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Navigating the New York Courts with the Assistance of a Non-Lawyer

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Navigating the New York Courts with the Assistance of a Non-Lawyer

Judge Fern Fisher (ret.)*

ABSTRACT

This Article discusses a program implemented by the New York State Unified Court System in order to address the justice gap for unrepresented litigants. Part I of this Article discusses the process behind creating the New York Navigator's Program (discussed in more detail Part II), a program designed to help non-lawyer "Navigators" to assist unrepresented litigants in a limited capacity when the litigants appear before different types of state courts. The Navigators must complete training before they are able to assist the litigants. This program has been well received, as Part IV discusses, and has helped more and more unrepresented litigants achieve better results. Another significant accomplishment of the program is the perception of unrepresented litigants that they received procedural fairness. Lastly, this Article seeks to provide advice and a variety of important considerations for other jurisdictions that are considering implementing a similar program.

The United States ranks a surprising 19 out of 113 countries on civil justice issues on the Rule of Law Index prepared by the World Justice Project.¹ The ranking is due in part to the country's failure to provide accessible legal assistance.² The recent ranking has been

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1. *Rule of Law Index*, WORLD JUST. PROJECT, 38 (2018), https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition_0.pdf.at 25.

2. *See id.* at 13, 148.

preceded by low rankings for the same reason in other years.³ President Trump has proposed the elimination of funding for the Legal Services Corporation (“LSC”) which is the primary provider of civil legal services to the poor in the United States.⁴

It has been estimated that 57 million low-income individuals will be eligible to receive legal help in 2018,⁵ and that a serious justice gap exists due to the insufficient funding the Legal Services Corporation receives.⁶ This justice gap means that nationally, LSC-funded programs provided legal assistance to only 1.8 million people in 2016.⁷ An American Bar Association Commission recently found that the majority of low-income and moderate-income individuals receive inadequate civil legal assistance.⁸ In order to address the justice gap crisis, state court systems, like the New York State Unified Court System, have implemented a continuum of legal assistance measures⁹ to meet the needs of the over 1.8 million

3. See *id.* at 13; Roderick B. Mathews & Juan Carlos Botero, *Access to Justice in the United States Findings from the Newly Released Rule of Law Index of the World Justice Project*, 59 VA. LAW. 24, 25 (2010), <http://worldjusticeproject.org/our-work/publications/journal-articles/access-justice-united-states>; Dan Froomkin, *Rule of Law Index: U.S. Ranks Low in Access to Justice Compared to Other Wealthy Nations*, HUFFINGTON POST (Nov. 28, 2012, 12:00 AM), http://www.huffingtonpost.com/2012/11/28/rule-of-law-index2012_n_2200765.html; Lisa Mahapatra, *United States Justice System Falls Behind That of Other High-Income Nations*, INT’L BUS. TIMES (Mar. 7, 2014, 2:44 PM), <http://www.ibtimes.com/united-states-justice-system-falls-behind-other-high-income-nations-charts-1560167>.

4. See Debra Cassens Weiss, *Trump Budget Eliminates Legal Services Corp. Funding*, A.B.A. J. (March 16, 2017, 8:45 AM), http://www.abajournal.com/news/article/trump_budget_eliminates_funding_for_legal_services_corp. The 2019 budget announced on February 12, 2018 eliminated 22 agencies including the Legal Services Corporation. Brett Samuels, *The 22 Agencies and Programs Trump’s Budget Would Eliminate*, THE HILL, (Feb. 12, 2018, 1:28 PM), <http://thehill.com/homenews/administration/373441-the-federal-programs-trump-proposes-cutting-in-2019-budget>.

5. See FISCAL YEAR 2018 BUDGET REQUEST, LEGAL SERVS. CORP., 1–2 (2018), <https://www.lsc.gov/media-center/publications/fiscal-year-2018-budget-request>.

6. *Id.* at 1.

7. *Id.* at Preface (Jim Sandman Letter).

8. *Report on the Future of Legal Services in the United States*, A.B.A. COMM’N ON THE FUTURE OF LEGAL SERVS., 11–12 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

9. See generally *N.Y. State Courts Access to Justice Program, 2011 Report*, N.Y. ST. UNIFIED CT. SYS. (2012), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2011report.pdf; *N.Y. State Courts Access to Justice Program, 2012 Report* (2012), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2012report.pdf; *N.Y. State Courts Access to Justice Program, 2013 Report to the Chief Judge and the Chief Administrative Judge of the State of New York* (2014), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2013report.pdf; *N.Y. State Courts Access to Justice Program, 2014 Report to the Chief Judge and the Chief Administrative Judge of the State of New York* (2015), <http://www.ny>

unrepresented litigants that have cases in various courts.¹⁰ The Court Navigator program, which utilizes non-lawyers to help unrepresented litigants navigate the New York courts, is one measure that shows great promise.¹¹ This writing explores programs that inspired the New York Court Navigator program, the operation of the program, and suggestions to other jurisdictions for the implementation of Navigator programs.

I. CONCEPTUALIZING THE NEW YORK COURT NAVIGATOR PROGRAM

In 2007, the New York courts looked to address an imbalance that existed in the New York City Housing Court.¹² At the time, at least 90 percent of landlords were represented by attorneys while only five percent or fewer of tenants being evicted had attorneys.¹³ This disparity resulted in imbalanced negotiations between landlord attorneys and unrepresented tenants that occurred in the hallways outside the courtrooms. Landlord attorneys reached agreements that were too often the product of overreaching or unethical negotiating.

The Civil Court of the City of New York Housing Part had developed volunteer lawyer programs, but the staggering number of unrepresented tenants required an innovative approach. As a result, the Resolution Assistance Project (“RAP”) was developed using law students as RAP assistants. The role of the RAP assistant

[courts.gov/ip/nya2j/pdfs/NYA2J_2014report.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2014report.pdf); N.Y. STATE COURTS ACCESS TO JUSTICE PROGRAM, 2015 REPORT TO THE CHIEF JUDGE AND THE CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK (2016), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2015report.pdf; N.Y. STATE COURTS ACCESS TO JUSTICE PROGRAM, 2016 REPORT TO THE CHIEF JUDGE AND THE CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK (2017), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2016report.pdf.

10. N.Y. STATE COURTS ACCESS TO JUSTICE PROGRAM, 2016 REPORT TO THE CHIEF JUDGE AND THE CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK (2017), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2016report.pdf.

11. Rebecca L. Sandefur & Thomas Clarke, *Roles Beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and Its Three Pilot Projects*, AM. B. FOUND. RES. J., at 14–22 (2016).

12. I was the Administrative Judge in charge of the NYC Civil Court, which included the Housing Court. I was responsible for access to justice issues for that court. In 2009, I was appointed the Deputy Chief Administrative Judge of the NYC trial courts, as well as the Director of the NYS Access to Justice Program. My authority over the Housing Court and all courts continued until I retired from the bench in July, 2017.

13. See TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2010), <https://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceREPORT.pdf>.

was limited to standing with the unrepresented litigant during hallway negotiations or in conferences with the judge's law clerk to ensure that the litigant could voice his or her side of the case. The RAP assistant also was trained to observe whether the landlord's attorney was overreaching or engaging in unethical behavior. In the event the litigant was unable to adequately tell his or her story or was outmatched by the attorney, the RAP assistant was to encourage him or her to ask to see the judge. The RAP assistant was not allowed to participate in the negotiations or conferences but could remind the litigant of what he or she wanted to tell the landlord's attorney or the judge's law clerk.

In 2013, the Permanent Commission on Access to Justice recommended the use of non-lawyers to close the justice gap.¹⁴ As a result, the chief judge at the time, Jonathan Lippman, appointed the Committee on Non-Lawyers and the Justice Gap ("the Committee") to consider the issue of non-lawyers.¹⁵ In determining which non-lawyer programs to recommend to the chief judges, the committee considered several existing programs and initiatives. Specifically, the Committee considered the existing RAP Program, the use of non-lawyers in Great Britain in a program called McKenzie Friends, and the use of health care navigators.¹⁶

The McKenzie Friends program developed from a divorce case in which one of the parties requested permission to use an attorney who was not admitted in Great Britain; the court denied that request. The decision in the case was reversed because of the denial. The use of non-lawyers to assist litigants evolved. Following that case, a non-lawyer who assists a litigant in court is called a McKenzie Friend. McKenzie Friends can be paid.¹⁷

The healthcare field uses patient navigators to address the inequities experienced by low-income individuals and ethnic and racial minorities.¹⁸ These navigators facilitate access to the healthcare system by connecting patients to resources. They assist

14. *Press Release, Chief Judge Names Members of Committee Charged with Examining How Non-Lawyer Advocates Can Help Narrow New York's Justice Gap*, N.Y. ST. UNIFIED CT. SYS. (May 28, 2013), http://www.nycourts.gov/press/pdfs/pr13_07.pdf.

15. *Id.*

16. I was involved in ongoing discussions with the committee's co-chairs.

17. Owen Bowcott, *Judges' Reforms Threaten the Role of Lay Legal Advisors*, *GUARDIAN* (Apr. 13, 2016) www.theguardian.com/law/2016/apr/13/mckenzie-friends-fees-ban-lay-legal-advisers. See also *McKENZIE FRIENDS*, <http://www.mckenzie-friend.org.uk/> (last visited Apr. 3, 2018).

18. Ana Natale-Pereira, Kimberly R. Enard, Lucinda Nevarez & Lovell A. Jones, *The Role of Patient Navigators in Eliminating Health Disparities*, 117 *CANCER* 3543, 3547 (2011), <https://onlinelibrary.wiley.com/doi/abs/10.1002/cncr.26264>.

in overcoming barriers such as “financial and insurance issues, paperwork and documentation, cultural beliefs and language barriers, as well as issues related to transportation, childcare, and neighborhood resources.”¹⁹

After consideration of several options, the Committee proposed the current Court Navigator Program to Chief Judge Lippman. The proposal resulted in an administrative order establishing the program as a pilot.²⁰

II. THE COURT NAVIGATOR PROGRAM

The administrative order established a pilot program in The Consumer Debt Part in the Bronx, where all consumer debt cases were handled, and in the Kings County Housing Court in Brooklyn.²¹ It also established three types of navigators from three providers: The New York State Access to Justice Program (“A2J Navigator”), Housing Court Answers, and University Settlement. Generally, as described on the Court Navigator website, all Court Navigators “provide general information, written materials, and one-on-one assistance to eligible unrepresented litigants.”²²

In addition, Court Navigators provide moral support to litigants, help them access and complete court forms, assist them with keeping paperwork in order, assist them in accessing interpreters and other services, explain what to expect and what the role of each person is in the courtroom. Court Navigators are also permitted to accompany unrepresented litigants into the courtroom in the Bronx, New York, Kings, and Queens County Housing Court and Bronx Civil Court. While these Court Navigators cannot address the court on their own, they are able to respond to factual questions asked by the judge.²³ Navigators are able to accompany litigants during negotiations with their opponents’ attorneys and in conferences with judges’ law clerks. Navigators are not allowed to participate or interfere in the negotiations or conferences but may prompt litigants to discuss their issues in the case.

Importantly, Navigators are trained to persuade a litigant to see the judge before agreeing to settle the case if it appears there is

19. *Id.* at 3548.

20. Administrative Order of the Chief Administrative Judge of the Courts, Admin Order No. 42/14, 1 (N.Y. Feb. 10, 2014), <http://www.nycourts.gov/COURTS/nyc/SSI/pdfs/AO-42-14.pdf>.

21. *Id.*

22. *New York City Housing Court Navigator Program*, N.Y. St. Unified Ct. Sys., <http://www.nycourts.gov/COURTS/nyc/housing/rap.shtml> (last visited Mar. 21, 2018).

23. *Id.*

overreaching or unethical behavior by the opponent's attorney, or the litigant's defenses are ignored.²⁴ However, each of the types of Navigators have some differences.²⁵

A. *A2J Navigators*

The RAP program was merged into the Court Navigator Program and RAP Assistants were re-named A2J Navigators.²⁶ It became more difficult to recruit law students to participate once the 50-hour pro bono rule²⁷ was instituted in New York. RAP and Navigator work did not qualify for the 50 pro bono hours because the service did not qualify as legal work under the rule.

A2J Navigators are now volunteer college students who are recruited by the New York State Access to Justice Program.²⁸ They either receive class credit or fulfill community service requirements by their participation in the Navigator Program. Recruiting has been successful in local community and public colleges. Recruitment efforts have produced a very diverse pool of Navigators who come from different cultural backgrounds and speak many languages. The diverse pool of A2J Navigators is helpful in servicing a diverse population who use the courts and aids in helping the court to be culturally competent and sensitive. The A2J Navigators serve in the Bronx Consumer Debt Part and in the Housing Parts of every New York City County except for Richmond County. An unanticipated result of the A2J Navigator program is that the program has motivated diverse college students to become interested in applying for law school. A2J Navigators' responsibilities fall within the general description above of the Navigators' duties. These Navigators assist litigants only for the day and have no contact with a litigant outside the courthouse once the court case is

24. N.Y. STATE COURTS ACCESS TO JUSTICE PROGRAM, COURT NAVIGATOR TRAINING MANUAL 6 (2014) http://www.nycourts.gov/courts/nyc/ssi/misc/140418_CNPMannual.pdf.

25. *Id.* at 2–3.

26. *See generally* N.Y. STATE COURTS ACCESS TO JUSTICE PROGRAM, 2016 REPORT TO THE CHIEF JUDGE AND THE CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK (2017), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2016report.pdf.

27. *See* N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16 (2018).

28. There have been a few exceptions. Individuals who are not college students must be approved by the Court. Very few participants are not college students. *See* N.Y. STATE COURTS ACCESS TO JUSTICE PROGRAM, 2016 REPORT TO THE CHIEF JUDGE AND THE CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK 18 (2017), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2016report.pdf.

over for that day. A2J Navigators are supervised by court employees.

B. Housing Court Answers Navigators

Housing Court Answers Navigators are employees and volunteers supervised by the program, which is a non-profit organization.²⁹ These Navigators primarily assist litigants in developing and filing an answer in the Kings County Housing Court (Brooklyn). As a litigant enters the clerk's office for the housing court in Brooklyn, a Navigator approaches the litigant and asks if he/she would like assistance answering the housing case. The litigant is then aided in developing an answer but is also interviewed to determine if there is a social service need that requires attention to resolve the legal case. The social service need could be difficulties with accessing public benefits, domestic violence, or something different. Litigants in most need of social service assistance are referred to University Settlement Navigators for assistance. Housing Court Answers Navigators also provide informational sheets on housing issues and resources that are approved by the court. This type of Navigator does not participate in any courtroom activity or in settlements.

C. University Settlement Navigators

University Settlement Navigators are all case managers employed by University Settlement, a non-profit social services organization.³⁰ University Settlement Navigators, in addition to the general responsibilities outlined above, conduct intake interviews to determine social services needs and address the social service need to resolve the housing case. These Navigators meet with litigants outside the courthouse and between court dates at their offices to provide case management services. University Settlement Navigators accompany all litigants accepted for case management to all court dates. These Navigators are supervised by the organization.

29. *See generally About Us*, HOUSING COURT ANSWERS, <http://housingcourtanswers.org/about-us/> (last visited Mar. 24, 2018). Housing Court Answers is an organization that provides legal information to both landlords and tenants. The organization has maintained with Court permission information tables in New York City Housing Courts for more than 25 years. They receive a grant from the Court to maintain the tables. *See id.*

30. *See generally About Us*, UNIVERSITY SETTLEMENT, <https://www.universitysettlement.org/us/about/> (last visited Mar. 24, 2018). University Settlement describes its mission as "Providing social services that give families a helping hand has become part of our national fabric." *Id.*

III. TRAINING

The New York State Courts Access to Justice Program trains all Navigators. The training session involves a video prepared by the court which demonstrates the role of a Navigator in scenarios that are typical and often confronted by an unrepresented litigant. The participants will do some role playing during the training. The training is approximately two hours. The program makes an effort to train college students at their colleges. All Navigators are provided with the link to the training manual.³¹ Housing Court Answers and University Settlement will supplement the court training with their own training programs.

IV. EVALUATION OF THE COURT NAVIGATOR PROGRAM

The Public Welfare Foundation provided a grant to the American Bar Association Foundation and the National Center for State Courts to conduct an evaluation of the Court Navigator Program.³² The evaluation found, in summary, the following: “The programs were found to be appropriate uses of trained personnel without full formal legal training and to have potential for sustainability. Navigator programs, through their impact on both legal and life outcomes, thus can result in financial savings to society as well as a reduction in the hardships experienced by unrepresented litigants in civil cases.”³³

The evaluation found positive key findings for each of the three programs.³⁴ The RAP program and the A2J Court Navigator program were developed with the objective of assisting unrepresented litigants in telling their side of the case in the courtroom and in negotiations. These Navigators were envisioned as resources aimed at helping provide procedural fairness and promoting public trust and confidence in the Court. The evaluation found that 56 percent of litigants surveyed responded that they were better able to tell their stories because of the assistance of Navigators.

The New York State Courts’ goal is to increase the percentage of litigants who feel they obtained procedural fairness through a Navigator who helped in telling their stories. The court’s objective of obtaining fairer outcomes for unrepresented tenants was achieved by Housing Court Answers Navigators. Through Housing

31. N.Y. STATE COURTS ACCESS TO JUSTICE PROGRAM, COURT NAVIGATOR TRAINING MANUAL (2014) http://www.nycourts.gov/courts/nyc/ssi/misc/140418_CNPMannual.pdf.

32. See Sandefur & Clarke, *supra* note 11, at 6.

33. *Id.* at 5.

34. *Id.* at 4.

Court Answers Navigators, litigants raised twice as many defenses in their cases than litigants who did not receive help.³⁵ The survey also indicated that 87 percent of individuals receiving Navigator help were more likely to have their defenses addressed by the judge.³⁶ Navigator-assisted litigants had repairs ordered by the Court 50 percent more often than non-assisted litigants.³⁷ University Settlement Navigators were successful in preventing evictions for every tenant that obtained their help. The evaluation noted: “By contrast, in recent years, one formal eviction occurs for about every nine nonpayment cases filed citywide.”³⁸

V. TAKEAWAYS AND SUGGESTIONS FOR OTHER JURISDICTIONS

A commission on future housing court improvements has recommended the expansion of the Navigator Program.³⁹ The New York Court system must expand the program consistent with the recommendations of the evaluation. Adequate supervision of particularly the A2J Navigators will be necessary to expand the program.⁴⁰ The commission has recommended ensuring that court staff and judges buy into the program through more communication about the program’s goals and operation to litigants, judges, court staff, court users, and other stakeholders, to improve the program.⁴¹ The New York Courts learned the need for adequate supervision and communication after the program was in operation. These improvements are applicable to other jurisdictions when developing a Navigator program. In addition to the importance of supervision and communication, there are several other issues the court addressed when developing the program and offered for consideration by other jurisdictions interested in a Navigator program.

VI. DETERMINE OBJECTIVES AND GOALS

Clearly identifying the goals and objectives of a Navigator program is important to accomplish from the start and will shape the roles of the Navigator. At the outset, the New York State Unified Court System developed the RAP program to address procedural fairness and public perceptions that the court was imbalanced un-

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 4–5.

39. SPECIAL COMMISSION ON THE FUTURE OF THE N.Y.C. HOUSING COURT, REPORT TO THE CHIEF JUDGE 24 (2018) <http://www.nycourts.gov/publications/housingreport2018.pdf>.

40. *See* Sandefur & Clarke, *supra* note 11, at 49.

41. *Id.*

fairly against tenants. The Housing Court Answers and University Settlement Navigators were envisioned to address public perception and affect outcomes of cases. The goals and objectives of the program will shape the types of funding that might be available for the program, whether volunteers or more trained navigators should be used, as well as other operational decisions.

VII. FINDING THE RIGHT PARTNERS FOR THE PROGRAM

Regardless of the type of Navigator program a state chooses to develop, partner organizations willing to provide volunteers or services to litigants are essential to operate a viable Navigator program. Local community colleges, four-year colleges, and community groups are possible partners for providing volunteers. Established non-profit social services agencies with fundraising capabilities should be considered to navigate and provide services. Both Housing Court Answers and University Settlement are well-established agencies.

VIII. REACHING OUT TO LOCAL AND STATE BAR ASSOCIATIONS

Before the roll out of a Navigator program, local bar associations and state bar associations should be made aware of the potential program. Ideally, bar associations might be engaged in the planning stage. Bar associations' support will make establishing a Navigator program easier. Lawyers might have concerns that Navigators will create unwanted competition in the market for legal services. In New York, however, early discussions with the New York State Bar Association assuaged concerns and opposition to the program.

IX. SUSTAINABILITY ISSUES

The evaluation referenced in Part IV discusses the importance of addressing the sustainability of the New York Navigator Program.⁴² Ongoing assessment of adherence to program objectives and goal attainment is important for determining success. The ability to sustain adequate supervision and tracing of Navigators is a factor in the long-range success of a program. Sustaining resources for the program either in kind or through funding will be the biggest challenge facing any program. The New York courts were able to obtain a small grant from the City of New York which has not

42. See Sandefur & Clarke, *supra* note 11, at 41-49.

been renewed. Housing Court Answers and University Settlement had a small grant from a foundation which is now defunct.

Currently, the A2J Navigator costs of the program continue to be absorbed into the existing court budget. University Settlement and Housing Court Navigators continue to provide services through existing budgets. The ability to expand the New York Navigator program will be based on identifying ongoing funding and resources. Consideration of financial support for a Navigator program through court budgets, other local or state funding, and from non-profit organizations with existing budgets or the ability to fundraise, is fundamental in developing and sustaining a program.

X. CONCLUSION

The justice gap is so large that courts must consider a continuum of legal assistance to meet the vast needs of persons without lawyers. While representation by an attorney for all low-income individuals with claims and defenses should remain the goal, attainment of the civil right to counsel is unlikely to occur in the foreseeable future. Under any funding scheme for civil legal services for the indigent, moderate income individuals will still require assistance. Navigators can play a vital role in improving the public's trust and confidence in the justice system and in providing better outcomes for unrepresented litigants.

ROLES BEYOND LAWYERS

Summary and Recommendations

of an Evaluation of the
New York City Court
Navigators Program and its
Three Pilot Projects

December 2016

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Research Summary and Recommendations

Introduction

There is now a major movement in the United States to expand the use of appropriately trained and supervised individuals without full formal legal training to provide help to people who would otherwise be without legal assistance of any kind. The general approach has been endorsed by The Commission on the Future of Legal Services of the American Bar Association,⁴³ and by the *Guidance* issued by the National Center for State Courts in support of the Justice for All Strategic Planning Initiative developed in response to a recent resolution of the Conferences of Chief Justices and State Court Administrators.⁴⁴

The need for such innovations is clear. At the time this evaluation was conducted, approximately 90 percent of tenants facing eviction in New York City did not have a lawyer, while the vast majority of landlords did.⁴⁵ Research from the National Center for State Courts shows that in 70 percent of non-domestic civil cases in urban counties, one party is unrepresented while the other has lawyer representation.⁴⁶

The first comprehensive evaluation of programs providing assistance through staff or volunteers without full formal legal training provides important evidence that these initiatives can influence the experiences of unrepresented litigants in positive ways and can also shape the outcomes of court cases, including legal and real-life outcomes.

43. ABA Commission on the Future of Legal Services, Report on the Future of Legal Services in the United States (2016), http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

44. National Center for State Courts, <http://www.ncsc.org/jfap>.

45. SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES: THE RESULTS OF TWO SURVEYS. SELF-REPRESENTED LITIGANTS IN THE NEW YORK CITY FAMILY COURT AND NEW YORK CITY HOUSING COURT, Office of the Deputy Chief Administrative Judge for Justice Initiatives. New York, NY: Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005. At time of the release of this report (October 2016), increased funding for lawyer representation in eviction cases has reduced the percentage of unrepresented tenants to around 83 percent.

46. National Center for State Courts Civil Litigation Project, *The Landscape of Civil Litigation in State Courts* (2015), <https://www.ncsc.org/-/media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

The umbrella program, New York City Court Navigators, makes use of trained and supervised individuals with no prior formal legal training to provide one-on-one assistance to unrepresented litigants in the City's Housing and Civil Courts. Navigators provide information, assist litigants in accessing and completing court-required simplified forms, attend settlement negotiations and accompany unrepresented litigants into the courtroom. If judges address direct factual questions to a Navigator, the Navigator is authorized to respond.

In February 2014, three distinct Navigator pilot projects began operation in New York City Courts as part of the larger Navigator program. Two of these pilot projects involve volunteer Navigators. A third pilot project involves experienced caseworkers on the staff of a non-profit organization; these caseworkers had previously performed more limited roles.

The evaluation of the New York City Court Navigators program was conducted by researchers from the American Bar Foundation and the National Center for State Courts, under a research project supported by the Public Welfare Foundation. The research assessed the *appropriateness*, *efficacy*, and *sustainability* of each of the three Navigator pilot projects. The program design and evaluation frameworks, published elsewhere⁴⁷, were newly developed for the evaluation as models for general use in access to justice evaluation research.

The positive results of the three Navigator pilot projects were produced in a context that is both adverse and supportive. The New York City Courts are among the most chaotic and overloaded in the United States. That the pilot projects showed evidence of positive contributions in such environments suggests that such programs could be effective in a wide range of jurisdictions. At the same time, the New York City Courts are leaders in developing innovations to provide fairness for unrepresented litigants. The fact that the courtrooms in which Navigators worked were those in which other significant efforts had already been made to improve the experiences of unrepresented parties may have been an important support to the pilot projects, making some results easier to achieve here than

47. INCREASING ACCESS TO JUSTICE THROUGH EXPANDED 'ROLES BEYOND LAWYERS': PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS, Rebecca L. Sandefur and Thomas M. Clarke, American Bar Foundation and National Center for State Courts, Chicago, IL and Williamsburg, VA, 2015. Available at americanbarfoundation.org/research/A2J.

might be the case elsewhere. Alternatively, Navigators working in courts that have not made efforts to improve the experiences of unrepresented litigants could be found to have comparatively larger influence on litigant experience and case outcomes.

Key Findings: Evidence of Program Impact

The three Navigator pilot projects differ in important respects, but all involve the same core capacities: providing to unrepresented litigants the services of information, moral support, and accompaniment to negotiations with the other side's attorneys and into courtrooms. Navigators are authorized to respond to questions from court attorneys and judges and to prompt litigants to provide additional information.

Complete descriptions of each pilot project are available in the full Report.⁴⁸ The evaluation uncovered evidence that assistance from appropriately trained and supervised individuals without formal legal training is associated with changes in a range of outcomes, including both legal and real-life outcomes.

Principal findings of the evaluation include:

- The ***Access to Justice Navigators Pilot Project*** is built around trained volunteer Navigators “for-the-day.” These Navigators assist unrepresented litigants in understanding and moving through nonpayment or debt collection proceedings. Access to Justice Navigators currently operate in a variety of housing courts and in consumer debt cases in civil court in New York City. ***Surveys of litigants revealed that litigants who received the help of any kind of Navigator were 56 percent more likely than unassisted litigants to say they were able to tell their side of the story.***
- The ***Housing Court Answers Navigators Pilot Project*** involves trained volunteer Navigators “for-the-day,” operating in the Brooklyn Housing Court. These Navigators provide individualized assistance with tenants’ preparation of a legal document, the “answer” to the landlord’s petition for nonpayment of rent, in which the tenant responds to the petition by asserting defenses. Litigants assisted by Housing Court Answers Navigators ***asserted more than twice as many defenses as litigants***

48. The full report may be found here: americanbarfoundation.org/research/A2J/RolesBeyondLawyers.

who received no assistance. A review of case files reveals that *tenants assisted by a Housing Court Answers Navigator were 87 percent more likely than unassisted tenants to have their defenses recognized and addressed by the court. For instance, judges ordered landlords to make needed repairs about 50 percent more often in Navigator-assisted cases.*

- The *University Settlement Navigators Pilot Project* employs trained caseworkers who are employees of a nonprofit organization. These Navigators, operating in the Brooklyn Housing Court, are Navigators “for-the-duration,” working the case from initial appearance through resolution and beyond. This pilot project’s aim is to prevent evictions by providing both the in-court services that all Navigators are able to provide as well as an ongoing relationship with litigants in which the Navigator both accompanies the unrepresented litigant to all of the court activities related to her case and assists the tenant outside of court in connecting with benefits and services for which she may be eligible. *In cases assisted by these University Settlement Navigators, zero percent of tenants experienced eviction from their homes by a marshal. By contrast, in recent years, one formal eviction occurs for about every 9 nonpayment cases filed citywide.*

The programs were found to be appropriate uses of trained personnel without full formal legal training and to have potential for sustainability. Navigator programs, through their impact on both legal and life outcomes, thus can result in *financial savings to society as well as a reduction in the hardships experienced by unrepresented litigants in civil cases.*⁴⁹

Description of the Program, Evaluation, and Pilot Projects

On February 11, 2014, then New York State Chief Judge Jonathan Lippman announced in his State of the Judiciary speech what he described as:

[A] series of court-sponsored incubator projects to expand the role of non-lawyers in assisting unrepresented litigants. This idea of finding ways for non-lawyers to help pro se litigants is one

49. For estimates of the costs and benefits of providing lawyer assistance in eviction cases, see Stout Risius Ross, Inc., *The Financial Costs and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*, (2016).

that has only just begun to emerge in the United States. But it has taken hold elsewhere in the common-law world, including the United Kingdom, to great positive effect. With the new projects that we announce today, it is my hope that we can graphically illustrate the tremendous difference non-lawyers can make in closing the justice gap.

The three pilot projects commenced operation in 2014 under the general guidance of a special task force, the Committee on Non-Lawyers and the Justice Gap,⁵⁰ appointed by the Chief Judge. The pilot projects operated within the New York Civil Court, under the Supervision of Deputy Chief Administrative Judge Fern Fisher and with close participation of community groups and regular input from legal aid agencies and bar associations.

All of the pilot projects shared a general approach, as described by Chief Judge Lippman in the 2014 State of the Judiciary speech:

. . . This kind of one-on-one assistance will include providing informational resources to litigants and helping them access and complete court do-it-yourself forms and assemble documents, as well as assisting in settlement negotiations outside the courtroom.

Most significantly, for the first time, the trained non-lawyers, called Navigators, will be permitted to accompany unrepresented litigants into the courtroom in specific locations in Brooklyn Housing Court and Bronx Civil Court. They will not be permitted to address the court on their own, but if the judge directs factual questions to them, they will be able to respond. They will also provide moral support and information to litigants, help them keep paperwork in order, assist them in accessing interpreters and other services, and, before they even enter the courtroom, explain what to expect and what the roles are of each person in the courtroom.

Clear guidelines govern what a non-lawyer can and cannot do to ensure that they do not cross the line into the practice of law. They will receive training and develop expertise in defined subject areas. When these non-lawyers confront situations where the help of a lawyer is crucial, they will have access to legal service providers for help and referrals.

50. See the press release at http://www.nycourts.gov/press/pdfs/pr13_07.pdf.

An Order issued by the Chief Administrative Judge of the Courts codified these protections and authorizations.⁵¹ The courthouses in which the Navigators projects were piloted are chaotic, loud, confusing and overwhelming, perhaps even to new lawyers as well as to the approximately 90 percent of tenants who, at the time of this research, were there without legal representation.⁵²

In 2014, the Public Welfare Foundation made a grant to the National Center for State Courts and the American Bar Foundation to fund the development of frameworks for the design and evaluation of such programs and the use of that evaluation framework to assess two distinct initiatives, i) the New York Court Navigators program, reported on here, and, ii) the Washington State Limited License Legal Technicians program, which authorizes trained, licensed and regulated legal technicians to provide a range of services in a provider-client relationship without attorney supervision.⁵³

The evaluation of the New York Court Navigators program included review of court files, surveys of litigants and Navigators, and interviews with stakeholders such as lawyers, judges, court staff, staff in nonprofit organizations that work in these areas, and current and potential funders as well as Navigators themselves. The majority of the data were collected in the Brooklyn Housing Court, as this was the only site of two of the three pilot projects. Following the evaluation framework, the data collected were reviewed for evidence of 1) *appropriateness*: whether the services as designed could potentially produce the kinds of outcomes desired; 2) *efficacy*: whether the services showed evidence of producing those outcomes; and 3) *sustainability*: whether it was reasonable to anticipate

51. See Administrative Order of the Chief Administrative Judge of the Courts 42-14, February 11, 2014. Available at <https://www.nycourts.gov/courts/nyc/SSI/pdfs/AO-42-14.pdf>.

52. SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES: THE RESULTS OF TWO SURVEYS. SELF-REPRESENTED LITIGANTS IN THE NEW YORK CITY FAMILY COURT AND NEW YORK CITY HOUSING COURT, Office of the Deputy Chief Administrative Judge for Justice Initiatives. New York, NY: Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005. At time of the release of this report (October 2016), increased funding for lawyer representation in eviction cases has reduced the percentage of unrepresented tenants to around 83 percent.

53. "Limited License Legal Technician Program," <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians>. The Roles Beyond Lawyers Evaluation report on the Limited License Legal Technicians is scheduled to appear later this year.

that the project could be maintained, expanded and replicated in other jurisdictions.

Recommendations for Enhancements of the New York Navigators Program

The New York City Court Navigators Program shows evidence of achieving the goals of the program as a whole and of its individual pilot projects. One broadly shared benefit from the launch and evaluation of pilot innovations is the opportunity to learn about both what works and what could work better. Some improvements to the existing projects can be achieved at minimal cost. Expanding the projects' size to have greater impact on legal and life outcomes would be more expensive, but also likely accompanied by substantial savings to society as well as reductions in hardship.

Lower-cost changes to achieve improvements include:

- Providing dedicated, on-going supervision for Access to Justice Navigators in all the courthouses where they work. Volunteer Navigators should be supervised by trained and experienced staff who are on-site and available for questions, consultation, and support during all the hours Navigators are providing services. This supervision should include additional "on-the-job" training for Navigators about working with unrepresented litigants and court staff within the bounds of the Navigator role.
- Educating both the judges and the court attorneys who assist the judges about Navigators' role and capacities, so that both groups are able to use Navigators as a resource in acquiring information they need to make decisions and in using courtroom time as efficiently as possible.
- Educating court staff about Navigators' role, and working with court staff to develop means to better integrate Navigators into the case flow, so that Navigators' work is a consistently helpful supplement to the work of clerks and other courthouse workers.
- Increasing availability of the DIY ("do-it-yourself") computer kiosks for the preparation of answers and other legal documents.
- Developing a triage referral system that integrates the various services currently available in the courthouse, so that those cases that would benefit most from the enhanced ser-

vices provided by some types of Navigators are more likely to receive them.

- Providing more information about all types of Navigators to the public, with the goal of increasing the use of all types of Navigators.

Cost projections for expansion of the projects appear in the full Report.

General Conclusions About “Roles Beyond Lawyers” Programs

This is the first comprehensive evaluation of a “Roles Beyond Lawyers” program, in which appropriately trained and supervised individuals without full formal legal training provide help to litigants who would otherwise be without assistance. As in all empirical social science, questions remain to be answered by future research. Nonetheless, actionable conclusions about the range of Roles Beyond Lawyers initiatives can be drawn from this evaluation.

1. People without formal legal training can provide meaningful assistance and services to litigants who are not represented by a lawyer.
2. These services can impact several kinds of outcomes, ranging from litigants’ understanding of court processes and empowerment to present their side of the case, to providing more relevant information to the decision-maker, to formal legal outcomes and the real-life outcomes experienced by assisted litigants and their families.
3. The tasks Navigators are actually able to perform, and thus their impact, are influenced by the philosophy and attitude of the court in which the services are provided, including the attitudes of case processing staff and judges.
4. Contributions of Navigators’ work to legal outcomes and real-life outcomes such as eviction prevention are likely similarly influenced by court environment and by the range of services and benefit programs available in the jurisdiction. The availability of such services and benefits to which Navigators can connect litigants is a major mechanism of Navigator impact. Some jurisdictions, such as New York City, have significantly more such resources than most.

5. The impact of Roles Beyond Lawyers programs on legal outcomes can be greatly assisted by the availability and use of plain language, standardized legal forms, such as the Answer form, and of software programs (what in New York are called “DIY” programs) that help litigants prepare legal documents such as answers. Such programs have been developed for many jurisdictions, facilitating the replication of Roles Beyond Lawyers programs.

General Recommendations

1. Sustaining the Current Program

The Navigators projects produce goods valued by a range of stakeholders. Sustaining funding for the program is recommended, with sufficient increases to follow the Navigator supervision recommendations in the Report.

2. Replication in New York City and State

Replication is recommended, but with careful attention to changes of the kind described above to enhance efficacy and total cost effectiveness.

3. Replication Beyond New York State

The Navigators program shows potential to contribute to the national goal of providing meaningful access to justice for all, as urged for adoption by the states by the Conference of Chief Justices.⁵⁴ The findings of the Report suggest that these approaches can be an important tool in helping achieve this goal, and that they should be integrated with other initiatives developed to meet the goal.

4. The Overall Evaluation Framework

The framework is recommended for evaluations of all types of “Roles Beyond Lawyers” programs. It is offered as useful for evaluations of other access to justice innovations. Potential downsides of a standardized approach are likely to be outweighed by the benefits of being able to compare different innovations on their appropriateness, efficacy and sustainability.

54. Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All. Conference of Chief Justices and Conference of State Court Administrators (2015). http://www.ncsc.org/~media/microsites/files/access/5%20meaningful%20access%20to%20justice%20for%20all_fina.ashx