study of the impact of legal representation on case outcomes. ARCHIVE FOR THE 'SYMPOSIUM (WHAT DIFFERENCE REPRESENTATION)' CATEGORY, http://www.concurringopinions.com/archives/category/representation-symposium (last visited Jan. 7, 2013). The exchanges among symposium participants are representative of the range and intensity of views on the study's findings.

38 Unbundled or discrete task assistance is a service innovation that is now accepted in many states. *See* FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES: A GUIDE TO DELIVERING LEGAL SERVICES A LA CARTE (2000); *see generally* Jeanne Charn, *Celebrating the Null Finding*, *supra* note 35.

39 Rebecca L. Sandefur, *The Fulcrum Point of Equal Access to Justice: Legal and Non-Legal Institutions of Remedy*, 42 LOY. L.A. L. REV. 949, 951 (2009).

40 See William L.F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1981) (positing that a multi-stage process results in only a small fraction of potential claims ever reaching a lawyer or a legal institution).

41 Sandefur, *supra* note 39.

42 PASCOE PLEASENCE, CAUSES OF ACTION: CIVIL LAW AND SOCIAL JUSTICE (2006).

43 AMERICAN BAR ASSOCIATION CONSORTIUM ON LEGAL NEEDS AND THE PUBLIC, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS (1994), *available at* http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf.

system.[44] Her paper focused on differences in response that depend on differences in "institutions of remedy." In the U.S., where free legal assistance is scarce and third-party non-legal institutions of remedy are underdeveloped and not widely publicized, people facing justiciable problems have basically a binary choice: get legal advice or do nothing. In the U.K., however, poor and middle income people are not only guaranteed access to legal assistance from a solicitor, they can turn to well-branded and trusted non-legal public institutions, such as the Citizens Advice Bureau or local councils.

Sandefur looked in detail at people facing housing and personal finance problems and found distinct national differences in the way they responded. In the U.S., about twenty-five percent of people did nothing, twenty-seven percent reported seeking legal advice at some point, and eight percent sought advice from non-legal third parties, such as a consumer agency, a local official, a community group, or a union.[45] In the U.K., the pattern was quite different. In the U.K., only five percent of people with housing and personal finance issues did nothing, and only ten percent turned to solicitors or the formal legal system. Thirty-seven percent turned to non-legal third-party providers of advice.[46] It is important to keep in mind that, unlike in the U.S., in the U.K. more than forty percent of the population is *guaranteed* free or low-cost access to legal services. Notwithstanding this categorical guarantee of access to legal assistance, nearly four times as many people chose a non-legal advice alternative. In the U.S., where there is no guaranteed access to legal services for poor people and no subsidized attorneys for working-class and moderate-income people, more people turn to lawyers. Sandefur concludes that

> turning to law should not be seen as the exclusive or even the predominant means through which people in market democracies attempt to handle their civil justice problems. Rather, turning to law should be seen as part of a richly textured terrain of possible responses and remedies. If we wish to expand or—even more ambitiously—to equalize access to justice, we must look to the breadth of this terrain.[47]

The stunning bottom line of this now-substantial body of empirical research[48] is this: If we want to increase access to legal assistance, we should not think only in terms of more lawyers, but should also develop reliable and readily accessible non-legal advice givers and other less lawyer-centric services. Legal Services

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44 Sandefur, *supra* note 39, at 953.

45 *Id.* at 970.

46 *Id.* at 971.

47 *Id.* at 955.

48 Herbert M. Kritzer, *To Lawyer or Not to Lawyer: Is That the Question?*, 5 J. EMPIRICAL LEGAL STUD. 875, 879 fig.2, 896-98 figs.12, 13 & 14 (2008) (reviewing legal needs studies conducted in Australia, Canada, Japan, the Netherlands, New Zealand, the United States, England, and Wales).

policymakers in the U.K. have, based on this research, substantially expanded *ex ante*, or "front end," advice services,[49] and found in subsequent surveys a reduction in people who take no action, from twenty percent to ten percent.[50] Work of the sort Faith Mullen and her colleagues are involved in complements such front-end strategies by reforming agencies to be more self-help friendly.

More than thirty years ago Gary Bellow presciently urged the legal services community to pursue similar policies, not because he was resigned to inability to achieve some attorney "gold standard" but because he was concerned that even the most dedicated legal aid professionals would come to define the "daily calls of individuals for . . . 'corrective justice'" based on their own needs and values rather than those of their clients. He noted that

> I find myself more and more interested in efforts to decrease the centrality of lawyers — or, at least, lawyers playing traditional roles — in the legal aid system. A large (very large) increase in (1) paid, community based lay advocates, (2) "pro se clerks" and other persons . . . whose job it is to facilitate either negotiation or adjudication without lawyers, (3) the number of forums in which the unrepresented or those represented by lay persons would find a responsive setting, (4) the training . . . of lawyers to perform support roles as a back-up to self-help lay advocacy efforts, (5) systems which regularize the handling of particular kinds of cases, and (6) public education . . . designed to increase law knowledge and sophistication, would, I believe, make some dent in the ways the current system excludes and channels grievances. It might also permit a much more serious debate . . . on the nature of legal "expertise," the functions of legal training, and the role played by the legal profession and professionalism . . . in perpetuating the problems they have now publicly undertaken to solve.[51]

The empirical dimension of the work of the Bellow Scholars emphatically does not answer all questions or resolve tough policy choices about delivery of legal services, but it does support a healthy pragmatism, provide a gauge for assessing whether our interventions are making a positive difference for the clients and communities we serve, and offer tools for staying in touch with the needs, preferences, and perspectives of those we seek to help. Through their investigations of the actual functioning and impact of law in people's everyday lives and their focus on that "intersection of civil law and adversity,"[52] the Bellow Scholars partici-

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49 *See* Gary Bellow, *Legal Services in Comparative Perspective*, 5 MD. J. CONT. LEGAL ISSUES 371, 375 (1994) (arguing for adoption in the U.S. of Canadian and European models of justiciable problem resolution that emphasize front-end advice services).

50 PLEASENCE, *supra* note 42, at 129 (examining much broader categories than Sandefur).

51 Gary Bellow, *Legal Aid in the United States*, 14 CLEARINGHOUSE REV. 337, 344 (1980).

52 Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and the Responses of Inaction*, *in* TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 113 (Pascoe Pleasence et al. eds. 2007).

pate in and carry on Gary Bellow's legacy of hard work, high standards, and critical self-reflection. Most important I hope, as I am certain Gary would have hoped, that an empirical disposition serves as an antidote to complacency and perceived constraints, freeing us to attack hard problems in new, perhaps unorthodox ways until we have good evidence that inch by inch, the problem has yielded, and we start again, a little further down the road.