

REDESIGNING JUSTICE INNOVATION: A STANDARDIZED METHODOLOGY

Daniel W. Bernal* & Margaret D. Hagan**

Post Turner v. Rogers, courts, advocates, and academics are increasingly investing in access to justice research and development. However, despite many descriptions of how past justice interventions developed, and established methodologies for rigorous evaluation of outcomes, no consensus has yet emerged on which design methodologies produce the best justice innovations. Without an intentional, replicable approach to developing usable and useful justice interventions, interventionists are more likely to create products that few people use, or to waste time and money on expensive randomized trials. To address this need, this Article integrates existing expert-oriented and user-centered approaches and presents a first attempt at establishing a standard methodology for creating and vetting new justice interventions. In addition, to demonstrate the dangers of designing without a comprehensive framework and the difficulties of applying an ideal framework in the real world, we offer a detailed case study of the initial version of Arizona Eviction Help. Ultimately, we argue that just as randomized field experiments have become the status quo in evaluation of justice interventions, a human-centered, participatory approach should become the standard in their design.

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* Daniel W. Bernal is a Fellow at the Stanford Legal Design Lab and an Associate at Latham & Watkins in Washington, D.C. He holds a J.D. from Stanford Law School and a Ph.D. from the University of Arizona.

** Margaret D. Hagan is the Director of Stanford's Legal Design Lab and is a lecturer at Stanford Law School and Institute of Design. She holds a D.Phil. from Queen's University Belfast, an M.A. from Central European University, and a J.D. from Stanford Law School.

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INTRODUCTION

Court leaders, legal advocates, and technologists are increasingly investing in access-to-justice research and development to identify initiatives that can improve the efficiency and usability of the courts.¹ Within the civil justice community, these efforts have often been referred to as “justice innovation,” or the process of creating new methods, ideas, or products designed to improve resolution of justice issues and enhance participation in the justice system.² This investment has both a practical and constitutional impetus. In *Turner v. Rogers*, the U.S. Supreme Court held that “alternative procedural safeguards” must be provided to ensure due process for unrepresented litigants in civil contempt proceedings.³ Under an expansive reading, *Turner* might be seen as a mandate to the state courts to overhaul their adjudicatory systems.⁴ Justice innovation has also become a growing area of research within the traditional legal academy. At least eight labs, including Northeastern University’s NuLaw Lab, Stanford’s Legal Design Lab, and Harvard Law School’s Access to Justice Lab, are primarily focused on access to justice research and development.⁵

1. See Bonnie Rose Hough, *Let’s Not Make It Worse: Issues to Consider in Adopting New Technology*, 26 HARV. J.L. & TECH. 256, 256-57 (2012).

2. “Justice innovation” is often used as shorthand for the phrase “access to justice innovation.” See, e.g., Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 DRAKE L. REV. 845, 849 (2012). Our usage of “justice innovation” alone highlights the inherent ambiguity in the word “access” and recognizes that innovations achieving justice may not involve access to the courts or case participation. See generally Rebecca L. Sandefur, *Access to What?*, DAEDALUS, Winter 2019, at 49. For an example of a recent usage of “justice innovation,” see Robert Ambrogi, *A Potentially Major Lifeline for Low-Income Legal Tech and A2J*, ABOVE THE LAW (Nov. 12, 2018, 2:33 PM), <https://perma.cc/GFX2-NL97> (describing Pew Charitable Trust’s recent launch of a new “civil justice innovation” project). In this article, we use the phrase to refer to civil justice innovations; however, parallel movements exist in the criminal justice community.

3. *Turner v. Rogers*, 564 U.S. 431, 448 (2011). For a discussion of the role of *Turner* in the legal self-help movement, see Jessica K. Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 CONN. L. REV. 741, 789-90 (2015).

4. See Steinberg, *supra* note 3, at 747.

5. See NULAW LAB, <https://perma.cc/QNY7-YQEZ>; LEGAL DESIGN LAB, <https://perma.cc/NM66-JPPW>; ACCESS TO JUSTICE LAB, <https://perma.cc/H4HW-YMCW>.

With increased interest from the courts, more funding to experiment with new modes of communication and service delivery,⁶ and support from law schools and start-ups, justice innovation has become a priority.

Nevertheless, justice innovations have not always been purposefully designed or rigorously tested. In the rush to build new websites, applications, and chatbots, courts do not always have the resources or the expertise to analyze whether such interventions will engage their litigants, or will affect outcomes in their cases and lives. The first movement in justice innovation, led by James Greiner and the Harvard Access to Justice Lab (A2J Lab), championed the *testing* of justice interventions through randomized field experiments.⁷ The A2J Lab has studied, among other areas, the impact of representation in eviction, unemployment, and divorce cases, as well as the impact of self-help materials on debt, default, and guardianship proceedings.⁸ This movement for evaluation of interventions is slowly gaining traction. More courts and legal aid organizations cautiously agree that justice innovations, however well-intentioned, ought to be rigorously evaluated to ensure that the community can determine whether they are impactful or are causing harm.⁹

The second movement in justice innovation centers on design. Many interventionists, people who work on crafting and deploying new products, services, and policies in the system, have documented how and why past justice interventions were developed.¹⁰ Others have focused on how new technology-based interventions might be designed to increase the quality, scale, and efficiency of services to litigants.¹¹ However, only a few have proposed

Other labs include the University of Denver's Institute for the Advancement of the American Legal System, <https://perma.cc/QQ3P-VCC9>; Michigan State's Legal RnD, <https://perma.cc/H9D7-6VZ2>; Chicago-Kent Law Lab, <https://perma.cc/9GNU-976M>; Brigham Young University's Legal Design Lab, <https://perma.cc/G2QT-ZBNL>; and the University of Arizona James E. Roger College of Law's Innovation for Justice Lab, <https://perma.cc/U4RY-HMWF>.

6. See, e.g., *Technology Initiative Grant Program*, LEGAL SERV. CORP., <https://perma.cc/ATK9-SVQJ>; Ambrogi, *supra* note 2.

7. See generally D. James Greiner and Andrea Matthews, *Randomized Control Trials in the United States Legal Profession*, 12 ANN. REV. L. & SOC. SCI. 295 (2016); see also D. James Greiner, *The New Legal Empiricism & Its Application to Access-to-Justice Inquiries*, DAEDALUS, Winter 2019, at 70 (arguing that access to justice requires employing a new legal empiricism and that “[o]nly a [randomized controlled trial] can assure, up to statistical uncertainty, that any differences observed on the outcome variables . . . are due really to the difference in service level offered . . .”).

8. For an overview of the publications produced by Greiner and the A2J Lab, see A2JLAB, <https://perma.cc/M89X-Z4S5>.

9. See Greiner & Matthews, *supra* note 7, at 302 (describing the legal profession's resistance to randomized control trials).

10. See generally James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241 (2012) (describing the design and implementation of justice innovations from eight scholars and practitioners).

11. *Id.*; see also RICHARD ZORZA, *THE SELF-HELP FRIENDLY COURT: DESIGNED FROM*

comprehensive methodologies to improve and standardize the design and evaluation process.¹² Those who have generally adopt either an expert-centered or a client-centered approach. For example, Greiner, Jiménez, and Lupica take the expert-centered approach, drawing from literatures in adult education, marketing, and public health to uncover the psychological and cognitive barriers litigants face, and outlining several expert strategies designed to overcome them.¹³ Alternatively, Hagan, Quintanilla, Salter, and Thompson posit variations of a client-centered design approach, emphasizing consultations with litigants, community advocates, court staff, and judicial leaders.¹⁴

An intentional methodology for design interventions minimizes the likelihood of failed interventions. Some high-profile justice interventions have failed publicly, like the Dutch online dispute resolution platform Rechtwijzer that closed for lack of users.¹⁵ Many promising new applications struggle with low usage and little impact.¹⁶ Without an intentional methodological framework for developing usable and useful justice interventions, interventionists risk creating products that few people discover or use. They also risk wasting resources on expensive randomized controlled trials to test interventions that are not as strong as they could be. Moreover, without a robust methodological approach, interventionists may even risk stigmatizing or alienating clients from the court system.¹⁷

THE GROUND UP TO WORK FOR PEOPLE WITHOUT LAWYERS 37-40 (2002); Ronald W. Staudt, *Technology for Justice Customers: Bridging the Digital Divide Facing Self-Represented Litigants*, 5 U. MD. L.J. RACE, RELIG., GENDER & CLASS 71, 72-73 (2005); see generally REBECCA L. SANDEFUR, LEGAL TECH FOR NON-LAWYERS: REPORT OF THE SURVEY OF U.S. LEGAL TECHNOLOGIES (2019), <https://perma.cc/Z5MF-C3ML>.

12. See *infra* Part I.

13. J. David Greiner et al., *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1123-25 (2017).

14. See *infra* Part I.

15. Steve Hynes, *Digital law crashes out . . . for now*, NEW L.J. (Apr. 27, 2017), <https://perma.cc/CB73-ABC6>.

16. See, e.g., Matthew Stubenberg, Address at Stanford Law School's Law and Design Summit: Legal Aid Technology and Design, YOUTUBE (Jan. 31, 2018), <https://perma.cc/AH7A-CEQS> (describing difficulty in obtaining users for MD Expungement app); see generally Tanina Rostain, *Techno-Optimism & Access to the Legal System*, DAEDALUS, Winter 2019, at 94-96.

17. For example, Bonnie Hough notes that while technological innovations might produce savings and efficiency, they may also create a "digital divide that institutionalizes a two-tiered system incapable of delivering appropriate justice to low-income persons." See Hough, *supra* note 1, at 258. While scholars have not yet studied the potential stigmatizing effect of justice innovations that may keep citizens out of the courtroom or ineffective in it, some researchers have shown that a claimant's pro se status in an employment discrimination case generates negative stereotypes about the claimant among law-trained individuals and adversely affects decisionmaking about settlement awards. Victor D. Quintanilla et al., *The Signaling Effect of Pro Se Status*, 42 L. & SOC. INQUIRY 1091, 1119 (2017). The authors conclude by hoping that this new research will inform the "next generation of interventions to better address the biases and stereotypes that pro se parties encounter and experience within the civil justice system." *Id.*

While justice scholars have identified the need for design methodology, proposed guiding principles and theories, and demonstrated practical applications, no consensus on design methodology has emerged.¹⁸ To address this need, this Article integrates existing methodologies and proposes a comprehensive methodological framework for human-centered, research-informed justice design. Our framework marries the expert-oriented and human-centered approaches and presents a first attempt at establishing a standard methodology for creating and vetting new justice interventions. In addition, by operationalizing the different stages in justice design, we hope to offer a common language to facilitate a unifying and iterative conversation that moves towards consensus.

The justice innovation design framework we propose is based on two core hypotheses. First, we posit that methodologies using co-design (in which interventionists work directly with affected stakeholders to create and test an intervention) should be a primary part of justice innovation design. Co-design methodology can overcome some of the most meaningful barriers and concerns that still infect interventions. It can help to locate expertise outside of academia and inside communities—with litigants, court staff, and advocates who have actual insight into how possible interventions will play out in context.¹⁹ It can also help to redefine the social construction and production of self-represented litigant status²⁰ by allowing low-income members of society, outsiders, and persons from subordinated groups to participate in the construction and production of their identities.

Second, we posit that bottom-up co-design methodologies will be most effective when paired with more top-down methodologies, like theoretical research, reviews of innovation landscapes, and rigorous evaluation techniques. While co-design work provides essential insight into a specific context, successful interventions must also be developed through expert-sourced models, patterns, and theories that have established knowledge about what types of interventions have succeeded in analogous fields. A research-informed methodology framework can ensure that interventionists are building from national best practices in their local community; avoiding concepts that have

18. See *infra* Part I.

19. See Victor D. Quintanilla, *Human-Centered Civil Justice Design*, 121 PENN ST. L. REV. 745, 755 (2017) (comparing the human-centered approach to client-centered lawyering and noting that human-centered design involves “all people potentially affected by a design,” as contrasted with a traditional design approach that prioritizes the designer’s expertise above the experiences of the end user) (internal citation omitted).

20. See generally Victor D. Quintanilla, *Doing Unrepresented Status: The Social Construction and Production of Pro Se Persons*, 69 DEPAUL L. REV. (forthcoming 2020) (theorizing that court officials and lawyers apply stereotypes, schemas, biases, expectations, and labels about pro se parties to unrepresented persons in ways that disempower low-income members of society and materially affect the enforcement of rights, power, and privilege).

been proven not to work elsewhere; and harnessing proven design patterns or behavioral nudges that have shown themselves to be successful in laboratory settings.²¹

This Article proceeds in three Parts. In Part I, we synthesize and compare civil justice research and development methodologies to provide a clearer understanding of the state of civil justice design. In Part II, we present a comprehensive Justice Innovation design framework that integrates these previous methodological proposals into a more robust one, which specifically addresses an area overlooked in the literature—early-stage development and evaluation. In Part III, to demonstrate the dangers of designing without a comprehensive framework and the difficulties of applying an ideal framework in the real world, we offer a detailed case study of the initial version of Arizona Eviction Help. While this intervention was developed with intentional design methodologies, several financial, time, and staffing constraints made it difficult to apply a comprehensive approach, and first-round interventions were largely unused.²² The case study demonstrates the importance of following an adaptable but comprehensive methodological framework to produce innovations that are useful and used. Ultimately, we argue that a framework that integrates co-design and expert research should become the standard for the creation of justice innovations—just as randomized field studies have become the standard for their testing.

I. EXISTING CIVIL JUSTICE DESIGN METHODOLOGIES

As more scholars and practitioners have focused on improving the civil justice system, several have proposed theories and methodologies on how to improve documents, services, products, and policies in the system.²³ These approaches offer design process steps and strategic principles for interventionists to scope, build, pilot, and evaluate system improvements. This Part will describe the four most influential approaches that have been proposed in recent years. Read collectively, they begin to create a comprehensive, systematic, and replicable framework for the design of justice innovations.

In this Part, we first analyze the primary contributions of each of these four approaches. Respectively, the approaches encourage justice innovators to draw from expert knowledge; to make courts more human-centered; to approach problems from a systems perspective; and to involve community members in the process of co-design. Then, we distill and organize the methods proposed in each approach into explicit methodologies. This operationalization is designed to help practitioners put these approaches into practice during the various

21. See *infra* Part II.

22. See *infra* Part III.

23. For the four most comprehensive frameworks, see *infra* Subparts II.A-D.

stages of justice innovation. For example, while practitioners might want to both take a human-centered approach and draw from expert strategies, they might not know how to operationalize either approach or how to fit them together. By mapping out these separate approaches on the same landscape, we demonstrate both synergistic possibilities and methodological gaps. In Part II we draw from this synthesis to propose a comprehensive framework for justice innovation.

A. Expert-Oriented Design

The first approach is expert-oriented design, exemplified by Greiner, Jiménez, and Lupica's article *Self-Help, Reimagined*.²⁴ This approach advocates for the professionalization of justice innovations and challenges justice innovators to build on pre-existing knowledge, including knowledge from other disciplines.²⁵ For example, the authors argue that justice innovations must address the cognitive, emotional, and behavioral barriers that litigants face when attempting to resolve justice issues.²⁶ They draw on literatures as varied as adult education, marketing, and psychology to argue that current self-help materials are poorly designed to engage litigants with limited bandwidth and, therefore, are unlikely to produce their intended justice outcomes.²⁷ In addition, the authors seek to change the paradigm from self-help-as-education to self-help-as-action. Simply providing access to legal help materials is insufficient, they argue; instead, advocates must investigate how litigants *deploy* such materials to secure improved outcomes.²⁸ The expert-driven approach is one of the most established strategies in justice innovation, as courts, nonprofits, legal aid organizations, and legal academics have vast reserves of expert knowledge to draw upon. One common expert-driven methodology is the legal nudge, where the innovative nudge is designed by experts to effectuate desired actions, like court attendance.²⁹

24. See Greiner, *supra* note 13, at 1122.

25. *Id.* at 1125 (looking to a variety of literatures—particularly public health, education, and cognitive psychology—to solve common problems litigants face when deploying self-help).

26. *Id.* at 1127-36.

27. *Id.* at 1128.

28. *Id.* at 1124.

29. Thaler and Sunstein conceptualize a “nudge” as “any aspect of the choice architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives.” RICHARD THALER & CASS SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* 6 (2008). Legal scholars have begun to explore how behavioral science may impact litigant action. For example, redesign of court forms has been found to increase court appearance rates. See BRICE COOKE ET AL., *USING BEHAVIORAL SCIENCE TO IMPROVE CRIMINAL JUSTICE OUTCOMES* 4 (2018), <https://perma.cc/T65B-36PB> (finding that a nudge-based redesign of the New York City criminal court appearance ticket reduced nonappearance by 13%, which prevented

While methodologies used in the expert approach vary widely, the common thread is that experts drive the decision-making.³⁰ The *Self-Help, Reimagined* methodology might be operationalized as follows: First, expert knowledge drives the early stages of justice innovation—what research questions are likely to have the most promise, what barriers the intended beneficiaries are facing, what innovations are likely to overcome such barriers. Next, under this expert eye, justice innovations should be developed in law.³¹ The following table presents our visual representation of how a practitioner might operationalize this approach and some of the methodological strategies that proponents would recommend at the various stages.

approximately 17,000 arrest warrants per year); *see also* J.J. Prescott, *Assessing Access to Justice Outreach Strategies*, J. INST. & THEORETICAL ECON. 34, 51-55 (2018) (finding that mailed reminders can encourage court attendance and warrant resolution).

30. *See infra* notes 32-36 and accompanying text. The expert approach is usually employed when academics get involved. In a typical case, an interventionist surveys what academics and practitioners already know, develops a hypothesis, and then tests it. *See, e.g.*, Prescott, *supra* note 29, at 35, 37 (surveying the take-up literature and testing the relative effectiveness of outreach strategies recommended by experts to increase litigant use of court).

31. *Id.* at 1166-68 (surveying the literature on testing).

| <p style="text-align: center;">The Expert-Centered Approach <i>Greiner, Jiménez, and Lupica</i></p> | | | |
|--|---|--|---|
| <p>Overall Goals and Principles:</p> <ul style="list-style-type: none"> ▪ Create better materials to serve low and moderate-income people navigating the civil justice system. ▪ Address cognitive and psychological barriers researchers have identified in this population. ▪ Evaluate whether the materials are effective in the real world. ▪ Shift paradigm of effective self-help from self-help-as-education to self-help-as-action. | | | |
| Phase | Motivations, Goals, and Outcomes for this Phase | Actions to Take | Principles, Requirements, Guiding Insights, and Other Best Practices |
| 1. Identify legal problem. | Focus on problem to be addressed by self-help. | | |
| 2. Understand the barriers that the population is facing. | <p>Avoid producing <i>undeployable</i> interventions.</p> <p>Appreciate established research's findings on low-to moderate-income population.</p> | <p>Break problem into constituent cognitive, psychological, and mental processing parts.</p> <p>Study known cognitive, emotional, and behavioral challenges people have when needing to learn and use complex information and carry out the tasks involved in the problem.</p> | <p>Known barriers to understand:</p> <ul style="list-style-type: none"> • Being overtaxed; • Lack of bandwidth; • Anxiety and feelings of threat; • Unfamiliarity with legal mundanity. |
| 3. Create materials that address these barriers. | Use best practices and harness strong proposals to create better hypotheses about what materials might work best. | Borrow from expert findings on how to overcome these challenges. | <p>Beware of common dysfunctions of self-help:</p> <ul style="list-style-type: none"> • Too much conceptual understanding, without step-by-step |

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| | | <p>Adapt successful models from other analogous projects and fields:</p> <ul style="list-style-type: none"> • Cartoons; • Diagrams; • Self-affirmation exercises; • Self-agency messages; • Role-playing exercises; • Goal-setting; • Content overviews; • Scripts; • Checklists. | <p>procedure;</p> <ul style="list-style-type: none"> • No analogies; • No visual images; • Poor language choice; • Unclear presentation style; • Weak organization and hierarchy. |
| <p>4. Test new materials.</p> | <p>Evaluate at an early stage if the materials are effective in helping people understand and deploy knowledge.</p> <p>Balance out lawyers' instincts about what is effective with those of the public.</p> | <p>Use Lab testing techniques around comprehension:</p> <ul style="list-style-type: none"> • Text base macro; • Situational model macro; • Semi-structured cognitive interviews; • Protocol analysis: thinking out loud while using materials to see failures; • Cloze test: filling in missing words. | <p>Start by asking open-ended comprehension questions—e.g. “Can you recall defenses?”</p> <p>Move to situational-model questions—e.g. “Would this defense be available to you if . . .?”</p> <p>Have the user think aloud as they try to use your materials.</p> <p>Law students are better test users than attorneys or academics, but vary from real users in important ways.</p> |

B. Human-Centered Civil Justice Design

The second approach is Quintanilla's human-centered civil justice design process. This approach aims to create a more human-centered justice system, and focuses primarily on improving procedural justice outcomes.³² It is the first of three human-centered design approaches we will review in this Part. Quintanilla combines methods from design thinking and dispute system design to encourage innovators to understand the public's experience, ideate and develop pilots, and rigorously evaluate these pilots against a range of procedural and substantive justice outcomes.³³ In addition, Quintanilla's approach broadens the scope of outcomes that courts should consider when determining the success of justice innovations from efficiency and outcome goals to experience goals—including procedural justice, dignity, and participation.³⁴

Quintanilla proposes several methodologies to realize this human-centered justice system. First, he recommends involving all stakeholders at the initial design stages to ensure that experts are asking the right questions and are concerned about the outcomes that matter most to all people involved.³⁵ For example, he contends that courts should not establish outcomes of justice innovations in silos but in collaboration with all stakeholders.³⁶ In addition, early stage innovation for human-centered designers focuses on empathizing with and understanding the needs and experiences of all participants in the system, especially litigants.³⁷ To do so requires methods such as observation, interviews, focus groups, and deep immersion with communities.³⁸

In early evaluations of justice innovations, Quintanilla again calls for the involvement of *all* stakeholders and focuses primarily on considerations of procedural justice.³⁹ Such evaluations are less likely to be accomplished effectively in laboratory settings and cannot be carried out solely with student testers.⁴⁰ Instead, Quintanilla and other human-centered designers rely on methodologies such as focus groups and design workshops to bring all

32. Quintanilla, *supra* note 19, at 750.

33. *Id.* at 749-51.

34. *Id.* at 790-95.

35. *Id.* at 749.

36. *Id.* at 791-95. Re-evaluating what constitutes resolution of justice problems is further informed by Rebecca Sandefur's analysis of how people conceptualize and deal with their justice problems. *See generally* Sandefur, *supra* note 2, at 50.

37. Quintanilla, *supra* note 20, at 749.

38. *Id.*

39. *Id.* at 761-62. Quintanilla also proposes a survey design that would reflect procedural justice concerns. *Id.* at 794-95.

40. While Quintanilla does not explicitly rule out student testers, the point of the model is to engage stakeholders themselves by designing *with* communities. *Id.* at 756-57.

stakeholders together.⁴¹ These evaluations build upon what experts already know;⁴² however, the litmus test is whether such strategies will work for *these* users in *this* unique setting. Finally, in this early evaluation stage, Quintanilla places a high priority on ensuring that all stakeholders and beneficiaries have standing, dignity, and respect during the process.⁴³

For the final evaluation of justice innovations, Quintanilla advocates for randomized trials in the field.⁴⁴ However, he argues that the outcomes of those studies should be evaluated in light of the needs and problems identified earlier by the grounded methodologies.⁴⁵ This aims to avoid unintended impacts of the pilot intervention and claims of success when, for example, more people are coming to court, but people are still not feeling heard.⁴⁶ In Quintanilla's model, the pilot randomized study will likely lead to additional iterations before being released as a justice innovation. Even then, it must be continually monitored to ensure that larger systemic problems do not emerge. Practitioners might operationalize the approach using the following table.

41. *Id.* at 759-61.

42. For example, Quintanilla considers the "voice effect" when considering how litigants might respond to different justice innovations. *Id.* at 766-68. The "voice effect" refers to the well-established phenomenon that people perceive the resolution of a dispute to be fairer when they are given a chance to voice their case, even when they are told directly that such voicing will not affect the outcome. See Rob MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Justice*, 1 ANN. REV. L. & SOC. STUD. 171, 182 (2005).

43. Quintanilla, *supra* note 19, at 760.

44. *Id.* at 752.

45. *Id.*

46. *Id.* at 791, 795-97.

| Human-Centered Civil Justice Design | | | |
|---|--|---|--|
| <i>Quintanilla</i> | | | |
| Overall Goals and Principles: | | | |
| <ul style="list-style-type: none"> ▪ Empathize with and understand needs and experiences of all participants in the system, especially litigants. ▪ Create more legitimate, accessible, just systems. ▪ Find balance between efficiency goals and experience goals—dignity, engagement, and participation. | | | |
| Phase | Motivations, Goals, and Outcomes for this Phase | Actions to Take | Principles, Requirements, Guiding Insights, and Other Best Practices |
| 1. Understand the public's experience. | <p>Uncover varied needs, goals, and concerns of all litigants.</p> <p>Identify causes, conditions, and nature of problems.</p> <p>Assess status quo of the justice system vis-à-vis needs and aspirations of the public.</p> | <p>Survey litigants at the close of cases, including anonymous online surveys, to evaluate distributive and procedural justice.</p> <p>Survey lawyers and judges when cases close.⁴⁷</p> <p>Methodologies:</p> <ul style="list-style-type: none"> • Observations; • Interviews; • Focus groups; • Deep immersion with communities; • Psychological and behavioral studies of stakeholder experiences. | <p>Involve all stakeholders and beneficiaries.</p> <p>Ensure they have standing, dignity, and respect during these processes.</p> <p>Find where parties' perceptions converge and diverge.</p> |

47. *Id.* at 794-95.

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| 2. Ideate and develop pilots. | Generate new ideas that can improve the quality of justice and address the identified needs. | Brainstorming and early evaluations. Pilot development. Draw from known attributes of procedural justice: • The voice effect; • Neutrality and unbiased manner of decision-makers. | Involve stakeholders in this process. Allow plural perspectives into the development of new ideas. When staff follow procedural justice principles, they value them more. |
| 3. Implement and rigorously evaluate pilots. | Analyze and understand intended and unintended impacts of the pilot intervention, to see if it truly addresses the needs and problems earlier identified. | Randomized controlled trials. Observations of behavior and post-roll out surveys. Reflection on what iterations are needed before full implementation and integration into the system. | Ensure outcomes are known before wider integration of the intervention into the system. Avoid wicked system problems. |

C. Public-Centered Civil Justice Design

The third approach is Salter and Thompson's *public-centered* design. Like Quintanilla, Salter and Thompson start from a grounded understanding of the experience of actual court users; however, their design methodologies more explicitly focus on the repeated interaction of the public with the justice system and aim to create better processes and architectures.⁴⁸ For example, Salter and Thompson reframe users as court *customers*, not litigants, who are receiving a justice and dispute resolution service.⁴⁹ They argue that the design process should not be about creating single-service touchpoints, but end-to-end services

48. Shannon Salter & Darin Thompson, *Public-Centered Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal*, 3 MCGILL J. DISP. RESOL. 113, 116 (2017).

49. *Id.* at 126 ("According to this approach, members of the public are treated as the recipients of a court's or the tribunal's services. The services in this case involve justice and dispute resolution.").

that combine different interventions into an overall process redesign to improve the quality of justice.⁵⁰

The first design stages in Salter and Thompson's model closely approximate those in Quintanilla's model. However, Salter and Thompson offer different considerations and methodologies. For example, in the initial stage of understanding users, Salter and Thompson strongly emphasize determining if people prefer a collaborative or adversarial process, and identifying informational and technology preferences.⁵¹ In creating potential justice innovations, Salter and Thompson identify procedural rules as a major obstacle for many customers and argue that designers should explore how such rules might be embedded directly into processes, forms, and interactions themselves, or given to litigants in stages so that they are received when most relevant.⁵² The authors advocate for testing innovations first with community advocates and then with the broader public.⁵³ Often, a combination of innovations will be needed to get to the right level of access to justice. Under this systems theory, the litmus test is whether the people who were meant to use court services and processes can indeed understand and navigate them. This approach might be operationalized in the following table.

50. *Id.* at 116.

51. *Id.* at 116-18, 134-35.

52. *Id.* at 124.

53. *Id.* at 124-25.

| Public Civil Justice Design <i>Salter & Thompson</i> | | | |
|--|---|--|--|
| Overall Goals and Principles: <ul style="list-style-type: none"> ▪ Create an end-to-end process that supports people from problem to resolution, and that fits with their preferences for type of justice and service delivery. ▪ Put the public first, with a high priority on the needs, interests, and limitations of justice system users. ▪ Find balance between justice system needs and the public’s needs in terms of complexity, due process, and service navigation. | | | |
| Phase | Motivations, Goals, and Outcomes for this Phase | Actions to Take | Principles, Requirements, Guiding Insights, and Other Best Practices |
| 1. Understand the needs and life contexts of the justice system and its users. | Ensure that justice system leaders are aware of how their public users are currently experiencing the system, what the steps of the process are, and where there need to be improvements. | Understand who the different types of people using the system are. Determine if people prefer a collaborative or adversarial process. Identify information preferences and technology practices. | People come from many contexts, and often with illiteracy, poverty, or disabilities. Reframe the notion of the public from litigants to customers, who are receiving a service of justice and dispute resolution. |
| 2. Identify interventions that can fit justice system needs and user needs. | Ensure that members of the public who will likely use the civil justice system have voice in how it is designed. Ensure that core principles of due process and consistency are not abandoned—and that more practical constraints around time, | Create detailed procedural rules, but stage how they are given to people so they’re more relevant to present context. Embed rules directly into processes, forms, and interactions themselves. | Do not build processes and services for the most complex cases. It might be several interventions taken together to transform the entire system. New interventions should improve the system’s adaptation |

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| | <p>money, and staffing are also recognized.</p> <p>Identify combinations of new ideas that can get the right level of justice, delivery mechanisms, and process.</p> | <p>Use plain language and simple phrasings.</p> | <p>to different people.</p> <p>They may be more collaborative than adversarial.</p> |
| 3. Test and validate interventions. | <p>See if the people who are meant to use court services and processes can indeed understand and navigate them.</p> | <p>Conduct intensive user testing of new concepts with community advocates, and then with members of the public.</p> <p>Gather feedback to refine the intervention early.</p> | |

D. Community-Led Development

Outside of academia, professionals in courts and non-profits have also developed methodological frameworks for the creation of justice interventions. One of the leading justice innovations has been JustFix.nyc, which over the past four years has developed a series of tools to help tenants and advocates fight housing injustice in New York City.⁵⁴ While many companies and courts have tried to build apps to create social change, JustFix.nyc has seen impressive results. In 2018 there were 71,446 visits to JustFix.nyc web services, 1,589 new apartments added JustFix.nyc accounts, over 300 letters were mailed to landlords, and 636 families likely avoided displacement.⁵⁵ The organization's fundamental advantage has been the application of their own comprehensive

54. See Luis Ferré-Sadurni, *Bad Landlord? These Coders Are Here to Help*, N.Y. TIMES (Dec. 4, 2018), <https://perma.cc/6M7Q-4B99>. For a collection of news articles featuring JustFix.nyc, see <https://perma.cc/4TF6-V2YK>. See also SANDEFUR, LEGAL TECH FOR NON-LAWYERS, *supra* note 11, at 5-6 (describing JustFix.nyc's habitability complaint services); Lyle Moran, *Legal Tech Tools Can Be Vastly Improved, California Bar Task Force Told*, ABOVE THE LAW (Apr. 11, 2019), <https://perma.cc/4KPP-QM8F>.

55. JUSTFIX.NYC, 2018 ANNUAL IMPACT REPORT 1, 7 (2019), <https://perma.cc/8Z4D-V7MF>.

community-led development methodology.⁵⁶ Through this co-design process, JustFix.nyc labors to “augment, not replace,” or to center work on the existing ecosystem—outlining where technology can facilitate work already being done.⁵⁷ While this approach draws from the theoretical approaches of Quintanilla, Salter, and Thompson, it is primarily designed to accomplish action in the world, and therefore offers many concrete and valuable lessons for justice practitioners.

In the early stages of justice innovation, JustFix.nyc advocates for deep investment in defining the innovator’s community.⁵⁸ Here, the nonprofit suggests that aspiring innovators volunteer within the community to understand the existing conversation, to respect the histories, contributions, and needs of the current speakers, and, ultimately, to identify a justice space into which innovators can speak.⁵⁹ In addition, it encourages innovators to deeply understand the lived experience, preferences, and needs of would-be users.⁶⁰ Some methods JustFix.nyc has used in support of these aims are speaking with trusted intermediaries, volunteering on support lines, and interviewing and shadowing clients.⁶¹ These diverse viewpoints and data should then be analyzed through a process of co-design to identify patterns and possible points of intervention.

Next, JustFix.nyc creates two-way educational environments to involve people in tools that will be relevant to their lives.⁶² This is a significant movement from the earlier design models. Here, users are not just court customers, but vital collaborators. They are the experts on which innovations are actually desired and whether they will be used. During these co-design sessions, users educate innovators on their experiences, goals, and affordances, while innovators contribute their own personal experience and well as relevant expert knowledge.⁶³ In these co-design sessions, participants create journey maps of current processes to encourage what is already being done well and to identify needs and constraints.⁶⁴ When the prototyping process begins, designers start with low-fidelity, print-based prototypes before investing any technical resources. This often starts with wire-framing and progresses through print-based approximations before any coding begins. For example, before building a tool that would automatically create letters to landlords, JustFix.nyc

56. Georges Clement et al., JustFix.nyc, Presentation at the Technology Initiative Grants Conference (Jan. 11, 2017) (presentation on file with author).

57. *Id.* at 14, 16, 19-20.

58. *Id.* at 25-27.

59. Telephone Interview with Ashley Treni, Co-Founder, JustFix.nyc (Sept. 12, 2019).

60. *Id.*

61. *Id.*; see also Clement et al., *supra* note 56, at 30-33.

62. Clement et al., *supra* note 56, at 38.

63. See Telephone Interview with Ashley Treni, *supra* note 59.

64. *Id.*

staff received feedback on this practice in co-design sessions and then wrote letters by hand for real cases to gauge the impact.⁶⁵ In developing these tools, JustFix.nyc argues that innovators should build every feature modularly, so that each can easily be removed or improved without redoing the entire design.⁶⁶

When implementing these interventions, JustFix.nyc collects extensive data and then iterates. For example, while hosting the first version of its tenant web app, the company collected data on Google Analytics, interviewed users, and hosted a help line for anyone who had trouble using the interface or was unable to resolve their justice issues.⁶⁷ This troubleshooting and increased functionality was then incorporated into the next version of the app.⁶⁸ This co-design is painstakingly local; JustFix.nyc is only now beginning to expand to other communities beyond New York City.⁶⁹ While it plans to build upon the expertise it acquired in New York, it is now starting the co-design process anew by defining the communities in each new location. This community-led development framework might be operationalized by the following table.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

| Community Led Development <i>JustFix.nyc</i> | | | |
|--|---|---|--|
| Overall Goals and Principles: <ul style="list-style-type: none"> ▪ Center work on existing eco-system, outlining where technology can facilitate work already being done. ▪ Augment without replacing invaluable in-person resources—such as local organizing efforts and pro bono legal services—by streamlining how they track cases, communicate with tenants, and handle referrals. ▪ Involve people and communities in the creation of tools and services that are relevant to their lives. | | | |
| Phase | Motivations, Goals, and Outcomes for this Phase | Actions to Take | Principles, Requirements, Guiding Insights, and Other Best Practices |
| 1. Define your community. | Identify the justice space into which you want to speak. Understand the various stakeholders in the justice ecosystem. | Volunteer in your community to understand the space and establish relationships. Create opportunities for collaboration and outreach. Invite others to work with you. | Leverage existing experience and knowledge. Partner with hyperlocal groups with intersecting interests. Volunteer and collaborate to develop partnerships. |
| 2. Understand user needs. | Meet clients where they are. Gather different perspectives and identify patterns. | Interview and shadow clients as they navigate housing situation. Volunteer on support lines. Meet with community groups and legal service providers to learn about their practices. | Experience realities on the ground and lean on experiences of others. Look for a place where you can add value. |

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| <p>3. Co-design solutions.</p> | <p>Involve people in the creation of tools that are relevant to their lives.</p> <p>Build and test scrappy prototypes before investing technical resources.</p> | <p>Create journey maps of existing processes and constraints.</p> <p>Create two-way educational environments.</p> <p>Develop wireframes based on ideation.</p> <p>Try everything in analog fashion before investing technical resources.</p> <p>Build everything modularly so that parts can be easily revised or removed.</p> | <p>Understand what advocates are already doing well.</p> <p>For testing, don't tell them it's your design.</p> <p>Don't rationalize design decisions; listen to feedback.</p> |
| <p>4. Implement & test solutions.</p> | <p>Release beta versions.</p> <p>Collect data on usage and solicit user feedback.</p> | <p>Host trainings and workshops.</p> <p>Solicit ongoing feedback and community validation.</p> | <p>Collect quantitative user data and qualitative user experiences.</p> |
| <p>5. Iterate.</p> | <p>Return to definition stage and repeat process.</p> <p>Release updated versions and iterate again.</p> | <p>Share findings.</p> <p>Host support lines to stay connected to client needs, to understand pain points, and to troubleshoot questions about the intervention.</p> | <p>Justice interventions must be locally produced; co-design process must be repeated anew in different locales.</p> <p>Continue making tweaks to improve functionality and real-world use.</p> |

II. A PROPOSED JUSTICE INNOVATION DESIGN FRAMEWORK

We synthesized these various justice innovation processes in order to survey the methodological landscape and find patterns that could be useful for our own work and for the wider interventionist community. In addition to the justice innovation literature, we also combined insights from broader literature on participatory and human-centered design,⁷⁰ along with our own practice in the access to justice innovation space over the past five years at the Stanford Legal Design Lab.⁷¹ Here, we present an initial Justice Innovation Design Framework that includes top-down expert strategies and bottom-up participatory co-design, and reflects the particularities of designing for a complex bureaucratic government system with many rules and stakeholders. This initial draft is meant to be a work in progress. It provides a clear architecture for our own justice interventions but is designed to grow alongside new case studies, research findings, and ideas.

The goals of our proposed Framework are similar to those of previous ones: to ensure that the highest quality ideas are chosen to make the strongest prototypes and pilots; to ensure stakeholders participate in the selection, creation, and refinement of ideas; and to build a body of knowledge and strategies that can improve the ecosystem of justice innovation. Our primary contributions are to demonstrate how existing methodologies map onto one another, to integrate a mixture of bottom-up and top-down methods, and to add more detail into the steps for practitioners to follow. For those interested in designing justice innovation, this Framework may serve as an overview of the required steps and a method by which to accomplish them.

The six phases of the Framework cover the same essential arc as the

70. See, e.g., Charles Owen, *Design Thinking: Notes on Its Nature and Use*, DESIGN RES. Q., Jan. 2007, at 16, 23-25 (describing the characteristics of design thinking); Susanne Bødker & Morten Kyng, *Participatory Design That Matters—Facing the Big Issues*, 25 ACM TRANSACTIONS ON COMPUTER-HUM. INTERACTION, Feb. 2018, at 1, 22 (envisioning a new agenda for the future of participatory design); Laurens Boer & Jared Donovan, *Prototypes for Participatory Innovation*, Presentation at the Designing Interactive Systems Conference (June 11, 2012) in PROC. OF THE DESIGNING INTERACTIVE SYS. CONF., June 2012, at 388 (providing design guidelines for how provocative types, or provotypes, can help to generate knowledge about users); Jakob Trischler et al., *The Value of Codesign: The Effect of Customer Involvement in Service Design Teams*, 21 J. SERV. RES. 75, 89 (2017) (describing how to integrate customer insights and professional expertise in a co-design model).

71. For documentation of our own explorations with different processes and strategies in creating justice interventions, see Margaret D. Hagan, *Participatory Design for Innovation in Access to Justice*, DAEDALUS, Winter 2019, at 120; Margaret D. Hagan, *A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Interventions to Make Courts User-Friendly*, 6 IND. J.L. & SOC. EQUALITY 199 (2018); Margaret D. Hagan & Miso Kim, *Design for Dignity and Procedural Justice*, Presentation at the Applied Human Factors and Ergonomics International Conference (July 11, 2017), <https://perma.cc/ZFZ5-ZKNQ>.

methodologies surveyed above: growing an intervention from a high-level idea to a specific plan, and then implementing it to evaluate whether it has the promised impact. This Framework's advantage is its greater detail and coverage. It combines the human-centered design approach's attention to scoping the "right" problem and bringing in a wide group of stakeholders and community experts, with the exploratory designs and vetting of promising solutions that feature more prominently in expert-centered approaches. The framework also emphasizes the work that must happen *after* lab tests or even a randomized control pilot. Interventionists often seek innovations that can successfully address a specific metric—like an appearance or default rate. However, a broader framework should also consider longer-term outcomes, to see if a single piloted intervention creates larger change for the individuals or the system.

For interventionists who traditionally follow expert strategies when crafting new pilots, using this framework would mean putting more emphasis on the earlier stages of the process. In particular, it would mean establishing a network of stakeholders not just to agree to the research design and pilot partnership, but to help define the most meaningful points for intervention; what ideas or adaptations of expert-sourced ideas have the most value; and how a specific new product, service, or policy, should be implemented in practice. This co-design process would come throughout the first three phases of work.

In addition, this Framework would have teams invest in more qualitative and quantitative lab-based testing in the third exploration phase in order to ensure that the team does not invest in a possible pilot too quickly. This may include having sessions in which multiple ideas are ranked against each other by stakeholders, or in which prototypes of ideas are evaluated with lengthy, qualitative testing sessions—rather than brief surveys—to better understand exactly if and how this new intervention may play out in the field. Greater investment in evaluation before field trials should ensure that the pilot version is the strongest it can be, and avoid the common fate of low public engagement with justice interventions.

The Framework also promotes a commitment to iteration. Even if a promising idea, when piloted, proves to not engage the intended audience—e.g., no one visits a website or uses a service—or to not affect the desired metric—e.g., it does not encourage more people to attend a hearing or improve case outcomes for litigants—the Framework in phases 3, 4, and 5 encourages the interventionists to explore how they might rescue their idea through more co-design, quick tests, or exploration of expert strategies. Whether the failure emerges in lab tests, field observational tests, or controlled trials, the Framework encourages the team to gather data on failure, be specific about the observed dysfunctions, and commit (in most cases) to redesigning the intervention in order to test it again. This is particularly important because of the frequent disconnect between how people actually behave in a specific justice system context, what people state their preferences to be during co-

design sessions, and what experts theorize people's behavior will be. As many past justice innovation teams have learned, failures are quite common, and a Framework ought to acknowledge this and support teams through failure toward better outcomes.

For interventionists who are more inclined to investing in relationships with community members to understand the problem area and create ideas for new pilots, the Framework layers in more strategies, theories, and best practices from scholarly literature and civic innovation practitioners. Particularly in the first phase (Establishing the Project) and in the third phase (Exploratory Designs), expert-sourced strategies can be brought in through literature reviews, social science partnerships, and cross-jurisdiction network-building. This work beyond co-design can bring valuable established knowledge into the local context. Expert-sourced resources can help interventionists to better define the problem area in terms of common metrics; to draw on rich studies of social dynamics and the broader justice system; to identify proven nudges and behavioral heuristics; and to landscape related successful and failed interventions. This knowledge is rarely brought in when a team is working strictly with a client-centered design process, and it can bring scientific knowledge and a wider perspective to the work, especially when combined with co-design efforts. Plugging into the work of scholars and other jurisdictions earlier in the process can also ensure that an intervention reaches a wider audience who might better understand how it fits into ongoing research and policy work.

Two overarching values guide most of the Framework: quality and dignity. The comprehensiveness, integration of scientific knowledge, and use of co-design work is intended to support interventionists to make the highest quality pilot they can, and to use the most effective evaluation instruments to understand its impact. These methods should lead interventionists to create new efforts that are closely tied to the local context, likely to be used by the intended communities, driven by evidence and theory, and taken from initial stages to larger theories of change. At the same time, the Framework also emphasizes the *dignity* of the people in the system—the litigants, court administrators, judicial officers, service providers, frontline court staff, and others who are trying to make the system work well for its users and professionals. Their voices, preferences, and involvement in the process are key, not just to make a higher-quality intervention, but also to ensure that they are given respect and participation in a process that might redefine how the system operates and how their journeys proceed. Every intervention is potentially about the future of the legal system; therefore, a design methodology should ensure that all stakeholders deeply and actively participate in their future.

| Justice Innovation Design Framework <i>Hagan and Bernal</i> | | | |
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| Overall Goals and Principles: | | | |
| <ul style="list-style-type: none"> ▪ Generate strong ideas to improve people’s participation in the legal system, their capabilities to navigate it, and their justice outcomes. ▪ Create buy-in among all stakeholders, and work with them to scope the ‘right’ problem and create feasible, breakthrough solutions. ▪ Evaluate concepts regularly, particularly before pilot, in order to spend resources wisely and generate a body of knowledge and strategies about what works. | | | |
| Phase | Goals, Outcomes, and Motivations for this Phase | Actions to Take | Principles, Requirements, Guiding Insights, and Other Best Practices |
| 1. Establish a project. | <p>Identify a wicked problem that needs to be resolved.</p> <p>Ensure there is community involvement in setting the agenda, with buy-in to ensure there will be stronger access, handoffs, outreach, and support.</p> | <p>Review literature and data on major needs, breakdowns, and policy areas.</p> <p>Hold interviews and interactive sessions to hear from stakeholders about what needs ought to be targeted.</p> <p>Scope out local partnerships, stakeholders, and community organizations.</p> <p>Volunteer in your community.</p> | <p>Involve all stakeholders; ensure standing and dignity (Quintanilla).</p> <p>Reframe notion of public from litigants to customers (Salter & Thompson).</p> <p>Ensure community and stakeholder buy-in (Hagan).</p> <p>Volunteer alongside stakeholders in their work (JustFix.nyc).</p> |
| 2. Scope the opportunity space. | <p>Uncover people’s needs, behaviors, and preferences in this problem area.</p> <p>Identify research on how the system works, what people need, and</p> | <p>Multi-stakeholder design workshops to identify major needs in the problem area.</p> <p>Observations and service safaris.</p> | <p>Understand known psychological barriers and expert recommendations (Greiner et al.).</p> |

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| | <p>what interventions might have promise.</p> <p>Frame the problem statement in multiple ways to uncover the most productive framing.</p> | <p>Interviews with various stakeholders.</p> <p>Data analysis about current behaviors and system outcomes.</p> <p>Integration of expert research.</p> <p>Benchmark solutions, past interventions, and analogous projects that can inspire.</p> | <p>Evaluate procedural and distributive fairness (Quintanilla).</p> <p>Determine customers' informational and technological preferences (Salter & Thompson).</p> <p>Understand justice system needs <i>and</i> user needs (Salter & Thompson).</p> <p>Augment, not replace community resources (JustFix.nyc).</p> |
| <p>3. Engage in exploratory design and testing of possible solutions.</p> | <p>Generate a variety of possible interventions that could resolve the wicked problems, and that fit with the design research.</p> <p>Validate (or not) promising ideas to see which should have further resources.</p> <p>Get early feedback on the ideas' value, feasibility, and viability, and use it to select the best ideas and refine them to be their strongest.</p> | <p>Co-design workshops with stakeholders to brainstorm.</p> <p>Analogy scouting and other brainstorming techniques.</p> <p>Create concept catalogues that gather together around 15 promising ideas for quick ranking.</p> <p>Early prototype mock-ups, click-throughs, and sketchy versions for evaluation.</p> <p>Qualitative review of prototypes with stakeholders for refinement.</p> | <p>Beware of common self-help dysfunctions and borrow from existing research (Greiner et al.).</p> <p>Create two-way exploratory labs (JustFix.nyc).</p> <p>Conduct lab testing using expert methods (Greiner et al.).</p> <p>Build everything in analog first (JustFix.nyc).</p> |

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| | | Controlled lab tests of prototypes to assess if they meet criteria. | |
| 4. Conduct field tests and pilot trials of solutions, and iterations. | <p>Get behavioral feedback about whether and how people will use the intervention.</p> <p>Understand the potential impact of the intervention.</p> <p>Identify what iterations are needed to best improve its impact and avoid harms.</p> | <p>Randomized controlled trials of intervention.</p> <p>Observational studies of intervention's outcomes.</p> <p>Conduct surveys with stakeholders.</p> | <p>Randomized control trials, when possible; randomization may happen at a jurisdictional, rather than individual, level (Greiner et al.).</p> |
| 5. Evaluate short-term outcomes, improved replications and scaling. | <p>Determine if the intervention has the expected positive impact in practice.</p> <p>Understand how the system responds to the new intervention, and what unexpected consequences arise.</p> <p>If the project has positive impact, explore how it can be scaled with more features or replicated in more places.</p> | <p>Analyze appearance and default rates to measure participation levels.</p> <p>Analyze legal capabilities to measure ability to comprehend, deploy, and engage with legal system.</p> <p>Analyze procedural justice and substantive justice outcomes</p> <p>Communicate results to other interested jurisdictions and possible partners.</p> | <p>Human-centered surveys of parties, lawyers, and judges (Quintanilla).</p> <p>Develop an 'audience' for a pilot of interested organizations who may want to adapt the intervention if it is shown to be successful (Hagan).</p> <p>Investigate whether this touchpoint should be part of an end-to-end redesign (Salter & Thompson).</p> |

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| <p>6. Long-term evaluation of social and justice outcomes.</p> | <p>Understand what results for the people and the justice system after the interventions, in terms of their effects on family, neighborhoods, safety, civic participation, and legitimacy of government systems.</p> <p>Understand the effect on the system itself—efficiency, consistency, respect—and on procedural, distributive, and substantive justice.</p> | <p>Partner with civic data holders to identify what data-sharing is possible from agencies, non-profits, and others who provide services and track outcomes for individuals who have been in the justice system.</p> <p>Work with social science researchers who are conducting longitudinal studies of poverty, homelessness, services, and policies.</p> <p>Develop longer term reviews of changes in the institutions and legal system, to observe changes in technology investments, service models, rules and regulations, and organizational culture.</p> | <p>Human-centered surveys of parties, lawyers, and judges (Quintanilla).</p> |
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Our initial Framework is meant for interventionists and scholars to use, evaluate, and refine with additions to methodologies, guiding principles, and goals. We expect the overall six phases, overarching goals, and main methods to stay constant, but for there to be many additions that will offer nuance, examples, and caveats. Ideally, it will grow with the community as more interventions are proposed and tested.

III. ARIZONA EVICTION HELP CASE STUDY

How can a design framework be put into action to identify how real problems in the justice system might be improved? In this Part, we describe our multi-year approach towards creating exploratory co-designs for tenants facing

eviction in Arizona—a project which, after the first round of testing, saw little impact.⁷² To be clear, we undertook this design project without the benefit of the comprehensive design framework proposed above. This case study illustrates the range of methods we used, and how the intervention fared as a result. By checking our design methodology against each step of the framework, we can better understand how we might more intentionally design the next iteration of the intervention.

We include this case study to demonstrate where we went wrong and to spotlight the messiness of incarnating an ideal co-design framework in the real world. Too often deadlines, politics, personalities, and scarce resources constrain justice innovation. For example, in our study of tenant default and disengagement in Pima County housing court, we lacked the investment of all stakeholders, had only sparse funding, and worked largely from a distance. While it is humbling to publicize failure, this is one of the benefits of conducting early stage testing. In failure, we learn another way that doesn't work before trying again. Interventionists need more examples of projects that failed for lack of comprehensive design—if only to communicate to courts and non-profits the need to allow interventionists more freedom to design comprehensively and devote more resources to research and development.

Overlaying our case study on our Justice Innovation Framework exposes our design methodology as largely expert-driven. While the project was grounded in field observations, not all stakeholders were involved in the establishment of the project and scoping the opportunity space. This led us to invest considerable resources into a solution that was not supported by all stakeholders. In addition, much of the co-design work was accomplished from a distance, with tenants who were not currently facing eviction, and therefore may have not reflected local preferences or knowledge and likely gave us an inaccurate understanding of how our product would be used in the real world. These limitations resulted in us testing a product that could have been better designed to effect the desired change in our target users. In the space below we explore each stage of the project.

A. Establishing a Project

In establishing a project, our Justice Innovation framework recommends that we identify a wicked problem that needs to be solved and ensure that there is community involvement in setting the agenda. This should include both top-down and bottom-up methodologies. Ours was top-heavy—though it might not

72. See Daniel W. Bernal and Andy Yuan, *Self-Help Is No Panacea: A Field Experiment on the Impact of Self-Help Mailers in an Arizona Court 21* (May 2019) (unpublished manuscript) (on file with author) (finding no statistically significant difference between the treated and control groups in almost every outcome variable at the end of a field experiment evaluating the benefits of mailed self-help for summary evictions).

initially appear so. Almost three years before the launch of our pilot, one of us taught an undergraduate writing class in partnership with the Pima County Justice Court.⁷³ Throughout the year, students were “evicted,”⁷⁴ observed and interviewed court clients, created comparative analyses of materials in other jurisdictions, and workshopped improved documents with judges and court staff. Ultimately, our class created a bilingual and visually accessible self-help packet to help tenants navigate their evictions.

This on-the-ground experience got us interested in the questions of informational access and court participation in the judicial process of summary eviction in Arizona. We strongly suspected that the packet was unlikely to make much of a difference. Tenants in our user testing had neither the bandwidth nor the desire to thumb through a twenty-page packet to learn housing law. We were also faced with the reality of default. More than half of all tenants in our jurisdiction would never attend their eviction case or independently reach out to the court when they received their eviction paperwork.⁷⁵ In addition, in Arizona, landlords—not the courts—are responsible for creating notice and pleading materials and for ensuring that such forms are served on the defendants.⁷⁶ Therefore, interventionists could not simply include additional information in the official legal documents that were already being sent by the landlords. Further complicating this issue, the only contact information the court had available was the address of eviction. We believed that we had our new wicked problem: How might we intervene to support customers whose landlords have filed for eviction *before* they choose not to attend court?

We then invested in understanding the eviction ecosystem in Arizona—from courts to legal aid organizations to non-profits and state entities. Ultimately, we created a partnership with the Arizona Bar Foundation, Pima County Consolidated Justice Court, and several legal aid providers. The Arizona Bar Foundation hosts all of the online self-help materials for the state and was interested in revamping their eviction resources. In addition, the legal aid groups had each separately identified the need to have more accessible, bilingual resources for tenants. While the court was hesitant to appear like it was taking sides—this was a tenant-focused intervention—and declined to be visibly involved during randomized testing, it agreed to partner with us to provide tenant contact information, to ensure that the justice interventions we

73. This class was an extension of the *Simpla Phi Lex* program started by Judge Dean Christoffel and Professor Barbara Atwood at the James E. Rogers College of Law at the University of Arizona, which aimed to make legal language more understandable.

74. Students were served with eviction pleading materials and had to attend court to plead their case in front of real judges.

75. See Daniel W. Bernal, *Eviction by Design* 49-50 (May 2019) (unpublished manuscript) (on file with author).

76. ARIZ. REV. STAT. § 33-361 (2015).

built would have full access to case information, and to open up the court for client surveys and interviews.

Here, we fell into several design traps. Most fatally, we did not involve all stakeholders in setting the research question. While on-the-ground experience and tenant interviews did lead us to our conclusion that tenant confusion and informational complexity contributed to decisions about court attendance, at no point did tenants indicate that access to usable information was the driving factor. This was largely our expert-driven hypothesis, a theory that one of us was interested in proving for our dissertation research. In addition, we still maintained the frame of tenants as *litigants* rather than as customers of the service of justice. This narrow framing—coupled with observations and interviews of tenants *exclusively* in the court context—may have led us to falsely conclude that default was a problem with tenant decision-making, rather than, for example, an intentional rejection of judicial services. In addition, we failed to engage several key stakeholders—most notably the Arizona Commission on Access to Justice—and failed to get sufficient buy-in from others—such as the court—to fully support a range of interventions.

B. Scoping the Opportunity Space

In scoping out the opportunity space, our Justice Innovation framework recommends that we uncover people's needs, behaviors, and preferences in this problem area, identify research that explains how the system works and what interventions might hold promise, and frame the problem statement in multiple ways to uncover the most productive one. We began our scoping by hosting an eviction design sprint at the Stanford d.school (design school) in October 2017.⁷⁷ Over twenty-five participants came, including students from the law and design schools and professional housing lawyers.⁷⁸ The Arizona Bar Foundation had prepared information about Arizona's eviction self-help landscape and we began with an overview of the solution space and the research we had conducted so far. This involved observations in court and expert recommendations. We then asked participants to take on one of four personas we had distilled from our earlier on-the-ground eviction design work. The goal of this sprint was to generate some big ideas and fresh perspectives in response to our new question. Participants came up with many different potential solutions, ranging from a mobile eviction help van with lawyers to a Khan Academy-like training for tenants facing eviction.⁷⁹ Participants believed that we could create a short informational nudge to get users to act; however,

77. Margaret D. Hagan, *Eviction Legal Help Workshop*, LEGAL DESIGN LAB (Nov. 2, 2017), <https://perma.cc/DD8A-RXCF>.

78. *Id.*

79. *Id.*

they feared that we could never get enough information in a self-help mailer to change case outcomes. We needed something interactive. Ultimately, given our constraints, previous interviews, and partner affordances, we decided on a two-part solution: a self-help nudge sent via direct mail with links to a mobile-friendly website.

This was perhaps our weakest design stage. While we had an extensive understanding of the known psychological barriers and expert recommendations, we did not involve evicted Arizonan tenants in this stage—which severely limited our ability to uncover their needs, behaviors, and preferences. This was a particularly difficult use case, not only because we were primarily operating out of California. We were trying to understand the motivations of individuals who *didn't* go to court. Rather than showing up unannounced at their door, we had to rely on expert research and tenants reflecting on their past experiences. In addition, we were unable to systematically evaluate the procedural and distributive fairness of the judicial process of summary eviction. Moreover, while we did research to understand customers' informational and technological preferences, those preferences were largely taken from surveys of people who had already visited Arizona Law Help or gone in-person to local legal aid organizations. Finally, because of various constraints, we had difficulty framing the problem statement in multiple ways, and settled on the most convenient, which was not perhaps the most productive.

C. Exploratory Co-Design

In creating exploratory co-designs, our Justice Innovation framework recommends that we generate a variety of interventions that could possibly solve the problem, validate promising ideas, and get early feedback to refine them to be their strongest.⁸⁰ On this project, we funneled our approach to co-design—starting with brainstorming multiple ways to conceptualize our design and narrowing these down and shaping them up through iterative feedback between students, designers, users, and experts. While the main design work was conducted through a handful of classes at Stanford's d.school, we used surveys to solicit feedback from national experts as well as iterative lab testing to infuse expert-and user-experience in the design process.⁸¹ Finally, by surveying a hundred Arizona tenants with eviction experience to decide between the three finalist prototypes, we left the final design decision to

80. See *supra* Part II.

81. For a general overview of our design process, see Daniel W. Bernal, *Eviction and the Promise of Self-Help Technologies*, STAN. LAWYER, Fall 2018, <https://perma.cc/8LEX-2LW7>. For a description of the two d.school courses where the design work occurred, see *Justice By Design: Eviction*, JUSTICE INNOVATION: STANFORD LEGAL DESIGN LAB (last visited Mar. 24, 2020), <https://perma.cc/ZHG7-JM7Y>.

users.⁸²

In our first d.school pop-up course, we started with a recap of key insights, personas, players, and trends regarding the eviction process, user experience, and legal help resources in Arizona.⁸³ Then we quickly moved to brainstorming and prototyping. Our two teams focused on the different intervention points to create an Idea Catalogue of possible ways to empower users through a mailer or a digital resource. When participants began the design workshop, they all took on personas and were “served” with eviction notice and pleading materials. They noted that tenants would likely face the following psychological barriers:

- ***Tenants would be likely to be confused, resigned, and powerless.*** Participants felt paralyzed and wanted a path—and a nudge—forward.
- ***The documents were threatening, condescending, and complicated.*** They left participants feeling dehumanized and shamed.
- ***Participants were very aware of the potential costs of losing.*** Still, they didn’t seem to understand the potential benefits of fighting. Actually, they thought that most tenants would probably think that trying to fight would cause more trouble.
- ***The legal documents caused a seismic shift in the rental relationship.*** So far tenants had likely talked with a person, their landlord or property manager. The notices felt cold and impersonal—and came from a lawyer.
- ***Participants wanted help, a touch of the personal.***

After this immersive experience, we provided participants with more data. The Arizona Bar Foundation prepared a report for us which included all of the questions that tenants had asked about eviction on the legal help websites run by our partner organization, as well as an overview of the trends that had emerged from the on-the-ground experience and tenant interviews we had conducted so far. After receiving this data, students split up into two groups to focus on one of the two treatments. Those focusing on the mailer started by brainstorming what attitudes tenants would need to adopt to overcome the psychological barriers keeping tenants from coming to court. As participants imagined that many tenants may feel hopeless, resigned, confused, and disempowered, they wanted to create materials that gave hope, motivation, clarity, and power.

To overcome these barriers, participants working on the mailer focused on format, content, and the messaging. The first major hurdle was getting someone in a crisis to open and respond positively to a piece of mail. They made these

82. All surveys and data on file with authors.

83. See *Justice By Design: Eviction*, supra note 81.

recommendations about the envelope:

- ***It needs to come from someone trusted by the community.*** Participants wanted an actual person deliver the information—someone who was trusted such as a celebrity or a pastor. Since this seemed infeasible, the question soon became how we could create an in-person experience through a mailer and a website.
- ***It needs to be personalized.*** Whether it was targeted to their specific communities or reflected their particular case, participants wanted users to see themselves in the self-help materials, perhaps by handwriting the tenant's name on it.
- ***It needs to make people feel like they are not alone.*** Participants wanted tenants to not only feel that they were not alone, but that they were part of a supportive community and that the creators of these materials understood their situation.
- ***It can't feel like spam.*** They wanted it to come from the court, preferably, and designed not to feel slick or like spam.

Participants wanted the content and feel of the actual mailer and website to be witty, fun, and conversational—not text heavy. Still, they recognized that it needed to fight against all of the psychological barriers that tenants faced. They had several different design ideas:

- ***Make a stats-based/emotional appeal to counteract shame.*** For example, by noting how common it is for people to get evicted, the mailer might help to normalize the user's experience and help her to feel comfortable reaching out.
- ***Make the content personalized and actionable.*** Participants wanted to include community lawyers' phone numbers and emails, housing resources, a number to call or crisis hotline. They wanted a place where users could pledge to take action.
- ***Highlight stories of community members who won their cases.*** Participants thought about having letters from a community member they recognize who faced eviction and won their case. Participants wanted to research how people in the community talked about eviction to understand the values and fears that came with it.
- ***Try out both positive and negative framing.*** They debated whether we should use *positive* framing—e.g., “Let's keep you in your house”—or *warn* tenants of the consequences—e.g., “If you don't go to court you will automatically lose.”
- ***Make the website simple.*** Participants wanted no more than three steps. Right now, the process felt so confusing that they wanted to distill it into the most concrete steps. They recommended following a basic storyline with cartoon tenants.

- **Spotlight options and wins.** They noted that from the original notice to the summons and complaint, all the language had been overwhelmingly negative for tenants. Participants wanted tenants to feel a win as soon as they visited the website and at various checkpoints throughout its use.
- **Break everything into day-by-day coaching.** Participants wanted to give tenants bite-sized information and break action steps down into day-by-day coaching.
- **Make it as visual as possible.** Participants thought that it would be helpful to show a photo-narrative and to come up with different ways to encourage tenants.

Overall, the group came up with eight sample prototype themes that would permeate through the self-help materials. After a round of voting, the group chose three to prototype:

1. **Spanglish Feisty:** “Want to fight to keep your casa? Si se puede!”
2. **Dynamic Norms:** “More and more tenants are resisting their eviction cases: Will you fight yours?”
3. **Misconception Correction:** “Think that leaving your house will make your case go away? It won’t. Learn your rights.”

Because we wanted the co-design process to involve many more legal designers, we presented these results to national experts. At the Equal Justice Conference and through other personal networks, we distributed a Qualtrics survey containing the various prototypes we created to 28 housing and self-help experts.⁸⁴ We presented the top eight ideas for the envelope to the experts and they chose the same top three as our student group. They also recommended several changes. For example, they recommended having more content in the mailer, such as a defense list, frequently asked questions, and action steps.⁸⁵ Through our survey they were able to click on sections of a prototype mailer to indicate the parts that they liked and didn’t like. We used this feedback to decide which of our ideas warranted a more thorough prototyping and which needed some revision. In most ways the recommendations of the experts converged with that of our student participants. But, in the few cases where they didn’t, we tried to include both versions to submit to user testing. After receiving this data and before the second part of the class, we worked with our developer, Metin Eskili, and our designer, Carolyn Hampe, to incorporate all of this feedback and create more refined prototypes.⁸⁶

84. All surveys and data on file with authors.

85. See *Justice By Design: Eviction*, *supra* note 81.

86. *Id.*

While creation and evaluation are never entirely sequential in design, our second d.school workshop was primarily meant to refine our prototypes through user input. This would be the first time that our sketchy prototypes were actually in the hands of users. However, we also wanted to use this interaction to test out the usability of the survey questions that we would ultimately present to a much larger group of Arizona tenants. We posted an ad on Craigslist for tenants with eviction experience and invited them to the d.school.⁸⁷ When participants came, we invited them to sit down with two researchers to talk about their own experience with eviction—the emotions they felt, the actions they took, the interventions that they think would have helped. Then we allowed them to dream. We asked them to come up with a \$5 million idea and a \$5 idea. We gave the users a persona to role play and served them with the Arizona notice and pleading forms. We again asked them questions about their emotional state and about their reaction to these materials. Then we gave them the three sample envelopes and mailers—randomizing which one they saw first—and asked participants whether they would open them and how they would react. They ranked all of the choices and then put Post-its on the blown-up versions behind them to indicate things that they thought they should change. Finally, we asked them various questions about the website functionality and design.

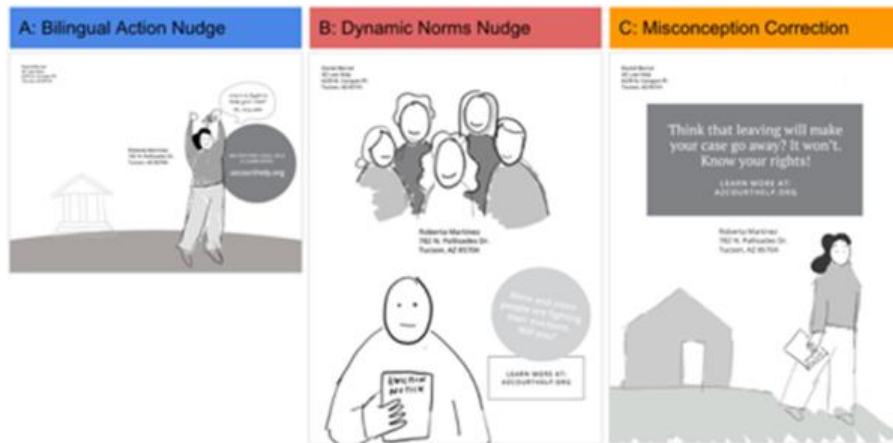
While the results were predictably inconclusive due to our small sample size, the in-person workshop changed the scope of our study in several ways.

- ***They hated the use of heroes in the self-help materials.*** As one of our interviewees expressed: “I don’t need a superhero. *I* can figure this out.” Two other interviewees felt like it was patronizing and another asked, “Why do you have these ‘caped crusaders?’” Interestingly, both the experts and our team had either a neutral or a positive reaction to this heroic design.
- ***They preferred a calmer tone.*** We wanted to inspire tenants to action, but they thought that first tenants needed to feel that everything was all right. They attributed this to the intimidation of the notice and pleading documents.
- ***They wanted the website to be simple and to have day-to-day coaching.*** They weren’t as interested in the flashier concepts that we had come up with—such as the ability to upload photos to turn them into admissible evidence.
- ***They wanted to frame everything in dollars.*** Our current mailers didn’t mention anything about money—which made some of our users incredulous. As one participant noted, “Put ‘free’ on the outside of the envelope so that we know you aren’t selling me something. And tell

87. *Id.*

me how going to my eviction hearing can save me money!”

Where our users were in consensus, we made changes to our prototypes and our survey. In addition, we made several changes to our survey design to ensure so that we would get better results. While we initially attempted to recruit participants on Amazon’s Mechanical Turk,⁸⁸ we decided we wanted to more specifically target Arizonans with past eviction experience who were searching for legal help online. To recruit our desired population, we posted an ad on azlawhelp.org, a self-help website run by our partner, the Arizona Bar Foundation.⁸⁹ We had 101 participants from our target audience population give fully engaged evaluations of our prototypes.⁹⁰ They compared the different variations of the prototype, each of which embodied a different hypothesis about what would engage litigants in their case and prevent default. For example, tenants ranked the following choices between envelopes:



88. A crowdsourcing website for hiring remotely located workers to perform discrete on-demand tasks. See AMAZON MECHANICAL TURK, <https://perma.cc/BWT9-MGVM>.

89. See Bernal, *supra* note 75. In an IRB-approved study, we partnered with the Arizona Bar Foundation to run a banner ad on their website for a little over one week. The advertisement offered visitors with past eviction experience in Arizona the opportunity to participate in a 15-minute online survey for a \$10 Walmart gift card. IRB application and survey results on file with authors.

90. All surveys and data on file with authors.

Overall, 44% of respondents preferred envelope B—the dynamic norms nudge—as compared to 26% for envelope A and 30% for envelope C.⁹¹ Respondents also reported being more likely to open envelope B—scoring it on average 7.47 out of 10 as compared to 6.29 for A and 6.11 for C.⁹² In fact, envelope B edged out the competition in almost every category: users found that this envelope signaled hope, looked the most professional, and carried a positive message.⁹³ Envelope B is reproduced larger scale below:

Option B

Daniel Bernal
AZ Law Help
7362 N. Shannon Rd.
Tucson, AZ 85741



Roberta Martinez
782 N. Pallasades Dr.
Tucson, AZ 85704



More and more
people are fighting
their evictions.
Will you?

LEARN MORE AT:
AZLAWHELP.ORG

91. *Id.*
92. *Id.*
93. *Id.*

Respondents were also asked to rate the content of the mailers that would be stuffed inside the envelopes. Mailer A was modeled after the cartoon-style self-help favored by the Harvard Access to Justice Lab. Mailer B featured several community members telling their stories of resistance and success. Mailer C focused on overcoming psychological barriers and attempted to reduce the cost of understanding how to respond to this eviction action. Mailer D featured an FAQ and clear next steps. The choices we presented to respondents are shown in the figure below:



Unlike the envelope results, the results from the mailers were mixed: respondents did not indicate any clear winner and instead found things that they liked and disliked about each one.⁹⁴ For example, respondents indicated that they slightly preferred A to the others, but indicated that they would be more likely to open mailer C, which emphasized community support and outlined options, and mailer D which provided FAQs and next steps.⁹⁵ Envelopes C and D also had the slight edge for giving good advice, providing targeted information, feeling professional, and producing a feeling of confidence.⁹⁶ There was, however, a clear loser: Mailer B—the mailer that highlighted short stories of tenants who had successfully defended themselves in court.⁹⁷

When asked about emotions people experienced with eviction, the most common responses were fear (86%), depression (83%), and hopelessness (81%).⁹⁸ When we asked respondents why they thought that most people didn't show up to court, the most popular answers were: (1) People are hopeless they could win (63%); (2) People are confused about their options (52%); and (3) People do not know how to navigate the legal system (50%).⁹⁹ These emotions seemed to map well to the parts of the treatments that users were choosing in the mailer and the envelope. Our documents needed to give people hope, cut through the confusion, and give tenants a sense that they would be able to navigate the legal system. When we made the final drafts, we decided to include a two-page mailer, using mailers C and D as the foundational documents and pulling in some content from A and some other behavioral nudges suggested by research. For example, we included a map of where the courthouse was located so that tenants could visualize coming there.

After collecting all this data, we sent another round of surveys out to 16 housing attorneys in Arizona, this time primarily focusing on the website.¹⁰⁰ The purpose was to determine if the functionality tenants desired corresponded to what the experts believed they actually needed. We also wanted to work with local experts to make sure that the content was all correct and reflected the on-the-ground reality. This short survey proved to be very important—it brought the practical to the legal logic flow. Here were some of the important take-aways:

94. *Id.*

95. *Id.*

96. All surveys and data on file with authors.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

- **Make the mailers and website feel more trustworthy.** Include sponsoring names and organizations. Be clear about who made the website.
- **Make it clear that this is not-for-profit.** Include this on the mailer and the first page of the website.
- **Build in ways to help tenants learn more and accomplish tasks.** For example, if we ask them when they were provided notice, we should show them where to find this on the notice. In response, we added a “tool tip” feature to the website that shows users the relevant notice and pleading documents with the case number culled out.
- **Have other ways for tenants to search for their case.** Because tenants would not be likely to have their case number on hand, experts thought that we should allow them to search based on last name and ZIP code.
- **Be careful about letting tenants request a continuance.** While anyone is *allowed* to request a continuance under Arizona law, our experts agreed that only a handful were granted last year. We changed this section so as not to overpromise or mislead tenants.
- **Talk about affirmative defenses.** Experts also stressed the need to talk about affirmative defenses to possession, such as the landlord’s failure to make repairs.
- **Take a “top down” approach to the website.** Start by identifying the type of eviction and give them some general orientation to the defenses, then ask them progressive questions to identify whether they have a defense.

The co-design portion of this research leveraged many useful methodologies and largely comported to the Justice Innovation framework that we recommend. We extensively borrowed from existing research, created two-way exploratory labs, validated sketchy ideas first, and came up with innovative ways to design from a distance. Each design decision was truly a community decision, carried by many hands. However, there were two primary areas where we could have improved. First, we still were unable to get direct feedback on our prototypes from tenants who were *currently* experiencing eviction. We hypothesize that tenants facing eviction occupy a unique psychological state and we remain unconvinced that tenants with past eviction experience are fully able or willing to re-enter this state to provide feedback. In short, we fear that our testing may have been more divorced from the real world than is preferable. Second, while we created several sketchy prototypes, we did not build every feature of our website in analog first. For example, when JustFix.nyc had the idea to automatically create landlord demand letters, they started by writing the letters out by hand.¹⁰¹ Slowly, over time, once they had

101. See Telephone Interview with Ashley Treni, *supra* note 59.

clear evidence that this would add value, they invested the technological resources.¹⁰² In contrast, we developed the functionality to automatically create Answers and Counterclaims on our website because they were recommended in our co-design session, not because we saw them used in the world.

D. Rigorous Field Testing

In creating field and pilot trials of solutions, our Justice Innovation Framework recommends that we collect behavioral feedback about whether and how people will use the intervention, as well as to identify what iterations are needed to best improve its impact and avoid harms.¹⁰³ Again, our situation was particularly difficult. Because our primary outcome metric was court attendance, which was already low, we knew that we would need a very large number of tenants to measure any effect. We secured a doctoral dissertation research grant through the National Science Foundation to conduct a four-month study to randomize treatment to tenants facing eviction in Pima County Justice Court.¹⁰⁴ Tenants in the treatment group were sent the self-help nudge in the mail, with a link to our website, www.azevictionhelp.org.¹⁰⁵ We then compared attendance rates, case outcomes, and money judgments.

Our study showed largely a null finding: treated tenants were no more likely than tenants in the control group to show up to court or get their cases dismissed.¹⁰⁶ In addition, treated tenants were actually slightly more likely to owe their landlord money.¹⁰⁷ Regarding the self-help materials, 16% of the mailers were returned to sender.¹⁰⁸ Regarding the website, only 30 tenants total—less than 2%—followed the link and no tenants printed out court documents by inputting case information.¹⁰⁹ We also conducted interviews of tenants immediately after their eviction hearing, in part to determine whether tenants had received the mailer and website and how they reacted.¹¹⁰ One

102. *Id.*

103. *See supra* Part II.

104. For the full results of this study, see Bernal & Yuan, *supra* note 72, at 21-22.

105. *Id.* at 18-19, 21-22 (describing and interpreting the empirical results). For a record of the website as of Apr. 10, 2020, see <https://perma.cc/C674-X49A>.

106. *Id.* at 19.

107. *See id.* at 22 for possible interpretations of this finding.

108. *Id.* at 13.

109. *Id.* at 14.

110. This interview study was primarily designed to explore tenant perceptions of justice following their eviction hearing. *See* Daniel W. Bernal, *Evicting the American Underclass: Housing Court & The Erosion of Public Confidence in the Judiciary* 7-8 (May 2019) (unpublished manuscript) (on file with author). All interviews were audio recorded and professionally transcribed. Reactions to the mailer do not feature in the current version of the article but original transcripts are on file with author. All interviewee names have been changed to protect confidentiality.

tenant looked at the mailer in horror and asked whether her information had been stolen.¹¹¹ Another said that it was a helpful part of her decision to attend court and that she used the phone number provided to reach out for help.¹¹² Some really appreciated the website when we showed them but hadn't felt like they had the bandwidth or the need to visit it before the hearing.¹¹³ Several tenants noted that the mailer didn't provide any information they didn't already know.¹¹⁴

E. Lessons & Revisions

Elsewhere we explore the policy impacts of these findings.¹¹⁵ Here, however, we briefly consider how such a finding reflects on our design. Where did we go wrong? What lessons have we learned? And what are we changing before the next round of testing? First, this teaches us the undeniable importance of involving all stakeholders in those first stages of justice innovations. We would have benefitted from investing much more time in the community, allowing them to drive the research agenda instead of relying on our own “expert” opinion. Second, we should have foregrounded the procedural justice concerns to ensure that our intended intervention—sending a mailer—didn't decrease people's standing, dignity, and respect in the process. Third, we needed to find ways to co-design directly with tenants in the midst of the eviction process. Interviewing tenants post-hearing set an entirely different tone from our lab-based work with formerly-evicted tenants. We should have created opportunities to get these materials in the hands of tenants during their eviction to have a more realistic understanding of how they would respond. Fourth, we would have benefitted from designing our website in easily stackable modules, and testing each function in analog before investing the resources to build it out further.

CONCLUSION

Some interventions are always going to fail, despite our best design. But by applying a comprehensive, rigorous methodology to designing justice innovations we increase our chance of avoiding costly implementation of ideas

111. See Interview with Katelyn, Defendant, Pima County Consolidated Justice Court, in Tucson, Ariz. (Mar. 20, 2019) (transcript on file with author).

112. See Interview with Alberto, Defendant, Pima County Consolidated Justice Court, in Tucson, Ariz. (Mar. 28, 2019) (transcript on file with author).

113. See, e.g., Interview with Diamond, Defendant, Pima County Consolidated Justice Court, in Tucson, Ariz. (Mar. 20, 2019) (transcript on file with author).

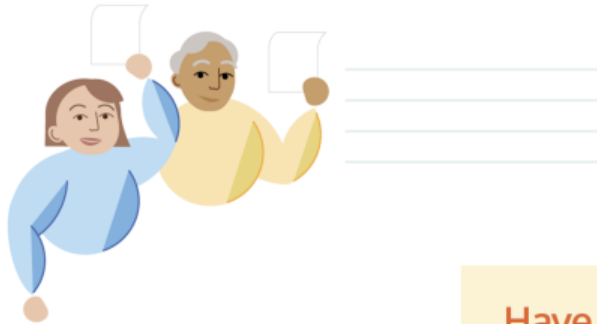
114. See, e.g., Interview with Diego, Defendant, Pima County Consolidated Justice Court, in Tucson, Ariz. (Mar. 7, 2019) (transcript on file with author).

115. Bernal & Yuan, *supra* note 72, at 21-22.

that do not engage users or have substantial impact on procedural or substantive justice outcomes. Human-centered design methodologies, paired with expert-sourced techniques, should become the standard in justice innovation, just as randomized field experiments have become the standard for their testing. As more courts, law schools, and companies strengthen their justice research and development capacities, we encourage greater transparency around how our innovations are created, especially when they are not successful. By making explicit a justice innovation creation process that is standard, accountable, and reproducible, interventionists can avoid previously identified traps and build upon each other's work. Moreover, by adopting similar language and methodologies, justice interventionists increase their chances of producing interventions that will serve their customers.

APPENDIX

Daniel Bernal
Arizona Eviction Help Study
c/o Arizona Bar Foundation
4201 N 24th St Suite 210
Phoenix, AZ 85016



Have an upcoming
eviction case?

¿Tiene un próximo caso de desalojo?



Learn about
your rights
& options

¡Conozca sus derechos y opciones!

This mailer contains FREE information about your rights and options in court. Inside, you'll find a link to a free website where you can learn more.

Este correo contiene información GRATUITA sobre sus derechos y opciones en el tribunal. En el interior, encontrará un enlace a un sitio web gratuito donde puede obtener más información.

Eviction can be overwhelming.
But you don't have to face it unprepared.
We'll provide the information you need.



You have options!
You have rights!

HERE ARE SOME OF THEM:

| | | | |
|--|--|--|--|
| <p>PAY WHAT YOU OWE. If you are being evicted for not paying your rent, you can stop your eviction by paying all the rent and fees you owe. Make sure to get a receipt and to pay what you owe before the judge makes their decision.</p> | <p>NEGOTIATE A SETTLEMENT. You can try to negotiate with your landlord to dismiss your eviction case. Make sure you get any agreement in writing. But be careful with what you sign. You can be signing a "stipulated agreement" in which you agree with the charges raised against you. If you sign one, you likely can't stay in your home.</p> | <p>FILE AN ANSWER. If you disagree with the reason that your landlord is trying to evict you or the amount your landlord says you owe, you may benefit from filing an Answer.</p> | <p>FILE A COUNTERCLAIM. If you didn't pay your rent because your landlord hasn't kept your home in a livable condition or if you think that your landlord owes you money, you may benefit from filing a Counterclaim.</p> |
|--|--|--|--|

More free info here:

WE BUILT A FREE WEBSITE TO HELP YOU LEARN MORE.

azevictionhelp.org

Get free info about the paperwork here:

Doing nothing can cost you.

If I just leave my house, this will all go away, right?

No. Ignoring the court summons you received has consequences. If you do not show up to court, the court will likely enter a default judgment against you. This judgment will have consequences:



Your landlord may send the amount you owe to debt collectors



Your credit score may go down.



You may have a harder time finding a new apartment.

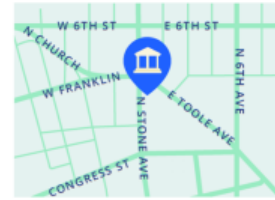


You may lose your right to subsidized housing.



You may lose the chance to negotiate the move-out date.

Should you go to court?



How will you get to court?

Bus Drive Walk Other

What if I can't make it to my court date?

To request to change the date of your hearing, or to request a translator or disability accommodations, call the court at:

(520) 724-3171

Learn more about the costs and benefits of going to court here

Why am I receiving this packet?

This information is provided by the Arizona Bar Foundation and is part of a research study. It was created with the assistance of the Stanford Legal Design Lab's designers, researchers, and students. Any information that you find in this mailer should be verified with the local courts, to ensure that it is correct.

We received your information through a public data request from the court and we will continue to collect data until your case ends. We won't share any of your personal information with others. The goal of our study is to determine whether free self-help information can change eviction case outcomes.

To learn more about this study, visit this site and navigate to "About Us."

WE BUILT A FREE WEBSITE TO HELP TENANTS LIKE YOU.
azevictionhelp.org

The screenshot shows the homepage of the Arizona Eviction Self-Help Guide. At the top, the browser address bar displays "https://az-self-help.herokuapp.com". The page header includes the site name "Arizona Eviction Self-Help Guide" and language options for "EN" and "ES". A green banner contains the text "¿Habla español? Ver el sitio web en español." Below this, an illustration of three diverse people holding up documents is positioned to the left of the main heading: "Have an eviction case? Learn about your rights and options". A sub-heading states: "We're a non-profit making it easier for tenants like you to learn about your eviction hearing. Your use of the site is part of a research study. We can help you:". Three main navigation buttons are displayed: "Find Your Case Information" (with a magnifying glass icon), "Identify Defenses & Counterclaims" (with a checklist icon), and "Create Court Documents" (with a document and pencil icon).

This screenshot shows the "Potential Defenses" section of the website. The header includes the site name, the current section "Potential Defenses", and language options. A green banner with "¿Habla español? Ver el sitio web en español." is present. A progress bar at the top indicates the current step: "2 Identify Defenses & Counterclaims", with "1 Find Your Case Info" and "3 Create Court Documents" also visible. The main question is "Why has your landlord filed for eviction?". Below this, four selection options are provided: "Non-Payment of Rent" (with a dollar bill icon), "Violation of the Lease" (with a document and pencil icon), "Material and Irreparable Breach" (with a warning triangle icon), and "I don't know" (with a question mark icon). At the bottom, there are navigation buttons for "< Back", "Reset Questions", and "Next >".

Arizona Eviction Self-Help Guide Find Your Case Info [About this Website](#) EN ES

¿Habra español? Ver el sitio web en español.

1 Find Your Case Info 2 Identify Defenses & Counterclaims 3 Create Court Documents

Find Your Case Information

We can help you find the date and time of your upcoming eviction hearing by searching public records data from the court. Please enter your last name and zip code to help us pull up your case information.

Last Name Zip Code

> Where did you get my data?

OR

Case Number (optional)




Arizona Eviction Self-Help Guide E-file Documents [About this Website](#) EN ES

¿Habra español? Ver el sitio web en español.

1 Find Your Case Info 2 Identify Defenses & Counterclaims 3 Create Court Documents

We can help you create court documents that may help your legal case.

ⓘ If you go back and complete sections 1 and 2 , we'll help you to identify which of these documents you can file and also help you to fill it out. If you already know which document you'd like to complete, you can download a fillable PDF here.

| | | |
|--|---|---|
|  <p>Answer</p> <p>File this if you disagree with the reason that your landlord is evicting you.</p> <p>VIEW DOWNLOAD</p> |  <p>Counterclaim</p> <p>File this if you have a claim against your landlord.</p> <p>VIEW DOWNLOAD</p> |  <p>Waiver</p> <p>Answers and Counterclaims cost money. File this for the court to waive these fees.</p> <p>VIEW DOWNLOAD</p> |
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